

IN THE GRAND COURT OF THE CAYMAN ISLANDS

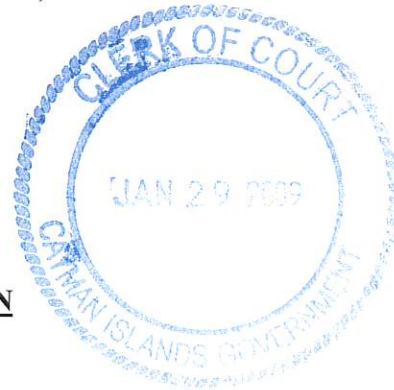
Cause No. 0032 of 2009



**IN THE MATTER OF** Warderly International Holdings Limited

**AND** in the matter of the Companies Law (2007 Revision)

**AND** the Grand Court Rules 1995, Order 102



**AMENDED PETITION**

To: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of the above-named Warderly International Holdings Limited shows as follows:-

1. The object of this Petition is to seek the sanction of the Court to a Scheme of Arrangement under Section 86 of the Companies Law (2007 Revision) (the "**Scheme**") between the above-named Warderly International Holdings Limited (the "**Company**") and all Scheme Creditors (such expression bearing the meaning assigned to it in the Scheme). A copy of the Scheme is attached to this Petition by way of Schedule.

**Incorporation of the Company**

2. The Company was incorporated in the Cayman Islands on 18<sup>th</sup> March 2002 as an exempted company with limited liability under the Companies Law.

**The Company's registered office and registered place of business**

3. The registered office of the Company is situate at Cricket Square, Hutchins

Drive, P.O. Box 2681, Grand Cayman KY1-1111, Cayman Islands.

4. The Company was registered as an overseas company in Hong Kong under Part XI of the Companies Ordinance, Chapter 32 of the laws of Hong Kong, on 6<sup>th</sup> June 2002. The head office and the principal place of business of the Company in Hong Kong is situate at 15<sup>th</sup> Floor, No.88 Lockhart Road, Wanchai, Hong Kong.

**The Company's objects**

5. The objects for which the Company was established are unrestricted and include, but without limitation:-
  - (a) to act and perform all the functions of a holding company in all its branches and to co-ordinate the policy and administration of any subsidiary company or companies wherever incorporated or carrying on business or of any group of companies of which the Company or any subsidiary company is a member or which are in any manner controlled directly or indirectly by the Company; and
  - (b) to act as an investment company and for that purpose to acquire and hold upon any terms and, either in the name of the Company or that of any nominee, shares, stock, debentures, debenture stock, annuities, notes, mortgages, bonds, obligations and securities, foreign exchange, foreign currency deposits and commodities, issued or guaranteed by any company wherever incorporated or carrying on business, or by any government, sovereign, ruler, commissioners, public body or authority, supreme, municipal, local or otherwise, by original subscription, tender, purchase, exchange, underwriting, participation in syndicates or in any other manner and whether or not fully paid up, and to make payments thereon as called up or in advance of calls or otherwise and to subscribe for the same, whether conditionally or absolutely, and to hold the same with a view to investment, but with the power to vary any investments, and to exercise and enforce all rights and powers conferred by or incident to the ownership thereof, and to invest and deal with the moneys of the Company not immediately required upon such securities and in such manner as may be from time to time determined.

### **The Company's share capital**

6. The share capital of the Company is HK\$80,000,000 divided into 8,000,000,000 shares of HK\$0.01 each, of which 422,000,000 are issued and fully paid and the remainder are unissued.
7. The Company was approved for listing on the Main Board of The Stock Exchange of Hong Kong Limited (the "**Stock Exchange**"), and the trading in the shares of the Company on the Stock Exchange commenced on 18<sup>th</sup> December 2002.

### **The Company's business**

8. The Company is an investment holding company and holds 18 subsidiaries (the "**Subsidiaries**") directly or indirectly. Before April 2007, the Company, via the Subsidiaries, was principally engaged in the manufacturing and trading of household electrical appliances and audio-visual products and the trading of kitchenware.
9. Due to the sealing up of its manufacturing facilities as mentioned below, since April 2007, the Company, via the Subsidiaries, began to concentrate its effort in trading business by securing sales orders from distributors and wholesalers and engaging OEM subcontractors to manufacture the products. The Company, via the Subsidiaries, now offers a wide range of products, including digital photo frames, Digital Enhanced Cordless Technology phones, turbo fans, water heaters and air-conditioners.

### **The Company's financial position**

10. Faced with keen competition, lower profit margins and rising production costs, the operating results of the Company and its Subsidiaries (hereinafter collectively referred to as the "**Group**") began to experience a downturn in late 2005. For the year ended 30<sup>th</sup> April 2006, the Group only managed to about breakeven, recording a net profit for the year of approximately HK\$398,000 only.

11. Thereafter the operating environment continued to worsen. The Group encountered difficulties in repaying amounts due to banks and suppliers. Various creditors of the Company and its Subsidiaries brought legal actions against the Company as well as various Subsidiaries.
12. Due to liquidity problems, the Group reduced its scale of operation in 2006. For the year ended 30<sup>th</sup> April 2007, the Group's turnover decreased by about 35% (as compared with the previous financial year ended 30<sup>th</sup> April 2006) to approximately HK\$187 million and a loss of approximately HK\$707 million was recorded, attributing to a decrease in shareholders' equity to a negative value of approximately HK\$367 million as at 30<sup>th</sup> April 2007.
13. As at 30<sup>th</sup> April 2007, the Company had no non-current assets. Due to the net liability position of the Subsidiaries, the Company had, in the audited accounts for the year ended 30<sup>th</sup> April 2007, made provision for impairment loss of (a) its investment in a Subsidiary, namely, Warderly Group Limited, being approximately HK\$106 million, (b) the amounts due from Subsidiaries, being approximately HK\$62 million, and (c) the dividend receivable, being approximately HK\$65 million. The Company recorded such investment, such amounts due from Subsidiaries and such dividend receivable as nil in its accounts. As at 30<sup>th</sup> April 2007, the Company's current assets consisted solely of bank balances and cash of approximately HK\$1,000 only, whilst its liabilities (consisting solely of current liabilities) amounted to approximately HK\$9,207,000. The Company was already insolvent on a balance-sheet basis, with net liabilities (which consisted solely of current liabilities) of approximately HK\$9,206,000.
14. According to the Company's interim report for the six-month period ended 31<sup>st</sup> October 2007, the Group then recorded net current liabilities to the extent of approximately HK\$384,515,000 and net liabilities to the extent of approximately HK\$381,867,000.
15. On 23<sup>rd</sup> January 2008, one of the principal Subsidiaries, Housely Industries Limited, which was engaged in investment holding and trading in household electrical appliances, was ordered to be wound up by the Court of First Instance of the High Court of Hong Kong upon the petition by one of its creditors.
16. In the year ended 30<sup>th</sup> April 2008, the Group recorded a turnover of

approximately HK\$1 million and a loss of approximately HK\$2 million. As at 30th April 2008, the shareholders' equity in the Group was reduced to a negative value of approximately HK\$398 million. The liabilities of the Company were significantly in excess of its realizable assets.

17. As at 30th April 2008, the Company had no non-current assets. Its current assets consisted solely of bank balances and cash of approximately HK\$1,000 only, whilst its liabilities (consisting solely of current liabilities) amounted to approximately HK\$316,045,000. Based on the records of the Company, the Company was insolvent on both a cash-flow basis and a balance-sheet basis, with net liabilities (which consisted solely of current liabilities) of approximately HK\$316,044,000. It was unable to pay its debts as they fell due.
18. According to the Company's unaudited balance sheet as at 31<sup>st</sup> October 2008 prepared by the Company on the books and records available to it, the assets of the Company consisted of an investment in a wholly owned subsidiary, namely Up Stand Holdings Limited ("Up Stand"), at a book value of HK\$1, and bank balances of HK\$104 only, whilst its total liabilities, consisting solely of current liabilities, amounted to approximately HK\$355.5 million. It was insolvent on both a balance-sheet basis and a cash-flow basis.
19. According to the latest unaudited balance sheet of the Company as at 19<sup>th</sup> December 2008, the assets of the Company consisted of an investment in Up Stand, at a book value of HK\$1, and bank balances of HK\$104 only, whilst its total liabilities consisting solely of current liabilities amounted to approximately ~~HK\$352.9~~ \$356.2 million. It was insolvent on both a balance-sheet basis and a cash-flow basis.
20. Based on the books and records available to the Company, the Company estimates that its total liabilities as at 19<sup>th</sup> December 2008 amounted to approximately ~~HK\$352.9~~ \$ 356.2 million and included the following:
  - (a) guarantee liabilities for Subsidiaries' borrowings in the sum of approximately HK\$341.4 million which are unsecured;
  - (b) unsecured bank and other borrowings of approximately ~~HK\$24,000~~ \$3.1 million ;

- (c) outstanding service fees owed to outside contractors and former directors of the Company of approximately ~~HK\$1.9~~ \$2.1 million, which are unsecured and non-preferential;
- (d) amounts due to a secured creditor of approximately HK\$1.2 million;
- (e) loans from Up Stand of approximately HK\$3.7 million, which are unsecured, non interest bearing and not repayable on or before 30<sup>th</sup> September 2009; and
- (f) inter-company loans due to other Subsidiaries (excluding Up Stand) of approximately HK\$4.7 million, which are unsecured, non interest bearing and repayable on demand.

