

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

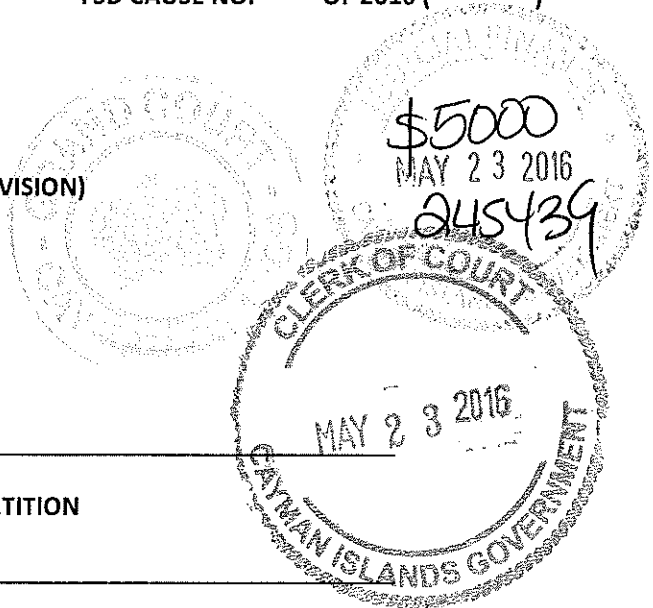
FSD CAUSE NO. 0069 OF 2016 ()

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND

IN THE MATTER OF AUTOHOME INC

PETITION



TO THE GRAND COURT:

The humble petition of Right Brain Limited, Stong Bond Ltd., Eight Dragon Success Ltd, AutoLee Ltd., Symmetrysky Ltd., each with a registered office at Drake Chambers, P.O. Box 3321, Road Town, Tortola, British Virgin Islands, and Future Power Holdings Limited with a registered office at P.O. Box 957, Road Town, Tortola, British Virgin Islands (the *Petitioners*). Each of the Petitioners is a registered shareholder of Autohome Inc. (the *Company*).

Introduction and Background: the Company, its board and the Petitioners' shareholding

1. This is the Petitioners' petition presented under section 94 of the Companies Law (2013 Revision) for alternative relief in accordance with section 95(3) of the Companies Law in respect of the Company.
2. The Company was registered in the Cayman Islands under its former name, Sequel Limited, on 23 June 2008 as an exempted company under registration number 212934. The Company's registered office is at Codan Trust Company (Cayman) Limited (*Codan*), Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman KY1-1111, Cayman Islands.

3. The Company carries on the business of providing information to automobile buyers and owners in the People's Republic of China (*PRC*) through online platforms.
4. The Company's shares are listed on the New York Stock Exchange (NYSE: ATHM). The Company has current market capital of approximately US\$2.77 billion and its shares are currently trading at a price of \$24.63 as at close of trading on May 20, 2016, with an average daily turnover of approximately US\$10 million. The initial public offering of 8,993,000 American Depositary Shares (*ADS*) was completed in December 2013. Each ADS represents one Class A ordinary share. A further public offering of 2,424,801 ADS was completed in November 2014.
5. The Petitioners are contributories of the Company, holding shares in the Company as follows:

Shareholder	Ordinary Shares	ADS	Percentage
Right Brain Limited	3,088,929	51,096	2.73
Stong Bond Ltd.	707,894	292,106	0.88
Eight Dragon Success Ltd.	-	1,599,588	1.38
AutoLee Ltd.	3,000,000	-	2.65
Symmetrysky Ltd.	-	500,000	0.44
Future Power Holdings Limited	-	3,044,778	2.69
Total	6,796,823	5,487,568	10.77

6. At all material times, Telstra Holdings Pty Limited (*Telstra*) held 54.6% of the Company's share capital in the form of Class B ordinary shares.
7. In addition to Telstra's and the Petitioners' shareholdings, the following institutional holders had an interest in the Company excess of 2% as at 31 March 2016:
 - a. Kayne Anderson Rudnick Investment Management LLC (4.41%);
 - b. Morgan Stanley (3.68%);

