



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

CAUSE NO: FSD 12 OF 2022 (RPJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF FULLERTON HEALTHCARE CORPORATION LIMITED
BETWEEN**

(1) TAN KIM SONG MICHAEL

(2) CHAN PAI SHENG DANIEL

...Petitioner(s)

FULLERTON HEALTHCARE CORPORATION LIMITED

...Respondent

WINDING UP PETITION

To: The Grand Court

THE HUMBLE PETITION of Tan Kim Song Michael ("**Dr Tan**") of 20 Sennett Place East Coast Hill Singapore 466855, Singapore, and Chan Pai Sheng Daniel ("**Dr Chan**") of 327 Bukit Timah Road, #18-02, Ferrell Residences, Singapore 259715, Singapore, shows that:

A. THE COMPANY

1. The Respondent, Fullerton Healthcare Corporation Limited (the "**Company**" or "**FHC**") is an exempted company incorporated in the Cayman Islands with limited liability in 2012, with its

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

registered office at Vistra (Cayman) Limited, P.O. Box 31119, Grand Pavillion, Hibiscus Way, 802 West Bay Road, Grand Cayman KY1-1205, Cayman Islands. The Company's principal activity is investment holding for the Fullerton group of companies, whose predominate activities are the provision of managed care and network management services, primary care services, diagnostics and speciality health services. The Company and its subsidiaries are collectively referred to as the "**Group**".

2. The Petitioners are co-founders of the Company and have been executive directors of the Company since it was founded.

(I) SHAREHOLDING

3. As far as the Petitioners are aware at the date of this Petition, the Company has in issue both ordinary and convertible preference shares. The Company's ordinary shares are held as follows:

	Shareholder	Percentage (approximate)
"Founder Shareholders"	Dr Tan	7.5%
	Entities owned and/or controlled by Dr Tan, namely: Sarah Healthcare Investments Limited Abraham Healthcare Investments Limited Isaac Healthcare Investments Limited Hesed Healthcare Investments Limited	6.1% 1.3% 3.8% 0.9% 0.1%
	Dr Chan	1.5%
	Entities owned and/or controlled by Dr Chan, namely: Chan Swee Investment Limited Saraca Hill Limited	1.7% 0.4% 1.3%
	Sub-Total	<u>17%</u>
"SINCAP Shareholders"	Mr David Sin (" Mr Sin "); SC Sanitas Holdings Limited (" Sanitas "); SIN Capital Associates Pte Ltd (" SIN Capital ");	Collectively, <u>60%</u>

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	Oceanfront Investments III Limited; Oceanfront Investments X Limited; Oceanfront Investments IX Limited; and Oceanfront Investments XI Limited	
"SL"	SL Investments Limited, an entity owned and/or controlled by Mr Sherwin Loh, who is an associate of Mr Sin and former representative of the SINCAP Shareholders on the Company's board from around 2014 to 31 May 2021	<u>1.8%</u>
"Ping An"	Xiang Zhou Unicorn Limited, which is the nominee of a Chinese investor, Ping An Capital Co., Ltd	<u>17%</u>
Employees	Former and current employees of the Group	<u>4.7%</u>
	Total	<u>100%</u>

4. As at the date of this Petition, the exact number of shares which are held by each of the SINCAP Shareholders is unclear to the Petitioners as there is a dispute between Mr Sin and another director of the Company, Mr Richard Ong ("**Mr Ong**"), as to the control and/or ownership over those shares.
5. Further, out of the 60% of shares held by the SINCAP Shareholders, there are potential claims by various private investors in respect of around 30% of these shares.
6. In addition, Java Asset Holding Ltd ("**RRJ**") is the sole holder of 250,000,000 Convertible Preference Shares ("**CPS**") in the Company. This is pursuant to a Subscription Agreement dated 9 April 2018 with the Company ("**CPS Agreement**") under which RRJ subscribed to the CPS.

