

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD 63 OF 2018

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)
IN THE MATTER OF EHI CAR SERVICES LIMITED



PETITION



TO: The Grand Court of The Cayman Islands

The humble Petition of Ctrip Investment Holding Ltd. with a registered office at Ugland House P.O. Box 309, Grand Cayman KY1-1104, Cayman Islands (the **Petitioner** or **Ctrip**). The Petitioner is a registered shareholder of eHi Car Services Limited (the **Company**).

1 The object of this Petition is to seek alternative relief against the Company pursuant to Section 95(3) of the Companies Law (2018 Revision) (as amended from time to time, the **Companies Law**)

A. INTRODUCTION TO THE COMPANY

Incorporation

2 The Company was registered under its former name, Prudent Choice International Limited, on 3 August 2007 as an exempted company under registration number 192584. The Company was also previously known as eHi Auto Services Limited.

3 The Company's registered office is P.O. Box 31119, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands.

4 The objects for which the Company was established are unrestricted.

Business Activity of the Company

- 5 The Company carries on the business of providing car rental services and car services to individual customers in the People's Republic of China (***PRC***). The Company operates its car rental and car services business through its PRC subsidiaries. In respect of its car rental business, the Company provides vehicles through their PRC subsidiaries Shanghai eHi Car Rental Co., Ltd (***eHi Rental***) and, eHi Auto Services (Jiangsu) Co. Ltd (***eHi Jiangsu***), and their subsidiaries and branches in different cities. The Company provides fleet management, information technology support and other car rental related services through eHi Car Rental Management Services (Shanghai) Co. Ltd (***eHi Management***), which is a subsidiary of eHi Rental. In respect of its car services business, the Company provides vehicles through eHi Rental, eHi Jiangsu and their subsidiaries and provides chauffeur services through its PRC subsidiary Shanghai Smart Brand Auto Driving Services Co. Ltd (***Shanghai Smart Brand***) and its subsidiaries and branches.

Share Structure

- 6 The Company's shares are listed on the New York Stock Exchange (NYSE: EHIC). The Company has current market capital of approximately US\$911.56 million and its shares are currently trading at a price of \$13.03 as at close of trading on 12 April 2018. The initial public offering of 10,000,000 American Depositary Shares (***ADS***) took place on 18 November 2014. The Ninth Amended and Restated Memorandum of Association states that the Company's current authorised share capital comprises of 500,000,000 shares divided into 407,328,619 Class A Common Shares (***Class A Shares***) (including Class A Shares represented by ADS), and 92,671,381 Class B Common Shares (***Class B Shares***). Each ADS represents two Class A Shares.

Board of Directors

- 7 Immediately prior to a board meeting on 6 April 2018, the Board of Directors of the Company (the ***Board***) was comprised of seven directors as follows:
- (a) Ray Ruiping Zhang, the founder, chief executive officer and chairman of the Board of Directors (***the Chairman***);
 - (b) Gregory Robert Stubblefield, a director since August 2016 (***Mr Stubblefield***);

- (c) Gang Chen, a director since June 2017 (*Mr Chen*);
- (d) Four independent directors: Qian Miao (*Mr Miao*), Andrew Xuefeng Qian (*Mr Qian*), David Jian Sun (*Mr Sun*) and Ronald Myers (*Mr Myers*) (together, the *Independent Directors*).

The Company's Shareholding

- 8 Among some of the principal shareholders of the Company are Ctrip, The Crawford Group (*Crawford*), CDH Car Rental Services Limited (*CDH*) and the Chairman and his affiliated companies.

B. OFFERS TO TAKE-PRIVATE

The Goliath Proposal

- 9 On 26 November 2017, the Company received a preliminary non-binding proposal letter (the *Goliath Proposal*) from Goliath Advisors Limited (*Goliath*), a third party PRC-based investment fund. Pursuant to the Goliath Proposal, Goliath sought to acquire all outstanding common shares of the Company for US\$13.35 per ADS in cash, or US\$6.675 per common share in cash.

The Special Committee

- 10 On 11 December 2017, in response to the Goliath Proposal, the Board formed a special committee (the *Special Committee*) comprised of Mr Miao, Mr Qian and Mr Sun, to evaluate the Goliath Proposal.

