

**REPORT OF THE
MARKET MISCONDUCT TRIBUNAL
OF HONG KONG**

on whether any market misconduct in the nature of false or misleading information
inducing transactions, insider dealing or otherwise has taken place
in relation to the listed securities of

China Forestry Holdings Company Limited

formerly listed on the Main Board of
the Stock Exchange of Hong Kong
(Stock Code: 930)

on and between 3 April 2008 and 13 January 2011

and on other related questions

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Chapter 10. Mr. Roderick Sutton (p. 162-176)	547-606
<i>Report-21 June 2017</i> , together with supporting documentation. Notes of corrections/updates.	
<i>Curriculum vitae</i> Senior Managing Director, Forensic Accounting and Advisory Service, FTI Consulting, Hong Kong. Fellow of Hong Kong Institute of CPAs. Fellow of Chartered Accountants, Australia and New Zealand. Receiver, Liquidator and Administrator. Expert evidence and reports received in Hong Kong Courts.	
<i>SFC’s instructions</i> : 13 November 2012; 15 August 2014. Prepare a report on alleged financial irregularities relating to published accounts for CF Group-FY 2008; FY 2009 and Interim Report 2010.	549-557
<i>Published accounts</i> : Prospectus, 2009 Annual Report; and 2010 Interim Report.	
<ul style="list-style-type: none"> • Opinions sought: identify discrepancies, including overstatements; opinion - materiality? • Two sets of ledgers: Local Books/HQ Books: opinion-which reflects true financial position of KUB? 	
<i>Further instructions</i> :	
<ul style="list-style-type: none"> • consider reversal of plantation assets upon logging on sales; plantation assets and/lease prepayments. Identify discrepancies-opinion on materiality. 	

Title	Paras
<ul style="list-style-type: none"> • Listing requirements: identify overstatements in figures/balances in Prospectus-opinion-whether CF met Listing requirements-Listing Rules of SEHK. 	
<p><i>Opinion: Two sets of ledgers: HQ Books (basis of CF's published financial statements) and Local Books materially different.</i></p>	558-562
<ul style="list-style-type: none"> • <i>Cash and bank balances:</i> <p>Higher reliance placed on independent third-party evidence: CSRC bank statements and documents obtained in absence of CF management support Local Books.</p> <p><i>Opinion: Local books more reliable than HQ Books.</i></p>	563-567
<p>Misstatements in Published information:</p>	568-606
<ul style="list-style-type: none"> • <i>cash and bank balances</i> <p>(i) understated as at 31 December 2008-about RMB 19.9 million; (ii) overstated as at 31 December 2009-about RMB 14.1 million; and overstated as at 30 June 2010-about RMB 520.5 million.</p> <p>Materiality: quantitatively material for FY 2008 and Interim Results 2010.</p>	569-572
<ul style="list-style-type: none"> • <i>NAV</i> <p>Difference in cash between HQ Books and Local Books for Interim 2010 Results-RMB 520,531,532; 5.28% of published NAV-RMB 9,862,809,859.</p> <p>Opinion: (i) quantitatively material; (ii) qualitatively material-misstatements in all 3 periods caused by provision of falsified bank statements to KPMG.</p>	573-580
<ul style="list-style-type: none"> • <i>Turnover</i> <p>Opinion: Overstated in HQ Books/published information: FY 2008-about RMB 498.9 million (91.56%); FY 2009-about RMB 793.6 million (99.99%); and Interim 2010-about RMB 494 million (99.99%).</p> <p>Materiality: overstatement of turnover-qualitatively material.</p> <p>Opinion: Overstatement of Turnover: Group's published Net Profit: FY 2008 (8.48%); and FY 2009 (155.12%); and Interim 2010 (115.13%).</p> <p>Materiality: qualitatively material.</p>	581-584
<ul style="list-style-type: none"> • <i>Cash transactions</i> <p>No weight placed on two documents provided by Commission: (i) Accounts Receivable Ledger of Kunming Ultra Big-provided to KPMG by Xue Jiang-2 March 2011; 'Cash records for 2010', provided by Raymond Tong.</p> <p>Opinion: Insufficient audit evidence of veracity of transactions.</p>	585-590
<ul style="list-style-type: none"> • <i>Plantation Assets</i> <p>As at FY 2008 stated to be-171,780 hectares of forest.</p> <p>Opinion Overstated-payments not traced to CSRC statements.</p>	590-591
<ul style="list-style-type: none"> • <i>Verification of FRCs</i> <p>(i) Fangda/H & F; (ii) SFC; (iii) FTI.</p> <p>Opinion Overstated: as at 31 December 2008 (98.5%); as at 31 December 2009 (97.9%); as at 30 June 2010 (91.9%).</p> <p>Materiality: overstatement quantitatively material.</p>	592-595
<ul style="list-style-type: none"> • <i>Valuation</i> <p>Opinion</p>	596-597

	Title	Paras
	Valuation Overstated: Group's published NAV: as at 31 December 2008, about RMB 7.5 billion (101.92%); as at 31 December 2009, about 7.5 billion (79.08%); as at 30 June 2010, about RMB 6.8 billion (69.58%). Materiality: overstatements were quantitatively material.	
	<ul style="list-style-type: none"> • <i>Financial statements-adjusted without overstatements</i> Appendix 9.0. [APPENDIX 3 of REPORT] Opinion FY 2008-net loss of RMB 2.3 billion; FY 2009-net loss of RMB 76 million.	598-599
	<ul style="list-style-type: none"> • <i>Listing requirements</i> <ul style="list-style-type: none"> (i) Profits Test-required profit attributable to shareholders not less than \$20 million in preceding year. (ii) Market capitalisation/revenue/cash flow Test-required revenue of \$500 million in preceding year. (iii) Market capitalisation/revenue Test-required revenue of \$500 million in preceding year. Opinion Adjusted profit attributable to shareholders-FY 2008-loss of RMB 2.2 billion, equivalent of HK \$2.5 billion. Adjusted revenue for FY 2008-about RMB 45.9 million, equivalent of HK\$51.5 million. (i) Net profit attributable to shareholders and (ii) revenue for the year would not meet the listing requirements.	600-606
	EVIDENCE OF THE SPECIFIED PERSONS	
Chapter 11.	Mr. Li Kwok Cheong	607-665
(p. 177-191)	<i>Li KC</i> : witness statement, 29 March 2019; records of interview-23 June 2011; 25 April 2013; 26 April 2013 and 19 June 2013.	607
	<i>Background</i> : Li KC-PRC civil servant; tobacco trader; investor in artwork. 2001-sole beneficial shareholder of Beijing Zhaolin; July 2003, purchased first forest.	608
	<i>Relationship with Li HC</i> Around 2004 met Li HC-Founder and MD of CES Holdings, listed on GEM. 2004-Li HC joined Beijing Zhaolin-1 February 2004, three years' employment contract Li HC/Beijing Jindfudi-GM. January 2005-Li HC recruited Wu Xiaofen and Zhang Hongyu. From 2006, Group management handed over to Li HC.	609-611
	<i>IPO/restructuring</i> From 2006, consideration given to listing. 21 December 2007-CF, incorporated by Kingfly Capital, wholly-owned by Li KC. March 2008-KUB established-wholly-owned foreign establishment in Yunnan. March/April 2008-Beijing Zhaolin's forestry interests transferred to KUB.	612-614
	<i>Sale of 3.2 million CF shares to Top Wisdom by Kingfly</i> 31 March 2008-Kingfly sold 3.2 million CF shares to Top Wisdom, wholly-owned by Li HC, for US \$32 million; payment of US \$2 million, balance due by 8 equal instalments, beginning 31 December 2010.	615
	<i>Pre-IPO investments</i> 30 December 2007-Carlyle acquired 500,000 CF shares from Kingfly; 18 March 2008-Carlyle subscribed for 3.5 million CF shares. 25 June 2009-Carlyle and Partners Group acquired CF shares from Kingfly and Top Wisdom and subscribed for CF shares.	616-617
	<i>Listing</i> 3 December 2009-CF listed on SEHK. Due diligence-Li HC responsible. Prospectus: Li KC looked at Chinese version briefly; relied on Li HC and professional parties. Li HC	618-622

Title	Paras
responsible for customers, sales and acquisitions. Li KC responsible for macro development direction. Site visits: Li KC visited sites of all forest land held by Group-met local government officials.	
<i>Explanations to KPMG</i>	624-631
<i>23 January 2023 meeting:</i> KPMG, Li KC and Prof. Wong. First Li KC knew of KPMG's audit issues. Li KC explained: (i) Logging permits-similar handwriting/identical position of chops-only one FB officer responsible; (ii) dates on Guizhou FRCs-might be Date Issued used as transfer date; (iii) customer bank account codes-unclear about problem, agreed to follow up; (iv) irregularities/inflated information-logging companies frequently over-logged amount permitted.	
<i>25 January 2023-issues raised in KPMG letter</i>	632
Explanations from Li HC: Li KC said Li HC provided explanations in CF teleconference board meeting to issues raised by KPMG:	
(i) Bank balances, shortfall of RMB 1 billion-monies used to purchase wood and buy forests in Yunnan and Guizhou;	
(ii) use of cash-to buy and sell logs and forest;	
(iii) bank codes-mistake by KPMG; and	
(iv) insurance-PICC/CF no agreement, policies taken out with other insurer.	
<i>Issue taken by Li KC with assertions by Li HC to CSRC</i>	635-639
After listing Li HC managed and operated the company, including the acquisition of forests from farmers.	
<i>Issue taken by Li KC: Verification of FRCs and logging permits</i>	640-644
Li KC took issue with Fangda's directed process of verification of FRCs and logging permits. FRCs: verification process by reference to certificate serial numbers and area, official seals, absence of information and differences in named FB officers. Multiple alternative possibilities: flawed registration and enquiry system; different standards adopted in different areas; FB's noncooperative. Logging permits: no legal requirement for the provision of enquiry services.	
<i>Roles of Li HC and Li KC</i>	645-6
Many witnesses spoke to respective roles of Li HC and Li KC: former-CEO, ran daily business of CF; latter-Chairman, concerned with the general direction of CF.	
<i>Staff recruitment</i>	649-650
Li HC recruited many important members of staff: Wu Xiaofen; Zhang Hongyu; Tong Wai Kit; Lv Aoquian; and Wen Guoping-all reported to Li HC.	
<i>Li HC's criminal conviction:</i>	
Li HC had been convicted by the Guiyang Nanming People's Court of misappropriation of money and sentenced to 3 years' imprisonment, suspended for 3 years.	651-652
<i>Disclosed information: false or misleading as to material facts</i>	653-6
(i) <i>knowledge:</i> Li KC did not know information in: Prospectus; 2009 Annual Results and 2010 Interim Results/2010 Interim Report were false or misleading as to material facts.	
(ii) <i>Reckless/negligent:</i> delegation by the board of overall management to Li HC with professional advisers was reasonable; not reckless/negligent.	
<i>Placement of 119 million CF shares by Top Wisdom-12 January 2011</i>	657
Li KC said Li HC had not accepted his suggestion CF shares be sold to Li KC.	
<i>Li KC's purchase of 12 million CF shares-13 January 2011</i>	658
Supported his case did not know of serious irregularities within CF.	

	Title	Paras
	<i>Reports: IBC; Ernst & Young; and Deloitte</i>	659-665
	Adverse findings in reports of Li HC. IBC report: Li HC ‘suspected’ of destroying large quantities of emails, material evidence in CF investigation. Li HC ‘found’ to have taken away logging permits and cash ledgers. ‘Preliminary conclusion’-Li HC instructed Wu Xiaofen to prepare forged financial information to deceive KPMG. ‘Reasons to believe’- Li HC, Wu Xiaofen and Zhang Hongyu maintained more than one set of accounts. Ernst & Young: found circumstantial evidence of falsification of Group’s documents. No conclusion in any reports Li KC participated in the conduct.	
Chapter 12. Mr. Li Han Chun (p. 192-211)		666-734
	Li HC: witness statement (9 April 2019); CSRC interview (31 July 2014); Transcript of evidence (January 2020).	666
	<i>Background</i>	
	DOB-10.7.1975; BSc (1997) Tsinghua University; April 1999-April 2003-GM CES Holdings; 2003-2006-School of Architecture Tsinghua University; July 2006-researcher at Hyperion Enterprise, Peking University.	667
	<i>Relationship with Li KC:</i>	668-671
	May 2007-met Li KC; offered job-assist in finance and listing. 1-2 weeks later met Xiao Feng, Carlyle, with Li KC; falsely introduced as Beijing Zhaolin employee of 3-4 years. Discussions-Carlyle investment/IPO. Resigned from Hyperion, joined CF around August 2007.	
	<i>Beijing Zhaolin’s forestry business:</i> Li HC knew nothing; management-Li KC, Shi Chuangsheng and Li Haijun.	672-673
	<i>Pre-IPO investment in CF:</i> Carlyle-30 December 2007 and 25 June 2009.	674
	<i>Listing:</i> Xiao Feng took leading role-arranging accountants, sponsors and lawyers. Li HC’s role-main point of contact, information from Li KC, Shi and Li Haijun.	675; 677-679
	<i>Recruitment at CF:</i> Li HC recruited Wu Xiaofen (cousin), Zhang Hongyu (Asst. at Hyperion) and Ma Xinxu (CES Holdings employee).	676
	<i>KPMG’s audit:</i> Wu Xiaofen responsible to liaise.	680
	<i>CF’s daily operations:</i>	681-685
	(i) forest acquisition-not involved; (ii) customers-not involved; (iii) logging-did not know much; (iv) insurance-assigned task of obtaining insurance to Shi Chuansheng; (v) purchase of logs-no business/not involved.	
	<i>Guizhou Wosen</i>	686
	2010 introduced to Zhou Xiaolin by Li KC, agent to acquire forests in Guizhou; Guizhou Wosen set up, managed by Zhou Xiaolin-reported to Li KC.	
	KPMG 2009 Annual Audit: reported to Li KC discovery of forged bank statements of KUB’s account with ICBC at Ya’an branch; used by Li Haijun, Shi and Xue Jiang.	687
	<i>Li HC’s placement of CF’s shares:</i>	688-698
	September/October 2010-invitation to invest in China State-owned iron ore project; early December 2010 asked Xue Ying to sell CF shares to raise US \$20 million. Informed Li KC intended to sell \$20 million worth of CF shares. 3 January 2011: instructed Xue Ying to sell CF shares to raise US \$40 million; other investment opportunities-	
	(i) media company; and	
	(ii) private equity investment. 4 January 2011-accepted Xue Ying’s advice to sell CF shares to raise US \$50 million.	

Title	Paras
12 January 2011: placement agreement-SCS/Top Wisdom sale of 119 million CF shares. Cross-examination-January 2020: agreed, had not produced any evidence of investment opportunities. Acknowledged agreement with Li KC required payment for earlier acquisition of CF shares; he had not paid anything. KPMG's discovery of audit issues: Li HC unaware of audit issues discovered by KPMG until 14 January 2011, after sale of his CF shares.	
<i>Transfer of proceeds:</i> 17 January 2011, net proceeds of placement received by Top Wisdom in SCS account; 25 January 2011, proceeds transferred to UBS account of Top Wisdom.	697-698
<i>Li HC's movements after 14 January 2011</i> Yunnan; UBS meeting-Shanghai-17 and 18 January 2011; Beijing-Lunar New Year 2011; Yunnan. 24 February 2011: arrested by Guizhou PSB; found partially guilty; reasons for conviction extremely far-fetched; suspended sentence.	699-700
<i>Response to documents produced by the Commission</i> (i) HQ Books/Local Books-never seen; (ii) inconsistencies in financial statements-Shi told Li HC because many cash transactions; (iii) Ernst & Young and Deloitte reports: alleged discovery of editable electronic versions of bank-in slips, bank statements and insurance agreements; creator of some alleged to be Li HC: never seen alleged documents; denied forged/instructed forgery of any document; denied computer he used contained such documents; denied responsibility for falsification.	701-708
<i>Discussions of audit issues:</i> Li KC, Michael Cheung and Li HC-his explanations provided by Shi Chuansheng.	710
<i>Li HC's evidence in January 2020:</i> A. Date Li HC joined CF; ambit of duties/responsibilities/work <i>Board minutes, 5 November 2009</i> -signed authorising publication of the Prospectus; contained false information about him; did not join Beijing Zhaolin in January 2004. <i>2004 employment contract/confirmatory Board minutes</i> -signed, false and fraudulently backdated in 2007-deliberately to mislead the public. Wu Xiaofen and Zhang Hongyu's employment contracts were signed in 2007; falsely and fraudulently backdated. <i>Biographical detail provided to Cazenove</i> to provide to SEHK omitted mention of employment at Hyperion and 2006-2007-deliberate omission to mislead SEHK. <i>Prospectus:</i> Li HC's remuneration-2006 and 2007 was false; provided to KPMG; that false information was not important. <i>Cazenove's due diligence interview:</i> 12 December 2007- told Cazenove he oversaw Beijing Zhaolin's operations. <i>CSRC:</i> Li HC said description of his role in Prospectus-responsible for daily operations-merely to comply with the Listing requirements.	711-718
B. <i>Responses to KPMG's disclosure of audit issues:</i> (i) <i>14 January 2011 KPMG meeting:</i> Li HC suggested customer bank codes were rural credit union codes-thought that possible. (ii) Post-14 January 2011: Li HC obtained information from Shi and Li Haijun of business operations-information passed on in his explanations. (ii) <i>Beijing Hotel meeting-in January 2011,</i> Li HC told Li KC/Xiao Feng/MC logs sold for cash, monies not deposited in bank. Shi told him that. Did not disclose that to others.	720 721 724 726 728-734

	Title	Paras
	(iii) 27 January 2011 teleconference meeting of CF Board: could not remember what he said in asserting bank balances were as stated; might have responded by claiming KPMG's concerns, 'ridiculous'.	
	A CONSIDERATION OF THE EVIDENCE	
Chapter 13.	A reasonable opportunity to be heard.	735-786
(p. 212-224)		
	<i>Proceedings before the Tribunal chaired by Mr. Kenneth Kwok SC.</i>	
	<i>Li KC's representation/participation in proceedings.</i>	
	(i) Represented: 3 May 2018-5 November 2019 by ONC Lawyers: 3 May 2018 issue/service of Commission's Notice; 18 October and 20 November 2018-Preliminary Conferences; 29 March 2019-filed Li KC's witness statement; ONC withdraw.	736
	(ii) Post-5 November 2019: unrepresented/did not participate in proceedings/did not give evidence.	
	<i>Substantive hearing:</i> 25 November 2019-23 January 2020; 3 and 16 March 2020-written closing submissions-filed by Commission and Li HC/Top Wisdom; 26 March 2020-hearing fixed for oral closing submissions on 30/31 March 2020 vacated. No further communications between Tribunal and parties.	738-739
	<i>Mr. Kwok's incapacity: submissions</i>	
	11 January 2022-Tribunal informed parties Mr. Kwok unable to discharge his duties and invited submissions.	740-744
	18 March 2022-Commission submitted Tribunal be reconstituted: new chairman and two members to conduct a <i>de novo</i> trial with witnesses giving oral evidence afresh, but with the existing documentary evidence. 22 March 2022-Li KC agreed to proposal. 4 April 2022-King & Wood Mallesons opposed proposal; proceedings extant; should be permanently stayed or discontinued. 7 April 2022-Li KC confirmed agreement, stating evidence submitted by my counsel previously will continue to be adopted, asserted unable to pay counsel.	
	<i>Re-hearing</i>	
	Li KC provided by Tribunal with: Hearing Bundles/written submissions/Directions/transcripts and correspondence. Li KC did not attend/participate in hearing.	741-742
	10 November 2022 Li KC informed Tribunal unable to attend hearing-Covid 19 restrictions; Li KC has no new submissions/evidence, conduct hearing on submissions/evidence already made.	745
	<i>Video-link</i>	
	29 November 2022-Directions: applications to give evidence by video link; 17 January 2023-Tribunal's email to Li KC: (i) no application received from Li KC, applications received/granted for others; (ii) Covid 19 restrictions relaxed-did Li KC intend to attend proceedings? No reply.	746-747
	<i>A consideration of the evidence</i>	
	No evidence to support assertion Li KC unable to pay for legal representation. No evidence why Li KC did not attend/participate personally in proceedings.	752-756
	<i>Conclusion:</i> Li KC had reasonable opportunity to be heard in proceedings, as required by s. 252(6) of the Ordinance.	757
	<i>Li HC/Top Wisdom's representation/participation in proceedings</i>	

	Title	Paras
	Li HC/Top Wisdom-represented by counsel instructed by King & Wood Mallesons at hearing chaired by Mr. Kenneth Kwok. Li HC's witness statement filed 9 April 2019. Li HC gave evidence in January 2020. Opening and closing written submissions filed.	758-759
	<i>Rehearing</i>	
	Li HC/Top Wisdom represented by same counsel/solicitors: submissions/attending hearings prior to rehearing; filing Opening submissions/participating in substantive re-hearing, commencing on 1 February 2023.	759
	<i>Change of representation</i>	
	20 June 2023: Chiu & Partners informed Tribunal represented Li HC/Top Wisdom.	760
	20 September 2023: Chiu & Partners informed Tribunal they ceased to act for Li HC/Top Wisdom, Li KC unable to pay costs/disbursements incurred; Li HC/Top Wisdom asserted no monies for legal representation unless released from injuncted funds of Top Wisdom.	761
	<i>Post-20 September 2023: communications with Li HC/Top Wisdom</i>	
	Tribunal/Commission-no responses to multiple communications with Li HC/Top Wisdom re: participation in proceedings.	765-773
	<i>A consideration of the evidence</i>	
	(i) Monies available to Li HC/Top Wisdom for legal representation	
	No evidence to support assertion made on 20 September 2023 that, other than injected funds, no monies were available to Li HC/Top Wisdom for legal representation. Issue raised previously: (i) application for permanent stay-24 and 25 October 2022; (ii) application for adjournment-10 January 2023. No evidence adduced.	775-781
	(ii) Personal participation	
	No evidence why Li HC did not participate personally/give evidence by video-link nor why Top Wisdom not represented by an appropriate person.	782-785
	<i>Conclusion:</i> Li HC/Top Wisdom-reasonable opportunity to be heard, s.252(6) of Ordinance.	786
Chapter 14. (p. 225-235)	When did Mr. Li Han Chau join China Forestry? What were his duties, responsibilities and work?	787-824
	<i>Li HC's case:</i> joined CF August 2007/June 2007-to do financing work; i/c listing; not responsible for business operations;	787-8
	<i>Prospectus</i> -approved by Li HC in CF minutes 5 November 2009, asserted joined CF in January 2004 as GM of Beijing Zhaolin.	789
	Li HC's <i>employment contract with Beijing Zhaolin</i> , dated 1 February 2004, false and fraudulently backdated to mislead public as to his experience in forestry industry;	790
	Wu Xiaofen and Zhang Hongyu's employment contracts, dated January 2005, also false and fraudulently backdated.	791
	<i>Li KC's witness statement:</i> Li HC joined CF in 2004; employment contract accurate	792
	Other evidence:	
	(i) <i>Xiao Feng</i> -first met Li HC in August 2007-Carlyle's consideration of IPO;	795
	1 week Sichuan intense due diligence site visit in September/October 2007;	798
	Li HC introduced local management/local officials-explained the business; Li HC participated in meetings with forest experts.	
	Quarterly reports to Xiao Feng by Li HC.	800
		805

Title	Paras
Xiao Feng refuted Li HC's assertion that his work did not involve forestry operations; seasoned manager who knew forestry industry very well. Surprised Li HC asserted he joined CF only in August 2007.	
(ii) <i>Ms Xue Ying</i> - contact for Cazenove with Li HC, as CEO, in CF's IPO-October 2007. - 2009; Li HC supervised everything.	806-809 808
(iii) <i>Michael Cheung Man Yu</i> -involved for UBS in CF's IPO from August or September 2009. Opinion-Li HC responsible to manage/operate CF; began working for CF in January 2011. Opinion-Li HC managed 90% of operations.	810 811-812
(iv) <i>Ms. Janette Yu</i> , KPMG Engagement Partner, 2009 and 2010 audit of CF; frequent contact with Li HC. Opinion-Li HC i/c of CF; knowledgeable of daily operations. 3 December 2010 KPMG Pre-audit meeting: issues Wen Guoping and Zhang Hongyu did not decide; resolved by Li HC in second meeting.	814-820 818-820
<i>Conclusion:</i> Tribunal rejects Li HC's evidence that he joined CF only in August 2007; accepts Xiao Feng's evidence-Li HC's knowledge/working experience of industry contradicted Li HC's assertion; Xiao Feng's evidence of Li HC's role in IPO consistent with evidence of Xue Ying/Michael Cheung. Tribunal rejects Li HC's assertion that he was not involved in CF's business operations.	821-823
Tribunal accepts Li HC's admission in cross-examination he did not join Beijing Zhaolin in January 2004; documents asserting contrary false and fraudulently backdated-to mislead about his experience for Track Record Period Test.	824
Chapter 15. The forestry assets of China Forestry (p. 236-243)	825-855
Issues: (i) expertise of Mr. Frank Li. (ii) Reliability of the investigations of forest assets.	826
Incomplete cross-examination.	827
Provenance and foundations of opinions; role of Mr. Frank Li	828-834
Expertise	835-836
Ambit of opinion: Verification of FRCs-collation of relevant statutory and regulatory provisions of law; does not address reliability of information obtained.	837-840
<i>A consideration of the submissions</i>	841-845
<i>Issue (i):</i> Expertise. Accept Mr. Frank Li independent expert. Expertise-well-qualified/experienced PRC lawyer. Evidence-collation of statutory provisions. No cross-examination as to errors or omissions of relevant law.	
<i>Conclusion:</i> Tribunal accepts Mr. Frank Li as expert witness of PRC forest law and role of Notaries Public.	845
<i>Issue (ii):</i> Reliability of results of investigation of forestry assets: verification addressed in H & F reports, statutory declaration of Ms Guo Jingwen; Notary Public certificates; audio recordings/transcript of enquiries in Sichuan. No evidence adduced supporting bare challenge to reliability.	846-853
<i>Conclusion:</i> overwhelming majority of FRCs presented by CF in IPO-not genuine; related assertions about CF's land use rights and valuations-false.	854
Chapter 16. Logging Permits, Customers, Insurance and Bank Balances (p. 244-271)	856-959
(i) <i>Logging Permits</i>	856-868

Title	Paras
Fangda opinion: logging activity requires a logging permit; only owners of property/usage rights may apply. No rules and regulation for verification. Verification process not included in Notary Public certificates.	858-860
Shuangjiang Logging Permits: Email exchange-16/17 December 2010-Naomi Lau / Zhang Hongyu / Liu Yana.	861
22 and 23 January 2011 KPMG meetings-issues raised.	862
16 February 2011-Dehong meeting with KPMG Zhang Hongyu-some logging permits are fake.	863
3 March 2011-KPMG meeting: Shuangjiang FB-Set of Shuangjiang logging permits are 'fake'	864-865
<i>Conclusion:</i> Set of Shuangjiang logging permits are fake. Since most of 51 FRCs are not genuine, related logging permits are not genuine.	866-868
(ii) <i>Customers</i>	869-885
FY 2010 audit-CF provided KPMG bank-in slips of payments by 17 customers; same 17 customers as provided for FY 2009 audit;	871
Bank codes for accounts with Bank of Communications in Lhasa Tibet. No such branch.	873
Bank-in slips and information false.	873
Forms of business: limited company; individual business; and Individual Proprietorship Enterprises-registration required.	874-879
Fangda directed verification enquiries of business names identified by Commission; No supporting Notary Public Certificates.	881-883 884
<i>Conclusion:</i> most businesses identified to KPMG by CF non-existent or not genuine customers.	885
(iii) <i>Insurance</i>	886-927
<i>Prospectus:</i> CF insured its forests in FY 2006; FY 2007; FY 2008; and 6 months to 30.06.2009 with PICC.	886-888
2009 Annual Report and 2010 Interim Report-CF continues to insure its forests.	889
3 December 2010 KPMG Pre-audit meeting: KPMG informed CF it would issue audit confirmation letters to PICC.	892
<i>KPMG's enquiries: CF's forestry insurance</i>	
November 2010: KPMG (Ms Linda Chen) contacted Ms Zhou Lihua of Siping City Branch, PICC.	891
January 2011-KPMG sent audit confirmation to PICC; telephone conversations with PICC.	894
12 January 2011: audit confirmation letter received by KPMG.	895
<i>Commission Notices/PICC Replies</i>	897
4 April 2011: Notice to PICC-identify all insurance policies with Beijing Zhaolin/KUB 2006-2010.	
15 April 2011: PICC (Ms. Eliza Man Kam Ching) reply - none with KUB; one with Beijing	898
27 May 2011: Notice to PICC-	897-910
<ul style="list-style-type: none"> • verify 48 insurance policies (2003-2010)-PICC with KUB or Beijing Zhaolin; • verify 7 insurance policies; documents asserting transfer of insurance policies with PICC from Beijing to KUB; and copies of audit confirmation letters. 	
9 June 2011: PICC reply:	
<ul style="list-style-type: none"> • none of 48 insurance policies were genuine; • 7 insurance policies were not issued by PICC. 	911

Title	Paras
Ms Eliza Man’s ROI: documents asserting transfer of insurance policies not genuine; address on audit confirmation letters not that of Siping City Branch; January 2011 audit confirmation letter not sent by Siping City Branch.	912-916
<i>A consideration of the evidence</i>	917-923
<i>Conclusion:</i> substantial, sustained falsification of documents advanced by CF to support false claim of insurance including: false insurance policies, false endorsements of audit/confirmation letters; use of fictitious addresses of PICC.	924-927
(iv) <i>Bank balances</i>	
KPMG’s enquiries:	928-929
25 January 2011: KPMG letter to CF-concerns about authenticity Bank-in slips and bank statements-KUB’s balance at Huaxia Bank 31.12.2010-RMB 745 m. and USD 71m.-ie approx. RMB 1,200 m.	
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² Changed to Portrait format.

³ Expert Evidence Bundle 16; pages 11148-11149, paragraph 3.17.

⁴ Expert Evidence Bundle 5A, page 3053.

CHAPTER 1
INTRODUCTION

China Forestry

1. China Forestry Holdings Company Limited (中國森林控股有限公司) was incorporated in the Cayman Islands on 21 December 2007. At all material times China Forestry owned its assets and ran its business through its indirectly-held wholly owned subsidiaries, (the “Group”). According to its published information, it purported to carry on business in the management and development of forests and the harvesting and sale of logs in the People’s Republic of China.

2. On 3 December 2009, China Forestry’s shares were listed on the Main Board of the Stock Exchange of Hong Kong (“SEHK”) (Stock Code: 930) (the “Listing”) by way of a global offering. A total of 810,452,000 China Forestry’s shares were allotted at \$2.07 per share, and a total of \$1,677.6 million was raised.

3. Cazenove Asia Limited, known as Standard Chartered Securities (Hong Kong) Limited (“SCS”) from 14 December 2009, and UBS AG (“UBS”) were the Joint Sponsors of the Listing.

4. On 26 January 2011, trading in China Forestry’s shares was suspended, “... pending the publication of an announcement in relation to price sensitive information of the Company”.

5. On 31 January 2011, China Forestry issued a public announcement stating that, with reference to the announcement, dated 26 January 2011:

“... during the audit process in respect of the financial year ended 31 December 2010 currently underway, possible irregularities have been identified by KPMG, the auditors of the Company.”

KPMG had been China Forestry’s auditors and reporting accountants for the Listing, and auditors at all material times until they resigned on 5 January 2012.

6. On 18 June 2015, China Forestry was wound-up, pursuant to an Order of the Grand Court of the Cayman Islands, and joint official liquidators appointed.

7. On 24 February 2017, the listing of China Forestry’s shares was cancelled.

Executive Directors of China Forestry

8. At all material times, the members of the Board of Directors of China Forestry included Li Kwok Cheong (李國昌) and Li Han Chun (李寒春).

9. At all material times since 21 December 2007, Li Kwok Cheong was an Executive Director and the Chairman of China Forestry and through his wholly owned company, Kingfly Capital Limited, held a total of 1,534,950,000 shares of China Forestry after the Listing.

10. At all material times, Li Han Chun was an Executive Director and the Chief Executive Officer (“CEO”) of China Forestry and, through his wholly owned company, Top Wisdom Overseas Holdings Limited (“Top Wisdom”), of which he was the sole director, after the Listing held a total of 194,175,000 shares.

THE NOTICE

11. By a Notice in writing, dated 3 May 2018, the Securities and Futures Commission (“the Commission”) instituted these proceedings, pursuant to section 252(2) of the Securities and Futures Ordinance (“the Ordinance”), asserting that it appeared to the Commission that market misconduct, within the meaning of sections 277¹ and 270² of Part XIII of the Ordinance, has or may have taken place in relation to the securities of China Forestry. It stated that:

“...the Market Misconduct Tribunal is hereby required to conduct proceedings and

¹ Section 277

Disclosure of false or misleading information inducing transactions

(1) Disclosure of false or misleading information inducing transactions take place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates or authorizes or is concerned in the disclosure, circulation or dissemination of information that is likely-

- (a) to induce another person to subscribe for securities, or deal in futures contracts in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts in Hong Kong, if
 - (i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
 - (ii) the person knows that, or is reckless or negligent as to whether the information is false or misleading as to material fact, or is false and misleading through the omission of a material fact.

² Section 270

Insider dealing

Insider dealing in relation to a corporation takes place-

(1) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation-

- (a) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
- (b) counsels or procures another person to deal in such listed securities or derivatives knowing or having reasonable cause to believe that the other person will deal in them.

determine

- (1) Whether any market misconduct in the nature of false or misleading information inducing transactions, insider dealing or otherwise has taken place;
- (2) The identity of any person who has engaged in the market misconduct found to have been perpetrated; and
- (3) The amount of any profit gained or loss avoided, if any, as a result of the market misconduct found to have been perpetrated.”

