

**GRAND COURT OF THE CAYMAN ISLANDS****FINANCIAL SERVICES DIVISION****CAUSE NO. FSD 34 OF 2022 (DDJ)****IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2022 REVISION)****AND IN THE MATTER OF CS ASIA OPPORTUNITIES MASTER FUND**

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**WINDING UP PETITION**

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**TO THE GRAND COURT**

The humble petition of Altair Asia Investments Limited (in Official Liquidation), c/o PwC Corporate Finance & Recovery (Cayman) Limited, 18 Forum Lane, P.O. Box 258, Grand Cayman, KY1 1104 (the "**Petitioner**") shows that:-

**A INTRODUCTION**

1 The Petitioner presents this petition for:

- (a) the winding up of CS Asia Opportunities Master Fund (the "**Company**") pursuant to sections 92(d) of the Companies Act (2022 Revision) (the "**Companies Act**") on the grounds that the Company is insolvent and unable to pay its debts; and

the appointment Mr Gordon MacRae of Kalo (Cayman) Limited, 38 Market Street, Suite 4208, Canella Court, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands ("**Kalo Cayman**") and Mr Gwynn Hopkins of Perun Consultants, 7/F, Hollywood Commercial House, 3-5 Old Bailey Street, Central, Hong Kong ("**Perun HK**") as joint official liquidators ("**JOLs**") of the Company.

This Petition is filed by Ogier, Attorneys-at-Law for the Petitioner, whose address for service is:  
89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands (MKS/LVS/427546.00001)

**B THE PETITIONER**

2 The Petitioner was incorporated in the Cayman Islands on 27 August 2012 as an exempted company with limited liability pursuant to the Companies Act, with Registration Number 271297.

3 On 7 December 2020, the Petitioner was placed into official liquidation and Mr Simon Richard Conway of PwC Corporate Finance & Recovery (Cayman) Limited, PO Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1 1104 Cayman Islands, Mr Man Chun (Christopher) So and Mr Peter James Greaves of PricewaterhouseCoopers Limited, 20/F Prince's Building, Central, Hong Kong were appointed as Joint Official Liquidators ("**Altair JOLs**").

4 The Petitioner 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.

5 As particularised further below, pursuant to the terms of a prime brokerage agreement entered into by the Company, it was liable to its prime broker, Global Prime Partners Limited ("**GPP**"), in the sum of HK\$73,004,750.21 (the "**CS Asia Liability**"). The Petitioner is currently unaware of the nature of the CS Asia Liability or when it arose. However, the Petitioner is aware that it went unpaid by the Company.

6 As a result of the Company's failure to satisfy the CS Asia Liability, GPP called upon a guarantee dated 4 July 2018 entered into between the Petitioner, the Company and GPP (the "**Guarantee**") by which the Petitioner guaranteed the Company's liability to GPP under the relevant prime brokerage agreement (including the CS Asia Liability).

7 Accordingly, in exercise of its rights under the Guarantee, GPP discharged the CS Asia Liability through the use of the Petitioner's assets.

8 As the Company is primarily liable to GPP in respect of the CS Asia Liability, and has had that liability satisfied through the use of the Petitioner's assets, the Petitioner is entitled to be reimbursed by the Company in the amount of the liability so satisfied. The Petitioner therefore issued a statutory demand to the Company demanding reimbursement but the Company has failed to satisfy that demand.

9 The Petitioner therefore seeks an order winding up the Company on the basis the Company is insolvent and unable to pay its debts as they fall due.

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**C THE COMPANY**

10 The Company was incorporated as an exempted limited company on 22 September 2015 with Registration Number 304258. On 3 February 2016, the Company registered as a Master Fund with the Cayman Islands Monetary Authority.

11 The Company's registered office is at 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands. Its directors are Mr Frank Dominick and Mr Patrick Maloney, both of whom were directors of the Petitioner prior to the appointment of the Altair JOLs.

12 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 GROUP STRUCTURE**

13 The Petitioner is unable to confirm the nature of the relationship between the Company and the other entities within the group of companies to which the Petitioner belongs.

