



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE No. FSD \_\_\_ OF 2022 (\_\_\_)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF POSITION MOBILE LTD SEZC

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WINDING UP PETITION

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**To the Grand Court**

The humble petition of Technology Investment Consortium, LLC, of CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman, Cayman Islands, KY1-1001 (the 'Petitioner') shows that:

A. THE COMPANY

1. Position Mobile Ltd SEZC (the 'Company') was incorporated under the laws of the Cayman Islands and later became an exempted special economic zone company limited by shares with the registration number WC-340777, under the then revision of the Companies Act. The registered office of the Company is CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman, Cayman Islands, KY1-1001.

2. The Company was formed to conduct development and commercialization of mobile internet products (the 'Apps'). The Company owns the intellectual property in the Apps that it develops and markets and derives an income stream from the sale of those Apps to consumers .
3. The Company was created as a joint venture vehicle between the Petitioner and Genimous Investment (Hong Kong) Co Ltd and Genimous Holding (HK) Limited ('Genimous Group'), both being companies incorporated under the laws of Hong Kong. The Company was created and operates as a quasi-partnership between the Genimous Group and the Petitioner.
4. The Company contracted and continues to contract out certain work connected with the development of the Apps and various back-office functions to Spigot Inc ('Spigot'), a company incorporated under the laws of Nevada, USA. Genimous Group acquired 100% of the shares of Spigot from, amongst others, Ryan Stephens, a member of the Petitioner-in or around May 2016 and Spigot employees and executives are closely involved in the operations of the Company. At various times, members of the Petitioner were employees and / or executives of Spigot or members of the boards of directors of those companies.

#### B. THE PETITIONER

5. The Petitioner is the holder of ordinary shares in the Company, having acquired those shares on 1 October 2019. The Petitioner acquired 2,450,000 shares in the Company in return for US\$ 50,000.00, amounting to 49% of the issued share capital. The remaining 51% are owned by Genimous Group. The Company is solvent, such that the Petitioner has a significant material interest therein.
6. At all material times, the Petitioner had a legitimate expectation that the Company would be run with the best interests of all members in mind, whether as a quasi-partnership or otherwise, and that the members of the Company would maintain their mutual trust and confidence as if in a partnership firm.

#### C. SUMMARY

7. In summary, the Petitioner seeks a winding up order in respect of the Company and its affairs pursuant to s.92(e) of the Companies Act (2022 Revision) ('Companies Act') on the basis that it is just and equitable that the Company be wound up for the following reasons:
  - a. The directors appointed by Genimous Group (the "GGDs") have excluded the directors appointed by the Petitioners (the 'PDs') from the management of the Company and suspended quarterly meetings of the board;

- b. The GGDs caused or permitted the accounting processes of the Company to be carried out by wholly owned subsidiaries of Genimous Group, rather than by independent third parties or by in-house account personnel, where previously accounting services for the Company had been provided in-house, removing the oversight of the PDs thereby;
- c. The GGDs have failed to replace certain executives of the Company that resigned in the October 2021, leaving the Company without an effective or independent suite of executive officers.
- d. The Genimous Group has made offers to purchase the Petitioner's shares at well below market value and refused to increase those offers, inconsistent with an earlier understanding between them as to the correct approach to the purchase price of those shares;
- e. The Company has refused to allow the PDs access to financial information to which they are entitled whether as directors of shareholders of the Company;
- f. The GGDs have obfuscated and frustrated the Petitioner's attempts to sell its shares and / or itself as holding company for those shares to third parties;
- g. The Genimous Group has made repeated threats to transfer the intellectual property belonging to the Company to other entities so as either to drive down the price of the shares of the Company or to obviate the need to purchase the Petitioner's shares. Other threats were made to terminate certain of the Petitioner's shareholders that were employed at Spigot if the offer of the Genimous Group was not accepted;
- h. The Genimous Group terminated or caused to be terminated Nicholas Jackson and Daniel Miller, both shareholders in the Petitioner, from executive positions in Spigot in retaliation for the Petitioner's refusal to accept Genimous Group's offer to purchase its shares;
- i. The GGDs caused or permitted Spigot to be overpaid millions of dollars for its services and have refused entreaties from the PDs to investigate the circumstances behind that overpayment;
- j. The Genimous Group have caused, permitted or threatened to cause or permit breach of various service agreements held by the Company with certain wholly owned Genimous Group, whether that breach would be / has been committed by the Company or the service provider;