The Chairman Proposal and the Chairman Consortium

- 11 On 1 January 2018, the Company received a further preliminary non-binding "take-private" (also known as "going-private") proposal letter (the *Chairman Proposal*) from the Chairman, MBK Partners HK Limited (*MBK*), and their affiliates (together the *Chairman Consortium*). Goliath agreed and confirmed to the Company that the Chairman Proposal superseded and replaced the Goliath Proposal. The Chairman Proposal outlined that the Chairman Consortium would form an acquisition company for the purpose of implementing a "going-private" bid of US\$13.35 in cash per ADS of the Company or US\$6.675 in cash per common Share (substantially similar to the

Goliath Proposal). It was further stated that the Chairman Proposal was intended to be financed with a combination of debt and equity capital. The Chairman Proposal indicated that the equity financing would be provided in the form of cash and rollover equity by members of the Chairman Consortium (or their affiliates) and any additional members admitted to the Chairman Consortium.

- 12 Between 12 February and 23 February 2018, Baring Private Equity Asia Ltd. (**Baring**) contacted representatives of Tiger Global Mauritius Fund (**Tiger Fund**), a Mauritius company, and holder of 5,264,080 ADSs in the Company to negotiate a securities purchase agreement in respect of Baring's purchase of all the ADS held by Tiger Fund.
- 13 On 23 February 2018, a term sheet (the **Chairman Consortium Term Sheet**) was entered into between the members of the Chairman Consortium, including, among others, the Chairman, MBK and Baring. The Chairman Consortium Term Sheet set out the terms of the formation and conduct of the Chairman Consortium for the purpose of jointly pursuing the Chairman Proposal. On the same date, Baring and Tiger Fund entered into a securities purchase agreement for the sale and purchase of the 5,264,080 ADS by Baring from Tiger Fund. The closing of the transaction is scheduled to be on or before 30 May 2018.
- 14 At all material times, the Special Committee's:
 - (a) Financial advisor was Duff & Phelps;
 - (b) US legal counsel was Fenwick & West LLP (**Fenwick**);
 - (c) Cayman Islands legal counsel was Maples and Calder (**Maples**).
- 15 At all material times, the Company's:
 - (a) Financial advisor was Kilometre Capital Management (**Kilometre**);
 - (b) US legal counsel was O'Melveny & Myers LLP.
- 16 At all material times, Ctrip and Ocean Link Consortium's:
 - (a) US legal counsel was Skadden, Arps, Slate, Meagher & Flom LLP (**Skadden**).

- 17 At all material times, the Chairman Consortium's:
- (a) US legal counsel was Weil, Gotshal & Manges LLP;
 - (b) PRC legal counsel is Fangda Partners;
 - (c) Cayman Islands legal counsel was Conyers Dill & Pearman.

The Ocean Link Proposal

- 18 Ocean Link Partners Limited (***Ocean Link***) is a private equity firm with a focus on China's travel and leisure sectors. Ocean Link currently manages a USD fund and an RMB Fund. Ocean Link has teams in Shanghai, Beijing and Hong Kong, and invests across the value chain and sub-verticals of the travel and leisure sectors, including online & offline travel services, hotels and resorts, destination services and entertainment, sector-related technology and business solutions providers. The funds investors include Chinese and global corporates, financial institutions, and sovereign wealth funds.
- 19 On 2 April 2018, Tony Tianyi Jiang (***Mr Jiang***), a Partner of Ocean Link, sent an official proposal to the Company's Board by email at 2.41 p.m. CST to purchase all the outstanding shares of the Company (the ***Ocean Link Proposal***). The Ocean Link Proposal was a proposal of US\$14.50 in cash per ADS of the Company (each representing two Class A Shares), or US\$7.25 in cash per Class A or Class B Shares. Recipients of the email included the Chairman, Mr Qian, Mr Chen, Mr Stubblefield and Mr Sun. Mr Miao and Mr Myers were not included in the email circulation as Ocean Link did not have their contact details at the time.
- 20 On the morning of 3 April 2018, Margaret Mi (***Ms Mi***) of Duff & Phelps, financial advisors to the Special Committee of the Company contacted Mr Jiang via Wechat to discuss the Ocean Link Proposal. At 3 p.m. CST. On the same day, Mr Jiang and Ms Mi had a telephone call during which Mr Jiang explained:
- (a) Ocean Link's strong commitment to bring the Ocean Link Proposal to fruition;
 - (b) that Ocean Link's Proposal would likely offer a higher offer price, even if the Chairman Consortium was to raise their current offer price in the Chairman Proposal;

- (c) the Ocean Link Proposal will carry a higher offer price, through which Ocean Link would endeavour to swing shareholders to not vote in favour of the Chairman Proposal;
- (d) Ocean Link has reached out directly to certain shareholders to gain their support given the lack of public disclosure of the Ocean Link Proposal by the Company, and Ocean Link had gained positive responses from certain existing shareholders;
- (e) with the financing capabilities of Ocean Link , the Special Committee should not be concerned about the ability of Ocean Link to complete the Ocean Link Proposal; and
- (f) Ocean Link was willing to cooperate with the Special Committee to expedite the Ocean Link Proposal from a logistical perspective, including due diligence and negotiation of definitive documents.

