

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 ICG I

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**WINDING UP PETITION**

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TO:     THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION of Sean Wilson Baguley (the "**Mr Baguley**") of 20 Salter Point Parade, Salter Point, Western Australia 6152, Australia, shows that:

**Introduction**

1.     ICG I ("**ICG i**") was incorporated under the Companies Law on 16 July 2018 as an exempted limited company with registered number 340045.
2.     Mr Baguley believes that ICG i was incorporated to acquire certain property in Hokkaido, Japan.
3.     The registered office of ICG i is situated at International Corporation Service Ltd ("**ICSL**"), PO Box 472, Harbour Place, 2nd Floor, North Wing, 103 South Church Street, George Town, Grand Cayman KY1-1106, Cayman Islands.
4.     ICSL is associated with the Cayman Islands law firm Travers Thorp Alberga ("**TTA**"). Email communications from ICSL come from the email domain "@traversthorpalberga".

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5. Based upon the records held by Mr Baguley, Mr Baguley believes that:
  - a. ICG i was incorporated by LC Capital Limited (“**LC Capital**”).
  - b. ICG i has issued 100 shares in total. LC Capital holds one share. Mr Baguley holds 99 shares.
  - c. ICG i has two directors, Mr Baguley and Jonathan Cheng.

### **The Parties**

#### Mr Baguley and Block Capital Group Limited

6. Mr Baguley is a director of Block Capital Group Limited (“**Block Capital**”), a company incorporated in the British Virgin Islands. Block Capital is registered as a foreign company with the Australia Securities & Investment Commission with ARBN 146 539 200.
7. As discussed further below, Block Capital has loaned funds to an entity related to ICG i.

#### Infinity Capital Group Limited

8. Infinity Capital Group Limited (“**Infinity**”) is a related company to ICG i. Infinity is registered as an exempt limited company with registration number 325882. Infinity was incorporated under the Companies Law on 9 August 2017. It has the same registered office as ICG i.
9. Infinity (as borrower) entered into a Loan Agreement with Block Capital (as lender) dated 22 October 2018 (“**Loan Agreement**”).
10. The Loan Agreement provided, *inter alia*:
  - a. Block Capital would loan US\$2,000,000 to Infinity (“**Loan**”);

- b. The term of the Loan would be two years;
- c. Infinity would provide security to the Lender in real property comprising units 201 and 203 at 169-32 Yamada, Kutchan, Abuta District, Hokkaido 044-0081 (referred to as the 'Aspect Apartments') (the "**Properties**").
- d. As the Properties were owned by ICG i, the security would be provided by way of 99 shares in ICG i being issued to Mr Baguley and Mr Baguley being appointed as a director to ICG i.

#### LC Capital Limited

- 11. The Loan Agreement states that:
  - a. ICG i is wholly owned by LC Capital. LC Capital remains a shareholder of one share of ICG i; and
  - b. LC Capital is the sole shareholder of Infinity.

#### ICG 1

- 12. ICG 1 ("**ICG One**") was incorporated under the Companies Law on 27 August 2018 (a short time after ICG i was incorporated) with registration number 341641. ICG One has the same registered office and same registered office service provider as ICG i.
- 13. It should be noted that ICG i has the name "ICG I" (that is, the letters ICG, followed capital letter "i"). However, ICG One has the name "ICG 1" (that is, the letters ICG, followed by the numeral "1"). "ICG I" and "ICG 1" are separate legal entities, both incorporated by LC Capital in the Cayman Islands at around the same time of negotiations between the parties regarding entry into the Loan Agreement.
- 14. Based upon the records held by Mr Baguley, Mr Baguley believes that:

- a. ICG One has issued 100 shares in total. Infinity holds one share (which was transferred to it by LC Capital). Mr Baguley holds 99 shares.
  - b. ICG One has two directors, Mr Baguley and Jonathan Cheng.
15. Until 22 June 2021, Mr Baguley believed that “ICG I”/“ICG 1” were one and the same entity. He 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. Mr Baguley believed that these characters both meant “one”.
16. Mr Baguley’s belief was reasonable, given, *inter alia*, section 30(1)(a) of the Companies Act (2021 Revision) (“**Companies Act**”) 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.

#### Jonathon Cheng and YC Chen

17. Jonathan Cheng is a director of ICG i, ICG One and Infinity.
18. YC Chen is General Manager and in-house Counsel for LC Capital and Infinity.
19. Mr Baguley believes that Jonathon Cheng and YC Chen are also directors of LC Capital.
20. YC Chen was previously employed as a lawyer by TTA in Hong Kong.

#### **Background**

21. As set out above, the Loan Agreement between Block Capital and Infinity was dated 18 October 2020 with security in the Properties to be provided through shares in ICG i being issued to Mr Baguley and Mr Baguley being appointed as a director of ICG i.