- c. Select Equity Group, Inc. (3.50%); and
 - d. Baillie Gifford and Company (3.41%).
8. In anticipation of the IPO, two of the Petitioners, AutoLee Ltd. and RightBrain Limited, entered into an Investors Rights Agreement (the ***Investors Rights Agreement***) dated 4 November 2013 with Telstra and the Company. The Investors Rights Agreement governs certain relationships between the parties with respect to corporate governance matters, registration rights, information rights and certain other matters. In particular, Article III of the Investors Rights Agreement provided Telstra registration rights under US securities laws in respect of its shares. The registration rights were granted to such existing shareholders under the Investors Rights Agreements as continuation of similar rights that they obtained as pre-IPO investors of the Company under their initial investment documents.
9. Article 8.5 of the Investors Rights Agreement provides that assignment of the Investors Rights Agreement by a party is only permitted with the prior written consent of all other parties (unless assignment is being made to affiliates of certain parties in which case prior written consent is not required).
10. Immediately prior to a board meeting of the Company scheduled for 11 a.m. (Beijing Time) on 13 May 2016, the Company had 10 directors as follows:
- a. Five directors appointed by Telstra: Cynthia Whelan (the ***Chairwoman***), Timothy Y. Chen (chairman until 6 May 2016), Andrew Penn, Han Willem Kotterman and Ruey-Bin Kao (the ***Telstra Directors***);
 - b. Three independent directors: Ted Tak-Tai Lee, Guangfu Cui and Junling Liu (the ***Independent Directors***); and
 - c. Two directors that serve or served as management of the Company: James Zhi Qin (i.e. a director of one of the Petitioners, Right Brain Limited, and CEO of the Company) (***Mr Qin***) and Xiang LI (i.e. a director of one of the Petitioners, AutoLee Ltd., and a former management member) (the ***Management Directors***).
11. The Company has an audit committee, which at all material times comprised of the Independent Directors, that is Ted Tak-Tai Lee, Guangfu Cui and Junling Liu (the ***Audit Committee***). Article 126 of the Articles of Association of the Company provides that “*For so long as the shares of the Company (or depositary receipts therefor) are listed or quoted on the Designated Stock*

Exchange, the Company shall conduct an appropriate review of all related party transactions on an on-going basis and shall utilize the Audit Committee for the review and approval of all potential conflicts of interest..”

12. Pursuant to Article 87(1) of the Articles of Association of the Company, Telstra “*shall be entitled, but not obligated, to appoint at least a majority of the Directors and remove and replace any Director so appointed, in each case by depositing a notification of appointment or removal at the registered office of the Company”*, as long as Telstra and its affiliates hold in aggregate at least 51% of the shares in the Company.
13. Additionally, Article 73 of the Articles of Association of the Company provides that: “*In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such meeting shall be entitled to a second or casting vote in addition to any other vote he may have”*. As the chairman is a Telstra director, Telstra has control of the Board even when it has only appointed five of the ten directors on the Board.
14. At all material times, the Company’s:
 - a. US legal counsel was Skadden, Arps, Slate, Meagher & Flom LLP (**Skadden**). Skadden was engaged by the Company in April 2011;
 - b. Cayman Islands legal counsel was Conyers Dill & Pearman (**Conyers**). Conyers was engaged by the Company in June 2011;
 - c. PRC legal counsel was TransAsia Lawyers (**TransAsia**). TransAsia was engaged by the Company in April 2011.

The Competing Offers

15. On 29 October 2015, the Company and Ping An Trust Co., Ltd., an affiliate of Ping An Insurance Group (**Ping An**), entered into a confidentiality agreement in connection with a proposed transaction (the **Ping An Confidentiality Agreement**).
16. On 30 March 2016 at approximately 5:30pm (Beijing Time) the directors of the Company were sent notification by email of the close of the trading window for shares of the Company effective from 1 April 2016 (New York time) until early May 2016 pending the release of the Company’s Q1 earnings (the **Blackout Period**). This notification advised the directors that during the Blackout Period they should not, (a) trade Company shares through their own account or other’s

accounts, or recommend to others to trade the Company shares, or (b) disclose any financial information or material facts of the Company to others. The Blackout Period restrictions were imposed pursuant to the Company's Statement of Policies Governing Material, Non-public Information and the Prevention of Insider Trading (the *Prevention of Insider Trading Policy*).