- 21 At the conclusion of the telephone call, Duff & Phelps proposed a full interview between Ocean Link, Duff & Phelps and Fenwick, the Special Committee's legal counsel, sometime later in the week.
- 22 Mr Jiang then emailed Mr Stubblefield to invite him to consider the Ocean Link Proposal and to speak over the telephone. The telephone call never materialised as Mr Stubblefield did not respond positively with a time for the call.
- 23 On 4 April 2018, at the request of Fenwick and Duff & Phelps (the Special Committee's legal counsel and financial advisors, respectively), Mr. Jiang attended a telephone call. On that call, Mr Jiang reiterated to Fenwick and Duff & Phelps the same points conveyed to Ms Mi on the telephone call on 3 April 2018. At the conclusion of the call, Mr Jiang requested an update on the status of the Special Committee's review of the current bids. The response of Fenwick and Duff & Phelps was that they were not aware of any update as they had not yet spoken to the Special Committee about their latest view but would do so after the telephone call.
- 24 On early morning of 5 April 2018, Ocean Link and CDH Venture Partners II, L.P (**CVP**) entered in a Purchase and Voting Agreement to purchase CVP's entire shareholding in CDH (the **CVP Transaction**). Mr Jiang informed the Chairman, Mr Qian, Mr Chen, Mr Stubblefield and Mr Sun of the CVP Transaction by email at 10.55 a.m. CST. The same was sent via Wechat to Fenwick and Duff & Phelps. Ocean Link filed a Schedule 13D with the United States Securities and Exchange

Commission (**SEC**) at 9.40 p.m. CST. The Schedule 13D is a filing by person(s) reporting beneficial ownership in shares of common stock in a public company greater than 5 per cent. Ocean Link received an acknowledgment message from the SEC at 9.55 p.m. CST.

C. THE PROPOSED BOARD MEETING AND THE 6 APRIL MEETING

Notice of Proposed Board Meeting on 4 April 2018

- 25 On 3 April 2018 at 11.48 p.m. CST, Mr Gang Chen (**Mr Chen**) as Ctrip's nominee on the Board, received a notice by email from Ms Pei Pei, the Company's Secretary, that a meeting of the Board was to be convened by means of a telephone conference on 4 April 2018 at 9 p.m. CST (the **Proposed Board Meeting**). The purpose of the meeting was stated to be for the Board to consider "*In addition to standard agenda items for the Company in advance of the 20-F [annual report filing] release, there have been some time-sensitive developments with regards to the taking-private transaction being evaluated, for discussion by the full Board of Directors of the Company.*" The notice was not accompanied by a proposed agenda.
- 26 On 4 April 2018 at 11.15 a.m. CST, Ctrip emailed the Company Secretary stating that Article 99 of the Company's Articles of Association (the **Articles**) required all board meetings to be convened with 48 hours' prior notice together with the provision of a clear agenda for the meeting. Therefore, the notice of the Proposed Board Meeting was not properly given pursuant to the Articles. By way of reply at 6.05 p.m. CST on 4 April 2018, the Company Secretary responded by email withdrawing the notice for the Proposed Board Meeting. At 6.18 p.m. CST on 4 April 2018, Mr Chen received a notice by email from the Company that a rescheduled meeting of the Board was to be convened by means of a telephone conference on 6 April 2018 at 7.30 p.m. CST (the **6 April Meeting**). Also in the notice, it stated "*In addition to standard agenda items for the Company in advance of the 20-F release, we would discuss amongst the full Board of Directors of the Company (1) the taking-private transaction proposed by the consortium on January 1, 2018 (and recent development) and (2) the taking-private transaction proposed by Ocean Link on April 2, 2018, including any perspective or recommendation of the Special Committee with respect of the same.*"
- 27 However, in a subsequent email to Ctrip's in-house legal team on 5 April 2018 at 12.15 p.m. CST, the Company Secretary re-sent a cropped screenshot of the notice stating "*In addition to*

standard agenda items for the Company in advance of the 20-F release, we would discuss amongst the full Board of Directors of the Company (1) the taking-private transaction proposed by the consortium proposed by Ocean Link on April 2, 2018, including any perspective or recommendation of the Special Committee with respect of the same." (emphasis added). This notice of the 6 April Meeting appears to have cropped the text of the previous notice of the 6 April Meeting, removing any mentioning of the Chairman Proposal by the Chairman Consortium.