22. Block Capital and Infinity agreed that the term of the Loan would be regarded as ending on 10 October 2020. However, Infinity failed to repay the Loan (and outstanding interest amounts) as required.
23. On 16 October 2020, Infinity requested an extension of the term of Loan until 10 January 2020.
24. Block Capital and Infinity agreed under a forbearance agreement (the “**Forbearance Agreement**”), *inter alia*, that the term of the Loan would be extended to 10 January 2021 and that the Loan and interest payable would be repaid within five business days of 10 January 2021.
25. In breach of the Loan Agreement and the Forbearance Agreement, Infinity failed to repay the Loan Amount or the interest within five business days of 10 January 2021. These sums remain wholly unpaid.
26. On 18 March 2021, YC Chen emailed Block Capital a remittance statement purportedly from Citibank showing the transfer of HKD 3,104,400 (approximately USD 400,000) to the bank account of Block Capital. No such funds have been received by Block Capital. Block Capital contacted Citibank to request if the remittance statement was genuine. Citibank did not provide such confirmation and advised that it was unable to locate the reference number noted on the remittance statement.
27. Block Capital issued a statutory demand under section 93 of the Companies Act to Infinity dated 2 June 2021, claiming the sum of AUD 3,573,809.53 calculated as at 10 May 2021 (“**Statutory Demand**”). Infinity failed to comply with the Statutory Demand.
28. In June 2021, Mr Baguley called several board meetings of ICG One in an effort to enforce Block Capital’s security. As stated above, Mr Baguley believed only one “ICG” entity existed and that entity was the owner of the Properties.

29. Jonathon Cheng (ICG One's only other director) failed to attend any of board the meetings called by Mr Baguley.
30. As a result of Block Capital and Mr Baguley's investigations, following the default by Infinity under the Loan Agreement, Block Capital and Mr Baguley discovered that:
  - a. ICG i and ICG One are two separate legal entities (despite the similarity of their names) registered in the Cayman Islands, incorporated by LC Capital at around the time the Loan Agreement was being negotiated.
  - b. There are competing allegations and uncertainty as to whether the Properties are held by ICG i or ICG One.
31. Mr Baguley and Block Capital have been unable to identify any commercial purpose for the incorporation of both ICG i and ICG One.
32. Mr Baguley has engaged lawyers in Japan to investigate the status of the Properties. Without waiver of privilege, in June 2021 these lawyers advised Mr Baguley that:
  - a. The registered owner of the Properties in Japanese is アイシージー・アイ which is translated as "ICG I" with the last part pronounced as the letter "I" (as in "eye") in Japanese.
  - b. Each property is currently subject to a seizure order dated 13 May 2021 by the creditor stated as "Kutchan-cho, Abuta-gun." This likely means that the local town has seized both Properties as the owner has defaulted on taxes.
33. By letter from Harneys (counsel for Infinity and for Jonathon Cheng) to Conyers (counsel for Block Capital and Mr Baguley), dated 21 June 2021, Harneys stated that:

- a. the Properties are owned by ICG One; and
  - b. Block Capital is not entitled to enforce its security under the terms of the Loan Agreement.
34. On 23 June 2021, Mr Baguley and Block Capital made various requests for information regarding ICG i and ICG One from Harneys and ICSL/TTA.
35. Harneys and ICSL/TTA have failed to provide substantive responses to these requests.
36. In particular, Mr Baguley has not received confirmation regarding whether: (i) ICG i or ICG One is the owner of the Properties; (ii) he is recorded on the Register of Members of ICG i as holder of 99 shares; (iii) he is recorded on the Register of Directors of ICG i as a director; and (iv) the memorandum and articles of association of ICG i were amended and restated in accordance with the Loan Agreement.

#### **Grounds**

37. The grounds upon which Mr Baguley claims to be entitled to a winding up order on a just and equitable basis are as follows:
- a. Loss of substratum:
    - i. Mr Baguley understands that ICG i was incorporated for the sole purpose of holding the Properties, to facilitate the security granted under the Loan Agreement between Infinity and Block Capital.
    - ii. If ICG i is not the owner of the Properties, it would be unjust and unequitable for ICG i to continue.
  - b. Further and/or alternatively, lack of probity and loss of confidence in the management of ICG i:

