



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD OF 2021 ( )

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2021 REVISION)  
AND IN THE MATTER OF LUCKIN COFFEE INC. (IN PROVISIONAL LIQUIDATION)

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PETITION

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TO: THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of **LUCKIN COFFEE INC. (IN PROVISIONAL LIQUIDATION)** (the **Company**) of Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands, shows as follows:

**INTRODUCTION**

1. The object of this Petition is to seek the sanction of this Honourable Court pursuant to section 86 of the Companies Act (2021 Revision) (the **Companies Act**) of a proposed scheme of arrangement (the **Scheme**) between the Company and certain of its creditors (the **Scheme Creditors**).

2. A copy of the following documents will be exhibited to a supporting affidavit sworn by Mr. Reinout Hendrik Schakel, to be filed with this Honourable Court:
  - (a) the proposed Scheme;
  - (b) a draft explanatory statement prepared in respect of the Scheme pursuant to Order 102 Rule 20(4)(e) of the Cayman Islands Grand Court Rules 1995 (Revised Edition) which includes details of the background to, and key terms of, the Scheme (the **Explanatory Statement**);
  - (c) various appendices to the Explanatory Statement, including, among other things, instructions to Scheme Creditors in relation to voting in respect of the Scheme and for claiming their entitlements under the Scheme, as well as certain detailed financial information concerning the Company and its subsidiaries (the **Group**); and
  - (d) a draft notice convening a single meeting of Scheme Creditors for the purposes of considering and, if thought fit, approving, with or without modification, the proposed Scheme.
3. Save where otherwise defined, capitalised terms used in this Petition shall have the same meaning as ascribed to them in the Scheme.

#### THE COMPANY

4. The Company is an exempted company which was incorporated with limited liability under the laws of the Cayman Islands on 16 June 2017 with company registration number 324324.
5. The registered office of the Company is situated at Conyers Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.
6. The objects for which the Company was established are unrestricted and the Company has full power and authority to carry out any object except as prohibited by the laws of the Cayman Islands.
7. The authorised share capital of the Company is US\$50,000 divided into 25,000,000,000 ordinary shares of par value US\$0.000002 each (comprised of 20,000,000,000 Class A Ordinary Shares and 5,000,000,000 Class B Ordinary Shares) of which:

- (a) 1,867,127,868 Class A Ordinary Shares are issued and paid up or credited as paid up as of 15 April 2021; and
  - (b) 144,778,552 Class B Ordinary Shares are issued and paid up or credited as paid up as of 15 April 2021.
8. The ADSs issued by the Company (each representing eight (8) Class A Ordinary Shares) were listed on the NASDAQ on 17 May 2019 (stock code: LK). However, on 1 July 2020, the NASDAQ informed the Company that the Company's securities no longer qualified for listing and had been delisted. The Company's ADSs have since been quoted on over-the-counter markets under the symbol "LKNCY".

#### **BUSINESS OF THE COMPANY AND THE GROUP**

9. The Company acts as an investment holding company with its direct and indirect subsidiaries located in the British Virgin Islands, Hong Kong, the United States and the PRC. The principal business of the Group is the sale of coffee and other products of high quality, high affordability and high convenience to customers through a pioneering technology-driven retail network. The Group carries on its business primarily in the PRC through its main operating subsidiaries, Luckin Coffee Group Co., Ltd and Beijing Luckin Coffee Co., Ltd., its wholly-foreign owned enterprise, Luckin Coffee (China) Co., Ltd., and a variable interest entity.
10. The Group is headquartered in Xiamen, Fujian and has over 5,000 outlets across 54 cities, making it one of the largest coffee networks in the PRC.

#### **BACKGROUND TO THE RESTRUCTURING**

11. Since March 2020, the Company has experienced a series of unforeseen events, particularised below, which caused significant disruption to the business of the Group, caused the Company to default on certain of its financial indebtedness and strained the capital resources of the Company.

