



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

CAUSE NO: FSD OF 2021 ()

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF JIAN YING OURGAME HIGH GROWTH INVESTMENT FUND

WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Kinetic Creation Global Investments Limited of 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong (the "**Petitioner**"), shows that:

A. INTRODUCTION

Jian Ying Ourgame High Growth Investment Fund (the "Fund")

1. The Fund is a Cayman Islands exempted limited company incorporated on 13 October 2017 (registration number 327997). The registered office of the Fund is P.O. Box 10240, 4th Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002, Cayman Islands.
2. The Fund is also registered with the Cayman Islands Monetary Authority as a private fund with reference number 1741692.
3. The sole purpose of the Fund is to hold shares in Ourgame International Holdings Limited ("**Ourgame**"), which is a Cayman Islands incorporated company listed on the Stock Exchange of Hong Kong Limited (the "**Hong Kong Stock Exchange**"). As far as the Petitioner is aware, the Fund does not carry on any other business. According to the 2019 Annual Report of Ourgame (the "**Annual Report**"), the Fund currently holds around 221,653,555 ordinary shares in Ourgame (the "**Ourgame Shares**", which

is a 20.27% shareholding in Ourgame). A significant portion of Ourgame's business involves its indirect ownership in WPT Enterprises, Inc, which is the World Poker Tour. Ourgame is also involved in online card and board game development and operations in China.

The Petitioner

4. The Petitioner is a company incorporated in Hong Kong and is an indirect wholly owned subsidiary of CCB (International) Holdings Limited. Both the Petitioner and CCB (International) Holdings Limited are part of the wider China Construction Bank Corporation group.

The Fund's Share Capital

5. Pursuant to the Fund's amended and restated memorandum and articles of association dated 12 January 2019 (the "**2019 Articles**"), the Fund's authorised share capital is US\$50,000 divided into:
 - (a) 100 Management Shares of a par value of US\$0.01 each (the "**Management Shares**");
 - (b) 4,000,000 Participating Non-Voting Shares of a par value of US\$0.01 each;
 - (c) 990,000 Participating Voting Shares of a par value of US\$0.01 each; and
 - (d) 9,900 Non-Participating Shares of a par value of US\$0.01 each.
6. As of the date of this Petition, the Petitioner holds 1,200,000 Class A Participating Non-Voting Shares in the Fund (the "**Class A Shares**").

7. The other known shareholders of the Fund are as follows:
- (a) Cithara Investment International Limited – the former investment manager of the Fund (the “**IM**”), who holds the 100 Management Shares in the Fund. The IM only has voting rights with respect to the change of the Fund's name (at Article 7.4(a));
 - (b) Total Victory Global Limited (“**Total Victory**”) – a company incorporated in the British Virgin Islands, who holds 450,000 Class B Participating Voting Shares (the “**Class B Shares**”), which were allotted to Total Victory on 21 December 2017. Total Victory is the only shareholder holding Participating Voting Shares in the Fund and is therefore the only shareholder entitled to vote at any general meeting of the members (other than with respect to the Fund's name – see Article 7.2(a)). According to the Annual Report, Total Victory is controlled by Mr YANG Eric Qing (who was a director and the Chairman of Ourgame until 30 June 2020 – “**Mr Yang**”), Mr NG Kwok Leung Frank (also known as Guoliang Wu, who is a former director of Ourgame – “**Mr Ng**”) and Mr ZHANG Peng (the former president of Ourgame). Further, the Annual Report states that Total Victory has the “*majority voting rights*” in the Fund;
 - (c) Elite Vessels Limited (773,465), Sonic Force Limited (1,036,641), Prosper Macrocosm Limited (621,985) and Golden Liberator Limited (18,500), who hold Class C Participating Non-Voting Shares in the Fund.
8. Until 8 March 2021, the directors of the Fund were Mr Xiong Hui (“**Mr Xiong**”, who is a nominee of Total Victory) and Mr Zhang Jun Justin (a nominee of the IM – “**Mr Zhang**”). The Petitioner understands that Mr Zhang Peng was Mr Xiong's supervisor when they worked at China Mobile.

