

EXECUTION VERSION

SETTLEMENT DEED

DATED 30 JULY 2010

ALLEN & OVERY

Allen & Overy

THIS DEED is dated 30 July 2010 and is made **BETWEEN**:

- (1) **TACK FAT GROUP INTERNATIONAL LIMITED** (Provisional Liquidators appointed), a company incorporated with limited liability under the laws of the Cayman Islands, the registered office of which is situated at Century Yard, Cricket Square, Hutchins Drive, George Town, Grand Cayman (the **Company**);
- (2) **ANWAY LIMITED**, a company incorporated with limited liability in the British Virgin Islands having incorporation number 1385355 and whose registered office is situated at OMC Chambers, P.O. Box 3152, Road Town, Tortola, British Virgin Islands (**Anway**);
- (3) **BEST FAVOUR INVESTMENTS LIMITED**, a company incorporated with limited liability in the British Virgin Islands having incorporation number 1388591 and whose registered office is situated at P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands (**Best Favour**);
- (4) **KEY WINNER HOLDINGS LIMITED**, a company established by the Provisional Liquidators to facilitate the implementation of the Restructuring Proposal, which is incorporated with limited liability under the laws of Hong Kong (company number 1325732) and whose registered office is situated at 14th Floor, The Hong Kong Club Building, 3A Chater Road, Central, Hong Kong (**Key Winner**);
- (5) **FOK HEI YU** and **RODERICK JOHN SUTTON**, the joint and several provisional liquidators of the Company, both of FS Asia Advisory Limited at 14th Floor, The Hong Kong Club Building, 3A Chater Road, Central, Hong Kong (the **Provisional Liquidators**);
- (6) **NEW PROFIT HOLDINGS LIMITED** (In Creditors' Voluntary Liquidation), a company incorporated with limited liability under the laws of Hong Kong (company number 1117406), and whose registered office is situated at 14th Floor, The Hong Kong Club Building, 3A Chater Road, Central, Hong Kong (**New Profit**);
- (7) **FOK HEI YU** and **RODERICK JOHN SUTTON**, the joint and several liquidators of New Profit, both of FS Asia Advisory Limited at 14th Floor, The Hong Kong Club Building, 3A Chater Road, Central, Hong Kong (the **New Profit Liquidators**);
- (8) **TACK FAT SWIMWEAR MANUFACTURING LIMITED** (In liquidation), a company incorporated with limited liability under the laws of Hong Kong (company number 122528), and whose registered office is situated at 14th Floor, The Hong Kong Club Building, 3A Chater Road, Central, Hong Kong (**Swimwear**); and
- (9) **CITIC BANK INTERNATIONAL LIMITED** (formerly known as CITIC Ka Wah Bank Limited), a company incorporated in Hong Kong with company number 0004095 whose registered office is situated at 232 Des Voeux Road Central, Hong Kong in its capacity as Security Trustee (**CITIC**).

(1) to (9) above each a **Party** and together the **Parties**.

BACKGROUND

- (A) Pursuant to the latest consolidated management accounts of the Company and its subsidiaries (the **Group**) dated 31 March 2010 New Profit is indebted to Swimwear in the amount of approximately HK\$10,898,000 (the **Swimwear Claim**).
- (B) Pursuant to a term loan facility agreement dated 8 June 2007, between, inter alios, Anway and CITIC (the **Facility Agreement**), Anway is indebted to CITIC in the sum of HK\$200,000,000 (the **CITIC Claim**).
- (C) In connection with the Facility Agreement, Anway and CITIC entered into a share charge dated 8 June 2007 (the **Share Charge**) pursuant to the terms of which Anway granted security to CITIC over ninety percent of the issued share capital of Best Favour (the **Secured Shares**).
- (D) On 18 June 2007, CITIC effected a transfer of the Secured Shares to The Ka Wah Bank (Nominees) Limited (the **Nominee**), without any intention to change the beneficial ownership of the Secured Shares or Anway's control over Best Favour, as acknowledged by both CITIC and the Nominee.
- (E) On 12 January 2009 the Company, the Radford Developments Limited (the **Investor**) and the Provisional Liquidators (amongst others) entered into an exclusivity and escrow agreement (as amended pursuant to side letters dated 8 July 2009 and 8 January 2010) for the purpose of facilitating the implementation of the proposal for the restructuring of the Group made by the Investor (the **Restructuring Proposal**).
- (F) On 18 June 2009, CITIC, the Nominee and Anway, amongst others, entered into a settlement deed pursuant to which legal title to the Secured Shares (subject always to the security in favour of CITIC) was returned to Anway for the purposes of implementing the Restructuring Proposal.
- (G) On 26 May 2010, the Company, the Investor and the Provisional Liquidators (amongst others) entered into a restructuring agreement for the purposes of implementing the Restructuring Proposal (the **Restructuring Agreement**).
- (H) To facilitate the implementation of the Restructuring Proposal, Swimwear and CITIC have agreed to accept the distributions to them contemplated by this Deed in full and final settlement of their Claims (as defined below) against New Profit and Anway respectively.