#### ***The Fabricated Transactions***

12. In and around March 2020, certain accounting irregularities were identified during the audit of the Company's consolidated financial statements for the fiscal year ended 31 December

2019. As a result, on 19 March 2020, the Company formed a special committee comprised of three independent directors of the Board (the **Special Committee**), to oversee an internal investigation into those issues.
13. On 2 April 2020, the Company publicly announced the formation of the Special Committee and its preliminary findings that certain officers and other employees of the Company had fabricated sale transactions and inflated the Company's costs and expenses (the **Fabricated Transactions**). As a result, the Company announced that no reliance should be placed upon previous financial statements and revenue figures released by the Company for the nine months ended 30 September 2019 and for the two quarters commencing 1 April 2019 and ending 30 September 2019, and additionally that investors should not rely upon prior guidance issued by the Company on net revenues for the fourth quarter of 2019. Following this announcement, the trading price of the Company's ADSs fell 75 percent, from US\$26.20 per share to US\$6.40 per share at closing on 2 April 2020.
  14. On 1 July 2020, the Company announced the substantial completion of the internal investigation conducted by the Special Committee, disclosing that the Fabricated Transactions, which were found to have occurred since April 2019, had resulted in the inflation of the Company's net revenue in 2019 by approximately RMB 2.12 billion (the equivalent of approximately US\$311 million), and an overstatement of the Company's costs and expenses by approximately RMB 1.34 billion (the equivalent of approximately US\$196 million).
  15. On the basis of the findings of the Special Committee, the Company terminated the employment of certain individuals identified as having participated in, or as having knowledge of, the Fabricated Transactions, including the Company's former Chief Operating Officer (Mr. Jian Liu), former Chief Executive Officer (Ms. Jenny Zhiya Qian), and other implicated individuals, and terminated its contractual relationships with third parties through which funds used in connection with the Fabricated Transactions had been funnelled to and through the Company.

#### ***Litigation and regulatory proceedings***

16. The public disclosures made by the Company relating to the Fabricated Transactions precipitated numerous legal and regulatory actions against, and investigations into, the Company in multiple jurisdictions.

17. Regulatory investigations were commenced by a number of regulatory authorities including the U.S. Securities and Exchange Commission (the **SEC**), the U.S. Attorney's Office for the Southern District of New York, the PRC Ministry of Finance and the State Administration for Market Regulation in the PRC. Certain of those investigations have resulted in fines and penalties being imposed against the Company.
18. Litigation was commenced against the Company in the United States, Canada, the PRC, Hong Kong and the Cayman Islands. The various claimants in those proceedings have asserted Claims founded primarily on grounds of loss and damage suffered by reason of their reliance of the accuracy of the financial information made available by the Company at the time of their investment in securities offered by the Company.
19. On 10 July 2020, a winding up petition was presented in the Grand Court of the Cayman Islands by a director of the Company, Mr. Chong Wai Yuen, in respect of unpaid directors' fees, seeking an order that the Company be wound up on the grounds that the Company was unable to pay its debts and was insolvent on a cash-flow basis (the **Winding Up Petition**). At that time, the potential legal implications of certain anti-money laundering legislation in the Cayman Islands, which had extra-territorial effect, had prevented the Company from making any payment in satisfaction of the petition debt.

### ***The Provisional Liquidation***

20. In response to the Winding Up Petition, on 10 July 2020, the Company issued an *ex parte* summons pursuant to section 104(3) of the Companies Act seeking the appointment of Mr. Alexander Lawson of Alvarez & Marsal Cayman Islands Limited and Ms. Wing Sze Tiffany Wong of Alvarez & Marsal Asia Limited as joint provisional liquidators of the Company on the grounds that the Company was or was likely to become unable to pay its debts and intended to present a compromise or arrangement to its creditors.
21. By an order dated 15 July 2020 (the **Appointment Order**), the JPLs were appointed with "light touch" powers. The purpose of the appointment is contained in paragraph 3 of the Appointment Order which states as follows:

*"3. The powers of the JPLs appointed pursuant to paragraph 1 above shall be limited to doing all things necessary and incidental to developing and proposing a restructuring of the Company's indebtedness in a manner designed to allow the Company to continue*

*as a going concern, with a view to making [sic] arrangement with the Company's creditors, including (without limitation) a compromise or arrangement by way of a scheme of arrangement pursuant to section 86 of the Companies Law."*

22. Pursuant to the Appointment Order, the JPLs were further authorised, as representatives of the Company (and if so advised), to:

*"4(i) ...seek relief under Chapter 15 of the United States Bankruptcy Code and to take such steps arising in connection therewith as the JPLs may consider appropriate"; and*

*"4(ii) ...seek recognition in any other jurisdiction, including, without limitation, Hong Kong."*

23. On 5 February 2021, the JPLs in their capacity as foreign representatives of the Company under Chapter 15 of the Bankruptcy Code filed a petition *In re Luckin Coffee Inc. (in Provisional Liquidation)*, No. 21-10228 (MG) seeking, among other things, recognition of the Provisional Liquidation and related relief in the Bankruptcy Court. On 30 March 2021, the Bankruptcy Court entered the Chapter 15 Recognition Order that, among other things, recognised the Provisional Liquidation as a "foreign main proceeding" under Chapter 15 of the Bankruptcy Code.
24. The appointment of the JPLs was recognised by the High Court of Hong Kong on 12 October 2020.