9. The Petitioner's shares in the Fund were expressly offered and were subscribed for on the basis of the information contained in:
- (a) the amended and restated memorandum and articles of association dated 13 December 2017 (the "**2017 Articles**", and collectively with the 2019 Articles, the "**Articles**"). Only a few amendments were made to the 2017 Articles (as shown in the 2019 Articles). The differences between the 2017 Articles and the 2019 Articles are relatively minor (except for the addition of Article 19.2) and the relevant provisions of the Articles (as set out below) are the same across both the 2017 Articles and the 2019 Articles;
 - (b) the Fund's Private Placement Memorandum dated December 2017 (the "**2017 PPM**") as amended in February 2019 (the "**2019 PPM**" and collectively, the "**PPM**"). The differences between the 2017 PPM and the 2019 PPM relate predominantly to the replacement of the previous investment manager and do not impact the matters described herein and the relevant provisions of the PPM (as set out below) are the same across both the 2017 PPM and the 2019 PPM; and
 - (c) the subscription agreement offered by the Fund to the Petitioner, which the Petitioner signed on 18 December 2017 (the "**Subscription Agreement**"). Pursuant to the Subscription Agreement, the Petitioner agreed to pay HK\$120 million¹ to subscribe for the Class A Shares (the "**Subscription Amount**"),

(together, the "**Fund Documents**").

¹ The exchange rate used in this Petition is US\$1:HK\$7.8.

B. THE RELEVANT DOCUMENTS**The Articles**

10. The relevant terms of the Articles are as follows:

(a) Article 1.1:

(i) *"Participating Non-Voting Share means a participating, non-redeemable, non-voting share of US\$0.01 par value in the capital of the Company, having the rights, and being subject to the restrictions, provided for in these Articles and the term Participating Non-Voting Share shall refer to all Classes and Series except where reference is made to a specific Class or Series";*

(ii) *"Participating Share means a Participating Non-Voting Share or a Participating Voting Share";*

(iii) *"Participating Voting Share means a participating, non-redeemable, voting share of US\$0.01 par value in the capital of the Company, having the rights, and being subject to the restrictions, provided for in these Articles and the term Participating Voting Share shall refer to all Classes and Series except where reference is made to a specific Class or Series."*

(b) Article 7.1(a) – *"As to voting: The holder of a Participating Non-Voting Share shall not (in respect of such Share) have the right to receive notice of, or attend and vote as a Member at any general meeting of the Company apart from the Reserved Matter under Article 19.2. The holder of a Participating Non-Voting Share may vote at a separate meeting of the holders of Participating Non-Voting Shares of the relevant Class convened in accordance with these Articles";*

- (c) Article 7.2(a) – *"As to voting: The holder of a Participating Voting Share shall (in respect of such Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company except that the holder of Participating Voting Shares shall not have any right to vote on any change to the Company's name which shall be the exclusive right of the holder of the Management Shares;"*
- (d) Article 7.4(a) – *"As to voting: The holder of a Management Share shall (in respect of such Share) have the right to receive notice of and attend as a Member at any general meeting of the Company but shall not have the right to vote on any matter except on a change to the Company's name which shall be the exclusive right of the holder of the Management Shares;"*
- (e) Articles 8.1 to 8.3:
- (i) *"Issue. Subject to the provisions of these Articles, the Directors may issue, allot, grant options over or otherwise dispose of Shares (including any fraction of a Share) at such times, to such persons on such terms and in such manner as the Directors may determine";*
- (ii) *"Subscription Agreement. The Company may, on the Closing Date, enter into a Subscription Agreement with any person pursuant to which such person agrees to subscribe for Participating Shares. A Subscription Agreement shall be in such form as the Directors may determine from time to time...";*
- (iii) *"Subscription Price. On receipt of subscription monies made by a Member in the Subscription Amount specified in the Subscription Agreement, the Directors shall on such day or days as the Directors may determine, issue Participating Shares and/or Non-Participating*

Shares of the relevant Class and Series at a Subscription Price determined in the sole discretion of the Directors";

- (f) Article 18.12 – "*Unanimous Written Resolutions. Any Ordinary Resolution or Special Resolution and any other action that may be taken by the Members at a general meeting may also be taken by a resolution consented to in writing, without the need for any notice, by all Members who would have been entitled to attend and vote at a general meeting called for the purpose of passing such a resolution or taking any other action...*"; and
- (g) Article 40.1 – "*Term of the Company. The Company shall be wound up at the expiration of the Initial Term, Extended Term 1 or Extended Term 2 (as the case may be) unless the applicable Fund Term is modified upon the request and/or approval of such Members in accordance with the terms set out in the Private Placement Memorandum.*"

