

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**



**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)  
IN THE MATTER OF FANG HOLDINGS LIMITED**

**CAUSE NO: FSD 278 OF 2020 (ASCJ)**

**BETWEEN:**

**(1) EVENSTAR MASTER FUND SPC  
for and on behalf of EVENSTAR MASTER  
SUB-FUND I SEGREGATED PORTFOLIO**

**(2) EVENSTAR SPECIAL SITUATIONS LIMITED**

**PETITIONERS**

**and**

**1<sup>ST</sup> RESPONDENT**

**VINCENT TIANQUAN MO  
FANG HOLDINGS LIMITED**

**2<sup>ND</sup> RESPONDENT**

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**CONSENT ORDER**

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**UPON** the summons for the appointment of provisional liquidators in respect of Fang Holdings Ltd ("**Company**") dated 4 December 2020 and affixed with the Court Seal on 8 December 2020 (the "**PL Application**")

**AND UPON** the PL Application coming on for hearing on Monday, 21 December 2020



**AND UPON** adjourning the hearing of the PL Application until 9am on Thursday, 24 December 2020

**AND UPON** the First Respondent and the Second Respondent, acting by and through their respective Leading Counsel, providing certain confirmations and undertakings, as set out in the Order made on 24 December 2020 and filed with the Court on 30 December 2020, regarding the management of the Second Respondent and restrictions on the disposition and/or encumbrance of the Second Respondent's real property, such undertakings to remain in place in respect of the First Respondent until the PL Application is heard and determined and judgment delivered and, in the case of the Second Respondent, such undertakings to remain in place until the earlier of (i) the adjourned PL Application being heard and determined and judgment delivered or (ii) the sanction of the Court

**AND UPON** further adjourning the hearing of the PL Application until 10am on Tuesday, 9 February 2021 so as to grant the Petitioners, the First Respondent and the Second Respondent an opportunity to negotiate and, if possible, agree further undertakings in respect of the Second Respondent's real property and, thereafter, further adjourning the PL Application to 10am on 15 April 2021

**AND UPON** the Petitioners, the First Respondent, the Second Respondent and Safari Group Holdings Limited (a contributory) having agreed, by their respective attorneys, to the further adjournment of the PL Application to 12 May 2021

**AND UPON** the PL application coming on for hearing on 12 May 2021 and being further adjourned to 13 May 2021

**AND UPON** the Court directing that the PL Application and the summons for the appointment of the reconstitution of the board of directors of the Company dated 18 June 2021 and affixed with the Court Seal on 21 June 2021 (the "**Reconstitution Summons**")

be adjourned to and listed for hearing on 15 and 16 June 2021 (the “**Original Hearing Dates**”) and making consequential directions regarding the further exchange of evidence

**AND UPON** the Original Hearing Dates being vacated and the PL Application and Reconstitution Summons being re-listed for hearing on 7 and 8 July 2021.

**AND UPON HEARING** Leading Counsel for the Petitioners, Leading Counsel for the First Respondent, Leading Counsel for the Second Respondent and Counsel for Safari Group Holdings Limited (a contributory) and Safari Group CB Holdings Limited (a creditor).

**IT IS HEREBY ORDERED BY CONSENT THAT:**

1. The PL Application and the Reconstitution Summons be adjourned, on the terms and undertakings annexed hereto, to the first available date after 30 October 2021.
2. The Petition herein be adjourned to a date no earlier than 31 December 2021, without prejudice to the parties’ ability to list the summons for directions for hearing prior to that date.
3. Liberty to apply.
4. Costs be reserved.

DATED this 20<sup>th</sup> day of July 2021  
FILED this 26<sup>th</sup> day of July 2021

  
\_\_\_\_\_  
**THE HONOURABLE CHIEF JUSTICE SMELLIE**



This Order is filed by Forbes Hare, Attorneys for the Petitioners, whose address for service is Forbes Hare, Cassia Court, 10 Market Street, Suite 716, Camana Bay, Grand Cayman, KY1-9006 (Ref: AJHA/FOD/KY5022.001)

