IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0132 OF 2024 (DDJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF TFKT TRUE HOLDINGS

WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

The humble Petition of Active Gains Universal Limited ("**AGUL**" or the "**Petitioner**") a company incorporated under the laws of the British Virgin Islands on 15 March 2017 with company number 1939555 and with its registered office situated at Conyers Trust Company (BVI) Limited, Commerce House, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands, VG1110, shows that:

A. INTRODUCTION

<u>The Company</u>

1. TFKT True Holdings (the "**Company**"), was incorporated as an exempted limited company under the laws of the Caymans Islands on 13 April 2017 (company registration number 321938) and its registered office is situated at the offices of Harneys Fiduciary (Cayman) Limited, 4th Floor, Harbour Place, 103 South Church Street, P.O. Box 10240, Grand Cayman, KY1-1002, Cayman Islands.

2. The Company is authorised to issue a maximum of 1,000,000 ordinary shares of par value US$1.00 each and as of the date of this Petition, the Petitioner's

understanding is that the Company has issued a total of 53,290 shares, each of which have been fully paid up.

3. Based on the latest register of members of the Company in the Petitioner's possession dated 29 January 2021, the current shareholding structure of the Company is as below:

(a) AGUL, the Petitioner, holding 14,500 shares of the Company equivalent to approximately 27% of the Company's total issued shares; and

(b) Fester Global Limited ("**Fester**", together with AGUL, the "**Shareholders**"), holding 38,790 shares of the Company equivalent to approximately 73% of the Company's total issued shares.

4. As explained in further details below in paragraphs 80 to 89, on 29 January 2021, Fester caused 10,000 shares of the Company held by the Petitioner to be wrongfully transferred to Fester. Immediately prior to the transfer of shares on 29 January 2021, the shareholding structure of the Company was as follows:

(a) AGUL, the Petitioner, held 24,500 shares of the Company equivalent to approximately 46% of the Company's total issued shares; and

(b) Fester, held 28,790 shares of the Company equivalent to approximately 54% of the Company's total issued shares.

5. The Company was incorporated as part of a restructuring exercise (the "**Restructuring**") as a holding company to indirectly hold the shares of True Fitness Holdings (Singapore) Pte Ltd ("**True Fitness (Singapore)**") which in turn owns a number of companies incorporated in Singapore including True Yoga Pte Ltd, True Fitness (STC) Pte Ltd and True Fitness Pte Ltd (collectively, the "**True Group**") operating various fitness centres and gymnasiums in Singapore, Taiwan and the People's Republic of China.

6. Prior to the Restructuring, the True Group currently held by True Fitness (Singapore) were owned by CJ Group Pte Ltd which belongs to a group of companies (the "**CJ Group**") ultimately owned by Mr. Wee Patrick John Ewe Seng ("**Mr. Wee**").

7. Given the corporate structure, the managements of the group of companies held by the Company often use the terms "*True Group*", "*TFKT Group*", "*True Cayman*

Group", "*True*" and "*True Yoga*" interchangeably to refer to the Company and its subsidiaries (the "**Group**").

<u>The Petitioner</u>

8. The Petitioner, AGUL, was incorporated under the laws of the British Virgin Islands on 15 March 2017 (company number 1939555) and its registered office is situated at the offices of Conyers Trust Company (BVI) Limited, Commerce House, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands, VG1110.

9. The sole director of the Petitioner is Mr. Wee.

10. The sole shareholder of the Petitioner is Mr. Wee.

<u>The First Respondent</u>

11. Fester was incorporated under the laws of the British Virgin Islands (company number 1923366) and its registered office is situated at the offices of Vistra Corporate Service Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands.

12. Fester is wholly owned by Kontafarma China Holdings Limited, formerly known as Tongfang Kontafarma Holdings Limited ("**Tongfang**"), a company incorporated under the laws of the Cayman Islands and listed on the Hong Kong Stock Exchange (stock code: 1312).

B. KEY ALLEGATIONS

13. The Petitioner is of the view that its relationship with Fester, being the only two Shareholders of the Company, is at an irreparable state and it would not be in the best interests for the Shareholders or the Company in the current untenable state of affairs to continue. This current state of affairs has been brought about by the actions of Fester and its nominated directors on the board of directors of the Company (who currently control the board) which can be summarised in the **<u>seven points</u>** below, and which are explained in more detail in the following sections:

    (a) Fester has used different hostile and aggressive methods in attempts to force the Petitioner's representatives out of the Company and have orchestrated a share transfer to wrongfully transfer the Petitioner's shares to Fester with the aim to take control over the Company;

(b) Fester's representatives on the Company's board of directors have knowingly caused the Company to act in breach of and Fester has breached the Company's Amended and Restated Articles of Association ("**Articles**") dated 19 May 2017 and shareholders' agreement ("**SHA**") dated 29 May 2017 agreed between the Shareholders (i.e. Fester and AGUL) and the Company, as part of an overall campaign to oppress and prejudice the Petitioner, AGUL as a minority shareholder. By way of example, such breaches of the contractual bargain agreed between the Shareholders and the Company include: (i) Fester causing the board of the Company to pass board resolutions without the necessary quorum and/or voting thresholds having been met and (ii) passing resolutions to force the Petitioner's representative to waive its rights to challenge resolutions from being passed at inquorate Company board meetings which is extremely prejudicial to the Petitioner's rights;

(c) Fester and its representatives control the Company and they have engaged in misconduct and demonstrated a lack of probity in the conduct of the Company's affairs, including (but not limited to): acting in bad faith, exercising their powers for improper purposes, acting under a conflict of interest, and failing to act in the best interests of the Company as a whole. Fester has used its position as the Company's majority Shareholder and control of the Company's board of directors to authorise various transactions for the benefit of Fester's parent Company, Tongfang. Fester's representatives have also caused the Company to fail to recover, without any attempts to recover, certain debts that are due and owing, which are properly payable by certain franchisee(s) to the Company's subsidiary;

(d) Fester has failed to honour its contractual obligations set out in the Company's SHA and excluded the Petitioner from making decisions regarding the Company which ought to be decided by the Shareholders' together unanimously;

(e) Fester's representatives have failed to disclose the financial information in an acceptable standard to the Petitioner despite repeated requests to do so and prohibited the Petitioner's representative, Mr. Wee, who was also a director of the Company to access and/or review the Company's records which made it impossible to perform his duties as a director;

(f) Fester has commenced various malicious proceedings against the Petitioner's representative causing the founder and representative of

AGUL, Mr. Wee, who is a single father with two children to be forced out of Taiwan, a key place of business of the group, and have to travel in the midst of COVID to deal with various legal attacks in different jurisdictions; and

(g) Fester has a history of not acting honestly with the Petitioner and this was evidenced in the transaction the Fester's representatives procured in relation to the disposal of the shares charged in favour of the Company at substantially under fair market value and which appears to benefit a Tongfang related entity, both of which calls for an explanation.

C. THE RESTRUCTURING

14. On 6 May 2017, Fester entered into a sale and purchase agreement (the "**SPA**") with AGUL for the acquisition of 51% shareholding of the Company held by AGUL at the time (equivalent to 25,500 shares of the Company) and a second sale purchase agreement for the acquisition of 29% shareholding in a company named True Yoga Holdings Limited ("**True Yoga**") held by Active Yield International Limited ("**AYIL**") for the total consideration of US$36,720,000. Subsequently, on 19 May 2017, the Company adopted the Articles.

15. As a condition precedent to the SPA, the CJ Group underwent a restructuring during which the shares of the True Group, directly or indirectly owned by the CJ Group, were transferred to a new holding company, True Fitness (Singapore). True Fitness (Singapore) is 100% owned by Profit Heaven Management Ltd ("**Profit Heaven**"), a company incorporated under the laws of the British Virgin Islands. The Company is the sole shareholder of Profit Heaven.

16. Pursuant to the SPA and a SHA executed between Fester, AGUL and the Company on 29 May 2017, Fester agreed to and invested US$5,000,000 on 7 July 2017 into the Company by way of subscribing for 3,290 shares of the Company for an aggregate subscription price of US$5,000,000. As a result of the investment and the issuance of the new shares, Fester became the owner of 54% shares of the Company and AGUL became the owner of 46% shares of the Company. The Company became under control of the new majority holder, Fester, as a result of the Restructuring. As agreed under the SPA, on 29 May 2017, AGUL and Fester executed a share charge pursuant to which AGUL agreed to charge 10,000 shares in the Company ("**Charged Shares**") as a continuing security for the payment of

the secured Shortfall (as defined in the SPA and set out below) in favour of Fester (the “**Share Charge**”).

17. As part of the restructuring, on 29 May 2017, True Fitness Holdings (Singapore) Pte Ltd (a wholly owned subsidiary of the Company) (“**True Fitness (Singapore)**”) as franchisor entered into a franchise agreement (“**Franchise Agreement**”) with True Concept Limited (a wholly owned subsidiary of True Yoga) (“**True Concept**”) as franchisee. Pursuant to the Franchise Agreement, True Concept was required to periodically pay True Fitness (Singapore) a franchise fee (“**Franchise Fee**”) in exchange for obtaining the right(s) and licence to run the fitness and yoga centres under the “True” brand in Taiwan.

18. By a share charge entered into between AYIL and the Company dated 29 May 2017 (the “**True Yoga Share Charge**”), as security for the payment of the Franchise Fee by True Concept, AYIL charged the 11,732,395 shares it held in True Yoga, being 71% of the issued share capital of the company at the time, in favour of the Company.

19. By a share charge entered into between the Company and True Yoga dated 29 May 2017 (the “**True Concept Share Charge**”), as security for the payment of the Franchise Fees by True Concept, True Yoga charged the 1,800,000 shares it held in True Concept, being 100% of the issued share capital of True Concept at the material time, in favour of the Company.