The relevant terms of the PPM

- 11. The relevant terms of PPM are summarised as follows (terms as defined in and page references to the PPM, unless otherwise stated):
 - (a) The term of the Fund (pages 16 to 17):
 - (i) the Initial Term (page 13) means the period commencing on the Closing Date, being 21 December 2017 (see page 12), and ending on the 12 month anniversary of the Closing Date, so that the last day of the Initial term was 20 December 2018;
 - (ii) the Initial Term of the Fund will only be extended to Extended Term 1 (page 13) (being 20 December 2019) if, prior to the expiry of the Initial Term, Total Victory requests such an extension of the Fund and the IM make such a request and Total Victory consents to the same. On 26

November 2018, Total Victory sent a notice to the Fund requesting that the Fund be extended to Extended Term 1. The Fund signed a document confirming receipt of the request and consenting to the extension of the term to Extended Term 1;

- (iii) the Extended Term 1 will only be extended to Extended Term 2 if, prior to the expiry of Extended Term 1:
 - (1) the Petitioner, Total Victory and the holders of the Class C Participating Non-Voting Shares collectively and unanimously request such an extension; or
 - (2) the IM makes such a request and all of the Fund's shareholders consent to the same;
- (b) The Fund's obligation to make the "*payment of the Fixed Return payable on a periodic basis as described below and/or other payment payable to the Class A Shareholders*" is expressly excluded from the definition of "*Distributions*". Distributions are only payable upon the winding up of the Fund at the end of the term of the Fund (page 19);
- (c) Upon the liquidation of the Fund (pages 19 to 20):

"All Distributable Proceeds shall be distributed as follows:

(a) firstly, 100% to the Class A Shareholder until the amount distributed to the Class A Shareholder equals its Subscription Amount in respect of Class A Shares;

(b) secondly, 100% to the Class A Shareholder until the amount distributed to the Class A Shareholder equals its Unpaid Fixed Return.

However, if the Fund Term is less than one year, the fixed return shall still be paid based on one whole year;

(c) thirdly, 100% to the Class A Shareholder until the amount distributed to the Class A Shareholder equals its Excess Return (if any, as defined below) calculated from the later of the Closing Date or the date that the Subscription Amount was paid to the date on which it was repaid;

(d) fourthly, 100% to the Class D Shareholder (if applicable) until the amount distributed to the Class D Shareholder equals its Subscription Amount (if any); and

(e) finally, if any, 90% of the balance shall be distributed to the Class B Shareholders and 10% of the balance shall be distributed to the Class C Shareholders,

within five (5) Business Days after the liquidation of all the Fund's assets. If the projected Distributable Proceeds as estimated prior to the actual liquidation of all the Fund's assets are not sufficient to fully cover the amounts under (a), (b) and (c) above, the Class B Shareholder shall subscribe for such number of Class D Shares with an aggregate subscription amount in the amount not less than such estimated shortfall prior to the winding up of the Fund";

- (d) The Fund is obliged to invest the subscription proceeds from the Petitioner and Total Victory (including the Subscription Amount) exclusively in shares of Ourgame, which is defined as the "*Portfolio Investment*" (page 25);
- (e) The Petitioner is entitled to the payment of the Class A Fixed Return from the Fund from the Closing Date to the expiry of the Initial Term (being 20 December 2018) or Extended Term 1 (being 20 December 2019). The Class A Fixed Return, being the fixed return due to the Petitioner under the Fund Documents,

is a fixed return of 10% p.a. simple interest of the Subscription Amount from funds lawfully available (pages 11, 13, 27 and 28);

- (f) If the liquid assets of the Fund on a Payment Date (20 December of each year after 2017) are insufficient to enable payment of the applicable Fixed Return, Total Victory is required to subscribe for such Class D Non-Participating Shares (the "**Class D Shares**") in the Fund as is necessary to enable the Fund to pay the applicable Fixed Return in accordance with the calculation for the Class D Contribution (as set out at page 28); and
- (g) If Total Victory does not comply with this obligation, upon request from the Petitioner, the Fund shall dispose of the Available Assets (being all assets of the Fund except the Class C Assets) and/or the Class C Assets in payment of the Fixed Return (page 28).

