

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2021 ( )

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF INFINITY CAPITAL GROUP LIMITED

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**WINDING UP PETITION**

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TO: THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION of Block Capital Group Limited (“**Block Capital**”) of Letiza Palmer, Level 1, 544 Beaufort Street, Mount Lawley, WA 6050, Australia, shows that:

**Introduction**

1. Infinity Capital Group Limited (“**Infinity**”) was incorporated on 9 August 2017 with registration number 325882 as an exempt limited company under the laws of the Cayman Islands. Infinity’s registered office is International Corporation Services Ltd., P.O. Box 472 George Town, Harbour Place, 2<sup>nd</sup> Floor, North Wing, 103 South Church Street.
2. Infinity’s principal office is at Units 802B & 803A, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty, Hong Kong. Infinity’s website (infinitycapital.hk) states that Infinity is in the business of developing world-class luxury residences and has completed a number of projects in Singapore, Thailand and Japan.

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### Grounds

3. The grounds upon which Block Capital claims to be entitled to a winding up order are as follows:
  - a. Block Capital claims that Infinity owes the sum of \$2,857,142.86 AUD (Australian Dollars) and interest to 10 May 2021 of \$716,666.67 AUD being a total indebtedness of \$3,573,809.53 AUD ("**Debt**"). The Debt arises under a Loan Agreement between Block Capital and Infinity dated 22 October 2016 ("**Loan Agreement**") under which Block Capital extended a \$2,000,000 USD (United States Dollars) loan ("**Loan**").
  - b. Interest was payable on the Loan at the rate of 15%, simple interest (non-compounded) per annum (except in the event of default).
  - c. Interest for the first year of the Loan, in the sum of \$300,000 USD was payable within five business days of Infinity receiving the Loan Amount. Infinity paid the interest for the first year of the Loan, albeit the payment was late.
  - d. The term of the Loan was two years. Infinity and Block Capital agreed that this period would end on 10 October 2020 and that the Loan would be repaid on or within 20 business days of this date.
  - e. On 16 October 2020 Infinity requested an extension of the term of the Loan to 10 January 2021. Following this request a forbearance agreement was agreed ("**Forbearance Agreement**") under which, *inter alia*:
    - i. The term of the Loan was extended to 10 January 2021;
    - ii. Interest in the period to 10 January 2021 would remain at 15%;
    - iii. The Loan was converted to Australian Dollars at the rate of AUD/USD FX 70c; and

- iv. The Loan and interest payable must be repaid within five business days of 10 January 2021.
- f. In breach of the Loan Agreement and Forbearance Agreement, Infinity failed to repay the Loan and interest within 5 business days of 10 January 2021.
- g. By a statutory demand dated 2 June 2021 ("**Statutory Demand**"), Block Capital demanded that Infinity pay the Debt or secure or compound for it to Block Capital's satisfaction.
- h. The Statutory Demand was served upon Infinity on 10 June 2021 at Infinity's registered office and Infinity has confirmed receipt of such.
- i. 21 days have passed since service of the Statutory Demand and Infinity has neglected to pay the Debt, or to secure or compound for the same to the satisfaction to Block Capital.

#### Security

- 4. Under the Loan Agreement, Block Capital and Infinty agreed that, to secure the due payment of the Loan and the compliance with Infinity's obligations under the Loan, security ("**Security**") would be provided as follows:
  - a. The Security would comprise two fully completed residential properties, units 201 and 203 at 169-32 Yamada, Kutchan, Abuta District, Hokkaido 033-0081, Japan (the "**Properties**").
  - b. The Properties (were allegedly) owned by ICG I (being the letter "i" rather than the number "one") incorporated on 16 July 2018 with registration number 340045 ("**ICG i**")
  - c. Mr Sean Wilson Baguley (a director of Block Capital) would receive a transfer of 99 shares of ICG i and be appointed as a director of ICG i.

- d. Amendments would be made to the Articles of ICG i to prevent any further issuance of shares, share transfers, appointment of directors or any further amendments of the Articles without the consent of Mr Baguley.
5. After the failure of Infinity to pay the Debt when due, in June 2021, Block Capital attempted to exercise its Security by way of taking control of ICG i.
  6. In its attempts to exercise its Security, Block Capital discovered in June 2021 that a separate legal entity named ICG 1 (being the number "one" rather than the letter "i") was incorporated on 27 August 2018 with registration number 341641 ("ICG One"), in breach of the Section 30(1)(a) of the Companies Act (2021 Revision).
  7. Block Capital believed that there was only one company and that the alphanumeric characters "i" and "1" were used interchangeably by the draftspersons' of various documents and emails. Block Capital believed that these characters both meant "one".
  8. Block Capital's belief was reasonable, given section 30(1)(a) of the Companies Act (2021 Revision) which provides that no company shall be registered by a name which is identical with a name by which a company in existence is already registered or so nearly resembles such name so as to be calculated to deceive.
  9. By letter dated 21 June 2021, Harneys (counsel for Infinity) stated that the Properties are owned by ICG One and alleged that Block Capital was not entitled to exercise its Security under the terms of the Loan Agreement.
  10. Infinity's position is that: (i) Infinity did not provide Block Capital with the Security as agreed under the Loan Agreement; and (ii) Block Capital is not entitled to enforce its Security.