**Loss of the Group's manufacturing facilities in Dongguan, PRC**

21. The Group's manufacturing facilities (the "**Kalee Factory**") in Dongguan, Guangdong Province, the People's Republic of China (the "**PRC**"), which was owned and run by a wholly owned subsidiary of the Company known as Dongguan Kalee Electrical Co., Ltd. ("**Dongguan Kalee**"), ceased operations since early 2007 due to Dongguan Kalee's insolvency and inability to pay debts and liabilities. In April 2007, the Kalee Factory, being the major asset of Dongguan Kalee, was eventually sealed up and closed down by the People's Court in the Dongguan City of Guangdong Province, the PRC, following claims by Dongguan Kalee's creditors.
22. On 7<sup>th</sup> December 2007, Dongguan Kalee filed an application for insolvency restructuring under the PRC laws with the Dongguan Intermediate People's Court in the PRC (the "**Dongguan Court**").
23. On 29<sup>th</sup> March 2008, the Dongguan Court allowed Dongguan Kalee's application for insolvency restructuring. The debt restructuring arrangement proposed by Dongguan Kalee was, however, not accepted by the requisite majority of its creditors.
24. On 13<sup>th</sup> May 2008, the creditors' committee of Dongguan Kalee filed an application to the Dongguan Court that Dongguan Kalee be liquidated for settlement of its debts.

25. On 25<sup>th</sup> May 2008, the Dongguan Court eventually ordered that Dongguan Kalee be liquidated for settlement of its debts by an auction sale of the Kalee Factory.
26. It is not expected that the said sale of the Kalee Factory will generate sufficient funding for full payment of all indebtedness of Dongguan Kalee or any surplus returnable to the shareholder of Dongguan Kalee, in view of the valuation by the Dongguan People's Court of the Kalee Factory at approximately RMB 68 million which is considerably lower than the total amount of Dongguan Kalee's indebtedness of approximately HK\$116 million.

#### **Listing Status of the Company**

27. On 11<sup>th</sup> May 2007, the Securities and Futures Commission of Hong Kong (the "SFC") issued a letter to the Company expressing its concerns over the deteriorating financial position of the Company, which had not then been made known to the investing public and that there was neither an orderly and fair market nor a properly informed market in the Company's shares, and the SFC directed suspension of trading in the shares of the Company on the Stock Exchange with effect from 14<sup>th</sup> May 2007.
28. By letter dated 24<sup>th</sup> April 2008 to the Company, the Stock Exchange informed the Company that, in view of the prolonged suspension of trading in the Company's shares and the Company's failure to demonstrate its compliance with Rule 13.24 of The Rules Governing the Listing of Securities on the Stock Exchange (the "**Listing Rules**"), the Stock Exchange has placed the Company in the second stage of delisting procedures pursuant to Practice Note 17 to the Listing Rules, and the Company was required to submit viable resumption proposals to the Stock Exchange at least 10 business days before the expiration of the six-month period from the date of the said letter. The Stock Exchange further stated that it would, after considering any proposal to be made by the Company, determine whether to proceed to the third stage of the delisting procedures at the end of such six-month period.
29. To resume the trading in the shares of the Company on the Stock Exchange, the Company is required under the Listing Rules to submit a resumption proposal (the "**Resumption Proposal**") to the Stock Exchange, which the Company has done so on 30<sup>th</sup> September 2008. As the suspension of the trading in the shares

was directed by the SFC and has to be lifted by the SFC, the Company on 30<sup>th</sup> September 2008 has also submitted its Resumption Proposal, details of such proposal are mentioned below, to the SFC for its review. By letter dated 15 October 2008, the SFC indicated its preliminary view of positive recommendation of the Company's Resumption Proposal.

30. To address the concerns of the SFC as mentioned above and in compliance with the disclosure requirements of the Listing Rules, the Company on 22<sup>nd</sup> October 2008 announced the audited annual results of the Group for the two years ended 30<sup>th</sup> April 2008 and the unaudited interim results of the Group for the six months ended 31<sup>st</sup> October 2007 and on 15<sup>th</sup> January 2009 announced the unaudited interim results of the Group for the six months ended 31<sup>st</sup> October 2008.

**The Investor's acquisition of approximately 36.03% of the Shares and takeover offer**

31. On 30<sup>th</sup> April 2008, Mr. Kan Che Kin, Billy Albert (the "Investor") entered into two sale and purchase agreements with Mr. Yeung Kui Wong and Imperial Profit Enterprises Limited, the then controlling shareholders of the Company, respectively to acquire an aggregate of 152,050,000 shares of the Company, representing approximately 36.03% of the then issued share capital of the Company, for an aggregate consideration of HK\$3,500,000. Completion of the said sale and purchase agreements took place on 30<sup>th</sup> April 2008.
32. On 5<sup>th</sup> June 2008, as required under Rules 13 and 26.1 of the the Code on Takeovers and Mergers published by the SFC (the "Takeovers Code"), the Investor offered to acquire all issued shares of the Company (other than those already owned or to be acquired by the Investor and parties acting in concert with him) at a consideration of HK\$0.02302 in cash for each share, and to cancel all outstanding share options (which have been granted by the Company pursuant to the share option scheme adopted by the Company on 26<sup>th</sup> November 2002) at a consideration of HK\$0.0001 in cash for each such outstanding option with a right to subscribe for one share.
33. The said offers did not become unconditional and lapsed on 3<sup>rd</sup> July 2008, the extended closing date of the said offers because, amongst other things, the valid acceptances of the said offers, together with the shares already owned by the Investor and parties acting in concert with him, did not result in the Investor and

parties acting in concert with him holding more than 50% of the voting rights of the Company.

34. The Investor has since 30th April 2008 been and is as at the date of this Petition interested in 152,050,000 Shares, representing approximately 36.03% of the issued share capital of the Company.

### **The Resumption Proposal**

35. On 31<sup>st</sup> July 2008, the Company appointed CIMB-GK Securities (HK) Limited as its financial advisor to formulate a viable resumption proposal acceptable to the Stock Exchange.
36. On 30<sup>th</sup> September 2008, the Company submitted the Resumption Proposal to the Stock Exchange and the SFC. The Resumption Proposal contains, amongst other matters, a restructuring proposal (the “**Restructuring Proposal**”) to revitalize the Company’s financial position. The principal terms of the Restructuring Proposal are as follows.
37. First, the raising of HK\$84.4 million, before expenses, by way of an open offer (the “**Open Offer**”) to the shareholders of the Company of zero coupon convertible notes (the “**Offer Convertible Notes**”), with rights to convert the whole or part of the principal amount of the Offer Convertible Notes into new shares of the Company (the “**Conversion Shares**”) at a conversion price of HK\$0.05 per Conversion Share, subject to adjustments. The Open Offer will be conditional upon:-
- (a) The lifting of the suspension of trading in the shares of the Company on the Stock Exchange by the SFC.
  - (b) The approval of the Resumption Proposal from the Stock Exchange having been obtained.
  - (c) The Scheme being sanctioned by this Honourable Court.
  - (d) A proposed scheme of arrangement mirroring the Scheme being sanctioned by the Court of First Instance of the High Court of Hong Kong

under section 166 of the Companies Ordinance, Chapter 32 of the Laws of Hong Kong (the “**Hong Kong Scheme**”).