The relevant terms of the Side Agreement

12. At the same time that the Petitioner subscribed for the Class A Shares in the Fund, on 18 December 2017, the Petitioner, Total Victory and the "*Supporting Parties*"² entered into a Side Agreement, the relevant terms of which are as follows (terms as defined in the Side Agreement and PPM as applicable):
- (a) Clause 3 – the Petitioner is entitled to payment of the Fixed Return in accordance with the terms of the PPM;
 - (b) Clause 4:
 - (i) Total Victory undertook to the Petitioner that it will subscribe for the requisite number of Class D Shares in order to enable the Fund to meet

² Qing Yang (Mr Yang), Guoliang Wu (Mr Ng) and Peng Zhang (the same parties in control of Total Victory).

its obligations, including the obligation to pay the Fixed Return to the Petitioner in accordance with the PPM (that is, 20 December each year during the term of the Fund);

- (ii) if Total Victory defaults, it is required to pay Kinetic additional default interest with reference to the Subscription Amount as calculated in Clause 4.2;
 - (iii) after the final distribution of assets of the Fund, Total Victory will pay the amount by which the Petitioner's Subscription Amount plus the unpaid Fixed Return and any Excess Return exceeds the aggregate payments that the Petitioner received by way of Fixed Return; and
- (c) Clause 5 – the Supporting Parties guarantee the performance of Total Victory's obligations to Kinetic under the Side Agreement, including, relevantly, to pay on demand any amount which the Class B Shareholder is liable to pay the Class A Shareholder (i.e. the Petitioner) (clause 5.1).

The relevant terms of the Investment Management Agreement (the "IMA")

13. On 12 January 2019, the Fund and the IM entered into the IMA, the relevant terms of which are as follows:

(a) Clause 13.1 – *"The Fund shall have the right to terminate this Agreement by a written notice if the Investment Manager materially breaches this Agreement and the Fund has delivered written notice of such breach and such breach has not been cured within 10 days after the Investment Manager's receipt of such written notice."*

(b) Clause 13.2:

"This Agreement will terminate automatically on:

(a) the date on which the Investment Manager ceases to hold a licence granted by the SFC to carry on Type 9 (asset management) regulated activity;

(b) the date on which the SFC suspends the Investment Manager's licence to carry on Type 9 (asset management) regulated activity;

(c) the date on which the Investment Manager becomes bankrupt or is the subject of proceedings for liquidation or dissolution or receivership or ceases to carry on business or becomes unable to pay its debts as they fall due; or

(d) the date the Fund is terminated."

C. THE GROUNDS FOR WINDING UP

Ground 1 – the Term of the Fund expired on 20 December 2019

14. The Initial Term of the Fund came to an end on 20 December 2018. The term of the Fund was extended from the Initial Term to Extended Term 1 in accordance with the terms of the PPM (see paragraph 11(a) above). However, the Petitioner (as the holder of the Class A Shares) did not request or consent to the extension of the Fund from Extended Term 1 to Extended Term 2 as required by the PPM (see paragraph 11(a)(iii) above). Therefore, the term of the Fund came to an end 20 December 2019.
15. Article 40.1 (see paragraph 10(g) above) states that the Fund is to be wound up at the end of its term. On 19 December 2019, the Petitioner emailed Mr Zhang (one of the Fund's directors and the IM's representative on the Fund's board) noting that the term of the Fund was to expire on 21 December 2019 and requesting that the Fund take steps to wind down the affairs of the Fund in accordance with the PPM. The Petitioner did not receive any response.

16. According to a search of the Cayman Islands Corporate Records and Register conducted by the Petitioner on 9 April 2021, the Fund is still active and has not commenced winding up in accordance with the Articles, the PPM or section 92(c) of the Companies Act (2021 Revision) (the "**Companies Act**"). The Fund is therefore in breach of its obligations to take steps to wind up the Fund upon the expiration of the term of the Fund on 21 December 2019 (the day after the last day of Extended Term 1).

Ground 2 – it is just and equitable that the Fund be wound up

Ground 2(a) - the failure of the Fund to comply with the Articles, the PPM and the Subscription Agreement

17. The Petitioner received the first payment of the Class A Fixed Return in around December 2018, but it has not received the payment of the Class A Fixed Return in respect of Extended Term 1, which should have been paid by the Fund on 20 December 2019 (the "**Accrued Fixed Return**").
18. As set out at paragraphs 11(e) and 11(f) above, where the Fund does not have enough funds to pay the Accrued Fixed Return, Total Victory is required to subscribe for the requisite number of Class D Shares to cover any shortfall thereby enabling the Fund to make payment. If Total Victory does not subscribe for the Class D Shares in accordance with its obligations under the PPM, the Fund (upon request from the Petitioner) is required to sell its assets in accordance with the PPM (including requisite number of the Ourgame Shares) to cover the Accrued Fixed Return.
19. On 18 May 2020, the Petitioner sent an email to Mr Zhang requesting that (in circumstances where Total Victory had failed to subscribe for the Class D Shares), the IM take steps to sell the Ourgame Shares to cover the shortfall with respect to the Accrued Fixed Return. The Petitioner has never received a response to this email.

