



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 287 OF 2021 (NSJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT

AND IN THE MATTER OF CHINA SILVER ASSET MANAGEMENT LIMITED

WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Safe Castle Limited of Coastal Building, Wickham's Cay II, P.O. Box 2221, Road Town, Tortola, British Virgin Islands (the "**Petitioner**") shows that:-

A. INTRODUCTION

1 The Petitioner presents this petition for:

- (a) the winding up of China Silver Asset Management Limited (the "**Company**" or "**Guarantor**") pursuant to sections 92(d) of the Companies Act (2021 Revision) (the "**Companies Act**") on the grounds that the Company is insolvent and unable to pay its debts; and
- (b) the appointment of Simon Richard Conway of PwC Corporate Finance & Recovery (Cayman) Limited, P.O. Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1-1104 Cayman Islands, together with Man Chun (Christopher) So and Hiu Yeung (Jacky) Wan of PricewaterhouseCoopers Limited, 20/F Prince's Building, Central, Hong Kong as joint official liquidators of the Company.

This Petition is filed by Ogier, Attorneys-at-Law for Safe Castle Limited, whose address for service is: 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands (OGP/NTA/500203.00001)

B. THE PETITIONER

- 2 The Petitioner was incorporated in the British Virgin Islands on 13 June 2014. It is principally an investment holding company and is an indirect wholly-owned subsidiary of China Shandong Hi-Speed Financial Group Limited, a company incorporated in Bermuda and listed on the Hong Kong Stock Exchange under stock code 0412.
- 3 The Petitioner was a shareholder of approximately 7,494,314.46 redeemable non-voting Participating Shares in Altair Asia Investments Limited ("**Altair**").
- 4 As particularised further below, on 7 December 2020, pursuant to a winding up petition presented by the Petitioner against Altair in Cause No FSD 274 of 2020 (NSJ), this Court made a winding up order against Altair on the ground that Altair was insolvent and unable to pay its debts as they fall due on the basis of:
- (a) Altair's failure to pay the Petitioner a guaranteed return of 15% IRR per annum, payable quarterly, in respect of the Petitioner's investment in the Company (the "**Guaranteed Return**")¹; and
 - (b) Altair's failure to pay the Petitioner the redemption sum owed in respect of its shares (the "**Redemption Debt**") pursuant to a redemption notice dated 4 August 2020, which fell due for payment on 4 November 2020.
- 5 The Company provided a guarantee in favour of the Petitioner dated 10 October 2017 (the "**Guarantee**") in respect of, *inter alia*, Altair's liabilities to the Petitioner, including the Guaranteed Return and the Redemption Debt.
- 6 In addition to the Altair's liabilities to the Petitioner, the Guarantee also provided that the Company:

¹ As explained below, no Guaranteed Return payments had been made to the Petitioner since October 2018.

- (a) would discharge the liabilities of China Silver Asset Management (Hong Kong) Limited² ("**CSAMHK**") to the Petitioner; and
 - (b) fully indemnify the Petitioner against all damages, losses, reasonable costs and expenses arising from any failure of Altair and/or CSAMHK to meet their respective liabilities to the Petitioner.
- 7 As detailed further below, the respective liabilities of Altair and CSAMHK have not been discharged by any of Altair, CSAMHK or the Company and remain outstanding. Nor has the Company made any payments to the Petitioner in respect of the damages, losses, reasonable costs and expenses it has suffered in respect of Altair's and CSAMHK's failure to meet those liabilities.
- 8 The Petitioner therefore seeks an order winding up the Company on the basis that the Company is insolvent and unable to pay its debts as they fall due on the basis of:
- (a) the Company's failure to discharge Altair's liabilities to the Petitioner in accordance with the terms of the Guarantee;
 - (b) the Company's failure to discharge CSAMHK's liabilities to the Petitioner in accordance with the terms of the Guarantee; and
 - (c) the Company's failure to pay other sums due and owing from it to the Petitioner under the terms of the Guarantee in accordance with the terms of the Guarantee.

C. THE COMPANY

- 9 The Company was incorporated as an exempted limited company on 17 September 2015 (Registration Number: 304090).