#### ***Default under the Existing Notes***

25. Pursuant to the Indenture, dated 14 January 2020 (as amended and restated) between the Company (as issuer) and the Bank of New York Mellon (as trustee), governed by New York law, the Company issued the Existing Notes in the aggregate principal amount of US\$460,000,000 with a maturity date of 15 January 2025. The Existing Notes bear interest at 0.75 percent which is payable semi-annually in arrears on 15 January and 15 July each year (or the Business Day immediately thereafter).
26. The Existing Notes were fully subscribed and constitute unsecured obligations of the Company.
27. The Existing Notes are not listed on any stock exchange.

28. Due to the events particularised above, the following defaults have occurred and are continuing under the terms of the Indenture:
- (a) the presentation of the Winding Up Petition which has yet to be dismissed or stayed, constituting a default under Section 6.01(j) of the Indenture and resulting in the automatic acceleration of all payments under the Existing Notes;
  - (b) the issue of the *ex parte* summons by the Company for the appointment of joint provisional liquidators, constituting a default under Section 6.01(i) of the Indenture and resulting in the automatic acceleration of all payments under the Existing Notes; and
  - (c) default in the payment of principal due under the Existing Notes and payable on acceleration, constituting a default under Section 6.01(a) of the Indenture.
29. By reason of the aforementioned breaches of the Indenture, all outstanding principal (US\$460,000,000) and accrued and unpaid interest under the Existing Notes became immediately due and payable.
30. On 11 November 2020, by an Order of the Cayman Court, certain Noteholders, namely MHD Vertco Ltd., DKP Vertco Ltd, DKIP Vertco Ltd., and DKIL Vertco Ltd., were substituted as the petitioner in respect of the Winding Up Petition, following which an amended petition was presented to the Cayman Court on 7 January 2021.

#### **FINANCIAL POSITION OF THE COMPANY AND INABILITY TO PAY**

31. Notwithstanding that the Company is solvent on a balance-sheet basis, the Company does not presently have, nor have access to, cash or cash equivalents sufficient to discharge in full its outstanding liabilities owing under the Existing Notes and is therefore insolvent on a cash-flow basis.
32. Moreover, the Company has significant contingent liabilities in the nature of the damages Claims which have been asserted against the Company in the United States and elsewhere.
33. Additional financial information will be provided in the evidence filed in support of the Petition.

**STEPS TAKEN BY THE COMPANY AND THE JPLS**

34. Since their appointment, the JPLs have assisted the Company in its dealings with various stakeholders further to securing a holistic restructuring of the Company's current and contingent liabilities. Among other collaborative efforts and achievements, the Company and the JPLs engaged in discussions with:
- (a) the Ad Hoc Group, being an ad hoc group of holders of the Existing Notes, who collectively hold approximately 57 percent in aggregate outstanding principal amount of the Existing Notes, with a view to formulating and negotiating the terms of a restructuring of the indebtedness of the Company under the Existing Notes;
  - (b) the Company's majority shareholder, Centurium Capital Management Ltd (*Centurium Capital*), to agree an injection of additional funds into the Company which would result in enhanced returns to the Company's creditors in a debt restructuring; and
  - (c) the Company's contingent creditors, being certain claimants and those purchasers of the Company's ADSs, who formed a committee for the purpose of negotiating and agreeing a fair settlement of their Claims.
35. Following the aforementioned discussions:
- (a) on 16 March 2021, the Company, the JPLs and the Ad Hoc Group entered into the Noteholder RSA pursuant to which the members of the Ad Hoc Group undertook, among other things, to support and implement a restructuring of the debt owed by the Company under and in connection with the Indenture and the Existing Notes on the terms agreed and documented in the Noteholder RSA, which included supporting and implementing the proposed Scheme. As at the date of this Petition, the Noteholders who have executed the Noteholder RSA, or executed an accession letter agreeing to be bound by the Noteholder RSA (as amended, supplemented, or otherwise modified), collectively hold well in excess of 75 percent of the total value of the Existing Notes;
  - (b) on 15 April 2021, the Company concluded the Investment Agreement with Cannonball Limited (an affiliate of Centurium Capital) and Joy Capital II, L.P., pursuant to which the Company agreed to issue, and the Investors each agreed to

subscribe for, an amount of senior preferred shares in the Company, totalling an investment of US\$250,000,000 in the Company. It is a precondition to the consummation of the transaction contemplated by the Investment Agreement that, *inter alia*, the Scheme has become effective such that the Scheme Claims against the Released Parties (including the Company) have been fully released and discharged;