**Annex**  
**Schedule of Agreed Terms**

1. The Company shall procure that its nominating committee (the "**Nominating Committee**") shall consider in good faith and, if thought fit, approve the appointment of an independent director of the Company proposed by the Petitioners (the "**Proposed Evenstar Independent Director**"; once appointed at a general meeting as outlined below, the "**Evenstar Independent Director**"). In the event that any Proposed Evenstar Independent Director is rejected by the Nominating Committee, the Petitioners may put forward an alternative, which the Company shall procure the Nominating Committee likewise to consider in good faith and, if thought fit, approve the nomination for appointment of independent director of the Company.
2. Mr Mo undertakes, in his capacity as a member of the Nominating Committee, that he will support the appointment of the Proposed Evenstar Nominee Independent Director.
3. In the event that the Nominating Committee fails, by 2 August 2021, to approve the appointment of the Proposed Evenstar Independent Director, the Petitioners shall have liberty to apply forthwith to re-list the PL Application and the Reconstitution Summons and the terms which follow below will be redundant.

***Director Appointment to the Company's Board of Directors***

4. Once the Proposed Evenstar Independent Director is approved by the Nominating Committee, the Company shall convene an extraordinary general meeting of the Company (the "**EGM**") to be held no later than 15 September 2021 for the purpose of putting the following resolutions to the members of the Company for their consideration and, if they deem fit, their approval, namely:

- (i) The appointment of Howard Huyue Zhang, Changming Yan, Shaohua Zhang and Jian Liu as directors of the Company, to the extent that they are not already directors of the Company and, to the extent that they are, the ratification of such appointment(s);
- (ii) The ratification by the Company of the acts of Howard Huyue Zhang, Changming Yan, Shaohua Zhang and Jian Liu, insofar as any of them may not have validly appointed or reappointed as a director at any time prior to the EGM. Such ratification will include but not be limited to the approval by the Nominating Committee of the Proposed Evenstar Independent Director; and
- (iii) The appointment of the Proposed Evenstar Independent Director, as an independent director of the Company;
- (iv) The approval of the terms of the Proposed Evenstar Independent Director's appointment, including but not limited to his terms of service including remuneration, indemnification and duty of confidentiality.
- (v) The sanction of the appointment of all independent directors to the boards of the variable interest entities which directly or indirectly hold real property in the PRC for the Company (the "**VIEs**", as listed in the Schedule below - the "**VIE Schedule**"), and steps to be taken by the Company to (1) remove the existing directors of the VIEs (including, where applicable, Mr Mo), and (2) amend the constitutional documents of the VIEs so as to limit the powers of the directors of the VIEs to dispose of, encumber, hypothecate and mortgage real property (i.e. the constitutional documents will be revised to permit the transfer or disposal of real property only by way of unanimous resolution of the board of directors).

(collectively, the "**EGM Resolutions**")

5. Mr Mo, the Company and the Petitioners shall agree, in advance, the proposed form of the EGM Resolutions to be considered by the members at the EGM.
6. The legal representatives of the Petitioners (from Forbes Hare, Skadden, Arps, Slate, Meagher & Flom LLP and/or Jun He ("**Representatives**")) and the legal representatives of Mr Mo (from Mourant) and the Company (from Conyers and/or Wilson Sonsini), may attend and observe the EGM either in person or by means of conference telephone or other communications equipment which may be utilized, as specified in article 61(3) of the Company's fifth amended and restated articles of association (the "**Articles**"), and for this purpose the Company and Mr Mo agree that the Representatives may inspect any proxies or corporate authorities submitted by any member for the purposes of voting at the meeting by way of corporate authority and/or by proxy.
7. At the EGM, Mr Mo undertakes that he shall:
  - (i) Vote any shares in the Company, which are registered in his own name, in favour of the appointment of the Proposed Evenstar Independent Director as an independent director of the Company; and
  - (ii) Procure that entities with a shareholding in the Company that are subject to his effective control (whether *de jure* or *de facto*) will vote their shares in favour of the appointment of the Proposed Evenstar Independent Director as an independent director of the Company.
8. Mr Mo expressly warrants (i) that he and such entities control not less than 69% of the total voting power in the Company and (ii) that he will not reduce such control beneath this threshold of 69% pending the hearing and determination of the Petition and the delivery of judgment.
9. In the event that either or both of the following occur, namely:

- (a) the resolution to appoint the Proposed Evenstar Independent Director (and/or the resolution to approve the terms of his appointment) does not pass at the EGM for any reason; and
- (b) the Proposed Evenstar Independent Director shall not be appointed to the boards of all of the VIEs by 31 October 2021

the Petitioners shall have liberty forthwith to apply to re-list the PL Application and the Reconstitution Summons and the terms of this Annex will be redundant.