² CSAMHK (formerly known as Ardon Maroon Fund Management (Hong Kong) Limited) was incorporated in Hong Kong with registration number 1352529.

- 10 The Company's registered office is at 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands.
- 11 The Petitioner does not have access to the Company's memorandum and articles of association ("**M&AA**"). Accordingly the Company's authorised share capital and the objects for which it was established under the terms of its M&AA are unknown to the Petitioner.

D. THE GROUP STRUCTURE

- 12 The Company is, and was at all material times, the parent company of CSAMHK owning all 1,280,000 ordinary shares in CSAMHK.
- 13 CSAMHK acted as investment advisor to Ardon Maroon Fund Management Limited³ ("**Ardon Maroon**") which, in turn, was the investment manager holding 100% of the management shares in Altair.
- 14 On 11 March 2020, on the petition of the Petitioner, a winding up order was made against CSAMHK by the Court of First Instance of the High Court of Hong Kong (the "**Hong Kong Court**"). An appeal to the Hong Kong Court of Appeal is currently pending against the winding up order.
- 15 Prior to the winding up orders being made against Altair and CSAMHK, Mr Frank Dominick ("**Mr Dominick**") and Mr Patrick Nicholas Maloney ("**Mr Maloney**") were both directors of Altair and CSAMHK. Mr Dominick was also the Chief Investment Officer of CSAMHK and Mr Maloney was also the Managing Partner of CSAMHK.
- 16 As at the date of this Petition, the Petitioner believes that Mr Dominick and/or Mr Maloney were, at all material times, the person(s) in control of the Company.

³ Incorporated in the Cayman Islands with registration number 231371.

E. THE PETITIONER'S INVESTMENT IN ALTAIR

- 17 The following facts and matters will already be familiar to the Court and are included for completeness (since they form the basis upon which the winding up order was previously made against Altair).
- 18 Pursuant to a subscription form and subscription agreement dated 1 October 2017, but in fact executed on 10 October 2017 (together, the "**Subscription Document**"), the Petitioner subscribed for "*such number of Shares in [Altair], at their applicable Net Asset Value at the relevant Subscription Date, as may be subscribed for with HK\$200,000,000.*" In doing so, the Petitioner agreed to be bound by Altair's Memorandum and Articles of Association.
- 19 On 10 October 2017, the Petitioner and Altair also entered into a side letter, executed as a deed, in connection with the Petitioner's investment in the Company (the "**Side Letter**"). The key provisions of the Side Letter are as follows:

1. "Extraordinary Redemption Events"

- 1.1 *Subject to the provisions of paragraph 1.2, [the Petitioner] may request for the redemption of all or any portion of the Shares (including any positive returns on that investment) (an "Extraordinary Redemption") upon the occurrence of any of the following (each, an "Extraordinary Redemption Event"):*

...

- 1.1.11 *if the average of the closing price of the shares of RM Group Holdings Limited (stock code: 932)⁴, a company listed on The Stock Exchange of Hong Kong Limited, for any 5 consecutive trading days is below the then applicable conversion price under the convertible bonds to be issued by RM Group Holdings Limited in or around mid-October 2017; or*

⁴ RM Group Holdings Limited is now called Shunten International (Holdings) Limited and was the target of the Company's investment.

- 1.1.12 *the expiry of one-year period after the date of allotment and issue of the Shares.*
- 1.2 *Save and except paragraph 1.1.11, [the Petitioner] must give [Altair] at least 90 days' prior written notice of any Extraordinary Redemption and that Extraordinary Redemption will take place on the later of 90 days following the date of that notice and the date specified in that notice (and that Extraordinary Redemption may therefore occur on a day which is not a Redemption Day). For the avoidance of doubt, the obligations of redemption shall arise upon service of the written notice of the Extraordinary Redemption. For paragraph 1.1.11, [Altair] shall redeem the Shares at the aggregate consideration of the original amount of investment plus the Guaranteed Return (to be calculated on a pro rata basis in proportional [sic] of the period expended) within 21 business days (in Hong Kong) after the date of written notice given by [the Petitioner].*
- 1.3 *For the purposes of paragraph 1.2, [Altair] must promptly notify [the Petitioner] of the occurrence of any Extraordinary Redemption Event.*

...