14 However, it is understood that the Company is managed and ultimately controlled by China Silver Asset Management LLC ("**CSAM LLC**"), a company incorporated in Delaware, USA in which Mr Frank Dominick, one of the Petitioner's former directors, is a 51% shareholder of CSAM LLC's issued shares.

**E THE PETITIONER'S RELATIONSHIP WITH GPP**

15 On 9 April 2018, the Petitioner entered into an English law governed prime brokerage agreement ("**PBA**") with GPP, its prime broker.

16 The key provisions of the PBA are as follows:

**"DEFINITIONS**

**"Cash Account"** *means one or more accounts in the books of GPP in which GPP records all cash amounts credited and all cash amounts debited to the Counterparty under this*

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*Agreement other than cash held in the Client Money Account in accordance with the terms hereof...*

**"Equivalent Securities"** *where the relevant Security has an ISIN, Equivalent Securities shall mean securities with the same ISIN, where such Securities do not have an ISIN, Equivalent Securities shall mean with respect to any Securities, securities of the same issuer, issue and of an identical type, nominal value and description as such security and shall include certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate)...*

**"Prime Broker Securities"** *means:*  
  
*...(iii) Securities credited to the Securities Account under Clause 3.5.1*

**"Securities"** *means:*

- (i) any bond debenture, note or certificate (whether in tangible or intangible form) or other instrument or equivalent intangible holding evidencing indebtedness;*
- (ii) any share, interest or participation in the issued share capital of a company including any replacement shares, interests, or participations following a surrender, cancellation, conversion, sub-division or consolidation;*
- (iii) any warrant or future on, or any option or right to subscribe for or purchase any of (i) or (ii) above; and*

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- (iv) *any other securities or instrument as agreed between the parties from time to time, and includes in each case an interest in a security accruing by virtue of the fact that the security is held through a clearing system, custodian or other intermediary.;*

**"Securities Account"** *means one or more accounts (other than a Custody Account) in the books of GPP wherein GPP records Securities that*

- (i) *it holds for the Counterparty...*

...

## **2. APPOINTMENT OF PRIME BROKER**

2.1 *[the Petitioner] may from time to time agree to enter into Prime Broker Transactions where:*

2.1.1 *[the Petitioner] agrees to purchase Securities from a Third Party and nominates GPP as its agent for settlement (a "Purchase Transaction"); or*

2.1.2 *[the Petitioner] agrees to sell Securities to a Third Party and nominates GPP as its agent for settlement (a "Sale Transaction").*

...

## **5. TITLE**

5.1 *All right, title and interest in all Prime Broker Securities provided in accordance with this agreement and credited to the Securities Account together with all legal and beneficial ownership thereof shall vest in GPP, and GPP's obligation in respect thereof shall be limited to its obligation to deliver Equivalent Securities in accordance with the terms of this Agreement. The parties acknowledge and agree that the Prime Broker Securities held in the Securities Account are*

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*received and are held appropriately by GPP with full ownership under a title transfer agreement.*

5.2 *Collateral Money and all other cash amounts held by GPP for the account of the Counterparty (other than cash held in the Client Money Account) are transferred hereunder to GPP as collateral with full ownership and is received and held appropriately by GPP. Such Collateral Money and other cash amounts cease to be (or do not become) the Counterparty's cash, the Counterparty will not have a proprietary claim over such Collateral Money and other cash amounts, and the Counterparty will be a general creditor of GPP with (subject to the limitations described above) an unsecured contractual claim against GPP for re-transfer of equivalent cash. Such cash will not be segregated from the money of GPP or any other counterparty or client of GPP and will be held free and clear of all trusts. The parties further agree that GPP will use such cash in the course of its business.*

...

**9. SETTLEMENT**

9.1 *GPP shall open and maintain one or more Cash Accounts, one or more Securities Accounts, one or more Client Money Accounts and one or more Custody Accounts in the name of the Counterparty, and all cash or Securities held by or received by GPP from or for the benefit of the Counterparty pursuant to this Agreement and to any Transactions shall be held in such Accounts as instructed by the Counterparty, except in accordance with the provisions of Clause 4.*

...