20. Below is a diagram showing the shareholding structure of the group comprising of the Company and True Yoga as at 7 July 2017:

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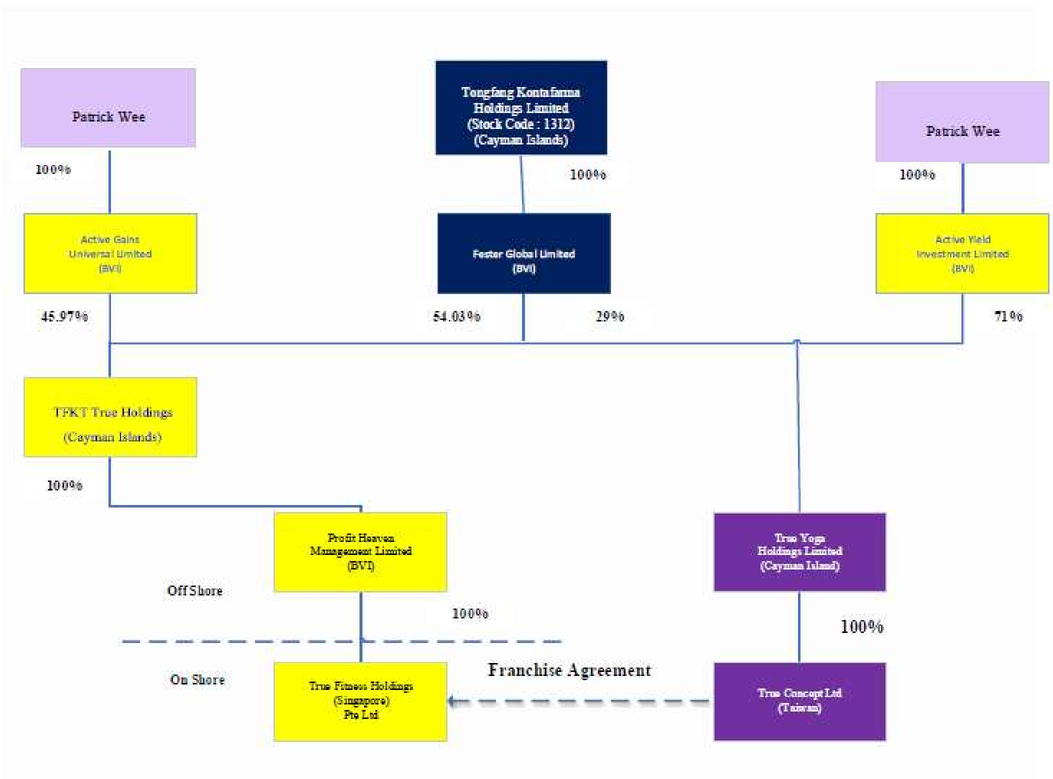

<u>The SPA</u>

21. For the purpose of this Petition, the relevant terms of the SPA are extracted below:

(a) Clause 10 of the SPA provides that:

"***10. PROFIT SHORTFALL***

10.1 In consideration of the Purchaser entering into this Agreement, each of the Warrantors hereby undertakes to the Purchaser that the Audited Net Income shall not be less than figures specified below:

(a) the Audited Net Income as shown in the 2017 Accounts shall not be less than US$8,200,000;

(b) the Audited Net Income as shown in the 2018 Accounts shall not be less than US$10,900,000; and

(c) the Audited Net Income as shown in the 2019 Accounts shall not be less than US$13,800,000.

10.2 Each of the Warrantors undertakes to the Purchaser that <u>if the respective Audited Net Income as shown in the Relevant Accounts is less than the amount specified in Clause 10.1 and the Shortfall (as defined below in Clause 10.4) is more than 10%, the Vendor shall pay to the Purchaser an amount equal to the Shortfall on a dollar-to-dollar basis in US dollar on or before the seventh Business Day</u> from the date of availability of the Relevant Accounts which shall be ready on or before 31 March of each of the next three years, such payment shall be made by the Vendor delivering to the Purchaser a cashiers' order and made payable to the Purchaser (or as it may direct).

10.3 For the avoidance of doubt, the Parties agree that the Audited Net Income as shown in the Relevant Accounts which is used to compute the Shortfall in this clause shall not take into account and/or be reduced by any additional tax liability incurred by the True Cayman Group resulting from the franchise fee payable by True Concept under the Franchise Agreement (except for the prevailing corporate tax imposed by the Inland Revenue Authority of Singapore but regardless of (i) any withholding tax that may be imposed by the tax authority in Taiwan and (ii) the tax deductibility of such franchise fee in the books of True Concept) (the "Tax-caused Shortfall"). If any of the Shortfall is caused by such Tax-caused Shortfall, the Vendor shall pay to the Purchaser an amount equal to such Tax-caused Shortfall on a dollar-to-dollar basis in US dollar multiplied by the Vendor's effective shareholding percentage for the particular year accordingly. The effective shareholding percentage of the Vendor means the total number of shares in True Cayman held by the Vendor expressed as a percentage of all issued shares of True Cayman.

*10.4 For the purpose of this Clause 10, "**Shortfall**" means the difference between the amounts specified in Clause 10.1 and the Audited Net Income as shown in the Relevant Accounts.*

10.5 The following provisions shall apply for the preparation of the Relevant Accounts:

(a) *the financial performance on newly opened clubs not set out in Schedule 8 and club openings after the Completion Date shall not be taken into account for the said Audited Net Income;*

(b) *the same accounting principles, bases and policies as those adopted in the preparation of the Audited Accounts shall be adopted by the True Cayman Group on a consolidated basis;*

(c) *subject to paragraph (b) above, where any matter or item covered or dealt with or which ought to be covered or dealt with in the Relevant Accounts may be subject to more than one accounting treatment, the matter or item shall be dealt with in accordance with the IFRS; and*

(d) *depreciation on a straight-line basis shall be made.*

10.6 *Each of the Warrantors hereby authorises the Purchaser (but without obligation on the part of the Purchaser) if a default of payment by the Warrantors is subsisting to apply any money the Warrantors may have with the Purchaser in or forwarding satisfaction of any sum at any time due and payable by it to the Purchaser under or in relation to this Clause 10.*

10.7 *To further ensure the payment obligation under this Clause 10, the Vendor hereby agrees to deliver a share charge in favour of the Purchaser upon Completion pursuant to which the Vendor shall charge 10,000 shares in True Cayman (representing 20% of the entire issued share capital of True Cayman as at the date of this Agreement) in favour of the Purchaser. In the event that the Vendor fails to pay to the Purchaser for the Shortfall, the Purchaser shall be entitled to directly offset the Shortfall against the amount of any outstanding Consideration payable by the Purchaser to the Vendor as well as sell or transfer the charged shareholdings to cover the Shortfall as well as any interests accrued thereon.*

10.8 *The Vendor shall be entitled to sell 4,500 shares in True Cayman (representing 9% of the entire issued share capital of True Cayman as at the date of this Agreement) at US$10,800,000 based on 8.0x of audited EBITDA of US$15,000,000 in the 2017 Accounts to the*

Purchaser or the Purchaser's nominee, provided that the Audited Net Income in the 2017 Accounts shall be not less than US$8,200,000 (subject to a 10% deviation). The Purchaser shall undertake to be obliged to complete the purchase and/or shall undertake to procure its nominee to complete the purchase of the said additional 9% shareholdings from the Vendor within ten Business Days of the Vendor giving notice to the Purchaser, subject to compliance of the Listing Rules by FEL [Fester] *on a best endeavours basis. The Parties acknowledge and agree that in the transfer contemplated under this Clause, the Vendor shall not be obliged to provide any warranties or indemnities to the Purchaser or the Purchaser's nominee other than warranties as to the Vendor's ownership of such shares free from Encumbrances and its capacity to sell its shares. For the avoidance of doubt, the Parties agree that the Audited Net Income as shown in the 2017 Accounts for the purpose of this Clause 10.8 shall not take into account and/or be reduced by any Tax-caused Shortfall.*" (emphasis added)

(b) Pursuant to clause 1.1 of the SPA, "*Audited Net Income*" means:

"*the audited consolidated net profit after Tax attributable to the True Cayman Group* [the Company and its subsidiaries] *as shown in the Relevant Accounts*"

(c) Pursuant to clause 1.1 of the SPA, "*Warrantors*" means:

"*the Vendor and Mr. PJW* [Mr.Wee]*, and a 'Warrantor' shall mean any of them*".

<u>The SHA</u>

22. For the purpose of this Petition, the key terms of the SHA are extracted below:

(a) Clause 3.2.4:

"***Board Reserved Matters:*** *Subject to any additional requirements specified by Applicable Laws, the Shareholders agree to procure that none of the matters set out in Schedule 2 (each a "Board Reserved Matter") shall be taken by the Company, save with (i) the majority approval by the Board in respect of Board Reserved Matters as set out in Part A of Schedule 2 or (ii) the unanimous written approval by the Board in respect of Board Reserved Matters as set out in Part B of Schedule 2.*"

(b) Clause 3.3:

"***Shareholders' Obligations***: *Each of the Shareholders shall exercise its voting rights and powers available to it to ensure that:*

3.3.4 *the Company shall keep full and proper account records in accordance with generally accepted accounting principles relating to its business, undertakings and affairs, which records* <u>*shall be made available at all reasonable times for inspection by the Directors and/or the Shareholders by prior appointment during office hours*</u>*;*

3.3.5 *the Company shall prepare annual and interim accounts, in each case in accordance with generally accepted accounting principles and in compliance with all applicable laws in respect of each accounting reference period, and shall procure that the annual accounts are audited as soon as practicable and* <u>*shall supply copies of the same, both in draft and final form, to each of the Shareholders immediately upon their issue, and in any event not later than 45 days after the end of each relevant financial period*</u> *(annual/semi-annual) so as to ensure FEL's* [Fester] *compliance with the Listing Rules;*

…

3.3.7 <u>*the Company shall prepare and provide to each of the Directors monthly management account within 15 days after the end of each month and operating statistics and such other trading and financial information*</u> *in such form as the Board may agree to keep each of the Shareholders properly informed about the business and financial condition of the Company and generally to protect their interest.*

…

3.3.10 *the Company shall* <u>*permit each Director (or his alternative or designee) to visit and inspect and examine the Company's properties and records, and to discuss the affairs of the Company with its management*</u>*.*" (emphasis added)

