

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

0144 (AJEF)
CAUSE NO. OF 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF HAOHAI INTERNATIONAL HOLDINGS (GROUP) LIMITED



WINDING UP PETITION

To: The Grand Court of the Cayman Islands

The humble petition of O'Melveny Myers LLP operating at Plaza 66, Tower 1, 37 Floor, 1266 Nanjing Road West, Shanghai, 200040, the People's Republic of China (*PRC*) (the *Petitioner*) shows THAT:

A. BACKGROUND

1. Haohai International Holdings (Group) Limited (the *Company*) is a Cayman Islands exempted company which was registered on 19 October 2010 under the laws of the Cayman Islands.
2. The registered office of the Company is situated at the offices of Offshore Incorporations (Cayman) Limited, PO Box 2804 GT, 4th Floor, Willow House, Cricket Square, Grand Cayman, Cayman Islands.
3. The Company is the holding company of a group of PRC companies, and substantially all of the group's business is conducted through three wholly owned PRC subsidiaries, Shanghai Haohai Enterprise Management Co., Ltd. or Haohai Enterprise, Shanghai Haohai International Trading Co., Ltd. or Haohai Trading, and Shanghai Haohai General Aviation Co., Ltd. or Haohai Aviation.
4. The Company historically provided warehousing facilities, focusing on public bonded and non-bonded warehousing of bulk commodities in the PRC. In 2008, the Company

obtained a General Aviation Enterprise Operation License from the PRC government and officially began providing general aviation logistics services in September 2010.

5. In 2012, the Company was seeking to launch an initial public offering and listing of the Company's shares in the United States on the New York Stock Exchange (the *IPO*). The Petitioner was engaged as legal counsel to advise the Company on this matter. The IPO did not go ahead and the Company has failed to pay legal fees and disbursements owing to the Petitioner for the provision of legal services for the period from 3 November 2010 to 10 April 2012. Further information as to the retainer agreement between the Company and the Petitioner is set in Section C below.

B. THE PETITIONER

6. The Petitioner, a California limited liability partnership headquartered at 400 South Hope Street, Los Angeles, California, is a large international law firm with offices in the United States, Europe, and Asia.
7. The Petitioner presents this Petition as a creditor of the Company, and is entitled to do so pursuant to section 94(1)(b) of the *Companies Law (2012 Revision)* on the basis that the Company is unable to pay the debts which it owes to the Petitioner.

C. EVENTS LEADING TO THE PETITION

8. Pursuant to a retainer letter for the provision of legal services dated 3 November 2010 between the Petitioner and the Company (the *First Retainer Letter*), and a supplemental retainer letter dated 16 March 2012 between the Petitioner and the Company (the *Second Retainer Letter*) (together, the *Retainer*), the Petitioner provided the Company and its affiliated entities with legal services for the period from 8 November 2010 to 10 April 2012 in relation to the Company's proposed IPO (the *Subject Matter*). (An English translation of the First and Second Retainer Letters are attached to the Affidavit of Ku Ching Yu in Exhibit KCY-1 at pages 16 to 26 and 40 to 50 respectively).
9. Pursuant to the First Retainer Letter, the Company agreed that:

“subject to the terms of this letter, our firm’s total fees for the Subject Matter will not exceed the cap of \$850,000 (exclusive of actual expenses to be reimbursed to us), if the Subject Matter is closed before December 31, 2011. [The Petitioner] will charge [its] fees upon the closing of the Subject Matter. If the Subject Matter is not consummated, [the Petitioner] will only charge 75% of [its] fees due and payable on an appropriate date. If [the Petitioner fails] to consummate the Subject Matter before the said deadline or [the Petitioner’s] fees are significantly increased due to the occurrence of unexpected significant circumstances, [the Petitioner’s] fee estimate shall be no longer relied and [it] will then create a new estimate of fees for the legal services provided for the Subject Matter through negotiation with [the Company]” (First Retainer Letter, paragraph 1) (KCY-1, paragraph 1, page 19).

