



COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2023 ( )

IN THE MATTER OF TANVEX BIOPHARMA, INC.

AND IN THE MATTER OF SECTION 15 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF ORDER 102 OF THE GRAND COURT RULES (AS AMENDED)

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PETITION

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TO: The Grand Court of the Cayman Islands

**THE HUMBLE PETITION OF:** Tanvex BioPharma, Inc. of Vistra (Cayman) Limited, P.O. Box 31119, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands (the “**Company**”) shows that:

1 The object of this Petition is to seek the confirmation of the Court of a reduction in the Company’s issued share capital (the “**Capital Reduction**”), pursuant to section 15 of the Companies Act (2023 Revision) (the “**Act**”).

**The Company**

2 The Company was incorporated on 8 May 2013 under the Companies Act as an exempted company with registration number 277584.

3 The registered office of the Company is Vistra (Cayman) Limited, P.O. Box 31119, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands Islands.

**THIS PETITION** is filed by Campbells LLP, Attorneys-at-Law for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, Cayman Islands (Ref: SMT/00468-41466)

- 4 The objects for which the Company was formed are unrestricted. The Company carries on business in the pharmaceuticals industry and it is listed on the Taiwan stock exchange.
- 5 Upon its incorporation, the authorised share capital of the Company was US\$50,000 divided into 500,000,000 ordinary shares having a nominal or par value of US\$0.0001. On 16 June 2016, the authorised share capital of the Company was increased to New Taiwan Dollar (“**NT\$**”) 5,000,000,000.00 divided into 500,000,000 shares of a nominal or par value of NT\$10.00 each, and this remains the amount of the share capital of the Company as at the date of this Petition.
- 6 As of the date of this Petition, a total of 352,609,101 ordinary shares have been issued, having a paid-in (paid-up) share capital value of NT\$3,526,091,010.
- 7 The Articles of Association of the Company provide, *inter alia*, as follows:

*“31. The Company may also by Special Resolution:*

*....*

*(b) subject to the Law, reduce its share capital and any capital redemption reserve in any manner authorised by law; ...”*

- 8 As shown in the audited financial statements of the Company as of 31 December 2021 (the “**2021 AFS**”), the Company had an accumulated loss of NT\$11,327,436,762 as at that date. The purpose of the proposed Capital Reduction is to utilise the credit arising from the Capital Reduction to offset this accumulated loss.
- 9 As at 31 December 2021, the total equity significantly outweighed the Company’s nominal liabilities, which were recorded in the 2021 AFS in the sum of NT\$1,918,794,496.

**Process for Capital Reduction**

- 10 On 25 November 2022 (as revised on 29 November 2022) the Company gave 15 days' notice to all of its shareholders and creditors, via announcements on the Taiwan stock exchange, of an Extraordinary Shareholders' Meeting to be held on 13 December 2022, at which one item of business would be the proposed capital reduction. The proposed capital reduction was stated to involve the cancellation of 235,072,734 ordinary shares (having a par value of NT\$10 per share) such that the paid-in share capital of the Company would be reduced by NT\$2,350,727.34, to a total of NT\$1,175,363,670 resulting in the share capital comprising 117,536,367 ordinary shares having a par value of NT\$10 per share. The rationale for the proposed share capital reduction was stated as being to improve the financial structure of the Company and make up for accumulated losses.
- 11 By a special resolution of the Company (the "**Special Resolution**") duly passed at an Extraordinary Shareholders' Meeting on 13 December 2022 (the "**EGM**"), it was resolved (subject to the sanction of the Grand Court) to *"cancel 235,072,734 ordinary shares with a par value of NT\$10 per share and reduce the paid-in capital by NT\$2,350,727,340. Based upon the current paid-in capital of the company of NT\$3,526,091,010, the paid-in capital after the capital reduction is NT\$1,175,363,670, the par value per share is NT\$10, and the shares after the capital reduction are 117,536,367 shares, and the capital reduction ratio is about 66.6666667. Shareholders recorded in the shareholder register on the capital reduction base date will eliminate their shares in proportion to the shares they hold, and approximately 666.6666667 shares will be reduced for every thousand shares; that is, approximately 333.3333333 shares will be exchanged for every thousand shares."*
- 12 As recorded in the Minutes of the EGM, the EGM was attended by representatives of 201,126,655 voting (ordinary) shares. The resolution was approved by a vote of 174,842,377 (i.e. 86.93%) of the voting shares present, and therefore passed.
- 13 Under the Taiwan Companies Law, which applies to the Company as it is listed on the Taiwan stock exchange, creditors are entitled to lodge any objections to a proposed consolidation of a company balance sheet within 30 days of having been given notice of a resolution having been passed. The

Company gave such a notice to creditors, via an announcement on the Taiwan stock exchange, on 13 December 2022, such that any objections were required to be lodged by 14 January 2023. The 30-day period expired on 14 January 2023 and no objections to the proposed capital reduction have been lodged.

