

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

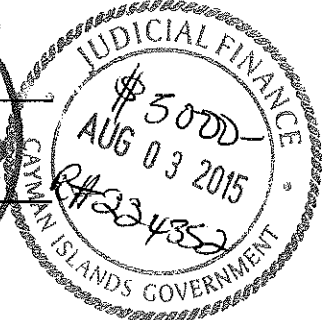
CAUSE NO: FSD 0123/15

IN THE MATTER OF PART XVI OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF FOUNTAIN MEDICAL DEVELOPMENT, LTD.



PETITION



TO THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION of FOUNTAIN MEDICAL DEVELOPMENT, LTD whose registered office is c/o CARD Corporate Services, P.O. Box 709, Zephyr House, 122 Mary Street, George Town, Grand Cayman, KY1-1107, Cayman Islands (the "Petitioner"), shows that:

**Background**

1. The Petitioner was incorporated on 8 June 2007 as an exempted limited company under the laws of the Cayman Islands with registration number 188966.
2. The directors of the Petitioner were, at the material time, as follows:
  - a. Larry Li;
  - b. Xin Ke;
  - c. Yu Wu; and
  - d. Dan Zhang,

(together, the "Directors").

3. Until shortly before completion of the transaction to which the Petition relates, the Petitioner had in issue an aggregate of 6,314,616 Class 1 Common Shares of par value US\$0.001 each (the "Class 1 Common Shares"), 9,153,991 Class 2 Common Shares of par value

US\$0.001 each (the "**Class 2 Common Shares**") (together, the "**Common Shares**"), and 4,500,000 Series A Preferred Shares of par value US\$0.001 each (the "**Preferred Shares**").

4. The shares to which the Petition relates are 2,208,000 Common Shares (the "**Shares**") held by Qiao Joanne Jiang Chen of 21 Hunter's Ridge, Pennington, New Jersey, 08534, United States of America (the "**Dissenting Shareholder**"). The Dissenting Shareholder held 9.17% of the issued shares in the Petitioner.
5. A verified list containing the name and address of the Dissenting Shareholder, who filed a notice under Section 238(5) of the Companies Law (2013 Revision) (the "**Law**") and with whom agreement as to the fair value of her shares has not been reached is at Appendix A of this Petition.

#### **The Plan of Merger**

6. On 11 May 2015 the board of directors of the Petitioner unanimously approved (the "**Directors' Resolutions**") and executed a plan of merger dated 11 May 2015 (the "**Plan of Merger**") between the Petitioner and Fountain Medical Merger Co., Ltd ("**Merger Co**"), on the basis that the merger (the "**Merger**") was determined as being desirable and in the Petitioner's commercial interests.
7. Merger Co was incorporated on 2 January 2015 as an exempted limited company under the laws of the Cayman Islands with registration number 295109. Merger Co's registered office is c/o CARD Corporate Services, P.O. Box 709, Zephyr House, 122 Mary Street, George Town, Grand Cayman, KY1-1107, Cayman Islands.
8. Merger Co was formed solely for the purposes of the Merger. As at 2 May 2015, Merger Co had in issue an aggregate of 6,419,568 Class 1 Common Shares of par value US\$0.001 each, 6,790,936 Class 2 Common Shares of par value US\$0.001 each and 4,500,000 Series A Preferred Shares of par value US\$0.001 each.
9. The Plan of Merger (which was expressed to be governed by and construed in accordance with the laws of the Cayman Islands) provided for, *inter alia*, the Petitioner being the surviving company and for the holders of Common Shares in the Petitioner to receive

US\$0.45112953 in exchange for the cancellation of each common share (the "**Merger Consideration**").

10. In summary, the value of the Merger Consideration was arrived at by the directors of the Petitioner having regard for the following:

- a. The total assets of the Petitioner;
- b. The total liabilities of the Petitioner;
- c. The total net assets of the Petitioner; and
- d. The total number of shares issued in the Petitioner (on a fully diluted basis).

11. During 2014, the Petitioner (as the surviving company) merged with an unrelated entity, K&L Consulting Services, Inc. (the "**K&L Merger**"). For the purposes of the K&L Merger, the combined value of the surviving company (the Petitioner) was determined to be \$16M (the "**K&L Valuation**").

12. Over the course of the following year, the Petitioner incurred total liabilities in the amount of US\$5,817,600. Consequently, the net asset value of the Petitioner as at the time of the Merger was calculated by applying its total liabilities incurred following the K&L Merger against the K&L Valuation, bringing the total net assets of the Petitioner to US\$10,182,400 (the "**Net Asset Value**").