**Alleged dispute in relation to Debt**

11. By letter dated 21 June 2021, Harneys (counsel for Infinity) confirms Infinity's receipt of the Statutory Demand on 3 June 2021 and alleges, *inter alia*, that:
  - a. The presentation of the Statutory Demand is an abuse of process (which is denied);
  - b. The amount of the Debt stated in the Statutory Demand is wrong (which is denied); and
  - c. The Debt is secured through ICG One rather than ICG i (contrary to the terms of the Loan Agreement).
12. In its 21 June 2021 letter, Infinity fails to make any representation that it is solvent and/or able to pay its due debts.

**Conclusion**

13. In the circumstances, Block Capital has established grounds to wind up Infinity on the basis that it is unable to pay its debts. As a result, Block Capital seeks the following relief:
  - a. The appointment of Christopher Kennedy, Edward Simon Middleton and Tiffany Wong Sze Wing as joint official liquidators of Infinity ("JOLs"); and
  - b. Costs.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:

- (1) Infinity be wound up in accordance with the Companies Act and that:
  - a. CHRISTOPHER KENNEDY, of Alvarez & Marsal Cayman Islands Limited, 2nd Floor, Flagship Building, 142 Seafarers Way, George Town, Grand Cayman, KY1-1104, Cayman Islands, TIFFANY WONG SZE WING and

EDWARD SIMON MIDDLETON of Alvarez & Marsal Asia Limited of 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong be appointed as JOLs with the power to act jointly and severally.

- b. The JOLs shall not be required to give security for their appointment.
- c. The JOLs shall have the power to act jointly and severally in their capacity as liquidators of Infinity.
- d. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
- e. In addition to the powers set out in Part II of the Third Schedule to the Companies Act, the JOLs be authorised to exercise all of the powers set out in paragraphs 1, 2, 4, 7, 8, 10 and 11 of Part I of the Third Schedule to the Companies Act and section 110(2) thereof, without further sanction of this Honourable Court.
- f. The JOLs be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of Infinity and the winding up of its affairs in the Cayman Islands and/or elsewhere.
- g. Without prejudice to the generality of the foregoing, the JOLs be authorised and be granted leave to take all such actions as may be necessary to:
  - i. communicate on Infinity's behalf with the regulators as appropriate; and
  - ii. make applications to, and seek the assistance and recognition from, the courts of any foreign jurisdictions as may be necessary in the

course of their conduct as JOLs of Infinity or for the purposes of carrying out any of the functions provided for herein.

- h. The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules, 2018.
- i. No disposition of the property of Infinity by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Act.
- j. No suit, action or other proceeding may be proceeded with or commenced against Infinity except with the leave of the Court and subject to such terms as the Court may impose.
- k. The JOLs shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding up and the hourly rates and the amount of remuneration shall be determined in accordance with the Insolvency Practitioners' Regulations, 2018.
- l. The JOLs be at liberty to pay themselves (up to 80% of the JOLs' remuneration pending approval by the Court), their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of Infinity as expenses of the liquidation.

m. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of Infinity as an expense of the liquidation.

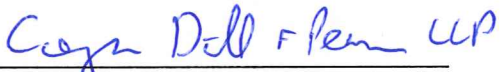
n. The JOLs be at liberty to apply generally.

(2) Costs

(3) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner ever pray etc.

DATED this 6<sup>th</sup> day of July 2021

  
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Conyers Dill & Pearman LLP  
Attorneys at Law for the Petitioner

NOTE: This petition is intended to be served on Infinity.

This Petition was presented by Conyers Dill & Pearman LLP, Attorneys-at-Law for and on behalf of the Petitioner herein whose address for service is Second Floor, SIX, Cricket Square, PO Box 2681, George Town, Grand Cayman, KY1-1111

Notice of Hearing

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts,  
George Town, Grand Cayman on the \_\_\_\_\_ day of \_\_\_\_\_ 2021  
at \_\_\_\_\_ am / pm.

Any correspondence or communication with the Court relating to the hearing of this  
petition should be addressed to the Registrar of the Financial Services Division of the  
Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.