(c) Clause 4:

"***4. Board of Directors***

4.1 ***Number:*** *Unless otherwise unanimously agreed upon in writing by the Shareholders, the Board shall consist a maximum of 5 Directors.*

4.2 ***Composition:*** *The Board shall at all times consist of 3 Directors nominated by FEL* [Fester] *(the "**FEL Directors**") and 2 Directors nominated by AGUL (the "**AGUL Directors**"). Each Director shall be appointed by an ordinary resolution of the company and each Shareholder agrees to vote at general meetings of shareholders, execute any written shareholder resolutions and provide written consents (as applicable) with respect to the Share held by it in order to give effect to such appointments.*

4.3 ***Right of Appointment and Removal****: The right of appointment conferred on a Shareholder under Clause 4.2 shall include the right of that Shareholder to remove at any time from office such person appointed by that Shareholder as a Director and the right of that Shareholder at any time and from time to time to determine the period during which such person shall hold the office of Director.*

4.4 ***Notice in Writing:*** *Each appointment or removal of a Director pursuant to this Clause shall be in writing and signed by or on behalf of the Shareholder concerned and shall be delivered to the registered office for the time being of the Company.*

4.5 ***Further Director:*** *Whenever for any reason a person appointed by a Shareholder ceases to be a Director, that Shareholder shall be entitled to appoint forthwith another Director.*

…

4.8 ***Chairman***

4.8.1 *The Chairman of the Board for the period of 3 years commencing from the date this Agreement shall be one of the FEL* [Fester] *Directors.*

4.8.2 *The* *Chairman shall not be entitled to a second or casting vote at any meeting of the Board or at any general meeting of the Company*.

4.9 Meetings of Directors

4.9.1 *The Directors shall hold meetings of the Directors at least once every three months at such time and place as the Board may decide from time to time. Additional board meetings may be called by any Significant Shareholder or at least 30 per cent. in number of the Directors.*

4.9.2 *Each meeting of the Directors shall be convened and chaired by the Chairman, or failing him such Director nominated by the other Directors present.*

4.9.3 *Each of the Directors shall be entitled to receive not less than 7 days' written notice of all meetings of the Directors (or such shorter period of notice in respect of any particular meeting as may be agreed jointly by all the Directors) specifying the date, time and place of the meeting and the business to be transacted thereat.*

4.9.4 *The quorum at a meeting, or adjourned meeting, of Directors necessary for the transaction of any business of the Company shall be 3 Directors, comprising at least 2 FEL* [Fester] *Director and 1 AGUL Director, present at the time the relevant business in transacted. In the event that a meeting of Directors duly convened cannot be held for lack of quorum, the meeting shall be adjourned to the same time and day of the following week and at the same place and at least 3 days' notice shall be given to the Directors in relation to such adjourned meeting.*

4.9.5 *Subject to the Board Reserved Matter as set out in Part B of Schedule 2, all resolutions of the Directors at a meeting or adjourned meeting of the Directors shall be adopted by a simple majority vote of the Directors present. Each Director shall be entitled to one vote in respect of each matter to be decided upon.*

4.10 Chief Executive Officer and Chief Financial Officer

4.10.1 *The chief executive officer of the Company shall be nominated by FEL* [Fester] *and be appointed by the Board. As at the date of this Agreement, the chief executive officer shall be Patrick John Wee Ewe Seng;*

4.10.2 *As at the date of this Agreement, the chief financial officer of the Company shall be nominated by FEL* [Fester] *and the Directors shall procure the appointment of the nominated chief operating officer. As at the date of this Agreement, <u>the chief financial officer of the Company shall be Chen Hwee Alvin</u>, who shall be in charge of the finance and accounting functions including but not limited to financial budgeting, financial reporting and fund raising. The chief financial officer shall report to the chief executive officer of the Company and the chief financial officer of FEL* [Fester] *(or such other person to be designated by FEL* [Fester]*), and to such other persons as may be required by the Board from time to time.*

4.11 *<u>The Shareholders further agree to maintain the stability of the key management team of the Company for so on long as Patrick John Wee Ewe Seng shall be the chief executive officer of the Company and he shall be retained for a term of three years form the date of this Agreement</u>, provided that Patrick John Wee Ewe Seng shall not be guilty of any grave misconduct or wilful neglect in the discharge of his duties as the chief executive officer of the Company, his employment shall be renewed.*" (emphasis added)

(d) Clause 5.2:

"Quorum: *The quorum at a general meeting, or adjourned meeting, of the Company necessary for the transaction of any business of the Company shall be 2 Shareholders present in person or by proxy, including* [Fester] *FEL and AGUL. In the event that a general meeting of the Company duly convened cannot be held for lack of a quorum, the meeting shall be adjourned to the same time and day of the following week and at the same place and at least 3 days' notice shall be given to the Shareholders in relation to such adjourned meeting."*

(e) Clause 5.6:

"***Shareholder Reserved Matters**: Notwithstanding any provisions in this Agreement and subject to any additional requirements specified by Applicable Laws, the Shareholders agree to procure that none of the matters set out in Schedule 3 (each a "Shareholder Reserved Matter") shall be taken by the Company save with the unanimous written approval of all Significant Shareholder*"

(f) Clause 6:

"***6 Dividend Policy***

6.1 Distribution of net profit

6.1.1 *The annual general meeting of the Company at which the annual audited accounts of the Company for a 12-month financial reporting period are laid before the Shareholders (the "**Audited Accounts**") must be held not later than 9-days from the end of the relevant financial year.*

6.1.2 *The Auditors shall be instructed to report (at the expense of the Company) the amount of the profits available for distribution by the Company at the same time as they sign their report on the Audited Accounts.*

6.1.3 *The Company shall distribute to the Shareholders not less than 25 per cent. of the Company's net profit after tax lawfully available for distribution in each financial year subject to the Board making reasonable provisions and transfers to reserves and having regard to the repayment of loans, strategic or growth plans and/or future needs of the Company and the Group*." (emphasis added)

(g) Clauses 7.1 and 7.2:

"***7.1*** *Any financing required by the Company shall be determined by the Board and unanimously approved in writing by all the Shareholder ("**Additional Financing**").*

7.2 *External Finance*

*If Shareholders unanimously approve in writing Additional Financing by way of loans from banks or other third parties, the Shareholders shall use their reasonable endeavours to assist the Company in obtaining such loans. It is agreed that to the extent that any guarantees, securities, indemnities, warranties or other undertakings (collectively the "**Undertakings**") are required to be given as condition in relation to any external financing to the Company, any such Undertakings shall at all times be unanimously approved in writing by all the Shareholders. No Shareholder shall have any authority to commit the Company to any such Undertaking.*" (emphasis added)

(h) Clause 10:

"***General Obligations of Shareholders***

Each Shareholder undertakes to exercise all voting rights and powers of control available to it in relation to the Company so as to give full effect to the terms and conditions of this Agreement including, where appropriate, the carrying into effect of such terms as if they were embodied in the Constitution, and procuring that the Company adheres to the terms and conditions of this Agreement."

(i) Clauses 11.1 to 11.5, 11.7 and 11.9:

"***11.1*** *T<u>he Shareholders hereby declare that it is their intention that the Company shall achieve an IPO or Trade Sale by 31 March 2020</u>. In this connection, the Shareholders hereby undertake to take all reasonable steps to ensure that the above intention is fulfilled as soon as reasonably practicable.*

11.2 *Notwithstanding anything to the contrary contained in this Agreement, <u>in the event that</u> no formal application has been made to the Stock Exchange of Hong Kong Limited for an IPO or <u>no agreements have been entered into by the Company for a Trade Sale of the Company by 6.00pm on 31 March 2020, the Parties agree that</u>, unless otherwise agreed by the Parties, <u>the Company shall forthwith without further notice to be given to or by any Shareholder, be subject to a Trade Sale and all Shareholders agree to explore the opportunity or a Trade Sale at the Prescribed Price</u>*

(as defined below) as soon as reasonable practicable, subject to compliance with the Listing Rules.

11.3 *The "Prescribed Price" in respect of any Shares proposed to be transferred to a third party, shall be the fair value of the Shares in the Company as determined at or around such time by an independent firm appointed jointly by FEL* [Fester] *and AGUL in accordance with this Clause 11 (the "**Appointed Valuer**")*

11.4 *No person shall be appointed as the Appointed Valuer unless it is a Big Four Accounting Firm, that is PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young and KPMG.*

11.5 *FEL* [Fester] *and AGUL shall jointly appoint one Appointed Valuer to conduct an independent valuation of the fair value of the Shares of the Company ("Fair Value") if they agree to proceed with the Trade Sale.*

…

11.7 *<u>The Prescribed Price as determined by the Appointed Valuer shall be final and binding on all persons concerned.</u> The Appointed Valuer shall act hereunder in the determination of the Prescribed Price as expert and not as arbitrator and in the absence of fraud, the Appointed Valuer shall be under no liability to any such person by reason of its determination or certificate or by anything done or omitted to be done by it for the purposes thereof or in connection therewith.*

…

11.9 *<u>Once a Prescribed Price has been determined in accordance with this Clause 11, the Parties hereby agree to engage and mandate the Appointed Valuer to procure a third party purchaser for all of the Company's Shares and all Shareholders agree to act in accordance with Clause 10 of this Agreement to give full effect to the terms of this Clause 11</u>."* (emphasis added)

(j) Clause 22 provides that:

"22. Non-Waiver

No failure on the part of any Party to exercise, and no delay on its part in exercising, any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. <u>The rights provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law</u>." (emphasis added)

(k) Clause 25 provides that:

"25. Remedies

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. <u>The election of any one or more of such remedies by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other available remedies</u>." (emphasis added)

(l) Clause 27 provides that:

*"**27. Prevalence of Agreement***

In the event of any ambiguity or conflict arising between the terms of this Agreement (as amended, modified or supplemented from time to time) and those of the Constitution, <u>the terms of this Agreement shall prevail as between the Shareholders</u> and, where applicable, the Shareholders shall forthwith cause such necessary alterations to be made to the Constitution as are required so as to remove any ambiguity or conflict." (emphasis added)

(m) Clause 30 provides that:

*"**30.1** This Agreement is governed by, and shall be construed in accordance with, the laws of Hong Kong.*

30.2 *In relation to any Proceedings, the Parties hereto irrevocably submit to the non-exclusive jurisdiction of the courts of Hong Kong and waive any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum. The taking of Proceedings in one or more jurisdictions shall not preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).” (emphasis added)*

(n) Part A of Schedule 2:

“***Matters requiring majority approval of the Board members***

1. The remuneration of the Directors (whether Directors' fees, salaries or benefits) and senior management of the Group Company.