- (e) The approval of the Open Offer and transactions contemplated thereunder by the shareholders (the “**Independent Shareholders**”) of the Company other than the Investor and his associates and those persons (if any) who are required under the Listing Rules and/or the Takeovers Code to be abstained from voting at the extraordinary general meeting (the “**EGM**”) of the Company at which resolution(s) will be proposed to consider, and if thought fit, to approve, among other matters, the Open Offer and the transactions contemplated thereunder.
  - (f) The Underwriting Agreement (as defined below) becoming unconditional.
38. Second, the underwriting of the Open Offer by the Investor pursuant to an underwriting agreement (the “**Underwriting Agreement**”) entered into by the Company and the Investor on 8th October 2008.
39. The Underwriting Agreement is conditional on a number of conditions precedent being fulfilled including, amongst others, conditions precedent relating to the dispatch of a circular containing details of the Open Offer and the notice of the EGM to the shareholders of the Company, the approval by the Independent Shareholders of the Open Offer and the proposed transactions under the Resumption Proposal at the EGM; the Listing Committee of the Stock Exchange granting and not having withdrawn or revoked listing of and permission to deal in the Conversion Shares; the delivery to the Stock Exchange for authorisation and the registration with the Registrar of Companies in Hong Kong respectively of one copy of each of the requisite prospectus documents relating to the Open offer; the posting of copies of the said prospectus documents to the relevant shareholders; the delivery of an office copy of the court order sanctioning the Hong Kong Scheme to the Registrar of Companies in Hong Kong for registration; the delivery of an office copy of the court order sanctioning the Scheme to the Registrar of Companies in the Cayman Islands for registration; the lifting of the suspension of the trading in the shares of the Company on the Stock Exchange by the SFC; the approval of the Resumption Proposal from the Stock Exchange having been obtained; and all other necessary waivers, consents and approvals (if required) from the relevant governmental or regulatory authorities for the Open Offer and the transactions contemplated thereunder having been obtained and fulfilled.

40. The Company and the Investor further agree that subject to the fulfillment of the requirements under the Takeovers Code, at the absolute discretion of the Investor, the Investor may apply for a “whitewash waiver” from the SFC pursuant to note 1 of the Notes on dispensations from Rule 26 of the Takeovers Code in respect of the obligations to make a mandatory general offer for all the securities of the Company not already owned or agreed to be acquired by the Investor or parties acting in concert with him which would otherwise arise as a result of the exercise of the conversion rights attaching to the Offer Convertible Notes.
41. In the event that the Investor intends to apply for the whitewash waiver, the Investor shall serve a “whitewash notice” to the Company informing it of such intention, additional conditions precedent will be included in the Underwriting Agreement relating to the passing of the necessary resolution(s) by the Independent Shareholders, by way of a poll, at the EGM to approve the whitewash waiver, and the Executive Director of the Corporate Finance Division of the SFC granting the whitewash waiver to the Investor and parties acting in concert with him and the satisfaction of any condition attached to the whitewash waiver granted.
42. The other terms and conditions of the Underwriting Agreement are set out in the First Affirmation made by Seto Ying and filed herein.
43. Third, a sum of HK\$37 million derived from proceeds of the Open Offer will be used for the settlement of all amounts due to the Scheme Creditors of the Company by way of the Scheme and the Hong Kong Scheme. The Scheme and the Hong Kong Scheme will be basically of the same terms. It is intended that the Scheme shall be implemented at the same time as the Hong Kong Scheme. Whilst the Company is incorporated in the Cayman Islands, the Company’s principal place of business and assets are located in Hong Kong, it is considered prudent to have both the Scheme and the Hong Kong Scheme approved by the Scheme Creditors, sanctioned by the relevant Courts and implemented in order to ensure that creditors are bound by these arrangements under both Cayman Islands and Hong Kong laws.
44. The Company intends that the remainder of the proceeds of the Open Offer in the estimated sum of about HK\$47.4 million will be utilized as follows:-
  - (1) An aggregate sum of HK\$7 million will be used for the payment of the

restructuring and scheme costs (including such part of the costs funded by the inter-company loan from Up Stand to the Company (the “**Up Stand’s Loan**”). Any restructuring and scheme costs in excess of HK\$7 million will be borne by the Investor pursuant to the Loan Agreement mentioned below.

- (2) A sum of approximately HK\$3.4 million or such larger sum (if the Investor’s Loan (as to be mentioned below) has increased to fund further general working capital of the Group) will be channelled by the Company to Up Stand, for repayment of part of the Investor’s Loan pursuant to the Loan Agreement mentioned below.
- (3) The balance of the proceeds of the Open Offer, approximately HK\$37 million, will be used for the general working capital of the Group.

#### **The Loan Agreement amongst the Company, Up Stand and the Investor**

45. On 2nd January 2009, the Company, Up Stand and the Investor entered into an Agreement (the “**Loan Agreement**”) in respect of the Investor’s Loan.
46. As of the date of this Petition, the Investor has advanced an aggregate of HK\$6 million to Up Stand, which loan was, before the Loan Agreement was concluded, non-interest bearing and repayable on demand, and out of which approximately HK\$2.3 million has been used by Up Stand or on-lent to its fellow Subsidiaries for their daily operations while approximately HK\$3.7 million has been loaned by Up Stand to the Company as Up Stand’s Loan to settle the part of the restructuring and scheme costs which are paid or payable prior to the effective date of the Scheme in the sum of approximately HK\$2.6 million and to finance the Company’s general working capital requirements to the extent of approximately HK\$1.1 million.
47. It is expected that in the period up to the completion of the Open Offer, further funding will be required by the Group and the Investor’s loan will increase. On 2nd January 2009, the Company, Up Stand and the Investor entered into a Loan Agreement, under which the parties agreed, amongst other matters, that:-
  - (a) Subject to the terms and conditions of the Loan Agreement, the Investor agrees to make further advance to Up Stand whenever demanded by Up

Stand in writing up to an aggregate of HK\$10,000,000 (taking into account the loans totaling approximately HK\$6 million already advanced by the Investor to Up Stand before the signing of the Loan Agreement on 2<sup>nd</sup> January 2009) (the “Investor’s Loan”).

- (b) Subject to the terms and conditions of the Loan Agreement, Up Stand agrees, upon request by the Company, to further advance part of the Investor’s Loan to the Company in order for the Company to settle further restructuring and scheme costs and to finance its further general working capital requirements.
- (c) The Investor agrees that the Investor’s Loan is non-interest bearing while Up Stand also agrees that Up Stand’s Loan is also non-interest bearing.
- (d) In consideration that the Investor agrees not to demand for the repayment of any part of the Investor’s Loan on or before 30<sup>th</sup> September 2009, the parties to the Loan Agreement agree to the effect that the repayment of the Investor’s Loan shall be made as follows:
  - (i) The Company shall, on the fifth business day after receipt of the net proceeds from the Open Offer, immediately (1) repay the outstanding Up Stand’s Loan to Up Stand; and (2) make a new inter-company loan to Up Stand in such an amount for Up Stand to repay all the outstanding Investor’s Loan, such new inter-company loan shall be non-interest bearing and repayable on demand;
  - (ii) Upon receipt of the repayment of Up Stand’s Loan from the Company, Up Stand shall immediately repay such amount to the Investor as settlement of part of the Investor’s Loan; and
  - (iii) Upon receipt of the new inter-company loan from the Company as referred to in paragraph (i) above, Up Stand shall immediately repay the remaining outstanding amount of the Investor’s Loan to the Investor.
- (e) If the Company does not receive the net proceeds from the Open Offer by 30<sup>th</sup> September 2009, the outstanding Investor’s Loan shall be repayable by Up Stand on demand by the Investor.

- (f) The Investor agrees that he will be responsible for any restructuring and scheme costs in excess of HK\$7 million without recourse against the Company or the Scheme Fund provided that the Underwriting Agreement becomes unconditional on or before 30<sup>th</sup> June 2009 (or such later date(s) as the Investor and the Company may agree in writing). Upon receipt of the written notice from the Company regarding the amount of any such restructuring and scheme costs in excess of HK\$7 million, the Investor shall make payment of the excess amount to the Company within seven business days from the date of such written notice.
48. The Investor had not yet advanced to Up Stand any further amount during the period from 2<sup>nd</sup> January 2009 (when the Loan Agreement was signed by the parties thereto) up till the date of this Petition.
49. In view of the insolvency of the Company, the Directors of the Company consider that it is unlikely for the Company to raise funds by borrowing from financial institutions or other sources, and that the Investor's Loan is vital to the survival of the Company, and the conclusion of the Loan Agreement is in the best interests of the Company and the Creditors.