IT IS AGREED as follows:

1. DEFINITIONS

In this Deed:

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business in Hong Kong.

Cash Consideration means the sum of HK\$50,000,000 payable by the Investor pursuant to the Restructuring Proposal.

Cayman Court means the Grand Court of the Cayman Islands.

Closing has the meaning given to it in the Restructuring Agreement.

Closing Date has the meaning given to it in the Restructuring Agreement.

BACKGROUND

- (A) Pursuant to the latest consolidated management accounts of the Company and its subsidiaries (the **Group**) dated 31 March 2010 New Profit is indebted to Swimwear in the amount of approximately HK\$10,898,000 (the **Swimwear Claim**).
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Closing has the meaning given to it in the Restructuring Agreement.

Closing Date has the meaning given to it in the Restructuring Agreement.

Convertible Bonds means the convertible bonds to be issued on the Closing Date by the Company pursuant to the Restructuring Proposal providing for payment of HK\$20,000,000 one year after the Closing Date, to be allocated as to five sevenths pro rata to Key Winner for the benefit of the creditors of the Company whose claims are to be dealt with under the schemes of arrangement in relation to the Company contemplated by the Restructuring Proposal and as to two sevenths to New Profit for the benefit of the New Profit Stakeholders.

HK\$ means Hong Kong dollars, the lawful currency for the time being of Hong Kong.

Hong Kong means the Hong Kong Special Administrative Region of the PRC.

Hong Kong Court means the High Court of Hong Kong.

New Profit Stakeholders means Swimwear, CITIC and Noble and any other person who may be identified during the restructuring process.

Noble means Noble Group Investment Limited, a company incorporated with limited liability under the laws of the British Virgin Islands, the registered office of which is situated at OMC Chambers, P.O. Box 3152, Road Town, Tortola, British Virgin Islands.

2. DISTRIBUTIONS

2.1 On the Closing Date the Company shall:

- (a) transfer or procure the transfer of HK\$14,285,714.00 (fourteen million, two hundred and eighty-five thousand, seven hundred and fourteen HK\$), representing two-sevenths of the Cash Consideration; and
- (b) issue two-sevenths (calculated by reference to the total nominal face value of the Convertible Bonds) of the Convertible Bonds (the **New Profit Convertible Bonds**);

to New Profit or as it directs following consultation with the New Profit Stakeholders (the **New Profit Distribution**).

2.2 After receipt of the New Profit Distribution, New Profit may, at any time and in its absolute discretion, sell the New Profit Convertible Bonds (in whole or in part) to any person provided that the consideration received in respect of such sale is not less than the amount equal to the par value of the New Profit Convertible Bonds plus two per cent. per annum at the time of such sale. For avoidance of doubt, the consideration received in respect of any sale of the New Profit Convertible Bonds will form part of the New Profit Distribution.

2.3 At any time after receipt of the New Profit Distribution, New Profit may distribute the New Profit Distribution in the following order of priority:

- (a) firstly, in or towards payment of or provision for all costs and expenses incurred in connection with the liquidation of New Profit (including any costs and expenses incurred by the provisional liquidators of New Profit and/or the New Profit Liquidators);
- (b) secondly, in or towards satisfaction of amounts owed by New Profit to any secured creditors of New Profit;
- (c) thirdly, in or towards satisfaction of amounts owed by New Profit to Swimwear and, if the New Profit Liquidators have identified any other unsecured creditor(s) of New Profit, such other unsecured creditor(s) pro rata; and

- (d) fourthly, to Best Favour for the benefit of CITIC and Noble (the **Best Favour Distribution**) as set out below.

2.4 After receipt of the Best Favour Distribution, Best Favour may distribute the Best Favour Distribution in the following order of priority:

- (a) firstly, if Best Favour is in liquidation, in or towards payment of or provision for all costs and expenses incurred in connection with the liquidation of Best Favour (including costs and expenses incurred by the provisional liquidator(s) of Best Favour and/or the liquidator(s) of Best Favour); and
- (b) secondly, in or towards satisfaction of amounts owed by Best Favour to any secured creditors of Best Favour (if any);
- (c) thirdly, in or towards satisfaction of amounts owed by Best Favour to any unsecured creditors of Best Favour; and
- (d) fourthly, distribute the remaining Best Favour Distribution to Anway (for the benefit of CITIC) as to 90 per cent. and to Noble as to 10 per cent.

