



THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD ____ OF 2025 ()

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF PENGUIN SOLUTIONS, INC.

PETITION

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION OF PENGUIN SOLUTIONS, INC., an exempted company incorporated with limited liability and registered under the laws of the Cayman Islands with registration number 255221 whose registered office is at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands (the "**Company**" or the "**Petitioner**") shows that:

1. **INTRODUCTION**

- (a) The object of this Petition is to seek the sanction of the Court pursuant to section 86 of the Companies Act (2025 Revision) (the "**Companies Act**") of a proposed scheme of arrangement to be made between the Company and the holders, as at a record time to be established, of the ordinary shares of the Company with a par value of US\$0.03 each (the "**Penguin Solutions Cayman Ordinary Shares**") and the holders of the convertible preferred shares of the Company with a par value of US\$0.03 each (the "**Penguin Solutions Cayman Convertible Preferred Shares**", together

with the Penguin Solutions Cayman Ordinary Shares, the "**Scheme Shares**") (the "**Scheme Shareholders**") (the "**Scheme**").

- (b) A copy of the Scheme will be exhibited to an affidavit made by a director or authorised representative of the Company, which will be filed with this Honourable Court in advance of the convening hearing.

2. THE PETITIONER

- (a) On 21 April 2011, the Company was incorporated as an exempted company limited by shares pursuant to the Companies Act (as in effect at that time).
- (b) The registered office of the Company is situated at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands.
- (c) The Company's principal place of business is in the Cayman Islands.
- (d) The objects of the Company are unrestricted and the Company has full power and authority to carry out any objects not prohibited by law, as provided for by Section 7(4) of the Companies Act.
- (e) The Company is the ultimate parent company of the Penguin Solutions group of companies, a group of end-to-end technology companies which provide technology hardware and software solutions (the "**Penguin Solutions Group**"). Through the Company's subsidiaries, the Penguin Solutions Group is an end-to-end technology company solving complex challenges in computing, memory and LED solutions for customers worldwide. The Penguin Solutions Group designs, builds, deploys and manages high-performance, high availability enterprise solutions.

- (f) The authorised share capital of the Company is US\$6,900,000 divided into 200,000,000 ordinary shares with a par value of US\$0.03 each (being the Penguin Solutions Cayman Ordinary Shares) and 30,000,000 convertible preferred shares with a par value of US\$0.03 each (being the Penguin Solutions Cayman Convertible Preferred Shares).
- (g) As at open of business on 21 March 2025, 61,625,699 Penguin Solutions Cayman Ordinary Shares and 200,000 Penguin Solutions Cayman Convertible Preferred Shares were issued and outstanding.
- (h) Since 24 May 2017, the Penguin Solutions Cayman Ordinary Shares have been listed and traded on the Nasdaq Global Select Market ("**Nasdaq**") and are currently traded under the ticker symbol "PENG" (previously "SGH").
- (i) The number of Penguin Solutions Cayman Ordinary Shares in issue and ownership of the same will fluctuate between open of business on 21 March 2025 (being the date of this Petition) and the date of the sanction of the Scheme (if so sanctioned) as a result of the normal trading of such shares.

3. **Penguin Solutions Delaware**

- (a) On 20 March 2025, Penguin Solutions, Inc. ("**Penguin Solutions Delaware**") was incorporated as a corporation in the State of Delaware, the United States of America. The registered office of Penguin Solutions Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801, and the name of its registered agent at such address is The Corporation Trust Company.
- (b) As at the time at which the Scheme becomes effective in accordance with its terms, the authorised capital stock of Penguin Solutions Delaware will be 230,000,000 shares of capital stock, consisting of 200,000,000 shares

of common stock with a par value of US\$0.03 each (such shares, the "**Penguin Solutions Delaware Common Stock**") and 30,000,000 shares of convertible preferred stock with a par value of US\$0.03 each (such shares, the "**Penguin Solutions Delaware Convertible Preferred Stock**", together with the Penguin Solutions Delaware Common Stock, the "**Penguin Solutions Delaware Stock**").