### **The Scheme**

50. Both the Scheme and the Hong Kong Scheme are intended to be made with all creditors of the Company excluding (a) Up Stand, (b) secured creditors to the extent of the agreed value or the proceeds of realization of their security interest (regardless such security interest given by the Company or any other person) and (c) persons with claims for the costs incurred by the Company in the negotiation, preparation and implementation of the Resumption Proposal, the Restructuring Proposal, the Scheme and the Hong Kong Scheme (the "**Scheme Creditors**").
51. The Restructuring Proposal has been embodied in the Scheme. Briefly, the Scheme involves: -
- (a) the transfer of the sum of HK\$37 million (the "**Scheme Fund**") out of the proceeds of the Open Offer by the Company to a scheme trust

account (the “**Scheme Trust Account**”) to be opened by the scheme administrators (the “**Scheme Administrators**”);

- (b) the administration of the Scheme by the Scheme Administrators, who will open the Scheme Trust Account to hold the Scheme Fund for, first, the full payment of the preferential claims of the preferential creditors admitted by the Scheme Administrators or the scheme adjudicators (the “**Scheme Adjudicators**”), and second, settlement of the claims of the unsecured Scheme Creditors admitted by the Scheme Administrators or the Scheme Adjudicators on a *pari passu* basis;
- (c) upon the Scheme and the Hong Kong Scheme becoming effective, each of the Scheme Creditors discharging and waiving all of its claims against the Company in consideration of the right to participate with the other Scheme Creditors in the distribution of the Scheme Fund, and is barred from taking any proceedings against the Company in respect of its claims.

52. It is proposed that the Scheme Creditors shall include the Subsidiaries of the Company to whom the Company are indebted, except Up Stand.

### The Disputed Claim

- 53. As at the date of this Petition, there is a disputed claim (the “**Disputed Claim**”) by RHT Limited (the “**Disputed Creditor**”) against the Company for (a) alleged patent registration fees of HK\$464,500, (b) alleged royalty fee in the sum of HK\$92,100,000, (c) further and/or other relief, and (d) costs, as claimed by the Disputed Creditor in High Court Action No. 2260 of 2008 (the “**High Court Action**”) in the Court of First Instance of the High Court of Hong Kong commenced on 10th November 2008 by the Disputed Creditor as Plaintiff against the Company as Defendant. Details of the Disputed Claim are set out in the First Affirmation made by Ms. Seto Ying and filed herein.
- 54. The amount claimed by the Disputed Creditor, if admitted as a valid claim under the Scheme, would amount to approximately ~~20.77~~ 20.62% of the total value of the claims of the Scheme Creditors (on the basis that the only secured creditor with a claim of approximately HK\$1.2 million based on the books and records available to the Company (the “**Secured Creditor**”) does not participate in the

Scheme) or ~~21.71~~ 20.56% (on the basis that the Secured Creditor participates as a Scheme Creditor for its entire Claim in the Scheme).

55. Under the Scheme, in the event that a Notice of Claim is duly submitted by the Disputed Creditor, the Disputed Claim will be treated as an unadmitted claim, for which an appropriate reserve will be made by the Scheme Administrators out of the Scheme Fund pending the conclusion of the legal proceedings or a settlement between the Company and the Disputed Creditor. Subject to the provisions for set-off in the Scheme, the admitted claim of the Disputed Creditor will either be: (a) the amount awarded in the proceedings in its favour after deduction of such interest, damages, compensation and loss of profit forming part of such award and relating to the period after the effective date of the Scheme and after setting off the amount awarded in the proceedings in favour of the Company in respect of the Company's claims or counterclaims against the Disputed Creditor in such proceedings; or (b) the settlement sum as agreed by the Company and the Disputed Creditor and payable by the Company to the Disputed Creditor.

#### **The Scheme in the interests of the Company and its creditors**

56. Based on the information available to the Company, it is unlikely that the creditors of the Company would receive a return under the liquidation scenario that is superior to the likely return if the above mentioned Restructuring Proposal is implemented. In view of the financial difficulties of the Group and the Company's total liabilities of approximately HK\$~~352.9~~ 356.2 million as at 19<sup>th</sup> December 2008, there will be insufficient assets available to distribution to its secured and unsecured creditors. The return to the creditors upon liquidation will therefore be minimal.
57. The Company considers that the Scheme is in the interests of the Company and the Scheme Creditors in that if the Resumption Proposal is approved by the Stock Exchange and implemented, the suspension in the trading of the Company's shares on the Stock Exchange is lifted by the SFC, and the Open Offer, the Underwriting Agreement, the Loan Agreement and the Restructuring Proposal are successfully implemented:
- (a) A sum of HK\$37 million from the proceeds of the Open Offer will be put into the Scheme Fund and paid to the Scheme Administrators which will then be available for distribution to the Scheme Creditors. Based on

the books and records available to the Company, as at 19<sup>th</sup> December 2008, the total indebtedness of the Company due to the Scheme Creditors (together with interest thereon as at 19<sup>th</sup> December 2008) amounted to approximately HK\$~~348~~ 351.3 million (excluding the Disputed Claim of approximately HK\$92.6 million and the entire claim of the Secured Creditor of about HK\$1.2 million) or HK\$~~349.2~~ 352.5 million (excluding the Disputed Claim of approximately HK\$92.6 million but assuming the Secured Creditor opts to participate in the Scheme for its entire claim), and there was no preferential claim. The estimated return to the Scheme Creditors under the Scheme is between ~~10.48~~ 10.38% and ~~8.28~~ 8.22% of their non-preferential claims, depending on the admissibility of the Disputed Claim and the participation of the Secured Creditor in the Scheme.

- (b) If the Scheme is not approved, the Resumption Proposal is unlikely to be approved by the Stock Exchange, and the Underwriting Agreement, the Open Offer and the Restructuring Proposal will not proceed, the sum of HK\$37 million as stated in paragraph (a) above will not become available and the Company is likely to be put into insolvent liquidation, resulting in minimal return to the creditors (including the secured creditor).

58. The implementation of the Restructuring Proposal and the Scheme are also in the interests of the Company and its shareholders as a whole, taking into account the estimated new capital injection from the Open Offer in the sum of about HK\$37 million.

59. Your Petitioner therefore humbly prays as follows:

- (1) That the Scheme of Arrangement set out in the Schedule hereto may be sanctioned by this Honourable Court so as to be binding upon the Company and the Scheme Creditors as therein defined.
- (2) Or that such other Order may be made in the premises as to the Court shall seem meet.

NOTE: It is intended to serve this Amended Petition on Warderly International Holdings Limited, at its registered office located at Cricket Square, Hutchins Drive, P.O. Box 2681, Grand Cayman KY1-1111, Cayman Islands

Dated this <sup>29<sup>th</sup></sup> day of January 2009

Conyers Dill & Pearman

Conyers Dill & Pearman

Attorneys-at-Law for the Petitioner herein

#### Notice of Hearing

This Amended Petition, having been presented to the Court on the 29<sup>th</sup> day of January 2009, will be heard at the Law Courts, George Town, Grand Cayman on the 27<sup>th</sup> day of March 2009 at 10:00am or as soon thereafter as the Petition can be heard.

This Amended Petition was filed by Conyers Dill & Pearman, Attorneys-at-Law for and on behalf of the Petitioner herein whose address for service is at Cricket Square, Hutchins Drive, P. O. Box 2681,  
Grand Cayman KY1-1111, Cayman Islands

Schedule

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 0032 of 2009

**IN THE MATTER OF** Warderly International Holdings Limited

**AND** in the matter of the Companies Law (2007 Revision)

**AND** the Grand Court Rules 1995, Order 102

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Scheme of Arrangement  
(under Section 86 of the Companies Law (2007 Revision),  
of the Laws of the Cayman Islands )

Between

**WARDERLY INTERNATIONAL HOLDINGS LIMITED**

and

**THE SCHEME CREDITORS**  
(as hereinafter defined)

**A. SCHEME ADMINISTRATORS**

1. Mr. Stephen Liu Yiu Keung and Mr. David Yen Ching Wai are appointed as the Scheme Administrators with powers to act jointly and severally. If at any time any Scheme Administrator wishes to resign or is incapable of acting, he shall be replaced by such other Person as shall be nominated by Ernst & Young Transactions Limited and appointed in accordance with the provisions below. Any Scheme Administrator so appointed shall, as soon as reasonably practicable,

following his appointment give written notice of his appointment to all Creditors who have filed Notices of Claim in accordance with Clauses 14 or 16 of the Scheme and whose Claims have not been fully rejected or discharged, and the Company.

