



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO.FSD 327 OF 2023 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF ADAMAS PING AN SPECIAL LIMITED

WINDING UP PETITION

TO: THE GRAND COURT

The humble petition of Yun Sheng Capital Company Limited, the registered office of which is situated at 18/F, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong (the **Petitioner**) shows that:

1. The Petitioner seeks an order for the winding up of Adamas Ping An Special Limited (the **Company**) pursuant to section 92(e) of the Companies Act (2023 Revision) (the **Companies Act**) on the grounds that it is just and equitable that the Company be wound up.

A. Introduction

2. The Company was incorporated in the Cayman Islands as an exempted company with limited liability and with registration number 302439 on 27 July 2015 pursuant to the Companies Act.
3. The Company's registered office is at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.
4. The Petitioner is a limited company incorporated under the laws of Hong Kong with its principal place of business being 18/F, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong.

B. The Company

5. The share capital of the Company is US\$100 divided into 100 shares of a par value of US\$1.00 each.

6. Pursuant to the latest Register of Members of the Company as of 18 May 2022, the shareholders of the Company are:
 - (a) The Petitioner 50 shares; and
 - (b) Adamas Group Limited (**AGL**) 50 shares.
7. Prior to being struck off as further discussed in paragraph 35 below, AGL was a company incorporated in the Cayman Islands as an exempted company with limited liability and with registration number 268137 on 18 April 2012. AGL's registered office was at 89 Nexus Way, Camana Bay, Grand Cayman, KY1-9007, Cayman Islands.
8. The objects for which the Company was established are unrestricted, but the shareholders of the Company agreed that the purpose of the Company is limited to those objects referred to in paragraph 11 below.

C. The Joint Venture

9. The Company was formed as part of a joint venture arrangement (the **JV**) between Mr Paul Lincoln Heffner (**Mr Heffner**) and Ping An Insurance (Group) Company of China, Ltd (together with Mr Heffner, the **Investors**) through their respective investment vehicles, namely AGL and the Petitioner.
10. The sole shareholder of AGL was Adamas Management Holdings Ltd, a British Virgin Islands (BVI) company, which was in turn wholly-owned by Mr Heffner through two BVI companies, namely Net Effect Ltd (50%) and Extensive Yield Global Investments Ltd (50%). Mr Heffner was the sole ultimate beneficial owner and director of AGL, as well as its holding BVI companies.
11. For the purposes of the JV, the Company was incorporated to act as the founder partner and a limited partner of the fund that the Investors intended to establish and referred to in paragraphs 12-15 below.
12. The JV was effected through Adamas Ping An Opportunities Fund L.P., being a Cayman Islands exempted limited partnership established on 30 July 2015 (In Voluntary Liquidation) (the **Fund**).
13. Pursuant to the Third Amended and Restated Limited Partnership Agreement dated 16 October 2017 (the **LPA**), the Fund was structured such that:
 - (a) Adamas Ping An Co-Management Limited (the **GP**), a company incorporated in the Cayman Islands as an exempted company with limited liability and with registration number 302440 on 27 July 2015, was the general partner;
 - (b) The Company was the founder partner and a limited partner;
 - (c) Adamas Asset Management (HK) Limited (currently in liquidation), a company incorporated in Hong Kong, was the investment advisor; and

(d) The limited partners were, besides the Company, DEG - Deutsche Investitions und Entwicklungsgesellschaft mbH, the Fire and Police Pension Fund, San Antonio; Gamma Emirates Investments L.L.C.; Kapitalforeningen Formuepleje Merkur, Sub fund Formuepleje Merkur KL; Morgan State University Foundation, Inc.; and Ultimate Epoch Limited (the **LPs**).

14. Consistent with the purpose of the JV, the purpose of the Fund was, amongst other things, to carry on business as an investor.
15. The Fund was the only investment vehicle in which the Company was a limited partner. The Company has no other business.