10. Mr Mo undertakes not to convene an extraordinary general meeting for the purposes of removing the Evenstar Independent Director and Mr Mo undertakes not to requisition or otherwise procure an extraordinary general meeting for the purpose of removing the Evenstar Independent Director or to vote (or cause or permit any of the entities subject to his control to vote) in favour of any resolution to remove the Evenstar Independent Director whether such resolution is tabled at an extraordinary general meeting of the Company (howsoever convened) or otherwise.
11. In the event that a valid requisition is made by any requisite shareholder(s) of the Company pursuant to Article 58(2) (other than Mr. Mo and/or entities he controls) or a general meeting is called by the majority of the Board of the Company pursuant to Article 58(1) for removal of the Evenstar Independent Director, Mr Mo undertakes to not vote in favour of such resolution for the removal of the Evenstar Independent Director.
12. Mr Mo has liberty to apply to the Court to vary or discharge the undertaking, set out at paragraph 10, on 21 days' notice to the Petitioners.

***Terms and Scope of the Approved Evenstar Nominee Directors' Appointment***

13. If the Evenstar Independent Director cannot continue in office for any reason or ceases to hold office for any reason, the Petitioners shall have the right to propose his or her replacement and in such an eventuality, Mr Mo shall support and vote in favour of such appointment of replacement Evenstar Independent Director and Mr Mo and the Company shall procure the appointment of the replacement Evenstar Independent Director to the boards of the VIEs and to the Company's board either to fill a casual vacancy or as an addition to the board pursuant to article 86(3) of the Articles or by the Company in general meeting, by way of ordinary resolution, pursuant to 86(2) of the Articles.
  
14. Where the replacement Evenstar Independent Director is appointed pursuant to Article 86(3) of the Articles, he or she will hold office only until the next following annual general meeting. Where this occurs, Mr Mo undertakes that he shall:
  - (i) Vote any shares in the Company, which are registered in his own name, in favour of the appointment of the replacement Evenstar Independent Director as independent director of the Company at the next following annual general meeting; and
  - (ii) Procure that entities with a shareholding in the Company that are subject to his effective control (whether *de jure* or *de facto*) will vote their shares in favour of the re-election of the replacement Evenstar Independent Director at the next following annual general meeting.
  
15. Where it is proposed that the replacement Evenstar Independent Director be appointed pursuant to Article 86(2) of the Article, Mr Mo undertakes that he shall:
  - (i) Vote any shares in the Company, which are registered in his own name, in favour of the appointment of the replacement Approved Evenstar Nominee

Director as an independent director of the Company at the general meeting in question; and

- (iii) Procure that entities with a shareholding in the Company that are subject to his effective control (whether *de jure* or *de facto*) will vote their shares in favour of the re-election of the replacement Approved Evenstar Nominee Director at the general meeting in question.

In the event that the resolution to appoint the replacement Evenstar Independent Director does not pass for any reason, including but not limited to a decision by the chairman of the meeting to exclude any proxy or corporate authority submitted by an entity controlled by Mr Mo, the Petitioners shall have liberty forthwith to issue a fresh summons seeking the appointment of provisional liquidators and/or the reconstitution of the board of directors of the Company and the terms set out below at paragraphs 25 and 26 shall apply in such event.

