

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

0130
CAUSE NO. FSD ___ OF 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)
AND IN THE MATTER OF RIGHTWAY CHINA REAL ESTATE LIMITED



WINDING UP PETITION



To the Grand Court



The humble petition of Goldman Sachs (Asia) Finance, Goldman Sachs RE Investments Holdings Limited and Fortunesea (Cayman) Ltd. (**"the Petitioners"**) shows that:-

1. Rightway China Real Estate Limited (**"the Company"** or **"RCRE"**) is an exempted limited company incorporated under the laws of the Cayman Islands with registration number 188265 and its current registered office is situated at Maples Corporate Services Limited, P.O. Box 309, Uglund House, South Church Street, George Town, Grand Cayman, Cayman Islands.
2. The Company is the ultimate holding company of a group of operating companies in the PRC (**"the Rightway Group"**) which engage in property development and construction in the cities of Dalian and Beijing (amongst others) in the PRC. The Group's primary assets are its direct and indirect shareholdings in PRC companies that own land and development rights in the PRC.
3. The Company holds a 100% shareholding in Dash Limited (**"Dash"**), a Cayman Islands company, and a 100% shareholding in Million Horses Holdings Limited (**"MHH"**), a British Virgin Islands company.
4. The Company held a 100% shareholding in Allied Treasure Limited (**"ATL"**), a business company incorporated in the British Virgin Islands until 20 December 2011, when

unbeknownst to the Petitioners at the time, the Company purportedly transferred this shareholding to Home Fortune, a Hong Kong company (as defined and described further below).

5. ATL and Dash are respectively the 83.75% and 16.25% shareholders of Rightway Real Estate Development Company Limited, a PRC company, which in turn holds the majority ownership of the Rightway Group's PRC operating subsidiaries.

The 2007 Financing

6. On 3 December 2007, RCRE entered into a syndicated loan arrangement with a group of lenders (the "**Lenders**"), which included the Petitioners, pursuant to which RCRE obtained a loan of USD496 million from the Lenders. The loan was secured by, among other things, charges over the shares in RCRE, ATL, Dash and MMH.
7. As part of the arrangement, RCRE issued in aggregate 391,141 shares to some of the Lenders or their affiliates (the "**Investors**"), including the Petitioners, for a consideration of USD194 million, and granted put options to them in respect of all of the RCRE shares held by them pursuant to a subscription agreement.

The 2011 Restructuring

8. In 2009, Fu Yan Bin ("**Fu**"), the founding Chairman of the Rightway Group, commenced restructuring negotiations with the Lenders. On 31 March 2011, a set of new finance documents was executed to implement a restructuring of the credit facilities ("**the Restructuring**"). The key restructuring documents are:-
 - (a) a Framework Agreement;
 - (b) a Facility Agreement;
 - (c) an Intercreditor Agreement;
 - (d) the Terms and Conditions of the convertible bonds issued by RCRE ("**the Bonds**");
 - (e) four Confirmatory Share Mortgages in favour of DB Trustees (Hong Kong) Limited, as the Security Agent ("**the Security Agent**"), over the shares in RCRE, Dash, ATL

and MHH (Dash, ATL and MHH collectively, "**the Original Guarantors**"). ATL and MHH were wholly owned direct subsidiaries of RCRE at the time;

- (f) four Confirmatory Security Agreements in favour of the Security Agent over the assets of RCRE and the Original Guarantors; and
- (g) a guarantee given by Fu and Fortune Source Investments Ltd ("**FSI**"), a 40% shareholder of RCRE ("**the Founder Guarantee**").

(collectively, "**the Finance Documents**"). All of the Finance Documents are dated 31 March 2011 and governed by Hong Kong law.

9. Pursuant to the Finance Documents:-

- (a) the Company repaid the original loan of USD496 million with premium;
- (b) the Lenders, including the Petitioners, agreed to advance USD547,812,590.50 (the "**Loan**") to the Company, which included a cash loan and a Payment in Kind Loan (i.e. PIK interest on the original loan capitalised under the restructuring); and the Loan was secured by the guarantees, share mortgages and security over the assets of certain of the Company's affiliates pursuant to the agreements set forth in paragraphs 8(e) to 8(g) above;
- (c) the Company issued the Bonds to the Investors in consideration for which part of their shares in the Company were repurchased and cancelled by the Company, through the deemed exercise of the Investors' put options.

10. The cash loan commitments of the Petitioners totalled USD57.506 million and the PIK Loan commitments of the Petitioners totalled USD5.955 million.

11. The Intercreditor Agreement provided for, *inter alia*, the priority of the creditors. Specifically, the Loan ranked in priority over the Bonds (as well as other shareholder loans and intragroup liabilities) and, therefore, holders of the Bonds are generally prohibited from taking enforcement action until the Lenders are fully paid under the Facility Agreement.

Individual Lenders' Rights to Enforce the Finance Documents

12. The right of individual Lenders to enforce the Finance Documents is recognised under clause 2.2(d) to (f) of the Facility Agreement: each Lender may initiate proceedings to recover its portion of any outstanding Loan, even though it may not independently enforce the security documents itself.
13. As between the Lenders, each Lender does not have independent power to enforce any of the security or exercise any rights or powers under the security documents, except (a) through the Security Agent or (b) in respect of the security given under the Facility Agreement. The Facility Agreement includes, under clause 14.1, a guarantee given by the Original Guarantors by which each of them jointly and severally, and irrevocably and unconditionally, guaranteed to each Finance Party (including the Petitioners) punctual performance by the Company of all its obligations under the Finance Documents.