2. The Scheme Administrators shall be entitled to exercise such rights and powers as are necessary or desirable to give effect to the provisions of the Scheme and matters incidental thereto.
3. Where two Persons for the time being hold office as Scheme Administrators, they shall be entitled to act jointly and severally.
4. Each Person from time to time appointed as Scheme Administrator shall be an individual qualified to act as liquidator of a company in Hong Kong and/or experienced in handling restructuring or insolvency of companies in Hong Kong. Such Person shall also be independent of the Company and any Scheme Creditor.
5. Any Person for the time being holding office as Scheme Administrator may at any time resign by giving notice in writing of not less than one month to the Company and the other person (if any) for the time being holding office as Scheme Administrator.
6. If any Person for the time being holding office as Scheme Administrator:
  - (a) dies;
  - (b) is convicted of an indictable offence;
  - (c) resigns his office by notice in writing pursuant to Clause 5 above;
  - (d) becomes bankrupt;
  - (e) is disqualified from acting as a director of a company under the Companies Ordinance; or
  - (f) is admitted to hospital because of mental disorder or becomes the subject of an order made by a court having jurisdiction whether in Hong Kong or elsewhere in matters concerning his mental disorder; or
  - (g) otherwise becomes incapacitated and such incapacity is for a duration of not less than one month continuously or in aggregate during any period of

three months

he shall cease to hold office as Scheme Administrator.

7. If at any time only one Person holds the office as Scheme Administrator, he may appoint only one Person to hold office with him as Scheme Administrator. Such Person so appointed shall be duly qualified in accordance with Clause 4 above and not ineligible by reason of any of the matters referred to in Clause 6 above, and shall have consented to act as a Scheme Administrator. Such appointment shall be by instrument in writing signed by the appointer.
8. If at any time no Person holds the office of Scheme Administrator, the Company shall be entitled to appoint not more than two Persons to hold office as Scheme Administrators. Each such Person shall be duly qualified in accordance with Clause 4 above and not ineligible by reason of any of the matters referred to in Clause 6 above, and shall have consented to act. Such appointment shall be by instrument in writing signed by the Company.

#### **B. CONSTITUTION OF THE SCHEME FUND**

9. The Scheme Administrators shall, as soon as reasonably practicable after the Effective Date, open the Scheme Trust Account and shall deposit all monies paid to them in their capacity as Scheme Administrators into the Scheme Trust Account.
10. All property received by the Scheme Administrators in their capacity as such, including the Scheme Fund, shall be held on trust for the payment of the Admitted Preferential Claims (if any) and the Dividends.
11. The Company shall on the date of Completion notify in writing the Scheme Administrators of the Completion and within five Business Days after the Completion transfer a sum of HK\$37 million, being part of the subscription monies of the Offer Convertible Notes paid pursuant to the Open Offer upon Completion, to the Scheme Trust Account.

12. The Company's obligation to make payment into the Scheme Trust Account pursuant to Clause 11 is conditional on and subject to the Completion.
13. With effect from the Effective Date, each of the Scheme Creditors discharges and waives all of its Claims against the Company in consideration of the right to receive full payment of its Admitted Preferential Claim and participate with each of the other Scheme Creditors (in respect of its Admitted Non-Preferential Claim) in the distribution of the Scheme Fund on the terms of the Scheme.

### **C. PROOF AND DETERMINATION OF CLAIMS**

14. As soon as practicable and in any event no later than 14 days after the Effective Date, the Scheme Administrators shall give notice to all Scheme Creditors of whom he has knowledge, by letter and by advertisement in one English language newspaper and one Chinese language newspaper in Hong Kong, that Scheme Creditors must submit a Notice of Claim at or before 5:00 p.m. on the Cut-Off Date. At the time of the notification by post, the Scheme Administrators shall also send to the Scheme Creditors a Notice of Claim substantially in the form set out in Appendix 3 to this Document. A Notice of Claim submitted by a Person to the Company or the chairperson of the Scheme Meeting on or before the Effective Day for the purpose of voting at the Scheme Meeting shall be deemed to be a Notice of Claim to the Scheme Administrators by such Person, provided that such Person may submit a further Notice of Claim at or before 5:00 p.m. on the Cut-Off Date, such further Notice of Claim shall supersede any prior Notice of Claim.
15. On the Effective Date, the Company shall deliver to the Scheme Administrators all Notices of Claim that have been received by the Company or the chairperson of the Scheme Meeting on or before the Effective Date.
16. On or before the Cut-Off Date, each Scheme Creditor shall deliver to the Scheme Administrators at its own expense:
  - (a) no later than 5:00 p.m. on the Cut-Off Date, a Notice of Claim in respect of the amount of the indebtedness claimed to be owed to it by the Company as

at the Effective Date, completed substantially in accordance with the instructions printed on it; and

- (b) such other documents or other evidence as the Scheme Administrators may consider necessary for the purpose of substantiating its Claim.
17. Unless a Secured Creditor has agreed a value for its Security Interest pursuant to sub-clause 17(a) below or released its Security Interest pursuant to sub-clause 17(b) below, then that Secured Creditor's Claim will be treated as an Unadmitted Claim for which an appropriate reserve will be made by the Scheme Administrators out of the Scheme Fund pending that Secured Creditor notifying the Scheme Administrators that it has realised its Security Interest and providing details of the unsecured portion of its Claim (if any), or, if earlier, releasing or agreeing with the Scheme Administrators a value for its Security Interest.
- (a) A Secured Creditor may agree with the Scheme Administrators a value for its Security Interest for the purposes of determining the amount of its Admitted Claim, which agreed value shall be deducted from its Claim for the purposes of determining the amount of its Admitted Claim, and participate in the Scheme as a Scheme Creditor for the amount of the Admitted Claim.
  - (b) A Secured Creditor may release its Security Interest, in which case no deduction on account of its Security Interest shall be made from its Claim for the purposes of determining the amount of its Admitted Claim, and participate in the Scheme as a Scheme Creditor for the amount of the Admitted Claim.
18. A Secured Creditor shall pay to the Scheme Administrators any amount received in excess of its Claim from the net proceeds of realization of its Security Interest and distributions received by it under the Scheme.
19. Each Scheme Creditor will:
- (a) in completing its Notice of Claim take into account any amount received from the primary obligor or any co-surety prior to the date on which it submits its Notice of Claim or is deemed to have submitted its Notice of Claim pursuant to Clause 14 above;

- (b) pay to the Scheme Administrators any amount received from the primary obligor or any co-surety if and to the extent the aggregate value of the Scheme Creditor's receipts under the Scheme and from the primary obligor or any co-surety exceed the total amount owed to the Scheme Creditor by the primary obligor.
20. In the event that a Claim duly submitted by a Scheme Claimant under the Scheme is subject to Proceedings between the Company and such Scheme Claimant, and such Proceedings have commenced and are continuing as at the Effective Date, the relevant Claim will be treated as an Unadmitted Claim for which an appropriate reserve will be made by the Scheme Administrators out of the Scheme Fund pending the conclusion of the Proceedings or a settlement between the Company and such Scheme Claimant. Subject to the provisions of Clause 26 below, the Admitted Claim of such Scheme Claimant will either be: (a) the amount awarded in the Proceedings in favour of such Scheme Claimant after deduction of such interest, damages, compensation and loss of profit forming part of such award and relating to the period after the Effective Date and after setting off the amount awarded in the Proceedings in favour of the Company in respect of the Company's claims or counterclaims against such Scheme Claimant in such Proceedings; or (b) the settlement sum as agreed by the Company and such Scheme Claimant and payable by the Company to such Scheme Claimant.
21. Preferential Creditors shall be paid in full to the extent of the amounts of their Admitted Preferential Claims out of the Scheme Fund, in priority to the distribution in respect of the Admitted Non-Preferential Claims.
22. A Person whose Claim is Preferential only as to part is entitled to participate in the Scheme as a Scheme Creditor for the non-Preferential portion of its Claim provided that such portion of its Claim is admitted under the Scheme as an Admitted Non-Preferential Claim.
23. The Scheme Administrators shall examine every Notice of Claim lodged with them and the related evidence, and shall as soon as reasonably practicable decide whether to admit or reject the Claim, in whole or in part, or to require further evidence in support of it. The Scheme Administrators shall send to each Scheme Claimant a notice in writing of their decision relating to that Scheme Claimant's Claim. Where the decision is to reject the Claim in whole or in part, the Scheme Administrators' notice of decision is to be accompanied by written reasons for their decision.