- (c) on 3 June 2021, the Company, under the oversight of the JPLs, successfully obtained the approval of the State Administration of Foreign Exchange in the PRC for the transfer of funds in an amount sufficient to satisfy the Cash Consideration out of the Group's available cash in the PRC, through a planned capital reduction;
- (d) on 1 September 2021, the Company, the JPLs and the Majority Ad Hoc Group agreed an amendment to the Noteholder RSA pursuant to which (among other things) the milestone date for the Company to file the Petition and Summons seeking sanction of the Scheme was extended from 1 September 2021 to 22 September 2021; and
- (e) on 20 September 2021, the Company entered into a binding term sheet with the co-lead plaintiffs appointed in the provisionally certified class action *In re Luckin Coffee Inc. Securities Litigation*, Case No.1:20-cv-01293-JPC-JLC (SDNY) to fully resolve all Claims that have been, or could be filed on behalf of, a class of purchasers of the Company's ADSs between 17 May 2019 through 15 July 2020, inclusive, that has been certified for settlement purposes.

#### THE SCHEME

- 36. The principal object and purpose of the Scheme is to effect a compromise of the obligations of the Company arising under and in connection with the Existing Notes and the Indenture and thereby enable the Company to satisfy its financial obligations, carry on business as going concern and enhance its future trading position and prospects.
- 37. All other liabilities of the Company are expected to be addressed separately and/or paid as and when they become due and payable in the ordinary course of business.

***Scheme Creditors***

38. The Scheme Creditors are those persons with the benefit of Claims arising directly or indirectly, pursuant to or in connection with, the Existing Notes or the Indenture. As the Existing Notes were issued in the form of Global Notes, such persons include:
- (a) any person with the underlying economic or beneficial interest as principal in the Existing Notes which person has the right, in certain specified circumstances, to be issued definitive notes in their own name in accordance with the terms of the Existing Notes and the Indenture;
  - (b) (without double counting), any person recorded directly in the records of a Clearing System as holding an interest in any Existing Notes in an account of the Clearing System either for its own account or on behalf of its relevant client; and
  - (c) the Depository (or its nominee) and the Existing Notes Trustee (solely in their capacities as the beneficiaries of the covenants to repay principal and pay interest on the Existing Notes pursuant to the Indenture).
39. The Company has sought directions from this Honourable Court directing the Depository (or its nominee) not to vote at the Scheme Meeting.

***Principal features of the Scheme***

40. In the event that the Scheme is sanctioned by the Cayman Court and becomes effective in accordance with its terms, Scheme Creditors will release and discharge all Claims, including the Scheme Claims, against the Company and any Released Party in consideration for which, the Scheme Creditors (and/or their Designated Recipients, as applicable) will be entitled to receive for each US\$1,000 of principal amount and accrued and unpaid interest (at the applicable default rate under the Indenture up to and including the Restructuring Effective Date) under the Existing Notes held by any such Scheme Creditor, the following Scheme Consideration:
- (a) Cash Consideration in the amount of US\$320;