- k. Following interest in the Company from the Committee on Foreign Investment in the United States ('CIFIUS'), the Company on 8 November 2021 caused one of the GGDs to resign and to be replaced by a US citizen, John Lash, as Security Director. Mr Lash has shown no reasonable degree of willingness to dissent against the GGDs' management of the Company or to act in accordance with his fiduciary duty to act in the best interests of the Company.
- l. The above conduct summarized above and developed in more detail below has justifiably led the Petitioner to lose all trust and confidence in the Company's management and represents oppression of the Petitioner as minority shareholder;
- m. The above conduct of the Company at the direction of the GGDs evidences the need for an immediate investigation into its affairs by independent liquidators.

#### D. THE INCEPTION OF THE COMPANY AND THE PETITIONER'S LEGITIMATE EXPECTATIONS

- 8. Mr Stephens of the Petitioner made a presentation to Genimous Group in January 2018 in Beijing concerning the extension of the business of Spigot into mobile phone applications. It was proposed that a new venture be formed between Genimous Group and the Petitioner to house that business and that the new company would exist at arm's length from Genimous Group. The business of the Company duly began under those general terms, on the understanding that it would operate as a joint venture, at arm's length from Genimous Group and its subsidiaries and that the business would be run with mutual trust and confidence, in the manner of a quasi-partnership.
- 9. On or about 30 July 2019, the Petitioner and the Genimous Group signed a non-binding Agreement on Key Terms (the 'Term Sheet') back-dated to 11 April 2019, in which they recorded their general understanding as to the creation of the Company and/or its aims and objectives and/or how the relationship between the parties would come to an end. Amongst other terms and insofar as material, the Term Sheet contained provisions that:
  - a. The Company was to operate a mobile internet advertisement business on the basis of voluntary, equal, mutual benefits and trusts (Recital a));
  - b. The Company was intended to represent a joint venture (Clause A);
  - c. The Company should be owned 49/51 in favour of the Genimous Group (Clause C);

- d. Upon annual net income rising to US\$ 8 million or above with a return on investment above 35% in the preceding two quarters, the Genimous Group agreed to purchase the shares of the Petitioner at a multiple of 10 times 2020 net income (the 'Buy-Out') (Clause E2);
  - e. The Company should have 5 directors, 3 appointed by the Genimous Group and 2 by the Petitioner, which board would meet at least once every quarter (Clause G1);
  - f. All transactions between Genimous and the Company would be conducted at arm's-length (Clause G2).
10. It will be the Petitioner's case that the above clauses of the Term Sheet match the general terms agreed between the parties in January 2018 and that the conduct of the parties between January 2018 and the signature of the Term Sheet was consistent with the above set out terms.
11. The Petitioner had at all material times a legitimate expectation that the Company would be run upon the principles agreed in January 2018 and set out in the Term Sheet and / or that Genimous Group would honour the Buy-Out arrangement upon the Company achieving the necessary metrics set out above.
12. Further or in the alternative, the conduct of the Genimous Group in the creation and early operation of the Company was consistent with the above mentioned terms and confirmed and / or independently gave rise to the above identified legitimate expectations on the part of the Petitioner.