- i. Although Mr Baguley is a named director of ICG i, counsel for Jonathon Cheng (Harneys) has asserted (in relation to ICG One) that Mr Baguley cannot currently exercise his rights as a director of the Company as Mr Baguley wishes.
  - ii. Mr Baguley reasonably believes that Jonathon Cheng would take the same view in relation to ICG i and take steps to oppose Mr Baguley exercising his rights as director in respect of ICG i.
  - iii. Mr Baguley has justifiably and irretrievably lost confidence in Jonathon Cheng and his ability or willingness to manage the affairs of ICG i in ICG i's best interests, including, *inter alia*:
    - A. Jonathon Cheng's participation in the incorporation of ICG i and ICG One, the names of which so nearly resemble each other so as to be calculated to deceive;
    - B. Jonathon Cheng's failure to protect the Properties given the seizure orders made against them in Japan by the local government; and
    - C. Jonathon Cheng's involvement in relation to YC Chen sending a purported Citibank remittance statement to Block Capital in respect of payments due from Infinity, which Citibank was unable to confirm was genuine.
  - iv. It would be unjust and inequitable for Jonathon Cheng to remain in his role as director of ICG i and for ICG i to ignore Mr Baguley's rights as director and shareholder.
- c. Further, or in the alternative, oppression of shareholder rights:

- i. Although Mr Baguley owns 99 (out of 100) shares of ICG i, counsel for Jonathon Cheng (Harneys) has asserted (in relation to ICG One) that Mr Baguley cannot exercise his rights as a shareholder as Mr Baguley wishes.
  - ii. Mr Baguley reasonably believes that Jonathon Cheng, and the other shareholder of ICG i (LC Capital, which is under the control of Jonathon Cheng) would take the same view in relation to ICG i and that Jonathon Cheng (and LC Capital) would take steps to oppose, *inter alia*, the exercise of Mr Baguley's rights as shareholder to remove Jonathon Cheng as director and/or any other steps Mr Baguley considered necessary in the best interests of ICG i, and/or in accordance with the terms of the Loan Agreement in relation to the Properties.
  - iii. It would be unjust and inequitable for Mr Baguley's rights as majority shareholder to be ignored.
- d. Further and/or alternatively, the need for an independent investigation:
- i. Mr Baguley's own investigations have discovered that the names "ICG I" and "ICG 1" have appeared to be used interchangeably by Jonathon Cheng and YC Chen in their dealings with Mr Baguley and Block Capital.
  - ii. Mr Baguley believes that an independent investigation of the circumstances surrounding the incorporation of two companies with almost identical names, at the same time as negotiations in relation to the Loan Agreement being entered, is required.
  - iii. It would be unjust and unequitable for the business of ICG i to continue without an independent investigation into the affairs of ICG i.

38. In light of the issues described above, it is possible that Mr Baguley does not have a fully informed view of the current financial and operational status of ICG i. As such, Mr Baguley is unable to confirm whether or not ICG i is currently solvent and/or if there are further examples of mismanagement and misconduct.

#### **Alternative remedies**

39. It is Mr Baguley's belief, based upon, *inter alia*, the 21 June 2021 letter from Harneys to Conyers regarding ICG One, that Infinity, LC Capital, Jonathon Cheng and/or YC Chen:
- a. will not recognize the effect of Mr Baguley exercising its rights as shareholder or director of ICG i to remove Jonathon Cheng from the board of ICG i (as Infinity, LC Capital, Jonathon Cheng and/or YC Chen will assert that Block Capital and/or Mr Baguley do not have such rights); and
  - b. will obstruct any attempts by Mr Baguley to obtain control of the Properties;
  - c. will obstruct any attempts by Mr Baguley to obtain information about ICG i and/or the Properties.
40. Accordingly, Mr Baguley believes that there are no other alternative remedies available which would allow Mr Baguley to obtain further information about the Properties and would allow Mr Baguley to exercise his rights as shareholder and director of ICG i.
41. To the extent it is alleged that an alternative remedy is that Block Capital may apply to wind up Infinity, Mr Baguley notes that such an application is being made by Block Capital contemporaneously with this Petition. In any event, given the uncertainty regarding the roles of Infinity, ICG One and ICG i, Mr Baguley does not consider that the application to appoint liquidators to Infinity is an alternative remedy to the relief sought in this Petition.

**Conclusion**

42. In the circumstances, it is just and equitable that ICG i should be wound up. As a result, Mr Baguley seeks the following relief:
- a. The appointment of Christopher Kennedy, Edward Simon Middleton and Tiffany Wong Sze Wing as joint official liquidators of ICG i (“JOLs”); or
  - b. Further, or in the alternative, the making of an order to regulate the affairs of ICG i; and
  - c. Costs.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) ICG i 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 ICG i.
  - 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 ICG i 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 ICG i'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 ICG i 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 ICG i 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 ICG i 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 ICG i 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 ICG i as an expense of the liquidation.
  - n. The JOLs be at liberty to apply generally.
- (2) Further, or in the alternative, an order regulating the affairs of ICG i under section 95(3) of the Companies Act.
  - (3) Costs.
  - (4) 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

Conyers Dill & Pearman LLP  
Conyers Dill & Pearman LLP  
Attorneys at Law for the Petitioner

NOTE: This petition is intended to be served on ICG I and LC Capital Limited.

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.