- (b) US\$230 principal amount of New Notes A, unless a New Notes A Replacement has occurred and subject to the exercise by such Scheme Creditor, in such Scheme Creditor's sole discretion, of the Equity Conversion Option (if applicable);
  - (c) US\$300 principal amount of New Notes B, unless a New Notes B Replacement has occurred;
  - (d) US\$75 principal amount of New Notes C, unless a New Notes A Replacement has occurred or, if there is a New Notes A Take-out pursuant to which the New Notes A are paid in full in cash (including any accrued and unpaid interest) or otherwise cease to be outstanding on or before the New Notes A Maturity Date, in which case the entire issuance of New Notes C will be automatically redeemed for \$0.00 one (1) Business Day after a New Notes A Take-out, regardless of whether a default or event of default under the New Notes C has occurred; and
  - (e) a number of Original ADSs equal to US\$60 divided by the Issue Price, representing the Original ADSs, or in the event of an ADS Facility Unavailability, cash in an amount of US\$60 in lieu of the Original ADSs, *provided that* if the Scheme Creditors receive the Original ADSs and, on the Reference Price Date, the Reference Price of the Original ADSs is lower than the Issue Price, the Scheme Creditors will receive, after the Restructuring Effective Date (and within fifteen (15) Business Days after the determination of the Reference Price), a number of additional ADSs equal to the Top-Up ADS or Net Loss ADSs as applicable, or in the event of an ADS Facility Unavailability, the cash equivalent of such additional ADSs (calculated pursuant to the terms of the Scheme).
41. In addition, if the Company is able to raise additional equity in the amount of US\$50,000,000 or more prior to the Restructuring Effective Date, each Scheme Creditor will have the option, subject to certain conditions, to elect to replace up to \$100 principal amount of New Notes A per \$230 principal amount of New Notes A with the Equity Conversion Consideration.
42. Scheme Creditors who fail to participate in the Scheme prior to the Bar Date, shall have no right or entitlements to receive any Scheme Consideration but will be bound by, and will have their Scheme Claims compromised and released pursuant to, the Scheme.

43. Assuming that the Restructuring Effective Date occurs prior to the Scheme Distribution Longstop Time, being 31 December 2021 (or such later date and time as the Company, the JPLs and the Majority Ad Hoc Group may agree) the Existing Notes will be cancelled and discharged and the respective rights and obligations of Scheme Creditors and the Company towards one another under the Existing Notes and the Indenture will terminate and be of no further force and effect.

***Conditions to effectiveness of the Scheme***

44. The Scheme will be effective on the Scheme Effective Date which will occur on and subject to the satisfaction or (if applicable) waiver of the following conditions:
- (a) the Scheme being approved by the requisite majorities of Scheme Creditors at the Scheme Meeting;
  - (b) the sanction of the Scheme (with or without modification) by an order of the Cayman Court, which order is duly filed with the Registrar of Companies in the Cayman Islands;
  - (c) the entry of a final order of the United States Bankruptcy Court recognising the Scheme pursuant to Chapter 15 of the United States Bankruptcy Code and enforcing the terms of the Scheme within the territorial jurisdiction of the United States; and
  - (d) the execution and effectiveness of the Deed of Release pursuant to which, among other things, the Scheme Creditors release the Company and certain other parties from certain liabilities (including the liability of the Company under the Existing Notes).

***Alternative to the Scheme***

45. In the event that the Scheme fails, the Restructuring will not proceed and the Company will be unable to comply with its repayment obligations under the Existing Notes and will be liable to winding up by the Cayman Court upon the extant Winding-Up Petition on the grounds of insolvency. Accordingly, an official liquidation of the Company and its subsidiaries is the most likely alternative outcome if the Scheme is not sanctioned, resulting in substantially lower returns to Scheme Creditors than if the Scheme is approved and the Restructuring is implemented successfully.

**ORDERS AND DIRECTIONS**

46. The Company intends to make an application for directions, *inter alia*, seeking leave to convene a single meeting of the Scheme Creditors for the purposes of considering and if thought fit approving, with or without modification, the Scheme pursuant to section 86 of the Companies Act, together with directions for convening the Scheme Meeting.
47. If the Cayman Court makes an order convening a single meeting of the Scheme Creditors and if the Scheme is then approved by the requisite majorities of Scheme Creditors, the Company will seek orders sanctioning the Scheme.

**YOUR PETITIONER, THE COMPANY, THEREFORE HUMBLY PRAYS:**

1. **THAT** the Scheme be sanctioned by this Honourable Court pursuant to section 86(2) of the Companies Act so as to be binding on the Company and the Scheme Creditors;
2. **THAT** the costs of and incidental to this Petition be paid out of the assets of the Company as an expense of the Provisional Liquidation; and.
3. **SUCH** further orders or other relief as this Honourable Court sees fit.

**AND** your Petitioner will ever pray etc.

**DATED** the 20 day of September 2021



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**Harney Westwood & Riegels**  
**Attorneys-at-Law for the Petitioner**

THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner whose address for service is 3<sup>rd</sup> Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: 054067.0002/NXH/JNW/AUP).

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on *13 December* 2021 at *10 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, Cayman Islands; Telephone (+1 345) 949-4296.