



GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2022 ()

ORDER OF SECTION 92 OF THE COMPANIES ACT (2022 REVISION)
IN THE MATTER OF JIAN YING SAMPLE HIGH GROWTH INVESTMENT FUND

WINDING UP PETITION

TO THE GRAND COURT

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

A. INTRODUCTION

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

1. The Fund is a Cayman Islands exempted limited company incorporated on 7 June 2017 (registration number 323555). The registered office and the registered agent of the Fund have resigned and the Fund is scheduled to be struck off on 29 April 2022.
2. The purpose of the Fund was to invest in a single target company, Active Gold Holding Limited ("**Active Gold**"), which in turn holds 123,862,500 domestic and outstanding shares (the "**Domestic Shares**") in Nanjing Sample Technology Co Ltd ("**Nanjing Sample**"), representing 15.64% of the total issued shares in Nanjing Sample. Nanjing Sample is a company incorporated in Nanjing, China with company number

91320100726074332B and listed on the Stock Exchange of Hong Kong Limited with stock code 1708. Nanjing Sample Technology Group Company Limited ("**Sample Group**") holds 50.77% of the issued shares in Nanjing Sample.

3. In accordance with the private placement memorandum of the Fund dated July 2017 (the "**PPM**"), the Fund was to realise gains following the listing of the Domestic Shares and commencement of public trading of Nanjing Sample on the Shenzhen Stock Exchange or the Shanghai Stock Exchange.
4. As at 13 October 2017, the directors of the Fund were Jin Zhanjie, Zhang Xiaolong and Wu Wei. The Petitioner was informed by Zhang Xiaolong in around September 2021 that all the directors of the Fund had resigned in around May 2021 at the request of Ms Li Wendong ("**Ms Li**"). The Petitioner understands that Ms Li is the Vice President of Sample Group. However, a search of the Registry's online portal shows that these three individuals are still listed as directors of the Fund.
5. Pursuant to the Fund's Amended and Restated Memorandum and Articles of Association (the "**Articles**"), the Fund has a share capital of US\$50,000 divided into two types of shares:
 - (a) **Participating Shares** - 4,999,900 participating shares of a par value of US\$0.01 each. There is only one class of participating shares known as "*Class A Shares*" in issue (the "**Participating Shares**"). As per the Fund's register of members available to the Petitioner, there are only two holders of Class A Shares, being:
 - (i) the Petitioner which holds 20,000 Class A Shares as at the date of this Petition. On 18 August 2017, the Petitioner paid HK\$200 million¹ to subscribe for the 20,000 Class A Shares and signed a subscription agreement accordingly (the "**Subscription Agreement**"); and
 - (ii) Treasure Innovation Limited ("**Treasure Innovation**"), a company incorporated in Hong Kong, which holds 35,000 Class A Shares; and
 - (b) **Management Shares** - 100 management shares of a par value of US\$0.01 each, which are conferred with, amongst others, the right to receive notice of, attend at

¹ The exchange rate used in this Petition is US\$1:HK\$7.80.

and vote at any general meeting of the Fund but with no right to receive dividends declared by the Fund and with no right to participate in the profits or surplus assets of the Fund (Article 5.2). Treasure Innovation holds all of the 100 issued Management Shares.

The Petitioner

6. The Petitioner is a company incorporated with limited liability in Hong Kong with its registered office at 12/F, CCB Tower, 3 Connaught Road Central, Central, Hong Kong and is part of the wider China Construction Bank Corporation group.

Summary

7. The Petitioner seeks an order from this Honourable Court to wind up the Fund on the following grounds:
- (a) the Fund is unable to pay its debts per section 92(d) of the Companies Act (2022 Revision) (the "**Companies Act**"); and/or
 - (b) the term of the Fund has expired and should be wound up accordingly per section 92(c) of the Companies Act.