(II) BOARD OF DIRECTORS

7. The Company's board comprises 9 directors as follows (the "**Board**"). The shareholders' representatives make up 7 out of the 9 members of the Board as follows:

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Shareholder Group	Directors	Number
Founder Shareholders	The Petitioners, both executive directors. Dr Chan's alternate is Mr Christopher Daniel.	2
SINCAP Shareholders	Mr Sin, Mr Ho Kuen Loon (" Mr Ho ") and Mr John Howard Batchelor (" Mr Batchelor "). Mr Ho is also the Chief Executive Officer of the Company. Mr Batchelor, who is from FTI Consulting, was appointed to the Board recently following a dispute between Mr Ong and Mr Sin.	3
RRJ	Mr Richard Ong (" Mr Ong "), a non-executive director, who is the owner and/or controller of RRJ.	1
Ping An	Mr Liu Dong (" Mr Liu ") (a non-executive director), whose alternate is Mr Wang Lin (" Mr Wang ")	1
Independent Directors	Mr Michael Lim and Dr Teh Kok Peng. Mr Michael Lim is the Chairman of the Board.	2
Total		9

B. SUMMARY OF GROUNDS

8. The Petitioners seek a winding up of the Company on just and equitable grounds because the directors of the Company, the majority of whom represent factional shareholders or other stakeholders' interest, cannot agree on how to restructure the Company which has resulted in the Company being cash-flow insolvent. Therefore, the Company is deadlocked and liquidators should be appointed to the Company.
9. Alternatively, the Petitioners seek a winding-up of the Company on the basis that it is unable to pay its debts on a cash-flow basis.
10. The Petitioners seek relief, amongst other things, under section 92(d) and/or 92(e) of the Companies Act (2022 Revision) ("**Companies Act**").

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C. DEADLOCK

11. Between 2018 and 2020, the Company took on expensive corporate debts by entering into two agreements with RRJ, namely, the CPS Agreement and the Perpetual Securities Instrument dated 2 April 2020 ("**PERPS Agreement**"). Although the Company's underlying businesses have been profitable, the Company has used most of the profits generated from these businesses to pay off its expensive corporate debts with RRJ. This has severely diminished the Company's cash position over time.
12. Sometime in December 2020, Mr Sin told the Petitioners that he wished to sell his shares in the Company. The Petitioners and the Board saw this as an opportunity for the Company to undergo a capital restructure by getting a suitable investor to inject funds into the Company to, amongst other things, replace its expensive corporate debts under the CPS and PERPS Agreements.
13. On 18 December 2020, the Board established a steering committee to oversee this process known as "**Project Phoenix**".
14. However, for the past year, despite numerous offers made by potential investors (at least two of these investors made binding offers based on an enterprise value of the Company of SGD1.26 billion), the Company has not been able to obtain funding from any of these investors because the Board and shareholders could not agree on how to restructure the Company.

(I) Project Phoenix

*Warburg Pincus ("**Warburg**") and Coalition Capital Limited ("**Coalition**")*

15. As part of the Project Phoenix process, on 16 June 2021, the Company received separate binding bids from two potential investors, Warburg and Coalition. These investors submitted separate offers to acquire up to 100% of the Company at a total enterprise value of SGD1.26

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billion. However, the Board could not agree on whether to move forward with these investors and let the offers lapse. Similarly, the other shareholders did not accept either of these offers.

Longview Acquisition Corp II ("Longview II")

16. On 12 May 2021, the Company received a non-binding proposal from Longview II which was brought in by Mr Sin. However, Longview II's proposal was based on, amongst other things, Ping An and the Petitioners exiting the Company and the SINCAP Shareholders rolling over their shares. The Petitioners informed Longview II that that was not their position as they intended to stay on with the Company. Subsequently, Longview II informed the Board that they were not proceeding with a bid citing, amongst other things, their views that there were "*operating and governance complexities between founders and investors*" which had yet to be resolved. Longview II's withdrawal from Project Phoenix led to Mr Sin commencing proceedings in the Singapore Courts against the Petitioners on 2 July 2021.