- 14 The form of Minute proposed to be registered with the Registrar of Companies in accordance with section 17 of the Act is as follows:

*“The issued share capital of Tanvex BioPharma, Inc. (the “Company”) was by virtue of a Special Resolution passed on 13 December and with the confirmation of an order of the Grand Court of the Cayman Islands dated \_\_\_\_\_, 2023 reduced from NT\$3,526,091,010 divided into 352,609,101 ordinary shares of NT\$10.00 each to NT\$1,175,363,670 divided into 117,536,367 ordinary shares of NT\$10 each (the “Capital Reduction”). At the date of the registration of this Minute, the authorised share capital of the Company is 5,000,000,000.00 divided into 500,000,000, of which 117,536,367 ordinary shares of NT\$10 each have been issued and are fully paid or credited as fully paid.”*

#### **Impact of Capital Reduction**

- 15 The proposed Capital Reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital. Furthermore, the Capital Reduction will not alter the underlying assets, business operations, management or financial position of the Company nor will it affect the proportionate interests of shareholders.
- 16 The Capital Reduction will not have any cash flow impact or involve any return on investment to any one or more shareholders, nor will it involve a change in the Company’s total equity or the rights of shareholders.
- 17 Following an initial re-classification of the components of the Company’s total equity, the Capital Reduction will result in a reduction in the balance of the Share Capital line item in the Company’s

balance sheet and reduce the Company's accumulated losses, to the benefit of the Company and its shareholders collectively.

**The Company has minimal creditors, and the value of creditor claims is far exceeded by the Company's net assets**

18 According to the Company's management accounts (Income Statement and Balance) sheet dated 31 October 2022, the Company at that date had:

- (a) an accumulated deficit of US\$381,022,237.08 (which equates to approximately NT\$11,223,772,038);
- (b) creditor liabilities of US\$76,908.87 (which equates to approximately NT\$2,470,313);
- (c) cash holdings of US\$14,602,029.89 (which equates to approximately NT\$469,017,200); and
- (d) net assets of US\$ 61,268,604.70 (which equates to approximately NT\$1,967,947,583).

19 The financial position of the Company has not changed materially since 31 October 2022.

20 As at the date of this Petition, the Company has accrued expenses of approximately US\$12,424.77 in respect of accountants' fees, which will be paid shortly in the ordinary course of the Company's business. The Company has no other creditor liabilities.

21 The Company also has a sizable cash balance (in excess of US\$ 14,602,029.89 which equates to approximately NT\$469,017,200) to meet any liabilities arising (including in respect of professional fees associated with this Petition).

22 Consequently, the interests of any prospective or contingent creditors will be unaffected by the Capital Reduction.

**THE PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- 1 That the Capital Reduction of the Company proposed to be effected by the Special Resolution set forth in paragraph 11 of this Petition be confirmed and that the above-mentioned Minute be approved by the Court.
- 2 The Order entered on this Petition be produced to the Registrar of Companies and that an office copy thereof be delivered to him together with a copy of the Minute in respect of the capital reduction of the Petitioner.
- 3 Notice of the registration by the Registrar of Companies of this Order and the Minute be published once in the Cayman Islands within 21 days.
- 4 Such further and other order as this Honourable Court shall think fit.

Dated the 25<sup>th</sup> day of January 2023



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**Campbells LLP**

Attorneys for the Petitioner

**TO:** The Registrar of the Financial Services Division

**TIME ESTIMATE:** The estimate hearing time is 30 minutes (unless the petition is determined administratively)

**NOTE:** It is intended to serve this Petition on Tanvex BioPharma, Inc. of Vistra (Cayman) Limited, P.O. Box 31119, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands

**Notice of Hearing**

This Petition having been presented to the Court on the 7 day of Feb 2023 will be heard at the Law Courts, George Town, Grand Cayman on the day of 2023 at 9:30am or as soon thereafter as the Petition can be heard.