B. THE LOAN UNDER THE FACILITY AGREEMENT

The Background

8. On 18 August 2017, the Petitioner (as the "*Lender*") and the Fund (as the "*Borrower*") entered into a facility agreement for HK\$300 million (the "**Facility Agreement**"). The purpose of the loan was to allow the Fund to purchase the shareholding in Active Gold, so that it could become the indirect shareholder of Nanjing Sample. The following terms of the Facility Agreement, which is governed by Hong Kong law, are relevant:
- (a) Clause 1.1:
 - (i) *"Finance Document" means this Agreement, any Fee Letter, any Utilisation Request and any other document designated as such by the Lender and the Borrower*";

- (ii) *"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (Default interest);*
 - (iii) *"Loan" means, as the context requires, a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan";*
 - (iv) *"Obligors" means the Borrower and any person (if any) providing a guarantee of or security for the Facility, and "Obligor" means each of them";*
 - (v) *"Repayment Date" means the date falling thirty-six (36) months after the first Utilisation Date...";*
 - (vi) *"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents";*
 - (vii) *"Utilisation" means a utilisation of the Facility";*
 - (viii) *"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is made or to be made";*
 - (ix) *"Utilisation Request" means a notice substantially in the form set out in Schedule 2 (Utilisation Request);*
- (b) *Clause 3.1 – "The Borrower shall apply all amounts borrowed by it under the Facility towards acquisition of 100% of the capital shares of [Active Gold]...";*
 - (c) *Clause 5.4 – "If the conditions set out in Clause 4 (Conditions of Utilisation) and Clauses 5.1 (Delivery of a Utilisation Request) to 5.3 (Currency and amount) have been met, the Lender shall make a Loan available by the Utilisation Date through its Facility Office";*
 - (d) *Clause 6.1 – "Subject as otherwise provided in this Agreement, the Borrower shall repay the Loans in full in one instalment on the Repayment Date";*

- (e) Clause 8.1(a) – *"The rate of interest on each Loan for each Interest Period relating to it is the percentage rate per annum as set out below...(a) 8% for the period commencing on the Utilisation Date of such Loan to the date falling thirty-six (36) months after the first Utilisation Date"*;
- (f) Clause 8.2 – *"The Borrower shall pay accrued interest on a Loan on the last day of each Interest Period relating to it"*;
- (g) Clause 8.3 – *"If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is 24 per cent per annum. Such rate of interest shall apply in place of the rate specified in Clause 8.1, and if not paid sooner the default interest shall be payable on the date the Unpaid Sum is paid in full"*;
- (h) Clause 9.1:
 - (i) *"(a) The first Interest Period for a Loan will start on its Utilisation Date and end on 20 December 2018 (or, if the Utilisation Date is on or after 20 December 2018, on 20 December 2019)"*;
 - (ii) *"(b) Subject to paragraph (c) below, each subsequent Interest Period for a Loan will be twelve (12) months, starting on the last day of the preceding Interest Period for that Loan"*; and
 - (iii) *"(c) An Interest Period for a Loan shall not extend beyond the Repayment Date and shall be of such duration ending on the Repayment Date"*; and
- (i) Clause 23.4 – *"All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim"*;
- (j) Clause 33.1:
 - (i) *"(a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including any*

dispute regarding the existence, validity or termination of this Agreement)
(a "Dispute")";

- (ii) *"(b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary"; and*
- (iii) *"(c) This Clause 33.1 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions."*

9. On 21 September 2017, the Fund served a Utilisation Request on the Petitioner for the full amount of the Loan (being HK\$300,000,000) pursuant to the terms of the Facility Agreement and the Petitioner paid the amount of the Loan to the Fund's bank account on the same day, such that 21 September 2017 is the relevant Utilisation Date.

The Failure to Repay

10. Pursuant to clauses 1.1 and 6.1 of the Facility Agreement, the Loan and the interest accrued became due and payable on the Repayment Date of 21 September 2020 (being 36 months after the Utilisation Date of 21 September 2017),² which was a total of HK\$330,571,617.04 (which is the "**Unpaid Sum**", as defined in the Facility Agreement).
11. In around May and June 2020 (at the request of Ms Li), the Petitioner and Ms Li (purportedly on behalf of the Fund) commenced negotiations in relation to the extension of the Repayment Date prior to the Repayment Date. In August 2020, the Petitioner told the Fund the first repayment instalment must settle at least 50% of both (a) the Principal Loan of HK\$300 million (excluding interest); and (b) the Subscription Amount of HK\$200 million, which was a total of HK\$500 million. This first instalment had to be paid by the Repayment Date in order for the Petitioner to grant an extension of time (the "**Condition**").
12. On or around 3 September 2020, the Fund provided a proposed repayment plan and offered to repay 50% of the Principal Loan and the Subscription Amount on or before the Repayment Date (21 September 2020), in order to fulfil the Condition requested by the

² The Hong Kong Proceedings (as defined below) have proceeded on the common basis that the Repayment Date is 20 September 2020. The Petitioner submits that nothing turns on this slight discrepancy.