3. *Guaranteed Return*

[The Petitioner] will have a Guaranteed Return of 15% IRR per annum on their investment in the Company. Dividends representing the Guaranteed Return will be paid on a quarterly basis from when [the Petitioner] becomes a Shareholder in [Altair]. All assets of [Altair] will be used as collateral for the Guaranteed Return to [the Petitioner].

For the avoidance of doubt, the Guaranteed Return is not compounded and is on an annualized basis and a pro rata basis to when [the Petitioner] requests for the redemption of the Shares by [Altair]. The Manager and [Altair] acknowledge and agree that [the Petitioner's] entitlement to the Guaranteed Return, original investment and other additional entitlement towards the assets of [Altair] as shareholder of [Altair] (if any) shall have priority over all other rights, interests and entitlements of other shareholders or investors in

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[Altair]...[Altair] shall amend its Articles within 15 business days (in Hong Kong) after the date of this Side Letter reflecting the aforesaid priority rights.

...

10. No Waiver

No failure to exercise and no delay in exercising on the part of Safe Castle, [Altair], or the Manager any right, power, or privilege under this letter will operate as a waiver of that right, power or privilege nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise of any other right, power or privilege.

...

12. Additional Undertakings

[Altair] agrees to the Additional Undertakings while [the Petitioner] remains a Shareholder in [Altair]:

...

- [Altair] shall use the entire investment monies for the subscription of Shares for the purpose of subscription of the convertible bonds in the principal sum of HK\$200 million to be issued by RB Group Holdings Limited. [Altair] will keep Safe Castle informed of all conversions of convertible bonds and the sale of the conversion shares thereof and will not do any NAKED conversions without the converted shares being hedged;
- [Altair] will not reinvest any principal amount generated from the CB conversions while [the Petitioner] remains a Shareholder of [Altair]
- [Altair] will pay the 15% IRR Guaranteed return on a quarterly basis to [the Petitioner] as long as they remain a Shareholder in [Altair]."

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- 20 In addition to entering into the Side Letter, the following documents were entered into on 10 October 2017 for the Petitioner's benefit:
- (a) the Company executed the Guarantee in respect of the liabilities of Altair and CSAMHK owed to the Petitioner.
 - (b) the Company also executed a charge over its shares in CSAMHK.
 - (c) CSAMHK executed a charge in favour of the Petitioner over its bank accounts maintained with Standard Chartered Bank (Hong Kong) Limited.
 - (d) CSAMHK executed a corporate guarantee in respect of the liabilities of Altair (the "**CSAMHK Guarantee**").
 - (e) Mr Dominick executed a personal guarantee in respect of the liabilities of Altair and CSAMHK (the "**Personal Guarantee**").
- 21 The background to the Company's liability to the Petitioner pursuant to the Guarantee (which is itself based upon the Petitioner's investment in Altair and its previous attempts to recover that investment in prior proceedings against Altair and CSAMHK) is set out below.

F. ALTAIR'S DEBTS TO THE PETITIONER

The Guaranteed Return

- 22 As the Court will recall, the Guaranteed Return is a liquidated debt calculated in accordance with the terms of the Side Letter.
- 23 As set out at paragraph 19 above, paragraph 3 of the Side Letter provides for the payment of a Guaranteed Return to the Petitioner by Altair in respect of its investment in Altair. In relevant summary, the Side Letter provided, *inter alia*, that:
- (a) Altair is required to pay the Petitioner a Guaranteed Return of 15% IRR per annum on the Petitioner's investment in Altair;

