



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD OF 2020 ()

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF CBD AETHER CENTER LTD.

WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Guanghai SS Holdings Limited, whose registered office is c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands ("**Petitioner**") shows that:

Introduction to the Company

- 1 CBD Aether Center Ltd. (the "**Company**") was incorporated in the Cayman Islands on 21 December 2017 as an exempted company limited by shares under the Companies Law (2016 Revision) ("**Companies Law**"). The Company's registration number is 330639. The registered office of the Company is c/o Harneys Fiduciary (Cayman) Limited, P.O. Box 10240, 4th Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002, Cayman Islands.
- 2 The Company is a shareholder in Aether Limited 以太有限公司, a company with limited liability incorporated under the laws of Hong Kong with company number 163628, whose registered office is at Level 54, Hopewell Centre, 183 Queen's Road East, Hong Kong ("**Aether Limited**").
- 3 To the best of the Petitioner's knowledge, the Company has no assets other than its shareholding in Aether Limited and is not generating any revenue (whether from its shareholding in Aether Limited or otherwise).
- 4 The Company is a holding company that is registered to do business in Hong Kong.

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

5 Pursuant to a security agreement dated 28 May 2018 and a share charge dated 23 July 2018 the Company has pledged its shares in Aether Limited as security to China Cinda (HK) Asset Management Co., Limited of 12/F, AIA Central, 1 Connaught Road Central, Hong Kong ("**Cinda**") to secure a US\$ equivalent of RMB1,780,000,000 loan from Cinda to the Company.

The debt giving rise to this winding up petition

6 The Petitioner is the lender and Aether Limited is the borrower under a US\$80 million facility agreement dated 21 May 2018 (the "**Facility Agreement**") between:

- 6.1 the Petitioner,
- 6.2 Xeno Origin Limited,
- 6.3 Mr Lim Yew Cheng,
- 6.4 Mr Lin Minghan,
- 6.5 Kenora Corporation Limited; and
- 6.6 SCH 1 Limited (the "**Security Trustee**"),

as novated by a deed of novation dated 26 October 2018 (the "**Novation Deed**"), pursuant to which Xeno Origin Limited transferred the benefit and burden of the Facility Agreement to Aether Limited, between:

- 6.7 the Petitioner;
- 6.8 Aether Limited;
- 6.9 Xeno Origin Limited;
- 6.10 the "**Guarantors**", being:
 - (a) Mr Lim Yew Cheng;
 - (b) Mr Lin Minghan;
 - (c) Kenora Corporation Limited; and
 - (d) the Company; and
 - (e) the Security Trustee

as:

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

- 6.11 amended by an amendment deed dated 13 January 2020 (the "**Amendment Deed**");
- 6.12 further amended by an amendment deed dated 27 April 2020 (the "**Further Amendment Deed**"); and
- 6.13 amended and/or restated from time to time.

7 The principal due pursuant to the Facility Agreement, as amended by the Amendment Deed and the Further Amendment Deed, is US\$110,330,883.28.

8 An Event of Default has occurred under the Facility Agreement, Clause 19.1 (Non-payment) by reason of Aether Limited's failure to repay the loan in full on 30 June 2020 pursuant to Clause 6 (Repayment) of that agreement. Pursuant to:

8.1 Clause 6 of the Facility Agreement, as amended by the Amendment Deed and the Further Amendment Deed, Aether Limited was required to repay the principal of US\$110,330,883.28 by 30 June 2020; and

8.2 Clauses 8 (Interest) and 9 (Interest Payment Dates) of the Facility Agreement, as amended by the Amendment Deed and the Further Amendment Deed, Aether Limited was required to pay interest of US\$5,020,055.19 by 30 June 2020.

9 However, by 30 June 2020 Aether Limited had neither repaid any principal nor paid any interest, leaving a shortfall of the principal of US\$110,330,883.28 and a shortfall of interest of US\$5,020,055.19, for an aggregate shortfall of US\$115,350,938.47 as at 30 June 2020 (the "**Shortfall**").