…

5. Any single staff recruitment with total annual remuneration of over US$80,000.

…

15. Approval of all Executive Team and senior management appointments and terminations and their remunerations.

16. The appointment or removal of any person as Chief Executive Officer and the Chief Financial Officer of the Company.

…

19. Changing any terms of employment of a member of the Executive Team.”

(o) Paragraph 3 of Schedule 4 of the SHA:

“*3. The appointment or removal of, or change in, the auditors of any Group Company*”

(p) Pursuant to clause 1.1 of the SHA, the ‘Constitution’:

“means the Memorandum and Articles of Association for the time being of the Company;”

(q) Pursuant to clause 1.1 of the SHA, "*Executive Team*" is defined as:

"*the team responsible under the immediate authority of the Board for the conduct of the business of the Company, which shall comprise four members, of which three shall be nominated by FEL* [Fester] *and one shall be nominated by AGUL. As at the date of this Agreement, the team shall comprise Leung Ka Yip Danny (nominated by FEL* [Fester]*), Patrick John Wee Ewe Seng (nominated by AGUL), Ganeson Bupendra (nominated by FEL* [Fester]*) and Chen Hwee Alvin (nominated by FEL* [Fester]*)*".

(r) Pursuant to clause 1.1 of the SHA, "*Trade Sale*" ("**Trade Sale**") is defined as:

"*(a) a sale, lease, transfer or other disposition of all or substantially all of the assets of the Company, (b) a sale, transfer or other disposition of a majority of the issued and outstanding share capital of the Company or a majority of the voting power of the Company; or (c) a merger, consolidation or other business combination of the Company with or into any other business entity in which the Shareholders of the Company immediately after such merger, consolidation or business combination hold shares representing less than a majority of the voting power of the outstanding share capital of the surviving business entity*."

The Articles

23. For the purpose of this Petition, the key terms of the Articles are extracted below:

(a) Clause 17.6 provides that:

"17.6 Quorum. *A meeting of Members is duly constituted if, at the commencement of the meeting, there are present in person, through their authorised representative or by proxy two or more Members entitled to vote on resolutions of Members to be considered at the meeting…"* (emphasis added)

(b) Clause 20.2 provides that:

*"**20.2 Good Faith.***

Each Director shall exercise his powers for a proper purpose. Each Director, in exercising his powers or performing his duties, shall act *honestly and in good faith in what the Director believes to be the best interests of the Company."*

(c) Clauses 37.1 and 37.3 of the Articles provide that:

*"**37.1** **Accounts**. The Company shall keep proper books of account with respect to (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases of goods by the Company; and (c) the assets and liabilities of the Company, that in each case, are sufficient to give a true and fair view of the Company's affairs and to explain its transactions.*

…

***37.3** **Financial Information**. The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law."*

Formation of the board of directors

24. The board of directors of the Company (the "**Board**"), immediately after the Restructuring, consisted of the below personnel:

(a) Mr. Wee (nominated by AGUL);

(b) Mr. Phey Teck Moh (nominated by AGUL) ("**Mr. Phey**");

(together the "**AGUL Directors**")

(c) Mr. Yi Peijian (nominated by Fester);

(d) Mr. Zhang Yi (nominated by Fester); and

(e) Ms. Si Tou Man Wai (also known as Ms. Catherine Si Tou) ("**Ms. Si Tou**") (nominated by Fester)

(together, the "**Fester Directors**").

25. Mr. Zhang Yi was later replaced by Mr. Tan Kim Kang Sean ("**Mr. Tan**") in or around February 2018. Based on a 'director details' search conducted with the

Registrar of Companies dated 9 April 2024, it appears that the current directors of the Company are the following Fester Directors: Ms. Si Tou and Mr. Zhang Jie.

D. RELEVANT EVENTS IN SUPPORT OF THE KEY ALLEGATIONS

26. Less than a year after the Restructuring, the Fester Directors and the AGUL Directors began to have some disagreements in respect of the management of the Company and the True Group.

27. As described below, this resulted in a series of events whereby Fester, making use of its position as a majority shareholder and the Fester Directors, in breach of the SHA (i.e. the legal bargain agreed by the parties), oppressively forced various changes to the senior management of the Company and made various decisions detrimental to the AGUL's interest as a minority shareholder of the Company. This resulted in a total breakdown of trust and confidence between the Shareholders.

Attempted Forced resignation of Mr. Wee as chief executive officer

28. On 12 April 2018, the Company's Board held a meeting and (despite the objections of Mr. Phey and Mr. Wee (i.e. the AGUL Directors)) resolved *inter alia* that if Mr. Wee does not obtain an investment or loan for the Company (on terms acceptable to the Company) sufficient for the Company to cover its operational cash flow requirements for the next 12 months, then the Board would have the rights to:

    (a) call for a Board meeting by conference call of the Company on only 3 days' notice;

    (b) Mr. Wee would not be permitted to rely on his right to object to quorum at such meetings if he or Mr. Phey (i.e. the AGUL Directors) fails to attend; and

    (c) the Board can take steps necessary at these meetings to terminate Mr. Wee as the chief executive officer (without any of the Petitioner's director representatives present).

    (the "**12 April Board Resolution**")

29. The 12 April Board Resolution (passed by the Fester Directors, despite the votes against by the AGUL Directors) disregards the purpose of the SHA and is

inconsistent with clause 7 of the SHA which provides, *inter alia*, that it is the responsibility of all Shareholders, in the event that additional financing is required, to use their reasonable endeavours to assist the Company in obtaining such loans (not Mr. Wee's as chief executive officer).

30. It was unfair and extremely unreasonable for the Fester Directors to impose on Mr. Wee an obligation to obtain an investment or loan for the Company (on terms acceptable to Tongfang in accordance with their rights under the SPA, SHA and M&A) sufficient to cover its operation cash flow for the 12 months from the date of the 12 April Board Resolution.

31. Furthermore, the 12 April Board Resolution was in breach of clauses 4.9.3 and 4.9.4 of the SHA which provide that each of the director shall be entitled to receive not less than 7 days' written notice of all meetings of the directors (or such shorter period of notice as <u>may be agreed jointly by all the directors</u>) and that the necessary quorum at a Board meeting necessary for the transaction of any business of the Company shall be three directors, comprising at least two of the Fester Directors and one of the AGUL Directors. Mr. Wee and Mr. Phey (i.e. the AGUL Directors) did not vote in favour of the 12 April Board Resolution.

32. The Fester Directors did not have the right to pass a resolution to authorise the Board to act contrary to the SHA, shortening the notice period and removing Mr. Wee's right to object to a quorum being constituted in absence of any AGUL Directors.

33. The Fester Directors caused the Company to act in clear breach of the terms of the SHA.

34. During the period between April 2018 and May 2018, Mr. Wee received numerous threats from the Fester Directors demanding that he resign from his position as the Company's chief executive officer.

35. On 9 May 2018, Mr. Wee received a letter from TSMP Law Corporation, the legal representative of Fester and True Yoga Pte Ltd., terminating Mr. Wee's engagement as the chief executive officer of *inter alia* the Company immediately (the "**Termination Letter**"). To the best of the Petitioner's knowledge, no board meeting was convened by the board of True Yoga Pte Ltd., who Mr. Wee was still a director of at the time, approving the engagement of TSMP Law Corporation as the company's legal representative prior to 9 May 2018.

36. Pursuant to section 16 of Part A of Schedule 2 of the SHA, the appointment or removal of any person as chief executive officer requires majority approval of the Board members. To the best of the Petitioner's knowledge, no board meeting of the Company was convened after the passing of the 12 April Board Resolution to authorise the Company or the Board to remove Mr. Wee as chief executive officer and the decision to terminate Mr. Wee's engagement was in breach of the SHA.

37. Furthermore, accordingly to clause 4.11 of the SHA, the Shareholders agreed to maintain the stability of the key management team of the Company for so on long as Mr. Wee shall be the chief executive officer of the Company and he shall be retained for a term of three years from 29 May 2017. The Fester Directors caused the Board to act in breach of the SHA by terminating Mr. Wee's engagement for no proper reason within one year of execution of the SHA.

38. Fester, in its capacity as a shareholder of the Company, had no rights anyhow to terminate Mr. Wee's engagement as the Company's chief executive officer.

<u>Constructive dismissal of Mr. Chen</u>

39. Following a conversation between Ms. Reina Lim ("**Ms. Lim**"), an employee of Tongfang (the parent company of Fester), contacted Mr. Alvin Chen ("**Mr. Chen**"), the then chief financial officer of the Company, Mr. Chen resigned from his position as the Company's chief financial officer by a letter of resignation dated 18 April 2018. On the same date, True Yoga Fitness purportedly on behalf of the True Group issued a letter to Mr. Chen acknowledging his resignation and requesting Mr. Chen to refrain from entering the Company's office, attend to any matters or access any information relating to the Company, its subsidiaries or affiliate companies with effect from 19 April 2018.

40. On 19 April 2018, Mr. Wee had a discussion with Mr. Chen who claimed that he chose to leave his position as chief financial officer as Ms. Lim had requested him to resign or risk being summarily terminated by the Fester Directors. In order to get a letter of recommendation and to receive the remaining salary, Mr. Chen was left with no option but to resign.