24. Any amount of an Admitted Claim which is in a currency other than Hong Kong dollars shall for all purposes be converted into Hong Kong dollars at the exchange rate for the purchase of the relevant currency as offered by The Hongkong and Shanghai Banking Corporation Limited (or in the event of manifest error or non-publication, such other offered rate for the purchase of the relevant currency of any other licensed bank in Hong Kong as the Scheme Administrators shall select) at the close of business on the Effective Date and shall for the purposes of the Scheme be due in Hong Kong dollars.
25. Interest on any amount of the indebtedness owing under a Claim which is payable at a certain time or otherwise, shall not be provable or admissible as part of the Claim unless arising out of a contract or judgment and only for a period ending on or before [16<sup>th</sup> March 2009].
26. Where there have been mutual credits, mutual debts or other mutual dealing between the Company and any Scheme Creditor before the Effective Date, an account shall be taken of what is due from each party to the other in respect of such mutual dealings and the sums due from the other party and only the balance of the account, if any, shall be admitted.
27. Adjudication
  - (a) If a Scheme Claimant is dissatisfied with the Scheme Administrators' decision in respect of his Claim, he may, within 10 Business Days from the date of service of the notice of decision as provided in Clause 23 above, apply in writing (with a copy to the Scheme Administrators) to the Adjudicator for a review of such decision. The Scheme Claimant must, at the time of making the application, pay to the Adjudicator on account of the Adjudicator's costs a sum of HK\$50,000 (or such other figure as the Scheme Administrators and the Scheme Claimant may agree), failing which the Scheme Claimant's application for review will be invalid.
  - (b) The Adjudicator, acting as an expert and not as an arbitrator shall adopt such procedures as the Adjudicator may think fit, to enable the Adjudicator to decide whether the decision of the Scheme Administrators should be upheld, reversed or varied. The Scheme Administrators will use reasonable endeavours to procure that the Adjudicator delivers notice of the Adjudicator's decision to the relevant Scheme Claimant and the Scheme

Administrators as soon as reasonably practicable after the Scheme Claimant's application for review. The Adjudicator's decision shall be final, conclusive and binding on the Company and the relevant Scheme Claimant.

- (c) If no valid application for a review of the Scheme Administrators' decision is served on the Adjudicator by the Scheme Claimant to whose Claim that decision relates within 10 Business Days of service of notice of the Scheme Administrators' decision, that decision will be binding on the Scheme Claimant.
  - (d) If the Adjudicator decides that the amount of the relevant Scheme Claimant's Claim exceeds the amount determined by the Scheme Administrators by more than the greater of HK\$50,000 or 10% of the amount determined by the Scheme Administrators, the Adjudicator's costs will be borne by the Company and the Scheme Administrators will refund to the relevant Scheme Claimant the amount paid by such Scheme Claimant on account under sub-clause 27(a) above. Otherwise the Scheme Claimant must, in addition to the payment on account referred to in sub-clause 27(a) above, pay any further Adjudicator's costs relating to that Scheme Claimant's application for review, and in default of such payment, the Scheme Administrators are entitled to deduct the relevant amount from any payment and Dividend payable to the relevant Scheme Claimant and apply such amount to pay the further Adjudicator's costs.
- 28. A Scheme Claimant shall be deemed to be a Scheme Creditor to the extent of its Admitted Claim.
  - 29. A Notice of Claim may be withdrawn or varied at any time with the prior written consent of the Scheme Administrators.
  - 30. The Scheme Administrators may accept a Notice of Claim received after 5:00 p.m. on the Cut-Off Date but before the First Distribution Date only if they are satisfied, in their absolute discretion, that there is a reasonable explanation for the failure to deliver the Notice of Claim by the Cut-Off Date.
  - 31. Claims that are admitted by the Scheme Administrators or the Adjudicator will constitute Admitted Claims, qualifying such Claims for full payment out of the

Scheme Fund (in the case of Admitted Preferential Claims) or for distribution of the Dividends under the Scheme (in the case of Admitted Non-Preferential Claims).

32. For the avoidance of doubt, any Claim or part of a Claim of a Scheme Creditor which is not proved in accordance with this Section C or which is rejected by the Scheme Administrators or the Adjudicator, as the case may be, shall be treated (and if rejected in part, as to that part only) for all purposes as being wholly and irrevocably discharged and released and no Scheme Creditor shall be entitled to payment thereof or any make any claim or initiate any proceedings against the Company and/or the Scheme Administrators in relation thereto.

#### **D. BAR TO FURTHER PROCEEDINGS**

33. Subject to the provisions of Clauses 20, 26, and 34, from the Effective Date, none of the Scheme Creditors shall be entitled to demand or exercise any right of set-off against the Company in respect of its Claim, nor be able to seek to recover from the Company by legal process or otherwise, or to take any steps or proceedings against the Company or its assets, for the purpose of enforcing its Claim or recovering any part of its Claim by way of execution or otherwise, or to commence or prosecute or join in any proceedings to wind up the Company based upon its Claim.
34. A Secured Creditor shall be able to take any steps reasonably necessary to enforce any Security Interest unless otherwise released by the Secured Creditor prior to the Effective Date.

#### **E. DISTRIBUTION OF THE SCHEME FUND IN THE SCHEME TRUST ACCOUNT**

35. The Scheme Fund shall be used solely for the purposes of the Scheme including the payment of the Admitted Preferential Claims and the Dividends.
36. The Scheme Fund, whilst controlled by the Scheme Administrators, shall be applied in or towards payment in the following order of priority:

- (a) first, the Admitted Preferential Claims (if any), in full; and
  - (b) secondly, Dividends to the Scheme Creditors ranking *pari passu* and rateably amongst them in respect of their Admitted Non-Preferential Claims.
37. As soon as reasonably practicable after Cut-Off Date, and from time to time during their administration of the Scheme, the Scheme Administrators shall determine the amount of Scheme Fund available for distribution to the Scheme Creditors having regard to the reserve for the aggregate amount of Unadmitted Claims. The Scheme Administrators shall then make preferential payments to settle Admitted Preferential Claims and pay interim Dividends to Scheme Creditors with Admitted Non-Preferential Claims in amounts determined in accordance with Clause 38 below.
38. The Scheme Administrators shall have the power to make interim distributions to Scheme Creditors with Admitted Claims. The Scheme Administrators shall make such interim distribution at a level which will enable them to pay a percentage distribution to the Scheme Creditors and at the same time reserve in the Scheme Fund an amount equal to the amount which would be required to pay the same percentage distribution to Scheme Claimants with Unadmitted Claims if their Claims were to be admitted in full. The Scheme Administrator will review the interim payment percentage on a regular basis. As soon as reasonably practicable after an Unadmitted Claim becomes an Admitted Claim, the Scheme Administrators will pay the Scheme Claimant, whose Claim has become an Admitted Preferential Claim, the full amount of the Admitted Preferential Claim, or distribute Dividend to the Scheme Claimant, whose Claim has become an Admitted Non-Preferential Claim, at a proportion of that Admitted Non-Preferential Claim equal to the proportion paid to all other Scheme Creditors with Admitted Non-Preferential Claims.

#### **F. PAYMENT AND DELIVERY OF DIVIDENDS**

39. All payments and Dividends paid under the Scheme will be paid by cheque posted to the address of the Scheme Creditor as appearing in that Scheme Creditor's Notice of Claim or as provided by the Scheme Creditor to the Scheme

Administrators under the Scheme. The delivery or posting of the cheque shall be a good discharge to the Company and the Scheme Administrators.