17. On 14 April 2016 at approximately 12:33pm (Beijing Time), Mr Qin sent an email to Telstra on behalf of a consortium (the *Consortium*) comprised of Mr Qin, Boyu Capital Advisory Co. Ltd, Hillhouse TBC Holdings L.P., Sequoia China Investment Management LLP and the management shareholders with an offer to purchase 45% of Telstra's shares at US\$31 per share (the *Consortium's Share Purchase Offer*). A draft share purchase agreement for the offered share purchase was attached to the email.
18. That same day, at approximately 1:50pm (Beijing time) Mr Qin sent an email to Telstra advising that he had reason to believe there had been a breach of the Ping An Confidentiality Agreement as a result of certain documents being widely distributed in the public domain (which Mr Qin attached thereto). Furthermore, Mr Qin voiced his concerns about a potential sale of Telstra's shares in the Company to Ping An, or an affiliate, as he believed that such a sale would have short to longer term implications for the Company given his discovery that Ping An would not be funding the purchase itself and would therefore only be acting as an agent/middleman for a large pool of unidentified investors. In the short term, in Mr Qin's view, any such sale might trigger unfavourable reactions from public investors and, in the longer term, as well as reputational risks, Ping An (or its affiliate) may not invest much time and effort in the direction and wellbeing of the Company. Cynthia Whelan (*Ms Whelan*), on behalf of Telstra, simply responded that she would raise the confidentiality concerns with Ping An, but the Petitioners have otherwise received no response from Telstra in relation to the concerns raised.
19. That same day, at approximately 2:44pm (Beijing Time) Mr Qin sent an email to Telstra reiterating the Consortium's Share Purchase Offer and invited Telstra to join the Consortium in a concurrent privatization proposal. Mr Qin also provided a copy of a Letter of Intent from China Merchant Bank to provide debt financing for the Consortium's Share Purchase Offer and the privatization transaction.
20. That same day, at approximately 11:02pm (Beijing time), Mr Qin sent another email to Telstra that included the draft consortium agreement to be entered into among the Consortium members.

21. In the morning of 15 April 2016, Mr. Qin had a call with Telstra, during which Mr. Qin was informed that Telstra would be entering into an agreement (the *Ping An SPA*) with Ping An for the sale of certain issued shares in the Company (the *Ping An Share Sale*).
22. On the same day, at approximately 1:28pm (Beijing Time), Mr Qin sent an email to Telstra with a revision to the Consortium's Share Purchase Offer in that it no longer included the concurrent privatization proposal as Telstra had indicated to Mr Qin that Telstra preferred a straight forward transaction without the complication of a concurrent privatization proposal. Mr Qin asked Telstra to submit the Consortium's Share Purchase Offer to the Telstra board for consideration and highlighted the following:
 - (i) His belief that the current Consortium's Share Purchase Offer offered a directly comparable deal structure to the Ping An Share Sale;
 - (ii) The Consortium's Share Purchase Offer offered a superior price term and much higher closing certainty when compared with the Ping An Share Sale.
23. Ms Whelan responded on behalf of Telstra refusing to consider the Consortium's Share Purchase Offer and later that day advised that the Ping An SPA had been exchanged and that the Australian Stock Exchange (the "ASX") had been notified (as Telstra Corporation Limited is an ASX listed company).
24. That same day, and a few hours after Mr Qin was advised of the Ping An Share Sale by telephone in his capacity as Autohome CEO, Telstra announced the Ping An Share Sale for the sale of 47.7% issued shares in the Company for US\$1.6 billion at a sale price of US\$29.55 per share and stated that the sale was subject to any required Chinese regulatory approvals and approval from the Company's board of directors.
25. On 16 April 2016, Wilson Sonsini Goodrich & Rosati, the Consortium's counsel, sent a non-binding "going-private" proposal on behalf of the Consortium (the *Going Private Proposal*) to the board of directors of the Company. The Going Private Proposal included an offer to purchase all outstanding Class A ordinary shares (including Class A ordinary shares represented by ADS) and Class B ordinary shares for US\$31.50 per share.
26. On 26 April 2016, at a special board meeting, the board of directors of the Company formed a special committee (the *Special Committee*) to review and evaluate the Going Private Proposal. The Telstra Directors voted in favour of establishing the Special Committee. Mr Qin attended

the board meeting, but declared his conflict of interest and did not participate in the vote to establish the Special Committee.