41. Again, pursuant to section 16 of Part A of Schedule 2 of the SHA, the appointment or removal of any person as chief financial officer requires majority approval of the Board members. To the best of the Petitioner's knowledge, no Board meeting was convened to deal with Mr. Chen's resignation and to determine the necessary

arrangement as a result of his resignation. The AGUL Directors were not involved or consulted before the letter purportedly issued by the Company was sent to Mr. Chen. This is again in breach of the SHA.

The appointment of senior management of the Company

42. Pursuant to a letter from True Yoga Fitness, signed off by the True Group, dated 9 May 2018 ("**9 May Letter**"), to the Petitioner's surprise, an interim management team ("**Interim Management Team**") was formed consisting of Ms. Si Tou (one of the Fester Directors) and Mr. Tan(one of the Fester Directors), as the directors of the Company, and Ms. Lim (an employee of Tongfang, the parent company of Fester), as the chief operating officer and chief financial officer of the True Group (which in that context includes the Company and its subsidiaries).

43. At no time prior to the 9 May Letter did the Fester Directors sought the approval of the AGUL Directors' for Ms. Lim's appointment as the Company's new chief financial officer.

44. Pursuant to sections 15 and 16 of Part A of Schedule 2 of the SHA, the approval of any senior management appointments and the appointment of any person as the chief financial officer of the company requires the majority approval of the Board members. To the best of the Petitioner's knowledge, no Board meeting was convened to deal with Ms. Lim's appointment. The appointment was in breach of the SHA.

AGUL Director denied access to the Company's property

45. During the period between May 2018 and June 2018, whilst Mr. Wee was still a director of the Company and the Group subsidiaries at the time, he was denied access to the offices of the Company's subsidiaries in Singapore. The Singapore subsidiary's offices, namely the offices of True Yoga Pte Ltd of which Mr. Wee was also a director of at the time, was the corporate headquarters for all the Singapore operating subsidiaries and contain information/documentations relating to the operation and financial status of the Group.

46. On 12 June 2018, Mr. Wee received a letter from TSMP Law Corporation accusing him of trespassing the offices of the True Group in Singapore and was denied

further access to the premises. The letter made various inaccurate accusation alleging *inter alia*:

(a) that Mr. Wee no longer held any executive or management position in the True Group and are not authorised to enter any of the True Group's offices without prior authorisation when he was actually still a director of the Company and the Group subsidiaries;

(b) that Mr. Wee entered the office in Singapore without authorisation and surreptitiously made photocopies of confidential financial information belonging to the True Group when Mr. Wee as a director of the Company and the Group subsidiaries did not need any authorisation to enter the premises or make copies of the relevant information in the course of carrying out his duties as a director;

(c) that Mr. Wee harassed various employees by asking for confidential financial information when as of right, a director is entitled to information in relation to the company's financial. Contrary to what was stated in the letter, due to the longstanding relationships between Mr. Wee and the Group's employees, Mr. Wee was in fact warmly welcomed by the staff present at the premises of the Group's offices.

47. In light of the issues, at the Company's board meeting held on 21 June 2019, Mr. Wee proposed the following resolutions which were all ultimately voted down by the Fester Directors:

"*That within 3 businesses days of the passing of this resolution, it shall be communicated to all relevant staff/managers, that Mr. Wee, as a Director, shall not be denied or restricted access to the office of True Yoga Pte Ltd at 8 Claymore Hill#02-03, Singapore, to meet the current management team for Singapore and Taiwan to discuss the affairs of the Companies."*

and

"That within 3 business days of the passing of this resolution, it shall be communicated to all relevant staff/managers, that Mr. Wee, as a Director, and/or his nominated accountant, shall have access to the offices of True Yoga Pte Ptd at 8 Claymore Hill#02-03, Singapore, to meet with financial officers of the Company, and to inspect and take copies of the management accounts and operating statistics and such other financial information for the financial year 2018

and up to January 2019 so that the Board member may be properly informed about the business and the financial position of the subsidiaries of the Company."

48. Pursuant to clause 3.3.10 of the SHA, Mr. Wee has the right to *"visit and inspect and examine the Company's properties and records, and to discuss the affairs of the Company with its management."*

49. The accusation of trespass and denial of Mr. Wee's access to the properties of the Group are unreasonable. Further, the denial of access to the Company's properties obstructed Mr. Wee from carrying out his duties as the Company's director and deprived Mr. Wee of his rights under clause 3.3.10 of the SHA. As a director of the Company, Mr. Wee should be entitled to the same information as the other directors. The deliberate actions of the Fester Directors to prohibit Mr. Wee from accessing the Group's records was extremely concerning to the Petitioner as it was unable to properly scrutinise the actions of the Fester Directors purportedly on behalf of the Company behind closed doors. As a result, the Petitioner lacks full and complete information to properly assess the corporate actions of the Company and whether its interests as a shareholder are being unfairly prejudiced as part of an apparent campaign by the Fester Directors to oppress the Petitioner.

<u>Failure to provide financial information of the Company to the director/shareholder</u>

50. Clauses 3.3.3, 3.3.4 and 3.3.7 of the SHA provides that the Shareholders shall ensure the Company (a) keep full and proper account records and make the same available at all reasonable times for inspection by the directors/Shareholders by prior appointment during office hours; (b) prepare and supply copies of annual and interim accounts, both in draft and final form, to each of the Shareholders immediately upon their issue, and in any event no later than 45 days after the end of each financial period (annual/semi-annual); and (c) prepare and provide to each of the Directors monthly management account within 15 days after the end of each month and operating statistics and such other trading and financial information in such form as the Board may agree to keep each of the Shareholders properly informed about the business and financial condition of the Company and generally to protect their interest.

51. Prior to Mr. Wee's removal as the chief executive officer, Mr. Wee ensured that the Company produced detailed financial reports in accordance with clauses 3.3.3,

3.3.4 and 3.3.7 of the SHA, and that the Company's Shareholders were provided with sufficient information to properly assess the Company's financial status.

52. However, since Mr. Wee's removal as the chief executive officer and Mr. Chen's removal as the chief financial officer of the Group, the format of the financial reports changed drastically and was no longer produced to the Shareholders within the time frame specified in clauses 3.3.3, 3.3.4 and 3.3.7 of the SHA. The financial reports produced by the finance team led by the Interim Management Team, consisting of two Fester Directors, were in the form of a management report with bare financial and operations performance numbers, which are insufficient for the Company's Shareholders to get a full picture of the Company's financial status. Key information such as detailed individual club performance statistics for each club which would detail their revenues, expenses and membership and personal training sales numbers was omitted from the financial reports. The financial information provided had no budget nor a month or year to date comparison to the budget. This format was changed to a more informative format in January 2019 onwards to provide more detailed club by club performance numbers. However, for the monthly management report for June 2019 onwards, which was released on 2 September 2019, the Interim Management Team changed the format of the monthly management reports to exclude individual monthly club performance numbers. The Interim Management Team also ceased providing any financial reports for the Taiwan Franchisee after September 2018 onwards, thereby preventing the AGUL Directors from getting a clear picture of the ability of True Concept's financial performance and its ability to pay the monthly franchise fees.

53. Since May 2018, the provision of the monthly management accounts which under clause 3.3.7 should be provided within 15 days after the end of each month, was consistently late by between two to three months after the prescribed 15 days period. This makes it difficult for the directors and Shareholders, in particular the AGUL Directors and the Petitioner, to get the most up to date information of the Company, assess the performance of the Company and make any necessary decisions to improve the Company's performance.

54. As a result of the above, and in addition to Mr. Wee's attempts as set out in the above paragraphs 45 to 49 to attend the Group's offices in Singapore to inspect the Group's financial records as the Company's director, on 25 May 2021, Mr. Wee proposed at the meeting of the Board a resolution: "*[t]*o approve *that the Management present the 2021 Budget, Cashflow Statement and Balance Sheet for the True Group of Companies on a consolidated basis and individually for the*

Board to review and consider." The proposed resolution was voted down by the Fester Directors.

55. Furthermore, on 21 June 2022, Mr. Wee in his capacity as the sole director of AGUL requested to inspect the account records and for copies of the annual interim accounts and monthly management account as AGUL had not been receiving the requested information since May 2021 except on one occasion as explained in paragraph 58 below where Ms. Lim produced a management report without full financial accounts.

56. On 23 June 2022, Ms. Lim replied saying that the date and time proposed by Mr. Wee was not convenient and will contact Mr. Wee shortly to arrange a time that is mutually convenient. Copies of the annual interim accounts and monthly management account were not provided as part of such email.

57. On 27 June 2022, Mr. Wee followed up with Ms. Lim again asking for a convenient time to inspect the requested documents.

58. On 13 July 2022, Ms. Lim replied attaching information provided to Fester as shareholder on a monthly basis regarding the business and financial condition of the Company and disregarded Mr. Wee's request to inspect the account records despite AGUL's entitlement under the SHA.

59. On 4 November 2022, Mr. Wee sought certain financial information from Ms. Lim and was provided the requested financial information by Ms. Lim. Since then, Mr. Wee or AGUL have not received any further account records, annual and interim account and/or monthly management account of the Company from the Board which is in breach of Fester's obligation to ensure provision of these information under Clauses 3.3.3, 3.3.4 and 3.3.7 of the SHA.

<u>Failure to procure initial public offer ("IPO")/ Trade Sale</u>

60. On 11 December 2019, Tongfang unilaterally appointed Ernst & Young, (wrongly failing to involve AGUL), to conduct a valuation of the Charged Shares of the Company as of 30 June 2020 (the "**EY Report**"). The EY Report was purportedly stated to be prepared on the specific instructions of the directors of the "True Cayman Group" which means the Company and its subsidiaries even though the EY Report was addressed to Tongfang. The EY Report resulted in a net valuation of the shares of the Company at between S$40.2 million to S$56.2 million ("**EY's 2019 Valuation**").

61. The appointment of Ernst & Young was unknown to and not approved by AGUL or the AGUL Directors. To the best of the Petitioner's knowledge, no Board meeting was convened or resolution(s) was/were passed authorising the engagement of and the disclosure of the Company's confidential financial documents to Ernst & Young. The Petitioner is concerned that there has been disclosure of the Company's confidential and sensitive information to third parties without the necessary consent.