- 16. The Company and the Proposed Evenstar Independent Director shall, in advance of the EGM, agree in good faith the terms of service as independent director of the Company including but not limited to: (i) remuneration; (ii) indemnity; and (iii) confidentiality provisions.
- 17. If agreement cannot be reached between the Company and the Evenstar Independent Director regarding the remuneration and indemnity specified in paragraph 16 above within 14 days herein, both the Petitioners and the Company shall have liberty to apply to the Court for the issue to be determined on an expedited basis, with necessary extensions for the timeline outlined herein.
- 18. The Company shall procure the appointment, by no later than 31 October 2021, of the all the independent directors of the Company, namely, the Evenstar Independent Director, Howard Huyue Zhang, Changming Yan and Shaohua Zhang to the boards of the VIEs as soon as practicable and Mr Mo and the Company shall take all such steps as may be necessary to:

- (a) remove the existing directors of the VIEs (including, where applicable, Mr Mo), and
- (b) amend the constitutional documents of the VIEs so as to limit the powers of the directors of the VIEs to dispose of, encumber, hypothecate and mortgage real property (i.e. the constitutional documents will be revised to permit the transfer or disposal of real property only by way of unanimous resolution of the board of directors).

For the avoidance of doubt, to the extent that the co-operation of any wholly foreign-owned enterprises (“*WFOEs*”) controlled by the Company and/or Mr Mo is required in effecting the amendment of the constitutional documents and/or registration with the State Administration for Market Regulation and relevant administrations of all relevant matters, the Company and/or Mr Mo shall procure such co-operation from the *WFOEs* in question.

- 19. If it shall emerge (for any reason) that there are additional VIEs which hold (directly or indirectly) any of Fang’s real property in the PRC, such additional VIEs shall be added to the VIE Schedule and Fang and Mr Mo shall forthwith take steps to procure compliance with paragraph 18 above in relation to each such additional VIE. In the event that such steps are not taken, the Petitioners shall have liberty to apply to the Court.
- 20. Mr Mo undertakes not to be involved in any decision-making process in respect of, or procure, any disposal or transfer of the real properties held directly or indirectly by the VIEs.
- 21. The Company and Mr Mo further undertake not to remove (or cause or permit any of its subsidiaries, including without limitation any of its *WFOES* to remove) without the leave of the Court the Evenstar Independent Director (or any replacement

Evenstar Independent Director) from the boards of the VIEs until after the Petition is heard and determined and judgment delivered.

22. Any application by the Company and/or Mr Mo seeking leave to remove any Evenstar Independent Director from the boards of the VIEs, pursuant to paragraph 21 above, shall be made on 21 days' notice to the Petitioners.
23. The Petitioners, Mr Mo and the Company (including its WFOEs) will co-operate with each other and their respective legal advisers (including the Petitioners' lawyers Jun He LLP) in good faith to agree the process for appointment of all the independent directors of the Company (including the Evenstar Independent Director, subject to passing of the EGM Resolutions) to the boards of the VIEs and the amendments to be made to the constitutional documents of the VIEs, as prescribed above at paragraph 4(v).

#### **Withdrawal of the PL Application and Subsequent Provisional Liquidation Applications**

24. The Petitioners agree to withdraw the PL Application and the Reconstitution Summons once both of the following have occurred, namely:
  - i. The appointment of the Evenstar Independent Director to the board of directors of the Company and the holding of the first board meeting thereafter; and
  - ii. The appointment of the Evenstar Independent Director to the boards of each of the VIE entities specified above.
25. The withdrawal of the PL Application and the Reconstitution Summons is without prejudice to the Petitioners' right to issue fresh summonses seeking the appointment of provisional liquidators to the Company (the "**Subsequent PL**

**Application**") and/or the reconstitution of the board (the "**Subsequent Reconstitution Summons**") in the event that any of the following occur, namely:

- (a) the Company and/or Mr Mo unreasonably refuses to co-operate with the Evenstar Independent Director in the discharge of his duties as an independent director of the Company and he resigns office for this reason; and
  - (b) new purported allegations of misfeasance, misconduct, mismanagement or the risk of asset dissipation comes to light (not already pleaded and/or contained in the evidence filed to date);
26. Mr Mo and the Company expressly agree that if the PL Application and the Reconstitution Summons are withdrawn and the Petitioners thereafter issue a Subsequent PL Application and/or a Subsequent Reconstitution Summons (as provided for in paragraph 25 above), the Petitioners may rely on the allegations of misconduct and misfeasance outlined by them in these proceedings to date without restriction and Mr Mo and the Company expressly agree that they will not seek to strike out such allegations in any Subsequent PL Application and/or Subsequent Reconstitution Summons on the basis of estoppel, lack of change of position or under *Henderson v Henderson* principles.