The Specified Persons

12. As required by section 13 of Schedule 9 of the Ordinance, the Notice specified the identity of the persons suspected to have perpetrated market misconduct, namely:

- (1) Li Kwok Cheong (“**Li KC**”);
- (2) Li Han Chun (“**Li HC**”); and
- (3) Top Wisdom Overseas Holdings Limited (“**Top Wisdom**”).

The Disclosed information

13. Of the information relevant to the alleged disclosure of false or misleading information inducing transactions, the Notice asserted:

“23. Various types of information relating to China Forestry’s business operations and financial information (as particularised in Sections C3 and C4 below and in Schedule 1, referred to herein as the “**Disclosed Information**”) were disclosed, circulated or disseminated to the public in the Prospectus, the 2009 Annual Results and the 2010 Interim Results.

24. Li KC and Li HC disclosed, circulated or disseminated, alternatively authorised or were concerned in the disclosure, circulation or dissemination of the Disclosed Information in the Prospectus, the 2009 Annual Results and the 2010 Interim Results, respectively.”

The Prospectus-China Forestry’s business

14. Section C3 of the notice enumerated various components of the purported business of China Forestry in FY 2008 and HY 2009 described in the Prospectus, in particular that:

- China Forestry had forestry rights over forests reflected in forestry rights

certificates obtained under the law of China to a total of 171,780 ha in Sichuan and Yunnan;

- China Forestry's turnover was exclusively from the sale of logs harvested from China Forestry's forests, harvesting of which was in compliance with logging permits obtained from local forestry bureaux, confirmation of which was evidenced by written Confirmations issued by the respective bureaux;
- China Forestry's actual logging was equal to the maximum logging permitted under China Forestry permits;
- China Forestry had 19 and 17 customers respectively in FY 2008 and HY 2009;
- China Forestry had insurance policies for all its forest for loss of trees;
- China Forestry had a healthy revenue from its logging operations and business prospects were positive for both revenue and growth;
- China Forestry met the listing requirements of the SEHK and was suitable to be listed; and
- China Forestry was led by an experienced and professional management team committed to its long-term success.

Finally, it was asserted that there were no matters concerning Mr. Li Han Chun or Mr. Li Kwok Cheong that it was required to be brought to the attention of the shareholders and the SEHK or that needed to be disclosed pursuant to the Listing Rules.

Schedule 1

15. Schedule 1 of the Notice was a collation of financial information in RMB, identified under various headings, disclosed in (i) the Prospectus ; (ii) the 2009 Annual Results; and (iii) the 2010 Interim Results, together with the description of what was stated to be the 'Adjusted Financial Position' for each of the periods of time under consideration.³

16. The 'Adjusted Financial Position' was stated to be the financial position of China Forestry after adjustments had been made to the 2008 and 2009 Annual Results and the 2010 Interim Results to reflect, what was asserted to be, "... the true, alternatively more accurate, factual state of affairs of China Forestry."⁴ In particular, it stated that it took into account the "... falsified information and documentation provided by China Forestry" to:

³ Appendix 1. Core Bundle 1, pages 1-17. The Notice: Section C4, paragraph 39.

⁴ The Notice, paragraphs 38-39.

- the joint sponsors and the listing advisors, including KPMG, for the Prospectus; and
- KPMG for the purpose of the 2009 Annual Audit and 2010 Interim Review.”

17. The financial information was presented in relation to identified topics, namely

- turnover;
- operating expenses for logging activities;
- changes in fair value of plantation assets less cost to sell;
- reversal of fair value of plantation assets upon logging on sales of the plantation assets;
- profit/ (loss) from operation;
- overall net profit/ (loss);
- plantation assets;
- lease prepayments;
- net assets/ (liabilities);
- cash and cash equivalents;
- VAT payable;
- prepaid insurance premium; and
- amortisation of insurance premium.

Chronology of issuance or publication of information

18. The Notice identified the dates on which the information was issued or published, following approval by the Board of directors of China Forestry, including the 1st and 2nd Specified Persons.⁵

(i) Prospectus-approved-5 November 2009 and issued-19 November 2009

On 5 November 2009, the Board of directors of China Forestry approved the Prospectus for the offering of shares, accepting responsibility for its accuracy and confirming that it did not contain any untrue statement of a material fact nor did it omit to state a material fact. On 19 November 2009 the Prospectus was issued by China Forestry.

⁵ The Notice, paragraphs 17-22.

(ii) The 2009 Annual Report-approved and published, 26 April 2010

On 26 April 2010, the Board of directors of China Forestry approved the 2009 Annual Report and published an Announcement of the Annual Results, for the year ended 31 December 2009. The Annual Results included the KPMG audited report on the 2009 financial statements.

(iii) The 2010 Interim Report approved-26 August 2010; Interim Result published, 27 August 2010

On 26 August 2010, the Board of directors of China Forestry approved the 2010 Interim Report. On 27 August 2010, China Forestry published an Announcement of the Interim Results, for the 6 months ended 30 June 2010. The Interim Results contained the 2010 financial statements, which KPMG had reviewed.

The Prospectus

19. Of the nature and purpose of the information contained in the Prospectus, the Notice asserted that:

“26...(it) purported to include information about China Forestry, in compliance with, *inter alia*, the Listing Rules, including Rules 11.06, 11.07 and Appendix 1. China Forestry’s Board collectively and individually accepted full responsibility for the accuracy of the information contained therein and confirmed, having made all reasonable enquiries, that to the best of their knowledge and belief there were no other facts the omission of which would make any statement in the Prospectus misleading.

27. In particular, pursuant to Rule 11.07, the Prospectus purported to contain such information as was necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of China Forestry and of its profits and losses and of the rights attaching to the Shares.

28. The information in the Prospectus included financial information relating to the ‘Track Record Period’, namely FY 2006 to 2008 and HY 2009, which was the date to which China Forestry’s latest audited consolidated financial statements were made up. In the Prospectus, the directors confirmed that there had been no material adverse change in China Forestry’s financial or trading position or prospects or its subsidiaries since HY 2009.”

Materially false or misleading information in the Disclosed Information

20. The Notice went on to identify what was asserted to be the materially false and misleading information contained in the disclosed information, asserting that it was based on various falsified information and documentation provided by China Forestry to:

- the Joint Sponsors and the listing advisors (including KPMG) for the purpose of preparing the Prospectus (including the financial information disclosed therein); and
- KPMG for the purpose of the 2009 Annual Audit and 2010 Interim Review.

21. The information was materially false or misleading in respect of:

- *The Group's revenue, profit and turnover generating activities*, namely,
 - (i) the nature of its turnover generating activities;
 - (ii) the existence of logging permits only permitted logging quota pursuant to which the Group's logging activities were conducted;
 - (iii) the existence of the IPO confirmations;
 - (iv) the number of the Group's customers;
 - (v) the Group's turnover; the Group's operating expenses for logging activities;
 - (vi) the Group's profits from operations;
 - (vii) the Group's profits for the year; and/or
 - (viii) the changes in fair value of plantation assets less cost to sell in reversal of fair value of plantation assets upon logging on sales of the plantation assets.
- *The value, existence and nature of the group's assets*, namely the Group's:
 - (i) forestry rights over, or possession of FRCs in respect of, forests in China;
 - (ii) insurance coverage on its forests and the insurance policies which the Group had paid;
 - (iii) prepaid insurance premium and amortisation of insurance premium;
 - (iv) net assets;
 - (v) plantation assets and/or lease prepayments; and/or
 - (vi) cash and cash equivalent balances
- *China Forestry's suitability to be listed and/or the quality of the Group's Management.*

The effect of the false or misleading information

22. Of the effect of the false or misleading information, it was alleged that:⁶

- in respect of the Prospectus, it was likely to induce another person to subscribe for the Shares; and
- in respect of the 2009 Annual Results and the 2010 Interim Results, it was likely to induce the sale or purchase in Hong Kong of the shares by another person, or increase or reduce the price of the shares.

The alleged misconduct of the 1st and 2nd Specified Persons

23. Of the alleged misconduct of the 1st and 2nd Specified Persons, it was asserted that LI KC and Li HC knew, or alternatively were reckless or negligent as to whether the disclosed information, or any part of it, was false or misleading as to a material fact or was false or misleading through the omission of a material fact.⁷

KPMG's discovery of irregularities in China Forestry

24. Of the discovery of irregularities in China Forestry by KPMG, it was noted that:

“40. On 3 December 2010, for the purpose of conducting the audit of the Group’s consolidated financial statements for FY 2010 (the “**2010 annual audit**”), KPMG met with *inter alios* Li HC, raising with China Forestry various inquiries arising from their audit.

41. In around December 2010 and January 2011:

41.1 KPMG discovered various audit issues which raised serious doubts about the authenticity of, *inter-alia*, customer’s bank accounts in China Forestry’s bank documents, insurance contracts, logging permits and FRCs (the “**2010 Audit Issues**”).

41.2 KPMG made various enquiries with China Forestry’s staff about the 2010 Audit issues.

42. In January 2011, KPMG held discussions with various directors, senior management and audit committee of China Forestry to discuss the 2010 Audit Issues.”

Placement agreement and execution of the sale of China Forestry shares by Top Wisdom

25. Of the sale of 119 million China Forestry shares by Top Wisdom at \$3.35 per share on

⁶ The Notice, paragraphs 49-50.

⁷ The Notice, paragraph 51.

12 and 13 January 2011, the Notice asserted:

“56. On 12 January 2011, after trading hours, Li HC procured Top Wisdom to enter into a placing agreement with SCS for placing an aggregate of 119,000,000 shares at HK\$3.35 per share to not less than six professional, institutional or individual investors (the “**Top Wisdom Placing**”).

57. On 13 January 2011, Li HC procured Top Wisdom to execute the Top Wisdom Placing and the settlement sum of HK\$398,219,458.00 (net of fees and expenses) was paid to Top Wisdom.”

Insider dealing

26. As noted earlier, section 270 the Ordinance (as at January 2011) provided that:

“(1) insider dealing in relation to a listed corporation takes place-

(a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation-

(i) deals in the listed securities of the corporation...”.

Person connected with a corporation

27. The Notice asserted that the 2nd and 3rd Specified Persons were persons connected⁸ with China Forestry.⁹

Specific information

28. Of the requirement that proof that conduct is insider dealing necessitates that there exists “specific information”¹⁰, the Notice asserted:¹¹

- KPMG’s identification of the 2010 Audit Issues and/or
- fact that the Disclosed information, or a substantial part of it, was materially false

⁸ Section 247 of the Ordinance (as at January 2011) provided that:

“(1) ...A person shall be regarded as connected with a corporation if, being an individual-(a) he is a director or employee of the corporation. (b) he is a substantial shareholder of the corporation”.

⁹ The Notice, paragraph 52.

¹⁰ Section 245(2) of the Ordinance (as at January 2011) provided that:

“ ‘relevant information’, in relation to a corporation, means specific information about-

(1) the corporation

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities.”

¹¹ The Notice, paragraph 53.

or misleading

“...were specific information about China Forestry or the Shares, and were not generally known to the persons who were accustomed or would be likely to deal in the Shares but would if generally known to them be likely to materially affect the price of the Shares.”

Knowledge

29. Of the requirement that it be proved that, at the time that a person deals in the listed securities of the corporation, he does so, “...having information which he knows is relevant information in relation to the corporation,” the Notice asserted:¹²

“Li HC knew in December 2010 that KPMG had identified some of the 2010 Audit Issues and could or would in due course reveal other false and misleading disclosures that had been made by China Forestry. He also knew that the Disclosed Information, or a substantial part of it, was materially false and misleading. Li HC knew that these two pieces of information (individually or collectively) amounted to relevant information in relation to China Forestry.’

30. Finally, it was asserted that Li HC’s knowledge was imputable to Top Wisdom, the 3rd Specified Person.

Conclusion

31. In the result, the Tribunal was invited to conclude that:

- the 1st and 2nd Specified Persons “...engaged or may have engaged in market misconduct” under section 277 (1) of the Ordinance.
- The 2nd and 3rd Specified Persons “...engaged or may have engaged in market misconduct” under section 270 (1) of the Ordinance.

¹² The Notice, paragraph 54.

CHAPTER 2

THE COURSE OF THE PROCEEDINGS

The hearing before the Tribunal chaired by Mr. Kenneth Kwok

32. Following the service on the Tribunal of the Commission's Notice, dated 3 May 2018, after the holding of Preliminary Conferences and the giving of directions, the substantive hearing commenced before Mr. Kenneth Kwok SC and two members on 25 November 2019. Evidence was received on a total of 19 hearing days on and between 25 November 2019 and 23 January 2020. On that date, the proceedings were adjourned to 30 and 31 March 2020 for the receipt of oral closing final submissions. As required by Directions given by Mr. Kenneth Kwok, the Commission and the 2nd and 3rd Specified Persons filed written closing submissions with the Tribunal on 2 and 16 March 2020. The submissions were very lengthy. The 1st Specified Person filed no written submissions.

33. In face of the onset of the Covid-19 pandemic in February and March 2020, having received the written submissions of the Commission and the 2nd and 3rd Specified Persons and having consulted them, by a letter dated 26 March 2020 Mr. Kenneth Kwok vacated the dates fixed for receiving oral submissions. Thereafter, the Tribunal made no further directions nor did it make any determinations or issue a written report.

The participation of the Specified Persons

The 2nd and 3rd Specified Persons

34. Throughout the proceedings before the Tribunal chaired by Mr. Kenneth Kwok, the 2nd and 3rd Specified Persons were represented by Mr. Ambrose Ho, SC, Mr. Issac Chan and Mr. Francis Chung, instructed by King & Wood Mallesons. The 2nd Specified Person gave evidence by video-link on part of the hearing days of 15 January 2020 and the whole hearing days of 16, 17 and 23 January 2020.

The 1st Specified Person

35. Although the 1st Specified Person was legally represented by ONC Lawyers at the Preliminary Conferences, held on 18 October 2018 and 20 November 2018, and continued to be so represented until 5 November 2019, during which time he had filed a lengthy witness statement on 29 March 2019, he was not represented at nor did he participate in the substantive hearing.

36. By a letter, dated 30 September 2019, ONC Lawyers applied for an extension of the time stipulated in the Directions¹³ in which to give notice of an application to give evidence by way of video-link from that date to 28 October 2019, explaining that the 1st Specified Person “...is keen to attend the Tribunal hearing in order to give oral evidence in person”, but that litigation in the PRC “...may affect Mr. Li’s freedom of movement to Hong Kong. Mr. Li may be required to give evidence by way of video-link in the PRC.”

37. By a letter, dated 8 October 2019, Mr. Kwok refused the application. Having noted that the direction, that any application to give evidence by video-link was required to be made on or before 30 September 2019, had been given on 20 November 2018 Mr. Kwok said:

“There is no allegation in your letter that the 1st Specified Person has taken any or any reasonable steps for more than 5 months to decide whether he wishes to make the application and if so, to make the application. He asked the Chairman to let him to drag on for another 28 days. The Chairman declines to grant the extension sought.”

The reference to “5 months” appears to have been an observation on the period of time that had elapsed after the filing of the 1st Specified Person’s witness statement and before the application for an extension of time was made.

Withdrawal of the 1st Specified Person’s solicitors-5 November 2019

38. By a letter, dated 5 November 2019, from the Tribunal to ONC Lawyers, the latter’s application, dated 28 October 2019, for leave to cease to act as solicitors for the 1st Specified Person, on the basis that they no longer had instructions to do so, was granted.

Attendance/participation of the 1st Specified Person at the hearing

39. By an email in Chinese, dated 19 November 2019, the 1st Specified Person informed the Secretary to the Tribunal that he was unable to attend the hearing and explained the circumstances: he was unable to leave the country because there were proceedings against him that were unresolved in respect of the unpaid salaries of employees and in relation to enterprises with which China Forestry did business; his passport had expired; he was bankrupt and unable to pay his solicitors.

40. The receipt of that email was the subject of discussion at the outset of proceedings on

¹³ “4. The parties do make any application (if any) for directions on witness(es) giving evidence by way of video-link on or before 30 September 2019”.

25 November 2019.¹⁴ The Chairman invited the Commission to provide an affidavit of service of the proceedings on the 1st Specified Person, so that the Tribunal could consider “...whether he has been given a reasonable opportunity of defending himself.” The Chairman concluded, “As to whether he can come to Hong Kong, he’s chosen not to apply for video link.”

41. By an email in Chinese to the Secretary to the Tribunal, sent at 17:51 on 25 November 2019, the first day of the hearing, the 1st Specified Person reiterated that explanation, but went on to ask the Tribunal to participate in the proceedings by video-link, adding:

“I remember ONC lawyers has previously asked me if I would have to make an application to the Tribunal for taking part in the hearing by video-link. At that time, I thought I would explore ways to take part in the hearing in Hong Kong in person. But as at now, I still could not find my way. I would like to seek the Chairman’s permission, allowing me to take part in the hearing by way of video link, and earnestly request the Chairman to advise me on the way to use video-link and matters to note.”

42. Again, the receipt of the email was the subject of discussion between the Chairman and counsel at the outset of proceedings on 26 November 2019. Having provided the parties with a copy of the email, the Chairman said:¹⁵

“It is the same as what has been said before. I do not propose to deal with it. He asked for advice. **The function of the Tribunal is not to give advice.**”

43. For his part, Mr. Jat raised the prospect of logistic difficulties, noting that it was “...possibly not feasible to have him connected by video link for the entire proceedings.” On the other hand, he observed that, “...if he simply says that at some stage (,) he wants to give evidence via video link, that may be feasible, although it seems to us that it may not be desirable that he is only giving evidence while not taking any active part in other parts of the proceedings.” Mr. Jat concluded by submitting that the 1st Specified Person had not really properly explained to the Tribunal, “... what has happened, what precisely is preventing him from coming and why he didn’t tell the Tribunal much earlier on about all these matters.”

44. For his part, Mr. Ho acknowledged there were logistical difficulties but added, “...if he were to participate in these proceedings at all it would not be just arrange a time for him to be connected and give evidence because he would have to understand what other people might

¹⁴ Transcript 25 November 2019, pages 1-4.

¹⁵ Transcript 26 November 2019, page 1.

have said things about him or things relevant to him.” Having noted that the 1st Specified Person had filed a witness statement, Mr. Ho observed, “...if he were of course to give evidence then we will obviously have to ask him questions. If he were not to give *viva voce* evidence, of course at the end of the day we may have to make submissions on the weight to be attached to that.”

45. In the result, the Chairman determined, “He has been given a very generous time-limit in which to apply for video-link. He has not and he has not explained clearly the delay.” No email in reply was sent by the Tribunal to the 1st Specified Person.

46. By an email to the Tribunal, dated 26 November 2019, Mr. Li Kwok Cheong provided documents he said described the restrictions placed on him that prevented him leaving the Mainland. Having adverted to the letter at the hearing on 27 November 2019, the Chairman said that he reaffirmed his earlier decision not to deal with the matter.¹⁶

The continuation of the hearing

47. The proceedings continued with the Tribunal receiving oral evidence until 23 January 2020, on which date the hearing was adjourned for the parties to file written submissions and for oral closing submissions to be made on 30 and 31 March 2020. The Tribunal did not inform the 1st Specified Person of those directions. The 1st Specified Person was not sent copies of the Written Closing Submissions filed with the Tribunal by the Commission and those representing the 2nd and 3rd Specified Persons on 2 and 16 March 2020. In those Written Submissions, his conduct was the subject of heavy criticism by counsel for both the Commission and the 2nd and 3rd Specified Persons. Similarly, he was not provided with a copy of the letter, dated 26 March 2020, in which the Chairman directed that the hearings of 30 and 31 March 2020 be vacated.

Mr. Kenneth Kwok’s incapacity

48. By a letter, dated 11 January 2022, in my capacity as a chairman of the Tribunal, I advised the parties that the Tribunal had been informed on 10 January 2022 by his son that Mr. Kenneth Kwok had suffered a serious medical setback such that “... he is and will be unable to discharge his duties as Chairman, in particular to play any further role in the completion of the Inquiry.” In those circumstances the parties were invited to make such submissions as they might wish to make as to the way forward.

¹⁶ Transcript 27 November 2019, page 1.

The way forward: the submissions of the parties

The Commission

49. In its written submissions to the Tribunal, dated 18 March 2022, the Commission submitted that the Tribunal be re-constituted with a new chairman and two new ordinary members “...to conduct a *de novo* retrial of the MMT Proceedings with witnesses giving oral evidence afresh but with the existing documentary evidence.” Further, it was asserted that it was, “...not in the interest of justice to dismiss or stay the MMT Proceedings without a decision or a retrial.”

The 1st Specified Person

50. Having been informed by the Secretary to the Tribunal of the specific submission made by the Commission, dated 18 March 2022, that the Tribunal be reconstituted and the proceedings be conducted *de novo* on the existing documentary evidence, by an email dated 22 March 2022, the 1st Specified Person informed the Tribunal in Chinese:

“I, Li Kwok Cheong, agree to the Tribunal be reconstituted by a new chairman and two new ordinary members to conduct retrial and use the existing documentary evidence.”

The 2nd and 3rd Specified Persons

51. In written submissions in reply on behalf of the 2nd and 3rd Specified Persons, dated 4 April 2022, by Messrs King & Wood Mallesons, issue was taken with the submission of the Commission that the Tribunal be reconstituted and that there be a trial *de novo*. It was contended that “...the proceedings are still extant and on-going, pending the determination of the Tribunal.” It was noted that the then Chief Executive had not exercised her power either to remove or replace the Chairman. Further, it was submitted that the “...fair and appropriate way to dispose of these proceedings” was that they be discontinued or permanently stayed, pursuant to section 253 (1)(i) of the Ordinance, it being asserted that, if a full rehearing was held, the 2nd and 3rd Specified Persons would be “...subject to irreparable prejudice”.

52. Having been provided by email with a translation of the Directions given by the Chairman on 6 April 2022, to the effect that a hearing would be held on 21 April 2022 to receive submissions from the 2nd and 3rd Specified Persons as to the jurisdiction of the Tribunal and as to whether the proceedings ought to be discontinued, stayed or dismissed, Mr. Li Kwok Cheong replied in Chinese to the Tribunal by email at 08:46 on 7 April 2022:

“Is it the case of the hearing will again be conducted? I can no longer afford to pay for a counsel. My counsel has already made a submission before. I have nothing further to add. All the evidence submitted by my counsel previously will continue to be adopted.”

[English translation.]

The appointment of two members and of the chairman

53. At a hearing on 21 April 2022, the Chairman, Mr. Michael Lunn, received the submissions of the parties as to the way forward.

54. In a letter from the Secretary for Financial Services and the Treasury, dated 8 June 2022, the Tribunal was informed of the approval by the Chief Executive of the appointment of two ordinary members, pursuant to sections 4 and 5 of Schedule 9 to the Ordinance.

55. At a hearing held on 13 July 2022, the Chairman, Mr. Michael Hartmann GBS, fixed the hearing of the application for stay by the 2nd and 3rd Specified Persons for 24 October 2022 making provision for the filing of evidence and submissions by the parties.

56. By a letter from the Secretary for Financial Services and the Treasury, dated 18 October 2022, the Tribunal was informed that, pursuant to section 42 (b) of the Interpretation and General Clauses Ordinance, Cap.1, read together with section 2 of Schedule 9 of the Ordinance, on the recommendation of the Chief Justice, the Chief Executive approved the appointment of Mr. Michael Lunn GBS as Chairman of the reconstituted Tribunal.

Ruling: the application for stay of proceedings-24 and 25 October 2022

57. Following an application, made at a hearing on 24 October 2022, on behalf of the 2nd and 3rd Specified Persons for a permanent stay of the proceedings, on 25 October 2022 the Chairman, handed down a written Ruling dismissing the application with an order of costs in favour of the Commission, with a certificate for two counsel.

Preliminary Conference and Directions hearing: 18 November 2022 and 29 November 2022

58. By a letter, dated 25 October 2022, from the Tribunal to the parties a Preliminary Conference was fixed for 18 November 2022. Following that hearing, on 29 November 2022 the Chairman issued Directions for the conduct of the hearing, including fixing the hearing dates to commence on 1 February 2023.

59. By a letter in English together with a Chinese translation, dated 4 November 2022, sent

to Mr. Li Kwok Cheong by courier to an address in Kunming City and by email, the SFC informed him of the salient features of the Directions given by the Tribunal on 25 October 2022, in particular that a Preliminary Conference was fixed to take place on 18 November 2022 and of the timetable for the filing of submissions by the parties.

60. In an email in Chinese to the SFC, dated 10 November 2022, Mr. Li Kwok Cheong provided typed text with a manuscript signature and the date, 10 October 2022. The letter and a translation were forwarded to the Tribunal. The text stated that it was, “Letter of Reply” and informed the SFC that he resided in Beijing, which was subject to “...rigorous pandemic prevention and control policies, which impose strict restrictions on free travel by residents”, such that he was “unable to attend hearing in Hong Kong.” He went on to state:

“Li Kwok Cheong has no new submissions to make, nor does he have new evidence to submit. The ‘Arbitration Court’ (sic) Tribunal may conduct a new hearing based on the submissions already made and the evidence already submitted by Li Kwok Cheong.”

Finally, Mr. Li Kwok Cheong said that, because of his inability to pay lawyers, he was unable to engage lawyers to attend the hearing on his behalf. He had no funds, other than those “...frozen in the HCMP 176/2011 case to pay reasonable legal fees for representation.” He asked the Tribunal to allow him access to those funds for that purpose.

61. In advance of the hearing of the Preliminary Conference, held on 18 November 2022, the Tribunal received written submissions from the Commission and those representing the 2nd and 3rd Specified Persons, copied to the 1st Specified Person, as to the future conduct of the proceedings. For his part, Mr. Li Kwok Cheong filed no submissions with the Tribunal.

62. By a letter to the Tribunal, dated 16 November 2022 the Commission informed the Tribunal that, having discussed the matter with those representing the 2nd and 3rd Specified Persons, dates in August 2023 and November 2023 were identified as dates on which the respective teams of counsel were “mutually available” for a 20 day hearing. By a letter to the parties, dated 17 November 2022, the Tribunal invited the parties “to identify and propose much earlier alternative dates for the hearings to be held, even if the hearings cannot be held continuously over a sequential period of time.”

18 November 2022

63. At the Preliminary Conference, held on 18 November 2022, counsel for the Commission and the 2nd and 3rd Specified Persons were invited to provide the Tribunal with

the dates on which they were available to conduct these proceedings in February and April 2023.

Directions: 29 November 2022

64. In written directions to the parties, dated 29 November 2022, the Chairman set the Inquiry down for a substantive hearing to commence on 1 February 2023, stipulating a total of seventeen dates for the hearing in February and April 2023 on which the parties had indicated that they were now available to conduct the proceedings. Amongst the related directions that were given, was the direction that any application for a witness to give evidence by way of video link was to be made 21 days in advance of the commencement of the substantive hearing.

Application for an adjournment of the proceedings

65. By a letter to the Tribunal, dated 4 January 2023, King & Wood Mallesons, acting on behalf of the 2nd and 3rd Specified Persons applied for an adjournment of the proceedings, fixed to commence on 1 February 2023, and an order vacating the hearing dates set for February 2023, together with an order that the proceedings commence instead on 12 April 2023 and a direction that, in consultation with the diaries of counsel, the Tribunal fixed other hearing dates in replacement to those that were to be lost in February 2023.

66. The Tribunal was informed that the application was made, pending the hearing in the High Court of an application made on 28 November 2022 on behalf of the 2nd and 3rd Specified Persons for the release of \$36.3 million, part of the monies that were the net proceeds of the placement of 119 million China Forestry shares on 13 January 2011 by the 3rd Specified Person on the instructions of the 2nd Specified Person, which monies were the subject of an injunction.¹⁷ The hearing in the High Court was set down for 30 January 2023.

67. The Tribunal was informed that the release of the monies sought by the 2nd and 3rd Specified Persons was to cover various legal costs including those anticipated for the rehearing in this Tribunal. It was contended that, without the release of the funds sought by the 2nd and 3rd Specified Persons, they were unable to secure funding to instruct legal representatives to commence preparation for the rehearing in this Inquiry.

68. Mr. Jat Sew Tong, for the Commission, opposed the application, submitting that the 2nd

¹⁷ HCMP 176/2011
Securities and Futures Commission v Li Han Chun (1st Defendant) and Top Wisdom Overseas Holdings Co Limited (2nd Defendant) and China Forestry Holdings Co Limited (In Official Liquidation (Intervener)).

and 3rd Specified Persons had filed no evidence with the Tribunal to support their alleged lack of funds and that, in any event, the “predicament was of their own making”, in that the 2nd and 3rd Specified Persons had failed to act expeditiously in making their application. The Tribunal had ruled against the application for a permanent stay of proceedings on 25 October 2022. Yet, the application had not been made until 28 November 2022. Further, there was no explanation for the delay until 4 January 2023, before the application for an adjournment was made to this Tribunal.

Hearing, Ruling and Reasons for Ruling: 10 and 12 January 2023

69. Having received written submissions in advance of the hearing and oral submissions from counsel, at the hearing on 10 January 2023 the Chairman dismissed the application for an adjournment, stating that reasons for that determination would be given in due course. On 12 January 2023, the Chairman handed down written Reasons for the Ruling.

Evidence by video-link

70. By a letter to King & Wood Mallesons, dated 13 January 2023, copied to the 1st Specified Person, the Tribunal acceded to their earlier application that the 2nd Specified Person be permitted to give evidence by video-link from Budapest in Hungary.

71. By a letter to the 1st Specified Person, dated 17 January 2023, the Tribunal referred to the directions that have been given that the evidence of various witnesses including the 2nd Specified Person be received by video link, and noted that no such application had been received from the 1st Specified Person. It having been noted that travel restrictions in Mainland China had now been relaxed, the 1st Specified Person was asked if he now intended attending and participating in the proceedings to commence on 1 February 2023. Also, in the context of his request to the SFC in his email, dated 10 November 2022, that the Tribunal allow him to use some of the monies injuncted in proceedings in HCMP 176/2011 to instruct lawyers in his case, he was informed that the Tribunal was not a party to those proceedings. The Tribunal received no reply to its letter.

The appointment of the two members

72. On 16 January 2023, the Tribunal was informed that, pursuant to the delegated authority of the Chief Executive in respect of sections 4 and 5 of Schedule 9 to the Ordinance, the Financial Secretary had appointed Dr Wong Wai Yee, Pauline and Mr. Chan Kok Chung,

Johnny as members of this Tribunal for the proceedings specified in the Notice, dated 3 May 2018.

The substantive hearing

73. The substantive hearing began on 1 February 2023 and continued on 2 and 3 February 2023, 6 to 10 February 2023; 23 March 2023; 12 and 14 April 2023, 17 to 21 April 2023; and 8, 9, 13 and 15 May 2023.

1 June 2023: Directions

74. It being necessary to fix further hearing dates, the Chairman conducted a Directions hearing on 1 June 2023 and consulted the parties as to the availability of counsel and witnesses.

75. On 2 June 2023, the Chairman gave further directions fixing hearing dates on 21 June 2023, 10 and 12 October 2023, 16 to 20 October 2023 and 1 and 4 December 2023. Directions were given that the evidence of Mr. Li Han Chun was to be received by video-link between 2 p.m. and 7 p.m. on 16 October 2023 and on such of the following days as was necessary to complete his evidence.

Change of solicitors acting for the 2nd and 3rd Specified Persons: 20 June 2023

76. By a letter, dated 20 June 2023, sent by email to the Tribunal, Messrs Chiu & Partners informed the Tribunal that they had been appointed to act as solicitors for the 2nd and 3rd Specified Persons in place of Messrs King & Wood Mallesons. In a second letter of that date from Chiu & Partners the Tribunal was informed that an application was to be made at the hearing scheduled for the following day for an adjournment of proceedings on that day and the hearings scheduled for 10 and 12 October 2023, and 16 to 20 October 2023. Complaint was made that the 2nd and 3rd Specified Persons had been "...rendered unable to exercise their legal rights due to a lack of funds". The Tribunal was informed that the 2nd and 3rd Specified Persons had given notice on 7 June 2023 to King & Wood Mallesons, terminating their services and instructing them to transfer all documents to Chiu & Partners. King & Wood Mallesons had declined to do so, claiming that they were owed \$12.2 million for their legal services.

77. By a letter sent by email, dated 20 June 2023, King & Wood Mallesons informed the Tribunal that they no longer had instructions to act for the 2nd and 3rd Specified Persons, including at the hearing on 21 June 2023. Having received an affirmation from Mr. Cheng Wah Kin Alex, a solicitor of King & Wood Mallesons, explaining the circumstances in which their

services had been terminated, the Tribunal made an order, dated 21 June 2023, that King & Wood Mallesons had ceased to be the solicitors for the 2nd and 3rd Specified Persons in these proceedings.

21 June 2023

78. At the hearing held on 21 June 2023 the Tribunal refused the application made on behalf of the 2nd and 3rd Specified Persons, by Mr. Ambrose Ho SC, for an adjournment of the proceedings and continued to receive the evidence of Mr. Li Fenghua, Frank.

20 September 2023-Chiu & Partners notified the Tribunal that they ceased to act for the 2nd and 3rd Specified Persons

79. In a letter, dated 20 September 2023, copied to the 1st Specified Person, Chiu & Partners, informed the Tribunal that, "...our firm and the Counsel team have ceased to act for" the 2nd and 3rd Specified Persons. The Tribunal was informed that had come about because:

"...Mr. Li was unable to make payment to us of costs and disbursements already incurred, we indicated that we were unwilling to continue to act, and he instructed us to cease work, and to instruct the Counsel team and our BVI legal advisers to cease work. That was late last Friday, 15 September 2023."

80. In a lengthy explanation, the Tribunal was informed that the fact that Top Wisdom had been struck off and dissolved in the British Virgin Islands was a matter that was relevant to Mr. Li's difficulties in making an application for the release of more monies from the injunctioned monies to fund its legal expenses in these proceedings. Further, the dispute with King & Wood Mallesons was unresolved.