D. The Shareholders' Agreement

16. Ancillary to the JV and the Fund, to govern their relationship as shareholders of the Company and to make provision for the management and administration of the affairs of the Company, the Company, AGL and the Petitioner entered into a Hong Kong law governed shareholders' agreement dated 7 March 2016 (the **SHA**).
17. Clause 2 of the SHA states that the purpose of the Company is to act as the founder partner of the Fund.
18. Pursuant to Clause 4.1 of the SHA, the Company's board of directors (the **Board**) shall consist of three directors, with each of AGL and the Petitioner appointing one director, and one director (who shall be resident in the Cayman Islands) being jointly appointed by AGL and the Petitioner. The initial composition of the Board immediately after the execution of the SHA was Mr Lau Pak Hong (who was later replaced by Mr Heffner up until his death on 1 January 2021) as appointed by AGL, Mr Ruan Kai (who has since been replaced by Mr Liang Wei) as appointed by the Petitioner, and Mr Don Wayne Ebanks (**Mr Ebanks**) who was jointly appointed by AGL and the Petitioner as resident director in the Cayman Islands. Mr Ebanks has tendered his resignation as director of the Company with effect from 16 April 2021.
19. Clause 6.1 of the SHA sets out a substantial list of Reserved Matters (as defined in the SHA) that require the approval of both AGL and the Petitioner. Reserved Matters include, amongst others, the declaration of any dividends or other distributions and the liquidation (voluntary or otherwise) of the Company. As such, the SHA clearly contemplates that both AGL and the Petitioner would play active roles in the affairs of the Company.
20. Clause 7 of the SHA contains a set of procedures for dealing with a deadlock should the directors of the Company fail to agree on any management decision, or AGL and the Petitioner fail to agree on a Reserved Matter. Clause 7.3 of the SHA provides that if AGL and the Petitioner do not agree upon a resolution of the deadlocked Reserved Matter despite the procedures in Clause 7.1 and 7.2, the Company shall be wound up in accordance with its memorandum and articles of association. These deadlock procedures contemplate a situation where AGL and the Petitioner hold different opinions and fail to agree on a Reserved Matter, but they do not envisage one where either AGL and/or the Petitioner may fail to, or be unable to, express any opinions at all.

21. Clause 14.1 of the SHA provides for the duration of the SHA and states that the SHA shall continue in full force and effect until the earlier of the date on which all of the shares in the Company and interests in such shares are owned by one shareholder, the sale of all existing shares in the Company and interests in such shares to a third party, the conclusion of the winding up or liquidation of the Company, or the written agreement of all of the shareholders that are at such time parties to the SHA.
22. Clause 14.3 of the SHA provides that a party that ceases to hold shares in the Company and interests in such shares, shall automatically cease to be a party to the SHA, save that certain provisions of the SHA (not including Clause 6.1 of the SHA, as further discussed in paragraphs 19 above and 26 below) continue to bind such a party. Pursuant to Section 162 of the Companies Act, following the striking off and dissolution of AGL (as discussed in paragraph 37 below), its property (including the shares and any interest in these shares which AGL held in the Company) vested in the Minister of Finance.
23. For the reasons set out in this Petition, without waiving privilege, the Petitioner has been advised by its Hong Kong lawyers that the SHA has been terminated on the grounds of:
 - (a) Frustration: The death of Mr Heffner, the only man standing behind AGL as further discussed in paragraphs 27-31 below, and the striking off and dissolution of AGL, were unforeseen events beyond what could reasonably have been contemplated at the time when parties entered into the SHA. AGL also ceased to hold any interest in the shares of the Company and automatically ceased to be a party to the SHA under Clause 14.3 of the SHA. These events had the effect of bringing the Company to a standstill, which, in turn, resulted in the performance of the SHA becoming impossible. For instance, performance of the Petitioner's obligations under Clause 4.1(a) of the SHA to exercise all voting rights and powers of control available to it to ensure that the Board consists of three directors as agreed, and under clause 7.1 to resolve a deadlocked Reserved Matter, have been rendered impossible. In addition, the exercise of the Petitioner's right under Clause 5.2 of the SHA to convene shareholders' meetings to resolve a Reserved Matter also became impossible. Accordingly, the SHA has been frustrated and is automatically terminated; and/or
 - (b) Discharge by Performance: The purpose or "subject matter" of the SHA has been fully performed given the winding down and voluntary liquidation of the Fund (set out at paragraph 33 below). As a result, the SHA has been discharged by performance.
24. Further or in the alternative, the parties clearly did intend to provide for procedures to resolve potential deadlocks (i.e. Clause 7) and for the duration and termination of the SHA (i.e. Clause 14). Clause 14.3 provides that if a party ceases to hold shares or any interest in the shares in the Company, that party will automatically cease to be a party to the SHA save for certain clauses therein. To give business efficacy to the SHA, without waiving privilege, the Petitioner has been advised by its Hong Kong lawyers that it is reasonable and equitable to imply a term into the SHA to the effect that the SHA should be terminated in the event that either AGL or the Petitioner ceases to hold any shares or any interest in the shares in the Company.