- 28 On 6 April 2018 at 6.13 p.m. CST, Lilith Mingshi Chen (***Ms Chen***) of Ctrip's in-house legal team sent an email to the Company attaching a letter appointing her as an alternate director to Mr Chen for the purposes of the 6 April Meeting.
- 29 In an email from O'Melveny & Myers dated 6 April 2018 at 6.24 p.m. CST, one hour prior to the 6 April Meeting, Ctrip received the following voluminous documents in advance of the 6 April Meeting, relating to the Chairman Proposal:
- (a) Proposed Board Resolutions;
 - (b) Special Committee's Recommendation;
 - (c) Summary of Factors Considered by the Special Committee;
 - (d) Fenwick's Legal Presentation on the merger agreement;
 - (e) Transaction Documents, including
 - (i) The merger agreement (the ***Merger Agreement***);
 - (ii) debt commitment letters from Morgan Stanley and Deutsche Bank;
 - (iii) interim investors agreement;
 - (iv) contribution and support agreement;
 - (v) equity commitment letters from members of the Chairman Consortium; and
 - (vi) limited guarantees from members of the Chairman Consortium.

- 30 Receiving such papers one hour before the meeting at which these papers had to be considered was unreasonable and provided Ctrip with no reasonable opportunity to review the same.
- 31 In an email at 7.08 p.m. CST on 6 April 2018, Ctrip, through Ms Chen, immediately emailed its protest as to the legality of the 6 April Meeting due to insufficient notice.

Formation of the Ocean Link Consortium

- 32 Shortly before the 6 April Meeting, Ocean Link and Ctrip formed a consortium (the ***Ocean Link Consortium***) in support of the Ocean Link Proposal. Mr Jiang immediately notified the Chairman, Mr Qian, Mr Chen, Mr Stubblefield and Mr Sun of this new development by email at 7.19 p.m. CST. The same information was sent via Wechat to Fenwick and Duff & Phelps at the same time.

The 6 April Meeting

- 33 The 6 April Meeting commenced at 7.30 p.m. CST via teleconference. The following Board members were present:
- (a) the Chairman;
 - (b) Mr Stubblefield;
 - (c) Mr Miao;
 - (d) Mr Qian;
 - (e) Mr Sun;
 - (f) Mr Myers; and
 - (g) Ms Chen as Alternate Director for Mr Chen.
- 34 In addition to the members of the Board, the following non-Board member representatives were present at the commencement of the 6 April Meeting:
- (a) Colin Chitnim Sung, Chief Financial Officer of the Company;
 - (b) David Michaels of Fenwick;

- (c) Derrick Kan of Maples;
- (d) Nima Amini, Vincent Lin and Aaron Xin of O'Melveny & Myers;
- (e) Christopher Hsu and Yvonne Jingyi Yan of Kilometre; and
- (f) Haiping Li and Mr Yuting Wu of Skadden.

35 At the beginning of the 6 April Meeting, Ctrip:

- (a) announced Ms Chen had been appointed as an alternate director to Mr Chen prior to the commencement of the 6 April Meeting, and Skadden was present at the 6 April Meeting;
- (b) objected to the invalidly called 6 April Meeting;
- (c) provided an update regarding the formation of the Ocean Link Consortium;
- (d) emphasised the merits of the Ocean Link proposal and requested that the Board deliberate and discuss the Ocean Link Proposal given its superior terms for all shareholders; and
- (e) declared its non-participation in the discussion at the 6 April Meeting because it had been invalidly convened due to an improperly proposed agenda being circulated prior to the commencement of 6 April Meeting.

36 O'Melveny & Myers stated that the agenda was sufficient as a matter of Cayman Islands law for the meeting to proceed.

37 The Chairman, assisted by lawyers from O'Melveny & Myers, proceeded with the meeting and briefly went through the Special Committee's recommendation. Neither the Chairman nor the lawyers from O'Melveny & Myers fully discussed the merits of the Ocean Link Proposal. Furthermore, none of the Special Committee members discussed the details of the Ocean Link Proposal in any depth during the meeting.