Communications with the Specified Persons

81. In a letter to Chiu & Partners, dated 22 September 2023, copied to the 1st, 2nd and 3rd Specified Persons, the Tribunal acknowledged the notification that they have ceased to act for the 2nd and 3rd Specified Persons and noted that the proceedings were scheduled to resume on 10 October 2023.

82. In a letter to the 2nd Specified Person, dated 3 October 2023, copied to the 1st Specified Person, the Tribunal noted that the 2nd Specified Person had been granted leave to give evidence by video-link and that Directions had been given, dated 2 June 2023, that the evidence was to be received from 2 p.m. to 7 p.m. on 16 October 2023 and on such following days as were

required. In that context, the 2nd Specified Person was asked to inform the Tribunal of the designated location from which he would give his evidence by video-link. In the event that the 2nd Specified Person was and would be unrepresented, the Tribunal offered to assist him to address the technical requirements to give evidence by video-link and, in the event that he was no longer in possession of paper or electronic versions of the Hearing Bundles, to provide him with a link from which he would be able to download an electronic version of that material. The Tribunal has received no response whatsoever to that letter.

83. In a letter to the Tribunal, dated 3 October 2023, the Commission attached letters, dated 11 September 2023 and 26 September 2023, addressed to Chiu & Partners and the 2nd Specified Person respectively, in which confirmation was sought of a wide range of measures relevant to the resumed hearings in October 2023. In particular, confirmation was sought that the 2nd Specified Person would give evidence by video-link. The Tribunal was informed that, as at 3 October 2023, no response had been received to either letter.

84. By a letter, dated 9 October 2023, to Mr. Li Han Chun and Top Wisdom, the Tribunal noted that no responses have been received to its letter, dated 3 October 2023, nor to the two letters signed by the Commission in which a range of outstanding matters had been raised with them in respect of the resumed hearing. Those matters including the continued cross-examination of the Commission's witness Mr. Frank Li, the continued cross-examination of their witness Mr. Eric Cheng by the Commission, and whether they intended to cross-examine the Commission's witnesses Ms. Winnie Pao and Mr. Roderick Sutton. They were urged that, if they, "...wish to continue to participate in these proceedings", they should respond immediately.

Hearings: 10 and 12 October 2023

85. At the hearings held on 10 and 12 October 2023, the Tribunal received the evidence of two expert witnesses called by the Commission, namely Ms. Winnie Pao and Mr. Roderick Sutton. None of the Specified Persons was represented, attended or participated in those hearings. In those circumstances, the Tribunal determined that Mr. Frank Li, an expert witness called by the Commission, was not required to attend the Tribunal to continue his evidence in cross-examination on behalf of the 2nd and 3rd Specified Persons, there being no one to cross-examine him. The 2nd and 3rd Specified Persons did not tender Mr. Eric Cheng, who was being cross-examined by the Commission, to give further evidence. So, no further cross-examination was possible.

Directions: 12 October 2023

86. On 12 October 2023 the Chairman gave directions to the parties as to the provision of written and oral submissions. A hearing to receive the oral submissions of the parties was fixed for 1 December 2023, with 4 December 2023 reserved. In compliance with those directions, the Commission filed its written submissions with the Tribunal, in English on 3 November 2023 and a Chinese translation on 10 November 2023. The Commission stated that it had copied those submissions to the Specified Persons by email.

87. By letters, dated 24 November 2023, sent by email to the 1st Specified Person and separately to the 2nd and 3rd Specified Persons, the Tribunal noted that it had received no written submissions from the Specified Persons and reminded them that the deadline for filing such written submissions as they might wish to provide to the Tribunal was noon on 25 November 2023. In addition, the Specified Persons were reminded that the Tribunal would receive the oral submissions of all the parties on 1 December 2023 with 4 December 2023 reserved. No response was forthcoming from any of those Specified Persons and no written submissions were filed with the Tribunal by them.

88. By a letter to the Commission, dated 28 November 2023, copied to the Specified Persons the Tribunal requested that the Commission provide written submissions on the issue of the proper construction in law of the phrase “likely to materially affect” the price of the listed securities, as set out in section 245(2) of the Ordinance as it was in January 2011. In response, the Commission filed Supplemental Closing Submissions addressing that issue on 30 November 2023. At the close of the oral closing submissions on 4 December 2023, the Commission advised the Tribunal that it had provided a copy of those submissions to the Specified Persons by email on 30 November 2023 and a Chinese translation of the submissions by an email, dated 3 December 2023.

1 and 4 December 2023-closing submissions

89. On 1 and 4 December 2023, the Tribunal received the oral closing submissions of the Commission. None of the Specified Persons attended or was represented at those hearings. The Commission confirmed that it had received no response from the Specified Persons to the emails sent to the Specified Persons, to which were attached the Commission’s written closing submissions and translations into Chinese of those submissions.

90. At the conclusion of the proceedings on 4 December 2023, the Tribunal said that it

would issue a written report in due course, pursuant to section 262 of the Ordinance, containing its determinations of the matters stipulated in the Commission's Notice, dated 3 May 2018, namely:

- (1) Whether any market misconduct in the nature of false or misleading information inducing transactions, insider dealing or otherwise has taken place;
- (2) The identity of any person who has engaged in the market misconduct found to have been perpetrated.

The Tribunal indicated that, in the event that it made affirmative findings in respect of those two matters, the Tribunal would give directions to facilitate a further hearing to determine the third question, namely:

- (3) The amount of any profit gained or loss avoided, if any, as a result of the market misconduct found to have been perpetrated.

CHAPTER 3

THE LAW

The nature of the proceedings

91. Proceedings in the Market Misconduct Tribunal are civil and inquisitorial.

Standard of proof

92. The standard of proof is “the standard of proof applicable to civil proceedings in a court of law”, namely on the balance of probabilities.¹⁸

Burden of proof

93. Neither party bears any burden of proof.

The material received and to be considered by the Tribunal

94. Pursuant to section 253 (1) (a) of the Ordinance, the Tribunal may-

“(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law.”

95. On the joint application of the parties, the Chairman gave Directions, dated 29 November 2022, that the Hearing Bundles include the Bundle of Transcripts compiled from and used at the hearing before Mr. Kenneth Kwok. The transcript included the evidence of Mr. Li Han Chun in January 2020.

The consideration to be given by the Tribunal to the transcript of the evidence of Mr. Li Han Chun in January 2020

96. In his oral closing submissions Mr. Jat submitted that the Tribunal should not consider the transcript of the evidence of Mr. Li Han Chun given in January 2020.¹⁹ He said that, “...in the absence of Mr. Li Han Chun himself, it would not be right...that the evidence he gave on the previous occasion, albeit under cross-examination, be used as written evidence as such.” In respect of any such evidence on which Mr. Li Han Chun might have wished to rely, for example his case as put in denials or explanations, Mr. Jat said simply, “...we have decided for the purposes of the rehearing that it will be literally a rehearing, and therefore we have taken that

¹⁸ Section 252(7) of the Ordinance.

¹⁹ Transcript 1 December 2023, pages 11-13.

position.” He confirmed that he had no authority on which he relied. Rather, he said it was “...a practical decision”, adding “It is not a matter of legal proposition that we wish to substantiate. We say it is a practical decision that we have decided to adopt.”²⁰

97. With respect to Mr. Jat, the Chairman has directed the Tribunal that, having regard to the Directions given by the Chairman, dated 29 November 2022, and to section 253(1)(a) and (h) of the Ordinance, the transcripts of the evidence of witnesses in the earlier proceedings, including that of Mr. Li Han Chun, have been received properly by the Tribunal and that the Tribunal may consider that evidence in making its determinations.

98. In considering the weight, if any, to give the evidence of Mr. Li Han Chun, the Tribunal is to have regard to the fact that Mr. Li Han Chun testified under affirmation, was subjected to cross-examination and was questioned by that Tribunal, but that he did not give evidence before this Tribunal. In consequence, this Tribunal was not in a position to observe the manner in which he gave evidence and, most importantly, to pose its own questions of Mr. Li Han Chun in the context of the evidence that this Tribunal has received.

Investigation reports: (i) Ernst & Young; (ii) Deloitte

99. At the behest of the Commission, the Tribunal received investigation reports from Ernst & Young, dated 29 April 2011²¹, and Deloitte, dated 2 May 2012.²²

100. Ernst & Young were engaged by the Audit Committee of China Forestry on 31 January 2011 to conduct an independent investigation of issues identified by KPMG in their audit of China Forestry, including those identified in KPMG’s letter to China Forestry, dated 25 January 2011. The report stated that those investigations included an examination of documents and computers in China Forestry’s Beijing office. It said that Ernst & Young had discovered Word/Excel formatted documents that were, “...supposedly third party prepared” such as multiple Bank-in and Bank-out slips, relating to customer settlement and customer payment in 2010.²³

101. Not a single witness was called by the Commission to give evidence in support of the investigations that led to the compilation of the Ernst & Young report, in particular its findings.

²⁰ Transcript 1 December 2023, pages 13-14.

²¹ Exhibits Bundle 17, pages 12661-12719.

²² Exhibits Bundle 18A, pages 13174-13346.

²³ Exhibits Bundle 17, page 12687.

102. Deloitte Consulting Services Company was engaged by the Independent Board Committee of China Forestry on 6 July 2011 to conduct an investigation into the operating activities of the China Forestry Group between January 2006 and December 2010. The Report stated that Deloitte have reviewed the contents of computers of employees and former employees.²⁴ It stated that a total of 26 editable electronic bank statements in Word and/or Excel format had been discovered, namely:²⁵

- (i) 12 bank statements of China Minsheng Bank in respect of “predecessor entities” of China Forestry, namely Beijing Jinfudi and Beijing Zhaolin, in respect of which it was asserted that, “The person who created the documents was Li Han Chun.”
- (ii) 2 bank statements of Huaxia Bank in the account of Kunming Ultra Big;
- (iii) 7 bank statements of the Ya’an branch of ICBC in the account of Kunming Ultra Big; and
- (iv) 5 bank statements of China Minsheng Bank in the account of the Beijing office of Kunming Ultra Big, in respect of which it was asserted that, “Two of them were created by Li Han Chun.”

103. Not a single witness was called by the Commission to give evidence in support of the investigations that led to the compilation of the Deloitte report, in particular its findings.

104. In his oral opening submissions, Mr. Jat specifically referred the Tribunal to this part of the Deloitte Report, in response to which the Chairman asked to be informed of the identity of the authors of the report. Mr. Jat was unable to provide that information.²⁶ Indeed, it was never provided. However, he did identify by name four members of the Ernst & Young team, including Ms. Diana Shin, who had signed off the Report as managing director of Ernst & Young (China) Advisory Ltd.²⁷ Mr. Jat said that no one had asked Ernst & Young who had discovered what and how.²⁸

105. Subsequently, Mr. Ho informed the Tribunal that the Commission had not requested Ernst & Young and Deloitte to produce their ‘working papers’ related to their reports.²⁹ That was a matter that had been addressed in correspondence during the previous hearing in an

²⁴ Exhibits Bundle 18A; page 13233, paragraph 3.8.

²⁵ Exhibits Bundle 18A; page 13340, paragraph 3.1. Appendix 10, pages 13413-13418.

²⁶ Transcript 1 February 2023, pages 166-170.

²⁷ Exhibits Bundle 17, page 12664.

²⁸ Transcript 2 February 2023, pages 121-123.

²⁹ Transcript 3 February 2023, pages 60-63.

enquiry raised by those representing the 2nd and 3rd Specified Persons and the Commission's response, dated 12 December 2019 and 23 December 2019 respectively.³⁰

106. In her evidence Ms. Denise Yip Yuk Yu, now an Associate Director of the Enforcement Division of the Commission, confirmed that she had never seen any of the material relating to the computer investigation referred to in the Deloitte report. She had not asked Deloitte to see it. She said that she had not done so because the custodian of the computers was unknown and unverifiable. So, very little reliance could be placed on that information.³¹

The submissions of the 2nd and 3rd Specified Persons

107. In his Opening written submissions, dated 26 January 2023, Mr. Ho took issue with the reliability of the Ernst & Young and Deloitte reports. He submitted that:³²

“...there is a significant concern over the reliability of such evidence. In the complete absence of the working papers even in the unused materials, no critical examination or verification of the various observations therein could be conducted.”

108. Mr. Ho acknowledged that the Tribunal had wide powers to receive and consider material pursuant to section 253(1)(a) of the Ordinance, but submitted that the power was subject to an overriding requirement of fairness. Whilst the Tribunal was not bound by the rules of evidence, he contended that it was not entitled to ignore the basic principles that gave rise to those rules of evidence. He invited the Tribunal to note the statement of the authors of Phipson on Evidence that, “The two key objectives of the rules of evidence are fairness and ascertaining the truth through accurate fact-finding.”³³

109. Mr. Ho submitted that, if the Tribunal received hearsay evidence, depending on the circumstances of the case and the importance of the evidence, fairness required affording the Specified Person a sufficient opportunity to challenge that evidence. That might involve cross-examination of relevant witnesses. He suggested that relevant to the question of fairness where hearsay evidence was relied on were a range of factors, including: the reasons for not calling witnesses, the relevance and importance of the evidence; and the credibility of the evidence.³⁴

³⁰ Supplementary Exhibits Bundle, Exhibits 1 and 2.

³¹ Transcript 3 February 2023, pages 121-126.

³² Opening Submissions for the 2nd and 3rd Specified Persons, paragraph 51.

³³ Opening Submissions for the 2nd and 3rd Specified Persons, paragraph 54. *Phipson on Evidence* (20th Edition), paragraph 1.08.

³⁴ Opening Submissions for the 2nd and 3rd Specified Persons, paragraph 57.

110. In conclusion, Mr. Ho said that it was proposed that further submissions be made, "...in due course as to the proper weight (if at all) to be given to the evidence."³⁵ Needless-to-say, the solicitors and counsel of the 2nd and 3rd Specified Persons having withdrawn from the proceedings, no such further submissions have been made to the Tribunal.

Closing submissions of the Commission

111. In its written Closing submissions, dated 3 November 2023, the Commission rejected the criticism made on behalf of the 2nd and 3rd Specified Persons as to the absence of witnesses to speak to the Ernst & Young and Deloitte reports. It was contended that those two reports fell to be regarded like the minutes produced by KPMG. They were, "...contemporaneous documents recording their investigative work and their findings."³⁶

112. Importantly, the Commission now submitted that:³⁷

"... (it) does not rely on such reports as positive evidence of the specified persons' market misconduct. Their significance is that they form part of the contemporaneous factual background. They primarily serve as evidence as to the ability of the IBC and its professional advisers to conduct their investigations (i.e. who they were able to interview and what information they were able to obtain)."

113. Of the Deloitte report, the Commission said it was relied on for "...the discrete point as to the irregular conduct of China Forestry's business *after* Li HC was suspended from duty, which relates to Li KC's knowledge and involvement in the fraud (paragraph 131 below)."³⁸

114. Subsequently, the Commission pointed to three alleged irregularities: first, involving circular transactions in respect of the alleged purchase and payment for logs in January to April 2011; secondly, the payment of monies into personal bank accounts of management staff; and thirdly, the fact that Mangzhouli Yishang kept two sets of accounts.³⁹

115. Notwithstanding the disclaimer as to the limited reliance on the Deloitte report, it is to be noted that it was contended that:⁴⁰

³⁵ Opening Submissions for the 2nd and 3rd Specified Persons, paragraph 59.

³⁶ The Commission's written Closing Submissions, paragraph 107.1.

³⁷ The Commission's written Closing Submissions, paragraph 106.

³⁸ The Commission's written Closing Submissions, paragraph 108.

³⁹ The Commission's written Closing Submissions, paragraph 131.

⁴⁰ The Commission's written Closing Submissions, paragraph 115.3(b).

“... EY and Deloitte were only able to obtain limited data from the computers of former management (including Li HC, Wu Xiao Fen, Zhang Hong Yu and Shi Chuan Sheng) and they observed indications that *data on the computers had been manipulated, hidden or destroyed.*”[Italics added.]

The Commission’s oral closing submissions

116. In his oral submissions, Mr. Jat said that the Commission did not suggest that the Tribunal rely on a finding in a report in respect of a computer to which Mr. Li Han Chun had access, to:⁴¹

“...show that Mr. Li himself was involved in that process, involved in the creation of the fraudulent documents. We are not saying that.”

Rather, the Tribunal was invited to regard it as:⁴²

“...a piece of objective evidence the Tribunal may or may not want to put any weight on it to say that it is evidence of the pervasiveness of the fraudulent practice being undertaken at the time. It is a computer in the finance department to which a number of people had access. It’s not somebody hiding in a strong room with multiple passwords to a specific computer in order to create something without other people knowing. That is the use to which we make of that sort of evidence.”

Ernst & Young witnesses

117. Of why the Commission had not called any of the four witnesses identified as having contributed to the Ernst & Young report, Mr. Jat said cryptically:⁴³

“Not quite sure, Sir, that I can go into any further explanation. All I can say, Sir, is that we did consider that issue; and there are reasons which are privileged that we have come up to the decision.”

Deloitte witnesses

118. Mr. Jat confirmed that no enquiries have been made of Deloitte as to who the authors of their report were. Nothing had been done. That was deliberate.⁴⁴

⁴¹ Transcript 1 December 2023, page 15.

⁴² Transcript 1 December 2023, page 15.

⁴³ Transcript 1 December 2023, page 17.

⁴⁴ Transcript 1 December 2023, page 18.

119. Mr. Jat acknowledged that Mr. Ho had made his position clear in his Closing written speech at the hearing chaired by Mr. Kenneth Kwok that, if the Commission wished to rely on the Deloitte and Ernst & Young reports, it was necessary to call witnesses to speak to their contents.⁴⁵

“We fully appreciate that, Sir. This is not an oversight, if I say.”

Directions

120. The Chairman has directed the Tribunal that the Ernst & Young and Deloitte reports have been properly received by the Tribunal.

121. As to the weight to be attached to those reports, the Chairman has directed the Tribunal to have regard to the paucity of supporting information provided by the Commission. Not even the Letter of Engagement, dated 31 January 2011 between China Forestry and Ernst & Young and the agreement between China Forestry and Deloitte, dated 6 July 2011, are available to the Tribunal. None of the primary material obtained in the course of the two investigations, for example the images of editable bank statements said to have been found on computers at China Forestry’s Beijing office, is available to the Tribunal. The fact that such material has not been provided to and received by the Tribunal appears to be the consequence of the considered and deliberate decision of the Commission not to seek the production of such material from Ernst & Young and Deloitte.

122. Although four persons involved in the investigation and compilation of the Ernst & Young report were identified by the Commission, none of them were called to give evidence in support of their report. No explanation was given to the Tribunal. That was in face of statements by the Chairman on the first day of the hearing as to the obvious relevance of such witnesses. No attempt was made by the Commission to identify those involved in the investigation and compilation of the Deloitte report. The fact that such evidence was not provided to and received by the Tribunal appears to be the consequence of the considered and deliberate decision of the Commission.

123. Those considered and deliberate decisions were taken by the Commission in the context of its knowledge of the challenge to the reliability of the two reports made on behalf of the 2nd and 3rd Specified Persons in the proceedings chaired by Mr. Kenneth Kwok and articulated

⁴⁵ Transcript 1 December 2023, page 33.

forcefully in the Opening written submissions made to this Tribunal.

The Independent Board Committee's reports

124. By a resolution of the board of directors of China Forestry, dated 28 January 2011, an Independent Committee (“IBC”) of the board of directors was constituted to enquire into the matters raised by KPMG in the course of its 2010 audit. Mr. Xiao Feng was one of the three non-executive directors of the committee. An Independent Inquiry Team of four members, of which Mr. Li Jian was a member, was constituted to assist the IBC in conducting its enquiries. Finally, a Special Task Force, of which Mr. Michael Cheung and Mr. Raymond Tong were both members, was constituted to deal with issues on the instructions of the IBC, to which it was to report.⁴⁶ Mr. Xiao Feng, Mr. Michael Cheung and Mr. Raymond Tong all gave oral evidence before this Tribunal, in addition to which the Tribunal received their records of interview by the Commission and the transcripts of their earlier evidence to the Tribunal chaired by Mr. Kenneth Kwok. In the course of their evidence, they addressed the circumstances of the investigation and the compilation of the reports of the IBC.

125. The Tribunal has received two reports of the IBC, both described as Interim Reports, dated 3 March 2011 and 18 July 2011.⁴⁷ In each of the reports, the topic of the ‘Progress of the Inquiry into the issues identified by KPMG’ was addressed under separate headings, including:

1. Problems with the account of Kunming Ultra Big in Huaxia Bank;
2. Issues with the insurance contracts of PICC;
3. Issues with logging permits;
4. Issues with forestry right certificates of Guizhou Wosen; and
5. Inquiry into Li Han Chun.

126. The narrative was presented in the Interim Report, dated 3 March 2011, under two headings, namely: ‘Investigation Findings’ and ‘Preliminary Conclusion’⁴⁸ and in the Interim Report, dated 18 July 2011 and the headings: ‘Further investigation findings’ and ‘Conclusion as of today’.⁴⁹

127. It is clear that the reports provided to the Tribunal were not self-contained. They were

⁴⁶ Exhibits Bundle 23A, page 17138.

⁴⁷ Exhibits Bundle 16, pages 12122-12216. Exhibits Bundle 17, pages 12770-12802.

⁴⁸ Exhibits Bundle 16, page 12166.

⁴⁹ Exhibits Bundle 17, page 12789.

incomplete in that, although there was reference in the text on multiple occasions to Appendices identified by a unique numerical reference in each report, no such documentation was provided to the Tribunal. Reference was made in the Interim Report, dated 3 March 2011 to no fewer than 26 Appendices. Obviously, some of the Appendices addressed topics that are of less importance to the issues that the Tribunal has to consider than others. However, some were clearly relevant to specific findings in the reports that are relevant to the Tribunal. For example, it was asserted, as a ‘Preliminary Conclusion’, that during the process of gathering emails, it had been found that various named persons, including Mr. Li Han Chun, had “...deleted a large amount of emails”. Reference was made to Appendix 20, “ [see the proof provided by the Company’s email service provider.]” In response to the Chairman’s enquiry, Mr. Ho confirmed that the Appendix was not in the Hearing Bundles, but that it was in ‘Unused material’. No response was forthcoming to the Chairman’s enquiry, “The parties have chosen not to put it before us?” Of the deletion of emails, it was asserted, “It is suspected that they are destroying the evidence.”⁵⁰

Meeting of 16 February 2011 in Dehong

128. Reference was made on a number of occasions to an interview conducted on 16 February 2011 at which Shi Chuansheng, Zhang Hongyu and He Zhi described China Forestry’s practice of dealing in cash and asserted that the records of those transactions were with Li Han Chun.⁵¹ Reference was made in the narrative to, “[For notes of the meeting see Appendix 15.]” Of course, as stated earlier no such Appendix was available to the Tribunal.

Minutes of the meeting: (i) KPMG and (ii) unknown provenance

129. On the other hand, the Tribunal has received the KPMG minutes of the meeting at a residential home, described as the Dehong branch of Kunming Ultra Big, on 16 February 2011, at which Shi Chuansheng, Zhang Hongyu and He Zhi participated and addressed the practice of dealing in cash by China Forestry. He Zhi said that the records of those transactions were with Li Han Chun.⁵² A second set of minutes, of unknown provenance, also describes that meeting.⁵³ In addition, the Tribunal has received oral evidence from Ms. Naomi Lau, Ms. Anthea Han and Mr. Michael Cheung of those events.

⁵⁰ Exhibits Bundle 16, page 12170.

⁵¹ Exhibits Bundle 16, pages 12170-2, 12180, 12181-2 and 12194.

⁵² Exhibits Bundle 16, pages 11851-11862.

⁵³ Exhibits Bundle 16, pages 12058-12061.

Mr. Li Han Chun's suspected misconduct

130. In both Interim reports, suspected misconduct by Mr. Li Han Chun and others was identified on multiple occasions in the 'Preliminary Conclusion' and in the 'Conclusion as of today'. For example, of the claimed use of cash in transactions in China Forestry, it was asserted that, "It is suspected that Li Han Chun... (and others) have received benefits out of the cash transactions."⁵⁴ Of the discrepancy between the bank statements and the accounting ledgers of the balances in the Huaxia Bank account, it was asserted of Li Han Chun and others that, "...it is suspected that they may conceal the actual trading situation and wanted to make a profit out of it."⁵⁵

131. Of the sale by Mr. Li Han Chun of Top Wisdom's China Forestry shares in mid-January 2011, it was asserted that, "It is suspected that Li Han Chun might have become aware of KPMG's doubt over his conduct during the 2010 audit process. Hence, actions were taken first to cash in by selling the shares in mid-January..."⁵⁶

132. In the Interim Report, dated 18 July 2011, a description was given of what was said to be Mr. Li Han Chun's explanation in a telephone conference call on 25 January 2011 with Mr. Li Kwok Cheong, Mr. Xiao Feng and Mr. Michael Cheung in which he said that cash proceeds of sales had been used to buy Forest assets, settle expenses and buy logs in north-eastern China. It was asserted that the IBC's preliminary view was that, "...it does not believe in the explanation given by Li Han Chun and his team."⁵⁷

Directions

133. The Chairman has directed the Tribunal to disregard the expressions of suspicion of misconduct and statements of belief expressed in the Interim Reports by way of 'Preliminary Conclusion' or in the 'Conclusion as of today' as being irrelevant to the Tribunal's task of making of findings of fact on the primary evidence it accepts and such proper inferences it draws. That is the task of the Tribunal, having regard to all the evidence received by this Tribunal.

134. Insofar as the Interim Reports make assertions as to facts having been 'found' or

⁵⁴ Exhibits Bundle 16, page 12168-9.

⁵⁵ Exhibits Bundle 16, page 12168.

⁵⁶ Exhibits Bundle 16, page 12202.

⁵⁷ Exhibits Bundle 17, page 12792.

established, the Tribunal is to have regard to all of the evidence that is relevant to that issue in determining whether the Tribunal is satisfied that such a fact has been established.

Witnesses whose examination was incomplete

135. Given that the cross-examination on behalf of the 2nd and 3rd Specified Persons of Mr. Frank Li was incomplete, given the absence of the 2nd and 3rd Specified Persons and their legal representatives on the dates fixed in October 2023 for his continued testimony, the Tribunal has been directed by the Chairman to have regard to that fact in determining what weight to attach to the criticisms made of his evidence on behalf of the 2nd and 3rd Specified Persons and the weight to be given to his evidence. Similarly, given the failure of the 2nd and 3rd Specified Persons to tender Mr. Eric Cheng to continue his testimony in cross-examination by the Commission, the Chairman directed the Tribunal to have regard to that fact in determining what weight to attach to his evidence.

Separate consideration

136. The Tribunal is to consider the case of each Specified Person separately.

Inferences

137. In drawing inferences, given the nature of these proceedings, the Tribunal does not have to be satisfied that it is the only inference to be drawn from proved facts. That is required in criminal proceedings. Rather, in these circumstances the Tribunal has to be satisfied that it has been established as a compelling inference.⁵⁸

Character

138. In his witness statement, dated 9 April 2019, Mr. Li Han Chun chose to disclose to the Tribunal that he had been arrested by the Guizhou Public Security Department in Yunnan on 24 February 2011.⁵⁹ He went on to state, "...after being detained for half a year, I was found partially guilty, and given a suspended sentence." Of that, he asserted, "...the reasons for convicting me were extremely far-fetched". In that context, it is clear that he protests his innocence. Finally, he said, "... the alleged improper behaviour was found to cause no loss to China Forestry at all."

139. For his part, Mr. Li Kwok Cheong asserted in his witness statement, dated 29 March

⁵⁸ *HKSAR v Lee Ming Tee (2003) 6 HKCFAR 336*; Sir Anthony Mason NPJ at paragraph 72.

⁵⁹ Mr. Li Han Chun's Witness Statement, paragraph 175.

2019, that Mr. Li Han Chun had been convicted by the Guiyang Nanming People’s Court in August 2011 of appropriating RMB 60 million of China Forestry’s monies, in consequence of which a suspended sentence of 3 years’ imprisonment had been imposed.

140. The Commission has not invited the Tribunal to receive any specific material at all in respect of Mr. Li Han Chun’s alleged conviction nor did Mr. Jat make any reference to it in the Commission’s written or oral Opening or Closing submissions. Further, the issue was not raised with Mr. Li Han Chun in cross-examination by Mr. Jat when he gave evidence to the Tribunal chaired by Mr. Kenneth Kwok, in January 2020.

141. In the result, the Tribunal has no primary evidence of the charges, if any, brought against Mr. Li Han Chun nor by whom they were brought. Further, the Tribunal has no Judgment or Statement of Findings of a Court detailing when, of what and on what evidence he was, in Mr. Li Han Chun’s words, “...found partially guilty”. Similarly, the Tribunal has no primary evidence of what sentence, if any, was imposed nor any Reasons for Sentence, stipulating the basis on which any such sentence was imposed.

142. In those circumstances, the Chairman has directed the Tribunal not to draw any inferences adverse to Mr. Li Han Chun in consequence.

Insider dealing

143. Section 270 of the Ordinance (as at January 2011) provided that:

“(1) Insider dealing in relation to a listed corporation takes place-

- (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation-
- (i) deals in the listed securities of the corporation...”

144. It follows that there are five elements in insider dealing:⁶⁰

- (a) the corporation concerned must be publicly listed;
- (b) the person concerned must be “connected with the corporation”,
- (c) the person must have information which constitutes “relevant information”;
- (d) the person must know that such information is inside information; and

⁶⁰ *Securities and Futures Commission v Yiu Hoi Ying Charles* (2018) 21 HKCFAR 475, paragraph 36.

- (e) the person deals with the corporation's listed securities with such knowledge.

Temporal aspects

145. In the joint judgment of Ribeiro and Fok PJJ of the majority in *Securities and Futures Commission v Yiu Hoi Ying, Charles* the temporal aspect of the five elements was noted, namely that the definition of insider dealing in section 270 stipulated that:⁶¹

“...the activity of insider dealing takes place at the point in time when the connected person having the relevant information and knowledge deals in the relevant publicly listed securities. This temporal aspect applies to each of the five elements so that, to constitute insider dealing, all the elements must be shown to exist at that point in time.”

Knowledge

146. The Tribunal must be satisfied that at the time that the Specified Person dealt in the shares he knew that the information in his possession was price sensitive. Knowledge may be proved directly or indirectly. It may be inferred from the proved facts and circumstances.

147. Section 245(2) of the Ordinance (as at January 2011) provided that:

“listed”

means listed on a recognized stock market, and for the purposes of this definition, securities shall continue to be regarded as listed during a period of suspension of dealings in those securities on the recognized stock market;

“listed corporation”

means a corporation which has issued securities that are, at the time of any insider dealing in relation to the corporation, listed;

“relevant information”,

in relation to a corporation, means specific information about-

- (a) the corporation;
- (b) a shareholder or officer of the corporation; or
- (c) the listed securities of the corporation or their derivatives

which is not generally known to the persons who are accustomed or would be likely

⁶¹ *Ibid*, paragraph 39.

to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;

148. It follows that there are four elements in “relevant information”:⁶²

- (a) the information must be specific;
- (b) it must be about the corporation or its listed securities;
- (c) it must be information which is not generally known to those who deal or are likely to deal in those securities; and
- (d) if the information were generally known to the market would be likely materially to affect the price of those securities, in other words, the information must be price sensitive.

Connected with a corporation (insider dealing)

149. Section 247 of the Ordinance (as at January 2011) provided that:

“(1) ... a person shall be regarded as connected with a corporation if, being an individual-

- (a) he is a director or employee of the corporation...”

Specific information

150. Specific information is, “information which possesses sufficient particularity to be capable of being identified, defined and unequivocally expressed. In this sense, it is to be contrasted with information which fails to achieve the required degree of specificity because it is too vague, inchoate or speculative.”⁶³

Likely to materially affect the price of the listed securities

151. The proper construction of the phrase “likely to materially affect the price of the listed securities” was addressed at length in the *Report of the Market Misconduct Tribunal on whether a breach of the disclosure requirements has taken place in relation to the listed securities of*

⁶² *Ibid*, paragraph 41.

⁶³ *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemidia Limited* (26 November 2015) of which Hartmann NPJ was Chairman, paragraph 165.

Mayer Holdings Limited.⁶⁴ In that case, the Tribunal was concerned with the duty, imposed by section 307B of the Ordinance, on a listed corporation to disclose inside information to the public as soon as reasonably practicable after the inside information had come to its knowledge. “Inside information” is what was called “relevant information” in the earlier version of the legislation with which this Tribunal is concerned.

152. The Chairman, Mr. McWalters GBS, noted that the definition of “inside information” requires that the information not be “generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities.”⁶⁵ That provision applied to both the duty to disclose inside information and the prohibition on insider dealing imposed by the Ordinance, which he described as “different sides of the same coin”. In those circumstances, he concluded that the meaning of “likely” in both definitions must be the same.⁶⁶

153. Earlier, Mr. McWalters said that there was “one very important distinction”, namely that:⁶⁷

“Insider dealing can be treated as a form of market misconduct and dealt with civilly by the Market Misconduct Tribunal. But it may also be treated as a criminal offence and be prosecuted in the courts of Hong Kong. When prosecuted on indictment it carries a maximum penalty of 10 years’ imprisonment.”

154. Mr. McWalters went on to note that the definition of “inside information” in section 285 of the Ordinance, which gives rise to the criminal offence in section 291, was identical to the definition of “inside information” in section 245(2), which gives rise to civil liability for conduct contrary to section 270.

155. Having said that there was no judgment of the Hong Kong courts on the meaning of “likely”,⁶⁸ Mr. McWalters noted that the issue had been addressed in Reports of this Tribunal and its predecessor the Insider Dealing Tribunal. Reference had been made in various Reports to the judgment of Foenander SDJ in the Subordinate Courts of Singapore in *Public Prosecutor*

⁶⁴ *Report of the Market Misconduct Tribunal on whether a breach of the disclosure requirements has taken place in relation to the listed securities of Mayer Holdings Limited*. (28 July 2023).

⁶⁵ *Ibid*, paragraph 57.

⁶⁶ *Ibid*, paragraph 97.