3. SETTLEMENT AND DISCHARGE

3.1 Swimwear acknowledges and agrees that:

- (a) payment to it of all or, as the case may be, its pro rata share of the Swimwear Distribution constitutes full and final settlement of the Swimwear Claim; and
- (b) on receipt of all or, as the case may be, its pro rata share of the Swimwear Distribution it shall be deemed to have no further claim against New Profit and to have waived any and all rights of action of any nature against New Profit arising prior to the date of payment of the Swimwear Distribution.

3.2 CITIC acknowledges and agrees that:

- (a) on receipt of 90 per cent. of the remaining Best Favour Distribution pursuant to paragraph (d) of Clause 2.4, it shall be deemed to have no further claims against Anway and to have waived any and all rights of action of any nature against Anway arising prior to the date of payment to it of 90 per cent. of the Best Favour Distribution; and
- (b) it will take all steps necessary to release, on the Closing Date, the security over the shares in Best Favour created by the Share Charge, including, without limitation, the execution of a deed of release and the return of any relevant documentation delivered to it by Anway pursuant to the terms of the Share Charge.

3.3 Each Party acknowledges and agrees that nothing in this Clause 3 will prejudice any claims that CITIC may have against the Company in connection with the CITIC Claim.

4. FURTHER ASSURANCES

Each Party undertakes with each other Party that it will execute all such documents and do all such acts and things as another Party may at any time and from time to time reasonably request and as may be lawful and within its power to do to carry into effect or to give legal effect to the provisions in this Deed and the transactions contemplated in this Deed.

5. EXPENSES

Each Party shall bear all its own legal and professional fees, costs and expenses of and incidental to the negotiation, preparation, execution and completion of this Deed and the implementation of its terms.

6. PROVISIONAL LIQUIDATORS

6.1 Each Party to this Deed acknowledges and agrees that:

- (a) the Provisional Liquidators and the New Profit Liquidators are Parties to this Deed solely for the purpose of obtaining the benefit of each provision of this Deed in their favour;
- (b) the Provisional Liquidators and the New Profit Liquidators act as agents of the Company and New Profit respectively, and shall incur no personal liability from acting in the capacity of agents or otherwise, nor shall any claim arise against any of them;
- (c) the Provisional Liquidators and the New Profit Liquidators, and their employers, employees, solicitors, advisers, agents, partners or representatives do not have any personal liability of any kind under, or by virtue of, this Deed, nor in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum in respect of any of the transactions contemplated in this Deed;
- (d) the other Parties to this Deed are not relying on any representation, conduct, statement or silence on the part of the Provisional Liquidators or the New Profit Liquidators, or any of their employees, solicitors, advisers, agents, partners or representatives in relation to any matter or circumstance and whether or not arising out of or under this Deed or any of the transactions contemplated by this Deed; and
- (e) all acknowledgements or agreements as to, or provisions of, exclusions of liability or indemnity in favour of the Provisional Liquidators or the New Profit Liquidators shall continue to be effective notwithstanding the Provisional Liquidators or the New Profit Liquidators resigning from or otherwise ceasing to hold office and (where the context permits) shall mean and include their present and future firm or firms, partners and employees, and any legal entity or partnership using in its name the words, any successor or merged firm and the partners, shareholders, officers and employees of the entity or partnership.

7. NOTICES

Any communication in connection with this Deed must be in writing and, unless otherwise stated, may be given in person, by prepaid registered post or by fax and shall be delivered to the addresses indicated below:

To the Company:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

and to

Century Yard, Cricket Square,
Hutchins Drive, George Town
Grand Cayman

To Anway:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Fascimile: (852) 2521 7632
Attention: Fok Hei Yu

with a copy to:

OMC Chambers, P.O. Box 3152 Road Town
Tortola British Virgin Islands

To Best Favour:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Fascimile: (852) 2521 7632
Attention: Fok Hei Yu

with a copy to:

P.O. Box 957, Offshore Incorporations Centre
Road Town, Tortola
British Virgin Islands

To Key Winner:

14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

To the Provisional Liquidators:

c/o FS Asia Advisory Limited

14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

To New Profit:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

To the New Profit Liquidators:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

To Swimwear:

c/o FS Asia Advisory Limited
14/F, The Hong Kong Club Building
3A Chater Road
Hong Kong

Facsimile: (852) 2521 7632
Attention: Fok Hei Yu

To CITIC:

232 Des Voeux Road Central
Hong Kong

Facsimile: (852) 3603 4691
Attention: Jack Wong & Rico Poon

8. AMENDMENTS

No amendment of this Deed shall be valid unless it is in writing and signed by or on behalf of each of the Parties. The term *amendment* shall include any amendment, supplement, deletion or replacement however effected.

9. COUNTERPARTS

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Deed.

10. GOVERNING LAW AND JURISDICTION

This Deed is governed by Hong Kong law and the parties submit to the non-exclusive jurisdiction of the courts of Hong Kong.