25. Further or in the alternative, the SHA is silent as to what is to occur once the stipulated purpose of the Company comes to an end. To give business efficacy to the SHA, without waiving privilege, the Petitioner has been advised by its Hong Kong lawyers that it is reasonable and equitable to imply a term into the SHA to the effect that the SHA shall be terminated should all funds managed by the Company (in this case, the Fund only) be placed into liquidation and the purpose for which the Company was incorporated comes to an end.
26. Accordingly, the requirement in Clause 6.1 of the SHA that Reserved Matters, specifically the liquidation of the Company, require the approval of AGL and the Petitioner does not prevent the presentation of this Petition by the Petitioner.

E. The Death of Mr Heffner

27. On 1 January 2021, Mr Heffner committed suicide. Mr Heffner was the sole director and ultimate beneficial owner of AGL and his death ultimately meant that AGL was no longer able to function, or to consider and make any corporate decisions.
28. As a direct consequence of AGL's inability to function, the Company could no longer consider and pass any shareholders' resolutions including those that would have been required for Reserved Matters under the SHA.
29. Since Mr Heffner's death, the Petitioner has not been able to contact the independent directors of Mr Heffner's corporate vehicles that directly or indirectly held shares in AGL, because: (i) AGL had never disclosed the identify of these independent directors to the Petitioner; and (ii) the Petitioner only found out from the judgment in the liquidation of Adamas Asset Management (HK) Limited in Hong Kong that Mr Heffner was the sole owner and director of the corporate vehicles above AGL. Nevertheless, the Petitioner as well as various LPs and certain current/former legal advisers and auditors have made multiple attempts to communicate with representatives of AGL who were previously put in charge of communicating with the Petitioner. Such attempts were unsuccessful.
30. On or around April 2021, the Petitioner received verbal advice from Briscoe Wong Advisory Limited, the liquidators of Adamas Asset Management (HK) Limited, the investment advisors of the Fund, that AGL had not been able to function as a result of the death of Mr Heffner.
31. The death of Mr Heffner has meant that the AGL is no longer able to function or make any corporate decisions. As a result, the Company cannot:
 - (a) effectively consider and pass any shareholders' resolutions including those that would be required for Reserved Matters under the SHA; or
 - (b) properly carry on its business as the founder partner and a limited partner of the Fund, a consequence of which has been that the Company's bank accounts were closed because of AGL's failure to provide various particulars and documents relating to AGL for the purposes of due diligence checks performed by DBS Bank (Hong Kong) Limited.

F. Liquidation of the Fund

32. Notwithstanding Mr Heffner's death and the consequent inability of AGL to function, the GP was able to work with AGL's only remaining nominated director to the Board, Mr Lau, so as to enable the GP to perform some limited tasks as general partner of the Fund, to the extent that these functions could be performed by way of board resolutions without requiring shareholders' approval. These included making distributions to the LPs with the final distribution being made in April 2022. The Fund no longer holds any assets for further distribution to the LPs including the Company.
33. Following the making of the final distribution to the LPs, the GP and the LPs have agreed to terminate the Fund in accordance with clause 17.1(b) of the LPA and appoint Ms So Kit Yee Anita of Ernst & Young Transactions Limited and Ms Tammy Karina Fu of EY Cayman Ltd. as joint voluntary liquidators of the Fund (the **JVLs**). This was achieved through the following steps:
- (a) The directors of the GP initially resolved in August 2022 to, amongst other things, place the Fund into voluntary liquidation and proposed that the JVLs be appointed over the Fund.
 - (b) The GP subsequently received the written consents of all of the LPs to place the Fund into voluntary liquidation and for the appointment of the JVLs.
 - (c) Following receipt of the written consents from the LPs, on 17 April 2023, the GP resolved, amongst other things that the Fund be terminated and wound up voluntarily with the JVLs appointed over the Fund as of that date.
34. The Fund has accordingly entered into a members' voluntary liquidation on 17 April 2023 with the JVLs appointed over it as of that date.