⁶⁷ *Ibid*, paragraphs 91-92.

⁶⁸ *Ibid*, paragraph 59.

v Alan Ng Poh Meng in which he addressed the construction of the phrase “likely materially to affect” the price of the securities in the context of similar legislation in Singapore. He said.⁶⁹

“What has to be decided is whether the information would be “likely materially to affect the price”. Information that is *likely* materially to affect the price, is information which *may well* materially affect the price. Put in another way, it is more likely than less likely that the price will be affected materially (emphasis added).”

156. Mr. McWalters observed that in the Report of the Insider Dealing Tribunal in *Public International Investments Limited*, of which Stock J, as Stock NPJ was then, was Chairman, it was determined that:⁷⁰

“We shall approach the question of likelihood as meaning a real or substantial likelihood.”

157. Mr. McWalters noted that in its decision in *Hannam v Financial Conduct Authority*⁷¹, the Upper Tribunal in the United Kingdom had found that Mr. Hannam was culpable of market abuse, contrary to section 118(3) of the Financial Services and Markets Act, 2000.

158. Mr. Hannam had disclosed the information in two emails sent to the Minister for Oil in the Kurdish Regional Government in September and October 2008 respectively. Mr. Hannam was the chairman of Capital Markets at JP Morgan, one of whose clients was Heritage Oil. The information concerned a potential third party for Heritage Oil and positive developments in its oil explorations.

159. Section 118(3) of the Act describes the behaviour which constitutes market abuse and provides that it encompasses behaviour, “...where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.”

160. The definition of inside information is provided by section 118C(2) of the Act, namely that:

“inside information is information of a precise nature which-

⁶⁹ *Public Prosecutor v Alan Ng Poh Meng* [1990] MLJ, page 10.

⁷⁰ *Report on whether insider dealing took place in relation to the listed securities of Public International Investments Limited*, paragraph 19.4.5.

⁷¹ *Hannam v Financial Conduct Authority* [2014] UKUT 0233 (TCC).

- (a) is not generally available,
- (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and
- (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related instruments.”

161. Section 118C(6) provides that:

“Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as the basis of his investment decisions.”

162. The statutory provisions referred to above and other provisions were amended in 2005 to transpose into domestic law two European Union Directives, namely the Market Abuse Directive and the Implementing Directive. Article 1(1) of the Market Abuse Directive provides:

“Inside information shall mean information of a precise nature which has not been made public, relating directly or indirectly, to one or more issuers of financial instruments or one or more financial instruments and which, if it were made public would be likely to have a significant effect on the prices of those financial instruments or the price of related derivative financial instruments.”

163. In its decision, the Upper Tribunal said that it was common ground that the word “likely” must have the same meaning as it has in Article 1(1) of the Market Abuse Directive.⁷² In giving effect to that requirement, the Upper Tribunal said:⁷³

“Since section 118C(2) reflects the provisions of Article 1(1) of the Market Abuse Directive, we should give the word “likely” the same meaning in that section as it has in that Article. English authorities showing the use of the word in different contexts are therefore of limited assistance in discovering the meaning properly to be attributed to it although the authorities do illustrate the truth of the familiar observation that a word can mean different things in different contexts.”

164. The Upper Tribunal noted that Mr. Hannam’s case as to the meaning of “likely” was

⁷² *Hannam*, paragraph 106.

⁷³ *Ibid*, paragraph 107.

that it meant “...more likely than not.”⁷⁴ The case of the Financial Conduct Authority was that it indicated a low level of likelihood⁷⁵, “...more than a mere possibility”.⁷⁶

165. Having rejected the submission that the proper construction of the word “likely” in section 118C(2)(c) was “...more probable than not”, the Upper Tribunal concluded that it was to be construed as meaning that:⁷⁷

“...there is a real (in contrast with fanciful) prospect of that information having an effect on the price of qualifying instruments.”

166. The Upper Tribunal noted that:⁷⁸

“On this approach to the meaning of “likely”, there is no difficulty in reconciling the provisions of section 118C(2)(c) and section 118C(6). The reasonable investor would use all of the information which is “likely to have a significant effect on price but will not take account of anything which is not “likely” to do so... the litmus test is whether a reasonable investor would be likely to take the information (we add: information which, of course, must be capable of having an effect on price) into account in deciding what to do.”

167. Of the context of the exercise of statutory construction Mr. McWalters observed that in the Upper Tribunal the parties had accepted that the purpose of the legislation was, “...concerned with preventing behaviour that amounts to an abuse of the financial markets and penalising that behaviour when it does occur.”⁷⁹

168. Of the construction of “likely” articulated in *Public Prosecutor v Alan Ng Poh Meng*, Mr. McWalters said, “they do not connote the same standard of probability. The phrase “may well” connotes a lower standard of probability than the more likely than not standard.”⁸⁰

169. Of the different levels of probability that are encompassed within the meaning of the word “likely” Mr. McWalters said:⁸¹

⁷⁴ *Hannam*, paragraph 106.

⁷⁵ *Ibid*, paragraph 106.

⁷⁶ *Ibid*, paragraph 115.

⁷⁷ *Ibid*, paragraph 118

⁷⁸ *Ibid*, paragraph 116.

⁷⁹ *Mayer*, paragraph 80.

⁸⁰ *Mayer*, paragraph 61.

⁸¹ *Ibid*, paragraph 89.

“This word may mean, in ascending levels of probability of the information materially affecting the price of the listed securities:

- (i) there is a *mere possibility* of the information having this affect;
- (ii) the information *may well* have this affect;
- (iii) there is a *real possibility* that the information will have this affect;
- (iv) there is a *real prospect* that the information will have this affect;
- (v) it is *more likely than less likely* that the information will have this affect; and
- (vi) there is a *substantial likelihood* that the information will have this affect.”

170. Mr. McWalters said that he eliminated the two extreme constructions of the phrase as meaning “mere possibility” and “substantial likelihood”. In rejecting the latter construction, the one adopted by Stock J in *Public Investments International Limited*, he said:⁸²

“I cannot see any justification for adding such a strong qualifying word as “substantial” to likely. It was not enacted by the legislature and neither context nor purpose points to the legislature having an intention to elevate the level of probability to such a high standard.”

171. Then, Mr. McWalters said that the middle of the spectrum of construction presented a choice between, “more than 50% (“more likely than less likely”, “more probable/likely than not) or less than 50% (“real possibility”, “real prospect”, “may well”).” Of that he said:⁸³

“If the word “likely” is construed as “more likely than not” then, to paraphrase and apply the words of Lord Nicholls in *Re H*, “it would have the effect of leaving outside the scope” of the disclosure requirement, cases where there is a real possibility that the information would materially affect the price of the listed securities “but that possibility falls short of being more likely than not”. Consideration has been given to whether setting the level of probability at a standard lower than more likely than not would produce unfairness in insider dealing cases and I have concluded it would not. For these reasons, it is my view that the more likely than not standard of probability would not be consistent with the context and purpose of the concept of “inside information” within the SFO.

⁸² *Ibid*, paragraph 100.

⁸³ *Ibid*, paragraphs 102-103.

Whether there is a meaningful difference between “may well”, “real possibility” and “real prospect” is questionable but, of the three terms. “real prospect” is the one term that best lends emphasis to the need for a standard that is higher than a possibility but not as high as “more probable than not”.”

The Commission’s submissions

172. At the specific request of the Tribunal, Mr. Jat provided a written Supplemental Closing Submissions, dated 30 November 2023, in which he addressed the proper construction in law to be given to the phrase “likely to materially affect the price of the listed securities”, as defined in the Ordinance, as at January 2011.

173. At the outset, Mr. Jat reminded the Tribunal that Ms. Winnie Pao had re-affirmed in her oral evidence the statement that she made in her report, namely that she construed the phrase, “likely to materially affect” as meaning “more probable than not”. In consequence, he submitted that, regardless of whether the threshold was as stipulated by Ms. Pao or the lesser threshold of “real prospect”, the requirement had been met.

174. In short, Mr. Jat submitted that the construction of the phrase, “likely to materially affect” articulated by Mr. McWalters in *Mayer*, namely a “real prospect” is correct.

175. Mr. Jat submitted that the reliance of Mr. McWalters on the decision of the Upper Tribunal in *Hannam v The Financial Conduct Authority* was appropriate, given that the case concerned market abuse within the meaning of the Financial Markets Act, 2000, where the definition of “inside information”, as defined by section 118C(2) was similar to the definition in section 307A of the Ordinance. He suggested that the purpose of the legislation in Hong Kong was to maintain Hong Kong’s role as an international financial centre and to do so by deterring and inhibiting insider dealing, but also requiring, as the other side of the coin, disclosure where appropriate.

176. He suggested that the analysis performed by Mr. McWalters was, “...to balance (A) the importance of the efficacy of the disclosure requirement, which pointed towards a meaning which did not carry with it too high a level of probability: §98; against (B) setting the level of probability so low that it caught those whose breach was due to not unreasonably, but mistakenly, adjudging the likelihood of the information materially affected the price of the listed securities: §99. This led him to reject the options at the extreme end of the spectrum of possible meanings of the word “likely”: §100.”

177. Mr. Jat submitted that the choice by Mr. McWalters of the “real prospect” test and the rejection of a test of more than 50% probability was to guard against a standard, having regard to disclosure requirements, that would exclude, “...cases where there is a real possibility that the information would materially affect the price of the listed securities but that possibility falls short of being more likely than not.” In doing so, Mr. McWalters had said that he was satisfied that the test did not produce unfairness in cases of insider dealing. Of that, he submitted, “...the reasoning clearly applies in the present case.”

178. It is to be noted that in its Decision in *Hannam*, in addressing the issue of the appropriate standard of proof, the Upper Tribunal noted the difference between the ingredients of the criminal offence of insider dealing, provided for by the Criminal Justice Act, 1993 and civil culpability under the market abuse provisions, it was stated that:

“...under section 57, a person has information as an insider only, if “he knows that” the information is inside information. Proof of the criminal offence therefore has a mental element which is wholly absent from the market abuse provisions with which we are concerned.”

179. By contrast, in Hong Kong proof of knowledge is required for both civil and criminal culpability.

180. Although the decision in *Hannam* was made ten years ago, no subsequent reference, either by the Upper Tribunal or in the courts, to the determination as to the meaning of “likely” in the context discussed above has been drawn to the attention of the Tribunal. That determination was referred to without comment by the author of ‘Insider Dealing-Law and Practice’, in which the law was stated to be as at 31 January 2020.⁸⁴ Also, reference to that determination was made by the authors of Archbold, ‘Criminal Pleading, Evidence & Practice’ (2024 Edition), where it was noted that:⁸⁵

“...the Tribunal was considering “inside information” in the context of the FSMA 2000, s.118C, and where it held that “likely” in s.118C(2)(c) (broadly corresponding to s.56(1)(d)) does not require that an effect on price be more probable than not, but merely that there should be a real (as opposed to a fanciful) prospect of the information having

⁸⁴ *Insider Dealing-Law and Practice-Sarah Clarke KC* (2nd Edition) 16.74.

⁸⁵ *Archbold: Criminal Pleading Evidence & Practice* (2024 Edition) 30-57, page 3151.

an effect on the price of the investment to which it relates, and that in turn means an effect that is more than *de minimis*.”

181. The Tribunal is aware that seven of the Specified Persons in *Mayer* filed a Notice of Appeal in the High Court in January 2024, in which reliance was placed in the Grounds of Appeal on the submission that the Tribunal erred in determining that the “likely” element of the statutory definition of “inside information” under s. 307A was the standard of “real prospect”, rather than a higher standard of at least “more likely than less likely.”

Direction

182. In approaching the issue of whether the information was “likely” to materially affect the price of China Forestry shares, the Chairman has directed the Tribunal to consider whether there was a “real prospect” of it having that affect.

Materially affect the price

183. As was noted in *Report of the Insider Dealing Tribunal on whether insider dealing took place in relation to the listed securities of Public International Investments Limited*, of which Stock NPJ was chairman, “... the word “materially” speaks for itself - it is to be contrasted with “slight”, “insignificant” and “immaterial”.⁸⁶

184. Of the test to be applied, it was stated:⁸⁷

“The test is hypothetical in that on the date that the insider acts on inside information, he acts when the investing public, not in possession of the inside information, either does not act, or acts in response to other information or advice. The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment.”

That analysis was cited with approval in the *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemidia Limited*.⁸⁸

The innocent purpose defence

185. Section 271(3) of the Ordinance provides that:

⁸⁶ *Report of the Insider Dealing Tribunal on whether insider dealing took place in relation to the listed securities of Public International Investments Limited* (5 August 1995), paragraph 19.4.1.

⁸⁷ *Ibid*, paragraph 19.4.2.

⁸⁸ *Report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemidia Limited* (26 November 2015), paragraphs 175-176.

“A person shall not be regarded as having engaged in market misconduct by reason of an insider dealing taking place through his dealing in or counselling or procuring another person to deal in listed securities... if he establishes that the purpose for which he dealt in or counselled or procured the other person to deal in the listed securities...in question... was not, or, where there was more than one purpose, the purposes for which he dealt in or counselled or procured the other person to deal in the listed securities...did not include, the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another person, by using relevant information.”

Aspects of the defence

186. The joint judgment of the majority in *Securities and Futures Commission v Yiu Hoi Ying, Charles* noted the following aspects of the defence:⁸⁹

- “(a) It is a defence which only comes into play where a *prima facie* case of market misconduct has been established.
- (b) The burden of establishing the defence is on the person seeking to rely on it, discharged on a balance of probabilities.
- (c) That person must establish that the purpose for which he or she dealt with the securities was not and (if there was more than one purpose) did not include, the proscribed purpose of securing or increasing a profit by using relevant information.
- (d) To discharge that burden, the specified person might often be expected to give direct evidence of his or her subjective purpose to show that he or she was acting for what might be called an “innocent purpose”. If such direct evidence is not given, that person must nevertheless be able to point to evidence which demonstrates that he or she acted for a purpose or purposes which entirely excluded the above-mentioned proscribed purpose when dealing with the securities”.

187. The joint judgment went on to note that, “...the purpose which the specified person relies upon in support of the defence is that which pertains at the time of his dealing in the relevant listed securities...”⁹⁰

188. Having noted that the focus of the enquiry stipulated in section 271(3) was whether or not the purpose for which the specified person dealt in the listed securities was for or included

⁸⁹ *Securities and Futures Commission v Yiu Hoi Ying Charles*, paragraph 43.

⁹⁰ *Ibid*, paragraph 44.

the proscribed purpose, namely the purpose of “securing or increasing a profit, avoiding or reducing a loss, whether for himself or another, *by using relevant information*”,⁹¹ the joint-judgment concluded that:⁹²

“...‘using relevant information’ in s. 271(3) simply means making one’s decision to buy or sell the listed securities because of the quoted market price, knowing that price to be either artificially high or artificially low because the relevant information is not generally known to those accustomed or likely to deal in the securities. By doing so, one is employing the price sensitive information to one’s own advantage in order to steal a march on the rest of the market since, were that information generally known, it “would... be likely to materially affect the price of the listed securities” and therefore would have negated the insider dealer’s advantage.”

The joint judgment added,“...it is the turning of the possession of that knowledge into action which constitutes the use of the relevant information.”⁹³

189. Of the ambit of the defence provided by section 271(3), in his judgment, in which he said that he agreed with the joint-judgment, Neuberger NPJ said that he was satisfied that:⁹⁴

“s.271(3) is intended only to apply where the purpose of the insider dealer’s purchase or sale of the shares concerned can be shown to be unconnected with the market price of the shares. In other words, in the case of a normal transaction-i.e. one motivated (at least in part) by the quoted price of the shares-the insider dealer will not be able to invoke s. 271(3) where he has been objectively advantaged as against the market by having the information. It would be inappropriate and unnecessary (and indeed impossible) to provide an exhaustive list of circumstances in which s. 271(3) could avail an insider dealer, but they would include a sale or purchase pursuant to a specific contractual obligation or a court order, and a sale or purchase when, if the information had been publicly available, it would, respectively, have increased or decreased the quoted price.”

Disclosure of false or misleading information inducing transactions.

190. Section 277 of the Ordinance provides that:

⁹¹ *Ibid*, paragraph 45.

⁹² *Ibid*, paragraph 49.

⁹³ *Ibid*, paragraph 50.

⁹⁴ *Ibid*, paragraph 181.

“(1) Disclosure of false or misleading information inducing transactions takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates or authorizes or is concerned in the disclosure, circulation or dissemination of, information that is likely-

- (a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (b) to induce the sale or purchase in Hong Kong of securities by another person; or
- (c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong, if
- (d) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
- (e) the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.”

Discloses, circulates or disseminates

191. China Forestry’s Prospectus, 2009 Annual Report and Annual Results and the 2010 Interim Report and Interim Results were all published to the public. Publication is one form of dissemination. A person approving those documents and the information contained therein knowing that the process led to publication is concerned in the dissemination by publication of that information.

False

192. False means untrue.

Misleading

193. Misleading is to cause an incorrect impression, one that is inconsistent with the true state of affairs.

Material fact

194. A material fact is a fact that is sufficiently significant to influence a reasonable person to take a course of action, for example to subscribe for shares or to buy or sell shares.

Likely to induce transactions

195. Information is likely to induce transactions if there is a real prospect of that effect.

Knowledge

196. Proof of knowledge, requires proof of actual knowledge. It may be proved directly or indirectly. Knowledge may be inferred from the proved facts and circumstances.

Reckless

197. A person acts recklessly in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk. The test is a subjective one, going to that person's mind.⁹⁵

Negligence

198. Negligence has been defined as the failure to exercise that care which the circumstances demand."⁹⁶ The legal standard is objective, namely judged through the eyes of the 'reasonable man'.

Reasonable opportunity to be heard

199. Section 252(6) of the Ordinance provides that:

“The Tribunal shall not identify a person as having engaged in market misconduct pursuant to subsection 3(b) without first giving the person a reasonable opportunity of being heard.”

200. What constitutes a “reasonable opportunity” is to be determined in accordance with the circumstances of each case, in particular the circumstances of each Specified Person. The observation by this Tribunal in its report in *Asia Telemedia* in November 2015 that, “The use of video link-ups is becoming more common”, has been borne out by the subsequent rapid development of the use of that technology in both courts and tribunals.⁹⁷ The availability of video-link technology for witnesses, including a Specified Person, to give evidence and for the

⁹⁵ *Sin Kam Wah v HKCFAR* (2005) 8 HKCFAR 192; paragraph 44, page 210 D-G. *Left v SFC & Anor* [2019] 5 HKC 305, page 319 D-H.

⁹⁶ *Carmarthenshire County Council v Lewis* [1955] AC 549.

⁹⁷ *The report of the Market Misconduct Tribunal into dealings in the shares of Asia Telemedia Limited* (26 November 2015).

Tribunal to receive that evidence is one of the circumstances to which this Tribunal may have regard in determining whether a reasonable opportunity to be heard has been afforded to a Specified Person.

CHAPTER 4

Issues arising from KPMG's 2010 audit of China Forestry

Systems Review

201. As part of its conduct of the audit of China Forestry for 2010, KPMG conducted a Systems Review in late November 2010 in the Beijing offices of China Forestry. Those involved, included:

Ms. Janette Yu-an Audit Partner;

Ms. Linda Chen-a Senior Engagement Manager;

Ms. Anthea Han-an Engagement Manager; and

Ms. Naomi Lau and Mr. Albert Lui-Assistant Managers, involved in fieldwork.

(i) Forestry logging permits

202. Ms. Naomi Lau testified that, in the course of the Systems review of China Forestry, she and others in the KPMG audit team became aware of differences in two sets of five forestry logging permits that were provided to KPMG by China Forestry in respect of locations at Mangan village, Shuangjiang County in Yunnan Province. One set of forestry logging permits bore the serial numbers 0215143-0215147, whilst the other set was numbered 0215144-0215148.⁹⁸ All of them were dated 21 June 2010. The former set of forestry logging permits had been obtained in August 2010 in Beijing during the interim review audit.⁹⁹ The second set of forestry logging permits had been provided to Ms. Naomi Lau in the Beijing office of China Forestry by Ms. Liu Yana during the Systems review at the end of November 2010, but before the 3 December 2010 pre-audit meeting between KPMG and China Forestry.¹⁰⁰ The documents had been requested in a 'Document Request list' sent to the client in advance of the Systems review.¹⁰¹ Photocopies, not originals, of the documents were provided.¹⁰²

203. Ms. Naomi Lau said that a comparison of the two certificates with the serial number 0215144 revealed different descriptions of the logging area and permitted volume of logging, namely 5 hectares and 1,483 m³ in one permit and 3.62 hectares and 1072 m³ in the other permit.

⁹⁸ Core Bundle 3, pages 1028-1056.

⁹⁹ Ms. Naomi Lau's 1st Record of Interview; Witness Evidence Bundle F2, page 5031 at counter #s 725 and 751.

¹⁰⁰ Transcript 10 February 2023, pages 29 and 34.

¹⁰¹ Transcript 10 February 2023, pages 32-33.

¹⁰² Transcript 10 February 2023, page 19.

The concern that arose was, given that both sets had been provided by China Forestry, simply, “Which one was correct?”¹⁰³ Ms. Naomi Lau said that KPMG only considered the total logging volume of all five permits that was permitted and noted that it was the same volume. In her evidence, she calculated that there was a difference of only 0.02 hectares in the total area described in the two different sets of the five forestry logging permits.¹⁰⁴

3 December 2010 Pre-audit meeting

204. Ms. Naomi Lau said that KPMG’s concerns about the forestry logging permits provided to KPMG by China Forestry had led to the matter being addressed at the Pre-audit meeting held in Beijing between KPMG and China Forestry on 3 December 2010. She said that “maybe” she had prepared the minutes of that meeting and that they had been reviewed by Ms. Janette Yu.¹⁰⁵ She had taken handwritten notes at the meeting, which she had made into the typed form now available after she had returned to Hong Kong on 10 December 2010.¹⁰⁶

205. The KPMG minutes stated:¹⁰⁷

“2. Audit matters

Sales and forestry ownership

- JY said the audit team plans to perform site visit to observe the entire logging operations, including the application of logging permit from forestry bureau, the harvesting process and delivery logs to customers.
- ZHY said it may be possible to arrange the site visit in mid-Jan 2011, but need to confirm with the local harvesting team.
- JY has requested for the original logging permit for December 2010 for audit team to inspect.”

[JY-Janette Yu; ZHY-Zhang Hongyu (Chief Resources Officer.)

206. In answer to the question, as to whether or not these were routine procedures which would be required for the annual audit of this company, Ms. Naomi Lau said, “No. Additional procedure we want to do in 2010.” She went on to explain why KPMG wished to perform

¹⁰³ Transcript 10 February 2023, pages 26-28.

¹⁰⁴ Transcript 10 February 2023, pages 30-31.

¹⁰⁵ Transcript 10 February 2023, page 3.

¹⁰⁶ Transcript 10 February 2023, page 8.

¹⁰⁷ Exhibits Bundle 15A, page 11079.

additional procedures:¹⁰⁸

“--we obtained two logging permits in the same sequence number but in different handwritten logging volume. Then we--because what we have obtained from client always is in the copy, so we want to obtain the original, to see... what it looks like, for the original. And we also want to confirm the process of applying the logging permit, because what we know before is all from the client.”

KPMG’s concerns over the forestry logging permits raised with China Forestry

207. Ms. Naomi Lau said that as far as she recalled, KPMG’s concerns arising from having been provided with two different sets of forestry logging permits relating to the same forest land was not disclosed to the client whilst KPMG were in Beijing.¹⁰⁹ However, following her return to Hong Kong on 10 December 2010, she communicated with both Mr. Zhang Hongyu and Ms. Liu Yana, respectively the Chief Resources Officer and a Resources Officer of China Forestry, on the subject of “Logging Licences for July”. That was a reference to the two sets of forestry logging permits. She said that she had forgotten why she described the licences as “for July”. She could not remember whether or not China Forestry needed to apply a month in advance or not¹¹⁰.

Email enquiries by Ms. Naomi Lau of Mr. Zhang Hongyu and Ms. Liu Yana

(i) 16 December 2010

208. In an email addressed to Director Zhang, but also sent to Ms. Liu Yana at 11:02 on 16 December 2010, under the Subject heading: Logging Licences for July, Ms. Naomi Lau wrote:¹¹¹

“We are compiling the information (we) collected from the Internal Control in November, and (we) found out that the Shuangjiang County Logging Licences for July are *surprisingly different* from those (we) received in August. Could (you) provide the reason (?)” [Italics added.]

209. In a separate email to them, sent at 11:03, she attached copies of the 2 different sets of 4 forestry logging permits with the serial numbers 0215144-0125147, together with a schedule

¹⁰⁸ Transcript 10 February 2023, pages 11-12.

¹⁰⁹ Transcript 10 February 2023, page 38.

¹¹⁰ Transcript 10 February 2023, pages 18-19.

¹¹¹ Core Bundle 3, page 1085.

which referred to 5 forestry logging permits with the serial numbers 0215143-0215147, which match the information in the logging permits as to the place of logging namely Mangan Forestry Farm, Shuangjiang County, and the period of the validity of the permits, namely July 2010.¹¹²

210. In her first record of interview, dated 14 February 2011, Ms. Naomi Lau said that she had followed up that email by calling Director Zhang by telephone. He said that he was on leave and asked her to contact Ms. Liu Yana.¹¹³ In her evidence, Ms. Naomi Lau confirmed that the conversation with him was very short, "...because he is not in the office, and he asked me to call Ms. Liu." She confirmed that is what she had done.¹¹⁴

211. Having acknowledged that her email did not specify the differences in the two sets of forestry logging permits, Ms. Naomi Lau said that she thought that following her email she had a telephone conversation with Ms. Liu Yana in which she had stated what the differences were and what she wanted her to explain.¹¹⁵

212. In an email, sent to Ms. Naomi Lau at 2:15 p.m. on 16 December 2010, Ms. Liu Yana responded:¹¹⁶

"...It was because at that time, when (we) received the Logging Licences for July, (we) found that the area of logging and output were mistaken in the Logging Licences issued by the Forestry Bureau. As a result, the Company contacted the Forestry Bureau, which corrected the mistakes in the Logging Licences. However, the people on my side were not aware about this at that time, and (I) sent to you the copies of the Logging Licences containing the mistakes. During your last trip to Beijing for audit, (you) asked once again for the Logging Licences for July to October. Afterwards, I received the corrected Logging Licences, and I passed them to you directly. That is why the Logging Licences for July (you) received in November are different from those you received in August."

213. In an email to Ms. Liu Yana, sent at 16:06 that afternoon, Ms. Naomi Lau asked:¹¹⁷

¹¹² Core Bundle 3, page 1092.

¹¹³ Ms. Naomi Lau's 1st Record of Interview; Witness Evidence Bundle F2, page 5034 at counter #803.

¹¹⁴ Transcript 10 February 2023, pages 47-48.

¹¹⁵ Transcript 10 February 2023, pages 41-42.

¹¹⁶ Core Bundle 3, page 1098.

¹¹⁷ Core Bundle 3, page 1097.

“Did the Forestry Bureau send an email or notice at that time explaining that the Logging Licences (they) issued contain mistakes and need to be corrected?”

214. For her part, Ms. Liu Yana replied to Ms. Naomi Lau at 16:21:¹¹⁸

“The local staff responsible for this issue have contacted relevant persons of the Forestry Bureau and corrected the mistakes directly. They have not produced any email or explanation you mentioned.”

215. Although Ms. Naomi Lau’s email reply to Ms. Liu Yana at 4:41 pm, which stated simply, “Then there’s nothing (we) can do about it...”, had an air of resignation about it, she testified that that was not the case. She said, “I remember we did do some additional work.” She agreed with the suggestion that this was “not the end for this issue?” On the other hand, she said, “but we did not continue follow-up with this with the client.” Of the KPMG audit team’s response to the reply, Ms. Naomi Lau said, “...we were very doubt in the reply”.¹¹⁹

216. Ms. Naomi Lau agreed that in her first record of interview she had said that in one of the telephone conversations that she had with Ms. Liu Yana, the latter had gone on to tell her that, given there was a difference in the logging area, a new set of logging permits had to be issued.¹²⁰ Because she did not understand her explanation, she had informed Ms. Linda Chen, who began to make some enquiries about logging permits.

(ii) 17 December 2010

217. In light of their inability to understand Ms. Liu Yana’s explanation, Ms. Naomi Lau sent Ms. Liu Yana an email at 12:02 on 17 December 2010, copied to Ms. Linda Chen, in which she sought a further explanation:¹²¹

“Sorry but we still have some questions about the Logging Licences for July...After checking the Logging Licences issued by the Forestry Bureau on two occasions, (we) found that the total area of logging and output approved for July are the same in the Logging Licences issued on two occasions. Could (you) explain the reason (why they) needed to be amended?”

218. In her reply sent at 1:58 p.m. to Ms. Naomi Lau, Ms. Liu Yana said:

¹¹⁸ Core Bundle 3, page 1097.

¹¹⁹ Transcript 10 February 2023, pages 43-44.

¹²⁰ Ms. Naomi Lau’s 1st Record of Interview; Witness Evidence Bundle F2, page 5035 at counter #819.

¹²¹ Core Bundle 3, page 1101.

“As far as I know, the output was changed correspondingly because the area of logging was inconsistent. As I have no backup copy of the Logging Licences given to you in August, could you please send me (the copies of them), so that I can consult with (the persons) on the forest side?”

Ms. Naomi Lau telephoned her to remind her that they were attached to an earlier email sent on 16 December 2011.

219. Finally, in an email sent at 2:32 p.m. on 17 December 2010 to Ms. Naomi Lau, Ms. Liu Yana said:¹²²

“Hi, we changed to logging by rotation beginning from April.”

220. For her part, Ms. Naomi Lau agreed that she had never received a satisfactory explanation for the inconsistencies that had been found in the two sets of the forestry logging permits.¹²³

(ii) Forestry Logging permits: same handwriting and chop impressions affixed at the same places on permits with different serial numbers

221. Ms. Naomi Lau said that in December 2010 the KPMG audit team had become aware of another issue arising in respect of forestry logging permits, namely that a set of nine such forestry logging permits, with the serial numbers 0259019-0259027, had unusual features:

“the chop was the same, that is, they looked like photocopy (sic, photocopies) and it was only that the numbering on them were different.”

She went on to add that the handwriting was the same. She testified that she had obtained the nine sets of forestry logging permits. They were photocopies. She said that she had forgotten if she had obtained the set of documents in August or November 2010, but if in the latter month it was given to her by Ms. Liu Yana.¹²⁴

222. The nine sets of forestry logging permits not only bore the same date, 21 June 2010, but also all referred to the same place, namely: Luxi City, Zhongshan, Dazubo Village.

223. In her evidence in chief, Ms. Naomi Lau said that those issues arising from the nine forestry logging permits were not ones which she had noticed before the meeting between

¹²² Core Bundle 3, page 1105.

¹²³ Transcript 10 February 2023, page 54.

¹²⁴ Transcript 10 February 2023, page 58.

KPMG and China Forestry on 3 December 2010.¹²⁵ However, at the end of her evidence on 12 April 2023, in response to questions by the Chairman, she said that she was aware of the concerns expressed in a document entitled, ‘Sales process-walkthrough’, dated 2 December 2010, prepared by Albert Lui, her colleague and fellow assistant manager in the audit team.

Sales process-walkthrough

224. In that document, Mr. Albert Lui wrote:¹²⁶

“Albert Lui (HK/A09) had discuss with Mr. Zhang Hongyu, Chief Resources Officer and obtain the document from Ms. Liu Yana, Resources Assistant on 02 December 2010.

...

5. The Company had applied the harvesting permits (logging permit) (G1.3e) according to the communication with customers and annual sales contract. (Control #2)

We noted that the hand-writing on certain logging permits looks exactly the same in every harvesting permit issued by the same local logging authority for each month with the chop of the forestry bureau stamped in the same place of logging permits.”

225. Attached to the Sales process-walkthrough were five Yunnan Logging Permits with consecutive serial numbers beginning 0215149 through to 0215153.¹²⁷ They were all dated 21 July 2010 and referred to logging at Mang’an Tree Farm, Shuangjiang County. Each of them bore the impression of three different chops, one oval and two differently sized circular chop impressions. Each permit bore both printed and handwritten Chinese characters.

226. For her part, in response to being asked whether she was aware of the concern expressed in the ‘Sales process-walkthrough’, Ms. Naomi Lau said that, although the issue had not been mentioned at the 3 December 2010 meeting, nevertheless before that meeting “...we have report the case to Janette and also Anthea.” That had been done by telephone before they came to Beijing. In addition, she recalled that Ms. Linda Chen had “...also flipped over on the document we obtained.” Of the concern of the KPMG audit team, Ms. Naomi Lau said:¹²⁸

¹²⁵ Transcript 10 February 2023, page 50.

¹²⁶ Exhibits Bundle 15B, page 10999.

¹²⁷ Exhibits Bundle 15A, pages 11008-11012 and 11040-11054.

¹²⁸ Transcript 12 April 2023, page 146.

“Because actually, this finding also happened after we had obtained the duplicate set of the logging permit, so we are worried about whether this logging permit is real or not, and then, when we are back to Hong Kong we have (to?) do more research on the logging permit because of all this finding.”

227. In his second record of interview, dated 17 January 2012, Mr. Albert Lui confirmed that he had prepared the Sales process walkthrough document. Of his observation at paragraph 5 in respect of the similarity of features of the differently numbered permits, he explained:¹²⁹

“Actually, we did (it) for silly reason since (we) had too much time. It’s because actually, their original one was also like a carbon paper. We placed the two pieces (of paper) together to make a comparison. Actually, (we) saw that the handwriting, chops, (and) positions all looked very similar.”

228. Of the implications, he went on to say:¹³⁰

“...some doubts (arose). Actually, could you really write on two pieces (of paper and make them) look *exactly* the same, just like (being produced) by a photocopier(?)

...

We had a doubt (as to) whether that thing was actually genuine. (We) had a doubt. ... (We) wanted to go to the Forestry Bureau to confirm the issuance (to see) if (they) were really issued by the Forestry Bureau.”