9.10.3 *Any monies received by GPP pursuant to a Sale Transaction shall be credited to the Cash Account.*

...

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9.11.3 *Any Securities received by GPP for the account of the Counterparty pursuant to a Purchase Transaction shall be credited to the Securities Account.*

9.11.6 *Subject to the provisions of Clause 9.11.7, GPP shall be obliged, at the request of the Counterparty, to deliver to the Counterparty at an account held by the Counterparty away from GPP, Equivalent Securities or any Securities recorded in the Securities Account or, at the discretion of GPP upon receipt of such request, the cash value of such Securities."*

- 17 It is understood that, at or about the same time as the Petitioner's entry into the PBA, the Company also entered into a prime brokerage agreement with GPP on the same or similar terms (the "**CS Asia PBA**").

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**F THE GUARANTEE**

18 On 4 July 2018, the Petitioner and the Company entered into the Guarantee, an English law governed deed of guarantee and indemnity in favour of GPP. In summary, the Guarantee provided that each of the Petitioner and the Company guaranteed that they would pay, on demand, each other's "*Guaranteed Obligations*" under their respective prime brokerage agreements with GPP, in the event that the relevant primary obligor failed to do so.

19 Insofar as they are material, the key provisions of the Guarantee are as follows:

"1.1 *The definitions and rules of interpretation in this clause apply in this deed.*

...

***Guaranteed Obligations:*** *all monies, debts, obligations and liabilities, of any nature from time to time due, owing or incurred by an Obligor to [GPP] under the terms of [the PBA and CS Asia PBA].*

...

***Obligor:*** *means the Guarantors in Schedule 1.*

Schedule 1 lists the Company and the Petitioner as Guarantors.

...

2.1 *In consideration of [GPP] entering into the Prime Brokerage Agreements [with the Petitioner and the Company] and continuing to provide the prime brokerage services to an Obligor as [GPP] in its absolute discretion sees fit, each Guarantor jointly and severally, and for the benefit of each other, guarantees to [GPP] that whenever an Obligor does not pay any of the Guaranteed Obligations when due, to pay on demand the Guaranteed Obligations.*

2.2 *Each Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1 agrees to indemnify and keep indemnified [GPP] in full and on demand from and against*

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*all and any losses, reasonable costs, claims, liabilities, damages, demands and expenses suffered or incurred by [GPP] arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of an Obligor to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.*

...

3.1 *[The Guarantee] is and shall at all times be a continuing security and shall cover the ultimate balance from time to time owing to [GPP] by an Obligor in respect of the Guaranteed Obligations.*

3.2 *The liability of each Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by:*

...

(f) *any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of an Obligor or any other person...*

...

3.3 *[GPP] shall not be obliged before taking steps to enforce any of its rights and remedies under this guarantee:*

(a) *to take any action or obtain judgment in any court against an Obligor or any other person;*

(b) *to make or file any claim in a bankruptcy, liquidation, administration or insolvency of an Obligor or any other person; or*

(c) *to make any demand, enforce or seek to enforce any claim, right or remedy against an Obligor or any other person.*

...

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10.1 [GPP] may at any time set off any liability of a Guarantor to [GPP] against any liability of [GPP] to a Guarantor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this guarantee.

...

17.1 This guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales."

## **G THE COMPANY'S DEBT**

20 On or before 7 December 2020, the Petitioner had Prime Broker Securities and/or cash in the sum of HK\$73,220,886.98 credited to its prime brokerage account held with GPP pursuant to clause 9.1 of the PBA.

21 Accordingly, pursuant to Clauses 5.1 and/or 5.2 of the PBA, GPP owed the Petitioner a debt in the form of an obligation to provide it with Equivalent Securities and/or cash valued at HK\$73,220,886.98 representing the aggregate value of the Prime Broker Securities and/or cash held by GPP for its account (the "**Petitioner Credit Amount**").

22 At or around the same time, the Company had an outstanding liability to GPP in the sum of HK\$73,004,750.21 (ie the CS Asia Liability) pursuant to the terms of the CS Asia PBA. The Petitioner does not know how the CS Asia Liability arose, its nature or the time for which it remained outstanding. However, the Petitioner understands that the Company has not challenged either the existence or quantum of the CS Asia Liability<sup>1</sup>.