Payment and Other Defaults of the Company

14. Clause 6.1 of the Facility Agreement provided a schedule of principal repayment by RCRE. Relevantly, the schedule provided for payment of instalments in the amount of USD74.4 million on 30 June 2011, 31 December 2011 and 30 June 2012.
15. On 30 June 2011, RCRE defaulted in payment of the second instalment (among other sums, such as interest and premium), thus triggering an Event of Default under clause 19.2 of the Facility Agreement. On 5 July 2011, RCRE made a part payment towards the principal in the sum of USD15,608,357.84 (after the deduction of interest and other outstanding sums), leaving a balance of USD63,255,642.16 of the second instalment of the principal unpaid.
16. On 31 December 2011 and on 30 June 2012, RCRE again defaulted on its payment obligations as stipulated in clause 6.1 of the Facility Agreement. Specifically, although it made a partial interest payment in the sum of USD USD16,806,053.82 on 31 December 2011, none of the principal repayments were made.
17. In December 2011, RCRE purportedly transferred all of its shares in ATL to a third party company called Home Fortune Enterprises Ltd ("**Home Fortune**"), without the knowledge or consent of the Lenders. This purported transfer constituted (i) a "change of control" under clause 7.3 of the Facility Agreement because ATL ceased to be a wholly owned subsidiary of

RCRE (and thus Lenders could cancel undrawn Loans and demand mandatory prepayment of outstanding Loans) and (ii) a breach of clause 5(b) of the Facility Agreement, which prohibited the charger from disposing of the charged shares and the Confirmatory Share Mortgage in relation to the shares in ATL.

18. For so long as the Loan remains outstanding:-
 - (a) demands may be made by any one of the Lenders against the Original Guarantors under the guarantees provided in the Facility Agreement in respect of the liability of RCRE;
 - (b) demands may be made of the Original Guarantors under the guarantees provided in the Intercreditor Agreement in respect of the liability of RCRE, but only by the Security Agent; and
 - (c) demands may be made of Fu and/or FSI under the Founder Guarantee in respect of the liability of RCRE, but only by the Security Agent.

19. The occurrence and continuation of an Event of Default also means that:-
 - (a) the Confirmatory Share Mortgages became immediately enforceable, upon which a receiver may be appointed in respect of the charged shares; and
 - (b) the Confirmatory Security Agreements became immediately enforceable.
 - (c) under clause 19.18 of the Facility Agreement, the Administrative Agent (Deutsche Bank AG, Hong Kong Branch) may cancel undrawn Loans and accelerate the Loan upon the instruction of the Majority Lenders (as defined in the Facility Agreement), when there is an outstanding Event of Default.

20. On 10 August 2011, a notice of default was issued by the Administrative Agent to RCRE and the Original Guarantors in respect of the 30 June 2011 non-payment, notifying them of the occurrence of an Event of Default under the Finance Documents. The notice also reserved the right of Lenders and Investors under the Finance Documents.

21. On 10 October 2012, the Administrative Agent issued a demand to the Original Guarantors, for the payment of all amounts outstanding under the Finance Documents, and the Security

Agent appointed three partners of PricewaterhouseCoopers as receivers and managers over the assets of each of the Original Guarantors.

Amounts owed to Petitioners

22. RCRE and the Original Guarantors have, however, failed to pay the amounts outstanding to all of the Lenders (including the Petitioners) under the Finance Documents in full or at all.
23. Despite repeated demands, RCRE has defaulted and failed to pay or discharge the sums which fell due on 30 June 2011, 31 December 2011 and 30 June 2012 (as referred to in paragraphs 15 and 16 above) or any other sums due under the Facility Agreement.
24. As at 30 June 2013, the total amount outstanding for all of the Lenders is USD592,975,504.13, of which the amount due to the Petitioners from RCRE amounted to USD68,750,783.01.
25. Each of the Petitioners is therefore an actual creditor or alternatively a prospective and/or contingent creditor of RCRE. RCRE is unable to pay its debts as they fall due and is accordingly insolvent.
26. In the circumstances, it is in any event just and equitable that RCRE be wound up.
27. The Petitioners nominate Kenneth M. KryS of KRyS Global, Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman, KY1-1205, Cayman Islands and Cosimo Borrelli of Borrelli Walsh, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong for appointment as joint official liquidators of the Company.

The Petitioners therefore humbly pray that:

- (1) The Company be wound up in accordance with the Companies Law (2012 Revision).

- (2) Kenneth M. Krys of KRyS Global, Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman, KY1-1205, Cayman Islands and Cosimo Borrelli of Borrelli Walsh, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as joint official liquidators of the Company (the "**Liquidators**").
- (3) The Liquidators be authorized to exercise any of the powers listed in the Third Schedule to the Companies Law (2012 Revision) without further sanction or intervention of the Court.
- (4) The Liquidators be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.
- (5) The Liquidators do file with the Clerk of the Court a report in writing of the position of the Company and the progress which the Liquidators have made with the winding up of the Company, with the realisation of its assets and in relation to any other matters connected to the winding up of the Company, at such time and in such manner as the Court may direct.
- (6) The Liquidators be at liberty to appoint such counsel, attorneys, professional advisors, 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.
- (7) No disposition of the Company's property by or with the authority of the Liquidators 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 Law (2012 Revision).
- (8) The Liquidators and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners Regulations 2008.
- (9) The Liquidators be at liberty to apply generally.
- (10) The costs of the Petition and the Petitioners be paid forthwith out of the assets of the Company.

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

AND your Petitioners will ever pray, etc.

Dated the 8th day of October 2013



Ogier

NOTE: This Petition is intended to be served on the Company.

This Petition was presented by Ogier, Attorneys-at-Law for the Petitioners, whose address for service is:
89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands (Ref: 424596.00001/RdLWJO)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on _____ 2013 at 10:00 am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, Tel: (345) 949 4296.