(iii) Forestry Rights Certificates in the name of Guizhou Wosen Forestry Development Co Ltd-30 December 2010

229. In his first record of interview, dated 15 February 2011, Mr. Albert Lui described the circumstances in which the respective Forestry Bureau in Liping County and Congjiang County in Guizhou Province had come to issue Notices, dated 31 December 2010 stating the time of transfer of the forest land described in a total of 7 sets of Forestry Rights Certificates to Guizhou Wosen Forestry Development Co., Ltd (“Guizhou Wosen”) was November and November to December 2010. The relevance of the issue was that Guizhou Wosen was not incorporated until 2010, whereas the Forestry Rights Certificates were stated to have been issued in 2008 and 2009.

¹²⁹ Mr. Albert Lui’s Record of Interview; Witness Evidence Bundle G1, page 5481 at counter #572.

¹³⁰ Mr. Albert Lui’s Record of Interview; Witness Evidence Bundle G1, page 5481 at counter #s 576-584.

China Forestry's 2010 Interim Report-acquisition of forest in Guizhou

230. China Forestry's 2010 Interim Report, dated 26 August 2010, addressed the 'Prospects' of the company under the heading Management Discussion and Analysis and stated that the company's "...acquisition targets will be extended to high-quality forest resources in Yunnan, Guizhou and Chongqing provinces."¹³¹ The Consolidated Balance Sheet noted, under the heading Non-Current Assets, a prepayment for forest acquisition of RMB190,338,500.¹³² The explanatory footnote stated:¹³³

"On 16 March 2010, the Group entered into a memorandum of intent to acquire a forest in Guizhou Province, the PRC and RMB 190,338,500 was paid by the Group as a deposit."

231. In his first record of interview, Mr. Albert Lui said that around 28 December (2010) he had travelled to the China Forestry's subsidiary's office of Guizhou Wosen, in Guiyang in Guizhou Province and met the Assistant to General Manager, Mr. Zhang Kai. However, the forestry rights certificates were not available. He was told that they were still being processed. He made use of the available time to inspect the forest land with Mr. Zhang Kai.

232. On 30 December 2010, Guizhou Wosen had provided his colleagues, Freddy Cheung and Althea Au Yeung, with copies of Forestry Rights Certificates. When he inspected those copies of the certificates, he noticed that they bore issue dates of 2008 and 2009, whereas he knew, "...the company should have been incorporated only in mid-2010."

233. On 31 December 2010, he returned to the Guizhou Wosen office in Guiyang where, at his request, he inspected originals of the copies of those Forestry Rights Certificates. The problem remained. As a result, Mr. Albert Lui said that:¹³⁴

"...we took a pile of documents to their Assistant to General Manager to tell him that there was such a situation. He said that he had to contact the people of the forest land to understand what it was about actually. About one to two hours later, ... he came back to us saying that their colleagues told them that...the date was the certificate issue date when they had the second forest reform. They said that they had consulted the ...local Forestry Bureau and was told that this was the normal practice."

¹³¹ Exhibits Bundle 2A, page 1160.

¹³² Exhibits Bundle 2A, page 1175.

¹³³ Exhibits Bundle 2A, page 1190.

¹³⁴ Mr. Albert Lui's Record of Interview; Witness Evidence Bundle G1, page 5367 at counter #629.

234. Mr. Albert Lui went on to explain:

“On 1 January...someone from their side... took out two certificates which were claimed to be evidence issued by the local Forestry Bureau to prove that the actual transfer time of the forestry right was November, December 2010. But according to what we could *identify*, some of the numbers on that certificate-the forestry right certificate were wrong. We also reflected that to their Assistant to General Manager. They said they would follow that up with the Forestry Bureau after the New Year to see if any further proof could be provided.”

The Certificates

235. Both of the certificates were headed:

“Illustration on the Time of Transfer of Forestry Right Certificates to Guizhou Wosen Forestry Development Company Limited”

The text in each of the certificates was in similar format and stated:

“With respect to the (number stipulated) forest land sites transferred to Guizhou Wosen Forestry Development Company Limited by (vendor’s name stipulated), the actual time of transfer was (November 2010 or November to December 2010 stipulated). The time as stipulated by the forestry right certificate issuance authority refers to the time when the certificate was issued at the initial stage of the second forestry reform. A brief summary of the (number stipulated) forestry sites:

(details of forestry rights certificates stipulated)”

(i) Liping County

236. One of the certificates bore the chop impression of the Forestry Bureau of Liping County over the printed title of that name, with the addition of reference to Guizhou Province, and referred to five Forestry Right Certificates by year-date and unique serial number. For example:

“Forestry Right Certificate No.: Li Fu Lin Zheng Zi (2008) No. 010585 (Transferor: Guizhou Senhao Forestry Resources Development Company Limited).”

Three of the certificates were described as dated 2008 and two of them as dated 2009. Four of the transferors were described as being Guizhou Senhao Forestry Resources Development

Company Limited, whilst the fifth transferor was described as being Tongren City Xinxin Forestry Technology Development Company.

(ii) Congjiang County

237. The other certificate bore the chop impression of the Forestry Bureau of Congjiang County over the printed title of that name, with the addition of reference to Guizhou Province, and referred to two Forestry Rights Certificates by year-date and a unique serial number. Both Forestry Rights Certificates to which reference was made were described as dated 2009.

238. Mr. Albert Lui said that the two certificates provided were original documents. They were provided by Mr. Wang Xin, the chief engineer of Changsheng Group, which was the private company of Guizhou Wosen. Of his involvement, Mr. Albert Lui said that Mr. Zhang Kai explained that, “Mr. Wang was more familiar with the operation of the forest land down there and was on better terms with.... the previous owners of the forestry rights, his help was sought to coordinate the acquisition of the forest land.”¹³⁵

239. Of the mistake in the certificate numbers, he said:¹³⁶

“...as far as I know, on one of his notices, the number of one to two forestry right certificates were probably wrong.... Zhang Kai’s explanation was that ... It should be typographic errors when they did the typing, but for the details, he said that he had to wait after the holiday and contact the Forestry Bureau before they could confirm that.”

However, he said that there “...has not been any further news from them to notify us.”

240. Subsequent to Mr. Albert Lui’s interview, the two certificates, described as Illustration on the Time of Transfer, were provided to the SFC in a letter from KPMG dated 24 February 2011.¹³⁷

¹³⁵ Mr. Albert Lui’s Record of Interview; Witness Evidence Bundle G1, pages 5370-5372 at counter #s 694-731.

¹³⁶ Mr. Albert Lui’s Record of Interview; Witness Evidence Bundle G1, page 5372 at counter #737.

¹³⁷ Exhibits Bundle 15.

CHAPTER 5

The identification to China Forestry of irregularities arising in the audit by KPMG:
explanations advanced by officers of the company

14 January 2011

241. In a series of telephone calls held in the afternoon and early evening of 14 January 2011 with various officers of China Forestry, KPMG identified a growing number of audit irregularities that they had uncovered. KPMG minutes described those meetings and several participants in the meetings testified orally.

242. Mr. Raymond Tong testified that on the morning of 14 January 2011 he had received a telephone call from Ms. Janette Yu of KPMG in which she had told him that KPMG had found something “very unusual” and “something strange” and that she wished to hold a conference call with the CEO and the Mainland CFO, namely Mr. Li Han Chun and Mr. Wen Guoping.¹³⁸ That resulted in a conference call with KPMG at 2:00 p.m. on 14 January 2011, in which he participated with Mr. Li Han Chun and Mr. Wen Guoping, during which he learned of various audit issues. That was the first time that he had realised there were such issues.¹³⁹

(i) *Minutes-2:00 p.m. conference call KPMG with Li Han Chun, Wen Guoping and Raymond Tong*¹⁴⁰

Customers’ bank accounts in Tibet

243. The minutes of the conference call held at 2:00 p.m. with Mr. Li Han Chun, Mr. Wen Guoping and Mr. Raymond Tong, state that KPMG informed them that, according to the customer bank codes on bank-in slips, all the company’s customers appear to have bank accounts in Tibet. That, was apparent from the standardised Bank Code system stipulated by the People’s Bank of China. All of the accounts were with the Bank of Communications.

244. Mr. Wen said that it might be that the standard Bank code had not been fully adopted in rural areas, such as Yunnan and Sichuan. Further, he said that, “...all of their customers open bank accounts in rural credit unions”. They might not follow the standardised Bank Code system.

245. At Mr. Wen’s request, at the conclusion of the meeting KPMG sent the material

¹³⁸ Transcript 6 February 2023, pages 117-118.

¹³⁹ Transcript 9 February 2023, page 19.

¹⁴⁰ Exhibits Bundle 15B, page 11374.

obtained from the People's Bank of China in relation to the standardised Bank Code system to the company.

246. Mr. Li Han Chun said that, "...the company has built up the relationship with some of its customers since 1999" and that the "...operation of rural credit union did not comply with the standard". He suggested that the auditors accompany the company to receive an explanation from the branch manager of the rural credit union.

(ii) 5:30 p.m. conference call KPMG with Li Han Chun.¹⁴¹

247. KPMG held a conference call with Mr. Li Han Chun alone at 5:30 p.m. The minutes noted that he was informed that the People's Bank of China had confirmed at 14:00 that all bank and non-bank financial institutions should follow the code system.

248. Mr. Li Han Chun acknowledged that there was no branch of the Bank of Communications in Lhasa, Tibet. He said, "...all of their customers bank accounts were opened in rural credit union".

249. Ms. Linda Chen observed that, if the bank code does not exist, "...it is not possible for its customers to remit sales proceeds to Kunming Ultra Big's bank accounts."

(iii) 18:20 conference call KPMG with Professor Wong Tak Jun¹⁴²

250. KPMG held a conference call with Professor Wong Tak Jun, the Chairman of the Audit Committee, at 18:20. The minutes noted that KPMG informed him that, according to the customer bank codes on bank-in slips, all the company's customers appear to have bank accounts in Tibet with the Bank of Communications. That, was apparent from the standardised Bank Code system stipulated by the People's Bank of China. However, the Bank of Communications confirmed that it had no branch in Tibet. Professor Wong was informed that, "...this matter may be serious" and advised to take legal advice. He was advised that independent directors and the Audit Committee had an obligation to protect the interests of minority shareholders.

(iv) 19:00 conference call KPMG with Raymond Tong¹⁴³

251. KPMG held a conference call with Mr. Raymond Tong at 19:00 hours. He was provided

¹⁴¹ Exhibits Bundle 15B, page 11376.

¹⁴² Exhibits Bundle 15B, page 11377.

¹⁴³ Exhibits Bundle 15B, page 11380.

with the information given to Mr. Li Han Chun and Professor Wong and told that those findings had been reported to Mr. Li Han Chun earlier.

UBS's China Forestry conference: Shanghai-17 and 18 January 2011-Mr. Raymond Tong and Mr. Li Han Chun

252. In his evidence, Mr. Raymond Tong explained that he had attended a China Forestry conference arranged by UBS in Shanghai on 17 and 18 January 2011. There, he met Mr. Li Han Chun on 17 January 2011, who said:¹⁴⁴

“We’ve gone down there and asked the local customers there and also asked the Co-ops in the countryside. The Co-ops in the countryside said to me, “What number do you want? I can give you whatever numeral prefix.”

He understood that was not necessarily a reference to Mr. Li Han Chun, but rather to the “team”.

253. Mr. Raymond Tong testified that he had returned to Hong Kong on about 20 January 2011, but then went on leave until 30 January 2011. As a result, he did not participate in meetings of China Forestry with KPMG on and between 22 and 27 January 2011.¹⁴⁵

22 January 2011: meeting at Chinese University-KPMG with Professor Wong Tak Jun

254. KPMG held an in-person meeting with Professor Wong Tak Jun at 2:00 p.m. on 22 January 2011. Four separate issues were identified in the meeting, namely issues arising from:¹⁴⁶

- (i) **Huaxia Bank accounts**-Kunming Ultra Big’s bank accounts with Huaxia Bank;
- (ii) **PICC insurance**-confirmations of insurance taken out by the company with PICC insurance in which KPMG had received inconsistent information in an oral explanation from a PICC employee in respect of a confirmation sought from PICC;
- (iii) **Logging permit**-permits on which the handwriting was the same and the chop impression were affixed at the same place on different logging permits; also, logging permits in respect of the same forest, but which had different serial numbers; and

¹⁴⁴ Transcript 6 February 2023, pages 134-135.

¹⁴⁵ Transcript 6 February 2023, page 139.

¹⁴⁶ Exhibits Bundle 15B, pages 11381-11386.

(iv) **Forestry right-Guizhou** concerns arising from the fact that the Company's subsidiary had not been incorporated until 2010, but was said to own forest land reflected in certificates dated 2008 and 2009.

255. Professor Wong was shown a summary of the bank account codes of the company's customers which demonstrated that all of their accounts began with the numbers "301-7710". From information available from the People's Bank of China, it was apparent that the first three digits referred to a city in Tibet and the four remaining digits to the Bank of Communications. However, the Bank of Communications confirmed that it had no branch in Tibet.

256. Professor Wong was informed that KPMG viewed the matters as "very serious", such that KPMG was concerned "...whether there are any fraud committed by the Company or Company's management. As such, we reported to Professor Wong independently."

22 January 2011

257. Mr. Xiao Feng testified that on 22 January 2011 he had received a request by telephone from Mr. Li Kwok Cheong to attend a meeting with KPMG in Hong Kong on 23 January 2011, arranged at the request of Ms. Janette Yu. He was dealing with another important matter in Hainan and was unable to attend.¹⁴⁷ Mr. Xiao Feng said that, prior to his conversation with Mr. Li Kwok Cheong, he had been kept informed and in telephone conversations with either Mr. Li Kwok Cheong or Mr. Li Han Chun or both of, "...accounting irregularities found out by KPMG."¹⁴⁸

23 January 2011

258. At Professor Wong's suggestion in the meeting on 22 January 2011, KPMG held two separate meetings with Professor Wong on 23 January 2011.

(i) *4:30 p.m.-KPMG, lawyers and Professor Wong*¹⁴⁹

At 4:30 p.m. KPMG held a meeting with Professor Wong and various lawyers. At his request they revisited in detail the issues that had been identified in the meeting with him on 22 January 2011.

¹⁴⁷ Transcript 17 April 2023, page 75.

¹⁴⁸ Transcript 17 April 2023, page 78.

¹⁴⁹ Exhibits Bundle 15B, pages 11387-11392.

(ii) 5:40 p.m.-KPMG, lawyers, Professor Wong and Mr. Li Kwok Cheong¹⁵⁰

259. At 5:40 p.m. KPMG held a conference call meeting with Mr. Li Kwok Cheong, together with all those present at the first meeting. The minutes noted that the issues identified in the four headings set out above in respect of the meeting on 22 January 2011 were canvassed with Mr. Li Kwok Cheong.

Customer bank accounts

260. For his part, in response to a statement by Ms. Shirley Wong that KPMG were concerned about the customer's bank accounts, Mr. Li Kwok Cheong said "...the customers use bank accounts in rural credit union." On being told that a check of the bank code of rural credit unions had resulted in a conflict with the bank codes described on the bank-in slips, Mr. Li Kwok Cheong said that he did not know why that was the case and agreed to check significant issues that had arisen during the audit meeting. He said that rural credit unions might be using "...some different bank code". He would investigate.¹⁵¹

Logging permits

261. Of the observation by KPMG that the handwriting on different logging permits for different months looked exactly the same and the chop impressions on logging permits were in the same position, Mr. Li Kwok Cheong explained that, "...there is one person assigned for issuance of logging permit in local forestry bureau, as such the handwriting may look similar."¹⁵²

Forestry rights certificates-Guizhou

262. Of KPMG's concern that the Forestry Rights Certificates issued for Guizhou Wosen for its acquisitions in December 2010 were dated in 2008 and 2009, before the company was set up, the minutes noted that Mr. Li Kwok Cheong said that, "...the useful life of forest ownership certificates is normally 30-50 years. The useful life will not be extended for subsequent transfer. Hence, the forestry bureau may use the first transfer date as the issue date of the certificate in order to match with the useful life granted and expiry date."¹⁵³

¹⁵⁰ Exhibits Bundle 15B, pages 11393-11398.

¹⁵¹ Exhibits Bundle 15B, page 11396.

¹⁵² Exhibits Bundle 15B, page 11395.

¹⁵³ Exhibits Bundle 15B, page 11395.

Possible irregularities and inflated financial information

263. Mr. Li Kwok Cheong commented that, "...there are possible irregularities and inflated financial information in the forestry industry and need some time to resolve".¹⁵⁴

25 January 2011

Meeting: KPMG, Mr. Michael Cheung and Mr. Raymond Tong

264. Throughout his testimony Mr. Michael Cheung was repeatedly referred to the transcript of the lengthy record of interview conducted of him by the Commission on 9 February 2011, only a few weeks after the events he was describing. He explained the use that he was able to make of that record of interview, "...because I look at my interview ...the notes you go through, Mr. Chan told me and then ... I can refresh my some (sic) memory."¹⁵⁵ He testified that he and Mr. Raymond Tong had a meeting with KPMG at their offices on 25 January 2011, after which they returned to China Forestry's offices in Hong Kong.¹⁵⁶

KPMG's letter to the board of directors of China Forestry

265. In a letter, dated 25 January 2011, to the board of directors of China Forestry received that day KPMG said that it was in the course of its audit for the year ended 31 December 2010 and wished to, "... set out some significant issues that have arisen". Further, it asserted that they "...raise serious questions as to the accounting records of the Group, and go to the matters that are central to the Group's operations."¹⁵⁷ The letter went on to state, "We have previously raised these issues with Li Kwok Cheong... Raymond Tong...and Wong Tak-jun."

Appendix to the letter

266. In an Appendix to the letter, under the heading, "list of significant outstanding matters as of 25 January 2011" the four issues canvassed with Professor Wong in the meeting on 22 January 2011 and revisited in the meeting with Professor Wong and Mr. Li Kwok Cheong on 23 January 2011 were addressed in some detail, together with the additional matter raised by Mr. Li Kwok Cheong at the meeting on 23 January 2011, namely "Irregularities and inflation".

¹⁵⁴ Exhibits Bundle 15B, page11397.

¹⁵⁵ Transcript 20 April 2023, page 69.

¹⁵⁶ Transcript 19 April 2023, page 132.

¹⁵⁷ Exhibits Bundle 15B, pages 11399-11403.

1. *Huaxia Bank account of Kunming Ultra Big*¹⁵⁸

267. It was noted that the document provided by the company indicated that the balances of that company at the Huaxia Bank on 31 December 2010 were “approximately RMB 1,200 million (being RMB 745 million and USD 71 million)” and represented sales proceeds received by Kunming Ultra Big in its bank accounts at that bank.

268. However, KPMG said that the bank codes of all those customers shown in the bank-in slips provided by the company all started with the prefix “3017710” which, according to the coding system of the People’s Bank of China, represented Bank of Communications, Lhasa, Tibet. But, the Bank of Communications said that it did not have a branch in Lhasa.

269. KPMG asserted that the company’s management had advised that, “...the customers use a local credit union which has not yet adopted the PBOC’s coding system.” However, it was noted that the People’s Bank of China asserted that all fund transfers must follow the coding system.

270. Further, it was noted that, although the company’s management had informed KPMG that six of the customers remitted proceeds to its bank account with Huaxia Bank from Luxi Village Credit Union Branch, the bank code of this credit union, “...is not consistent with that shown in the bank-in slips provided by the Company.”

271. In the result, KPMG went on to assert that:

“...we have serious doubts about the authenticity of the bank statements and bank pay-in slips provided to us in support of the Group’s sales receipts for the year.”

3. *PICC insurance contracts on the forests of the Group*¹⁵⁹

272. KPMG noted that the written confirmations received from the insurer, “...were not consistent with the insurer’s oral comments.” In the result, KPMG asserted, “...we have not yet been able to resolve this matter.”

4. *Logging permits*¹⁶⁰

273. KPMG observed that:

¹⁵⁸ Exhibits Bundle 15B, page 11402.

¹⁵⁹ Exhibits Bundle 15B, page 11403.

¹⁶⁰ Exhibits Bundle 15B, page 11403.

“The handwritten permits provided to us by the company in respect of a substantial number of logging permits appear identical and manual chops appear to be located in identical areas of each permit.”

Further, KPMG noted that the Forestry Bureau of Luxi City, Yunnan advised that its permits were computer-generated and not handwritten.

274. Moreover, KPMG noted that the serial number of five permits issued in June 2010 were different from the serial numbers of five permits issued in July/August 2010.

275. In the result, KPMG asserted, “...the reliability of logging permits is an important element to verify the Group’s recorded sales and assets. This matter also remains unresolved.”

5. *Forest ownership certificates.*

276. Of the issue of forestry ownership certificates in Guizhou, KPMG noted:¹⁶¹

“The Group set up a subsidiary, Guizhou Wosen Forest Development Co., Ltd, in 2010 (“Guizhou Wosen”), which acquired some forests in Guizhou Province in December 2010. According to the forest ownership certificates provided by management, the issue dates of the certificates, which were issued in the name of Guizhou Wosen, were dated as having been issued in 2008 and 2009, when Guizhou Wosen had not yet been established.

We have been advised by the Company’s management that the reason for this is that the dates used by the relevant bureaux is the date when the original owner acquired its rights. We have yet to independently verify this explanation.”

Mr. Michael Cheung

277. Although Mr. Michael Cheung said that he was unaware of any of the details of the audit issues raised by KPMG until 25 January 2011, on that date, at the request of Mr. Li Han Chun, he became involved in being informed of their concerns and providing explanations in return.

278. By that stage, overtures having been made to him on several occasions between September and December 2010 to join China Forestry to assist in their investor relations and to become involved in capital markets he had agreed to do so, but without having entered into

¹⁶¹ Exhibits Bundle 15B, page 11403.

any contract of employment. At the first meeting in September/October 2010, he had met Mr. Li Kwok Cheong and Mr. Xiao Feng at the China Hotel in Beijing. In November/December 2010, he had a second meeting. This time Mr. Li Han Chun joined Mr. Li Kwok Cheong and Mr. Xiao Feng. Then, at third meeting with Mr. Li Kwok Cheong, Mr. Li Han Chun and Mr. Xiao Feng held at the China Hotel, terms were discussed and he indicated agreement to join the company.¹⁶²

UBS's China Forestry Conference: Shanghai-17-18 January 2011

279. At the request of Mr. Li Kwok Cheong, Mr. Michael Cheung had attended a conference about China Forestry organised by UBS in Shanghai on 17 January 2011. He had done so to become better informed about the company and the industry. At dinner with Mr. Li Han Chun and Mr. Raymond Tong during the conference he had discussed his prospective role in the company.¹⁶³ For his part, as noted earlier, Mr. Raymond Tong said that he had returned to Hong Kong on about 20 January 2011, after which he had been on leave until 30 January 2011. As a result, he did not participate in various meetings of the company on and between 22 and 27 January 2011.

280. Earlier in the second half of 2009, he had been involved in aspects of China Forestry's ongoing IPO. He had meetings with Mr. Li Kwok Cheong and Mr. Li Han Chun and had maintained contact with them after he left UBS in 2010.¹⁶⁴

23 January 2011

281. On 23 January 2011, whilst he was in Beijing on holiday from his employment with JP Morgan, he received a telephone call from Mr. Li Han Chun. Having been told by him that there were some problems with the KPMG audit, he agreed to meet Mr. Li Han Chun at his office the following day.¹⁶⁵

24 January 2011

282. On 24 January 2011, in a short meeting with Mr. Li Han Chun of about 10 minutes he was told very little of any specific problems, other than that there was an issue arising from forestry certificates. Mr. Li Han Chun asked him, "Michael, can you help to go to talk with KPMG about their requests?" For his part, he thought that the matter was a "...communication

¹⁶² Transcript 20 April 2023, pages 13-16.

¹⁶³ Transcript 19 April 2023, pages 121-123.

¹⁶⁴ Transcript 19 April 2023, page 109.

¹⁶⁵ Transcript 19 April 2023, pages 123-124.

problem”, and said, “Okay, I can fly back to Hong Kong and then arrange to meet KPMG with Raymond.” In their conversation, Mr. Li Han Chun had used a normal tone of voice.¹⁶⁶ As agreed, he flew to Hong Kong from Beijing that day.

25 January 2011

283. Mr. Michael Cheung said that he and Mr. Raymond Tong had attended a meeting at KPMG’s offices on the morning of 25 January 2011. He thought that Mr. Raymond Tong had informed KPMG that they wished to meet.¹⁶⁷ He said that KPMG, “...set out more details(,) all the issues during the meeting”. For his part, he realised that “...the issues is more than what Li Han Chun told me.”¹⁶⁸ He and Mr. Raymond Tong just listened to KPMG. Then, they returned to China Forestry’s office. He thought that, after their return, KPMG had issued their letter to the Board of Directors of China Forestry, dated 25 January 2011. He had read it after Mr. Raymond Tong had passed it to him.

284. Mr. Michael Cheung said that after receiving the letter, “I and Raymond Tong called Chairman Li Kwok Cheong and the CEO to report to them-explain to them KPMG’s issues.”¹⁶⁹ He thought there was more than one such telephone conversation. Subsequently, he said:¹⁷⁰

“...the sequence is 25th we got the very detailed-- the first letter from KPMG, set out very detailed questions. So I and Raymond go through the very detailed questions with the CEO, and CEO gave me the explanation and then he told me. I go back to KPMG to reply to KPMG.”

285. Mr. Michael Cheung explained, “...the questions were answered by CEO.”¹⁷¹ The conversation took 2 or 3 hours.¹⁷² He said that he had made a personal note of the telephone conversation, but that those notes were no longer available to him.¹⁷³

26 January 2011:

(i) meeting: KPMG and Mr. Michael Cheung

286. In a letter to the board of directors of China Forestry, dated 27 January 2011, KPMG

¹⁶⁶ Transcript 20 April 2023, page 58.

¹⁶⁷ Transcript 20 April 2023, pages 59-60.

¹⁶⁸ Transcript 19 April 2023, page 132.

¹⁶⁹ Transcript 19 April 2023, pages 133-134

¹⁷⁰ Transcript 19 April 2023, page 161.

¹⁷¹ Transcript 20 April 2023, page 70.

¹⁷² Transcript 20 April 2023, pages 70 and 72-73.

¹⁷³ Transcript 19 April 2023, pages 162-163.

asserted that:¹⁷⁴

“We met with the company’s representative, Mr. Michael Cheung, on 26 January 2011 and participated on a conference call later that day with Mr. Cheung, Ms. Cindy Li (Company’s In-house Counsel), Professor TJ Wong (Audit Committee Chairman)” and the lawyers of the Company and the Audit Committee.

(ii) *7:30 p.m.-conference call-KPMG, Professor Wong Tak Jun and Michael Cheung, and lawyers for the company*

287. From 7:30 p.m. on 26 January 2011 KPMG conducted a telephone conference call with Professor Wong and Mr. Michael Cheung.

KPMG minutes

288. The notes of the meeting, described as Minutes of Meeting for China Forestry, commenced by noting that Mr. Michael Cheung:¹⁷⁵

“...provided an update in respect of the matters raised in KPMG’s letter dated 25 January 2011.”

The minutes went on to state that Mr. Cheung “...noted that KPMG has visited Hua Xia Bank in Kunming and obtained bank confirmations directly from the bank *this afternoon* for FY 2008, FY 2009 and FY 2010.” [Italics added.]

Bank accounts of customers and cash transactions

289. In respect of the bank accounts of the customers, Mr. Michael Cheung had “...talked to the Chairman and the CEO and understands from the CEO”, that:¹⁷⁶

“... certain cash transactions have not been properly and timely recorded.

The bank accounts were held by some individuals under “Debit Card Accounts” kept by the individuals, which were used when selling harvested logs. Separate books were maintained.

...some of the bank transactions did not exist.

As advised by CEO, the reason for that is to minimise VAT payment.

¹⁷⁴ Exhibits Bundle 16, pages 11814-11816.

¹⁷⁵ Exhibits Bundle 15B, pages 11404-11408.

¹⁷⁶ Exhibits Bundle 15B, page 11404.

... the sales transactions were not properly recorded, the bank balance per ledger is different from the balance per bank.”

290. Of the issue of the creation of customer bank codes, the minutes stated that Mr. Michael Cheung said:¹⁷⁷

“...he thought it may have been done by the local staff and by the local bank staff. However, he advised that he was not sure, and needed to find out.”

291. In his evidence, Mr. Michael Cheung said that the meeting was initiated by Professor Wong and his legal advisers.¹⁷⁸ He thought he had participated in the telephone conference from the China Forestry’s office in Hong Kong. He said that he did so alone, because “...Raymond, seems like he’s (on) holiday.”¹⁷⁹ He explained that he had obtained all of that information from Mr. Li Han Chun in telephone calls that he and Raymond Tong had made. “...after the first meeting with KPMG.”¹⁸⁰

292. Of the sale of logs, Mr. Li Han Chun had told him:¹⁸¹

“...they sell harvested logs means because they are foreign (sic), so they cut the trees, become logs and to sell, and they get the monies, but the monies go into the individual account rather than go into the listed company’s bank account.”

Separate books

293. Of the maintenance of separate books, Mr. Li Han Chun had told him:¹⁸²

“...because the book is not on the listco, so he said it may be possible the local team maybe have a separate book to record such transaction not yet recorded in listco accounting record.”

Subsequently, he added:¹⁸³

“CEO said there is a possibility that the local staff to record the cash transaction, they may have another-they may have books to record the transactions.”

¹⁷⁷ Exhibits Bundle 15B, page 11405.

¹⁷⁸ Transcript 20 April 2023, page 127.

¹⁷⁹ Transcript 20 April 2023, page 124.

¹⁸⁰ Transcript 19 April 2023, pages 145-148.

¹⁸¹ Transcript 19 April 2023, page 147.

¹⁸² Transcript 19 April 2023, pages 147-148.

¹⁸³ Transcript 19 April 2023, page 157.

294. Of the creation of customer bank codes, Mr. Li Han Chun had told him that the reason was to avoid VAT.¹⁸⁴ In cross-examination, he confirmed that the KPMG note which stated "...he thought it may have been done by the local staff..." was a reference to Mr. Li Han Chun. He agreed that in making that statement Mr. Li Han Chun had indicated that he wasn't sure of that.¹⁸⁵

295. Of the use of cash, he said that Mr. Li Han Chun had told him:¹⁸⁶

"In the forestry industry, there are many transactions using cash, and I do not rule out the possibility that for the sake of convenience, some colleagues would just deposit the money into their own personal accounts instead of the company's accounts. That will also make things convenient when they have to purchase forest land and they have to make payment. It would be easier, less troublesome, to draw money out of their personal accounts instead of the company's account."

The number of customers and bank balances

296. The KPMG minutes went on to state that Mr. Michael Cheung said that:¹⁸⁷

"...there should be more than 40 genuine ultimate customers.

(he) confirmed that the actual number of customers should be more than 17.

...the bank balance in Hua Xia Bank per management accounts were RMB 745 million and USD 71 million while the balances per bank were RMB 0.3 million and USD 31 million respectively.

... he had called the CEO for the reasons. As advised by the CEO, the differences are due to

(i) Purchase of wood logs as the CEO considered that the logging quota would be reduced. The CEO has imported wood logs from Russia as he anticipated that there would be a shortage in supply, resulting an increase in selling price of the wood logs in future.

(ii) Purchase of new forests which have not yet been recorded by the Company.

297. In his evidence, Mr. Michael Cheung explained that he had obtained information about

¹⁸⁴ Transcript 19 April 2023, pages 148-149.

¹⁸⁵ Transcript 20 April 2023, page 133.

¹⁸⁶ Transcript 19 April 2023, page 157.

¹⁸⁷ Exhibits Bundle 15B, page 11405.

the management accounts from Mr. Raymond Tong, but he could not recall from whom he had obtained information about the bank balances per the bank.¹⁸⁸ Of the difference between the balances in the management accounts and as per the bank, Mr. Michael Cheung explained that he had called Mr. Li Han Chun and asked him the reason for the big difference. It was his memory that Mr. Li Han Chun had given the reasons recorded in the minutes, instructing him "...to tell KPMG."¹⁸⁹

298. In cross-examination, Mr. Michael Cheung acknowledged that in giving evidence on 5 December 2019¹⁹⁰, having been taken to the KPMG minutes which described the difference between the balances in the management accounts and the balances per the bank in the context of his earlier statement that the bank confirmations had been obtained "*this afternoon*", he accepted that he had another conversation with Mr. Li Han Chun after the bank statements became available. However, when asked if he recalled now having a conversation with the CEO after the bank statements of Huaxia Bank were obtained, he said that it was too long ago "to recognise this."¹⁹¹

299. In his record of interview with the SFC, dated 23 March 2011, Professor Wong said that he had been informed by Mr. Michael Cheung on the morning of 26 January 2011 that the bank balances were not RMB 1.2 billion, but rather only RMB 200 million odd.¹⁹² Professor Wong confirmed that he had taken part with Mr. Michael Cheung in a telephone conference call with KPMG which began at 7:30 p.m. on 26 January 2011.¹⁹³

300. In cross-examination, Mr. Michael Cheung agreed that Mr. Li Han Chun said that there "*should be* more than 40 genuine ultimate customers". In his evidence he said, "As I recall, I said it's CEO told me that *may be* more than 40."¹⁹⁴ [Italics added.] In the face of the general suggestion that what he reported to the meeting of what Mr. Li Han Chun had said to him about the various issues, in particular whether or not Mr. Li Han Chun had said "This is what happened", Mr. Michael Cheung said:¹⁹⁵

"Not very definite, not very certain."

¹⁸⁸ Transcript 19 April 2023, page 150.

¹⁸⁹ Transcript 19 April 2023, pages 151-152.

¹⁹⁰ Transcript 5 December 2019; Line 7, page 49 and following.

¹⁹¹ Transcript 20 April 2023, page 139.

¹⁹² Witness Evidence Bundle C2; Tab 13, pages 2347-2486 at counter #s 538-551.