27. On 27 April 2016, Telstra informed the secretary of the board, Yun Sun, that Telstra required the board of the Company to pass a resolution resolving to enter into a registration rights agreement (the *RRA*) with an entity affiliated with Ping An as part of the Ping An Share Sale at a board meeting due to be convened on 3 May 2016. The form of RRA was attached to that email. On 28 April 2016, Telstra provided the secretary with board presentation materials of the RRA and advised the secretary that the RRA must be approved in its current form and that Telstra was not willing to discuss or agree to any changes to the RRA. Based on advice obtained from Skadden, Yun Sun asked for a copy of the Ping An SPA, in response to which Telstra indicated that whether the Ping An SPA should be provided to the board should be decided by the board. Telstra then informed Yun Sun that only an information session would be held at the 3 May 2016 board meeting regarding the RRA.
28. On 1 May 2016, Yun Sun sent an email to the board of directors informing them that Telstra wished to add the RRA as an information item to the agenda of the board meeting due to take place on 3 May 2016. The final form of RRA was attached to that email. The secretary of the board advised the directors of some background to the RRA and its implications, including her view (based on advice received from Skadden) that the board should have sight of the Ping An SPA when considering the RRA.
29. A board meeting was held on 3 May 2016 at which a representative of Sullivan & Cromwell (*S&C*), Telstra's legal counsel, was in attendance even though Telstra is not a party to the RRA. The Company's US Counsel, Skadden, was not invited and did not attend, even though the RRA is governed by New York law and the Company is a party to the RRA. At that board meeting, the Independent Directors and Management Directors were informed that a condition of the Ping An SPA is that the Company would be required to enter into the RRA and that only the RRA would require board approval, which was inconsistent with Telstra's 15 April 2016 announcement stating that the Ping An Share Sale was subject to regulatory approval and approval from the Company's board of directors. Although not legal counsel to the Company, S&C advised the Company's board of directors that entry into the RRA by the Company and Ping An would not be deemed a related party transaction under applicable laws. At that board meeting Ted Lee requested that the Company be given an opportunity to discuss with Ping An its intention regarding the shares to be purchased under the Ping An Share Sale. No further

feedback was provided to the board by the Telstra Directors on the discussion requested by Mr Lee.

30. On 5 May 2016, Mr Qin sent an email to the Telstra Directors on behalf of the Consortium with reference to the Ping An SPA and Ping An Share Sale. He referred to the Consortium's most recent Going Private Proposal to the board of directors to acquire all outstanding shares of the Company at a share price of US\$31.50 and pointed out that the Special Committee had been formed to evaluate this. He then referred to the Consortium's Share Purchase Offer and revised that further by making an offer to purchase from Telstra 47.7% to 54.6% of the total issued shares in the Company, with exact percentage within such range to be decided by Telstra at its option, at the same per share price of US\$31.50 on terms and conditions set forth in an attached draft share purchase agreement (the *Consortium SPA*), if and once the Ping An SPA was terminated pursuant to its terms. He pointed out that the Consortium SPA was not conditional upon completion of the Going Private Proposal or subject to regulatory approvals, and that the Consortium was willing to use offshore funds to close the share purchase under the Consortium SPA as soon as possible, but in any event within 30 days after execution of the Consortium SPA.
31. On 6 May 2016, Ms Whelan sent an email to the directors notifying them that she would be scheduling a board meeting to take place at 11am to 12:30pm Beijing time on 13 May 2016 (the *Meeting*), the purpose of which would be to put the RRA before the board for approval. A copy of the RRA, a summary of the RRA and a presentation of the RRA were attached to that email.
32. The Company sought and received advice from TransAsia, its PRC counsel, on 10 May 2016 regarding potential PRC legal issues raised by the Ping An Share Sale and related RRA. Advice was received to the effect that:
 - (i) the Ping An Share Sale would be considered an "outbound investment" by Ping An and in the circumstances certain PRC regulatory approvals would be required. The Company was advised that the board of directors should be provided with information on the required approvals process or an explanation of any lack of such approvals, including whether any such absence affects investment capacity or funding availability;
 - (ii) the Ping An Share Sale would be subject to review under PRC Anti-Monopoly Law (*AML*) and that if an entity does not comply with the relevant PRC rules, the relevant authorities are empowered to terminate and/or unwind the transaction, dispose of

relevant assets, shares or businesses within a set period and/or impose fines of up to RMB 500,000; and

- (iii) the advice foreshadowed that the Ping An Share Sale would be subject to a tax filing under the 2015 Notice on Certain Corporate Income Tax Matters Related to Indirect Transfer of Properties by Non-PRC Resident Enterprises (*Circular 7*) in the PRC.

TransAsia's advice was sent by Yun Sun to the board of the Company, including the Telstra Directors.