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- (b) dividends representing the Guaranteed Return will be paid by Altair to the Petitioner on a quarterly basis;
 - (c) all assets of Altair will be used as collateral for the Guaranteed Return;
 - (d) the Petitioner's entitlement to the Guaranteed Return shall have priority over all other rights, interests and entitlements of other shareholders or investors in Altair;
 - (e) Altair will not create any security, rights, interests or entitlements which rank in priority to the Petitioner's entitlement to the Guaranteed Return; and
 - (f) all dividends and other payments made by Altair under paragraph 3 of the Side Letter shall be made without set off or counterclaim and without deduction in respect of any present or future taxes or other charges unless Altair is compelled by law to make such deduction, in which case it will promptly pay to the Petitioner such additional amount as may be necessary to ensure that the net amount received by the Petitioner will be equal to the full amount which would have been received had such a deduction not been made.
- 24 Paragraph 12 of the Side Letter provides that Altair will continue to pay the Guaranteed Return to the Petitioner for so long as the Petitioner remains a shareholder of the Company.
- 25 Pursuant to paragraph 2(2) of a letter dated 23 January 2018 entered into by the Petitioner and Altair, it was agreed that the Petitioner's entitlement to the Guaranteed Return in respect of its Participating Shares in Altair was only in respect of the principal sum of HK\$140 million subsequent to 18 January 2018.
- 26 Accordingly, subsequent to 18 January 2018, a Guaranteed Return was to be paid by Altair to the Petitioner in the amount of HK\$5,250,000 on a quarterly basis, representing an IRR of 15% per annum on the principal sum of HK\$140 million, divided quarterly.

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Altair's failure to pay its liabilities in respect of the Guaranteed Return

- 27 Contrary to the terms of the Side Letter, no guaranteed return payments have been made since 10 August 2018. Accordingly, the following guaranteed return payments are owed to the Petitioner by Altair:

	Payment Due Date	Sum (HK\$)
1	18 October 2018	5,250,000
2	18 January 2019	5,250,000
3	18 April 2019	5,250,000
4	18 July 2019	5,250,000
5	18 October 2019	5,250,000
6	18 January 2020	5,250,000
7	18 April 2020	5,250,000
8	18 July 2020	5,250,000
9	18 October 2020	5,250,000
10	18 January 2021 ⁵	1,027,173.91
Total		HK\$48,277,173.91

- 28 The Guaranteed Return remains unpaid.

The Redemption Debt

- 29 On 4 August 2020, the Petitioner served a redemption request on Altair requesting the redemption of all of its Participating Shares pursuant to paragraph 1.1.12 of the Side Letter (the "**Redemption Request**"). The basis of the Redemption Request was as follows:
- (a) paragraph 1.1 of the Side Letter provides that the Petitioner may request the redemption of all or a portion of its Participating Shares (an "**Extraordinary**

⁵ Pursuant to paragraphs 3 and 12 of the Side Letter, the quarterly Guaranteed Return for the quarter ending on 18 January 2021 shall be pro-rated to 4 November 2020, i.e. the date on which the redemption sum became due and payable and the Creditor ceased to be a shareholder of Altair (also the date on which the Creditor presented the winding up petition against Altair to the Grand Court of the Cayman Islands).

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Redemption") upon the occurrence of any specified Extraordinary Redemption Events, including if a period of one year had expired after the date of allotment and issue of the Participating Shares to the Petitioner (paragraph 1.1.12);

- (b) the Participating Shares were allotted and issued to the Petitioner on or around 18 October 2017. At the time of the Redemption Request, a period of more than one year had therefore expired since the date of the allotment and issue of the Participating Shares, giving rise to an Extraordinary Redemption Event under paragraph 1.1.12 of the Side Letter; and
- (c) Accordingly, the Petitioner requested the Extraordinary Redemption of its Participating Shares under paragraph 1.1 of the Side Letter.

30 The Redemption Request was served on Altair on 4 August 2020, and specified a redemption date of 3 November 2020. Accordingly, the notice period in respect of the Redemption Request expired on 3 November 2020.

Altair's failure to pay its liabilities in respect of the Redemption Request

31 Therefore, as at 3 November 2020, upon the expiration of the relevant period provided for by paragraph 1.2 of the Side Letter, the Petitioner ceased to be a member and instead became a creditor of Altair in the amount of the redemption proceeds due pursuant to the Redemption Request.

32 The Court may recall that the exact amount of that debt is uncertain since it depends on information in the hands of the Company.