- (c) As at the date of this Petition, the authorised capital stock of Penguin Solutions Delaware is 1,000 shares of capital stock, all of which are common stock with a par value of US\$0.03 each, of which 1 share is issued and outstanding, with the remainder unissued. Penguin Solutions Delaware is a direct and wholly owned subsidiary of the Company.

4. **PURPOSE OF THE SCHEME**

- (a) The purpose of the Scheme is to implement a new corporate structure for the Penguin Solutions Group to result in a change in the jurisdiction of incorporation of the ultimate parent company of the Penguin Solutions Group from the Cayman Islands to Delaware, United States. This is anticipated to, among other benefits, simplify and streamline the organisational, statutory and regulatory structure of the Penguin Solutions Group for the benefit of shareholders and align the legal framework governing the Penguin Solutions Group with its operational footprint. Penguin Solutions Delaware will become the publicly traded new ultimate parent company of the Penguin Solutions Group. The Scheme will result in the Scheme Shareholders owning common stock and/or convertible preferred stock, as applicable, of a Delaware corporation instead of ordinary shares and/or convertible preferred shares, as applicable, of a Cayman Islands company.
- (b) In consideration for the transfer of the Scheme Shares from the Scheme Shareholders to Penguin Solutions Delaware, the Company will procure

that, at the time at which the Scheme will be implemented (the "**Completion Date**"), Penguin Solutions Delaware will allot and issue fully paid Penguin Solutions Delaware Common Stock and/or Penguin Solutions Delaware Convertible Preferred Stock (as applicable) to the Scheme Shareholders, on the following one to one basis:

- (i) for every one Penguin Solutions Cayman Ordinary Share transferred: one share of Penguin Solutions Delaware Common Stock shall be issued; and
- (ii) for every one Penguin Solutions Cayman Convertible Preferred Share transferred: one share of Penguin Solutions Delaware Convertible Preferred Stock shall be issued,

(the "**Scheme Consideration**").

- (c) The net result of the Scheme overall will be that each Scheme Shareholder will hold the same proportion of shares in Penguin Solutions Delaware as it held in the Company immediately before the Scheme took effect.
- (d) The Scheme and any order of this Court approving the same would constitute the basis for an exemption from registration under the United States Securities Act of 1933, as amended ("**US Securities Act**"), for the Penguin Solutions Delaware Common Stock and Penguin Solutions Delaware Convertible Preferred Stock to be issued by Penguin Solutions Delaware to the existing holders of Penguin Solutions Cayman Ordinary Shares and Penguin Solutions Cayman Convertible Preferred Shares, respectively, pursuant to the Scheme, by virtue of the exemption from registration provided by Section 3(a)(10) of the US Securities Act. That provision exempts from registration under the US Securities Act any security which is issued in exchange for one or more bona fide outstanding securities, where the terms and conditions of such issuance and exchange

are approved after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court authorised to grant such approval. Therefore, should this Honourable Court grant an order sanctioning the Scheme, on the basis that its terms and conditions are fair and reasonable, substantively and procedurally, the Penguin Solutions Delaware Common Stock and Penguin Solutions Delaware Convertible Preferred Stock to be issued to the Company's existing shareholders will be exempt from registration under the US Securities Act and from registration or qualification under the securities laws of the states of the United States of America.

- (e) The proposed transaction to be accomplished through the implementation of the Scheme is also described in the proxy statement (which includes, amongst other things, a detailed explanation of the proposed Scheme and the wider transaction, and the form of notice of the Scheme Meeting (as defined below)) (the "**Proxy Statement**") that has been prepared in accordance with Order 102, Rule 20 of the Grand Court Rules (2023 Revision) and Section 14(a) of the Securities Exchange Act of 1934.

5. **THE SCHEME**

- (a) The principal features of the Scheme are that at the Completion Date, all of the issued and outstanding Scheme Shares shall be transferred to Penguin Solutions Delaware.
- (b) In consideration for such transfer of the Scheme Shares to Penguin Solutions Delaware, the Company will procure that, on the Completion Date, Penguin Solutions Delaware will issue fully paid and non-assessable Penguin Solutions Delaware Stock to the Scheme Shareholders on the following basis:

- (i) each Penguin Solutions Cayman Ordinary Share will be exchanged for one Penguin Solutions Delaware Common Stock; and
- (ii) each Penguin Solutions Cayman Convertible Preferred Share will be exchanged for one Penguin Solutions Delaware Convertible Preferred Stock,

(being the Scheme Consideration).