- 33. Also on 10 May 2016, the Audit Committee requested a meeting with the company's US legal counsel, Skadden, and its Cayman counsel, Conyers, regarding the Ping An Share Sale. On 11 May 2016, two members of the Audit Committee, Ted Tak-Tai Lee and Guangfu Cui, had a meeting with Skadden and Conyers via telephone conference call. At that meeting, Skadden advised the Audit Committee that, *inter alia*, the RRA was a related party transaction, and therefore needed to be pre-approved by the Audit Committee before being discussed and approved by the board. The Audit Committee communicated this advice to Telstra.
- 34. On 11 May 2016, the Special Committee appointed Akin Gump Strauss Hauer & Feld as its legal counsel in relation to the Going Private Proposal. The Company continued to use its regular US legal counsel Skadden in connection with the Going Private Proposal.
- 35. Also on 11 May 2016, a former management member of the Company filed a report to the Ministry of Commerce of China, in which Ping An was accused of failing to make a filing to the Ministry of Commerce in respect of the Ping An Share Sale under the AML in the PRC.
- 36. On 12 May 2016, at approximately 5:50pm, Ms Whelan, the Chairwoman, sent by email, *inter alia*, the agenda for the Meeting, and briefing papers on the RRA. The agenda included approval by the board of the RRA. A number of Telstra's representatives (including Ajinkya Mukhopadhyay- to be detailed further below) were not listed in the agenda as proposed attendees at the Meeting.
- 37. On 13 May 2016, at approximately 8:16am (Beijing Time), Ms Whelan circulated dial-in details for the Meeting. Ms Whelan did not copy in Tie LI (the alternate director of Xiang LI) and Skadden to this email despite the secretary of the board's reminders to do so. Furthermore, Ajinkya Mukhopadhyay was not copied either.

38. It was usual practice at board meetings for directors to either dial in via video conference (from Telstra's Australia, HK and Beijing offices) or teleconference. In the past, meeting notices were usually sent by the secretary of the board (not the chairman).
39. Article 116 of the Articles of Association of the Company provides that "*The quorum necessary for the transaction of the business of the Board may be fixed by the Board and, unless so fixed at any other number, shall be a majority of the Directors then in office...*"
40. In view of the fact that:
- a. Telstra has effective control over the board;
 - b. The PRC legal advice received by the Company identified a number of significant PRC legal and regulatory concerns in respect of the Ping An Share Sale and the RRA;
 - c. Telstra had refused to provide the Ping An SPA to the board, thereby effectively preventing any meaningful consideration of the Ping An Share Sale;
 - d. The Independent Directors and Management Directors were concerned that the RRA and the Ping An Share Sale may be against the best interests of the Company (as detailed further below) and that further considered investigation and review of the Ping An Share Sale was required before any resolutions could be passed in respect of the RRA (and the Ping An SPA if board approval was required);

The Independent Directors and Management Directors decided that they would not attend the Meeting. Accordingly the Independent Directors and Management Directors informed Ms Whelan and the board of their decision not to attend the Meeting by email, both in the evening of 12 May 2016 and the morning of 13 May 2016 before the scheduled Meeting time.

The Meeting: 13 May 2016

41. At approximately 10:05a.m. (Beijing Time) on 13 May 2016, Telstra sent an email to an employee of Codan, the Company's registered agent, in its Hong Kong office, with a purported notice to appoint Ajinkya Mukhopadhyay (*Mukhopadhyay*) as a new director of the Company, presumably with the intention of forming a quorum at the Meeting in the absence of the Independent Directors and the Management Directors in order to pass a resolution approving the RRA. The Independent Directors and Management Directors were not copied to this correspondence and so were not put on notice of the purported appointment of a new director.

The notice was sent only to Codan's Hong Kong office, instead of its Cayman Islands office as required under the Company's Articles of Association for such purported appointment to be effective.

42. The Meeting commenced at around 11:13a.m. (Beijing Time) via telephone and video conference. The following non-board members were present at the commencement of the Meeting:

- i. Will Cai from Skadden, the company's US counsel
- ii. Robert Chu, Yeqing Zheng and another lawyer from S&C, Telstra's counsel;
- iii. Nicholas Chong, the CFO and Compliance officer of the Company;
- iv. Yun Sun, the secretary of the board and General Counsel of the Company;
- v. Jie Huang and Simon J. Brookes from Telstra's In-house legal team;
- vi. Mukhopadhyay from Telstra's M&A team.

43. The only board members present at the beginning of the Meeting were the Telstra Directors. The secretary of the board, Yun Sun, asked for confirmation that a quorum was present at which point the chairwoman, Ms Whelan, introduced Mukhopadhyay as a newly appointed director.

44. Once the Independent Directors and Management Directors learned about the purported appointment of Mukhopadhyay, at around 11:58a.m. (Beijing Time), they (in the case of Xiang Li, his alternate, Tie Li) (other than Junling Liu) immediately dialled into the Meeting conference line and:

- (i) queried the validity of the appointment of Mukhopadhyay;
- (ii) expressed their opposition to the board's approval of the RRA, and
- (iii) suggested that a meeting be scheduled to discuss the RRA after the Audit Committee review.