23 It is further understood that the Company failed to discharge the CS Asia Liability to GPP. As a result of the Company's failure in this regard, pursuant to Clauses 2.1 and 3.1 of the Guarantee, the Petitioner became liable to GPP for that debt.

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<sup>1</sup> Save that, as set out below, the Company does allege that the CS Asia Liability was satisfied by the Company out of the Company's own assets.

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24 On 16 December 2020, GPP elected to exercise its rights pursuant to Clause 10.1 of the Guarantee to set off the CS Asia Liability, owed to it by the Company, against the Petitioner Credit Amount, owed to the Petitioner by GPP, in order to satisfy the CS Asia Liability.

25 In circumstances where:

25.1 pursuant to the terms of the CS Asia PBA, the Company is the primary obligor in respect of the CS Asia Liability;

25.2 the Company failed to discharge the CS Asia Liability to GPP; and

25.3 GPP elected to satisfy the CS Asia Liability by exercising its right of set off, pursuant to Clause 10.1 of the Guarantee, against the Petitioner Credit Amount, such that the Petitioner's assets were used to discharge the CS Asia Liability owed to GPP by the Company,

the Petitioner is entitled to reimbursement from the Company in the amount of HK\$73,004,750.21 (in the equivalent value of the CS Asia Liability and hereinafter called the "**Petition Debt**").

## H GROUND S FOR WINDING UP

26 On 26 October 2021 the Petitioner issued and served a statutory demand (the "**Statutory Demand**") on the Company at its registered office seeking payment of the Petition Debt within 21 days.

27 On 12 November 2021, Travers Thorp Alberga ("**TTA**"), the Company's attorneys, wrote to Ogier, the Petitioner's attorneys, (the "**12 November Letter**") disputing the Statutory Demand on the basis that the CS Asia Liability had been satisfied by the Company out of its own assets.

28 TTA indicated that it would provide evidence in support of the Company's allegation in short order. However, despite various requests to the Company by the Petitioner for the provision of that evidence, the Company has failed to do so.

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- 29 The deadline for satisfying the Statutory Demand expired on 16 November 2021 and the Company has neglected to either pay the Petition Debt claimed in the Statutory Demand or otherwise secure or compound the same to the Petitioner's satisfaction.
- 30 Further, in light of the Company's failure to provide any evidence in support of the position set out in the 12 November Letter, the Petitioner believes that the Company has no bona fide dispute on substantial grounds to the Petition Debt.
- 31 Accordingly, by its failure to satisfy the Statutory Demand within 21 days after the date of service, the Company is deemed to be unable to pay its debts pursuant to section 93(a) of the Companies Act.
- 32 Further, it is to be inferred from the Company's failure to pay the Petition Debt that the Company is unable to pay its debts and is therefore insolvent for the purposes of section 92(d) of the Companies Act.
- 33 The Petitioner therefore respectfully requests that the Company be wound up pursuant to section 92(d) of the Companies Act 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 Gordon MacRae of Kalo Cayman and Mr Gwynn Hopkins of Perun HK be appointed as JOLs of the Company.
- 3 The JOLs be authorised to act jointly and severally in their capacity as joint official liquidators of the Company.
- 4 The JOLs shall not be required to give security for their appointment.
- 5 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.

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- 6 The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of their appointment in any other relevant jurisdiction and to make applications to the courts of that jurisdiction for such purpose.
- 7 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.
- 8 The JOLs have the power to engage staff (whether or not as employees of the Company) to assist them with the performance of their functions.
- 9 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).
- 10 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

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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.

- 11 The remuneration and expenses of the JOLs shall be paid out of the assets of the Company in accordance with the Companies Act (2021 Revision) and the Insolvency Practitioners' Regulations, 2018.
- 12 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.
- 13 The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company on indemnity basis.
- 14 Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated this 16<sup>th</sup> day of February 2022



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**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 Thursday 31 March 2022 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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