Petitioner, with the balance of the Principal Loan and the Subscription Amount to be repaid by 30 September 2021. An interest rate of 11% would apply to the outstanding balance from 20 September 2020. The Petitioner conditionally agreed to this repayment plan, subject to contract. However, the Fund failed to pay 50% (or any) of the Principal Loan and the Subscription Amount by 21 September 2020 and in any event failed to sign this proposed contract. As a result, no extension of the Repayment Date occurred and the Unpaid Sum remained due and payable in full on 21 September 2020.

13. On 11 February 2021, the Petitioner commenced proceedings against the Fund and two other defendants (collectively, the "**Defendants**") in respect of, amongst other causes of action, the failure of the Fund to repay the Unpaid Sum in the High Court of the Hong Kong Special Administrative Region (the "**Hong Kong Proceedings**" and the "**Hong Kong Court**"). The Defendants filed their Defence on 25 April 2021. The Petitioner also amended its Statement of Claim in the Hong Kong Proceedings on 25 May 2021.
14. On 29 March 2021, Ms Li (again on behalf of the Fund) made an offer to pay the Principal Loan of HK\$300 million by no later than 15 November 2021, with interest calculated at 11% per annum from 1 April 2021 to the date of repayment (see paragraph 37(2) of the Defence). Penalty interest of HK\$23,815,068.49 would also be repaid by no later than 30 September 2021. Despite this, the Fund failed to pay these amounts by these dates in full or in part (and also failed to repay any of the Subscription Amount). In any event, the Petitioner had not agreed to this proposed repayment schedule, such that there was no extension of the Repayment Date for the Unpaid Sum.
15. On 19 November 2021, the Petitioner filed an application for summary judgment in the Hong Kong Proceedings, which was supported by the Affirmation of Qian Zhiyi affirmed on 26 November 2021, on the basis that the Defendants (including the Fund) had no defence to the causes of action pleaded in the Statement of Claim (including the failure of the Fund to pay the Unpaid Sum). On 9 December 2021, the Defendants filed the unsworn affirmation of Ms Li in response. The substantial hearing of the summary judgment application will take place on 21 March 2022 before the Hong Kong Court.
16. In both the Defence and in the affirmation of Ms Li, the Defendants admitted that the Fund was liable to pay the Unpaid Sum in accordance with the terms of the Facility Agreement, though they submitted that the date of repayment was extended to 20 September 2021.

Even if an extension of time to 20 September 2021 had been granted (which is denied, and the Fund has adduced no evidence in the Hong Kong Proceedings showing that such an extension of time was granted), such that the Unpaid Sum (plus interest) was due and payable on 20 September 2021, the Fund failed to repay the Unpaid Sum in part or in full on or before this date.

17. In accordance with Clause 33.1(c) of the Facility Agreement (see paragraph 8(j)(iii) above), the Petitioner:

"... shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the [Petitioner] may take concurrent proceedings in any number of jurisdictions."

18. Putting to one side the dispute as to the correct Repayment Date (which is currently being dealt with in the Hong Kong Proceedings by way of summary judgment), as at the date of this Petition, the Fund has not repaid the principal loan of HK\$300 million (the "**Principal Loan**") in part or in full. Even on the Fund's case that the Repayment Date has been extended to 20 September 2021, the Principal Loan should have been repaid by that date. As the Principal Loan remains unpaid, default interest is accruing on the Principal Loan from at least 21 September 2021 (and, on the Petitioner's case that the Repayment Date was not extended, since 21 September 2020). Therefore, as at the date of this Petition, the Fund owes at least the following amounts to the Petitioner (being the "**Outstanding Debt**"):

Type	Amount
Principal Loan	HK\$300 million
Default interest pursuant to clause 8.3 of the Facility Agreement at 24% per annum from 21 September 2021 (on the basis that the Repayment Date was extended to 20 September 2021)	HK\$24,854,794.52
TOTAL	HK\$324,854,794.52 (US\$41,648,050.58)

19. The Petitioner reserves its position to amend the quantum of Outstanding Debt to include any consequential interest owed by the Fund to the Petitioner following the determination of the Repayment Date in the Hong Kong Proceedings.

C. THE END OF TERM OF THE FUND

20. The Petitioner's Class A Shares in the Fund were expressly offered and were subscribed for and on the basis of the information contained in the Articles, the PPM and the Subscription Agreement.

