

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO. <sup>256</sup> OF 2019 ( )

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW  
AND IN THE MATTER OF XIO DIAMOND LP



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WINDING UP PETITION

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TO: THE GRAND COURT OF THE CAYMAN ISLANDS

The humble Petition of China Life Trustees Limited (the *Petitioner*) of 17/F, CLI Building, 312 Hennessy Road, Hong Kong SAR, shows **THAT**:

- 1 XIO Diamond LP (the *Partnership*) is a Cayman Islands exempted limited partnership registered on 6 July 2016 with its registered office at Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands.
- 2 The Petitioner is, and was at all relevant times, the sole limited partner of, and sole economic stakeholder in, the Partnership.
- 3 The general partner of the Partnership is, and was at all relevant times, XIO Diamond GP Limited (*XIO Diamond GP*), a Cayman Islands exempted company with limited liability.
- 4 The sole director and shareholder of XIO Diamond GP is, and was at all relevant times, Xiang Li (also known as *Athene Li*).

**FULFILLMENT OF THE PURPOSE OF THE FUND**

- 5 The purpose and general nature of the business of the Partnership was to make, hold, own and dispose of investments in an entity known as J.D. Power & Associates (*JD Power*) alongside other investment vehicles managed and/or advised by XIO

Cayman Limited, a Cayman Islands exempted company affiliated with XIO Diamond GP (together, with the Partnership, the *XIO Funds*).

- 6 The XIO Funds, including the Partnership, made and held their investments in JD Power through their shareholding in Jefferson Cayman Holdco Limited (*JHC*), which in turn held shares in Jefferson Cayman Holdco II Limited (*Jefferson Cayman*), which in turn held shares in Jefferson Holdco Inc. (*Jefferson Delaware*), which in turn owned JD Power.

#### **WINDING UP OF THE PARTNERSHIP**

- 7 The operation of the Partnership is subject to the terms of an Amended and Restated Exempted Limited Partnership Agreement dated 6 September 2016 (the *LPA*).

- 8 The purpose of the Partnership is set out in section 2.4 of the LPA:

*"The purpose and general nature of the business of the Partnership is to make, hold, own and dispose of Portfolio Investments in the Portfolio Company [JD Power] and to engage in such other activities as are permitted hereby or are incidental or ancillary thereto as the General Partner shall deem necessary or advisable, all upon the terms and conditions set forth in this Agreement."*

- 9 Article IX of the LPA deals with the Term and Dissolution of the Partnership, and section 9.1 provides:

*"The Partnership...shall continue until the Partnership is wound up pursuant to Section 36(1)(a) of the [Law], which winding up shall occur upon the first of any of the following events (each an "Event of Dissolution"): ...*

- (b) the time as of which the Partnership has disposed of all of its Portfolio Investments or the General Partner has determined not to make a Portfolio Investment in the Portfolio Company; ...*

*provided that the Partnership shall not be dissolved until a notice of dissolution has been filed with the Registrar of Exempted Limited Partnerships in the Cayman Islands in accordance with the Act..."*

- 10 The definition of Portfolio Investments is set out in section 4.1 of the LPA, which notes that:

*"The Partnership shall make investments directly or indirectly in the Portfolio Company (the securities in which the Partnership has actually invested...are referred to herein as "Portfolio Investments")..."*

- 11 "Portfolio Company" is defined to be JD Power.

- 12 Sections 9.2 and 9.3 of the LPA deal with the process for winding up the Partnership and the final distribution of the Partnership's assets. Section 9.2 provides:

*"Upon the occurrence of an Event of Dissolution, the Partnership shall be wound up and dissolved. The General Partner or, if there is no general partner, a liquidator appointed by a Majority in Interest of the Limited Partners, shall proceed with the Dissolution Sale and the Final Distribution..."*

- 13 On 16 December 2019, Jefferson Cayman completed the sale of its shares in Jefferson Delaware, thereby constituting a disposal of the Partnership's interest in JD Power (the **Transaction**). The Transaction will lead to the automatic winding up of the Partnership pursuant to the terms of the LPA, as well as pursuant to sections 36(1)(a) and 36(10)(d) of the Exempted Limited Partnership Law (2018 Revision)(the **Law**).

- 14 The known assets of the Partnership are its interest in the sale proceeds of JD Power, its shares in JHC and funds held in a bank account maintained on behalf of the Partnership.

- 15 The Partnership holds 25.50% of the issued shares of JHC and its effective interest in the sale proceeds of JD Power is 24.86% (**Sale Proceeds**).