#### **The 24 December Undertakings**

27. The undertakings recorded in this Court's Order dated 24 December 2020 (the "**24 December Undertakings**") shall continue in effect save that the parties agree that Mr Mo shall be released from the following undertakings, namely:
- i. The undertaking not to vote in favour of the exercise of, nor otherwise cause, procure or permit the Company to exercise, the CIH Share Option;

- ii. Not to cause, procure or permit Next Decade Investments Limited and/or Media Partner Technology Limited to enter into an agreement with the Company providing for an extension of the period of time within which the option to purchase CIH shares from Next Decade Investments Limited and/or Media Partner Technology Limited may be exercised or a renewal of the CIH Share Option;
  - iii. Not to vote in favour of the early redemption of nor cause, procure or permit the Company to effect the early redemption of either the IDG Notes (as restructured in 2018) and/or the Safari Notes nor to seek to cause or procure or encourage IDG Alternative, the IDG Purchasers or any related IDG party and/or Safari CB (as applicable) to seek the early redemption of the IDG Notes and/or the Safari Notes (as applicable).
28. For the avoidance of doubt, undertakings 4-6 given by Mr Mo, acting by and through his Leading Counsel and recorded in the 24 December Undertakings, shall remain in force.
29. For the avoidance of further doubt, the undertakings provided by the Company and recorded in the 24 December Undertakings shall remain in force.
30. The Company and Mr Mo (as appropriate) have liberty to apply to the Court to vary or discharge the undertakings, set out at paragraphs 28 and 29 above, on 14 days' notice to the Petitioners.

### **Schedule**

1. Beijing Hua Ju Tian Xia Network Technology Co., Ltd 北京华居天下网络技术有限公司
2. Beijing China Index Information Co., Ltd 北京中指数资讯有限公司
3. Beijing SouFun Internet Information Service Co., Ltd 北京搜房互联网信息服务有限公司
4. Beijing SouFun S&T Development Co., Ltd 北京搜房科技发展有限公司
5. Beijing Century Jia Tian Xia Technology Development Co., Ltd 北京世纪家天下科技发展有限公司
6. Beijing Li Tian Rong Ze Yi Jia Technology Development Co., Ltd 北京立天荣泽科技发展有限公司
7. Beijing Jia Tian Xia Advertising Co., Ltd 北京家天下广告有限公司
8. Tianyunjie Technology (Chengdu) Co., Ltd 天韵杰科技（成都）有限公司
9. Shouxiruizhi Commercial Service (Chengdu) Co., Ltd 首玺睿智商务服务（成都）有限公司
10. Hanxianglong Network Technology (Chengdu) Co., Ltd 瀚香龙网络科技（成都）有限公司
11. Rong Gang Commercial Service (Chengdu) Co., Ltd 蓉港商务服务（成都）有限公司
12. Xingbenyuan Commercial Service (Chengdu) Co., Ltd 兴本源商务服务（成都）有限公司
13. Shuntaiduoli Network Technology (Chengdu) Co., Ltd 顺泰多利网络科技（成都）有限公司
14. Gang Lian Ji Network Technology (Chengdu) Co., Ltd 港联技网络科技（成都）有限公司

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| 15. | Rui Xin Chen Commercial Services<br>(Chengdu) Co., Ltd             | 瑞鑫辰商务服务（成都）有限公司  |
| 16. | Wuhan Tuoshi Fang Tian Xia Commercial<br>Service Co., Ltd          | 武汉拓世房天下商务服务有限公司  |
| 17. | Chongqing Yahao Technology Development<br>Co., Ltd                 | 重庆雅豪科技发展有限公司     |
| 18. | Chongqing Ju Jiu Wu Technology<br>Development Co., Ltd             | 重庆居久屋科技发展有限公司    |
| 19. | Beijing Li Tian Rong Ze Technology<br>Development Co., Ltd         | 北京立天荣泽亿家科技发展有限公司 |
| 20. | Tianjin Sipu Shidai Science and Technology<br>Development Co., Ltd | 天津思普时代科技发展有限公司   |

APPROVED AS TO FORM AND CONTENT

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