38 During the meeting, Fenwick discussed some of the terms of the Merger Agreement including providing the Special Committee the ability to consider a superior proposal of merger, which

could be pursued if the Special Committee consider it a superior offer. Fenwick stated it would recommend the termination of the Merger Agreement, subject to the payment of a 1.5% termination fee, as provided in the Merger Agreement, in order to enter into the superior transaction. Fenwick clarified that this termination fee would be approximately US\$14 million payable by the Company to the Chairman Consortium. Fenwick then stated that the Special Committee recommended the Board to approve the Chairman Proposal and the related merger documents.

39 Outside counsel for Ctrip informed the Board on more than one occasion during the course of the meeting that the formation meant that Ctrip believed the Ocean Link Consortium would have a combined voting power of sufficient size to vote against and block the merger transaction proposed by the Chairman Proposal. O'Melveny & Myers responded by stating that there was no filing to demonstrate the formation of the Ocean Link Consortium and that neither Ctrip nor Ocean Link had sufficient shares on their own to block the transaction proposed by the Chairman Proposal.

40 Without further consideration of the arguments submitted by Ctrip's outside counsel on this point, the Chairman then called for the Board to vote on the proposed board resolutions. The Chairman, Mr Stubblefield and Mr Sun (a member of the Special Committee) recused themselves from voting on the proposed board resolutions. Ctrip's alternate director, Ms Chen, was not counted toward the quorum. The remaining directors, Mr Miao (member of the Special Committee), Mr Qian (also member of the Special Committee) and Mr Myers voted in favour of the proposed board resolutions (i.e. three out of the seven directors voted in favour of the proposed board resolutions). The Board proceeded to resolve:

- (a) to approve that the Merger Agreement, the plan of merger and the other ancillary documents (collectively, the **Transaction Agreements**), and the transactions proposed by the Chairman Proposal, including the merger, as fair (both substantively and procedurally) to the Company and in the best interests of the Company and its shareholders, and declared it advisable to enter into the Transaction Agreements;
- (b) to authorize the members of the Special Committee to execute and deliver, in the name and on behalf of the Company, the Transaction Agreements and all other

documents required to effect the Merger and other transactions contemplated under the Merger Agreement;

- (c) to resolve that an extraordinary general meeting of the company shall be called for approving the Merger and Merger transactions; and
- (d) resolutions regarding Share Incentive Plans, financing and consent solicitation, exchange act deregistration and NYSE delisting, and additional actions, etc.

(collectively, the **6 April Resolutions**).

D. DEVELOPMENTS SINCE THE 6 APRIL MEETING

The Definitive Merger Agreement

- 41 After the meeting on 6 April 2018, the Company issued a press release announcing that it was entering into the Merger Agreement with Teamsport Parent Limited (***Teamsport Parent***) and Teamsport Bidco Limited (***Merger Sub***), a wholly owned subsidiary of Teamsport Parent. Teamsport Parent and Merger Sub are part of the acquisition companies for the purpose of implementing the Chairman Proposal mentioned above at paragraph 11. Pursuant to the Merger Agreement, Parent will acquire the Company for cash consideration equal to US\$6.75 per common share of the Company or US\$13.50 in cash per ADS of the Company, each of which represents two Class A common shares of the Company, other than rollover shares and ADS' representing rollover shares, as applicable.

Notice of the 10 April Meeting

- 42 By email sent at 10.46 a.m. CST on 8 April 2018, Ctrip received notice of a further meeting to be held on 10 April 2018 (the ***10 April Meeting***). The notice materially stated "*On behalf of the Chairman of the Board of Directors of the Company (the 'Board'), updated notice is hereby provided for a Board meeting to be held on Tuesday, April 10th, at 11:00am (Shanghai time) via teleconference. The time of the Board meeting has been updated to 11:00am as compared to 10:35am referenced in the prior notice, so that the Board meeting can take place on the hour (at 11:00am Shanghai time). The agenda is to discuss developments related to the taking-private transaction and any related considerations or actions of the Board.*"

43 On 9 April 2018 at 11.06 a.m. CST, Ms Chen of Ctrip's in-house legal team sent an email to the Company attaching a letter appointing her as an alternate director to Mr Chen as of 9 April, including attending the 10 April Meeting. The email also stated that the agenda circulated for the 10 April Meeting was "too broad and vague" and requested that the Company provide the following:

- (a) The specific topics that will be discussed at the 10 April Meeting;
- (b) Any proposal submitted to the Board for voting; and
- (c) The draft board resolutions and any relevant documents to be approved.