## **LOSS OF CONFIDENCE IN ATHENE LI**

- 16 In addition to the rights arising under the LPA for liquidation of the Partnership, the Petitioner is aware of serious allegations which have been made against Athene Li, the sole director of XIO Diamond GP, in proceedings before this honourable Court. The Petitioner is aware that Athene Li and XIO Diamond GP are subject to a confidential order made by this Court which would have the effect of preventing XIO Diamond GP from taking any steps to wind up the Partnership.
- 17 The Petitioner has lost all confidence in Athene Li and her ability to properly manage XIO Diamond GP and the Partnership in the following circumstances:
- (a) The nature and seriousness of the allegations made against Athene Li and XIO Diamond GP in other proceedings before this Court; and
  - (b) XIO Diamond GP's unsustainable assertion that under the LPA it is entitled to charge the Partnership for its significant expenses associated with defending Court proceedings, in circumstances where it appears that the involvement of XIO Diamond GP in the proceedings is due to its association with Athene Li, rather than any allegations made against the Partnership or the Petitioner.

## **WINDING UP OF THE PARTNERSHIP BY A PROFESSIONAL INDEPENDENT LIQUIDATOR**

- 18 The winding up of the Partnership should be conducted by a professional liquidator independent of Athene Li and XIO Diamond GP in the following circumstances:
- (a) It is appropriate that the Partnership be wound up at this time, since the purpose of the Partnership has now been fulfilled and the sale of JD Power will lead to the automatic winding up of the Partnership pursuant to the terms of the LPA and sections 36(1)(a) and 36(10)(d) of the Law.
  - (b) The Petitioner as the sole limited partner of the Partnership has no confidence in XIO Diamond GP by virtue of its control by Athene Li. The

Petitioner's preference is for the appointment of an independent liquidator to have conduct of the liquidation of the Partnership.

- (c) The independent directors of JHC have confirmed that they will hold the Sale Proceeds in escrow pending resolution of the various Court proceedings on foot involving, amongst others, Athene Li. In the absence of the appointment of an independent liquidator, the Partnership will remain in the control of Athene Li through her control of XIO Diamond GP, with the consequence that JHC will not distribute the Partnership's entitlement to the Sale Proceeds, thereby keeping the Petitioner out of its money indefinitely.
- (d) Alternatively, if the Sale Proceeds are distributed to the Partnership absent the appointment of a liquidator, the Petitioner has no confidence that XIO Diamond GP and Athene Li will distribute those funds to the Petitioner in accordance with the terms of the LPA.
- (e) Further, the appointment of an independent liquidator should not have any impact on the rights or obligations of the XIO Diamond GP under the LPA. XIO Diamond GP does not have any economic interest in the Partnership, save for the payment of any outstanding fees and expenses to which it may be entitled pursuant to the terms of the LPA. A liquidator will be in a position to independently adjudicate such claims.
- (f) The appointment of a liquidator is not disproportionate in circumstances where (i) the Sales Proceeds to be distributed to the Partnership are significant, (ii) the costs of the liquidation will ultimately be borne out of the assets of the Partnership (which only the Petitioner is entitled to subject to any fees and expenses which XIO Diamond GP may be properly entitled to), and (iii) winding up costs would be incurred whether the winding up was carried out by XIO Diamond GP or by an independent liquidator.
- (g) The appointment of a liquidator will not prejudice the conduct of any court proceedings to which XIO Diamond GP is a party.

- (h) In any event, as noted above, the Petitioner understands that XIO Diamond GP is restrained from taking any steps to wind up the Partnership at this time, such that the appointment of an independent liquidator is necessary to allow the terms of the LPA to be put into effect.

**GROUNDS FOR PETITION**

- 19 The Petitioner is the sole limited partner of the Partnership and is entitled to petition for orders and directions for the winding up of the Partnership pursuant to section 36(3)(g) of the Law and, pursuant to section 36(13) of the Law, to seek an order that the affairs of the Partnership be wound up by a person appointed by the Court other than XIO Diamond GP.
- 20 The winding up of the Partnership is deemed to have commenced pursuant to section 36(10)(d) of the Law upon the occurrence of an event provided for in the LPA, namely the Transaction.
- 21 The Petitioner therefore seeks an order confirming that the winding up of the Partnership should be carried out under the supervision of the Court by an independent liquidator appointed for that purpose.

**YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**

- 1 The Partnership be wound up in accordance with the Law;
- 2 Mr Luke Almond of Borrelli Walsh (Cayman) Limited, Strathvale House, 3<sup>rd</sup> Floor, 90 North Church Street, Grand Cayman KY1-1204, Cayman Islands and Mr Cosimo Borrelli of Borrelli Walsh Limited, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as official liquidators of the Partnership;
- 3 An order for the Petitioner's costs of the Petition; and
- 4 Such further or other relief as the Court deems appropriate.

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

Dated the 23rd day of December 2019

Harney Westwood & Riegels

Harney Westwood & Riegels

Attorneys-at-Law for and on behalf of the Petitioner

**NOTE:** This Petition is intended to be served on the Partnership, XIO Diamond LP.

**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:** PPS/LBG/053289.0002).

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on 2019/2020 at 10:00am.

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, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: 3459494296.