33 The debt is pleaded as US\$10,679,528.70, calculated as follows:

- (a) the Side Letter does not expressly provide for how the consideration payable pursuant to an Extraordinary Redemption⁶ is to be calculated. However the Side Letter is expressed to be binding on the Petitioner and Altair as if the

⁶ Other than in respect of a the Extraordinary Redemption Event under paragraph 1.1.11 of the Side Letter.

matters set out in it had been expressly included in the M&AA and the Subscription Agreement (paragraph 4), which will therefore apply;

- (b) clause 3.1 of the Subscription Agreement provides that Participating Shares are redeemed at their net asset value ("**NAV**") per Participating Share as determined by the Directors. Clause 3.2 of the Subscription Agreement provides that Altair's NAV shall be determined by reference to the NAV of Prelude Opportunity Fund LP, the partnership for which Altair acted as an investment vehicle;
- (c) accordingly, the Redemption Debt is calculated by reference to the NAV per Participating Share as calculated at the end of the last business day of October 2020 – i.e. 30 October 2020 (the "**October 2020 NAV**").

34 Despite repeated requests, Altair failed to provide the Petitioner with up-to-date financial information, and as far as the Petitioner is aware made no attempt to calculate the October 2020 NAV.

35 Accordingly, the Redemption Request was calculated by reference to the most recent statement of Altair's NAV set out in Altair's balance sheet as of June 2020 (the "**June 2020 Balance Sheet**")⁷.

36 The June 2020 Balance Sheet records that the Company's NAV as of June 2020 was US\$18,957,078.07 and that the Petitioner's shareholder capital in Altair was US\$16,451,690.94 out of a total shareholder capital of US\$19,601,240.40 (83.9%).⁸

37 Assuming that the June 2020 Balance Sheet is accurate and represents Altair's financial position as at the end of October 2020, after taking into account Altair's liability

⁷ This was exhibited to the Fifth Affidavit of Frank Dominick dated 29 June 2020 in Cause No FSD 200 of 2019 (RPJ).

⁸ The Petitioner makes no admission as to the accuracy of the June 2020 Balance sheet.

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to pay the Guaranteed Return,⁹ the Redemption Debt due to the Petitioner pursuant to the Redemption Request is approximately **US\$10,679,528.70**¹⁰:

NAV (assumed to be the same as stated on the June 2020 Balance Sheet)	US\$18,957,078.07	
Less Guaranteed Return due as at 4 November 2020		-US\$6,228,200 ¹¹
Adjusted NAV	US\$12,728,878.07	
Multiplied by ratio of the Petitioner's shareholder capital to total shareholder capital (83.9%)	US\$10,679,528.70	
Total Redemption Debt due	US\$10,679,528.70	

38 The Redemption Debt remains unpaid in its totality.

⁹ The June 2020 Balance Sheet does not take into account Altair's liability to pay the Guaranteed Return to the Petitioner in the aggregate amount of HK\$48,277,173.91. Taking Altair's liability to pay the Guaranteed Return into account will reduce Altair's NAV as stated in the June 2020 Balance Sheet by HK\$48,277,173.91 (or US\$6,228,200 based on the prevailing USD/HKD exchange rate).

¹⁰ As explained in paragraphs 58-60 below, the Statutory Demand inadvertently referred to an incorrect figure. However, the calculation table at paragraph 13 of the Statutory Demand is correct and is consistent with the above.

¹¹ US\$6,228,200 is the USD equivalent of the Guaranteed Return due as at 4 November 2020 in the sum of HK\$48,277,173.91 (at an exchange rate of US\$0.12901 to HK\$1 based on OANDA.com) referred to in paragraph 27.

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G. THE PETITIONER'S ATTEMPTS AT RECOVERY OF THE REDEMPTION DEBT AND THE GUARANTEED RETURN

Winding-up Proceedings against Altair

- 39 On 4 November 2020, the Petitioner presented a winding up petition in Cause No FSD 274 of 2020 (NSJ) against Altair relying upon its failure to pay both the Redemption Debt and the Guaranteed Return.
- 40 On 7 December 2020, this Court ordered that Altair be wound up and appointed Mr Simon Richard Conway of PwC Corporate Finance & Recovery (Cayman) Limited, P.O. Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1 -1104 Cayman Islands, Mr Peter James Greaves and Mr Man Chun (Christopher) So of PricewaterhouseCoopers Limited, 20/F Prince's Building, Central, Hong Kong as joint official liquidators of Altair (the "**Altair JOLs**").
- 41 Segal J further ordered that the Petitioner's costs of and incidental to the winding up petition against Altair be paid out of Altair's assets on an indemnity basis (the "**Altair Petition Costs**").
- 42 The Altair Petition Costs are in the sum of US\$309,755.60. As at the date hereof, the Petitioner has not received any payment in satisfaction of that sum.