44 At 6.16 p.m. CST on 9 April 2018, Ms Chen received an email on behalf of Mr Zhang stating:

"Regarding the agenda for the meeting tomorrow at 11:00 AM Shanghai time, as mentioned in the notice below, the meeting is intended to cover various developments relating to the going private transaction and has been called by the Chairman to ensure that the directors are adequately informed regarding important matters concerning the approved going private transaction and Ocean Link's proposal. This will be an important opportunity for the full board to discuss such things as Ocean Link's proposed purchase of CDH's shares of eHI disclosed in recent SEC filings.

While the Board may be asked to reaffirm the resolutions adopted on April 6th (which were previously circulated to the Board in advance of the April 6th meeting and are attached here for your reference), it is not currently contemplated that any other matters will be put to a vote as the meeting is primarily intended to be a forum to update the Board on various developments and provide directors the opportunity to ask questions. Having said that, if there are any material developments occurring in the meantime between now and the Board meeting, the Board would consider and weigh as appropriate.

To prevent the situation of the last Board meeting, where members of the Skadden team representing Ctrip joined in the middle of the Board meeting, we also kindly request that you provide us a list of any and all participants joining this upcoming Board meeting from the Ctrip side."

The 10 April Meeting

45 The 10 April Meeting commenced at 11 a.m. CST via teleconference. The following Board members were present:

- (a) Chairman;
- (b) Mr Stubblefield;

- (c) Mr Miao;
- (d) Mr Qian (on behalf of himself and as a proxy of Mr Sun);
- (e) Mr Myers; and
- (f) Ms Chen as Alternate Director for Mr Chen.

46 In addition to the members of the Board, the following non-Board member representatives were present at the commencement of the 10 April Meeting:

- (a) Colin Chitnim Sung, Chief Financial Officer of the Company;
- (b) Gordon Davidson, David Michaels and Ken Myers of Fenwick;
- (c) Nima Amini, Vincent Lin and Aaron Xin of O'Melveny & Myers;
- (d) Christopher Hsu and Yvonne Jingyi Yan of Kilometre; and
- (e) Haiping Li and Yuting Wu of Skadden.

47 At the beginning of the 10 April Meeting, Ctrip:

- (a) stated it was still of the view that the proposed agenda for the 10 April Meeting was too broad and vague, despite the email sent on behalf of the Chairman at 6.16 p.m. on 9 April 2018;
- (b) declared its non-participation in the discussion at the 10 April Meeting because it had been invalidly convened due to an improper proposed agenda being circulated prior to the commencement of 10 April Meeting;
- (c) sought to confirm no resolutions would be voted on at the 10 April Meeting; and
- (d) announced Skadden was present at the 10 April Meeting.

48 O'Melveny & Myers stated that the notice of the 10 April Meeting was provided consistent with past practice and that a rigid agenda was not proffered so as to maintain an open discussion regarding the Company's latest developments. Also, Kilometre stated that the wording used in

the notice did not contemplate the Company's latest developments and that resolutions could be able to be put to the Board if necessary. Ctrip's representative maintained the agenda for the 10 April Meeting was too broad and vague and stated that they would not actively participate in the 10 April Meeting which had been invalidly convened.