40. Cheques shall be posted at the sole risk of the addressee and neither the Company nor the Scheme Administrators shall be responsible for any loss or delay in transmission.
41. Scheme Creditors will not be entitled to any payment or Dividend which remains unclaimed for more than six months after the date of the cheque to which such payment or Dividend relates.

#### **G. TERMINATION OF THE SCHEME**

42. The Scheme will terminate and cease to have effect:
  - (a) if the Completion does not take place at or before the expiration of the period specified in the Underwriting Agreement within which the Investor is required to fulfil all his obligations under the Underwriting Agreement or the expiration of 9 months after the Effective Date, whichever is the earlier; or
  - (b) when payments and distributions to all Scheme Creditors under the Scheme have been completed pursuant to the terms of the Scheme. (For this purpose, all payments shall be deemed to be made upon, and the Termination Date shall be, the date upon which the Scheme Fund shall have been distributed to the Scheme Creditors in accordance with the terms of the Scheme).
43. The Scheme Administrators shall give notice of the Termination Date to Scheme Creditors and the Company as soon as reasonably practicable after the termination.
44. The duties and responsibilities of the Scheme Administrators under the Scheme will cease upon the giving of the termination notice.
45. In the event that the Scheme is terminated pursuant to Clause 42(a) above, the Claims which have been discharged and waived against the Company under Clause 13 of this Scheme will be deemed to have not been discharged and

waived under the Scheme and the Scheme Creditors will be entitled to take any action or proceeding against the Company in respect of their Claims as if the Scheme had never been effective and binding on them.

#### **H. LIABILITY AND INDEMNITY**

46. None of the Scheme Administrators or any of their representatives, partners, staff or agents shall incur any personal liability under the terms of the Scheme or otherwise.
47. None of the Scheme Creditors or the Company shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Scheme Administrators or their nominated representatives in accordance with and to implement the provisions of the Scheme or the exercise by any such Person in good faith of any power conferred upon it or him for the purposes of the Scheme and no such Person shall be liable for any loss or any kind whatsoever unless such loss is attributable to its or his own willful default, fraud, dishonesty or willful breach of duty or trust.
48. The Company shall indemnify the Scheme Administrators against all expenses and against all costs, claims, proceeding, expenses, losses, damages and liabilities of any description which may be incurred or suffered by the Scheme Administrators in good faith in the performance of their role.

#### **I. COSTS AND EXPENSES**

49. All costs, charges and expenses and disbursements incurred by the Company in connection with the negotiation, preparation and implementation of the Resumption Proposal, the Restructuring Proposal, the Scheme and the Hong Kong Scheme shall be the Restructuring and Scheme Costs including, without prejudice to the generally of the foregoing:
  - (a) all legal, accounting, financial and other consultants' fees, tax, duties, administrative, licence, listing, audit, filing, registration and other fees, costs and expenses whether incurred in Hong Kong or elsewhere in connection with the negotiation, preparation and implementation of the

Resumption Proposal, the Restructuring Proposal, the Scheme and the Hong Kong Scheme;

- (b) the costs of convening and holding the relevant creditors' meeting and the costs of obtaining the sanction of the Hong Kong Court and registration of the order of the Hong Kong Court sanctioning the Hong Kong Scheme with the Registrar of Companies in Hong Kong;
  - (c) the costs of convening and holding the Scheme Meeting at the direction of the Court and the costs of obtaining the sanction of the Court and registration of the order of the Court sanctioning the Scheme with the Registrar of Companies in the Cayman Islands;
  - (d) the costs of convening and holding the relevant meeting of the Shareholders to consider and approve the Open Offer and the relevant matters related to the Open Offer;
  - (e) all liabilities, expenses, costs and disbursements incurred by the Scheme Administrators in the course of the exercise or performance of their powers, duties and functions under the Scheme and the Hong Kong Scheme;
  - (f) the costs of remunerating the Scheme Administrators in connection with the exercise and performance of the powers, duties and functions of the Scheme Administrators under the Scheme and the Hong Kong Scheme; and
  - (g) the fees of and the costs, charges and expenses incurred by the Adjudicator in connection with the exercise and performance of his powers, duties and functions under the Scheme and the Hong Kong Scheme.
50. Up to a maximum sum of HK\$7 million of the Restructuring and Scheme Costs will be borne by the Company. The Company will discharge such costs (including the Pre-Scheme Costs) without deduction from the Scheme Fund.
51. The Restructuring and Scheme Costs in excess of HK\$7 million will be borne by the Investor, without any recourse whatsoever against the Company or the Scheme Fund, provided that the Underwriting Agreement becomes unconditional

on or before 30<sup>th</sup> June 2009 or such later date(s) as the Investor and the Company may agree in writing.

#### **J. MODIFICATION OF THE SCHEME**

52. On or after the Effective Date, the Scheme Administrators may at any time if they consider it expedient to do so and it is in the mutual interests of the Scheme Creditors or, in respect of any matters of the Scheme which affect the Company and the Scheme Creditors, apply to the Court for the purpose of modifying the provisions of the Scheme or to obtain directions in relation to any matters or disputes arising in respect of the Scheme. If the Court approves a modification to the Scheme or give a direction in relation to any matter or dispute which may arise in respect of the Scheme, it shall be binding on the Company and the Scheme Creditors.

#### **K. GENERAL**

53. In the event that the Adjudicator resigns or is prevented during the implementation of the Scheme from acting by death or incapacity, such Adjudicator may be replaced by another Person, who shall be independent of the Company and of any Scheme Creditor, as may be appointed by the Scheme Administrators. The succeeding Adjudicator shall as soon as reasonably practicable after the replacement give written notice to all Scheme Creditors and the Scheme Administrators of such replacement. For the purpose of this Clause 53, if any of the events described in Clause 6 above occurs in relation to the Adjudicator or the Adjudicator has a conflict of interest, the Adjudicator is incapacitated and the term "incapacity" shall construe accordingly in this Clause 53.
54. The rights of the Scheme Creditors under the Scheme shall be assignable, subject to the Scheme Administrators receiving a pre-agreed administration fee per assignment, written notice of the assignment and such other documentation as in the reasonable opinion of the Scheme Administrators may be required in relation to the validity of the assignment, from the Person taking an assignment from a Scheme Creditor.

55. Save as otherwise provided herein, any notice or demand hereby or by law authorised or required to be given shall be sufficiently given by posting the same by ordinary post (or airmail if outside Hong Kong and Macau) to or by transmission by fax to or by leaving the same at: -
- (a) in the case of the Company, the principal place of business of the Company in Hong Kong at 15<sup>th</sup> Floor, No.88 Lockhart Road, Wanchai, Hong Kong (fax number: (852) 2520 2281);
  - (b) in the case of the Scheme Administrators, the office of Ernst & Young Transactions Limited at 62<sup>nd</sup> Floor, One Island East, 18 Westlands Road, Island East, Hong Kong (fax number: (852) 2827 0715) Attention: Mr. Stephen Liu Yiu Keung;
  - (c) in the case of the Adjudicator, the office of BDO McCable Lo Limited at 25<sup>th</sup> Floor, Wing On Centre, 111 Connaught Road Central, Hong Kong (fax number: (852) 2543 1051) Attention: Mr. Kong Chi How, Johnson;
  - (d) in the case of a Scheme Creditor, his address or fax number stated in his Notice of Claim or provided otherwise by the Scheme Creditor to the Scheme Administrators under the Scheme.
56. If a notice or demand as referred to in Clause 55 is posted, it shall be deemed to have received by the addressee within 48 hours (or 72 hours, if from or to a place outside Hong Kong) after the same shall have been posted and proof that an envelope containing such notice was properly addressed, prepaid and posted shall be sufficient evidence that such notice or demand has been duly served or given. If such notice or demand is delivered by hand, it shall be deemed to have been received by the addressee when the same is left at the relevant address and proof that the same was so left shall be sufficient evidence that such notice or demand has been duly served or given. If such notice or demand is transmitted by fax, it shall be deemed to have been received at the time of transmission, save that if such transmission is effected otherwise than between 9:00 a.m. and 4:00 p.m. on a Business Day in the territory in which the Person to whom such transmission is effected is located, such transmission shall be deemed to have been received at 9:00 a.m. on the next Business Day in such territory and proof that such notice or demand was successfully transmitted to the correct facsimile number (by way of transmission confirmation or otherwise)

shall be sufficient evidence that such notice or demand has been duly served or given. In this Clause 56, the term "Business Day" in respect of a territory outside Hong Kong will mean a day (other than a Saturday or Sunday) on which banks are generally open for business in that territory.