Winding-up Proceedings against CSAMHK

- 43 Similarly, the Petitioner presented a winding up petition against CSAMHK before the Hong Kong Court on 7 March 2019 in its capacity as co-guarantor of Altair's liabilities to the Petitioner pursuant to the terms of the Guarantee.
- 44 On 11 March 2020, the Hong Kong Court made a winding up order against CSAMHK on 11 March 2020.
- 45 Subsequently:
- (a) on 5 June 2020, the Hong Kong Court dismissed the Company's (*qua* sole shareholder of CSAMHK) application for a stay of the winding up order against

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CSAMHK pending appeal and ordered that the Company pay the Petitioner's costs of the stay application.

- (b) on 19 March 2021, the Hong Kong Court of Appeal ordered, *inter alia*, the Company to lodge the sum of HK\$605,000 by 16 April 2021 with the Hong Kong Court as security for costs of the appeal against the winding up order (failing which the appeal would be automatically dismissed), and that the Company pay the Petitioner's costs of the security for costs application.
- (c) the Company failed to lodge the security for costs monies with the Hong Kong Court within the time stipulated. On 19 April 2021, they subsequently applied for a retrospective time extension in respect of the payment of security and the reinstatement of the appeal (the "**Appeal Reinstatement Application**").
- (d) on 9 July 2021, the Hong Kong Court of Appeal retrospectively extended the deadline for security for costs to be paid until 14 July 2021 and ordered that the appeal be reinstated upon security being paid. It was further ordered that the Company pay the Petitioner's costs of the Appeal Reinstatement Application.

46 The Petitioner incurred costs of and incidental to both (i) the winding up petition against CSAMHK and (ii) the Appeal Reinstatement Application in Hong Kong (collectively the "**HK Proceedings**") in the sum of at least HK\$413,164.00¹² (the "**HK Petition Costs**").

47 As at the date hereof, the Petitioner has not received any payment in satisfaction of that sum.

H. TERMS OF THE GUARANTEE

48 The scope of the liabilities falling within the terms of the Guarantee are defined in Recital C thereof as follows:

¹² As explained in paragraphs 61-62 below, the sums claimed in the Statutory Demand in respect of the HK Petition Costs do not include the legal costs of Hon & Co. as this information was not within the Petitioner's knowledge at the date of the Statutory Demand.

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"(C) In consideration of Safe Castle agreeing to enter into the Subscription Document and the Side Letter, the Guarantor agrees to execute this personal guarantee in respect of the due and punctual performance and observance of all obligations and liabilities of:

(i) [Altair] under the Subscription Document and the Side Letter; and

(ii) [CSAMHK] under the Side Letter,

*(the "**Secured Obligations**") and this Guarantee is accordingly supplemental to the Subscription Document and the Side Letter".*

49 Clause 2 of the Guarantee provides as follows:

2. GUARANTEE

2.01 *In consideration of Safe Castle agreeing to enter into the Subscription Document and the Side Letter at the request of the Guarantor, the Guarantor hereby guarantees, unconditionally and irrevocably, as the principal debtor and not merely as a surety, the due and punctual performance and observance by Altair and [CSAMHK] of all the Secured Obligations so that whenever any of [Altair] or [CSAMHK] fails to perform or observe any of the Secured Obligations in the manner provided under the Subscription Agreement and/or the Side Letter, the Guarantor shall upon demand by Safe Castle (and whether or not Safe Castle shall have made any demand on or taken any proceedings against [Altair], [CSAMHK] or any other persona and without any other formalities all of which are hereby expressly waived by the Guarantor), cause or procure forthwith to be performed and complied with all Secured Obligations.*

2.02 *As a separate and independent stipulation, the Guarantor shall be liable as if the Guarantor were the principal obligor in respect of such liability and obligation and not merely as surety, and without any requirement for Safe Castle first to have recourse against [Altair], [CSAMHK], or any other person, and the Guarantor's liability shall not be discharged, impaired or reduced by any time or indulgence granted to [Altair], [CSAMHK] or any other person by*

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Safe Castle or by any dealings or transactions between Safe Castle and [Altair], [CSAMHK] or any other person or by any amendment or supplement to the Subscription Document and/ or the Side Letter.