- 49 The Chairman, assisted by lawyers from O'Melveny & Myers and seemingly reading from a script, proceeded with the meeting. Before a vote was called to reaffirm and ratify the adoption of the resolutions passed at the 6 April Meeting, Ctrip's representative stated that the Special Committee had not fully and properly considered the Ocean Link Proposal. Subsequently, Chairman, Mr Miao, Mr Myers and Mr Qian, voting in his own capacity and as Mr Sun's proxy, voted in favour of reaffirming the resolutions of the 6 April Meeting. Mr Stubblefield recused himself from voting. Ms Chen also recused herself from voting due to Ctrip's ongoing objection to the validity of the 6 April Meeting and the 10 April Meeting. At the conclusion of the vote, Skadden queried whether the Chairman should have recused himself from voting given that he was a member of the Chairman Consortium and had recused himself from the voting at the 6 April Meeting. O'Melveny & Myers responded stating that as the Chairman had declared his interest at the 6 April Meeting, he was not conflicted from voting at the 10 April Meeting.
- 50 The meeting then proceeded to discuss the CVP Transaction, and in particular whether it violated the Company's rights pursuant to an Investors Rights Agreement entered into in 2013 prior to the Company's IPO (the *pre-IPO IRA*) between various shareholders, including CDH, Ctrip, Crawford and the Company. The Chairman put the following resolution to a vote, namely: a resolution to authorise the officers of the Company to instruct its legal counsel to investigate whether the Company's rights (particularly the right of first offer by Ctrip and Crawford) have been violated under the pre-IPO IRA due to the CVP Transaction, to advise the Company as to its rights and remedies, and to take legal action if necessary to protect the Company's rights (**10 April Resolution**). Chairman, Mr Miao, Mr Myers and Mr Qian, voting in his own capacity and as Mr Sun's proxy, voted in favour of the resolution. Mr Stubblefield recused himself from voting. Ms Chen also recused herself from voting due to Ctrip's understanding that the 10 April Meeting was invalidly called and no resolutions would be voted on at the 10 April Meeting.

E. MISCONDUCT IN RELATION TO THE NOTICE OF THE 6 APRIL MEETING AND THE 10 APRIL MEETING

- 51 The 6 April Meeting and the purported notice thereof, in addition to the misleading notice by screenshot on 5 April 2018 at 12.15 p.m. CST, and the 10 April meeting and the purported notice thereof, were in clear contravention of paragraph 99 of the Articles as Ctrip was not provided with an accurate proposed agenda for either meeting. Accordingly, any business transacted at the 6 April Meeting and 10 April Meeting is invalid due to the insufficiency of notice.
- 52 Furthermore, the Transaction Agreements and other transactional documents were provided one hour before the meeting and neither Ctrip nor Mr Chen was provided with an adequate opportunity to consider the same or with sufficient information by the Company as to the agenda to enable it / him to form a view as to the purpose of the 6 April Meeting or the 10 April Meeting.
- 53 Further, or in the alternative, Ctrip contends that the withholding of voluminous documents, including lengthy resolutions, until the email from O'Melveny & Myers sent an hour prior to the 6 April Meeting at 6.24 p.m. is corroborative of the fact that the original notice of meeting and agenda was insufficient.
- 54 The Company's description of the business to be considered at the 6 April Meeting and the 10 April Meeting in the proposed respective agendas was deliberately incomplete, vague and deceptive, with the intention of misleading Ctrip and Mr Chen as to the true purpose of the meeting.
- 55 The actions taken by the Board of the Company led the Petitioner to have real and present concerns that its newly acquired voting powers will be prejudiced and that it will not be in the position to possibly block any merger transaction.

F. MISCONDUCT IN RELATION TO THE 6 APRIL RESOLUTIONS

- 56 It is clear that there was no full discussion of the merits of the alternative higher offer in the Ocean Link Proposal by the Ocean Link Consortium at the 6 April Meeting. The Chairman Consortium's Merger Agreement was clearly a *fait accompli* by the Special Committee even before the 6 April Meeting was improperly convened. The Special Committee's role is to get the

best possible price for the shareholders of the Company. The Petitioner is concerned about the apparent failure to properly consider the Ocean Link Proposal.

57 The 6 April Resolutions passed at the 6 April Meeting expose the Company to risk and loss that will be borne by the Company if / when any dissenting shareholders object to the Chairman Consortium's Merger Agreement pursuant to Section 238 of the Companies Law on the basis that there was a higher offer of US\$14.50 by the Ocean Link Consortium for possible harm to their interest. The Petitioner submits that the "*fair value*" must be US\$14.50, not US\$13.50, by reason of the existence of the Ocean Link Proposal.

58 In light of the foregoing, the conduct of the Chairman and the directors, who supported the Chairman Proposal by voting in favour of passing the 6 April Resolutions at the 6 April Meeting, constitutes:

- (a) the exercise of the directors' powers conferred on Mr Miao, Mr Qian and Mr Myers for an improper purpose, namely to avoid proper scrutiny or due consideration to the Ocean Link Proposal;
- (b) a breach of their fiduciary duties by preferring the interests of the Chairman Proposal over the best interests of the Company;
- (c) a breach of their fiduciary duties by recklessly causing a loss to the Company in the amount of US\$14,062,642, being the payable termination fee under the Merger Agreement. The Chairman Proposal is not for the best interest of the shareholders of the Company because it is not the best offer available when compared to the superior Ocean Link Proposal. Pursuant to Section 8.06 of the Merger Agreement, the Company is liable to pay 1.5% of the equity value of the Merger Agreement, as a termination fee, should the Special Committee later conclude that the Ocean Link Proposal is in fact preferable.