10 From 30 June 2020 up to and including 3 November 2020 (the date of the Statutory Demand (as defined at paragraph 13 below)) default interest of US\$9,689,478.83 accrued in addition to the Shortfall pursuant to the Facility Agreement, Clause 8.3 (Default Interest) such that the total amount outstanding as at (and including) the date of the Statutory Demand was US\$125,040,417.30.

11 Pursuant to a deed of guarantee and undertaking dated 24 May 2018 (the "**Guarantee**") between the Company as guarantor in favour of the Petitioner as novated by the Novation Deed, Clause 2 (Guarantee and Indemnity), the Company:

11.1 guarantees punctual performance by Aether Limited of all of Aether Limited's obligations under the Facility Agreement; and

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

11.2 undertakes that whenever Aether Limited does not pay any amount due under or in connection with the Facility Agreement, that it shall immediately on demand pay that amount as if it was the principal obligor.

12 On 23 October 2020 the Petitioner issued a demand to the Company pursuant to the Guarantee for the Company to pay the Shortfall plus default interest up to 15 October 2020 (the "**Demand**"). The Demand stated that default interest will continue to accrue in accordance with the Facility Agreement.

Statutory demand

13 On 3 November 2020 the Petitioner served a statutory demand (the "**Statutory Demand**") on the Company at its registered office, claiming the sum of at least:

13.1 the principal amount of US\$110,330,883.28;

13.2 interest of US\$5,020,055.19; and

13.3 default interest of US\$9,689,478.83

calculated up to and including the date of the Statutory Demand, being a total indebtedness of US\$125,040,417.30 (the "**Sum Demanded**").

14 As at the date of this Petition, the Company has neither responded to the Demand nor the Statutory Demand.

Solvency of the Company

15 Upon the expiry of the 21 day period following service of the Statutory Demand, namely on 25 November 2020, if the Company has failed to pay the Sum Demanded then, pursuant to section 93(a) of the Companies Law (2020 Revision), the Company shall be deemed to be unable to pay its debts.

16 Further or alternatively, the Company is unable to pay its debts because since 23 October 2020, the Shortfall has been due and payable and the Company has failed to pay the same to the Petitioner.

Nomination of Joint Official Liquidators

17 The Petitioner nominates Margot MacInnis and John Henry of Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, 48 Market Street, Suite 4290 Canella Court, Camana

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

Bay, Grand Cayman, Cayman Islands for appointment as the official liquidators of the Company.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up in accordance with the Companies Law.
- (2) Margot MacInnis and John Henry of Grant Thornton Specialist Services (Cayman) Limited, 2nd Floor, 48 Market Street, Suite 4290 Canella Court, Camana Bay, Grand Cayman, Cayman Islands be appointed as the official liquidators of the Company ("**Liquidator**").
- (3) The Liquidators shall not be required to give security for their appointment.
- (4) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and in the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
- (5) The Liquidators shall have the power to engage staff (whether or not as employees of the Company) to assist their in the performance of her functions.
- (6) The Liquidators shall be at liberty to appoint counsel, attorneys and professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist their in the performance of their duties in accordance with Companies Winding Up Rules, O.25.
- (7) The Liquidators shall be at liberty to apply generally.
- (8) The costs of the Petitioner of and incidental to the Petition be paid out of the assets of the Company as an expense of the liquidation.

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

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

AND your Petitioner will ever pray etc.

DATED this 25th day of November 2020

FILED this day of November 2020

Maples and Calder.

Maples and Calder

Attorneys-at-law for the Petitioner

NOTE: This Petition is intended to be served on the Company by service on its registered office.

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on _____ at _____ am.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone +1 345 949 4296.

This WINDING UP PETITION is filed by Maples and Calder, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: 737791.5/64521180/CJM/LBS)