Platinum Equity Advisors International Pte Ltd ("Platinum")

17. On 21 July 2021, the Company received an "*unsolicited non-binding offer*" based on an enterprise value for the Company of between SGD1.42 billion and SGD1.38 billion. On 23 July 2021, the other Board members voted to, amongst other things, grant Platinum a 6-week exclusivity period based on its non-binding offer. The Petitioners objected to this as the Company would effectively be foregoing the binding bids from Warburg and Coalition. Subsequently, Platinum informed the Company on 16 September 2021 that it would not be submitting a bid, citing "*material issues*" such as:
- (a) "*the apparent dissension amongst key stakeholders of the business as evidenced by the ongoing legal proceedings*"; and

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- (b) *"apparent division within the management ranks at the Singapore headquarters that potentially threatens the stability of the business and creates a transaction risk for a potential buyer of the business".*

(II) Project Recap/ Project Omega

18. On 24 November 2021, the Company entered into a binding term sheet with two investors brought in by Mr Ong as part of his proposal to restructure the Company (hereinafter referred to as "**Project Recap**" or "**Project Omega**"). Project Recap contemplated, amongst other things, a severe dilution of the shareholding of the existing shareholders. Project Recap required an amendment to the shareholders' agreement dated 24 November 2017 (as amended as at 9 April 2020) ("**SHA**") which required the consent of all parties to the SHA. The Petitioners and Ping An's representative, Mr Wang, objected to Project Recap, as there were other proposals put forth by potential investors at the time which would not result in a dilution of the shareholding of the existing shareholders.
19. After failing to obtain consent from all parties to amend the SHA, on 22 December 2021, RRJ sent a letter to the Company stating, amongst others things, that *"due to various shareholder-level deadlocks, the requisite shareholder approvals to consensually implement the Bain/65 Plan were not forthcoming. As such, FHC management has been unable to deliver a recapitalisation deal or bring in fresh funds for the group to meet its liquidity needs."*

(III) Project Future

20. Subsequently, Mr Wang and Mr Sin introduced a potential Chinese investor to the Company as part of what is known as "Project Future". However, the Board and shareholders (apart from Ping An and Mr Sin) have been unable to agree on Project Future due to various issues. One of the issues is the fact that Project Future requires the SIINCAP Shareholders to cause

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the minority shareholders to sell their shares in circumstances where not all shareholders intend to sell their shares in the Company.

(IV) Coalition

21. In addition to their binding offer made in June 2021 as part of Project Phoenix (which has since lapsed), Coalition has put forward at least two more proposals to the Company as at the date of this Petition for an acquisition of up to 100% of the Company or an acquisition of the underlying assets of the Company. However, the Board and shareholders have not been able to agree on either of these proposals made by Coalition.
22. By reason of the matters pleaded above, it is clear that the Company's directors and shareholders cannot agree on how to restructure the Company due to their factional differences. This deadlock has resulted in the Company being cash-flow insolvent. There is thus a need for liquidators to be appointed to oversee the liquidation of the Company to avoid further value destruction of the Company.

D. THE COMPANY IS UNABLE TO PAY ITS DEBTS

23. Further and/or in the alternative, the Company should be wound up as it is cash-flow insolvent and unable to pay its debts as they fall due.
24. Based on the weekly cash-flow projections set out in the PowerPoint presentation slides prepared by the Group CEO Mr Kuen for the most recent Board meeting on 20 January 2022 ("**Board Deck**"), it is expected that the Company will be in a negative cash position by 24 January 2022 and will continue to be in a negative cash position up to the end of 2023. In other words, by 24 January 2022, the Company will not have sufficient cash to finance its operating activities or satisfy its debts which are due or which will fall due.
25. Further, the fact that there are significant debts of the Company that will fall due in the near future, i.e. in or around the second quarter of 2022, which exceed the amount of cash that the

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Company is expected to have at that time, reinforces that the Company is unable to pay its debts as they fall due. These debts include:

- (a) The repayment of put options of USD135.7 million granted by the Company to Ping An and CITIC, which are expected to be exercised on or after 31 March 2022; and
- (b) The contractually mandated dividends of USD22m which will be payable to the convertible preference shareholders from 8 May 2022 onwards.