2.03 *Any statement of account certifying the monetary amount in connection with the Secured Obligations signed by any duly authorised officer of Safe Castle shall (save for any manifest error) be conclusive evidence as against [Altair] of such amount.*

2.04 *In determining the monetary amount of the liability of the Guarantor in respect of the Secured Obligations, any reduction in the liability resulting from amounts received by Safe Castle through the enforcement of any of the remedies under the Subscription Agreement and/or the Side Letter other than the Guarantee shall be disregarded.*

50 Clause 3 of the Guarantee states that:

3. CONTINUING SECURITY

3.01 *This Guarantee shall be a continuing security and shall cover and secure the due and punctual performance by [Altair] and [CSAMHK] of the Secured Obligations notwithstanding the insolvency or winding-up or incapacity of [Altair], [CSAMHK] or the Guarantor or the receipt of notices by Safe Castle of any such occurrence or any settlement of account or other matter whatsoever which but for this provision might operate to release or otherwise exonerate the Guarantor from its obligations hereunder.*

3.02 *It is hereby expressly agreed, confirmed and acknowledged by the Guarantor that Safe Castle may make more than one demand against the Guarantor hereunder, that his Guarantee shall remain in full force and effect and be binding on the Guarantor until all the Secured Obligations have been duly performed and observed pursuant to the respective terms thereunder, and performance of any part of the obligations by the Guarantor hereunder shall not operate to discharge or determine or terminate this Guarantee nor the continuing obligation and liability of the Guarantor hereunder.*

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3.03 *This Guarantee shall be in addition to and is not to prejudice or be prejudiced by any other guarantee, indemnity, lien, bill, note, mortgage or other security or rights now or hereafter held by Safe Castle from [Altair], [CSAMHK] or any other party for the Secured Obligations.*

51 Clause 4.02 of the Guarantee provides that the Company "agrees to keep Safe Castle fully indemnified against all damages, losses, reasonable costs and expenses arising from any failure of Altair and/or [CSAMHK] to carry out any Secured Obligations".

52 Clause 5 of the Guarantee provides that the Creditor may enforce the Guarantee notwithstanding that the Creditor may hold any other guarantee, lien or security or have any outstanding remedy against Altair, CSAMHK or any other persons.

53 Accordingly, pursuant to the terms of the Guarantee, the Company is liable to the Petitioner in respect of:

- (a) the Guaranteed Return and the Redemption Debt owed and unpaid by Altair; and
- (b) the Altair Petition Costs and the HK Petition Costs owed and unpaid by Altair, CSAMHK, and the Company pursuant to the indemnity provided for in Clause 4.02 of the Guarantee as these sums were incurred by the Petitioner as a result of Altair and CSAMHK failing to perform their obligations under the Subscription Document and Side Letter.

54 The Company is therefore indebted to the Petitioner in respect of the following:

Redemption Debt	US\$10,679,528.70
Guaranteed Return	HK\$48,277,173.91
Indemnity in respect of the Altair Petition Costs	US\$309,755.60
Indemnity in respect of costs incurred in relation to the HK Petition Costs	HK\$413,164.00
Total	US\$10,989,284.30 + HK\$48,690,337.91