¹⁹³ Witness Evidence Bundle C2; Tab 13, pages 2347-2486 at counter #s 538-613.

¹⁹⁴ Transcript 20 April 2023, page 135.

¹⁹⁵ Transcript 20 April 2023, page 136.

301. The KPMG note went on to state that Mr. Michael Cheung:¹⁹⁶

“...moved on to discuss the findings on the bank confirmations:

- (i) FY 2008, balances per ledger are RMB 45 million and USD 3.5 million while balances per bank are RMB 0.1 million and USD 12.9 million i.e. the balance per the Bank is greater than that recorded in the Company’s books.
- (ii) FY 2009, balances per ledger are RMB 3 million and USD 31 million while balances per bank are RMB 0.2 million and USD 2.7 million. Difference of around USD 28 million was noted.

As advised by MC, cash was used to purchase new forests, which have not yet been recorded (*which is a new finding in addition to the reason advised in the meeting that morning regarding purchases of timber logs*), also accounted for the difference.”
[Italics added.]

302. In his evidence, Mr. Michael Cheung said that he had obtained the information as to the balances per the ledgers of the company from Mr. Raymond Tong. He could not remember if he had had a meeting “...that morning” with KPMG. Mr. Li Han Chun had “...told me the big difference is used to purchase new forests.”¹⁹⁷

303. In cross-examination, Mr. Michael Cheung agreed with the suggestion that Mr. Li Han Chun had said that the difference in the bank balance, “*may be* due to purchase of wood logs or purchase of new forests”. However, when it was suggested to him that it was “*perhaps* due to these reasons”, he said, “I can’t recall. It’s too detailed.”¹⁹⁸

27 January 2011: Beijing China Hotel meeting-Michael Cheung, Li Kwok Cheong, Li Han Chun and Xiao Feng

304. Mr. Michael Cheung said that he had returned from Hong Kong to Beijing on 27 January 2011 and, following his arrival, had a meeting at the China Hotel with Mr. Li Kwok Cheong, Mr. Li Han Chun and Mr. Xiao Feng.¹⁹⁹

305. In cross-examination, Mr. Michael Cheung gave a brief summary of the sequence of

¹⁹⁶ Exhibits Bundle 15B, page 11406.

¹⁹⁷ Transcript 19 April 2023, pages 153-154.

¹⁹⁸ Transcript 20 April 2023, page 139.

¹⁹⁹ Transcript 19 April 2023, page 163.

events to set in place the context of the meeting on 27 January 2011.²⁰⁰

“... after we received the letter from KPMG, the first letter, 25th, we have called CEO and then the next day, maybe have another call regarding the bank statements. So everything is through the telephone conference, we are not face-to-face meeting,... the 24th, the chairman put it just a communication issue, but now there is a big issue, from my point of view. So a big call, we have conversation, views, telephone conversation... during 26th KPMG meeting, an update meeting together with Prof Wong--they set out some of what I told them,... I may be telling--may not be exactly the Chairman told me, so--CEO. So I would like to get the letter, go back in face-to-face with CEO to confirm, “You told me this and I told KPMG that, is it correct?”

306. Of the meeting itself, Mr. Michael Cheung said that the issues canvassed were those identified in the KPMG letter to the Board of Directors of China Forestry, dated 25 January 2011, together with the explanations which he had obtained from Mr. Li Han Chun in telephone conversations he gave at the meeting which began at 7:30 p.m. on 26 January 2011. In cross-examination, Mr. Michael Cheung agreed with the suggestion that, save for one matter, all of the assertions of facts which he had advanced and attributed to Mr. Li Han Chun at the meeting with KPMG on 26 January 2011, which were recorded in the minutes of that meeting, were in fact qualified by Mr. Li Han Chun with a range of caveats: “...he couldn’t rule out the possibility that...”; “possibly”; and “perhaps”.²⁰¹ The sole exception was that Mr. Li Han Chun had asserted, in respect of the sales of China Forestry, “...the transaction is real.”²⁰² None of those caveats is reflected in the minutes.

27 January 2011: KPMG’s letter to the board of directors of China Forestry

307. In a letter, dated 27 January 2011, to the board of directors of China Forestry, KPMG said that they had been advised on 26 January 2011 by Mr. Michael Cheung that:²⁰³

“...the Company acknowledges that false documents and information have been provided to us.”

308. Of that, KPMG observed, “It appears clear that serious irregularities have taken place within the Group which have a material impact on the financial information recorded in the

²⁰⁰ Transcript 20 April 2023, page 143.

²⁰¹ Transcript 20 April 2023, pages 77-136.

²⁰² Transcript 20 April 2023, page 100.

²⁰³ Exhibits Bundle 16, page 11814.

Group's accounting records that have previously been presented to us by the Company.”

Bank balances

309. Of the newly available information as to the bank balances of Kunming Ultra Big Forestry Resource Development Co. Ltd., KPMG said, “We have now received a bank confirmations and other documents from Hua Xia Bank in respect of the balances as at 31 December 2010”. KPMG went on to assert:²⁰⁴

“This shows that the cash balance was RMB 233 million (being RMB 0.3 million and USD 35.8 million) in contrast to the balance of RMB 1,200 million (RMB 745 million and USD 71 million-see our letter of 25 January 2011) shown in the documents provided to us for the purposes of our audit.

We were advised that the Company understands that this shortfall of almost RMB 1,000 million is accounted for by illicit purchases of inventories of wooden logs and purchases of new forest assets that we were advised took place near the end of 2010, and which were not reflected in the Group's accounting records. The directors must verify these explanations and trace and recover the assets, if it is the case that the cash has been used in this manner.”

Group customers and sales

310. Of the number of customers and the volume of sales of the Group, KPMG went on to state:²⁰⁵

“We were also advised that during the year ended 31 December 2010, the Company earned revenues from over 40 customers (compared to 17 customers disclosed to us) and that the true revenues of the Group exceed those disclosed in the financial information provided to us. We have been advised that the true sales to the 17 customers disclosed to us are lower than the amounts recorded in the Company's accounting records, and that this shortfall is more than made up by the financial effect of undisclosed cash sales to other customers. We require full documentary evidence in support of these assertions.”

²⁰⁴ Exhibits Bundle 16, page 11815.

²⁰⁵ Exhibits Bundle 16, page 11815.

Forest assets

311. Of the forest assets of China Forestry, KPMG said:²⁰⁶

“We have been advised that the Group is satisfied that it has good title to forest assets and that further steps will be taken to verify title, including the use of external lawyers. Again, we need full documentary evidence to verify this.”

29 January 2011: China Forestry letters to KPMG

312. In the first of two letters dated 29 January 2011, to KPMG by Mr. Li Kwok Cheong on behalf of the board of directors of China Forestry, in response to the letter dated 25 January 2011, it was asserted:²⁰⁷

“2. Irregularities and Inflation

The Chairman would like to clarify that his comments on the “...possible Irregularities and Inflated financial information” during the meeting on 23 January 2011 were referring to a known practice in the PRC forestry industry that some of the forestry operators in this industry would harvest a larger area of forest than what they are permitted.

We would like to emphasise that the Group has not been engaged in such practice.”

313. In the second letter, dated 29 January 2011, in response to the letter dated 27 January 2011, having informed KPMG that their concerns, “...on the information and documents supplied to you by the Company” were noted and that “an Independent committee had been established to conduct a fair and thorough investigation expeditiously”, Mr. Li Kwok Cheong stated:²⁰⁸

“In passing, we note your account of the discussion with Mr. Cheung on 26 January 2011. We have checked with Mr. Cheung. He does not believe that he has acknowledged on the Company’s behalf that the information and documents as provided to you are false. However, we do appreciate seriousness of your concerns. This explains why a swift and proper Independent Investigation is warranted. Such Investigation would also form part of our Independent committee’s work.”

²⁰⁶ Exhibits Bundle 16, page 11816.

²⁰⁷ Exhibits Bundle 16, pages 11817-11818.

²⁰⁸ Exhibits Bundle 16, pages 11819-11820.

28 January 2011-China Forestry Board Minutes

314. In a telephone conference meeting of the board of directors of China Forestry, held on 28 January 2011, at which Mr. Li Kwok Cheong and Mr. Li Han Chun participated, it was resolved that the replies to the KPMG letters dated 25 January 2011 and 27 January 2011 set out above be made. Also, it was noted that, Mr. Li Han Chun and Ms. Wu Xiaofen²⁰⁹

“...agree to cease their current duties and devote their energy mainly to help handle the issues questions by KPMG.”

For his part, Mr. Raymond Tong testified that he had participated in the telephone conference.²¹⁰

16 February 2011-meeting at the Dehong branch office of Kunming Ultra Big

315. As noted earlier, following the constitution of the IBC, on 28 January 2011, the audit issues identified by KPMG were investigated through the combined efforts of various professional firms. On 16 February 2011, enquiries were made of Mr. Shi Chuansheng, Mr. Zhang Hongyu and Mr. He Zhi at the residential home identified as the Dehong branch office of Kunming Ultra Big.

Participants

316. In addition to the three interviewees, there were no fewer than ten other participants identified in the KPMG minutes of the meeting: Mr. Michael Cheung of China Forestry; three members of staff of KPMG, including Ms. Naomi Lau and Ms. Anthea Han; two lawyers from Jun He Law Offices, appointed by the Audit Committee, and one lawyer from Broad and Bright, appointed by China Forestry; a member of staff of Ernst & Young and two members of staff of PKF Consulting Inc.

Minutes

317. Ms. Naomi Lau testified that she had prepared the minutes of the meeting under the KPMG logo.²¹¹ She made handwritten notes during the meeting, from which she compiled the minutes in typewritten format after her returned to Hong Kong, “which should be the day after this meeting.”²¹² She and Ms. Anthea Han had been shocked at what they were told at the

²⁰⁹ Exhibits Bundle 23A, pages 17128-17155 at page 17151.

²¹⁰ Transcript 9 February 2023, page 60.

²¹¹ Exhibits Bundle 16, pages 11851-11856.

²¹² Transcript 23 March 2023, pages 41-42.

meeting and, having discussed the matter that evening in their hotel, they had called Ms. Janette Yu to report the matter.²¹³ She, Ms. Anthea Han and Mr. Michael Cheung testified about the meeting.

318. The primary interlocutor was Mr. Michael Cheung, although Ms. Naomi Lau and Mr. Raymond Wang, of Ernst & Young, also posed questions of the interviewees. Mr. Shi, the manager of the Resource Department of the Dehong branch, said that he had worked for Mr. Li Kwok Cheong and the Company for seven or eight years. Mr. He Zhi, an accountant of Kunming Ultra Big, said that he had joined the Company in 2003 or 2004. Mr. Zhang Hongyu, the Chief Resources Officer of the Group, said that the office had operated as a representative office since 2008, but had been registered as a branch office in December 2010.

Applications for logging permits

319. Mr. Shi and Mr. Zhang said that they were responsible for making applications for the issue of logging permits.

Sales-cash basis

320. In response to Mr. Michael Cheung's enquiry as to how sales were conducted, the minutes noted:²¹⁴

“Shi said all the sales were carried on cash basis, the cash received was kept in safety deposit box. Only Shi knows the password and HZ (He Zhi) keeps the key. The cash was used to pay for the logging permit (Forestry Maintenance Fund) and the forests acquisitions. Since payment to farmers is too complicated if work via bank account and the Company needs to bear the transaction costs, hence the Company use cash to settle the transactions with the farmers.”

Cash in/out records

321. In response to Mr. Michael Cheung's enquiry of whether there were cash in/out records, the minutes noted that:²¹⁵

²¹³ Transcript 23 March 2023, page 25.

²¹⁴ Exhibits Bundle 16, page 11852.

²¹⁵ Exhibits Bundle 16, pages 11852-11853.

“HZ said the Company has kept a separate record on the cash transaction. After they prepare the cash ledger, they will send to Wu Zong (the CFO of the Group in Beijing). The cash ledger was prepared using computer in DeHong office.

[HZ later said the computer in DeHong office was taken by Mr. Li Han Chun for reconstruction of books and records in early February 2011. While as per the Ernst & Young’s investigation report on 10 Apr 2011, it stated that HZ’s computer was not available for imaging during 17-19 February 2011.]”

322. The minutes noted that Mr. He Zhi went on to state:

“...they have sent all records and ledgers to Li Han Chun (the CEO of the Group in Beijing) for the investigation purpose, including the computer, hence no document or any record was kept at the Dehong branch.”

Mr. Shi added that, “...the CEO has kept the internal records, every month the Dehong branch submitted the management account (cash ledgers) to Beijing branch.”

Management accounts: 2010 sales of RMB 1.2 billion

323. The minutes noted that Mr. Shi’s explanation for what had happened to the RMB 1.2 billion cash from sales in 2010 reflected in the management accounts, was that the monies had been used:

- (i) to acquire forests from farmers and
- (ii) to purchase logs.

324. In particular, the minutes noted that:²¹⁶

- Shi said the cash was used to acquire forests from farmers and purchase logs from Manzhouli and Yichun. All the transactions at Manzhouli port were done in cash, the amount of each transaction can be as high as RMB 10 million. Hence, they need to take a lot of cash to Manzhouli to purchase good-quality logs. They have the hand-written invoices or receipts for each purchase. They also keep the inventories records for themselves.
- Shi further said that the cash transported out by the Company’s human resources, driving from Dehong to other places. The staff responsible to transport the cash is

²¹⁶ Exhibits Bundle 16, page 11853.

one of the twenty staff worked under Shi now and all of them are reliable. It takes almost 6-7 days to drive from Dehong to Manzhouli and Yichun. When the cash reached Manzhouli and Yichun, the purchases were then completed by the staff at local offices/branches. The logs are mainly imported from Russia.

- Shi said the Company has also paid cash for the forests acquisition in 2010, and each transaction has an invoice specifying the forest area and stock volume the Company being purchased. Every time Shi has taken photo with the farmers when they received the cash from the deal. Shi said the Company should have the invoices; however, some were on farmer's hand and need to collect them back if we would like to check."

The acquisition of forests by the Dehong branch in 2010

325. In response to Ms. Naomi Lau's enquiry as to how many forests had been acquired by the Dehong branch in 2010, the minutes noted:

- Zhang said most of the forests acquired by the Dehong branch was located in Ninglang.²¹⁷
- The cash payments in 2010 were mainly for the acquisition of Ninglang forests, but there were some commission for intermediaries for the acquisition of Dali forests, which were also paid in cash.²¹⁸

Logging permits with duplicated serial numbers

326. In response to an enquiry if the Company had noted that there were two sets of logging permits with duplicated serial numbers, the minutes noted the response, namely:²¹⁹

- Both Shi and Zhang said they did not communicate with the forestry bureau on the duplicated numbering logging permit before. As the logging permit they have issued were not used finally, it is no point to raise this question to the forestry bureau.

Harvesting in 2010

327. In answering the enquiry as to whether or not the Dehong Prefecture Forest Bureau

²¹⁷ Exhibits Bundle 16, page 11853.

²¹⁸ Exhibits Bundle 16, page 11854.

²¹⁹ Exhibits Bundle 16, page 11854.

could verify the logging permit, the minutes noted:²²⁰

- Zhang said Shuangjiang is not within the Dehong Prefecture and the Company did not harvest in Shuangjiang in 2010.

328. In response to the enquiry by Ms. Naomi Lau as to whether there had been any harvesting in Shuangjiang and Lianghe in 2010, the minutes noted:²²¹

- Zhang said no. The Company only has harvested in Dehong, mainly in Luxi (around 600K m3) and some in Yingjiang.

329. In response to Ms. Naomi Lau's question as to where the company had harvested during 2010, the minutes noted:²²²

- Zhang said the Company only harvested in Dehong Prefecture in 2010, which mainly Luxi and Yingjiang for around 600K m3. There was no harvest in Shuangjiang and Lianghe, and also no harvest in Sichuan Jinhekou and Sichuan other forests in 2010.

Over-harvesting

330. In response to Ms. Naomi Lau's enquiry as to whether China Forestry had harvested in excess of the volumes permitted in the logging permits, the minutes noted that:

- HZ said it is common in the market and there are some kinds of....., meaning those logs were harvested without obtained a proper logging permit. He admitted that the Company has over-harvested.
- Zhang said the Company has harvested around 800K m3 in Dehong Prefecture (included both Luxi and Yingjiang.)

Excess logging permits for forests it was not intended to harvest

331. The minutes noted that, in response to an enquiry from Ms. Naomi Lau as to why the company applied and paid for logging permits for forest areas that it did not intend to harvest, the minutes noted that:²²³

²²⁰ Exhibits Bundle 16, page 11854.

²²¹ Exhibits Bundle 16, page 11854.

²²² Exhibits Bundle 16, page 11854.

²²³ Exhibits Bundle 16, page 11854.

- Zhang said the extra logging permits are for the log smuggled from Myanmar. [We followed up Zhang’s statement with MC a week later in HK. MC said the Chairman confirmed that it is not the real case, Zhang has said something nonsense during the time interviewing with us. We are unable to obtain further evidence to support Zhang’s and the Chairman’s statement.]

Safe and cash on the premises

(i) Ms. Naomi Lau

332. Of Mr. Shi’s statement that the cash proceeds generated by the business were kept in a safe, Ms. Naomi Lau said that she did not remember having seen a safe inside the premises and was not shown one.²²⁴ In cross-examination, having been reminded that in a record of interview she had been shown another version of the minutes of the meeting²²⁵, in which it was stated that during the meeting, “Shi and He opened the branch’s safe, which contained a large amount of cash”, Ms. Naomi Lau said that she did not recall such events.²²⁶

(ii) Ms. Anthea Han

333. For her part, Ms. Anthea Han said in her evidence-in-chief that she had seen a safe inside the premises. It was about 2’ x 2’. At the request of some of the participants in the meeting it had been opened, but she did not see inside the safe. On the other hand, she acknowledged that in a record of interview, dated 17 May 2012, she said she had seen inside the safe and said, as to the amount of money in the safe, “...not too much”. She added, “...there was really not much cash in the safe.”²²⁷ Having been shown the minutes of unknown provenance of the same meeting in which it was stated that, “Shi and He opened the branch’s safe, which contained a large amount of cash” Ms. Anthea Han said that she could not recall seeing a large amount of cash in the safe.²²⁸

(iii) Mr. Michael Cheung

334. In his evidence in cross-examination, Mr. Michael Cheung said repeatedly that he could not recall whether the various matters described in the KPMG minutes had been discussed.²²⁹ In answer to a question from Member Mr. Johnny Chan, as to whether or not he had seen a safe

²²⁴ Transcript 10 February 2023, page 165. Transcript 23 March 2023, page 18.

²²⁵ Exhibits Bundle 16, pages 12061-12067 at page 12064.

²²⁶ Transcript 23 March 2023, page 162.

²²⁷ Witness Evidence Bundle H1; pages 6132-6194, counter #s 505-516 and 570.

²²⁸ Transcript 9 May 2023, page 104.

²²⁹ Transcript 21 April 2023, pages 38-41.

in the premises, Mr. Cheung said that based on his memory, “I remember I didn’t see any safe box during the interview.”²³⁰ He gave a similar answer in reply to whether or not he had seen a large amount of cash on the premises. In cross-examination, having been shown the minutes of unknown provenance of the meeting²³¹, he repeatedly said that he could not recall the events there described, including the description of Mr. Shi and Mr. He opening the safe, which was found to contain a large amount of cash.

The whereabouts of the cash in/out records and computer

335. In cross-examination, Ms. Naomi Lau acknowledged that the assertion attributed to Mr. He Zhi, stipulated in brackets in the text of the minutes, that the computer used to compile the cash ledger in the Dehong branch, “...was taken by Mr. Li Han Chun” was inconsistent with the assertion made immediately afterwards that all records and ledgers, “...including the computer” had been “sent” to Mr. Li Han Chun. Ms. Naomi Lau explained that what was said at the meeting was just, “No computer at the Dehong office.”²³² She said that, “...in the meeting, they only say the records go to Beijing office. They did not really say to Li Han Chun or who.” The stipulation of Mr. Li Han Chun was not one made at the meeting, “...this is the additional information subsequent.” Mr. He Zhi had not identified Mr. Li Han Chun at the meeting. She said, “...someone say it is Li Han Chun. So I typed.” She was the person who added the information contained in the brackets.²³³

“Fake” logging permits

336. In her evidence-in-chief, Ms. Naomi Lau acknowledged that in her record of interview, dated 27 February 2012, she had said of the meeting of 16 February 2011 that Mr. Zhang Hongyu “...mentioned that some logging permits were fake”. In her evidence, Ms. Naomi Lau explained that the statement by Mr. Zhang came in the face of her persistent questions about logging permits. She described Mr. Zhang as being, “rather pissed off”. That was the context in which he had said that the logging permits were fake. Ms. Naomi Lau said that she had not documented Mr. Zhang’s statement in the minutes. She had not done so, “...because it’s not really-no, this is a real fact or just they want to end the topic. Don’t ask again.”²³⁴

337. In cross-examination, Ms. Naomi Lau explained that she had not made a note of Mr.

²³⁰ Transcript 21 April 2023, page 42.

²³¹ Exhibits Bundle 16, pages 12061-12067 at 12064.

²³² Transcript 12 April 2023, page 43

²³³ Transcript 12 April 2023, page 45.

²³⁴ Transcript 23 March 2023, pages 48-49.

Zhang's statement in the minutes, "Because I cannot confirm it is true statement or not; I cannot do any further investigation."

CHAPTER 6

Expert evidence-Mr. Frank Li

338. Mr. Frank Li, a partner of Fangda Partners, was called as an expert witness by the Presenting Officer in respect of opinions expressed by Fangda Partners in three separate areas, namely:

- (i) the verification of Forestry Rights Certificates in the Yunnan and Sichuan Provinces of the People’s Republic of China (“PRC”);²³⁵
- (ii) the role and recognition of Notaries Public of the PRC in the PRC and the practice and significance of engaging local Notaries Public for the performance of verification work in (i);²³⁶
- (iii) business licence searches conducted in the Yunnan and Sichuan Provinces of the PRC²³⁷, and a related supplemental opinion²³⁸.

Engagement letter: SFC and Peter Yuen & Associates-4 June 2013

339. By an Engagement Letter, dated 4 June 2013, Peter Yuen & Associates, acting in association with Fangda Partners (“Peter Yuen”), agreed to provide “legal services in connection with the verification and notarisation of Forestry Certificates in China” to the Securities and Futures Commission.²³⁹ Mr. Frank Li said that Peter Yuen & Associates changed its name to Fangda Partners on 1 December 2018.²⁴⁰ Peter Yuen agreed to engage the services of Beijing H & F Information Consultants Limited (“H & F”) in the verification process in respect of:²⁴¹

- (i) the authenticity of 51 Forestry Certificates issued by local forestry authorities in Sichuan and Yunnan and the information contained therein (**the “51 Certificates”**);²⁴² and

²³⁵ Expert Evidence Bundle 1A; Tab 1, pages 1-30.

²³⁶ Expert Evidence Bundle 4A; Tab 20, pages 2094-2098.

²³⁷ Expert Evidence Bundle 4A; Tab 24, pages 2340-2383.

²³⁸ Expert Evidence Bundle 4B; Tab 35, pages 2682-2707.

²³⁹ Expert Evidence Bundle 13B, pages 9299-9304.

²⁴⁰ Email to the SFC, dated 17 December 2023.

²⁴¹ Expert Evidence Bundle 13B, page 9300.

²⁴² Exhibits Bundle 26, page 19948: The copies of the 51 Forestry Rights Certificates were provided to the Commission by UBS in a reply, dated 28 February 2011, to a Notice of the Commission, dated 21 February 2011.

- (ii) the information in the two lists of Forestry Certificates issued by the local forestry authorities to Kunming Ultra Big Forestry Resource Development Co. Ltd. and Chengdu Yishang Forestry Resource Development Co Ltd in Sichuan and Yunnan Provinces.²⁴³

340. Further, Peter Yuen agreed to engage, "...local notary officer(s), and local agent company as may be requested by the notary officers from time to time, on your behalf to attend the verification process and to issue a notary certificate at the end of the verification process to confirm the fact that the verification process has duly taken place". Also, it was agreed that Peter Yuen would work with H & F, "...to perform the verification process and reporting the findings and conclusions of the verification process...and if necessary, to give evidence in Hong Kong court to explain how the verification is undertaken and its findings and conclusions, and to confirm the process does not violate any PRC laws and regulations."²⁴⁴

Fangda Partners: Four opinions

341. Four written opinions, signed in the name of Fangda Partners were adduced into evidence:

- (i) an opinion, dated 6 August 2015, *inter alia* on the subject of the verification of the 51 Forestry Rights Certificates, described earlier;²⁴⁵
- (ii) an opinion, dated 11 September 2015, addressed: (a) the role, and recognition of Notaries Public practice; and (b) the practice and significance of engaging Notaries Public in the verification process in Yunnan and Sichuan;²⁴⁶
- (iii) an opinion, dated 5 May 2016, addressed the issue of the search of business licences in Yunnan Province and Sichuan Province;²⁴⁷ and
- (iv) a supplemental opinion on the search of business licences in Yunnan Province and Sichuan Province, dated 19 January 2017.²⁴⁸

342. Of the practice in the Mainland, Mr. Frank Li said that it was "...common practice for us to sign the firm's name for the legal opinion to be used in a jurisdiction where signing in the firm's name is generally accepted."²⁴⁹

²⁴³ Unused material; the two lists of forestry certificates were provided to the Commission in a letter from Orrick, dated 26 February 2013 and related to forestry certificates "as at June 2012".

²⁴⁴ Expert Evidence Bundle 13B, pages 9300-9301.

²⁴⁵ Expert Evidence Bundle 1A, pages 1-320.

²⁴⁶ Expert Evidence Bundle 4A, pages 2094-2339.

²⁴⁷ Expert Evidence Bundle 4A, pages 2340-2681.

²⁴⁸ Expert Evidence Bundle 4B, pages 2682-2824.

²⁴⁹ Transcript 15 May 2023, page 56.

343. Of the opinion, dated 11 September 2015, in respect of the role, practice and significance of a Notary Public, in particular in respect of the verification process, Mr. Frank Li said that he had not signed the report, but nevertheless he agreed with the opinions expressed as to the relevant law in the PRC.²⁵⁰ Mr. Frank Li said that before he agreed to be an expert witness, he had read the three opinions, dated 6 August 2015, 11 September 2015 and 5 May 2016, with which opinions he agreed.²⁵¹ He had reviewed and signed off the supplemental opinion on the search of business licences in Yunnan Province and Sichuan Province, dated 19 January 2017.²⁵²

Opinion: verification of the 51 Forestry Rights Certificates

Scope of the work

344. Of the scope of the work performed in respect of the verification of the 51 Forestry Rights Certificates, the opinion dated 6 August 2015 noted that it included:²⁵³

- verifying the authenticity of the 51 Forestry Rights Certificates and the information contained therein with local forestry authorities, eight in Yunnan and five in Sichuan; and
- making enquiries of forestry departments as to whether ‘Logging Permits’ could be issued to a party other than the owner of:
 - (a) property rights for forest lands;
 - (b) usage rights for forest lands;
 - (c) property rights for forests or wood; and
 - (d) usage rights for forests or wood.

Further, that in performing that work: H & F²⁵⁴

- (i) ... prepared a written investigation report recording the actual verification results...;
- (ii) ...engaged public notaries in Sichuan and Yunnan to witness the performance of the Verification Work and to thereafter issue three sets of notary certificates confirming that the Verification Work took place and describing the manner in which the Verification Work was conducted;

²⁵⁰ Transcript 15 May 2023, page 56.

²⁵¹ Transcript 21 June 2023, page 56.

²⁵² Transcript 15 May 2023, page 170.

²⁵³ Expert Evidence Bundle 1A; page 4, paragraph 4(a).

²⁵⁴ Expert Evidence Bundle 1A; page 5, paragraph 4(b).

(iii) at the request of the local notary offices, also engaged local law firms...to conduct the Verification Work together with H & F.

345. The opinion went on to state that:²⁵⁵

Ms. Guo Jingwen, a legal assistant of Fangda Partners, was assigned to personally and fully participate in the Verification Work in the PRC and to report to the SFC whenever necessary regarding the verification results and the problems encountered during the Verification Work. It is expected that the said legal staff will give evidence in the Courts of Hong Kong if and when required (including giving evidence with respect to the verification process, and the conclusions reached in relation to the Verification Work).

Opinion: Notaries Public

(i) Qualifications of the Notaries Public engaged for the work

346. In the opinion in respect of the role, significance and practice of Notaries Public in the PRC it was noted that, "...the Public Notary Office comprises of individual notaries and is supervised and guided by the Ministry of Justice of the PRC and local judicial authorities."²⁵⁶ *Article 18 of the Notarization Law of the PRC*, which came into effect on 1 March 2006, stipulated a range of requirements to be met for qualification as a Notary Public.

347. The opinion stated that the Notaries Public engaged for the verification process met those requirements and were native speakers of Putonghua, in which language the work was performed. Further, it was asserted that those Notaries Public were independent third parties to the work performed, as required by Article 41 and were obliged, pursuant to Articles 23 and 41 of the Notarization Law, to ensure the truthfulness of their notary certificates and assume responsibility for that work.²⁵⁷

(ii) The weight to be given to notary public certificates

348. Of the weight to be given to notarisation, it was stated that, "considerable weight is given to notarization in the PRC." Of the relevant law, it was asserted that²⁵⁸:

²⁵⁵ Expert Evidence Bundle 1A; page 5, paragraph 4(c).

²⁵⁶ Expert Evidence Bundle 4A; page 2095, paragraph 3.

²⁵⁷ Expert Evidence Bundle 4A; page 2097, paragraph 9.

²⁵⁸ Expert Evidence Bundle 4A; page 2097, paragraph 10.

- (a) *Article 36 of the Notarization Law* provided that, “a notarized civil act, fact or document of legal significance shall be taken as the basis of establishing the facts (i.e. the notary certificate shall be considered as evidence of the facts) in the PRC, *except where there is strong evidence indicating the contrary*”;
- (b) *Article 69 of the Civil Procedure Law* provided that “the People’s Court shall take that acts, facts or documents notarized under the statutory procedures (being the procedures stipulated in the Notarization Law of the PRC) as the basis for deciding the facts, *unless there is any evidence to the contrary which suffices to overturn the notarization*”; [italics added] and
- (c) *Article 9(6) of Some Provisions of the Supreme People’s Court on Evidence in Civil Procedures* provided that, “in lawsuits in the PRC, notarized facts that are recorded in a notary certificate do not need to be proven by way of presenting evidence by the parties, *except where there is evidence indicating the contrary.*” [Italics added.]

349. In the result, the opinion was expressed that:²⁵⁹

“Therefore, in the absence of any credible evidence indicating the contrary, evidence from the Notaries Public for the Verification Work (by way of a notary certificate setting out the events which he/she had witnessed in the PRC) should be recognised generally in the PRC and would be admissible as evidence in Chinese court proceedings. Furthermore, they should carry considerable weight with the Chinese courts in terms of its truths and accuracy.”

350. Of the role and practice of Notaries Public engaged in this case, Mr. Frank Li said in evidence:²⁶⁰

“The presence of the notary public is to witness the performance of the verification work and to confirm the verification work actually took place in describing the manner how the verification work was conducted.”

351. Of the weight to be given to their notarisation, he went on to say:²⁶¹

²⁵⁹ Expert Evidence Bundle 4A; page 2098, paragraph 11.

²⁶⁰ Transcript 15 May 2023, page 52.

²⁶¹ *Ibid.*

“...it’s a common practice for parties to engage a notary public to issue notarised evidence in Mainland China and the statement containing such notarised evidence is rarely challenged in the legal proceedings.”

The verification of the authenticity of the 51 Forestry Rights Certificates

352. At the outset of the opinion in respect of the verification of the authenticity of the 51 Forestry Rights Certificates, the ambit of the opinion provided was described. It included:²⁶²

- (a) the relevant laws and regulations relating to forestry rights certificates;
- (b) the 4 types of forestry rights ownership;
- (c) the requirements for registration;
- (d) the general circumstances surrounding the enquiries and verification;
- (e) the verification process and difficulties encountered; and
- (f) the status of superseded or cancelled Forestry Rights Certificates.

353. In addition, the subject of the issuance of Forestry Logging Permits and the verification of their authenticity was addressed.

Forestry Rights Certificates

354. By a notice, effective 18 April 2000, the State Forestry Administration prescribed that Forestry Rights Certificates be issued in a standardised form. The State Forestry Administration issued ‘New Notice’ prescribing a new form in which Forestry Rights Certificates were to be issued, effective from 28 September 2004.²⁶³

Forestry Rights Certificates: the four types of forestry rights ownership

355. Pursuant to Articles 3 and 4 of the *Administrative Provisions for the Register of Forests, Wood and Forest Lands* (“Administrative Provisions”), promulgated by the State Forestry Administration, only an owner of the “property rights” or an owner of the “usage rights” of forest lands or forests or woods are entitled to apply for a Forestry Rights Certificate. That gives rise to four sets of ownership rights, namely in respect of:²⁶⁴

- (a) the property rights for forest lands;

²⁶² Expert Evidence Bundle 1A; page 2, paragraph 1.

²⁶³ Expert Evidence Bundle 1A; pages 7-8, paragraphs 10-11.

²⁶⁴ Expert Evidence Bundle 1A; pages 8-9, paragraphs 12-13.

- (b) the usage rights for forest lands;
- (c) the property rights for forests or wood; and
- (d) the usage rights for forests or wood.

Registration and issuance of Forestry Certificates

356. *Article 11 of the Administrative Provisions* set out the requirements for applications for the registration of Forestry Rights Certificates, including the provision of accurate information as to:

- location;
- borders;
- forestry category; and
- area.

The whole range of information required in the certificate was set out in the draft certificate.