45. Specifically, Ted Lee and Guangfu Cui, as the members of the Audit Committee present at the Meeting, explained that in reliance upon the advice of the Company's US Counsel, Skadden, (a representative of whom, Will Cai, was in attendance and confirmed this advice) the Audit

Committee's conclusion was that the RRA was a related party transaction, and therefore needed to be pre-approved by the Audit Committee before being discussed and approved by the board. The Audit Committee requested, in light of the advice from Skadden, that the Audit Committee be provided with an opportunity to review the RRA as a related-party transaction. This request was rejected outright by the Chairwoman, Ms Whelan, at the Meeting, despite Article 126 of the Company expressly requiring Audit Committee review of all related party transactions (see paragraph 11 above).

46. At the Meeting, the Independent Directors and Management Directors also made the observation that, under the RRA, the Company was not receiving any consideration for taking on obligations and limitations on its financial and disclosure planning, which was also of concern to them.

47. Following this discussion, a representative of Conyers, the Company's Cayman Islands legal counsel, who had joined the Meeting at 12:05p.m. (Beijing Time) recommended that the Meeting be rescheduled in light of the questions regarding the validity of the appointment of Mukhopadhyay and other questions regarding the RRA and the Ping An SPA. In reliance on that advice, at approximately 1:20p.m. (Beijing Time), Tie Li, Ted Lee, Guangfu Cui and Mr Qin left the meeting conference line.

48. Despite the above, following the departure of the Independent Directors and Management Directors from the meeting, the Telstra Directors and Mukhopadhyay nevertheless proceeded to resolve:

- (i) to approve the RRA and the instrument of transfer between Ping An and Telstra; and
- (ii) that the Company, its employees and registered agent, should take any necessary actions to effect the Ping An Share Sale.

Developments since the Meeting

49. On 16 May 2016 Tie Man, the Company's internal audit director, reported to the US Securities and Exchange Commission that the approval of the RRA violates corporate governance requirements under NYSE Listed Company Manual and the Public Company Accounting Reform and Investor Protection Act of 2002, and also that the Ping An SPA transaction between Telstra and Ping An in the Blackout Period breached the Company's insider trading policies.

50. On 17 May 2016 the Company received a notice from Beijing Haidian Branch of State Administration of Taxation (*Tax Bureau*) which stated that the announced sale of the Company's shares from Telstra to Ping An should be subject to a Circular 7 tax filing and requested submission of the documents related to the Ping An Share Sale and completion of the filing within 30 days after the signing of the Ping An SPA. Assuming that Telstra entered into the Ping An SPA with Ping An on the date of Telstra's announcement, the said materials should have been provided to the Tax Bureau by 14 May.
51. Also on 17 May 2016, Harney Westwood & Riegels (*Harneys*), legal adviser to the Petitioners, issued a letter to the Company requesting that it remedy the misconduct of the Telstra directors and noting that if certain confirmations were not provided within 2 days legal proceedings would be commenced without further notice. A response was received from Ms Whelan on 19 May 2016 at approximately 5:11pm (Hong Kong time) in which she alleged the deadline provided to respond was not sufficient but, in any event, they disagreed with the contents of Harneys' letter.
52. Harneys responded to Ms Whelan on 19 May 2016 confirming that the Petitioners would be willing to refrain from taking legal action in relation to the matters raised in its letter of 17 May 2016 (the *Dispute*) provided that written confirmation was received by 5pm on 20 May 2016 (Hong Kong time) from Telstra and Codan that no further steps or action would be taken in connection with the RRA or the Ping An SPA until the Dispute is resolved or following the expiration of 14 days' notice to the Petitioners. No confirmation to this effect has been received from Telstra or Codan.
53. On 20 May at approximately 3:47pm (Hong Kong time), Harneys received a letter from Ms Whelan in response to Harneys' letter dated 17 May 2016. Ms Whelan stated that she was responding in her capacity as chair of the Company (despite the obvious conflict in her position as a representative of Telstra) and (i) asserted, for reasons set out in detail in that letter, that the concerns raised in Harneys' letter in relation to Telstra's conduct had no merit; and (ii) alleged that Mr Qin may be in breach of his fiduciary duties by continuing to pursue the interests of the Consortium.