20. As at the date of the Petition, the closing share price for Ourgame is around HK\$0.66. If the entire portfolio of Ourgame Shares (221,653,555 shares) were sold at the date of the Petition, the gross proceeds would be HK\$146,291,346.30, which would be sufficient to cover the Accrued Fixed Return owed to the Petitioner and also the Subscription Amount (HK\$120 million) to be paid as part of the liquidation process (a total of HK\$132 million).
21. The IM informed the Petitioner on 8 May 2020 by email that the Fund held shares in both its own name on the Cayman register of members for Ourgame (132,464,366 shares – the "**Paper Shares**") and 89,189,189 shares in the form of "**Paperless Shares**" (that is, in the name HKSCC Nominees Limited). The Paperless Shares can be freely traded on the Hong Kong Stock Exchange. The IM also informed the Petitioner on 31 March 2021 by email that the Fund had sold a total of 21,151,000 Paperless Shares between 20 January 2021 and 31 March 2021. However, the monies from this sale have not been used to pay the Accrued Fixed Return. The Petitioner does not know what has happened to the proceeds of that sale. Based on the email from the IM to the Petitioner on 31 March 2021, the 21,151,000 Paperless Shares were sold for between HK\$0.59255 and HK\$0.611846673 per share.
22. In the absence of any communication from the Fund's directors, the Petitioner also attempted to contact the directors of Ourgame directly in January 2021 about converting the Paper Shares in Ourgame into Paperless Shares so that the remaining Ourgame Shares can be sold on the Hong Kong Stock Exchange and the proceeds used to pay the Accrued Fixed Return. However, the Petitioner was informed by Computershare Hong Kong Investor Services Limited (Ourgame's Hong Kong branch registrar based on the Annual Report) that Ourgame's directors would need to consent to the conversion process and Ourgame's directors have declined to do so. In email correspondence between Elvie Lu of the IM and Yundan Xiao of Ourgame, Ms Xiao said that Ourgame would not convene a meeting of the board of directors of Ourgame to discuss the conversion process.

23. On 7 April 2021, the Petitioner wrote to the Fund demanding payment of the Accrued Fixed Return whether as a result of the Fund:
- (a) using its own funds;
 - (b) using the subscription proceeds from the Class D Shares subscribed by Total Victory; or
 - (c) by selling its assets including the requisite number of Ourgame Shares.
24. The Petitioner received separate responses from Mr Xiong and Mr Zhang Peng on 9 April 2021. However, the responses did not answer the issues raised in the letter (particularly with regards to the points at paragraph 23 above). Further, the Petitioner has not received the Accrued Fixed Return as at the date of this Petition.
25. In the circumstances, the Fund has failed to comply with its obligations pursuant to:
- (a) the Articles, by ignoring the terms upon which the Class A Shares were allotted (as per Articles 8.1 to 8.3 – see paragraph 10(e) above);
 - (b) the PPM (and by extension, the Subscription Agreement), by refusing to oblige Total Victory to subscribe for the Class D Shares and either:
 - (i) failing to sell the requisite number of Ourgame Shares to cover the Accrued Fixed Return; and/or
 - (ii) selling certain Ourgame Shares but failing to distribute these proceeds to the Petitioner.