G. MISCONDUCT IN RELATION TO THE 10 APRIL MEETING AND RESOLUTIONS

59 Notwithstanding the Petitioner's contention that the resolutions passed at the 6 April Meeting were invalid due to the 6 April Meeting being invalidly convened, the Petitioner does not recognise the proposal put forth to the Board at the 10 April Meeting to "*reaffirm and ratify*" the

resolutions passed at the 6 April Meeting. It is clear that this is simply an attempt by the Chairman and those directors in support of the Chairman Proposal to legitimise the invalid results of the 6 April Meeting.

- 60 In light of the Board's past conduct with respect to the 6 April Meeting and the hostility it has shown to date towards the Ocean Link Proposal, a clear inference can be drawn that the actions taken at the 10 April Meeting, particularly in relation to the CVP Transaction, are motivated primarily by a desire on the part of certain members of the Board to stymie and frustrate the viability of the Ocean Link Proposal, contrary to the best interests of the Company. This inference is all the more acute by the fact that neither the intention to vote on a resolution nor a draft of the 10 April Resolution had been circulated (whether in writing or otherwise) to Ms Chen (and presumably other Board members) previously, notwithstanding that parties having conduct of that meeting were seemingly reading from a prepared script.
- 61 The voting on the 10 April Resolution by the Board was clearly the true purpose of the 10 April Meeting and which had been carefully pre-planned in a written script despite the indications that in the notice of 10 April Meeting stating no matters would be voted on. Clearly, this statement was not true and that for the second time, the Chairman and the Company were deliberately vague as to the true agenda in questionable circumstances.
- 62 Furthermore, the Company's lack of sufficient communication to update the agenda of the 10 April Meeting to accurately reflect the matters that were to, in fact, be tabled at that meeting, namely the SEC filings in relation to the CVP Transaction and the formation of the Ocean Link Consortium, is further indicative of the poor corporate governance of the Company contrary to the best interests of the Company.
- 63 Based on the above, the Petitioner has lost all trust and confidence in the Board and in its ability to act in the best interests of the Company. The conduct of the Chairman and the Special Committee, in using their powers to pursue their own agendas, was in complete disregard to the interests of the Company and is detrimental and prejudicial to the interests of the Company's shareholders.

64 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 PETITIONER THEREFORE HUMBLY PRAYS AND REQUEST THAT:

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

- (a) The Company is permanently enjoined from relying upon the 6 April Resolutions, and the 6 April Meeting shall be declared void;
- (b) The Company is permanently enjoined from relying on the 10 April Resolution, and the 10 April Meeting shall be declared void;
- (c) The Special Committee shall use its best endeavours to fulfil its role to identify and recommend the best possible bid with which to take the Company private;
- (d) The Special Committee shall review the Ocean Link Proposal and submit its recommendations to the Board with detailed reasons (the *Special Committee Review*);
- (e) The findings of the Special Committee Review shall be considered at a duly convened meeting of the Board of Directors of the Company;
- (f) Notwithstanding the presentation of the said Petition:
 - (i) Payments made into or out of the bank account of the Company in the ordinary course of business of the Company; and
 - (ii) Dispositions of the property of the Company made in the ordinary course of its business for proper value between the date of the presentation of the Petition and the date of judgment on the Petition or further order in the meantime

shall not be void by virtue of the provision of section 99 of the Companies Law (2018 Revision) in the event of an order for the winding up of the Company being made on the said Petition provided that (the relevant bank) shall be under no obligation to verify for itself whether any transaction through the Company's bank account is in the

ordinary course of business, or that it represents full market value for the relevant transaction.

- (g) Such further or other relief as this Honourable Court deems appropriate;
- (h) The Petitioner's costs of and incidental to this Petition paid by the shareholders of the Company that comprise the Chairman Consortium jointly and severally on an indemnity basis, such costs to be taxed if not agreed.

AND your Petitioner will ever pray etc.

Dated the 13 day of April 2018



Harney Westwood & Riegels

Attorneys-at-Law for and on behalf of the Petitioner

NOTE: This Petition is intended to be served on the Company at PO Box 31119, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-1205, Cayman Islands.

This Petition was presented 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: 050826-0001-INM).