

HONG KONG / JUDGMENT

RE WORLDCO INTERNATIONAL LTD

COURT

Court of First Instance

DECIDED

19 September 2007

CASE / FILE NUMBER

HCMP382/2007

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bjbj HCMP 382/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 382 OF 2007

IN THE MATTER of WORLDCO INTERNATIONAL LIMITED and IN THE MATTER of the
Companies Ordinance, Cap. 32

Before: Hon Kwan J in Court Date of Hearing: 17 September 2007 Date of Judgment: 17 September
2007 Date of Handing Down of Reasons for Judgment: 19 September 2007

REASONS FOR JUDGMENT

This is a petition presented by Worldco International Limited (the Company) for confirmation of its proposed reduction of capital, pursuant to sections 58 and 59 of the Companies Ordinance, Cap. 32. The Company was incorporated on 24 September 2004. It has been carrying on the business of trading in, promoting, and providing consultancy service of pharmaceuticals in China. The initial authorised capital of the Company was \$10,000.00, divided into 10,000 shares of \$1.00 each. The present authorised capital is \$36,500,000.00, divided into 36,500,000 ordinary shares of \$1.00 each, all of which have been issued and are fully paid up. The only shareholder is TTY Biopharm Company Limited, a company incorporated in Taiwan. There is provision in the articles of association that the Company may by special resolution reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law. At an extraordinary general meeting of the Company on 26 February 2007, special resolutions were passed to reduce the capital to \$18,250,000.00, divided into 36,500,000 shares of \$0.50 each, and that such reduction be effected by cancelling the paid-up capital to the extent of \$0.50 upon each of the 36,500,000 issued ordinary shares of \$1.00 each, thereby reducing the nominal amount of the 36,500,000 ordinary shares from \$1.00 to \$0.50 each. In the opinion of the directors, the sum

of \$18,250,000.00 proposed to be cancelled is no longer represented by available assets of the Company. The reasons for the proposed reduction were given in a circular to the shareholder dated 26 February 2007. As at 31 December 2006, the Company had accumulated losses of RMB 20,497,739.00. The proposed reduction is to extinguish the accumulated losses to the extent of \$18,250,000.00, thereby bringing the share capital more in line with its available assets. The balance sheet showed that on 31 December 2006, the Company had total accrued liabilities of \$10,541,161.00. The directors anticipated that such liabilities would be paid in the ordinary course of business over the next twelve months. In the absence of unforeseen circumstances, on completion of the proposed reduction, the directors considered that the Company should have sufficient working capital for its present requirements. The proposed reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital. At the first hearing of the summons for directions on 24 April 2007, I adjourned the summons sine die with liberty to restore for the Company to file further evidence giving a proper explanation of how the accumulated losses were incurred and what part of the losses should be regarded as permanent losses. Further evidence was filed by the Company on 8 June 2007, the effect of which may be summarised as follows. According to the latest audited accounts, the loss in the period from 1 January 2006 to 31 October 2006 was RMB 4,660,660.00 and the accumulated losses were RMB 21,024,389.00. According to the management accounts as at 31 December 2006, the loss in the period from 1 January 2006 to 31 December 2006 was RMB 4,134,020.00 and the accumulated losses were RMB 20,497,739.00. The accumulated losses of RMB 20,497,739.00 had arisen from provision made against the investment in a subsidiary (of RMB 10,431,540.00) and from the operating losses of the Company (of RMB 10,066,199.00). The Company has provided a breakdown of the operating losses. The directors considered such losses to be of a permanent nature. As for the subsidiary, it had incurred heavy research and development costs which had been charged to its respective profit and loss accounts and the directors of the Company have felt it necessary to make the provision in the Company's own accounts. For the protection of creditors for those parts of the accumulated losses which might not be regarded as permanent (RMB 10,431,540.00), the Company has offered an undertaking in the usual form, the provisions of which are set out in the schedule annexed hereto. At the adjourned hearing of the summons for directions on 22 August 2007, an order was made to dispense with the settlement of a list of creditors. Directions given for the advertisement of the petition have been complied with. There being only one shareholder in the Company who had consented to the reduction, there is no question of inequitable treatment of shareholders in the reduction or that the proposals were not properly explained. I am satisfied that the reduction is for a discernible purpose and there is adequate safeguard for creditors. Accordingly, I have made an order in terms of the draft order as amended and approved the minute for reduction of capital. (S Kwan) Judge of the Court of First Instance High Court Miss Kitty Tsang, instructed by Li & Partners, for the Petitioner SCHEDULE UNDERTAKING AND UPON the Company by its Counsel undertaking that upon the reduction of capital effected by virtue of the Special Resolution set out in paragraph 7 of the Petition herein taking effect (the Effective Date) and for so long as there shall remain outstanding any debt or claim against the Company which would be admissible to proof in a winding up of the Company commencing on the Effective Date and the

persons entitled thereto shall not have agreed otherwise, the Company shall credit to a special reserve in the books of the Company (the Special Reserve) up to a sum equal to RMB10,431,540.00 of profits arising from or in respect of: any distribution made by any subsidiary of the Company (which was such a subsidiary as at the Effective Date) to the Company and paid out of profits earned by such subsidiary prior to the Effective Date; and any revaluation or disposal or release of provision in respect of any of the Company s fixed assets included in its balance sheet at the Effective Date; and any revaluation, disposal or release of provision in respect of liens or loans to its subsidiary which loan or loans existed at the Effective Date. AND so long and to the extent that it shall not be capitalised (and subject to below) the Special Reserve:

- (1) shall not be treated as representing realised profits of the Company;
 - (2) if the Company becomes a listed company and for so long as it remains a listed company shall be treated as an undistributable reserve of the Company for the purposes of Section 79C of the Companies Ordinance (or any statutory modification or re-enactment thereof) PROVIDED THAT the amount standing to the credit of the Special Reserve may be reduced by an amount equal to any increase after the Effective Date in the paid-up capital of the Company as a result of any issue of shares (other than an issue made for the purposes of purchase by the Company of its own shares) for cash or other consideration or from a capitalization of any distributable reserve (not including the Special Reserve). PAGE -
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