Ground 2(b) – the need for investigations into the affairs of the Fund*The Club Services Transaction*

26. Ourgame, through its 100% shareholding in a BVI company called Primo Vital Limited ("**Primo**", of which Mr Yang is the director and chief executive officer), owns a 31.1% stake in Allied Esports Entertainment, Inc. ("**AESE**", which is listed on the NASDAQ). AESE owns 100% of Allied Esports Media, Inc. ("**AEM**"), which owns Club Services, Inc., and which in turn owns 100% of WPT Enterprises, Inc. According to the Form 10-K Annual Report of AESE as at 16 March 2020 for the 2019 financial year, Mr Ng is a director and the Chief Executive Officer of AESE.
27. On 19 January 2021, Ourgame announced that AEM had entered into a Stock Purchase Agreement on 19 January 2021 to sell its interest in Club Services, Inc. to Element Partners, LLC for US\$78.25 million (the "**Club Services Transaction**" and the "**Original Purchase Price**"). According to this announcement, Rule 14.07 of the Rules Governing the Listing of Securities on the Hong Kong Stock Exchange states that where a disposal of assets held by a listed company exceeds 75% of the applicable percentage ratio, it is considered a "*very substantial disposal*". For this reason, Ourgame must seek the approval of its shareholders before AEM can proceed with the Club Services Transaction. According to this announcement, Ourgame considered that the net proceeds would be approximately US\$76.66 million and would be used for the following purposes:
- (a) approximately 5% (approximately US\$3.83 million) for the repayment of existing debts;
 - (b) approximately 20% (approximately US\$15.33 million) for research and development of the existing online card and board games owned by Ourgame;

- (c) approximately 30% of the net proceeds (approximately US\$23.00 million) for investment and development in other games related sectors;
 - (d) approximately 30% of the net proceeds (approximately US\$23.00 million) for expanding and developing existing business abroad, such as research and development; and
 - (e) approximately 15% of the net proceeds (approximately US\$11.50 million) for general working capital.
28. On 10 March 2021, Ourgame sent a circular to its shareholders setting out the Club Services Transaction in further detail and containing the notice of extraordinary general meeting scheduled for 29 March 2021 ("**EGM**").
29. On 19 March 2021, Element Partners, LLC agreed to increase the purchase price with respect to the Club Services Transaction to US\$90.50 million. In light of the higher purchase price, Ourgame considered that the net proceeds would be approximately US\$87.8 million and would be used for the following purposes:
- (a) approximately 5% (approximately US\$4.39 million) for the repayment of existing debts;
 - (b) approximately 20% (approximately US\$17.56 million) for research and development of the existing online card and board games owned by Ourgame;
 - (c) approximately 30% of the net proceeds (approximately US\$26.34 million) for investment and development in other games related sectors;
 - (d) approximately 30% of the net proceeds (approximately US\$26.34 million) for expanding and developing existing business abroad, such as research and development; and

- (e) approximately 15% of the net proceeds (approximately US\$13.17 million) for general working capital.
30. On 29 March 2021, Element Partners, LLC agreed to increase the purchase price with respect to the Club Services Transaction to US\$105 million (the "**Revised Purchase Price**"). In light of the higher purchase price, Ourgame considered that the net proceeds would be approximately US\$102.3 million and would be used for the following purposes:
- (a) approximately 5% (approximately US\$5.1 million) for the repayment of existing debts;
 - (b) approximately 20% (approximately US\$20.5 million) for research and development of the existing online card and board games owned by Ourgame;
 - (c) approximately 30% of the net proceeds (approximately US\$30.7 million) for investment and development in other games related sectors;
 - (d) approximately 30% of the net proceeds (approximately US\$30.7 million) for expanding and developing existing business abroad, such as research and development; and
 - (e) approximately 15% of the net proceeds (approximately US\$15.13 million) for general working capital.
31. As the amendments to the terms of the original Stock Purchase Agreement were made less than 10 business days before the EGM, the EGM has been adjourned and will be reconvened at a later date (see also the announcements dated 23 March 2021 and 30 March 2021). As at the date of the Petition, Ourgame has not announced the new date for the adjourned EGM.

32. The Petitioner is concerned that the entire proceeds of the Club Services Transaction will be subsumed by AEM (and by extension, Ourgame), such that no proceeds will be available for distribution to shareholders (including the Fund). In fact, despite the two increases to the Original Purchase Price, the amounts to be spent on the areas listed above have been proportionally increased. There is no explanation for why this is the case and why AEM will not be distributing the difference between the Original Purchase Price and the Revised Purchase Price to AESE (by way of dividend) and for this money to be distributed up to the indirect shareholders of AEM, including the Fund. Assuming that US\$25.64 million (the difference between the net proceeds arising from the Original Purchase Price and the Revised Purchase Price) are to be distributed by way of dividend up to the Fund, the shareholders of AEM should be entitled to the following:
- (a) AESE (100% shareholder of AEM) – US\$25.64 million;
 - (b) Primo (31.1% shareholder of AESE) – US\$7.974 million;
 - (c) Ourgame (100% shareholder of Primo) – US\$7.974 million; and
 - (d) The Fund (20.27% shareholder of Ourgame) – US\$1.6163 million.
33. The Petitioner has requested that the Fund provide details of the demands the Fund has made for the sale proceeds to be distributed to the shareholders (see the letter referred to at paragraph 23 above). The Petitioner received a response from the Fund stating that the Fund is not a direct shareholder of AESE and only has access to publicly available information. The Petitioner is justifiably concerned that the Fund will never see any of the proceeds from the Club Services Transaction, if it is approved by the shareholders of Ourgame (including the Fund) at the adjourned EGM.