- 26. By the end of the first quarter of 2022, the Company will have a negative cash balance of USD66.8 million. The Company will thus be unable to satisfy the repayment of the above debts (and any other debts falling due).
- 27. In light of the above, it is apparent that the Company cannot pay its debts that are due at present or alternatively, on the balance of probabilities, the Company does not, or will not, have the resources to discharge those debts that will fall due in the reasonably near future. For the foregoing reasons, the Company is clearly not solvent on a cash flow basis.
- 28. Although the Company will be cash-flow insolvent by 24 January 2022, the Company has valuable assets which, if realised, would be sufficient to settle its debts with surplus available for distribution to the Company's shareholders, including the Petitioners who currently hold around 17% of the Company shares directly and indirectly.
- 29. Based on the audited financial statements of the Company for the financial year ended 31 December 2020, the Company is balance sheet solvent based on it having net assets of SGD352,684,000 as at 31 December 2020.
- 30. In addition, the enterprise value of the Company was valued at SGD1.26 billion in the form of the binding bids submitted by Warburg and Coalition as part of Project Phoenix.

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31. Thus, I believe that on the winding up of the Company, after satisfying the Company's liabilities, there would be a surplus available for distribution to its shareholders.
32. In the premises, it is just and equitable to wind up the Company in accordance with section 92(e) of the Companies Act, alternatively, on the basis of section 92(d) of the Companies Act.

E. RELIEF

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) The Company be wound up and that Gordon MacRae and Elizabeth Mackay, each of Kalo (Cayman) Limited, PO Box 776, 38 Market Street, Suite 4208, Canella Court, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands, be appointed as the joint official liquidators of the Company (the "**Liquidators**") as follows:
 - (a) the Liquidators shall not be required to give security for their appointment;
 - (b) the Liquidators are appointed, the Liquidators shall have the power to act jointly and severally in their capacity as joint liquidators of the Company;
 - (c) in addition to their powers prescribed in Part II of the Third Schedule to the Companies Act which are exercisable without sanction of this Court, the Liquidators shall be authorised to exercise the following powers without further sanction or intervention from the Court:
 - i. control and otherwise deal with all existing bank accounts in the name of the Company and to open new bank accounts in the name of the Company;
 - ii. carry on the business of the Company so far as the Liquidators consider necessary for its beneficial winding up;
 - iii. engage staff (whether or not as employees of the Company and whether located in the Cayman Islands or elsewhere) as the Liquidators consider necessary to assist them in the performance of their duties, on such terms as

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the Liquidators may think fit, and to remunerate them out of the assets the Company as an expense of the official liquidation;

- iv. engage counsel, attorneys, and/or other professional advisors (whether in the Cayman Islands or elsewhere) as the Liquidators consider necessary to assist them in the performance of their duties, on such terms as the Liquidators may think fit, and to remunerate them out of the assets the Company as an expense of the official liquidation;
- v. control and otherwise deal with, in the name and on behalf of the Company, any extant court proceedings issued in any jurisdiction;
- vi. pursue applications and/or proceedings in any other jurisdiction for recognition of the liquidation and/or their appointment and/or to obtain information they require to perform their duties;
- vii. apply for further directions concerning their functions and the exercised or proposed exercise of their powers,

and for the avoidance of doubt, the powers bestowed on the Liquidators may be exercised by them within and outside the Cayman Islands;

- (d) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers shall be voided by virtue of Section 99 of the Companies Act;
- (e) The Liquidators shall have the authority and are directed to take possession of, collect and get in any property of the Company in the name of the Company and for that purpose to take any proceedings in any jurisdiction that they consider necessary;
- (f) The Liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with the Companies Winding Up Rules 2018 and Part III of the Insolvency Practitioners' Regulations 2018;

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- (g) The costs of the Petitioner be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed if not agreed with the Liquidators;
- (h) The Liquidators be at liberty to apply generally; and/or
- (i) Such other relief be granted as the Court deems appropriate.

Dated this 20th day of January 2022



Carey Olsen

Attorneys for the Petitioners

NOTE: This Petition is intended to be served on:

(1) Fullerton Healthcare Corporation Limited

Vistra (Cayman) Limited
P.O. Box 31119
Grand Pavillion, Hibiscus Way, 802 West Bay Road
Grand Cayman KY1-1205
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 _____ at _____ .

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.

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