13. The Net Asset Value was divided by the total number of shares in the Petitioner on a fully diluted basis (22,570,906) providing for an individual share value of US\$0.45112943 (the Merger Consideration).

14. The Dissenting Shareholder received a copy of the valuation exercise by email dated 21 December 2014.

#### **Prior notice to shareholders of the Merger**

15. On 2 May 2015, the Petitioner gave notice by email to its shareholders of an extraordinary general meeting of the Petitioner to be held on 11 May 2015 at 09:00 (Chinese time) at

Room 301, Building 17, No. 1 Yuan (Non-Centre), Wuliqiao Yi Jie, Chaoyang District, Beijing 100024 (the "EGM").

16. In the Petitioner's email of 2 May 2015, the Petitioner attached the following documentation:

- (i) Letter dated 2 May 2015 to shareholders of the Petitioner in respect of the EGM (the "2 May Letter"). The 2 May Letter enclosed a document also dated 2 May 2015 and headed "*Management Information Circular Q&A on the Merger, Voting Rights and Solicitation of Proxies*";
- (ii) A proxy voting form; and
- (iii) a draft plan of merger (the "**Draft Plan of Merger**"),  
  
(together the "**Proposal Documentation**").

17. The 2 May Letter provided an overview of the proposed resolutions to be decided upon at the EGM by stating, *inter alia*, as follows:

*"At the Meeting you will be asked to approve a plan of merger (the "Merger") pursuant to which the Company, as the surviving company, will merge with Fountain Medical Merger Co., Ltd. as constituent company.*

*Holders of issued and outstanding Class 1 and Class 2 Common shares of the Company (each, a "Common Share") will receive US\$0.45112953 per share in return for cancellation of their shares."*

18. Pursuant to paragraph 5 of the Draft Plan of Merger, the shares held by the shareholders in the Petitioner would be converted as follows:

*"Each Class 1 Common Share of US\$0.001 par value each (other than a Class 1 Common Share in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision)) shall be cancelled in exchange for the right to receive US\$0.45112953 per Class 1 Common Share.*

*Each Class 2 Common Share of US\$0.001 par value each (other than a Class 2 Common Share in respect of which the holder has validly exercised and duly maintained its right of*

*dissent under Section 238 of the Companies Law (2013 Revision)) shall be cancelled in exchange for the right to receive US\$0.45112953 per Class 2 Common Share.*

*Each Series A Preferred Share of US\$0.001 par value each (other than a Series A Preferred Share in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision)) shall be converted into a Series A Preferred Share in the Surviving Company.*

*Shares, being any of Class 1 Common Shares, Class 2 Common Shares, or Series A Preferred Shares, in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision) ("Dissenting Shares") shall be cancelled in exchange for a payment resulting from the procedure in section 238 of the Companies Law unless any such holder of Dissenting Shares fails to exercise or withdraw its rights under section 238 of the Companies Law in which event it shall receive the merger consideration noted above this paragraph.*

19. Pursuant to paragraph 5 of the Draft Plan of Merger, the shares held by the shareholders in Merger Co would be converted as follows:

*"Each Class 1 Common Share of US\$0.001 par value each (other than a Class 1 Common Share in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision)) shall be converted into one Class 1 Common Share in the Surviving Company.*

*Each Class 2 Common Share of US\$0.001 par value each (other than a Class 2 Common Share in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision)) shall be converted into one Class 2 Common Share in the Surviving Company.*

*Each Series A Preferred Share of US\$0.001 par value each (other than a Series A Preferred Share in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision)) shall be converted into a Series A Preferred Share in the Surviving Company.*

*Shares, being any of Class 1 Common Shares, Class 2 Common Shares, or Series A Preferred Shares in respect of which the holder has validly exercised and duly maintained its right of dissent under Section 238 of the Companies Law (2013 Revision) ("FMD Dissenting Shares") shall be cancelled in exchange for a payment resulting from the procedure in section 238 of the Companies Law unless any such holder of FMD Dissenting Shares fails to exercise or withdraw its rights under section 238 of the Companies Law in which event it shall receive the merger consideration noted above this paragraph.*

20. Accordingly, for the purposes of this petition, the Dissenting Shareholder (being the holder of 2,208,000 Common Shares), would be entitled to receive US\$0.45112953 per common share (the Merger Consideration) in accordance with the Draft Plan of Merger.