Removal of the IM and removal of Mr Zhang from the board of the Fund

34. On 1 April 2021, Mr Xiong sent an email to Mr Zhang stating that the Fund had passed a shareholder resolution (signed by Total Victory) terminating the IMA between the Fund and the IM and removing Mr Zhang as a director of the Fund with immediate effect. The updated Register of Directors provided by Mr Xiong showed that Mr Zhang had been removed from his position on 8 March 2021, almost a month earlier.
35. According to the undated shareholder resolution signed by Total Victory, the IM had purportedly "*disposed of the [Fund's] Investment Portfolio and assets without knowledge or consent of the Board or the Class B Shareholder...*" However, clauses 13.1 and 13.2 of the IMA (see paragraph 13 above) do not contain any provision for the removal of the IM by the Fund with immediate effect. The Fund is required to give the IM 10 days' notice to remedy any material breach of the IMA. By purporting to remove the IM and terminate the IMA with immediate effect, the Fund has acted in breach of the IMA. On 8 April 2021, the Petitioner sent an email to the Fund asking it to clarify the basis on which the IM could be removed and the IMA terminated with immediate effect. On 9 April 2021, the Petitioner received a response from Mr Xiong. However, the response did not answer the questions regarding the basis for the removal of the IM and the termination of the IMA.
36. While Total Victory was within its rights under Articles 7.2(a) and 18.12 to remove Mr Zhang as a director, the Petitioner is concerned about why Total Victory has taken this step. This means that Mr Xiong (a nominee of Total Victory, which has little or no economic interest in the Fund based on the closing share price of Ourgame as at the date of the Petition and the distribution waterfall at paragraph 11(c) above) has full control of the Fund. In addition, the Petitioner considers that in the absence of the assistance from liquidators, the Fund will not make any proper enquiries with respect to the Club Services Transaction (and will vote in favour of this at the adjourned EGM) or explain why it has purportedly removed the IM in breach of the IMA.

37. In the circumstances, the Fund has engaged in mismanagement and misconduct forming the basis for the Fund to be wound up on the just and equitable grounds by failing to:
- (a) comply with its obligations under the Articles, the PPM and the Subscription Agreement with respect to the payment of the Accrued Fixed Return; and
 - (b) make proper enquiries into the Club Services Transaction and attempting to remove the IM with immediate effect in circumstances where there is no basis to do so. It is necessary for a liquidator to conduct investigations into these issues.
38. The directors (including Mr Zhang up to at least 8 March 2021) have breached their duties to the Fund, including their duties to act in the best interests of the Fund, to exercise their powers for the purposes for which they are conferred and to act with skill, care and diligence. It is unlikely that these issues will be remedied while Total Victory and its beneficial owners are directors of other entities within the Ourgame group (Mr Yang is a director and CEO of Primo and Mr Ng is a director and also the Chief Executive Officer of AESE).
39. The Petitioner has justifiably lost all trust and confidence in the directors' ability and willingness to manage the Fund's affairs in the best interests of the Fund and its shareholders. It is just and equitable that the Fund be wound up and the Petitioner seeks a winding up order in respect of the Fund for the reasons set out herein.

Solvency of the Fund

40. The Petitioner is not aware that the Fund has any substantial liabilities and therefore believes that the Fund would be solvent but for its undischarged liability to the Petitioner.

Conclusion

41. In the premises, the Fund should be wound up on either or both of the following grounds:
- (a) its term has come to an end and it should be wound up in accordance with section 92(c) of the Companies Act; and
 - (b) it is just and equitable that the Fund be wound up in accordance with section 92(e) of the Companies Act. There is no alternative or other remedy or cause of action available to the Petitioner which would satisfactorily protect its interests or the interests of the other stakeholders of the Fund.