The Independent Directors and Management Directors' concerns with the RRA , Ping An SPA and Ping An Share Sale

54. For the reasons summarised below, the Independent Directors and the Management Directors (i) are concerned that the Telstra directors are not acting in the best interests of the Company in

relation to their conduct of the RRA and the Ping An Share Sale; and (ii) do not consider that the RRA, or the proposed Ping An Share Sale, are in the best interests of the Company:

- (i) As determined by the Audit Committee based on the advice from the Company's US counsel, Skadden, the RRA is a related party transaction and as such requires consideration and pre-approval of the Audit Committee under US federal securities laws as well as the NYSE Listed Company Manual and the charter of the Audit Committee;
- (ii) The Telstra Directors are acting in conflicts of interest, in breach of the Articles of Association, in particular Article 126, of the Company, and in blatant disregard of legal advice from the Company' US, PRC and Cayman legal counsel, in resolving to approve the RRA, a related party transaction, for the proposed Ping An Share Sale solely for the benefit of Telstra without the pre-approval of the Audit Committee;
- (iii) Under the RRA, the Company would not be receiving any consideration for taking on obligations and limitations on its financial and disclosure planning;
- (iv) Telstra negotiated the terms of the RRA purportedly with Ping An without any authorization or input from the board of the Company, despite the Company being a party to the RRA and Telstra not being a party to the RRA;
- (v) The Independent Directors and Management Directors had not been provided with necessary documentation, including in particular the Ping An SPA, to enable them to properly consider whether execution of the RRA (an ancillary transaction document) by the Company and other steps to be taken in respect of the proposed Ping An Share Sale are in the best interest of the Company. There is no justification for withholding a copy of the Ping An SPA for reasons of confidentiality. The Ping An SPA should permit disclosure to an affiliate, which the Company is, and if it does not then Telstra has failed to negotiate the RRA and the Ping An SPA in a way that would enable the Telstra directors to comply with their duties to the Company by securing the authority to provide to the Company all necessary documentation in respect of the sale of a major shareholding in the Company;
- (vi) The Company provides material non-public financial information to Telstra on a monthly basis pursuant to the Investors Rights Agreement. In accordance with the

Prevention of Insider Trading Policy, during the Blackout Period, affiliates (including Telstra) should not trade the Company's shares through insiders' own account or recommend others to trade the Company's share. Telstra did not inform the Company's compliance officer or any of the Independent Directors and Management Directors before signing the Ping An SPA with Ping An. Given Telstra announced the Ping An SPA with Ping An on 15 April 2016 when the trading window was closed, the transaction is in violation of the Prevention of Insider Trading Policy;

- (vii) The RRA is between the Company and an affiliate of Ping An. It has not been made clear to the Independent Directors and Management Directors the link between that affiliate and Ping An. Before approving the RRA the board needs to satisfy itself as to the identity of the party with which it is entering a contract, and that the Company is in compliance with all PRC rules (including those of the Chinese Insurance Regulatory Commission in relation to overseas subsidiary established by insurance companies);
- (viii) If the Ministry of Commerce finds the accusations made by the former management member in respect of AML to be true, there may be serious negative consequences on the Company's operations and financial results;
- (ix) If Telstra and Ping An fail to file tax forms and pay the applicable taxes as required under Circular 7, the Company may be subject to penalties and other significant regulatory consequences by the tax authorities. The Company has not been provided with any information in relation to Telstra and/or Ping An's compliance with Circular 7;
- (x) The Ping An Share Sale will have short and long term implications and risks for the Company, as outlined in paragraph 18 above.
- (xi) The Going Private Proposal and the Consortium's Share Purchase Offer included a \$31.50 share offer, which represents a premium of US\$1.95 per share over Ping An's proposal of \$29.55 per share, and which would be made available to all shareholders of the Company. By proceeding with the Ping An Share Sale and the Ping An SPA, not only are Telstra and the Telstra Directors exposing the Company and its body of shareholders to high risks and negative consequences for the reasons set out above (including due to the lack of due process and regulatory and legal due diligence) they are also unfairly prejudicing the Petitioners and all other shareholders by depriving

them of the opportunity to benefit from the Going Private Proposal, thus causing them loss and potentially devaluing the shares of the Company.

