

# CONYERS

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## MEMO

Date: 20 June 2023

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To: **Viva Goods Company Limited** (the “**Company**”)  
From: **Conyers Dill & Pearman**  
cc: **Messrs. Deacons** (as Hong Kong legal advisers to the Company)  
**The Stock Exchange of Hong Kong Limited**  
Re: Cayman legal advice re dividend payment

Dear Sirs,

We understand that The Stock Exchange of Hong Kong Limited has requested the Company to disclose in the listing document to be issued by the Company relating to the proposed transfer of listing from GEM to the Main Board whether the Company can pay dividend in view of the accumulated losses position (the “**Accumulated Losses**”) with the support of a legal opinion. We set out below the legal opinion required.

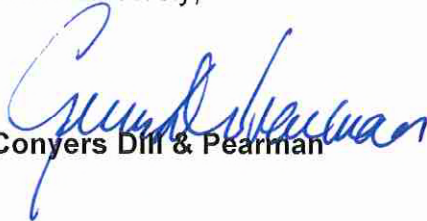
We have reviewed a copy of the existing articles of association of the Company adopted by a special resolution passed on 13 April 2023 and took effect on 14 April 2023 (the “**Articles**”) and assume that the Articles is currently in full force and effect.

We advise as follows:

1. The Companies Act (As Revised) of the Cayman Islands (the “**Act**”) does not regulate the source of funds which may be used by a company to declare and pay a dividend. At common law, the position follows the United Kingdom position that dividends may be declared and paid out of profits. There is no statutory definition of the term “profits” under the Act so the amount of profits will normally be determined by reference to the applicable accounting principles.

2. Although there is no statutory definition of “profits” under the Act, the Cayman Islands courts have expressly approved *dicta* of Buckley J in *Dimbula Valley (Ceylon) Tea Co. Ltd v Laurie* [1961] Ch 353 that surplus arising from a revaluation of an asset may be distributed as profit where (a) the valuation could not be open to criticism and (b) the company has fluid assets available for the payment of dividend, leaving it with assets of sufficient value to meet commitments shown on the liabilities side of its balance sheet.
3. Article 156(B) of the Articles expressly provides that “where any asset, business or property is bought by the Company as from a past date...the profits and losses thereof as from such date may at the discretion of the Directors in whole or in part be carried to revenue account and treated for all purposes as profits or losses of the Company, and be available for dividend accordingly.” It follows that from the Cayman Islands legal perspective and as provided in the Articles, “profits” include realized and unrealized profits.
4. In addition, under the Act<sup>1</sup>, the share premium of a company may be applied by a company, subject to the provisions of the memorandum and articles of association, towards payment of distribution or dividends to members provided that immediately following the date on which the distribution or dividend is proposed to be paid, the company is able to pay its debts as they fall due in the ordinary course of business.
5. Subject to and based on the above, notwithstanding the Accumulated Losses, the Company may still declare dividend (a) out of profits of the Company if the Company has sufficient profits, realized or unrealized, unless such is contrary to the accounting principles adopted by the Company and/or (b) out of the share premium of the Company if following the date on which the dividend is proposed to be paid, the Company is able to pay its debts as they fall due in the ordinary course of business.

Yours sincerely,



Conyers Dill & Pearman

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<sup>1</sup> Section 34(2) of the Act