This Deed has been entered into as a deed on the date stated at the beginning of this Deed.

SIGNATORIES

The Company

SIGNED AS A DEED by FOK HEI YU)
for and on behalf of TACK FAT GROUP)
INTERNATIONAL LIMITED)
(PROVISIONAL LIQUIDATORS)
APPOINTED) without personal liability)
in the presence of:)



Witness:

Signature: 

Name: TAM CHAK SUN

Address: 4/F, The Hong Kong Club Building, 3A Chater Road, Central, H.K.

Anway

SEALED with the COMMON SEAL of)
ANWAY LIMITED)
and signed by)
Nicholas James Gronow)
duly authorised by Anway Limited)
in the presence of:)



Witness:

Signature: 

Name: TAM Chak Sun

Address: 4/F, The Hong Kong Club Building, 3A Chater Road, Central, H.K.



Best Favour

SEALED with the COMMON SEAL of)
BEST FAVOUR INVESTMENTS LIMITED)
and signed by)
Nicholas James Gronow)
duly authorised by Best Favour Investments Limited)
in the presence of:)



Witness:

Signature: *[Handwritten signature]*

Name: *TAM Chek Sun*


Address: *14/F, The Hong Kong Club Building,
7A Charter Road, Central, H.K.*

Key Winner

SEALED with the COMMON SEAL of)
KEY WINNER HOLDINGS LIMITED)
and signed by)
FOK Hei Yu)
duly authorised by Key Winner Holdings Limited)
in the presence of:)



Witness:


Signature: 
Name: YAM Chak Sun
Address: 14/F, The Hong Kong Club Building,
3A Charter Road, Central, H.K.

The Provisional Liquidators

SIGNED as a Deed by Fok Hei Yu without)
personal liability and solely for the purpose)
of receiving the benefit of the provisions of)
this Deed in the Provisional)
Liquidator's favour in the presence of:)



Witness:

Signature: 
Name: YAM Chak Sun
Address: 14/F, The Hong Kong Club Building,
3A Charter Road, Central, H.K.

New Profit

SIGNED AS A DEED by FOK HEI YU)
for and on behalf of NEW PROFIT)
HOLDINGS LIMITED)
(IN CREDITORS' VOLUNTARY LIQUIDATION))
without personal liability)
in the presence of:)



Witness:

Signature: 

Name: YAM Chak Sun

Address: 14/F, The Hong Kong Club Building,
3A Charter Road, Central, H.K.

The New Profit Liquidators

SIGNED as a Deed by FOK HEI YU without)
personal liability and solely for the purpose)
of receiving the benefit of the provisions of)
this Deed in the Provisional)
Liquidator's favour in the presence of:)



Witness:

Signature: 

Name: YAM Chak Sun

Address: 14/F, The Hong Kong Club Building,
3A Charter Road, Central, H.K.

Swimwear

SIGNED AS A DEED by FOK HEI YU)
for and on behalf of TACK FAT SWIMWEAR)
MANUFACTURING LIMITED)
(IN LIQUIDATION) without personal liability)
in the presence of :)



Witness:

Signature: 

Name: YAM Chak Sun

Address: 14/F, The Hong Kong Club Building, 3A Chater Road, Central, H.K.

CITIC

SEALED with the COMMON SEAL of)
CITIC BANK INTERNATIONAL LIMITED)
and signed by)
Jack Wong and)
Rico Poon)
duly authorised by Citic Bank International Limited)
in the presence of:)

Witness:

Signature:

Name:

Address:

Swimwear

SIGNED AS A DEED by FOK HEI YU)
for and on behalf of TACK FAT SWIMWEAR)
MANUFACTURING LIMITED)
(IN LIQUIDATION) without personal liability)
in the presence of :)

Witness:

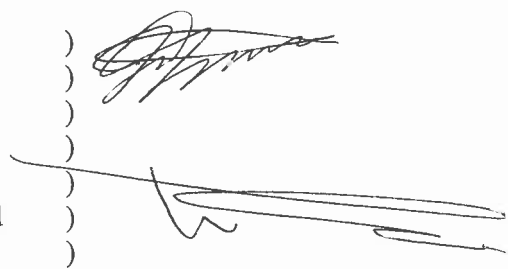
Signature:

Name:

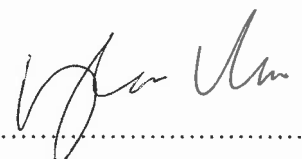
Address:

CITIC

SEALED with the COMMON SEAL of)
CITIC BANK INTERNATIONAL LIMITED)
and signed by)
Jack Wong and)
Rico Poon)
duly authorised by Citic Bank International Limited)
in the presence of:)



Witness:

Signature: 

Name: Alex Cho

Address: 18/F Somerset House
Taikoo Place, Hong Kong