#### E. THE CONDUCT OF BUSINESS OF THE COMPANY

13. From the date of incorporation of the Company, the board of directors comprised 5 individuals. Originally, those 5 individuals were:
- a. Ryan Stephens, PD and shareholder of the Petitioner;
  - b. Cody Mahaffey, PD and shareholder of the Petitioner;
  - c. Xingang 'Scott' Yu, GDD;
  - d. Jing Sun, GGD; and
  - e. Deming He, GGD.

14. During the course of a meeting of the board of directors of the Company held on 11 December 2020, the following items discussed at the preceding board meeting in August 2020, amongst others, were ratified:
- a. The board of directors would meet quarterly;
  - b. Financial and operational results would be regularly reported to all directors of the Company;
  - c. Genimous Group and the Petitioner would meet after the publication of the 2021 budget to discuss purchasing Petitioner's equity position in the Company; and
  - d. The Company hired Ryan Dinyer as Treasurer for the Company with a non-voting seat on the board of directors.
15. The presentation prepared in support of the December 2020 board meeting set out, amongst other things, that return on investment in 2020 had been 33%.
16. By the end of the second quarter of 2021, return on investment was described to be 'well above benchmark', variously between 35%, 132% and 61% between October 2020 and June 2021. This indicated that return on investment had reached at or risen above 35% for two consecutive quarters. Further, exiting 2021 the net income run rate of the Company was approximately \$1.5MM per month, or approximately \$18 million on an annualized run rate basis
17. In 2021, there was a concern that Spigot was overcharging the Company and this was brought up with Mr Dinyer. He agreed with that assessment. Upon analysis, it was thought that Spigot had over-charged and the Company had paid several millions of dollars that should not have been paid but no action was taken either by the Company or by Spigot.

F. GENIMOUS GROUP'S OFFER TO PURCHASE THE SHARES OF THE PETITIONER

18. In December 2020, Mr Yu contacted Mr Stephens by telephone on behalf of Geminous Group to present an offer (the '2020 Offer') to purchase the Petitioner's shares in the Company for US\$ 5 million. Mr Yu stated that if Genimous Group's offer were not accepted, Genimous Group would use its debt leveraged position within the Company to appropriate its assets without compensating the Petitioner.
19. While the 2020 Offer was materially lower than envisaged under the Term Sheet and/or lower than a reasonable valuation of the Company generally, the Petitioner elected to accept. However, for reasons not fully understood by the Petitioner, Genimous Group withdrew from the proposed transaction in

January 2021. Mr Stephens warned the GGDs at the following board meeting on 18 March 2021 that any attempt to appropriate the assets of the Company without compensating the Petitioner would result in legal action.

20. The Petitioner on 9 July 2021 proposed that both the Petitioner and Genimous Group might realize their shareholding by the use of a SPAC. That offer was communicated to Mr Peter Wong, who had by that time replaced Mr Yu as the representative of Genimous Group (and who was acting as CEO of Spigot), by Bill Tracy, the Company's Company Secretary and was refused.
21. In early November 2021, Mr Wong approached Mr Stephens with a further offer (the '2021 Offer') from the Genimous Group to purchase the Petitioner's shares in the Company and a meeting was arranged for 18 November 2021 to discuss. At that meeting, Mr Stephens resurrected the potential use of an SPAC, but was told that Genimous Group did not wish to sell its stake in the Company. During the course of the meeting and amongst other things, Mr Wong stated that:
  - a. Genimous Group regretted setting up the Company as a joint venture;
  - b. Genimous Group took the view that they had the right to offer whatever purchase terms they wanted to the Petitioner;
  - c. If the 2021 Offer were not accepted, Daniel Miller and Nicholas Jackson would be terminated from their positions in Spigot, in order to remove the Petitioner's operational visibility into and influence over the Company;
  - d. Genimous Group would strip assets from the Company and transfer them to other entities owned or controlled by them if the 2021 Offer were not accepted and remove funding from the projects in development for the Company; and
  - e. The 2021 Offer was made in the amount of US\$ 5.5 million, although the value of the Company was at that time far higher than it had been at the time of the 2020 Offer.
22. The Petitioner resolved to reject the 2021 Offer, considering that it fell well short of proper market value. That rejection was communicated to Mr Wong on 7 December 2021 and the Petitioner indicated that it would explore selling its shareholding in the Company to third parties.