- (c) An application will be made to Nasdaq for the Penguin Solutions Delaware Common Stock to be admitted to trading on Nasdaq.
- (d) The Penguin Solutions Delaware Common Stock is expected to be listed on Nasdaq under the same ticker symbol under which the Penguin Solutions Cayman ordinary shares are currently traded (PENG).
- (e) Penguin Solutions Delaware will provide an undertaking to be bound by the Scheme and to do all acts or things as may be necessary or reasonably desirable for the purposes of giving effect to the terms of the Scheme.
- (f) As a result of the Scheme, shareholders of the Company will become stockholders of Penguin Solutions Delaware and such stockholders' rights will be governed by Delaware law and by Penguin Solutions Delaware's certificate of incorporation and bylaws. The net result of the Scheme overall will be that each shareholder will hold the same proportion of Penguin Solutions Delaware Stock, and with substantially the same rights, as it held in the Company before the Completion Date of the Scheme.
- (g) Following the Completion Date of the Scheme, Penguin Solutions Delaware, and its subsidiaries will continue to own and operate the existing businesses carried on by the Company prior to the implementation of the Scheme.

6. **AFFECTED SHAREHOLDERS**

- (a) The Scheme affects a single class of shareholders of the Company, comprising the Scheme Shareholders.

7. **SCHEME MEETING**

- (a) In relation to the proposed Scheme, the Company intends to make an application for certain orders, directions and/or declarations, including, amongst other things, the following:
- (i) a declaration that the relevant class of shareholders of the Company affected by the Scheme is that referred to at paragraph 6(a) above, being the Scheme Shareholders;
 - (ii) an order that the Company be at liberty to convene a single meeting of the holders of the Scheme Shares appearing on the Company's register of members as at the Voting Record Time (as defined below at sub-paragraph (iii)) for the purpose of considering, and if thought fit, approving the Scheme (with or without modification) (the "**Scheme Meeting**");
 - (iii) directions as to the method of convening and holding the Scheme Meeting including directions as to: the mode of delivery of, amongst other things, the Proxy Statement and notice of the Scheme Meeting together with the proxy form for use at the Scheme Meeting to, amongst others, the holders of the Scheme Shares, and that a voting record date be set in order to identify the holders of the Scheme Shares for the purposes of voting at the Scheme Meeting (the "**Voting Record Time**"); and
 - (iv) the appointment of a chairperson of the Scheme Meeting, and for directions that the chairperson of the Scheme Meeting should report

the results thereof to the Court within seven days of the Scheme Meeting.

- (b) The resolution intended to be submitted at the Scheme Meeting is:

*"**THAT** the Scheme of Arrangement (a copy of which has been produced to this meeting and for the purposes of identification signed by the chairperson hereof) in its original form or with such modifications, additions or conditions as may be approved or imposed by the Cayman Islands Grand Court, and as may be agreed by the Company, be and is hereby approved."*

YOUR PETITIONER, THE COMPANY, THEREFORE HUMBLY PRAYS:

1. THAT the Scheme be sanctioned by the Court so as to be binding on the Company and the Scheme Shareholders.
2. THAT to this end, all necessary inquiries may be made and directions may be made and given.
3. SUCH further orders or other relief as may be made in the premise as this Honourable Court shall deem fit.

AND your Petitioner will ever pray etc.

DATED this 21st day of March 2025

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

Attorneys-at-Law for the Petitioner

Note: It is not intended that this Petition be served on anyone.

This **PETITION** is presented by Walkers, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at-Law, Walkers, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands.

ENDORSEMENT

This Petition has been presented to the Grand Court of the Cayman Islands on the day of 2025 and will be heard by the Grand Court of the Cayman Islands on the day of 2025 at a.m. / p.m. (or as soon thereafter as the Petition can be heard).

This **PETITION** is presented by Walkers, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at-Law, Walkers, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands.