

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD 1 OF 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)  
AND IN THE MATTER OF COWELL E HOLDINGS INC

PETITION



TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of COWELL E HOLDINGS INC., whose registered office is at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104 (the "**Petitioner**"), shows that:

A. Background

1. The Petitioner was incorporated on 28 November 2006 as an exempted limited company under the laws of the Cayman Islands, and listed on the Korea Exchange ("**KRX**") on 29 January 2008.
2. The Petitioner is an investment holding company of a group of companies engaged in the manufacturing and sale of optics components and camera modules, with its sales and operations based in Hong Kong, the People's Republic of China and the Republic of Korea.
3. Mr Joung Hwan Kwak, who was the controlling shareholder of the Petitioner (with approximately 65.11% of the issued share capital of the Petitioner) entered into a share sale and purchase agreement (the "**SPA**") with Hahn & Company Eye Holdings ("**HCEH**") and a shareholders' agreement (the "**Shareholders' Agreement**") on 1 August 2011.
4. Pursuant to the terms of Article 4.2 of the Shareholders' Agreement, Mr Kwak and HCEH both agreed to exert their reasonable best efforts to purchase shares of the Petitioner so

that they would eventually together own such number of shares in the Petitioner to qualify for delisting of the Petitioner from the KRX.

5. HCEH initiated a tender offer between 2 to 23 August 2011 at the purchase price of KRW 4,300 per share. The holders of approximately 84.52% (8,488,001 out of 10,042,593) of the outstanding shares owned by all shareholders (other than Mr Kwak and HCEH) (the "**Minority Shareholders**") voluntarily tendered their shares to accept the tender offer. The tender price of KRW 4,300 constituted 35.55% premium over the one month volume weighted average price per share, 25.01% premium over six month volume weighted average price per share and 44.64% premium over one year volume weighted average price per share.
6. On or around 5 September 2011, HCEH submitted a further standing order ("**Order**") through the KRX for 1,179,333 shares at the purchase price of KRW 4,300 per share. On or around 25 November 2011, the Order was completed. As a consequence, HCEH has acquired approximately 96.26% of the outstanding shares owned by the Minority Shareholders and together with Mr Kwak, owned 98.75% of total issued and outstanding shares of the Petitioner. Accordingly, on 26 November 2011, the Petitioner was delisted from the KRX.
7. On 6 January 2012, HCEH purchased from Mr Kwak 5,023,017 ordinary shares, which is equal to 16.74% of total issued and outstanding shares of the Petitioner. At this point, the combined shares of Mr Kwak and HCEH amounted to 99.60% of total issued and outstanding shares of the Petitioner.
8. In connection with the delisting, HCEH and Mr Kwak submitted a letter of undertaking to the KRX pursuant to which they committed to buy the ordinary shares of the Petitioner tendered to them until 4 June 2012, at the purchase price of KRW 4,300 per share. In response, a total of 53,588 shares were tendered to HCEH and Mr Kwak, which were purchased as contemplated in a letter of undertaking. At this stage, HCEH and Mr Kwak collectively owned 99.78% of the total issued and outstanding shares of the Petitioners.

**B. The Merger**

9. On 7 May 2012, Cowell Eye Co. Ltd ("**Cowell**") was incorporated in the Cayman Islands as a bidder for the purposes of merging with the Petitioner pursuant to Part XVI of the Companies Law (2012 Revision) (the "**Merger**"). The purpose of the Merger was to:
- (i) provide the Minority Shareholders with liquidity for their investment in the Petitioner through payment of a merger consideration of KRW4,300 per ordinary share in cash ("**Merger Consideration**") in exchange for each ordinary share of the Petitioner; and
  - (ii) to help streamline the Petitioner's capital structure and to provide greater flexibility in managing the Petitioner's business and pursuing strategic goals.
10. On 25 June 2012, the Petitioner gave notice of an extraordinary general meeting to be convened on 10 July 2012 ("**10 July EGM**") for all its shareholders ("**Shareholders**") to vote on the following resolutions ("**Resolutions**"):
- "(a) That, as a Special Resolution, the Company be authorised to merge (the "Merger") with Cowell Eye Co., Ltd ("Cowell Eye"), so that the Petitioner will be the surviving company and all the undertaking, property and liabilities of Cowell vest in the surviving company by virtue of such merger pursuant to the provisions of Part XVI of the Companies Law (as amended) of the Cayman Islands (the "Companies Law");*
  - (b) That, as a Special Resolution, the Plan of Merger between the Company and Cowell Eye, including the Merger Agreement (the "Merger Agreement") among the Company, Cowell Eye, Joung Hwan Kwak ("Mr Kwak") and Hahn & Company Eye Holdings (the "Investor" and together with Mr Kwak, the "Investors") attached thereto (collectively, the "Plan of Merger") in the form annexed to the Notice of the Extraordinary General Meeting be authorised, approved and confirmed in all respects;*
  - (c) That, as a Special Resolution, the Company be authorised to enter into the Plan of Merger;*

- (d) *That the Plan of Merger be executed by any one Director on behalf of the Company and any Director or his designee (including Walkers), on behalf of the Company, be authorised to submit the Plan of Merger, together with any supporting documentation, for registration to the Registrar of Companies of the Cayman Islands and that such designee of the Director (including Walkers), on behalf of the Company, be authorised to make such additional filings or take such additional steps as they deem necessary in respect of the Merger; and*
- (v) *That all actions taken and any documents or agreements executed, signed or delivered prior to or after the date of the Extraordinary General Meeting by any Director or officer of the Company in connection with the transactions contemplated by the Merger be and are hereby approved, ratified and confirmed in all respects."*

11. The 10 July EGM was held in accordance with the articles of association of the Petitioner with requisite notice being given to the Shareholders of the Petitioner. The relevant resolutions were clearly set out in the notice of the meeting and the relevant proxy forms.
12. At the 10 July EGM, the Company's Shareholders in attendance and voting (being 99.78% of the total issued share capital of the Petitioner) unanimously voted in favour of the Merger and approved and passed each of the Resolutions.
13. Following the execution of the Merger Agreement by the Petitioner, Cowell, Mr Kwak and HCEH and the Plan of Merger by the Petitioner and Cowell, the Merger was subsequently completed on 28 August 2012 with the issuance of the Certificate of Merger by the Registrar of Companies being received by the Petitioner on the same date.
14. Save for Mr Kwak, HCEH, and one dissenting shareholder, Mr Ki In Kim (see paragraph 16 below), all the Shareholders voted in favour of the Merger and have accepted the Merger Consideration in exchange for their shares in the Petitioner.

**C. Notice of Dissent**

15. On 5 July 2012, the Petitioner received a written objection from Mr Kim (the "**Dissenting Member**") to the Merger which stated that the Dissenting Member would demand payment for his shares should the Merger be approved at the 10 July EGM. Mr Kim is the legal holder of 42,000 ordinary shares of the Petitioner (the "**Shares**").
16. On 20 July 2012, the Petitioner gave written notice to the Dissenting Member of the approval of the Merger by the Resolutions passed by the Shareholders at the 10 July EGM.
17. On 8 August 2012, the Dissenting Member gave to the Petitioner a written notice of his decision to dissent (the "**Notice to Dissent**"). The Notice of Dissent states (*inter alia*) that "...the purchase price would be reasonable at KRW 10,000 in the end of 2012 1Q".
18. On 4 September 2012, the Petitioner made a written offer to the Dissenting Member to purchase his Shares at KRW 4,300 per share, such price being a fair value as determined by the Petitioner.
19. To date, the Petitioner and the Dissenting Member have failed to agree upon the price to be paid for the Dissenting Member's Shares (notwithstanding that on 28 August 2012, the Dissenting Member has been paid KRW 4,300 per share in respect of the Merger Consideration).
20. In the circumstances, there is no alternative or other remedy or cause of action available to the Petitioner in order to satisfactorily protect its interests, the interests of its stakeholders, and at the same time address the rights of the Dissenting Member to be paid the fair value of his Shares.

**YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**


- (1) The Court determines the fair value of the Shares of the Dissenting Member, together with a fair rate of interest, if any, to be paid by the Petitioner upon the amount determined to be the fair value in accordance with the Companies Law (2012 Revision) (the "**Companies Law**").
- (2) The costs of the Petition and the Petitioner be paid by the Dissenting Member.

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

AND your Petitioner will ever pray etc.

DATED this 3<sup>rd</sup> day of January 2013

FILED this 3<sup>rd</sup> day of January 2013

  
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**WALKERS**  
Attorneys-at-Law for the Petitioner

**NOTE:** This Petition is intended to be served on the Dissenting Member at the address stated in the Register of Members.

#### **INDORSEMENT**

##### **Notice of Hearing**

This Petition having been present to the Court on                    January 2013 will be heard at the Law Courts, George Town, Grand Cayman on                    2013 at                    in the forenoon/afternoon or as soon thereafter as the Petition can be heard.

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioner, whose address for service is care of their said Attorneys at Walker House, 87 Mary Street, George Town, Grand Cayman KY 1-9001, Cayman Islands.