62. Pursuant to clause 11 of the SHA, the Shareholders shall procure an IPO or Trade Sale by 31 March 2020 and jointly appoint an independent firm (the "**Appointed Valuer**") to determine the fair value of the shares of the Company proposed to be the subject of a Trade Sale.

63. Since the Company failed to achieve an IPO, AGUL had been trying to obtain Fester's agreement in appointing an Appointed Valuer to determine the price of the Company's shares and proceed with the Trade Sale.

64. However, Fester was not cooperative and refused to proceed with the appointment of an Appointed Valuer in breach of Fester's obligations under clauses 10 and 11 of the SHA.

65. Furthermore, on 25 April 2020, Fester refused to accept or to negotiate with a prospective buyer for the shares of the Company at a price based on 7 times the 2019 Book EBITDA of the Company.

66. Fester claimed that it would not agree to any negotiations unless and until several unreasonable demands were agreed to by AGUL, including the acknowledgment that the 10,000 Charged Shares owned by AGUL in the Company that was charged as security for a profit shortfall ("**Profit Shortfall**") (as defined in clause 10 of the SPA and in paragraph 21(a) above) pursuant to the Share Charge were to be transferred to Fester despite the ongoing litigation in the matter.

67. At the Company's shareholders' meeting held on 22 May 2020 and again restated in an email from Mr. Leung Ka Yip Danny ("**Mr. Leung**") (a representative of Fester) to Mr. Wee dated 25 May 2020, Mr. Leung demanded that AGUL agree that the exploration of the Trade Sale of the 100% interest in the Company is subject to the pre-condition that the proceeds from the Charged Shares will be paid to Fester to offset AGUL's payment obligations under the profit guarantee in Clause 10 of the SPA and that AGUL acknowledges that Fester is entitled to sell or otherwise dispose of the Charged Shares outside the context of the Trade Sale notwithstanding the negotiations with respect to the Trade Sale.

68. On 29 May 2020, Mr. Wee sent an email to Mr. Leung refusing to agree to Fester's unreasonable demands as it was entirely unfair for Fester to force AGUL to accept additional conditions which were extremely unfavourable to AGUL and unwarranted in order to proceed with the Trade Sale. The ability of Fester to sell the Charged Shares outside the context of the Trade Sale would allow Fester to sell the Charged Shares to its desired third party purchaser who would not be bound by the terms of any Trade Sale provisions in the SHA and which would have made a Trade Sale impossible.

69. In same email from Mr. Leung dated 22 May 2020, he stated that "*[s]eparately in relation to the Appointed Valuer, Fester Global would want to clarify that it is PWC Hong Kong we agreed with Active Gains* [the Petitioner, AGUL] *to approach for the appointment of the Appointed Valuer in accordance with Clause 11 of the SHA.*"

70. Despite ongoing negotiations between the Shareholders, at the Company's shareholders' meeting convened on 12 June 2020, Fester claimed that it would not be proceeding further with the Trade Sale unless and until AGUL agreed unconditionally to all their terms and conditions imposed on the sale proceeds.

71. In a *volte face* from Mr. Leung's previous position as stated in his email dated 22 May 2020, subsequently, on 30 June 2020, Mr. Leung sent an email to Mr. Wee stating that:

"*[w]e wish to put on record that we have <u>never agreed to proceed with the trade sale and the appointment of the Appointed Valuer</u>. It has all along been our position that we are only prepared to continue exploring the opportunity of a trade sale if Active Gains* [the Petitioner, AGUL] *agrees to the conditions which are necessary for any meaningful discussions. We see no purpose in continuing the negotiations if the parties are unable to agree on this point*." (emphasis added)

72. Fester's wrongful refusal to cooperate with AGUL to appoint an Appointed Valuer and to progress the Trade Sale appears to be unreasonable and a wrongful act.

<u>Unauthorised Loans</u>

73. The Board, in breach of the SHA, passed the following resolutions for the Company to take out loans:

(a) on 16 May 2018, the Board in the absence of the AGUL Directors passed a resolution for a loan agreement to be entered between the Company as borrower and Tongfang as lender (the parent company of Fester) in relation to a loan of US$800,000 with an interest rate of 4%. The Board meeting improperly proceeded and passed this resolution despite lacking the necessary quorum;

(b) on 24 May 2018, despite the AGUL Directors voting against, the Fester Directors passed, by a majority of the Board, a resolution approving a draft loan agreement to be entered into between the Company as borrower and Tongfang as lender for a loan of US$5,000,000 for a term of 12 months and an interest rate of 5% per annum;

(c) on 7 February 2020, despite the AGUL Directors voting against, the Fester Directors passed, by a majority of the Board, a resolution that a US$1,540,000 loan from Tongfang, as well as the terms and conditions set out in the loan agreement circulated to the Board on 14 January 2020 by Director Mr. Tan, be approved, and that Ms. Lim be authorised to sign the Loan Agreement on behalf of the Company; and

(d) on 25 May 2021, despite the AGUL Directors voting against, the Fester Directors passed, by a majority of the Board, a resolution approving a loan of US$4,600,000 from Tongfang as lender to the Company as borrower

(together, the "**Loans**").

74. Pursuant to clause 7 of the SHA, the Loans must be unanimously approved in writing by all of the Shareholders. The Board did not have the power to approve the Loans. To the Petitioner's knowledge, no meetings of all of the Shareholders were convened to approve the Loan. The Fester Directors, by passing the resolutions approving the Loan, breached the requirements in the SHA to obtain the necessary approval from all of the Shareholders and executed the loan agreements without the required authorisation by all of the Shareholders. The Fester Directors therefore caused the Company to breach the SHA.

<u>Limiting the Petitioner's involvement in the preparation of the audit report</u>

75. On 2 October 2020, the Fester Directors passed the following resolutions:

"*IT WAS RESOLVED THAT Ms. Reina Lim be authorised as the sole authorised person to act for and on behalf of the Company in relation to the engagement of the Auditors of the Company to prepare and issue the financial statements of the*

Company for the financial year ended 31 December 2019, including but not limited to liaising and discussing with the Auditors, execution of any related documents and representing the Company to deal with the Auditors on any related matters.

IT WAS RESOLVED THAT Ms. Reina Lim be authorised as the sole authorised person to act for and on behalf of the Company in relation to the engagement of the Auditors to perform agreed-upon procedures ("AUP"), for the purpose of determining the Profit Shortfall (as defined and set out in Clauses 10.1 to 10.5 of the Sale and Purchase Agreement dated 6 May 2017 that is signed between Active Gains Universal Limited [the Petitioner, AGUL]*, Patrick John Wee Ewe Seng, Fester Global Limited and Tongfang Kontafarma Holdings Limited) for the financial year ended 31 December 2019, including but not limited to liaising and discussing with the Auditors, execution of any related documents and representing the Company to deal with the Auditors on any related matters.*"

76. At the same meeting, the following resolutions were tabled but voted down by the Fester Directors:

"*To authorize any two directors of TFKT True Holdings (the "Company") who are each to be representatives of the respective shareholders of the Company, to be the authorized persons to act for and on behalf of the Company in relation to the engagement of the auditors of the Company, namely Deloitte & Touche LLP (the "Auditors"), to prepare and issue the financial statements of the Company for the financial year ended 31 December 2019, including but not limited to liaising and discussing with the Auditors, execution of any related documents and representing the Company to deal with the Auditors on any related matters*

To authorize any two directors of TFKT True Holdings (the "Company") who are each to be representatives of the respective shareholders of the Company, to be the authorized persons to act for and on behalf of the Company in recovery from Reina Lim of the fees paid to the auditors of the Company, namely Deloitte & Touche LLP (the "Auditors"), for the AUP Reports for 2017 and 2018 that were not prepared in accordance with the Resolution of the Board on 2 August 2019, and to instruct the Auditors to perform and issue the agreed-upon-procedures ("AUP"), for the purpose of determining the Profit Shortfall (as defined and set out in Clauses 10.1 to 10.5 of the Sale and Purchase Agreement dated 6 May 2017 that is signed between Active Gains Universal Limited [the Petitioner, AGUL]*, Patrick John Wee Ewe Seng, Fester Global Limited and Tongfang Kontafarma Holdings Limited (the "SPA")) for the financial year ended 31 December 2017, 2018 and 2019, including but not limited to liaising and discussing with the Auditors, execution of any related* *documents and representing the Company to deal with the Auditors on any related matters.*"

77. Based on the above, it is the Petitioner's view that Fester wrongfully prohibited the AGUL Directors from dealing with the auditors of the Company and improperly sought to limit the information that was provided to the auditor (via Ms. Lim only) so that the auditor can determine the Profit Shortfall as per the instructions of Fester and reach an outcome in favour of Fester.

78. The appointment of the auditor was necessary to determine whether there was a Profit Shortfall which leads to the issue of whether Fester may enforce the Share Charge against AGUL under clause 10.7 of the SPA.

79. Fester Directors deliberately cut off communications between AGUL Directors and the auditor and prohibited them from ensuring that the correct financial information has been provided to the auditor to determine whether there is a Profit Shortfall. This is extremely unfair and deceitful given that the auditor's determination had detrimental consequences for AGUL. The AGUL Directors should have been consulted and involved when engaging/instructing the auditor.

Wrongful transfer of the Company's shares held by the Petitioner

80. On 24 December 2020, Fester issued a letter to AGUL notifying it of Fester's intention to exercise its rights under the Share Charge to purchase all of the Charged Shares at a consideration of US$4,300,000.

81. On 8 January 2021, one of the Fester Directors issued a notice to convene a meeting of the Board on 15 January 2021 to approve *inter alia* the transfer of the Charged Shares from AGUL to Fester at a consideration of US$4,300,000.

82. On 15 January 2021, the Board issued a notice to convene a meeting of the Shareholders on 29 January 2021 to pass a resolution to approve the appointment of Mr. Leung as a director of the Company with immediate effect pursuant to Clause 4.2 of SHA for the sole purpose of enforcement of the Share Charge of 10,000 shares in the Company dated 29 May 2017 between AGUL as chargor and Fester as chargee.

83. No representatives of AGUL attended the shareholders' meeting on 29 January 2021, yet nonetheless, the Fester Directors claimed that the Shareholders have

passed by majority a resolution that Mr. Leung be appointed as a director of the Company and an AGUL Director with immediate effect.

84. The Petitioner later found out that Fester, claiming to be the true and lawful attorney and proxy of AGUL appointed pursuant to clause 14.1 of the Share Charge and an appointment of proxy and power of attorney allegedly executed by AGUL in favour of Fester, attended the meeting and voted on behalf of AGUL for the appointment of Mr. Leung.

85. Clause 14.1 of the Share Charge provides that:

"*The Chargor, by way of security, irrevocably appoints the Chargee and its nominee(s), with full power of substitution and delegation, to be its attorney and in its name, on its behalf and as its act and deed or otherwise <u>to all such assurances, acts or things as it ought to do under the provisions of this Deed</u> and generally in its names and on its behalf to exercise all or any of the rights conferred by or pursuant to this Deed and <u>generally to execute, seal and deliver any deed, assignment, transfer, assurance, agreement, instrument or contract note which may in the opinion of the Chargee or its nominees(s) (or any substitute attorney) be required or considered proper, necessary or desirable for any of the purposes of this Deed</u>.*"

86. Clause 14.1 limits the powers of the power of attorney to performing all acts provided under the Share Charge and to execute, seal and deliver documents relevant to the transfer of shares. To attend the Company's shareholders' meeting, to vote on behalf of AGUL and to appoint a director on behalf of AGUL is outside the scope of clause 14.1 and inconsistent with the provision and purpose of the SHA. Accordingly, this also breached the quorum requirements for meetings of shareholders in clause 5.2 of the SHA and 17.6 of the Articles which require that a minimum of two shareholders be present in person or by proxy.

87. On 29 January 2021, the Fester Directors wrongfully authorised a transfer of 10,000 shares representing 20% of AGUL's shares in the Company claiming that the Board has approved the enforcement of a Share Charge and transfer of shares for a purported shortfall in payment of US$18,330,077 being the amount claimed in a counterclaim in HCA 1469 of 2019 in the High Court of Hong Kong.

88. The transfer was carried out despite objections from AGUL and its Hong Kong legal representatives on the basis that the matter was pending trial in the High Court of Hong Kong.

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89. The transfer of AGUL's 10,000 shares in the Company substantially diluted AGUL's shareholding percentage down from 47% to 27%, which is below the threshold of the definition of "Significant Shareholder" as set out in Clause 1 and Clause 5.6 of the SHA. The Petitioner's view is that this was Fester's attempt to remove AGUL's ability to exercise its rights as a "Significant Shareholder" under the list of reserved matters set out in schedule 3 of the SHA and to remove AGUL's power to call any meetings of the Board pursuant to clause 4.9.1 of the SHA. In effect, AGUL no longer has the same protection as a "Significant Shareholder" and Fester is free to act however it wants, in its own interest and to the detriment of AGUL.

Failure to recover Franchise Fees and interest due under the Franchise Agreement

90. Based on the information available to the Petitioner, since entering into the Franchise Agreement, True Concept has failed to make payment of the full amount of the Franchise Fee due under the Franchise Agreement to True Fitness (Singapore) and the outstanding franchise fees had ballooned to over S$18,500,000 as at 30 June 2020.

91. Prior to Mr. Wee removal as the Company's chief executive officer and on or about 13 April 2018, the Fester Directors approached Mr. Wee to consider the injection of funds into True Yoga by way of a convertible bond to fund the payment of the outstanding Franchise Fees. The discussion regarding the draft bond instrument and key terms were at the final stage and if successful, this would have substantially improved the Company's financial situation. Yet, on 9 May 2018, shortly after Mr. Wee provided his final comments on the draft bond documents to the Fester Directors, he received notice of his removal as the Company's chief executive officer and without giving any reasoning, the Fester Directors apparently ceased all efforts to progress matters pertaining to the convertible bond.

92. In or around December 2018, in a purported attempt to recover the then outstanding Franchise Fees, the Company exercised its rights in the True Yoga Share Charge and sold the charged shares to Ultimate Victory Limited for a total consideration of NT$78,000,000. The purchase price was decided by the Festor Directors based on a pricing analysis issued by KPMG Deal Advisory Limited (Taiwan) ("**KPMG Report**") and a valuation report issued by Valtech Valuation Advisory Limited (Hong Kong) ("**Valtech Valuation**"). None of the AGUL Directors or AGUL's representatives were involved in the engagement and preparation of the KPMG Report and Valtech Valuation.

93. The way the charged shares were sold was extremely unusual as little notice was given (i.e. four business days' notice). The Festers Directors provided wholly insufficient information in relation to the transaction with Ultimate Victory Limited to the Petitioner. The Petitioner was only aware that the buyer's representative, Mr. Kevin Lin, is the Deputy General Manager of a Taiwanese listed corporation named First Steamship Co., Ltd (TWSE Stock Code: 2601). The General Manager and controlling shareholder of First Steamship Co. Ltd is Guo Ren Hao. One of the Tongfang directors, Mr. Ng Qing Hai is also a director of First Steamship Co. Ltd.

94. Furthermore, based on a review of the KPMG Report and Valtech Valuation by iCFO Advisors Pte. Ltd dated 3 May 2019, an independent auditing and valuation expert engaged by the Petitioner, the calculations in those reports were flawed and the fair market value of the charged shares are estimated to be worth around NT$317 to 345 million, which is significantly higher (approximately 4 times the value of the sale price at its lowest) than the sale price that the charged shares were sold at.

95. This transaction plainly calls for an explanation, given that, amongst other things, it appears that:

(a) The Fester Directors appear to have caused the Company to sell a highly valuable asset at a price which was significantly under fair market value which caused an apparent loss to the Company;

(b) There has been wholly insufficient information provided by the Company, and/or the Fester Directors concerning Ultimate Victory Limited and/or the transaction generally including the refusal to provide any evidence and/or information on:

(i) The identity of the ultimate beneficial owner of Ultimate Victory Limited;

(ii) the engagement letters with and instructions given to the financial advisor, Deloitte Touche Tohmatsu (HK) or Deloitte & Touche (Taiwan), and the law firms acting for the Company; and

(iii) all correspondences between the Interim Management Team, the lawyers acting for the Company, the various prospective buyers and Ultimate Victory Limited;

(c) There has been a lack of any valuation evidence provided by the Company to confirm that the sale price constituted fair market value, and;

(d) The transaction may not have been a bona fide arm's length transaction given that one of the Tongfang directors, Mr. Ng Qing Hai is also a director of First Steamship Co. Ltd.

96. Despite enforcing the True Yoga Share Charge, the proceeds of the sale of the charged shares were still insufficient to satisfy the Franchise Fees owing by True Concept. Mr. Wee thereafter raised this issue with the Board members repeatedly but the Fester Directors have refused to take any further enforcement actions against True Concept or to enforce the True Concept Share Charge claiming it to be unenforceable under Taiwanese law.

97. The outstanding Franchise Fees continue to accrue yet no late payment interest of 5% has been charged, as provided for under the Franchise Agreement. The Company has not issued any invoice for the outstanding interest amounting to over S$2.8 million and the Festers Directors' explanation was that True Concept had already approached its shareholders for loans. The Petitioner understands that True Concept have obtained various loans from Tongfang at an interest rate of 10% per annum for terms of five years which is significantly in excess of the late payment interest rate under the Franchise Agreement.

98. To the best of the Petitioner's knowledge, as of the date of this Petition, Tongfang has extended loans to True Concept exceeding US$5 million.

99. Since then, despite no apparent bona fide rationale for doing so, no further enforcement actions were commenced against True Concept or under the True Concept Share Charge.

100. True Concept's failure to pay and the Company's decision not to pursue payment is made further apparent by the fact that True Concept has continued to make additional investments in Taiwan to expand its business.

101. In light of the above, it is apparent to the Petitioner that the Fester Directors are acting with a lack of probity in the conduct of the Company's affairs, including breaches of fiduciary duties to for example: to exercise powers for a proper purpose, and/or to avoid a conflict of interest, and/or to act in good faith and/or to act in the best interests of the Company. The Petitioner has lost all confidence in the Company's management and in Fester because the Fester Directors and Fester have made use of their position in the Company and Group to act to the benefit of Fester and its subsidiary and in detriment to the Company's interests, the Group's interests, and the Petitioner's interests.

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Unauthorised appointment of the Company's auditor

102. On 2 October 2020, the Company convened a meeting of the Shareholders to approve a resolution to appoint PKF-CAP as the Company's (and its subsidiaries') new auditors in place of Deloitte & Touche LLP.

103. Fester voted in favour of the proposed resolution while AGUL voted against.

104. However, under clause 5.6 and paragraph 3 of Schedule 3 of the SHA, in order for Company to change the Company's auditor, it was mandatory to obtain the unanimous approval of the "Significant Shareholders" which then consisted of both Fester and AGUL.

105. PKF-CAP was engaged as the Company's auditor on 1 February 2021 despite the fact that the resolution was not effectively passed as it breached the SHA.

106. Fester again caused the Company to act in breach of the SHA.

D. GROUNDS FOR WINDING UP

107. For the reasons set out above and summarised below, it is just and equitable to wind up the Company pursuant to section 92(e) of the Companies Act (2023 revision) (the "**Companies Act**").

I) Breach of Legal Bargain

108. As will be apparent from the above mentioned events, Fester has breached and/or the Fester Directors have caused the Company to breach numerous provisions of the SHA and/or the Articles and have deliberately caused resolutions to be passed at the meeting of the Board which in effect would deprive the Petitioner of its rights under the SHA and/or the Articles.

109. It would be unfair and extremely prejudicial to the Petitioner if the Court were to permit the Company to continue to operate or be managed in such a way that the rights of the Petitioner under the SHA and/or the Articles, and as a minority shareholder, are not trampled upon and wholly ignored.