357. The opinion stated that, in practice, Forestry Rights Certificates are generally issued by Forestry Bureau at county level, authenticity being evidenced by the impression of the official seal of the forestry bureau affixed to the certificate in the box entitled, 'Department of Filing Certificates'.²⁶⁵

Enquiries and verification in respect of forestry rights certificates

358. *Article 18 of the Administrative Provisions* required that the Forestry Bureau, issuing the certificate, was to develop a system of records. *Article 20*, provided that those records be made available to the public on request. However, it was noted in the opinion that, at the time of the Verification Work:²⁶⁶

“...the PRC has not yet established a nationwide system or organization for the verification of, and the enquiry service for, Forestry Rights Certificates.”

²⁶⁵ Expert Evidence Bundle 1A; page 16, paragraph 27.

²⁶⁶ Expert Evidence Bundle 1A; page 17, paragraph 30.

It was observed that, in consequence, in seeking verification of the Forestry Rights Certificates in Sichuan and Yunnan, it proved necessary, "...to make direct enquiries with the local forestry bureau which issued the relevant Forestry Rights Certificates."²⁶⁷ Further, it was noted that:²⁶⁸

"As between the various forestry bureaus, different standards and protocols are adopted in respect of the verification of, and the disclosure of information regarding, Forestry Rights Certificates."

The verification work

359. The opinion noted that the persons engaged in the verification work in respect of the 51 Forestry Rights Certificates and the spreadsheets, "...physically attended the Yunnan and Sichuan provinces and visited a total of 13 forestry bureaus at the county level."²⁶⁹ Ms. Guo Jingwen, an employee of Fangda Partners, a representative of H & F, Notaries Public and a representative of law firms, respectively local to either Yunnan (Mr. Zhou Shengquan of Yunnan Jingmao Law Firm) or Sichuan (Ms. Yang Yan of Sichuan Kangyue Law Firm), were present at each of those visits.

360. The opinion went on to note that:²⁷⁰

The final results of the Verification Work have been recorded in the annexed "Yunnan Forestry Rights Certificates Verification Report" and the "Sichuan Forestry Rights Certificates Verification Report" issued by H & F, as well as in the respective notary certificates.

Statutory declaration of Ms. Guo Jingwen

361. In a Statutory Declaration, dated 2 April 2015, made by Ms. Guo Jingwen in Washington, District of Columbia, United States of America, documentation relating to the verification work was exhibited, including:²⁷¹

(a) the H & F Yunnan Forestry Rights Certificates Verification Report, dated 12 November 2013, and its annexures ("Exhibit A");²⁷²

²⁶⁷ Expert Evidence Bundle 1A; pages 17-18, paragraph 31.

²⁶⁸ Expert Evidence Bundle 1A; page 18, paragraph 32.

²⁶⁹ Expert Evidence Bundle 1A; page 18, paragraph 34.

²⁷⁰ Expert Evidence Bundle 1A; page 28, paragraph 57.

²⁷¹ Expert Evidence Bundle 1B, pages 321-322.

²⁷² Expert Evidence Bundle 1B, pages 456-713.

- (b) Yunnan Notary Certificates (#s 5158-5165 Yun Qu Zhu Jiang Yuan Zheng Zi), dated 25 June 2013-4 July 2013, and their annexures (“Exhibit B”),²⁷³
- (c) the H & F Sichuan Forestry Rights Certificates Verification Report, dated 20 July 2014, and its annexures (“Exhibit C”);²⁷⁴
- (d) Sichuan Notary Certificates (#s 16960-16965 Cheng Zheng Nei Min Zi (2013), dated 25 December 2013 and their annexures (“Exhibit D”);²⁷⁵
- (e) Sichuan Notary Certificates (#s 2445-2450 Cheng Zheng Nei Min Zi (2014), dated 11 March 2014, and their annexures (“Exhibit E”)²⁷⁶; and
- (f) Transcripts of the voice recordings of meetings with Forestry Bureau officers that resulted in the issue of the Sichuan Notary Certificates, Exhibit D (“Exhibit F”).²⁷⁷

362. Ms. Guo said that she had attended all of the visits to the thirteen different Forestry Bureaux, commencing in Yunnan on 25 June 2013 and concluding in Sichuan on 30 August 2013. For her part, she provided an account of each of those visits.²⁷⁸

363. Although, as noted earlier, it was envisaged that in participating in the verification work, Ms. Guo would be available, if necessary, to give evidence in Hong Kong, Mr. Frank Li testified that Ms. Guo had left the employment of Fangda Partners by the time that she had made the Statutory Declaration, dated 2 April 2015.²⁷⁹ She had been contacted in 2019 and asked to give evidence in the earlier proceedings in this Tribunal. However, he understood that she had replied orally that, because of the lapse of time, she no longer wished to get involved in this matter. He said that recent attempts to contact her were unsuccessful, “she is not contactable.”²⁸⁰

Notary Certificates

(I) Yunnan-Ms. Li Songpai: Notary Certificate #s 5158-5165 (2013) Yun Qu Zhu Jiang Yuan Zheng Zi

364. Ms. Li Songpai was the notary public who certified eight notary certificates, #s 5158-

²⁷³ Expert Evidence Bundle 2, pages 714-996.

²⁷⁴ Expert Evidence Bundle 2, pages 997-1301.

²⁷⁵ Expert Evidence Bundle 3A, pages 1313-1630.

²⁷⁶ Expert Evidence Bundle 3A, pages 1631-1756.

²⁷⁷ Expert Evidence Bundle 3B, pages 1757-2090.

²⁷⁸ Expert Evidence Bundle 1B; pages 326-384, paragraphs 11-127.

²⁷⁹ Transcript 15 May 2023, page 64.

²⁸⁰ Transcript 15 May 2023, pages 64-65.

5165 (2013) Yun Qu Zhu Jiang Yuan Zheng Zi, in respect of verification work performed at eight different Forestry Bureaus in Yunnan in the overall period 25 June 2013 to 4 July 2013. Ms. Li was assisted by Assistant to Notary Che Xiongyan on five occasions and by officer Ru Fenhua on three occasions.

365. The certificates noted that on each of the occasions Mr. Zhou Shengquan, of Yunnan Jing Mao Law Firm, was present and described him as having asked the respective officials to verify the authenticity of the copy of a particular Forestry Registration Certificate (s) presented to the official. On some of the occasions, the certificate noted that verification was sought also in respect of a copy of “Breakdown of Ownership Registration” of a stipulated forest.

366. Each of the certificates stated that the matter to be notarised was: “Preservation of Evidence”. The applicant was identified as being Jing Mao Law Firm, acting through its designate Mr. Zhou Shengquan. It was noted that each of the applications had been filed on 21 June 2013. The evidence to be preserved was identified as being, “...the act and facts regarding the verification of the duplicate of a Forestry Ownership Registration Form”, and also, where appropriate, “the duplicate of a Breakdown of [a stipulated] Forest Ownership Registration”. It was stated that on each occasion, Ms. Li Songpai prepared a “*Working Record on the Preservation of Evidence*”, “in accordance with the situation at the scene.”

367. Each of the certificates, certified that:

- the act of visiting the aforesaid departments for the verification of the aforesaid duplicate (s) of the Forest Ownership Certificate (s) and, where appropriate, the Breakdown of Forest Ownership Registration of a stipulated forest by Practising Lawyer ZHOU Shengquan of Jing Mao Law Firm was true;
- that the Registration Form (s) and, where appropriate, the Breakdown of Ownership Registration of a stipulated forest, were enclosed to this Notary Certificate was the duplicate (s) verified by ZHOU Shengquan on that day; and that
- the duplicate of the “*Working Record on the Preservation of Evidence*” enclosed to this Notary Certificate is consistent with the original.

(i) *Notary Certificate # 5158- Forestry Rights Certificate (2008) No. 5108585422: Funing County*

368. The ‘*Working Record on the Preservation of Evidence*’ attached to Notary Certificate,

5158 (2013) Yun Qu Zhu Jiang Zheng Zi, dated 25 June 2013, serves to illustrate the obstacles encountered in pursuing enquiries in respect of Forestry Rights Certificates, the basis on which information was supplied and its ambit.²⁸¹

369. The Forestry Rights Certificate presented for verification was Fu Lin Zheng Zi (2008) No. 5108585422 and referred to a location at Nalai Village, Ayong Township, Funing County, Wenshan Prefecture in respect of 220,000 mu of Timber Forest.²⁸²

Working Record on the Preservation of Evidence ²⁸³

In the morning of 25 June 2013, our officers LI Songpai and CHE Xiongyan, together with Practising Lawyer ZHOU Shengquan of Jing Mao Law Firm arrived together at Funing County, Wenshan Prefecture and entered the Forest Ownership Administration Service Centre Building. ZHOU Shengquan stated the purpose of the visit to a male. The male claimed himself to be an officer of the Forest Ownership Administration Service Centre Building. Lawyer ZHOU Shengquan passed the duplicate of a set of Forest Ownership Registration Form with the number Fu Lin Zheng Zi [2008] No. 5108585422 to the officer. The officer said after looking at it that any enquiry on forest ownership information required the signature and approval of their Head of Office and, therefore, no enquiry could be entertained.

We retreated from the Forest Ownership Administration Service Centre Building and prepared to go to ask the supervisors of the Bureau of Forestry for signature before returning to make the enquiry again. Later, we arrived at the Party Administration Office, 5th Floor, Funing County Bureau of Forestry [this was because the Forest Ownership Administration Service Centre and the Bureau of Forestry were not at the same office]. We entered the office. Inside it was a male who claimed himself to be an officer of the Party Administration Office. After ZHOU Shengquan stated the purpose of the visit to him, this officer entertained us. He told us that the supervisors were all in meetings that morning. We were told to wait for a while.

About ten-odd minutes later, a male came. According to the aforesaid officer, this was Supervisor LI of the office. Supervisor LI showed us the name tag on the desk. The information on the name tag was: LI Jingyi, Title: Party Administration Office

²⁸¹ Expert Evidence Bundle 2, pages 814-818.

²⁸² Expert Evidence Bundle 2, page 812.

²⁸³ Expert Evidence Bundle 2, pages 814-816.

Supervisor. After we stated the situation to Supervisor LI, he said that he had to report that to his supervisor. After that he went to a conference room on the 5th floor, and came out about five or six minutes later.

In the office, he placed a phone call in front of us and said that he was calling an officer of the Forest Ownership Administration Service Centre to confirm whether the information on the duplicate of Forest Ownership Registration Form Fulin Zheng Zi [2008] No. 5108585422 was consistent with the information kept in the Administration Centre. The conversation lasted about three to four minutes.

After the conversation was concluded, Supervisor LI told us that the situation on the aforesaid Forest Ownership Registration Form was inconsistent with the situation registered with the Centre. For example:

- the ownership holder;
- the holder of the right of use;
- the certificate number;
- area; and
- common seal

were all inconsistent.

Supervisor LI even made a comparison between the common seal used by the Funing County Bureau of Forestry in 2008 in issuing Forest Ownership Certificates and the common seal on the duplicate of the Forest Ownership Registration Form provided by ZHOU Shengquan. The size and border thickness of the two common seals were different. A sample of the common seal used by the Funing County Bureau of Forestry in 2008 in issuing Forest Ownership Certificates was given to us.

After that we did not return to the Forest Ownership Administration Service Centre but left Funing County Bureau of Forestry together.

(Sd.) ZHOU Shengquan (Sd.) LI Songpai (Sd.) CHE Xiongyan 2013.6.25

The H & F Yunnan Forestry Rights Certificates Verification Report

370. The H & F Yunnan Forestry Rights Certificates Verification Report, dated 12 November 2013, provided another description of the events of 25 June 2013 described in

Notary Certificate #5158.²⁸⁴ Attached at Appendix 3 of that Report was the sample impression of the official seal used by Funing County Forestry Bureau in 2008 in issuing Forest Ownership Certificates provided by Mr. Li Jingyi, as described above in the Notary Certificate.²⁸⁵ As noted earlier, Mr. Li Jingyi compared that impression with the impression of the common seal affixed to the copy of the Forestry Registration Certificate, provided to him in the course of enquiries by Mr. Zhou Shengquan,²⁸⁶ concluding that they were different in size and border thickness.

371. It is to be noted that both the H & F Report and Ms. Guo Jingwen's Statutory Declaration referred to other grounds, not mentioned in the Notary Certificate, on which Mr. Li Jingyi had said that there were differences between the Forestry Rights Certificate presented by Mr. Zhou and the information available to the Funing Forestry Bureau, namely that the persons named in the Forestry Rights Certificate as being respectively the 'Handling officer' and the 'Responsible officer', namely Tao Dawei and Liang Fan, "...were not the staff of Funing County Forestry Bureau"²⁸⁷ and "...neither (person) ... is or was ever, an employee of the Funing Forestry Bureau."²⁸⁸ Furthermore, both the H & F Report²⁸⁹ and Ms. Guo Jingwen's Statutory Declaration²⁹⁰ referred to the fact that Mr. Li Jingyi provided a document entitled '*An Investigation and Verification Report on the Circulation of Forest Resources by Kunming Ultra Big Company in Nalai Village, Ayong Township, Funing County, Wenshan Prefecture.*'²⁹¹ The report is dated 21 January 2010 and refers specifically to Forestry Rights Certificate #5108585422, which it describes as, "not found".

372. Of the result of the verification, it stated "...there is no such case of transferring of forestry resources of 14,666.67 hectares in Nalai Village, Ayong Xiang, Funing County, Wenshanzhou by Kunming Ultra Big." The report provided reasons for that determination.²⁹²

- First, that "the forest land area of the Village Committee of Nalai Village, Ayong Xiang is 8,433 hectares of which the collective area (held by) individuals and the village is 4,280 hectares while (the area of) the state owned forest land is 4,153 hectares...there is a significant deviation in terms of the assignment area."

²⁸⁴ Expert Evidence Bundle 1B, pages 558-561.

²⁸⁵ Expert Evidence Bundle 1B, page 528: H & F Report.

²⁸⁶ Expert Evidence Bundle 1B, page 477.

²⁸⁷ Expert Evidence Bundle 1B, page 559: H & F Report.

²⁸⁸ Expert Evidence Bundle 1B; page 328, paragraph 13(b) of Ms. Guo Jingwen's Statutory Declaration.

²⁸⁹ Expert Evidence Bundle 1B; page 560, paragraph 3.

²⁹⁰ Expert Evidence Bundle 1B; pages 328-329, paragraph 14.

²⁹¹ Expert Evidence Bundle 1B, pages 682-683.

²⁹² *Ibid.*

- Secondly, in the context that the Forestry Rights Certificate # 5108585422 had not been found, it was noted that the “numbers of all forestry rights certificates of Ayong Xiang should start with “2810”, and... should be accompanied by the corresponding site maps which have been registered in the forestry right certificates.”
- Thirdly, “No file in relation to Kunming Ultra Big Co’s assignment of forestry resources is found after looking into all files.”

Prospectus

373.

- (i) In the Property Valuation section of the Prospectus, prepared by Greater China Appraisal Limited, dated 19 November 2009, the property described in Forestry Registration Certificate No. 5108585422, was said to be, “...a parcel of land with an area of approximately 146,666,667 square metres (approximately 14,666.67 hectares)” of Nalai Village Forest and that “...the forestry land use rights of the property are held under a Forestry Rights Certificate for a term of 30 years expiring on 24 July 2038 for forestry purpose.” The “Capital Value in Existing State as at 30 September 2009” was described as being “RMB 73,880,000.”²⁹³
- (ii) Then, it was asserted that the Company had been provided with a legal opinion that:
 - “(a) Kunming Ultra Big has obtained the forestry land use rights of the property.
 - (b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

14,666.67 ha is the equivalent of 220,000 mu described as the ‘Area’ in the Forestry Rights Certificate.

Certifications attached to the Working Record of the Preservation of Evidence

374. On several occasions the Working Record of the Preservation of Evidence, attached to a particular Notary Certificate stated that the notary public had provided a certification to those who made the enquiries.

²⁹³ Exhibits Bundle 1A, pages 424-478 at page 443.

(ii) *Notary Certificate # 5159-Forestry Registration Certificate Xi Lin Zheng Zi [2008] No. 5106934521: Xichou County*

375. The Working Record of the Preservation of Evidence stated that at the conclusion of enquiries made at the Forestry Ownership Administration Service Centre in the Xichou County Forestry Bureau Building an unidentified Supervisor, "...agreed to issue a certification to ...the Bureau of Justice of Qujing Municipality with the contents mainly being that no information on the land parcel could be found upon checking."²⁹⁴ The handwritten Certification, which was identified as Enclosure 2 of the Notary Certificate, was addressed to the Ministry of Justice of Qujing City, bore the impression of the seal of the Forestry Rights Management Service Centre of Xiqing County and was dated 25 June 2013. It stated:²⁹⁵

"(In regard to) the request for verification assistance made by your Ministry to the Forestry Rights Management Service Centre of the forestry bureau of our county (in relation to) the land numbered 05160129933 GDMSY 00014 under the Forestry Right Certificate of Xi Lin Zheng Zi [2008] No. 51306934521, after making enquiry, no information (was found) for the forest land of this Zi (certificate number)."

The copy of the Forestry Rights Certificate bore both those sets of numbers.²⁹⁶

376. Earlier in the narrative of the Working Record of the Preservation of Evidence, it was noted that, having accessed a computer in response to a request to verify the photocopy of the Forestry Rights Certificate Xi Lin Zheng Zi [2008] No. 51306934521, an officer identified only by the surname Yang stated that:²⁹⁷

"...the aforesaid duplicate was not authentic because the certificate number, common seal, area and land parcel number were all inconsistent. The number of Xichou County land parcels began with 0532623 while the number of Forest Ownership Certificates began with 23. The land parcel number and Forest Ownership Certificate number on the duplicate of the Forest Ownership Certificate provided by ZHOU Shengquan were inconsistent with (the record of) Xichou County Bureau of Forestry. In respect of the handling officer "LIU Jizhong" and the person in charge "ZHANG Xinchuan" on the duplicate, there were no such persons in the unit."

²⁹⁴ Expert Evidence Bundle 2, page 830.

²⁹⁵ Expert Evidence Bundle 2, pages 724 and 827.

²⁹⁶ Expert Evidence Bundle 2, page 825.

²⁹⁷ Expert Evidence Bundle 2, pages 828-829.

377. Furthermore, it was noted that Forest Ownership Certificates for their locality, namely Xiangpingshan “were for individuals as well as for units, but there wasn’t the Forest Ownership Certificate number on the duplicate provided by ZHOU Shengquan.”

Prospectus

378.

(i) In the Property Valuation section of the Prospectus the property described in Forestry Registration Certificate No. 5106934521, was said to be, “...a parcel of land with an area of approximately 166,666,667 square metres (approximately 16,666.67 hectares)” of Xiangpingshan Village Forest and asserted that “...the forestry land use rights of the property are held under a Forestry Rights Certificate for a term of 30 years expiring on 23 July 2038 for forestry purpose.” The “Capital Value in Existing State as at 30 September 2009” was described as being “RMB 83,950,000.”²⁹⁸

(ii) Again, it was asserted that the Company had been provided with a legal opinion that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

(iii) Notary Certificate # 5161-Forestry Registration Certificate Ma Lin Zheng Zi [2008] No. 5108543321 and No. 5108547621; Maguan County

379. The Working Record on the Preservation of Evidence noted that, at the conclusion of the enquiries made at the Maguan County Forestry Bureau, Wenshan Prefecture and at the Forest Ownership Administration Service Centre, an officer who identified himself as Zhang Xiaoyong, wrote on a copy of each of the two Forestry Registration Certificates provided to him:²⁹⁹

“(It is found) after checking that the County never issued this Forest Ownership Certificate, 2013.6.27.”

²⁹⁸ Exhibits Bundle 1A, page 440.

²⁹⁹ Expert Evidence Bundle 2, page 861.

380. It was noted that subsequently that day another officer affixed the impression of the “Common Seal of Maguan County Bureau of Forestry” to each of the copies on which the declaration had been written.

381. A copy of the two Forest Ownership Certificates, on which the declaration had been written and the impression of the common seal affixed were attached as Appendix 6 of the H & F Report.³⁰⁰ The text addressing that issue, which had been corrected by a Letter of Correction dated 26 February 2015,³⁰¹ noted that the handwritten declaration had been written by Zhang Xiaoyung, but the impression of the County seal had been affixed by another unidentified official.³⁰²

382. Earlier in the Working Record on the Preservation of Evidence it was noted that, having been provided with the two forestry registration certificates, and having accessed a computer, Mr. Zhang Xiaoyung had said:³⁰³

“...the area on the duplicates... was different from what was recorded in the Centre; that regarding the handler “LIANG Youxin” and the person in charge “LIU Ye”, there were no such persons in our unit; and that they had never issued the two aforesaid Forest Ownership Certificates either.”

Prospectus

383.

(i) In the Property Valuation section of the Prospectus, the property described in Forestry Registration Certificate No. 5108543321 and that described in Forestry Registration Certificate No. 5108547621 were said to be respectively:

- “...a parcel of land with an area of approximately 200,000,000 square metres (approximately 20,000.00 hectares)” of Wumu Village Forest,³⁰⁴ and
- “...a parcel of land with an area of approximately 146,666,667 square metres (approximately 14,666.67 hectares)” of Gesa Village Forest.³⁰⁵

³⁰⁰ Expert Evidence Bundle 1B, pages 686-691.

³⁰¹ Expert Evidence Bundle 4A; Exhibit G to the Statutory Declaration of Ms. Guo, pages 2092-2093.

³⁰² Expert Evidence Bundle 1B, pages 574-575.

³⁰³ Expert Evidence Bundle 2, pages 860-861.

³⁰⁴ Exhibits Bundle 1A, page 439.

³⁰⁵ Exhibits Bundle 1A, page 438.

(ii) Further, it was asserted in respect of each parcel of land that "...the forestry land use rights of the property are held under a Forestry Rights Certificate for a term of 30 years expiring on 22 July 2038 for forestry purpose." For the former, the "Capital Value in Existing State as at 30 September 2009" was described as being RMB100,740,000 and for the latter RMB 73,800,000.

(iii) Again, it was asserted that the Company had been provided with a legal opinion that:

"(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate."

(iv) Notary Certificate # 5165-Forestry Registration Certificate Shuang Zheng Lin Zheng Zi [2008] No. 5300076398: Shuangjiang County

384. The Working Record on the Preservation of Evidence noted that, at the conclusion of the enquiries made on 4 July 2013 at the Shuangjiang County Forest Ownership Transfer Service Centre in respect of Forestry Registration Certificate Shuang Zheng Lin Zheng Zi [2008] No. 5300076398, Supervisor Dong directed the production of a copy of Forest Ownership Certificate Shuang Zheng Lin Zheng [2005] No. 5300076398 on which, " 'Shuangjiang County Bureau of Forestry, 2013.7.3' was signed and a common seal was also affixed and it was passed to Zhou Shengquan."³⁰⁶ Copies of each of the documents were attached to the Notary Certificate as Enclosures 1 and 2.³⁰⁷

385. It is to be noted that, earlier in the record, the Working Record on the Preservation of Evidence stated that after he had examined the photocopy of the Forestry Registration Certificate provided to the Bureau, Supervisor Dong said, "...this company [Kunming Ultra Big Forestry Resource Development Co. Ltd] was never heard of."³⁰⁸ Subsequently, he asserted that, "the Unit never issued this Forest Ownership Certificate."³⁰⁹

386. Forest Registration Certificate Shuang Zheng Lin Zheng Zi [2005] No. 5300076398 asserted on its face that it was issued on 19 August 2005 and that the owner of the Forest land

³⁰⁶ Expert Evidence Bundle 2, page 996.

³⁰⁷ Expert Evidence Bundle 2, pages 801-804 and 988-993.

³⁰⁸ Expert Evidence Bundle 2, page 995.

³⁰⁹ Expert Evidence Bundle 2, page 996.

land-use rights, Forest or Forest wood ownership and Forest or Forest wood land-use rights was Shuangjiang Diya Investment Management Co. Ltd. The Location, Area and Timber type stipulated in both Forestry Registration Certificates were the same, namely Bangbing Township, Mengmeng Town, and 130,000 mu of Yunnan pine. However, the Expiry Date for use was different, namely 18 August 2055 for the certificate in the name of Shuangjiang Diya Investment Management Co. Ltd., whereas it was stipulated to be 12 April 2038 for the certificate in the name of Kunming Ultra Big.

H & F Report

387. The H & F Report also described the circumstances in which handwriting was added to the impression of the County seal affixed to Forest Registration Certificate Shuang Zheng Lin Zheng Zi [2005] No. 5300076398³¹⁰, a copy of which was attached as Appendix 8 of the Report.³¹¹

Prospectus

388.

(i) In the Property Valuation section of the Prospectus the property described in Forestry Registration Certificate No. 5300076398, was said to be, "...a parcel of land with an area of approximately 86,666,667 square metres (approximately 8,666.67 hectares)" of Mang'an Forest, Shuangjiang County and that "...the forestry land use rights of the property are held under a Forestry Rights Certificate for a term of 30 years expiring on 12 April 2038 for forestry purpose." The "Capital Value in Existing State as at 30 September 2009" was described as being "RMB 43,360,000."³¹²

(ii) Again, it was asserted that the Company had been provided with a legal opinion that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

³¹⁰ Expert Evidence Bundle 1B, page 611.

³¹¹ Expert Evidence Bundle 1B, pages 541-542 and 699-700.

³¹² Exhibits Bundle 1A, page 435.

Other Notary Certificates without Certification

(v) Notary Certificate #5163:10 Forestry Registration Certificates: Mangshi

389. In the Working Record on the Preservation of Evidence in respect of Notary Certificate #5163, it was noted that on 2 July 2013 no less than ten Forestry Registration Certificates were presented to the officials at the Forest Ownership Administration Service Centre of Mang Municipality, Dehong Prefecture. The prefix before each unique set of numerals was “Lu Lin Zheng Zi No.”³¹³ The record noted that, having looked at the ten Forestry Registration Certificates, an officer named Yin informed those seeking the verification of the authenticity of the certificates that:³¹⁴

- the common seal on the aforesaid duplicates was inconsistent with theirs;
- that the name of the common seal on the Forest Ownership Certificates issued by the Bureau of Forestry was: “Bureau of Forestry, Luxi Municipality People’s Government”; and
- that for the person in charge “MA Hongshan” and the handling officer “XU Pei” on the duplicates, there were no such persons in the Unit.

H & F Report

390. Under the heading ‘Summary of verification procedures’ the H & F Report provided more details of the observations made by Mr. Yin on his examination of the ten Forestry Registration Certificates. However, first it was explained that the name Luxishi had been changed to Mangshi with effect from 12 July 2010. As a result, verification work of Forestry Rights Certificates issued by the forestry bureau of Luxishi and Mangshi were conducted at Mangshi Forestry Bureau Management Service Centre.³¹⁵

391. Of the verification process, it was noted that Mr. Yin said:³¹⁶

- the certificate numbers on the photocopies of the Mangshi forestry rights certificates are wrong. The reason is that there should only be 5 digits in the forestry

³¹³ The ten FRCs were numbered: (i) 5300075323; (ii) 5300075324; (iii) 5300075327; (iv) 5300075333; (v) 5300075338; (vi) 5300075340; (vii) 5300075403; (viii) 5300075412; (ix) 5300075414; and (x) 5300075432.

³¹⁴ Expert Evidence Bundle 1B, page 965.

³¹⁵ Expert Evidence Bundle 1B, page 592.

³¹⁶ Expert Evidence Bundle 1B, pages 596-597.

right certificate number, but there are 10 digits in the certificate numbers of the photocopies of the Mangshi Forestry Right Certificates;

- the number of mu marked on the photocopies of the Mangshi Forestry Right Certificates are larger than the actual number of mu;
- the handling person Xu Pei and Ma Hongshan as recorded on 4 of the photocopies of Mangshi Forestry Rights Certificates are not the staff of Yunnan Province, Mangshi Forestry Right Management Service Centre;
- the official seal affixed to the photocopies of the Mangshi Forestry Right Certificates does not match with:
 - (i) the actual (official seal);
 - (ii) with the name shown on the official seal (affixed to) the forestry right certificate presented to us by Mr. Yin being the “Forestry Bureau of the People’s Government of Luxi City”.

Ms. Guo’s Statutory Declaration

392. In her Statutory Declaration, Ms. Guo confirmed the explanation given by Mr. Yin of the five digit numbers assigned to a Forestry Rights Certificate by that bureau and said that Mr. Yin explained that the “...size of the forest land as stated on the copy Certificates was larger than the actual size of the forest land.” Of Xu Pei and Ma Hongshan, she noted that Mr. Yin said that neither “...is, or ever was, an employee of Mang City Forestry Bureau Forestry Rights Management and Service Centre.”³¹⁷

393. Ms. Guo confirmed that Mr. Yin said the official seal applied to Forestry Rights Certificates by that bureau stated, “The Forestry Bureau of the People’s Government of Luxi City”, instead of the text of the seal impression affixed to the ten Forestry Registration Certificates, namely “The Forestry Bureau of Luxi County, Dehong Dai and Jingpo Autonomous Region.”³¹⁸

*(vi) Notary Certificate #5164-Forestry Registration Certificate Liang Lin Zheng Zi [2008]
No. 5301075300: Lianghe County*

394. In the Working Record on the Preservation of Evidence in respect of Notary Certificate

³¹⁷ Expert Evidence Bundle 1B; pages 348-349, paragraphs 53(a)-(c).

³¹⁸ Expert Evidence Bundle 1B; pages 348-349, paragraph 53(d).

#5164, it was noted that on 3 July 2013 a copy of Forest Registration Certificate No. 5301075300 was presented to an officer for verification as to authenticity at the Forest Ownership Administration Office of the Lianghe County Bureau of Forestry, Dehong Prefecture. The copy of the Certificate stated that the Area of forest over which Kunming Ultra Big enjoyed various rights of use and ownership was 200,000 mu in Mangxuan Village, Mengyang Township and bore the impression of a stamp, “Lianghe County Bureau of Forestry, Dehong Dai and Jingpo Autonomous Region”. The record stated that an unidentified female, who claimed to be an officer, examined the copy of the document and informed those seeking verification that.³¹⁹

- it was impossible for the villages in Lianghe County to have such a large plot of forest land;
- the expiry date of the Forest Ownership Certificates issued by the County was 31 December 2078, but the date on the aforesaid duplicate was 11 April 2038;
- the name of the handling person and the person in charge on the duplicate was inconsistent with the names on Forest Ownership Certificates issued by the County in 2008;
 - the handling person on the Forest Ownership Certificates issued by the County in 2008 was their supervisor but that on the duplicate was, “XIA Shan”;
 - the person in charge of the Unit was Head of Office YANG but that on the duplicate was, “GUAN Yong”;
- the number of the Forest Ownership Certificates of Lianghe County began with *B*, whilst the duplicate began with *A*;³²⁰
- the common seal on the Forest Ownership Certificates issued by the County was “Lianghe County Bureau of Forestry”;

395. The record went on to note that, having accessed a computer, the unidentified female said that:

³¹⁹ Expert Evidence Bundle 2, pages 979-980.

³²⁰ Expert Evidence Bundle 2, pages 795 and 976.

- she had entered the forest ownership system on the computer to enquire about the aforesaid Forest Ownership Certificate number but there was no Forest Ownership Certificate number as that on the duplicate.

Prospectus

396.

- (i) It is to be noted that the ten parcels of land addressed in Notary Certificate # 5163 and the single parcel of land addressed in Notary Certificate #5164 were considered together, namely as 11 parcels of land, in the Property Valuation section of the Prospectus. The property was described as located at Luxi Forest, Dehongzhou, Yunnan Province and said to be:³²¹

“11 parcels of land with total area of approximately 506,666,667 square metres (approximately 50,666.67 hectares).

The major tree species on the property are birch, beech, Yunnan pine and Chinese fir.

The forestry land use rights of the property are held under 11 sets of Forestry Right Certificate for 30 years with the latest term expiring on 11 April 2038 for forestry purpose.”

- (ii) Of the valuation of the property, it was asserted that its “Capital Value in Existing State as at 30 September 2009” was “RMB 253,030,000”.
- (iii) Details of all 11 of the Forestry Rights Certificates, together with the related “Forestry Land Area” for each of them, expressed in square metres, and what was asserted to be the “Forestry Land Use Rights Expiry Date” was set out in a table.
- (iv) Once again, it was asserted that the company had been provided with a legal opinion that:
- “(a) Kunming Ultra Big has obtained the forestry land use rights of the property.
- (b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

³²¹ Exhibits Bundle 1A, page 436.

(vii) Notary Certificate #5160-Forestry Rights Certificate Ma Lin Zheng Zi [2008] No. 5101254965, Malipo County

397. The Working Record on the Preservation of Evidence of Notary Public certificate number 5160 stated that on 26 June 2013 a copy of a Forest Registration Certificate number 5101254965 was presented by Mr. Zhou to an officer named Cao at the Forest Ownership Administration Service Centre in Malipo County, Wenshan Prefecture.³²² Having made enquiries by telephone, Ms. Cao said that:

- there were no such persons within their office as the persons described in the certificate as the Handling officer, Lin Dan, and the Person-in-charge, Chao Ting;
- the seal used on the certificate made reference to Wenshan Prefecture, whereas the seal used by their office made no such reference.

398. Another officer, Huang, said that the Forest Registration Certificates in Malipo County began with the numerical prefix 24, not the prefix 51 as on the certificate. Also, the whole forest area in the Yangpizhai village was not as large as the 350,000 mu stipulated in the certificate. In the afternoon, yet another officer, Supervisor Gan said that their office had not issued that forest registration certificate.

Ms. Guo's Statutory Declaration

399. Ms. Guo confirmed the information received from Ms. Huang as to the numerical prefix of the first two digits on the certificates issued by Malipo County Forestry Bureau and the information from Ms. Cao as to the status of Lin Dan and Chao Ting, the difference in the seal of their office and the impression of the seal on the Forestry Rights Certificate. Also, that Mr. Gan confirmed that the certificate had not been issued by Malipo Forestry Bureau. She said that Ms. Cao and Ms. Huang said that information as to “Linban” (林班) and “Xiaoban” (小班) were missing on the Forestry Rights Certificate.³²³ It is to be noted that the boxes on the form that provide for a description of the compartment and sub-compartment of the stipulated ‘Small area’ have been left blank.³²⁴

³²² Expert Evidence Bundle 2, pages 843-847.