## G. CONDUCT OF GGDs FOLLOWING REFUSAL OF PURCHASE OFFER

23. Following rejection of the 2021 Offer and notice of the Petitioner's intention to explore the sale of its shares in the Company or itself as a holding vehicle to third parties, the GGDs:

- a. Continued to fail or refuse to hold board meetings or meetings that included the PDs, despite requests from Mr Stephens to do so;
- b. Frustrated the Petitioner's offers to secure a buyer for their shares in the Company by refusing to execute connected non-disclosure agreements;
- c. Failed to circulate regular financial and operational information packages to the PDs that had previously been circulated on a monthly basis;
- d. Refused or caused to be frustrated requests made by Mr Mahaffey for financial and operational information of the Company made in February and March 2022 to which the PDs were entitled and / or to which the Petitioner was entitled;
- e. Out-sourced the accounting functions from the Company and to non-independent third parties, thereby reducing the ability of the PDs to access the financial information of the Company;
- f. Failed to replace the Company Secretary and Treasurer with executives not employed by wholly owned Genimous Group entities, despite the resignation of both individuals in the third quarter of 2021;
- g. Refused to respond substantively to a request from Mr Stephens for an audit to give the PDs and the Petitioner proper visibility into the financial position of the Company and its spending;
- h. Terminated or caused to be termination Mr Miller and Mr Jackson from their executive positions at Spigot on or about 19 January 2022;
- i. By reason of the above terminations, damaged the revenue stream of the Company;
- j. Continued their threats to appropriate the assets of the Company and, it appears to the Petitioner, have taken preparatory steps to do so.

#### H. WHISTLEBLOWER INFORMATION

24. The PDs have been informed by whistleblowers within the Company that the transfers of various pieces of intellectual property belonging to the Company are imminent as at the date hereof and that steps have been taken by the Company's internal legal advisers to process such transfers.
25. The PDs have further been informed that since the termination of Mr Miller and Mr Jackson from Spigot and seemingly consequent upon the loss of their expertise:
- a. The Apps of the Company have suffered in rankings, which will translate to substantial drop in revenue;
  - b. The Company refused to publish a mobile game that had been part of its strategic initiative for 2 years and which it funded, including the production of 2 prototypes. The Petitioner has been informed that Genimous Group intends to publish the game in question via a separate entity that it owns, despite the Company having funded creation and production of the game;
  - c. The GGDs are considering adding a crypto coin to the application produced by the Company. The Petitioner's case will be that this would represent a high risk policy with no obvious benefit to the Company and is a move that they and the PDs would oppose were they able to influence the affairs of the Company.
26. The Company on 29 September 2021, presented the PDs with a draft agreement with the CIFIUS that involved the Company amongst other entities. The PDs were given 24 hours to review and sign the document, having previously been unaware that CIFIUS had taken an interest in the Company. That agreement required the replacements of one of the GGDs with a US national not financially connected with the Genimous Group. The PDs were not consulted upon the identity of that new director, Mr John Lash, and were simply provided with draft resolutions of the Board to sign. Mr Lash has been made aware of the Petitioner's above identified complaints, but has taken no apparent steps to challenge the GGDs on management issues.
27. The above instances, whether separately, together or in combination represent unreasonable and oppressive conduct against the Petitioner, being at all material times in the position of a minority shareholder. The actions of the Genimous Group have been entirely at odds with proper business practices and/or with the legitimate expectations of the Petitioner as set out above. Furthermore, the above conduct represents serious mismanagement of the Company on the part of the GGDs, which

mismanagement the Petitioner and / or the PDs have been powerless to prevent, arrest or rectify and which mismanagement appears to be ongoing in nature