57. If any provision in the Scheme is held to be illegal, invalid or unenforceable under Cayman Islands law then the offending provision shall (insofar as it is illegal, invalid or unenforceable) be deemed to have no effect and will not affect or impair the remaining provisions of the Scheme.
58. The Scheme shall be subject to the laws of Cayman Islands and the Scheme Creditors shall submit to the non-exclusive jurisdiction of the Cayman Islands Court in respect thereof.

#### **L. DEFINITIONS**

59. In the Scheme, unless inconsistent with the subject or context, the following expressions shall have the meanings respectively set opposite them:

"Adjudicator"                      Mr. Kong Chi How, Johnson of BDO McCable Lo Limited or, failing him, such other person as the Scheme Administrators shall nominate from time to time

"Admitted Claim"                  an Admitted Non-Preferential Claim and/or an Admitted Preferential Claim

"Admitted Non-Preferential Claim"                  a Non-Preferential Claim which has been admitted in accordance with the Scheme

"Admitted Preferential Claim"                  a Preferential Claim which has been admitted in accordance with the Scheme

“Business Day”	a day (other than a Saturday and any day on which a tropical cyclone warning signal No.8 or above is hoisted between 9:00 a.m. and 12:00 noon and is not lowered at or before 12:00 noon or on which a “black” rainstorm warning signal is hoisted or remains in effect between 9:00 a.m. to 12:00 noon and is not discontinued at or before 12:00 noon) on which licensed banks in Hong Kong are open for general business
“Claims”	any debt, liability or obligation of the Company as at the Effective Date, whether known or unknown, certain or contingent, liquidated or unliquidated, including without limitation, any debt or liability to pay money or money’s worth, any liability under any statute or enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution, together with all interest on such debt, obligation or liability up to [16 <sup>th</sup> March 2009]
“Companies Law”	Companies Law (2007 Revision) of the Cayman Islands as amended from time to time
“Companies Ordinance”	Companies Ordinance (Chapter 32 of the Laws of Hong Kong) as amended from time to time
“Company”	Warderly International Holdings Limited, a company incorporated in the Cayman Islands with limited liability
“Completion”	the completion of the Open Offer and the Underwriting Agreement when the acceptance of the

Open Offer by the Shareholders has taken place and the Investor has fulfilled all his obligations under the Underwriting Agreement

- “Court” the Grant Court of the Cayman Islands
- “Creditor” a creditor with a Claim or Claims
- “Cut-off Date” the date to be determined by the Scheme Administrators by which the Claims are to be proved in accordance with the Scheme and which shall be at least 21 days after the date of the notices and advertisements referred to in Clause 14 of the Scheme
- “Dividend(s)” the amount payable to a Scheme Creditor in respect of its Admitted Non-Preferential Claim under the Scheme on a pro rata basis
- “Document” the document containing the explanatory statement required under Order 102, Rule 21(4) of the Grand Court Rules 1995, the Scheme and the appendices hereto
- “Effective Date” the day on which the Scheme becomes effective by virtue of the delivery of an office copy of the order of the Court sanctioning the Scheme to the Registrar of Companies in the Cayman Islands for registration
- “First Distribution” the date on which the Scheme Administrators intend

Date”	to pay the first Dividend to the Scheme Creditors
“Form of Proxy”	a form in writing by any Person claiming to be a Scheme Creditor substantially in the form set out in Appendix 4 to this Document
“HK\$”	Hong Kong dollar, the lawful currency of Hong Kong
“Hong Kong”	the Hong Kong Special Administrative Region of the People’s Republic of China
“Hong Kong Court”	the Court of First Instance of the High Court of Hong Kong
“Hong Kong Scheme”	the proposed scheme of arrangement to be made between the Company and the Scheme Creditors pursuant to section 166 of the Companies Ordinance in its present form, or with or subject to any modification of it, any addition to it or any condition approved or imposed by the Hong Kong Court
“Investor”	Mr. Kan Che Kin, Billy Albert, who was beneficially interested in approximately 36.03% of the entire issued share capital of the Company as at the Latest Practicable Date of this Document, 19 <sup>th</sup> December 2008
“Macau”	the Macau Special Administrative Region of the

People's Republic of China

“Non-Preferential Claim”	a Claim which is not Preferential
“Notice of Claim”	a claim in writing by any Person claiming to be a Scheme Creditor substantially in the form set out in Appendix 3 to this Document
“Offer Convertible Notes”	the zero coupon convertible note(s) in the aggregate principal amount of HK\$84.4 million to be issued by the Company under the Open Offer
“Open Offer”	the proposed open offer of the Offer Convertible Notes to be made by the Company to the Shareholders on the basis of one Offer Convertible Note in the principal amount of HK\$0.20 for every existing Share held on the Record Date of the Open Offer, the principal terms of which are set out in the announcement of the Company dated 8 <sup>th</sup> October 2008
“Person”	an individual, partnership, company, body corporate, joint stock company, trust, unincorporated association or body persons (including a partnership or consortium), joint venture or other entity, or a government or any political subdivision or agency thereof
“Preferential”	having priority as a preferential claim in a winding up of the Company pursuant to Section 265 of the Companies Ordinance and/or Section 162 of the Companies Law if the winding up of the Company

commenced on the Effective Date under the Companies Ordinance and/or the Companies Law

- “Preferential Claim” a Claim which is Preferential
- “Preferential Creditor” a Creditor with a Preferential Claim
- “Pre-Scheme Costs” the part of the Restructuring and Scheme Costs which are paid or payable prior to the Effective Date
- “Proceedings” any form of proceeding in any jurisdiction or forum including but without limitation any legal proceedings, arbitration, alternative dispute resolution, mediation, appeal, review of decision or judgment pursuant to any statute or rules of court or contract, proceedings on taxation of costs
- “Restructuring and Scheme Costs” the costs, charges, expenses and disbursements referred to in Clause 49 of the Scheme
- “Restructuring Proposal” the proposal for the restructuring of the Company contained in the Resumption Proposal and agreed between the Company and the Investor, comprising, amongst other things, the Open Offer and the Scheme and the Hong Kong Scheme
- “Resumption Proposal” the proposal for the resumption of trading of the Shares submitted by the Company to The Stock Exchange of Hong Kong Limited and the Securities and Futures Commission of Hong Kong on 30<sup>th</sup>

September 2008

- “Scheme” the proposed scheme of arrangement to be made between the Company and the Scheme Creditors under Section 86 of the Companies Law in its present form, which is set out in Part III of the Document, or with or subject to any modification of it, any addition to it or any condition approved or imposed by the Court
- “Scheme Administrators” any Person entitled to exercise such rights and powers as are necessary or desirable to give effect to the provisions of the Scheme
- “Scheme Claimant” a Person who claims to be a Scheme Creditor and has duly lodged a Notice of Claim under the Scheme
- “Scheme Creditors” Creditors excluding (a) Up Stand, (b) Secured Creditors, to the extent of the value of their Security Interests agreed with the Scheme Administrators under the Scheme, or upon realization, the net proceeds of realization of their Security Interests and (c) Persons with Claims for the Restructuring and Scheme Costs, to the extent of such Claims
- “Scheme Fund” all funds from time to time credited to the Scheme Trust Account, including any interest thereon
- “Scheme Meeting” the meeting of the Scheme Creditors convened at the direction of the Court for the purpose of considering and, if thought fit, approving the

## Scheme

“Scheme Trust Account”	an interest bearing account controlled by the Scheme Administrators or an escrow agent duly appointed by the Scheme Administrators for the purpose of and for the benefit of those entitled under the Scheme
“Secured Claim”	a Claim with the benefit of a Security Interest
“Secured Creditor”	a Creditor with a Secured Claim
“Security Interest”	any mortgage, charge, assignment, pledge, lien, hypothecation, encumbrance or security interest of whatever kind or any other agreement or arrangement having the effect of conferring security, including any proceeds of realization of the above
“Share(s)”	the existing share(s) of HK\$0.01 each in the share capital of the Company
“Shareholders”	the holder of the Shares
“Termination Date”	the date on which the Scheme is terminated and ceases to have effect
“Unadmitted Claim”	any Claim which has not been admitted or rejected by the Scheme Administrators or the Adjudicator (as the case may be)