10. The payment terms of the First Retainer Letter were amended by the Second Retainer Letter in which the Company agreed that:

*“if the Subject Matter is terminated by [the Company] before June 30, 2013 or the Subject Matter does not continue due to any reason, [the Petitioner] will issue a bill before June 30, 2013 for the legal service fees and expenses actually incurred and [the Company] **must pay all amounts billed before June 30, 2013**” (Second Retainer Letter, as translated, paragraph 1) (emphasis added) (KCU-1, paragraph 1, page 43).*

11. The IPO (ie the Subject Matter) did not go ahead and accordingly, by an invoice dated 16 July 2013, the Petitioner gave the Company formal demand for payment of the amounts due under the Retainer to the value of USD 936,693.21, comprising USD 915,633.50 in legal fees and USD 21,059.71 in disbursements (the **Outstanding Debt**) (a copy of the invoice appears at KCY-1, page 51, together with proof of delivery at KCY-1, page 113).
12. Under the Retainer, the Petitioner reserved the right to charge the Company interest at a rate of 10% per annum on all sums not paid within 30 days of presentation of its invoice (First Retainer Letter (English translation), KCY-1, page 21 and Second Retainer Letter (English translation), KCY-1, page 45). Therefore, as the invoice was presented by

a letter dated 16 July 2013, interest has been accruing from 16 August 2013 at a rate of USD 256.63 per day.

D. GROUNDS FOR THE PETITION

13. The Petitioner wrote to the Company by a letter dated 26 July 2013, demanding immediate payment of the Outstanding Debt, plus accruing interest to be charged at a rate of 10% per annum from 30 July 2013 (a copy of this letter appears at KCY-1, page 115). The Petitioner received no response to this letter.
14. On 16 August 2013, the Petitioner, through its Cayman counsel, Harneys, served a Statutory Demand on the Company requesting payment of the Outstanding Debt within 21 days (the **Statutory Demand**). The Company has not applied to restrain presentation of a winding up petition on the Company, nor has it responded to the Statutory Demand (a copy of the Statutory Demand appears at KCY-1, page 118, together with acknowledgement of service at page 121).
15. The Petitioner therefore presents this Petition on the ground that the Company is unable to pay its debts pursuant to sections 92(d) and 93(a) of the *Companies Law*.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. the Company be wound up by the Court under the provisions of the *Companies Law*;
2. KRIS BEIGHTON, of KMPG, P.O. Box 493 Century Yard, Cricket Square Grand Cayman KY1-1106 and PATRICK COWLEY, KPMG of 8th Floor, Prince's Building, 10 Chater Road, Central, Hong Kong be appointed as joint Official Liquidators of the Company (the **Liquidators**);
3. the Liquidators shall not be required to give security for their appointment;
4. the Liquidators shall be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the *Companies Law* without the further sanction or intervention of the Court;

5. the Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company's assets;
6. no suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose;
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*;
8. the Liquidators do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct;
9. the Liquidators be at liberty to appoint counsel, attorneys, and/or any other 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;
10. the Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate;
11. the Liquidators be at liberty to apply generally;
12. the costs of the Petition and the Petitioner be paid out of the assets of the Company;
13. the Liquidators shall cause a copy of this Petition to be delivered to the Registrar of Companies;
14. alternatively, that the Court do make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit; and
15. such further or other relief be granted as the Court deems appropriate.

Dated the 8th day of November 2013

Filed the 8th day of November 2013

Harney Westwood & Riegels
Harney Westwood & Riegels
Attorneys-at-Law for the Petitioner

NOTE:

It is intended to serve this Petition upon:

The Registrar

Haohai International Holdings (Group) Limited, at its registered office

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: 04490-0001-INM).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town,
on *17 December* 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 PO
Box 495, Grand Cayman KY1-1106, Telephone 345-949-4296.