Nomination of Joint Official Liquidators

42. The Petitioner nominates Christopher Barnett Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 70 Harbour Drive, George Town, Grand Cayman, Cayman Islands KY1-1104 and Wing Sze Tiffany Wong of Alvarez & Marsal Asia Limited, Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong to be appointed as joint official liquidators (the "**JOLs**") of the Fund.
43. In addition, the Petitioner is the primary economic stakeholder in a liquidation of the Fund. As set out at paragraph 11(c) above, the Petitioner is entitled the payment of the 100% of the Subscription Amount and the Unpaid Fixed Return before the remainder of any Distributable Proceeds are distributed to the Class B, C and D shareholders of the Fund. For these reasons, the Petitioner considers that its wishes with respect to the identity of the JOLs should be considered of paramount importance.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Fund be wound up pursuant to sections 92(c) and/or (e) of the Companies Act (2021 Revision) (as amended) (the "**Companies Act**").
2. Christopher Barnett Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 70 Harbour Drive, George Town, Grand Cayman, Cayman Islands KY1-1104, and Wing Sze Tiffany Wong of Alvarez & Marsal Asia Limited, Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong be appointed as joint official liquidators (the "**JOLs**") of the Fund.
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs have the power to act jointly and severally in their capacity as liquidators of the Fund.
5. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. The JOLs be authorised to exercise all of the powers set out in paragraphs 1, 2, 4, 7, 8, 10 and 11 of Part 1 of the Third Schedule to the Companies Act and section 110(2) thereof, without further sanction or intervention of this Honourable Court.
7. The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs in the Cayman Islands and/or elsewhere.
8. Without prejudice to the generality of the foregoing, the JOLs be authorised and be granted leave to take all such actions as may be necessary to:

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the Fund and to engage attorneys for such purposes in order to secure the assets of the Fund including but not limited to winding up proceedings against the directors of the Fund (if appropriate);
- (b) take all action required consistent with applicable law to carry on the business of the Fund so far as may be necessary for its beneficial winding up;
- (c) take all action on behalf of the Fund in the name of and to the exclusion of the directors of the Fund which shall forthwith have no authority or power to act in relation to the Fund other than at the direction and with the consent of the JOLs;
- (d) investigate the affairs of the Fund;
- (e) to exercise the rights to which a registered holder of any shares or other securities registered in the name of the Fund or any of its segregated portfolios, or to which an owner of any shares or securities held by or on behalf of the Fund (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities; the right to attend meetings and to exercise any voting power pertaining to such shares or other securities and to direct nominees of the Fund in whose names shares or other securities beneficially owned by the Fund are registered (including, without limitation, the directors of the Fund) to exercise all or any such rights as the JOLs shall direct;
- (f) take steps to locate, demand and secure cash held by the Fund in all bank accounts in the Cayman Islands or elsewhere;
- (g) communicate on the Fund's behalf with the regulators as appropriate;

- (h) make applications to, and seek the assistance and recognition from, the courts of any foreign jurisdictions as may be necessary in the course of their conduct as JOLs of the Fund or for the purposes of carrying out any of the functions provided for herein;
 - (i) raise or borrow money and grant securities therefor over the property of the Fund for the purpose of funding the costs and expenses of the liquidation (including as to the JOLs' remuneration).
9. The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules, 2018 (as amended).
 10. No disposition of the Fund's property and no transfer of the Fund's shares by or with the authority of the JOLs in the carrying out of their duties and functions and the exercise of their powers shall be avoided by virtue of section 99 of the Companies Act.
 11. Subject to section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations 2018 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Fund for their own remuneration.
 12. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Fund as an expense of the liquidation.
 13. The JOLs be at liberty to apply generally.
 14. The Petitioner's costs of and incidental to the Petition should be paid out of the assets of the Fund as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed.

15. Such further or other relief as this Honourable Court deems fit.

AND your Petitioner will ever pray etc.

DATED the 9th day of April 2021

FILED the 9th day of April 2021

Walkers

WALKERS

Attorneys at Law for the Petitioner

NOTE: This Petition is intended to be served on the Fund at the following address:

P.O. Box 10240, 4th Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002, Cayman Islands

This Petition is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of their said Attorneys at Law.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 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, Grand Cayman KY1-1106, telephone 345 949 4296.