I. NEED FOR AN INVESTIGATION IN THE AFFAIRS OF THE COMPANY

28. The GGDs made threats concerning Spigot employee termination, on which they followed through, and/or threats to strip intellectual property from the Company and appear to have taken preparatory steps to transfer certain of those assets to other entities. The GGDs have frozen the PDs out of management of the Company and/or made overpayments to Spigot and refused to investigate the same. Accounting functions have been outsourced to entities controlled by Genimous Group. The Petitioner has no visibility over whether or how the Company is being managed, the true financial position of the Company, whether or not intellectual property had been transferred or is in the process of transfer to other entities and/or upon other matters that may have impacted and may continue to impact on the value of the Petitioner's shareholding in the Company.

29. In the circumstances, there is a clear and urgent need to investigate the affairs of the Company and in particular the conduct of the GGDs since the PDs were excluded from the management of the Company.

J. GROUNDS FOR THE PETITION

30. For the reasons set out above, the Petitioner has justifiably lost all trust and confidence that the assets and affairs of the Company are being properly managed and mutual trust and confidence between the Petitioner and Genimous Group has irretrievably broken down.

31. The Petitioner believes that there is a need to investigate the Company's affairs and the conduct outlined above, in particular the instances of mismanagement in general and threatened mismanagement that have occurred since the rejection of the 2021 Offer in particular.

32. In all the circumstances, the Petitioner considers that it is just and equitable to wind up the Company and to place it under the control of independent official liquidators, in order to: i) ensure that its affairs are properly and promptly wound up, so that its remaining assets may be properly administered and returned to its economic stakeholders; ii) prevent any mismanagement of the Company and/or dissipation or misuse of its assets by the GGDs and / or Genimous Group; iii) to prevent continued oppression of the Petitioner as a minority shareholder; and iv) facilitate an independent investigation into the Company's affairs to the extent that is considered appropriate.

Nomination of Joint Official Liquidators

33. The Petitioner nominates Alexander William Lawson and 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 for appointment as joint official liquidators of the Company.

AND YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT

(1)

- a. The Company be wound up pursuant to section 92(e) of the Companies Act;
- b. Alexander William Lawson and 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 for appointment as joint official liquidators of the Company;
- c. The JOLs shall not be required to give security for their appointment;
- d. The JOLs shall have the power to act jointly and severally in their capacity as JOLs of the Company;
- e. No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of s.99 of the Companies Act;
- f. The JOLs shall have power to engage staff (whether or not as employees of the Company) to assist that person in the performance of that person's functions;
- g. The JOLs be at liberty to appoint Counsel, attorneys and professional advisers, 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 Companies Winding Up Rules, O.25;
- h. The JOLs be at liberty to apply generally.

- (2) In the alternative, pursuant to s.95(3)(d) of the Companies Act, an Order be made for the purchase of the Petitioner's shares by other members or by the Company itself at a price to be agreed between the parties or in default of agreement to be determined by the Court.
- (3) The costs of the Petitioner of and incidental to the Petition be paid out of the assets of the Company as an expense of the liquidation.
- (4) Such further or other relief be granted as the Court considers just.

AND your Petitioner will ever pray etc.

Date this 1st day of April 2022



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Dentons  
Attorneys for the Petitioner

NOTE: this Petition is intended to be served on the Company at its registered office

This **Petition** was presented by Dentons, attorneys for the Petitioner, whose address for service is 3<sup>rd</sup> Floor, One Capital Place, PO Box 10190. Shedden Road, George Town, Grand Cayman, KY1-1002, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on \_\_\_\_\_ 2022 at \_\_\_\_\_ am / pm.

Any correspondence 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 +1 345 949 4296.

This **Petition** was presented by Dentons, attorneys for the Petitioner, whose address for service is 3<sup>rd</sup> Floor, One Capital Place, PO Box 10190. Shedden Road, George Town, Grand Cayman, KY1-1002, Cayman Islands.