II) **Loss of Confidence in Management: Misconduct by Management and/or Lack of Probity in the conduct of the Company's Affairs**

110. As will be apparent from the above mentioned events, the Petitioner has had a total loss of confidence in the Board of the Company, as a result of the repeated and flagrant pattern of misconduct and lack of probity in the conduct of the Company's affairs by the Board of the Company which is comprised solely of Fester Directors. There are currently no representatives of AGUL sitting on the Board to safeguard AGUL's interest and the Fester Directors have acted with impunity.

111. It is apparent that Fester has been taking advantage of its position as a majority shareholder to oppress AGUL as a minority shareholder, including by forcing the personnel nominated by AGUL out of the Company (and the True Group) and prohibiting their involvement in the Company's management and affairs.

III) **Loss of Trust and Confidence**

112. As will be apparent from the above mentioned events, the Shareholders operated the Company as a quasi-partnership and the Petitioner has lost trust and confidence in Fester.

113. During the period between the year 2021 and to the date of this Petition, Fester has caused various legal proceedings to be commenced by Fester and/or its subsidiaries against Mr. Wee and/or the Petitioner in Singapore and Hong Kong concerning *inter alia* the management of the Company / its subsidiaries and the directors' respective duties. This has caused extremely hardship to Mr. Wee, a single father with two children, to travel in the midst of COVID to deal with the malicious proceedings commenced against him in different jurisdictions exhausting all his personal and/or work time. The legal attacks are in the Petitioner's view tactics to force Mr. Wee, the founder of the Group, out of the management of the Company and the Group so that Fester can take complete control over their management. The Petitioner does not intend to plead the full particulars of those legal proceedings in this Petition as the various subject matter of those proceedings are not directly relevant to the matters in issue in this Petition. However, the above mentioned events and the existence of the proceedings themselves are obvious evidence that the Shareholders can longer come to an alignment and there is a complete breakdown of trust and confidence between the

parties. The Petitioner reserves the right to provide further details of the proceedings in Singapore and Hong Kong in its evidence.

114. In addition to the legal proceedings, on dated 27 July 2018, 全真概念健康事業股份有限公司 (translated to "True Concept Health Business Holding Limited") acting by its representative, Ms. Si Tou, filed a criminal complaint against Mr. Wee and knowingly included the wrong or outdated address of Mr. Wee in the complaint ("**TW Claim**").

115. As the police were unable to locate Mr. Wee given the wrong address stated in the TW Claim, it led to a warrant of arrest being issued against Mr. Wee on 19 January 2019 for Breach of Trust ("**TW Warrant**"). The residential address listed for Mr. Wee in the criminal warrant is the office address of "True Concept Health Business Holding Limited" which is also not Mr. Wee's principle place of contact and the warrant stated that Mr. Wee had fled the country which is/was not true.

116. Mr. Wee was not aware of the TW Warrant until on or around April 2019 when Mr. Tan emailed copies of the said documents to Mr. Wee.

117. Due to the events described above, the Petitioner has completely lost its trust and confidence in Fester.

IV) <u>Deadlock</u>

118. In the Board meeting agenda issued by one of the Fester Directors dated 2 February 2020 with respect to the Board Meeting to be convened on 7 February 2020, it was proposed that in the event Mr. Wee and/or Mr. Phey (i.e. the AGUL Directors) failed, neglected and/or refused to attend the said Board meeting that was to be held on 7 February 2020 (being more than 3 consecutive failures to attend Board meetings of the Company), the rest of the members of the Board in attendance at such Board meeting shall be deemed to constitute a quorum for the Board meeting and they shall be permitted to pass a resolution to remove Mr. Wee and/or Mr. Phey (i.e. all of the AGUL Directors) as directors of the Company.

119. This was contrary to clauses 4.3 and 4.9.4 of the SHA and the Board does not have the power to pass such resolution.

120. Due to the aggressive, unreasonable and oppressive behaviours of the Fester Directors, on 24 September 2020, Mr. Phey (one of the two AGUL Directors) resigned as a director of the Company.

121. On 30 July 2021, due to the reasons including but not limited to the above, Mr. Wee was no longer confident to exercise its duties as a director and resigned from his role as director of the Company and its subsidiaries.

122. Given the history between the Fester Directors and the AGUL Directors and the treatment that the AGUL Directors received, there is no one in their right mind would agree to act as a director of the Company. The Petitioner was unable to find any candidates who are willing to act as the Company's directors.

123. As such, as of the date of this Petition, there are currently no AGUL Directors sitting on the Board and the Petitioner is reluctant to appoint any new directors to the Board due to the various oppressive behaviours (as mentioned above) of the Fester Directors. Furthermore, based on the Company's director search obtained on 9 April 2024, there is currently only two directors appointed by Fester, being Ms. Si To and Mr. Zhang Jie, on the Board which is not in line with clause 4.2 of the SHA.

124. Accordingly, the composition of the current Board is in breach of clauses 4.2 of the SHA and any meetings of the Board would not be able to meet the quorum requirement as set out on in clause 4.9.4 of the SHA.

125. This constitute a deadlock in the management of the Company as the Board is not quorate.

V) Need for an Investigation

126. As set out above and to be elaborated further in the Petitioner's evidence :

(a) Fester and the Fester Directors disregarded the terms of the Company's Articles and the SHA, causing multiple breaches and used various means to prohibit Mr. Wee and other key members of the management team from involving in the Company's management;

(b) The Fester Directors have repeatedly ignored the requests of the AGUL Directors and have made decisions outside the scope of their powers without consulting the Company's Shareholders and AGUL Directors which are detrimental to the Company's interests;

(c) The Fester Directors were acting solely in the interest of Tongfang, Fester and their subsidiaries authorising the Company to take out loans from them and making arrangements which is detrimental to the interest of Company and AGUL;

(d) The Petitioner was excluded from assisting with the appointment of an Appointed Valuer in relation to the valuation for the purpose of the IPO / Trade Sale;

(e) The Fester Directors were aggressive and hostile towards the AGUL Directors and put in place various measures prohibiting them from performing their duties as directors of the Company and made or commenced malicious complaints and proceedings against the AGUL Directors to threaten them; and

(f) There have been various failures to provide financial information to the Petitioner and the AGUL Directors as required under the SHA which caused them to be unable to assess the Company and Group's performances.

(g) There are various transactions which call for an explanation including for example, why the Company appeared to have disposed of the shares which were the subject of the True Yoga Share Charge at substantially under fair market value which involved a party with a common director with Tongfang, and why the Company has failed to properly pursue the True Concept Franchise Fees without proper explanation and despite repeated requests to do so from the Petitioner.

127. In light of the above, the Petitioner has failed to receive information in relation to the Company to which it is entitled and the Company has been managed in a way other than as the Petitioner had agreed under the SHA.

128. Accordingly, the Petitioner considers there is a need for a full investigation in to the management of the Company.

F. CONCLUSION

129. For the reasons set out above, and summarised below it is just and equitable to wind up the Company pursuant to section 92(e) for the following reasons:

I. Fester and the Fester Directors have caused repeated and serious breaches of the legal bargain (in particular the SHA) agreed between the Petitioner (AGUL), the Respondent (Fester) and the Company to the detriment of AGUL;

II. The Board of the Company is controlled by the Fester Directors, who have engaged in misconduct and had a lack of probity in the conduct of the Company's affairs and their actions have caused the Petitioner (AGUL) to lose all confidence in the management of the Company;

III. There is an irretrievable loss of trust and confidence between the Shareholders;

IV. The Board is currently deadlocked and unable to function as per the SHA given the composition of the Board, and;

V. In light of the aforementioned, there is a need for investigation into the Company's affairs.

YOUR PETITIONER THEREFORE HUMBLY PRAY THAT:

(1) The Company be wound up pursuant to section 92(e) of the Companies Act.

(2) In the alternative, pursuant to 95(3) of the Companies Act, as an alternative to a winding-up order, an order providing for the purchase of the shares of the Petitioner, AGUL by other members of the Company or by the Company itself at fair market value and, in the case of a purchase by the Company itself, a reduction of the Company's capital accordingly.

(3) Mr. Mitchell Mansfield of Kroll (Cayman) Ltd., 3rd Floor, 90 North Church Street, George Town, Grand Cayman, Cayman Islands and Mr. Jason Kardachi of Kroll Pte Limited, 10 Collyer Quay, #05-04/05 Ocean Financial Centre, Singapore 049315, be appointed as joint official liquidators of the Company with the power to act jointly and severally (the "**JOLs**").

(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.

(6) The JOLs be authorised to take any such action as may be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the assets of the Company and its subsidiaries in any jurisdiction.

(7) 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 purpose

(8) The JOLs have the power to appoint agents in the Cayman Islands, Singapore, Taiwan, Malaysia 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.

(9) The JOLs be authorised to take control of such of the direct and/or indirect subsidiaries of the Company (the "**Subsidiaries**") and/or control and vote the Company's interest in any 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 collectively 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 or terminate the engagement or authority of, directors, legal representatives, officers, agents, attorneys and/or managers to, by 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).

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(10) The JOLs be at liberty to appoint counsel, attorneys, and/or any other professional advisors and agents, 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.

(11) Pursuant to section 97(1) of the Companies Act, no suit, action or other proceeding, other than criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

(12) 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 this Order shall be voided by virtue of Section 99 of the Companies Act.

(13) The remuneration and expenses of the JOLs shall be paid out of the assets of the Company.

(14) 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 deem fit.

(15) Such further or other relief be granted as the Court deems appropriate.

(16) The Petitioner’s costs be paid by the Company and/or Fester, as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated this 25th of April 2024

Conyers Dill & Pearman

Conyers Dill & Pearman LLP

NOTE: This petition is intended to be served on the Company and Fester Global Limited c/o Vistra Corporate Service Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands.

This Petition was issued by Conyers Dill & Pearman LLP, Attorneys-at-Law for and on behalf of the Petitioner named herein whose address for service is Second Floor, SIX, Cricket Square, PO Box 2681, George Town, Grand Cayman, KY1-1111