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I. GROUNDS FOR WINDING UP

- 55 On 31 August 2021, the Petitioner served a statutory demand (the "**Statutory Demand**") on the Company at its registered office demanding payment of the sums of (i) US\$11,527,994.35 and (ii) HK\$48,521,792.91.
- 56 In relation to the calculation of the Redemption Debt, the correct amount of the Redemption Debt is US\$10,679,528.70 as stated above and in the table contained in paragraph 13 of the Statutory Demand. The reference to the alternative figure of US\$11,218,238.75 therein was an incorrect figure inadvertently referred to in the Statutory Demand.
- 57 However, the correct figure owed in respect of the Redemption Debt was correctly calculated at paragraph 13 of the Statutory Demand, in identical terms to the calculation pleaded at paragraph 37 herein.
- 58 On that basis, the Company was aware, at all material times, of the correct figure being claimed in respect of the Redemption Debt.
- 59 In relation to the calculation of the HK Petition Costs, at the time when the Statutory Demand was issued, the Petitioner did not have the legal costs incurred by the law firm Hon & Co. in the HK Proceedings and therefore was only able to rely upon the legal costs incurred by Stephenson Harwood in the sum of HK\$244,619.00.
- 60 The Petitioner has now obtained Hon & Co.'s legal costs in the sum of HK\$168,545.00 and has included that in the total HK Petition Costs of HK\$413,164.00.
- 61 The Company has neglected to either pay the sums claimed in the Statutory Demand or otherwise secure or compound the same to the Petitioner's satisfaction. Nor has it disputed the existence of the relevant debts.
- 62 It is therefore to be inferred that the Company is unable to pay its debts and is insolvent.
- 63 Further, as the Company has failed to pay the Redemption Debt, the Guaranteed Return, the Altair Petition Costs or the HK Petition Costs, it is averred that the Company is unable to pay its debts.

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64 Accordingly, the Petitioner respectfully requests that the Company be wound up pursuant to section 92(d) of the Companies Law on the basis that it is unable to pay its debts as they fall due.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:-

- 1 The Company be wound up in accordance with section 92(d) of the Companies Act.
- 2 Mr Simon Richard Conway of PwC Corporate Finance & Recovery (Cayman) Limited, P.O. Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1 -1104 Cayman Islands, Mr Man Chun (Christopher) So and Mr Hiu Yeung (Jacky) Wan of PricewaterhouseCoopers Limited, 20/F Prince's Building, Central, Hong Kong be appointed as joint official liquidators of the Company (the "JOLs").
- 3 The registered office of the Company be moved to PwC Corporate Finance & Recovery (Cayman) Limited, P.O. Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1-1104 Cayman Islands.
- 4 The JOLs be authorised to act jointly and severally in their capacity as liquidators of the Company.
- 5 The JOLs shall not be required to give security for their appointment.
- 6 The JOLs be authorised to exercise within and outside the Cayman Islands any of the powers conferred on them by the Court pursuant to Section 110(2) and Part II of the Third Schedule of the Companies Act without further sanction or intervention of the Court.
- 7 The JOLs be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the assets of the Company and its subsidiaries in any jurisdiction.
- 8 The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the Official Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such purpose.

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- 9 The JOLs have the power to appoint agents in the Cayman Islands, Hong Kong and elsewhere to do any business contemplated by this order which they are unable to do themselves or which can more conveniently be done by an agent.
- 10 The JOLs be authorised to take control of such of the direct and/or indirect subsidiaries of the Company (the "**Subsidiaries**") and/ joint ventures, investments, associated companies, businesses or other entities in which the Company holds an interest (or such shares of Company) (the "**Associated Companies**" and, together with the Company and the Subsidiaries, the "**Group**"), in each case wherever located, as the JOLs shall think fit; to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers and/or managers of such companies or entities, including (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the Assets and managing the affairs of the Company (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies).
- 11 The JOLs be at liberty to appoint counsel, attorneys, and/or any other 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 and on such terms as they may think fit and to remunerate them out of the assets of the Company.
- 12 The remuneration and expenses of the JOLs shall be paid out of the assets of the Company.

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- 13 The JOLs be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- 14 Such further or other relief be granted as the Court deems appropriate.
- 15 The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company on indemnity basis.

AND your Petitioner will ever pray etc.

Dated the 30th day of September 2021



Ogier
Attorneys for the Petitioner

NOTE: This petition is intended to be served on the Company.

This Petition was presented by Ogier, attorneys-at-law for the Petitioner, whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands

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NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on **9 December 2021 at 10:00am**.

Any correspondence or communication with the Court relating to the hearing of his 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 345 959 4296.

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