Misconduct of Telstra and the Telstra Directors

55. In light of the foregoing, including in particular the attempt to bypass the requirement of the Audit Committee to scrutinize a related party transaction, the conduct of Telstra and the Telstra Directors constitutes an exercise of the powers conferred on the Telstra Directors for an improper purpose, namely to obtain a benefit for one shareholder to the detriment and prejudice of the minority shareholders without any proper scrutiny or due consideration. In doing so, the Telstra Directors preferred the interests of their nominee shareholder over the interests of the Company, in breach of their fiduciary duties.
56. It is clear that the Telstra Directors through their actions have put themselves in a position of conflict where their discretion has been fettered to the detriment of the Company, in breach of their fiduciary duty to act honestly, in good faith and in the best interests of the Company. In particular, the Telstra Directors actions in wholly disregarding and acting contrary to legal advice from the Company's US legal counsel, the Company's Cayman Islands legal counsel, and the Company's PRC legal counsel constitutes a dereliction of their directors duties.
57. The Telstra Directors' misconduct also exposed the Company to the risk of breaching US securities law and PRC regulations, with potentially serious consequences. The Company received legal advice from its PRC counsel prior to the Meeting, on 10 May 2016, that the Ping An Share Sale would be considered an "outbound investment" by Ping An and, in the circumstances, certain PRC regulatory approvals would be required. In accordance with that advice, the board of directors should have been provided with information on the required approvals process or an explanation of any lack of such approvals, including whether any such absence affects investment capacity or funding availability; however no such information has been provided by Telstra or the Telstra Directors.
58. Furthermore, as a result of the advice from the Company's PRC counsel prior to the Meeting that the Ping An Share Sale would be subject to AML review, if the Company does not comply with the AML requirements in the PRC, the relevant authorities are empowered to terminate and/or unwind the transaction, dispose of relevant assets, shares or businesses within a set period and/or impose fines on the Company of up to RMB 500,000.

59. Further, in spite of the advice from PRC Counsel on 10 May 2016 that the Share Sale would be subject to a Circular 7 tax filing, no steps were taken by Telstra to make this filing, thereby exposing the Company to penalty interest and other regulatory consequences.
60. Based on the above, the Petitioners have lost all trust and confidence in the Telstra Directors and Telstra and their ability to act in the best interests of the Company. The conduct of Telstra in using its majority powers to pursue its own agenda with disregard to the interests of the Company and the minority shareholders is unfairly prejudicial to the interest of the minority shareholders.
61. The letter received from Ms Whelan on 20 May 2016 does not alleviate the Petitioners' concerns with the Ping An Share Sale, the RRA, the misconduct of Telstra and the Telstra Directors, or any other issues outlined above. Given the refusal of the Company to provide the written confirmations as requested by Harneys in its letter dated 19 May 2016, in time or at all, the Petitioners have no other option but to seek relief through the courts.
62. In the circumstances, the grounds for satisfying the court that it is just and equitable that the Company should be wound up have been satisfied and the Petitioner hereby seeks alternative relief pursuant to section 95(3) of the Companies Law.

YOUR PETITIONERS THEREFORE HUMBLY PRAY AND REQUEST THAT:

This Honourable Court exercises its jurisdiction to make all or any of the following orders regulating the conduct of the Company's affairs pursuant to section 95(3)(a) of the Companies Law:

- (1) The Audit Committee of the Company shall review the proposed Ping An Share Sale and the Registration Rights Agreement and submits its recommendations to the Board within 21 days of the date of this Order (the **Audit Committee Review**);
- (2) The Audit Committee of the Company is to be provided with the Share Purchase Agreement or any variation thereof for the purposes of the Audit Committee Review;
- (3) The Company shall act in accordance with the recommendations of the Audit Committee following the Audit Committee Review and shall not pass any resolutions approving the Registration Rights Agreement or the Share Purchase Agreement unless and until Audit Committee approval or a further order of this Court has been obtained;

- (4) The findings of the Audit Committee Review shall be considered at a meeting of the Board of Directors of the Company, duly convened on not less than 14 days' notice (the **Board Meeting**), and no steps shall be taken by the Company in respect of the Ping An Share Sale or any variation thereof prior to the convening of the Board Meeting;
- (5) The Company shall not take any steps to register the transfer of any shares to Ping An except in accordance with a resolution of the directors made at the Board Meeting in accordance with the process set out in orders (1) to (4);
- (6) Such further or other relief as this Honourable Court deems appropriate;
- (7) The Petitioner's costs of and incidental to this Petition be paid by the Telstra Shareholders on an indemnity basis, such costs to be taxed if not agreed.

And your Petitioner will ever pray etc.

Dated the 23 day of May 2016

Filed the day of May 2016


Harney Westwood & Riegels
Attorneys for the Petitioner

NOTE: This Petition is intended to be served on:

- (1) Codan Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman KY1-1111, Cayman Islands; and
- (2) Telstra Holdings Pty Limited at 242-282 Exhibition Street, Melbourne, VIC 3000, Australia.