21. The Articles relevantly stipulate the following:

- (a) Article 1.1:

(i) *"Participating 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 Private Placement Memorandum..."*

- (b) Article 8.1 – *"No Redemption. Participating Shares shall not be redeemable at the option of a Member";*

- (c) Article 43.1 – *"The [Fund's] business shall continue for the Term and for so long as the [Fund] holds assets and investments. At the expiration of the Term, the assets and investments of the [Fund] shall be realised in an orderly manner and the business of the [Fund] shall continue and shall be regarded as continuing as a going concern, until the process of realisation of the assets and investments of the [Fund] is complete"; and*

- (d) Article 43.3 – *"Distribution of Assets. If the Company shall be wound up... Any surplus shall be distributed amongst the Members in the following priority, subject to the rights attaching to any Shares or any special terms and conditions:"*

(i) *"(a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares;" and*

- (ii) *"(b) second, the balance shall be paid to the holders of Participating Shares in proportion to the aggregate Net Asset Value per Share of the Participating Shares held by each such Member;" and*
- (e) Article 43.5: *"Subject to these Articles, the [Fund] shall be wound up following the end of the applicable Term unless such Term is modified (including reduction or extension of the Term) with the consent of all of the holders of Participating Shares."*
22. The PPM also states at page 21 that: *"The holders of the Participating Shares have no right to withdraw or redeem the Participating Shares. Participating Shares are required to be held until the expiration of the Term of the Fund and disposal of the Fund's assets."*
23. The Articles do not directly define "Term". Rather, it is given the meaning ascribed to it in the PPM (being the "Initial Term" or the "Extended Term" as applicable). Pursuant to the PPM, the Closing Date of the Fund was 18 August 2017 and the Initial Term of the Fund would expire three years after the Closing Date (that is, 18 August 2020).
24. The Initial Term of the Fund can only be extended for an additional three years if, prior to the expiry of the Initial Term, the Class A shareholders unanimously request or consent to such an extension (see page 12 of the PPM). The Petitioner, as one of the holders of the Class A Shares of the Fund (which are Participating Shares), did not request or consent to any extension of the Initial Term. Therefore, the term of the Fund came to an end on 18 August 2020.
25. According to a search of the Cayman Islands Corporate Records and Register conducted by the Petitioner on 25 January 2022, the Fund will be struck off on 29 April 2022 and it has not commenced winding up in accordance with the Articles, the PPM or section 92(c) of the Companies Act. The Fund is therefore in breach of its obligations to take steps to wind up the Fund, in particular to realise the assets and investments of the Fund in an orderly manner per Articles 43.1, 43.3 and 43.5, at the expiration of the term of the Fund (being 19 August 2020, the day immediately following the last day of the Initial Term).
26. Pursuant to Article 8.1 and the PPM, the Petitioner must hold its Class A Shares for the duration of the Term of the Fund and cannot make a voluntary redemption request to the Fund. The Petitioner must wait for the Fund to commence liquidation in order to be able

to receive a distribution calculated with reference to the "*Net Asset Value per Share*" of its Class A Shares and there is no other option for the Petitioner to exit its investment.

27. In the circumstances, the only remedy by which the Petitioner can receive a distribution in accordance with Article 43.3 is an order winding up the Company.

D. CONCLUSION

28. In the premises, the Fund should be wound up on either or both of the following grounds:
 - (a) the Fund has failed and is unable to pay the Outstanding Debt, and is therefore liable to be wound up pursuant to section 92(d) of the Companies Act; and
 - (b) the term of the Fund has come to an end and should be wound up pursuant to section 92(c) of the Companies Act.
29. The Petitioner seeks an order that Christopher Barnett Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman, KY1-1104, Cayman Islands, and Wing Sze Tiffany Wong and Yeung Mei Lee of Alvarez & Marsal Asia Limited of Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong be appointed as joint official liquidators of the Fund.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:

1. The Fund be wound up pursuant to 92(d) and/or 92(c) of the Companies Act.
2. Christopher Barnett Kennedy of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman, KY1-1104, Cayman Islands and Wing Sze Tiffany Wong and Yeung Mei Lee of Alvarez & Marsal Asia Limited of Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong be appointed as joint official liquidators of the Fund (the "**JOLs**").
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 25th day of January 2022

Walkers

WALKERS

Attorneys at Law for the Petitioner

NOTE: This Petition is intended to be served on (a) the Fund at its former registered office; (b) the directors of the Fund; (c) Treasure Innovation Limited; and (d) Ms Li Wendong.

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 _____ am/pm.

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.