#### **The EGM**

21. At the EGM, a quorum was present in accordance with the article 19.01 of the articles of the association of the Petitioner (pre-merger) (the "**Articles**").
22. The following special and ordinary resolutions were set out in the proxy voting form with the Proposal Documentation sent on 2 May 2015 (the "**Resolutions**"):

#### ***"Special Resolutions***

1. *THAT the Company be and is hereby authorised to merge with Fountain Medical Merger Co., Ltd. (the "Merging Company") so that the Company be the surviving company and all the undertaking, property and liabilities of the Merging Company vest in the Company by virtue of such merger pursuant to the Companies Law (2013 Revision of the Cayman Islands (the "Merger").*
2. *THAT the Plan of Merger in the form annexed hereto (the "Plan of Merger") be and is hereby authorised, approved and confirmed in all respects.*
3. *THAT the Company be and is hereby authorised to enter into the Plan of Merger.*

#### ***Ordinary Resolutions***

4. *THAT that the Plan of Merger be executed by any one Director on behalf of the Company and any Director or Collas Crill & CARD on behalf of CARD Corporate Services Ltd. or CARD Corporate Services Ltd. for its own account, 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 Collas Crill & CARD on behalf of CARD Corporate Services Ltd. and/or CARD Corporate Services Ltd. for its own account be authorised to make such additional filings or take such additional steps as they deem necessary in respect of the Merger.*
5. *THAT all actions taken and any documents or agreements executed, signed or delivered prior to or after the date hereof by any Director or officer of the Company in connection with the transactions contemplated hereby be and are hereby approved, ratified and confirmed in all respects.”*

23. Pursuant to article 2.01 of Articles, the Resolutions required the following majorities in order to be carried:

- a. In the case of ordinary resolutions, a simple majority of the votes cast; and
- b. In the case of special resolutions, a majority of two thirds of the votes cast.

24. The Resolutions were:

- a. passed by the holders of Class 1 Common Shares, with 100% of the shareholders voting in favour of the Resolutions;
- b. passed by the holders of Class 2 Common Shares, with 70.60% of the shareholders voting, and 86.52% of the voting shareholders being in favour of the Resolutions; and
- c. passed by the holders of Preferred Shares, with 100% of the shareholders voting in favour of the Resolutions,

22. All votes by the shareholders in favour of the Resolutions were made by proxy.

## **Completion**

23. Following the approval of the Resolutions by the voting shareholders, the Plan of Merger was executed on 11 May 2015 by the Petitioner and Merger Co, as stated above.
24. The Plan of Merger was filed with the Registrar of Companies on 11 May 2015. The Certificate of Merger issued by the Registrar of Companies was received by the Petitioner on 12 May 2015.

## **Notices of Dissent**

25. On 7 May 2015, prior to the EGM, the Petitioner received written objection to the Plan of Merger from Appleby (Cayman) Ltd. ("**Appleby**"), on behalf of the Dissenting Shareholder.
26. On 26 May 2015, the Petitioner sent written notice dated 22 May 2015 to the Dissenting Shareholder of the approval of the Plan of Merger by shareholders at the EGM, pursuant to section 238(4) of the Law. A copy of the written notice was also served on Appleby, in soft and hard copy.
27. On 9 June 2015, Appleby sent a notice of dissent to the Plan of merger on behalf of the Dissenting Shareholder, pursuant to section 238(5) of the Law.
28. On 15 June 2015, the Petitioner sent a written offer to the Dissenting Shareholder repeating their offer to purchase the Shares at the value of US\$0.45112953 pursuant to section 238(8) of the Law.
29. Since then, the Petitioner and the Dissenting Shareholder have been unable to agree a price for the Shares. Accordingly, and pursuant to section 238(9) of the Law, the Petitioner humbly seeks the Court's determination of the fair value of the Shares.

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## **THE PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- (1) The Court determines the fair value of the Shares, 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 Law.

(2) The costs of and occasioned by the Petitioner in these proceedings be paid by the Dissenting Shareholder.

(3) The Court make such further order or grant such further relief as it deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 3<sup>rd</sup> day of August 2015.

FILED the 3<sup>rd</sup> day of August 2015.

Collas Crill & CARD

**Collas Crill & CARD**  
**Attorneys-at-Law for the Petitioners**

This Petition is intended to be served on:

1. The Dissenting Shareholder by service on her attorneys, Appleby (Cayman) Ltd.

**ENDORSEMENT  
NOTICE OF HEARING**

This Petition having been presented to the Grand Court of the Cayman Islands on 3 August 2015 will be heard at the Grand Court of the Cayman Islands on \_\_\_\_\_ 2015 at \_\_\_\_\_ am/pm or as soon thereafter as the Petition can be heard.

APPENDIX A

| Member                 | Address   |
|------------------------|---|
| Qiao Joanne Jiang Chen | 21 Hunter's Ridge, Pennington, New Jersey,<br>08534, United States of America |