G. Striking off and dissolution of AGL

35. On 28 October 2022, the Petitioner obtained a copy of a Cayman Online Registry Information System report (**CORIS Report**) and became aware for the first time that AGL had been struck off by the Registrar of Companies (**Registrar**) on 31 August 2021 and was thereupon dissolved by operation of section 156(1) and/or section 156A of the Companies Act. This means that the Registrar had reasonable cause to believe that the Company was not carrying on business, was not in operation and/or had failed to pay an administrative fine imposed in accordance with Part XVIIIB of the Companies Act. The Petitioner further understands from the CORIS Report that the registered office of AGL has also resigned.

H. Grounds for Winding Up

36. The Petitioner believes that it is just and equitable that the Company should be wound up pursuant to section 92(e) of the Companies Act and independent liquidators be appointed on the grounds that:
- (a) The Company was incorporated for and has the sole purpose of acting as founder partner and limited partner of the Fund;

(b) The current status of the Fund is that it:

- i. has made final distributions to its LPs;
- ii. is in voluntary liquidation, and therefore, is no longer operational; and
- iii. will shortly cease to exist; and

(c) The purpose of the Company has been spent and the Company is unable to carry on the function for which it was formed;

and as a result, the Company has lost its substratum.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Company be wound up in accordance with the Companies Act;
2. Ms So Kit Yee Anita of Ernst & Young Transactions Limited, 27/F One Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong and Ms Tammy Karina Fu of EY Cayman Ltd., 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman KY1-1106, Cayman Islands be appointed as joint official liquidators of the Company to act jointly and severally (the *Liquidators*);
3. The Liquidators shall not be required to give security for their appointment;
4. The Liquidators be given the power to act jointly and severally in their capacity as liquidators of the Company;
5. The Liquidators be authorised to take any such action as may be necessary or desirable to obtain recognition of their appointment in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose;
6. The Liquidators be authorised to exercise any of the powers set out in section 110(2) of the Companies Act and Part II of the Third Schedule thereof, without the further sanction of this Honourable Court;
7. No suit, action or other proceeding be proceeded with or commenced against the Company except with the leave of this Honourable Court and subject to such terms as this Honourable Court may impose;
8. No disposition of the property of the Company by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this order be voided by virtue of Section 99 of the Companies Act;
9. The Liquidators 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 and on such terms as they may think fit and to remunerate them out of the assets of the Company;

10. The remuneration and expenses of the Liquidators be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners' Regulations 2018 (as amended) and Order 20 of the Companies Winding Up Rules 2018 (as amended);
11. Subject to section 109(2) of the Companies Act and the Insolvency Practitioner Regulations 2018 (as amended), the Liquidators be authorised to render and pay invoices out of the assets of the Company for their own remuneration;
12. The Liquidators 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 Company as an expense of the liquidation;
13. The Liquidators be at liberty to apply generally; and
14. The costs of and incidental to this Petition be paid forthwith out of the assets of the Company as an expense of the liquidation to be taxed if not agreed.

AND your Petitioner will ever pray etc.

Dated this 3rd day of November 2023



HARNEY WESTWOOD & RIEGELS

Attorneys-at-Law for and on behalf of the Petitioner

NOTE: This Petition is intended to be served on the Company.

THIS **PETITION** is presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 3rd Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: 047173.0028/JGW/JNW).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on 5th December 2023 at 10:00am.

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, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: 345-949-4296.