³²³ Expert Evidence Bundle 1B, pages 334-337.

³²⁴ Expert Evidence Bundle 1B, pages 506 and 660.

H & F Report

400. The H & F Report broadly confirmed the information reported as having been received in Ms. Guo's statutory declaration and in the Notary Public certificate. Of the issue of the claimed area of forest stipulated in the Forestry Rights Certificate, namely 350,000 mu, the H and F report said that Ms. Huang said that all the area of Yangpizhai village was only 10,000 mu.

Prospectus

401.

(i) In the 'Property Valuation' section of the Prospectus, the property described in Forestry Registration Certificate number 5101254965 was said to be forest, mainly Chinese fir, of approximately 233,333,333 m², approximately 23,333.33 hectares, in size, held under a Forestry Rights Certificate for a term of 30 years, expiring on 22 July 2038. The 'Capital Value in Existing State as at 30 September 2009' was described as being RMB 117,530,000.³²⁵

(ii) It was asserted that the Company had been provided with a legal opinion that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

(viii) Notary Certificate #5162-Forestry Rights Certificate Yan Lin Zheng Zi [2008] No. 5104421365, Yanshan County

402. The Working Record on the Preservation of Evidence of Notary Public certificate number 5162 stated that on the afternoon of 27 June 2013 a copy of a Forest Registration Certificate number 5104421365 was presented by Mr. Zhou to an officer named Deng Zaixing at the Administration Service Centre of the Yanshan Forestry Bureau. He said that it was impossible to have an area as large as that stipulated in the certificate, namely 160,000 mu. Further, that there were no such persons in the Yanshan County Bureau of Forestry as the persons named in the certificate as 'Handler', namely Wang Long, and the one named as 'Person-in-charge', namely Liang Guo. Subsequently, an unidentified officer confirmed the

³²⁵ Exhibits Bundle 1A, page 441.

statement as to the Handler and person in charge and added that the impression of the seal on the certificate was different from the seal used by the Forestry Bureau, in that it stated, in addition, in the title “Wenshan Prefecture.”³²⁶

Ms. Guo’s Statutory Declaration

403. Ms. Guo confirmed the information received from Mr. Deng Zaixing as to the seal used by Yanshan Forestry Bureau on the forestry registration certificate and as to the persons named as Handler and Person-in-charge. In addition, she said that Mr. Deng also said that there was no record of the certificate having been issued by Yanshan Forestry Bureau, no forestry rights certificates had been issued to Kunming Ultra Big, that the claim that the trees in the forest was Cedar was incorrect, they being not suitable for planting in Chebaini village.³²⁷

H & F Report

404. The H & F Report confirmed that Mr. Deng had said that the seal impression on the forestry registration certificate was different from that used by the Forestry Bureau, in that the description of Wenshan Prefecture was added. Of Wang Long and Liang Guo, the corrected version of the report stated that they were not staff members of the Forestry Bureau Administration Service Centre of Yanshan County, Wenshan Zhuang and Miao Autonomous Prefecture.³²⁸

Prospectus

405.

(i) In the ‘Property Valuation’ section of the Prospectus, the property described in Forestry Registration Certificate number 5104421365 was said to be forest, mainly Chinese fir, of approximately 106,666, 667 m², approximately 10,666.67 hectares in size, held under a Forestry Rights Certificate for a term of 30 years, expiring on 23 July 2038. The ‘Capital Value in Existing State as at 30 September 2009’ was described as being RMB 53,730,000.³²⁹

(ii) It was asserted that the Company had been provided with a legal opinion that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

³²⁶ Expert Evidence Bundle 2, pages 901-905.

³²⁷ Expert Evidence Bundle 1B, pages 342-346.

³²⁸ Expert Evidence Bundle 4A, pages 2092-2093.

³²⁹ Exhibits Bundle 1A, page 442.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

Notary Certificates

(II) Sichuan

406. Mr. Gao Heng, a notary public of the Chengdu Notary Office, certified two sets of 6 Notary Certificates in respect of verification work performed at five different Forestry Bureaux in Sichuan Province in the overall period 26 to 30 August 2013:

- (i) Notary Certificate #s 16960-16965 Cheng Zheng Nei Min Zi (2013), dated 25 December 2013,³³⁰
- (ii) Notary Certificate #s 2445-2450 Cheng Zheng Nei Min Zi (2014), dated 11 March 2014.³³¹

407. The certificates noted that on each of the occasions Ms. Yang Yan, the designate of Sichuan Kangyue Law Firm, was present and described her as having asked the respective officials to verify the authenticity of the copy of a particular forestry registration certificate (s) presented to the officials and also the authenticity of a copy of a “Breakdown of Forestry Right Certificate Registration” of a stipulated Forest. It was noted that, by applications dated 25 August 2013, Sichuan Kangyue Law Firm sought the preservation of evidence of that verification exercise.

Notary Certificate #s 16960-16965 Cheng Zheng Nei Min Zi (2013)

408. Each of the notary certificate #s 16960-16965 Cheng Zheng Nei Min Zi (2013) noted that the respective meetings with officials at the various forestry bureau had been audio recorded by Mr. Gao Heng and his assistant Liu Rui, which recording had been burned on to compact discs. Each certificate stated that it was certified that: ³³²

- the audio contents of the compact disc... were consistent with the actual situation;
- the duplicates of the Forestry Right Certificates...and the set of Breakdown of Forestry Right Certificate Registration (of the particular County) were consistent with the actual situation;

³³⁰ Expert Evidence Bundle 3A, pages 1431-1630.

³³¹ Expert Evidence Bundle 3A, pages 1687-1756.

³³² Expert Evidence Bundle 3A, page 1435.

and were enclosed with the Notary Certificate.

409. In addition, enclosed with Notary Certificate #16961, in respect of a verification exercise conducted on 29 August 2013 at the Meigu County Forestry Bureau, was said to be a seal image which had been provided to Ms. Yang Yan by an officer Rao, after she had printed it off from the computer of the Law and Order Administration Team of the Public Security Bureau.³³³

Notary Certificate #s 2445-2450 Cheng Zheng Nei Min Zi (2014)

410. Each of the Notary Certificate #s 2445-2450 certified that a photocopy of each of the notary certificates, in the series 16960-16965, and the related “On-site record” were consistent with the original. So, for example, notary certificate #2445 referred to the earlier notary certificate #16960 and to the On-site record of the verification exercise at Yingjing County Forestry Bureau.³³⁴ As the title suggested, the On-site record purported to be a record of events at each of the respective Forestry Bureau from the time the party arrived until they left.

Ms. Guo Jingwen’s Statutory Declaration

411. In her statutory declaration, Ms. Guo said that, at the outset of the verification exercise in Sichuan, Mr. Gao Heng had instructed his assistant Mr. Liu Rui to make audio recordings of the ensuing conversations. She noted that the original CD copy made of those recordings was sealed and annexed to the original of each notary certificate as stated in the certificates and was Exhibit D to her statutory declaration. She said that a copy of the transcript of the voice recordings had been prepared, although she did not state by whom the transcript was prepared.³³⁵ As noted earlier, the transcript is Exhibit F of her Statutory Declaration.

Ms. Li Cissy’s witness statement

412. It having become apparent during the hearing that the sealed envelopes containing the CDs of the audio recording of the Sichuan enquiries had remained sealed and not checked against the transcript, at the request of the Tribunal, the Commission directed one of its officers, Ms. Li Cissy, to open the sealed envelopes, listen to their contents and compare the audio recording with the transcript referred to by Ms. Guo Jingwen. In the result, a witness statement of Ms. Li, dated 18 October 2023, to which was attached an amended transcript of what she

³³³ Expert Evidence Bundle 3B, pages 1470-1475.

³³⁴ Expert Evidence Bundle 3A, pages 1676-1689.

³³⁵ Expert Evidence Bundle 1B; pages 385-386, paragraphs 130-131.

was able to discern on the audio recording was filed with the Tribunal³³⁶. In her witness statement, she noted that, although she had made amendments to the transcript, the original transcript was, "...materially accurate" and "...substantially reflect" the contents of the conversations.

(i) Notary Certificates #16965 (2013) and #2450 (2014): Jinkouhe District

413. Notary Certificates #16965 (2013) and #2450 (2014) provide a description of the verification exercise conducted at the Jinkouhe Forestry Bureau, Le shan City in the afternoon of 26 August 2013. The On-site Record stated that, having been presented by Mr. Gao Heng with photocopies of 7 Forestry Registration Certificates³³⁷, all of which stated on their face that they were issued in respect of locations in Jinkouhe District on 24 March 2008, and having inspected those documents, Director ZHANG said that:³³⁸

- the handling persons on the photocopies of the Forest Right Certificates were incorrect, that QU Yang was not an officer of the Forestry Bureau; and that
- although MING Hongjiang was an officer of the Forestry Bureau, he was not the person in charge and had no authority to sign at the "Person In Charge" column
- the chop on the photocopies of the five Forest Right Certificates Jin Lin Zheng Zi [2008]: #00099; #00116; #00126"; #00148 and #00161, all showed the obvious mistake of putting down "Jinkouhe District" as "Jinhekou District".

414. In those chop impressions on the five Forestry Registration Certificates identified by Director Zhang the sequence of the characters is: Gold; River; and Mouth. By contrast, for example, in certificate #00139 the sequence of the characters is: Gold; Mouth; and River.³³⁹

415. The On-site Record noted:³⁴⁰

- "Director ZHANG, therefore, confirmed that the photocopies of the Forest Right Certificates provided by Lawyer YANG Yan were not the Forest Right Certificates issued by the Forestry Bureau of Jinkouhe District."

³³⁶ Supplementary Exhibits Bundle, Exhibit 14.

³³⁷ Jin Lin Zheng Zi [2008] #00139; #00153; #00126; #00148; #00116; #00161; and #00099.

³³⁸ Expert Evidence Bundle 3A, page 1751.

³³⁹ Expert Evidence Bundle 3A, page 1411.

³⁴⁰ Expert Evidence Bundle 3A, page 1752.

Ms. Guo Jingwen's Statutory Declaration

416. In her statutory declaration, Ms. Guo provided more detail of what Ms. Zhang had reported.³⁴¹

- Qu Yang, described as the handling officer in certificate #s 00139; 00153; and 00099 was not an employee of Jinkouhe District Forestry Bureau;
- Ming Hongjiang, described as the person-in-charge in certificate #s 00139; 00153; and 00099, was neither the actual responsible officer nor was he authorised to sign on those 3 certificates.
- Neither Wang Mingqi nor Zhao Zhengjun, described respectively as the Handling officer and the Responsible officer in certificate #s 00116; 00126; 00148; and 00161 is or ever was, an employee of Jinkouhe District Forestry Bureau.

The Prospectus

417. In the Property Valuation section of the Prospectus under the heading Valuation Certificate, the seven Forestry Rights Certificates, namely Jin Lin Zheng Zi [2008]: #00139; #00153; #00126; #00148; #00116; #00161; and #00099, presented by Ms. Yang Yan to Director Zhang at the Jinkouhe Forestry Bureau, Le shan City in the afternoon of 26 August 2013 were each addressed separately on different pages of the Prospectus.³⁴²

418. In respect of each of the seven Certificates, statements were made as to the Area of the parcel of land in various Village Forests in Jinkouhe District and its respective 'Capital Value in Existing State as at 30 September 2009':³⁴³

#00099-approximately 16.75 ha-RMB 50,000

#00161-approximately 2666.67 ha-RMB 13,240,000

#00116-approximately 511.07 ha-RMB 2,510,000

#00126-approximately 333.33 ha-RMB 1,620,000

#00148-approximately 970 ha-RMB 4,750,000

#00139-approximately 100 ha-RMB 490,000

³⁴¹ Expert Evidence Bundle 1B; page 363, paragraphs 78 (a)-(c).

³⁴² Exhibits Bundle 1A, pages 452-453 and 455-459.

³⁴³ Exhibits Bundle 1A, pages 452-453 and 455-459.

#00153-approximately 778.73 ha-RMB 3,840,000.

419. In respect of each parcel of land it was asserted that, “The forestry land use rights of the property are held under a Forestry Rights Certificate...”. In the related ‘Notes’, reference was made to the respective specific Forestry Rights Certificate number and it was asserted that:

“The forestry land use rights of the property are held by Kunming Ultra Big for a term of [number of years specified] expiring on [date specified] for forestry purpose.”

420. Finally, it was asserted that the Company had been provided with a legal opinion to the effect that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

(ii) Notary Certificates #16961 (2013) and #2446 (2014): Meigu County

421. Notary Certificates #16961 (2013) and #2446 (2014) provide a description of the verification exercise conducted on the morning of 29 August 2013 at the Meigu County Forestry Bureau in which enquiries were made as to the authenticity of the photocopies of Forestry Rights Certificates, namely: Mei Fu Lin Zheng Zi [2008] #3650357; #3650390; and #3650395. The first of those certificates was dated 24 March 2008 and the other two certificates dated 25 March 2008.

422. The On-site Record noted that when the photocopies of the three Forestry Registration Certificates were presented to police officer Rao, police number 089980, in the office of the Law and Order Team of the Public Security Bureau, Meigu County, having accessed a computer, she printed out a document which she said displayed the “code on the chop used by the Forestry Bureau during the corresponding period”, namely 2008. Of that, she said the code on the chop used by the Forestry Bureau:³⁴⁴

“...only had 3 “0”s but the corresponding digits of the code of the chop of the Forestry Bureau on the photocopies of the Forest Rights Certificates provided by Lawyer YANG Yan had four “0”s, which was inconsistent with the result of the computer inquiry.”

423. The Notary Certificate certified that the document printed out by officer Rao, on which

³⁴⁴ Expert Evidence Bundle 3A, pages 1703-1704.

she had made a declaration and affixed a stamp, was enclosed with the notary certificate.³⁴⁵

H & F Report

424. In the description in the H & F Report of the verification exercise conducted at Meigu County Forest Bureau on 29 August 2013, the circumstances in which officer Rao printed out the document was set out in the document attached as Annex 5.³⁴⁶ The hand written declaration on the document states:³⁴⁷

“After checking the Seal Security Administration Management System of Sichuan Province, our team found that the stamp had been paid for use (delivered for use?) since 18 January 2007 and was removed from the system on 25 March 2011.”

The Prospectus

425. In the Property Valuation section of the Prospectus, under the heading Valuation Certificate, the three Forestry Rights Certificates, namely: Mei Fu Lin Zheng Zi [2008] #3650357; #3650390; and #3650395 presented to officer Rao on 26 August 2013 were each addressed separately on different pages of the Prospectus.³⁴⁸ In respect of each of the three certificates, assertions were made as to the Area of the parcel of land and its respective ‘Capital Value in Existing State as at 30 September 2009’:

#3650395-approximately 186.93 ha-RMB 920,000

#3650390-approximately 88 ha-RMB 430,000

#3650357-approximately 338.27 ha-RMB 1,660,000.

426. In respect of each parcel of land it was asserted that, “The forestry land use rights of the property are held under a Forestry Rights Certificate...”. In the related *Notes*, reference was made to the specific Forestry Rights Certificate number and it was asserted that:

“...forestry land use rights of the property are held by Kunming Ultra Big for a term of [number of years specified] expiring on [date specified] for forestry purpose.”

427. Finally, it was asserted that the Company had been provided with a legal opinion to the effect that:

³⁴⁵ Expert Evidence Bundle 3A, pages 1694-1695.

³⁴⁶ Expert Evidence Bundle 2, pages 1159-1160.

³⁴⁷ Expert Evidence Bundle 2, pages 1107 and 1299.

³⁴⁸ Exhibit Bundle 1A, pages 444-446.

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

(iii) Notary Certificates #16960 (2013) and #2445 (2014): Yingjing County

428. The On-site record³⁴⁹ attached to notary certificate #2445 noted that on the morning of 26 August 2013 enquiries were made by Ms. Yang Yan at the Yingjing County Forestry Bureau in respect of six Forestry Rights Certificates.³⁵⁰ However, having been informed that “ a report of suspected false registration has already been made” and that the “Public Security Bureau is already involved in the investigation”, it was noted Ms. Yang Yan was advised that no information could be provided until the conclusion of the criminal investigation.

(iv) Notary Certificates #16962 (2013); and (v) #16963 (2013); and #2447 (2014) and #2448 (2014): E’bian County

429. The On-site Record³⁵¹ attached to notary certificate #2447 noted that on the morning of 27 August 2013 enquiries were made by Ms. Yang Yan at the E’bian County Forestry Bureau photocopies of those Forestry Rights Certificates³⁵², “a female surname Wang said that the handling person Zhang Jinsong and the person in charge Hu Yachiu.... had left the E’bian County Forestry Bureau long before such certificates were issued”. Further, Ms. Wang went on to say that “...there probably was something wrong with some of the information on these photocopies of the Forest Right Certificates.”

430. It is to be noted that all ten of the certificates were dated 25 March 2008 and Zhang Jinsong and Hu Yachiu respectively stipulated to be the Handling officer and the Person-in-charge.

The Prospectus

431. In the Property Valuation section of the Prospectus under the heading Valuation Certificate, the 10 Forestry Rights Certificates presented by Ms. Yang Yan to Ms. Wang on the morning of 27 August 2013 were each addressed. Assertions were made as to the Area of the

³⁴⁹ Expert Evidence Bundle 3A, page 1683.

³⁵⁰ Expert Evidence Bundle 3A, pages 1438-1468: Certificates Ying Lin Zheng Zi [2008] #5100970009; #5100996173; #5100996184; #5100996179; #5100996187; and #5100996251.

³⁵¹ Expert Evidence Bundle 3A, pages 1715-1716.

³⁵² Expert Evidence Bundle 3A, pages 1530-1568. Certificates E Lin Zheng Zi [2008] #5104316093; #5104316092; #5104316087; #5104316115; #5104316119; #5104316081; #5104299346; #5104316050; #5104316083; and #5104316176.

parcel of land and its respective ‘Capital Value in Existing State as at 30 September 2009’.³⁵³

#5104316093-approximately 107.47 ha-RMB 520,000

#5104316092-approximately 136.67 ha-RMB 660,000

#5104316087-approximately 149.76 ha-RMB 720,000

#5104316115-approximately 69.20 ha-RMB 340,000

#5104316119-approximately 833.33 ha-RMB 4,080,000

#5104316081-approximately 145.33 ha-RMB 710,000

#5104299346-approximately 79.75 ha-RMB 150,000

#5104316050

#5104316083...together approximately 45.47 ha-RMB 220,000

#5104316176-approximately 1385.83 ha-RMB 6,890, 000.

It was asserted that the “forestry land use rights of the property are held under a Forestry Rights Certificate.”

432. In the related *Notes*, reference was made to the specific Forestry Rights Certificate number and it was asserted that:

“...forestry land use rights of the property are held by Kunming Ultra Big for a term of [number of years specified] expiring on [date specified] for forestry purpose.”

433. Finally, it was asserted that the Company had been provided with a legal opinion to the effect that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

(vi) *Notary Certificate #16964 (2013) and #2449 (2014): Mabian Yi Autonomous County*

434. The On-site Record³⁵⁴ attached to notary certificate #2449 (2014) described enquiries made on the morning of 30 August 2013 by Ms. Yang Yan of several officials at the Forestry

³⁵³ Exhibits Bundle 1A; pages 447-451, 454, 462 and 464-465.

³⁵⁴ Expert Evidence Bundle 3A, pages 1737-1741.

Bureau of Mabian County in respect of two Forestry Rights Certificates, namely Ma Lin Zheng Zi #[2008] #5547³⁵⁵ and #5529³⁵⁶. Both of the certificates were dated 24 March 2008 and stated that the Handling Officer and the Person-in-charge were respectively Li Cun Xiang and Feng Lin.

435. The On-site record stated that, having perused the photocopies of the two Forestry Rights Certificates, an official surnamed Tang said:³⁵⁷

“The handling persons and persons in charge were not of ours, and the areas were not right either. We have changed the chop a few times. (I am) not sure of the authenticity of the chop, but authentic chops all have a code.”

436. Having examined the two photocopies, an official surnamed Yuan said:

- the location and village name of the Forest Right Certificate... 5547 were incorrect;
- there wasn't the village Meizikan;
- the parcel land number is incorrect; and also
- in '08 the number of the Forest Right Certificates had 5 digits and they started with 'Mabian Lin Zheng Zi';
- during that period it was unlikely for there to be printed ones...they were all completed manually.

437. It was noted that, in the result, Yuan concluded that those Forest Rights Certificates “were forged.”³⁵⁸

438. It is to be noted that the Forest Rights Certificate #5547 described the location of the parcel of land as “Meizikan village” and the name of the “Small area” as being Meizikan.

The Prospectus

439. In the Property Valuation section of the Prospectus under the heading Valuation Certificate the two Forestry rights certificates were addressed separately and descriptions given of the Area of the parcels of land and ‘Capital Value in Existing State as at 30 September

³⁵⁵ Expert Evidence Bundle 3A, pages 1589-1592.

³⁵⁶ Expert Evidence Bundle 3A, pages 1585-1588.

³⁵⁷ Expert Evidence Bundle 3A, pages 1737-1738.

³⁵⁸ Expert Evidence Bundle 3A, page 1738.

2009'.³⁵⁹

#5547-approximately 69.33 ha-RMB 340,000

#5529-approximately 600 ha-RMB 2,950,000.

440. It was asserted that the “forestry land use rights of the property are held under a Forestry Rights Certificate.”

441. In the related *Notes*, reference was made to the specific Forestry Rights Certificate number and it was asserted that:

“...forestry land use rights of the property are held by Kunming Ultra Big for a term of [number of years specified] expiring on [date specified] for forestry purpose.”

442. Finally, it was asserted that the Company had been provided with a legal opinion to the effect that:

“(a) Kunming Ultra Big has obtained the forestry land use rights of the property.

(b) Kunming Ultra Big has the right to occupy and use the property within the term of forestry land use rights as stated in the respective Forestry Rights Certificate.”

Forestry assets: an overview

443. In the Business section of the Prospectus under the heading, ‘OUR FORESTRY ASSETS’, an Overview was provided:³⁶⁰

“As at 30 June 2009, we owned forests covering a gross area of approximately 171,780 hectares of forests located mostly in Yunnan and Sichuan Provinces, which includes the Yunnan Luxi/Shuangjiang Forest we acquired in March 2008 and the Yunnan Wenshan Forest we acquired in July 2008.

The Yunnan Luxi/Shuangjiang Forest consists of naturally regenerated and plantation forests and has an area of approximately 59,333 hectares. The consideration for acquiring this forest has been fully settled.

The Yunnan Wenshan Forest is plantation forests and has an area of approximately 100,000 hectares. The total consideration for acquiring this forest is RMB551.6 million. As at the Latest Practicable Date, approximately RMB508.29 million has been paid for

³⁵⁹ Exhibits Bundle 1A, pages 460-461.

³⁶⁰ Exhibits Bundle 1A, page 180.

this acquisition and the unpaid balance plus interests accrued thereon amounted to approximately RMB103.4 million, of which RMB65.2 million will be settled with proceeds from the Second Share Purchase Agreement while the remaining RMB38.2 million will be settled with the Group's internal resources. Although the total purchase price of this forest has not been fully settled, its forestry rights have already been transferred to us as a matter of PRC law, and *we have already obtained its relevant forestry right certificates.*

Therefore we now own the forest trees and the usage rights of the forest trees and forest land, in respect of both the Yunnan Luxi/Shuangjiang Forest and the Yunnan Wenshan Forest.” [Italics and paragraphs added.]

444. Subsequently, the Prospectus asserted:³⁶¹

- All of our forests in Sichuan have been duly registered and have the relevant forestry right certificates...

For each of our forests in Sichuan, we own the forest trees, the rights to use the forest land and the rights to use the trees. Our rights are evidenced in the relevant forestry right certificates and are protected under the PRC Forestry Law.”

- “For all our Yunnan forests, we have obtained the relevant forestry right certificates and own the trees, the rights to use the forest land and the rights to use the trees.”

³⁶¹ Exhibits Bundle 1A, pages 191 and 193.

CHAPTER 7

Expert evidence: Mr. Frank Li-Business licences

445. In an opinion, dated 5 May 2016, Fangda Partners noted that, as instructed by Peter Yuen & Associates, acting for the SFC they had engaged other legal firms in Yunnan and Sichuan:³⁶²

“...to make enquiries with the relevant Administration of Industry and Commerce (“AIC”) offices to ascertain whether certain businesses (set out in Exhibits B, C and E...) have been registered with the AIC and to verify the business licences purportedly issued for the said businesses (copies of which are set out in Exhibits A and D) (together referred to as the “**Verification Work**”).

446. The documents set out in those exhibits had been provided by the SFC and were:³⁶³

Exhibit A: copies of ten business licences with respect to businesses that appear to be in Yunnan Province;³⁶⁴

Exhibit B: a copy of a spreadsheet summarising those details;³⁶⁵

Exhibit C: a copy of a spreadsheet setting out the details of nine businesses that appear to be in Yunnan Province and bear similar names to those set out in Exhibit B;³⁶⁶

Exhibit D: copies of eight business licences with respect to businesses that appear to be in Sichuan Province;³⁶⁷ and

Exhibit E: a copy of a spreadsheet summarising the details of 11 business names (eight of which are the businesses mentioned in Exhibit D) in Sichuan Province.³⁶⁸

447. Beijing Dacheng (Kunming) Law Offices and Sichuan Tongxing Law Office were engaged by Fangda Partners to conduct the verification work. A statement from the former law firm, dated 17 September 2015, in respect of verification work in Yunnan Province was exhibited to the Fangda Partners opinion as Exhibit F.³⁶⁹ A statement from Sichuan Tongxing

³⁶² Expert Evidence Bundle 4A; page 2341, paragraph 2(a).

³⁶³ Expert Evidence Bundle 4A; page 2342, paragraph 5.

³⁶⁴ Expert Evidence Bundle 4A, pages 2384-2405.

³⁶⁵ Expert Evidence Bundle 4A, pages 2406-2410.

³⁶⁶ Expert Evidence Bundle 4A, pages 2411-2416.

³⁶⁷ Expert Evidence Bundle 4A, pages 2426-2434.

³⁶⁸ Expert Evidence Bundle 4A, pages 2435-2439.

³⁶⁹ Expert Evidence Bundle 4B, pages 2440-2535.

Law Office, dated 20 January 2016, was exhibited as Exhibit G.³⁷⁰

Verification work: Yunnan

448. The statement of Beijing Dacheng (Kunming) Law Offices described enquiries having been made at the Mangshi AIC, Dehong Prefecture as to whether the businesses existed in the period 1 January 2008 to 31 December 2010.³⁷¹ In the first enquiries, in respect of the ten names listed in Exhibit B, only one of the businesses, Mangshi Fengping Dewang Wood Co. Ltd was “found” in the Registration system. The other nine names were absent from the Registration system, namely:³⁷²

- [i] Luxi City Dewang Wood Processing Factory;
- [ii] Luxi Taixiang Wood Processing Factory;
- [iii] Lingyun Wood Processing Factory;
- [iv] Dehong Prefecture Yichangda Wood Processing Factory;
- [v] Huakai Wood Processing Factory;
- [vi] Senbao Wood Processing Factory;
- [vii] Dezhong Wood Processing Factory;
- [viii] Luxi City Shunxing Wood Processing Factory; and
- [ix] Luxi Yongfu Wood Processing Factory

449. Given that those nine individually owned businesses all had business licence registration numbers that began with numbers other than “533”, which was the prefix of registration number for all business licences in Dehong Prefecture, it was asserted that they had not been registered with the Mangshi AIC system.³⁷³

450. The second batch of enquiries, made in respect of the nine names listed in Exhibit C, resulted in the names of the four of the businesses being found in the Mang City AIC Registration system, namely:³⁷⁴

- #1 Mangshi Dezhong Wood Processing Factory;
- #4 Luxi City Shunxing Wood Processing Factory;
- #7 Mangshi Yongfu Wood Products Processing Factory; and

³⁷⁰ Expert Evidence Bundle 4B, pages 2536-2608.

³⁷¹ Expert Evidence Bundle 4B, page 2488.

³⁷² Expert Evidence Bundle 4B, page 2489.

³⁷³ Expert Evidence Bundle 4B, page 2489.

³⁷⁴ Expert Evidence Bundle 4B, page 2490.

#9 Mangshi Yichangda Timber Business Limited Company.

451. The names of the other five businesses were absent:

#2 Xuzhou Dezhong Wood Processing Factory;

#3 Luxi City Shunxing Wood Processing;

#5 Mangshi Yongfu Wood Products Processing;

#6 Mangshi Yongfu Wooden Product Processing Factory; and

#8 Guilin City Yongfu Wood Processing Factory.

452. In the opinion of Fangda Partners, it was noted that the purported addresses of the nine businesses fell within "...the jurisdiction of Mang City AIC and they ought to be registered with the Mang City AIC."³⁷⁵ In the absence of anything to suggest that they had been registered, the opinion was advanced that it appeared that they, together with five other businesses:³⁷⁶

"...have never existed as AIC registered businesses with the Mang City AIC, nor have they ever been registered with the Mang City AIC as individual businesses, as portrayed in the business licences and spreadsheets in Exhibits A, B and C."³⁷⁷

453. In the context of the evidence that business licences issued in the Dehong Prefecture should start with the number "533", Fangda Partners expressed the opinion that:³⁷⁸

"Given that the business registration numbers of the business licences for items no. 1 to 9 in... Exhibit A do not start with the number "533", it is likely that those licences are fabricated."

454. On the other hand, Fangda Partners noted that *the Provisions on Administration of Enterprise Name Registration*³⁷⁹ required that the name of a business, "...shall start with the name of the province, city or county in which the business is located." On that basis, it was suggested that the business names Xuzhou Dezhong Wood Processing Factory and Guilin City Yongfu Wood Processing Factory, if genuine businesses, fell within the jurisdiction of the AIC Registration system in those respective cities, namely Xuzhou in Jiangsu Province and Guilin

³⁷⁵ Expert Evidence Bundle 4A; page 2351, paragraph 21.

³⁷⁶ Xuzhou Dezhong Wood Processing Factory; Luxi City Shunxing Wood Processing; Mangshi Yongfu Wood Products Processing; Mangshi Yongfu Wooden Product Processing Factory; Guilin City Yongfu Wood Processing Factory.

³⁷⁷ Expert Evidence Bundle 4A; page 2351, paragraph 22.

³⁷⁸ Expert Evidence Bundle 4A; page 2352, paragraph 23.

³⁷⁹ Article 7.

City in Guangxi Zhuang Autonomous Region, rather than Mang City.³⁸⁰ The search was in the wrong place.

455. Further, the opinion noted that two of the names, for which no registration was found, appeared to be incomplete names for which there were complete names in respect of businesses found to be registered:³⁸¹

- (i) Luxi City Shunxing Wood Processing Factory was likely the same business as Mangshi Shunxing Wood Processing Factory, formerly known as Luxi City Shunxing Wood Processing Factory, which was found to have existed as an individual business.
- (ii) Mangshi Yongfu Wooden Product Processing Factory was likely the same business as Mangshi Yongfu Final Wooden Product Processing Factory, which was found to have existed as an individual business.

Verification work: Sichuan

456. The statement of Sichuan Tongxing Law Office, dated 20 January 2016, signed by Ms. Liu Manlu described enquiries that had been made of the Yingjing Administration of Industry and Commerce in Ya'an, Sichuan in February and August 2015 in respect of the 11 businesses listed in Exhibit E.³⁸²

457. The result of those enquiries was that three of the businesses were found to have been registered as individually owned businesses, but that their registration had been cancelled.³⁸³ No registration record was found in respect of eight of the businesses.³⁸⁴ Four sole proprietorships were identified, bearing an identical or similar name to a business name for which no registration was found.

(i) *Date of 3 cancelled registrations:*³⁸⁵

- No details-Yingjing County Minsheng Wood Processing Factory [registration no. 5131233705424];

³⁸⁰ Expert Evidence Bundle 4A; page 2372, paragraph 20(b).

³⁸¹ Expert Evidence Bundle 4A; pages 2373-2374.

³⁸² Expert Evidence Bundle 4A, pages 2438-2439.

³⁸³ Expert Evidence Bundle 4B, page 2571.

³⁸⁴ Expert Evidence Bundle 4B, page 2571.

³⁸⁵ Expert Evidence Bundle 4B, pages 2569 and 2594.

- 25 August 2014-Yingjing County Fuli Furniture Factory [registration no. 513123600041113]; and
- No details-Yingjing County Qinglong Xiang Wood Processing Factory [registration no. 5131233705657].

(ii) *Date of approval of cancellation of the business licence:*³⁸⁶

- 2 June 2009-Yingjing County Minsheng Wood Processing Factory; and
- 28 April 2009-Yingjing County Qinglong Xiang Wood Processing Factory.

(iii) *Businesses (8) not registered*³⁸⁷

1. [b]Yingjing County Luohuiyin Wood Processing Factory [no registration # provided];
2. Yingjing Yaoshi Wood Co. Ltd. [registration no. 5131233703790];
3. Yingjing County Xinnan Wood Processing Factory [registration no. 5131233705513];
4. Yingjing County Xinqu Wood Processing Factory [registration no. 5131233701042];
5. Yingjing County Sankai District Wood Processing Factory [registration no. 5131233701337];
6. Yingjing County Anjing Wood Processing Factory [registration no. 5131233705134];
7. [a]Yingjing County Fuli Blockboard Processing Factory [registration no. 5131233773370]; and
8. [b]Yingjing Qinglong Wood Processing Factory [registration no. 51312300004718].

*Sole proprietorships with identical or similar names to names for which no registration was found*³⁸⁸

458. The statement went on to identify four sole proprietorship businesses with names

³⁸⁶ Expert Evidence Bundle 4B, pages 2596-2599.

³⁸⁷ Expert Evidence Bundle 4B, pages 2571-2572 and 2588-2592.

³⁸⁸ Expert Evidence Bundle 4B, page 2572.

identical or similar to names for which no registration was found:³⁸⁹

- Yingjing County Luohuiyin Wood Processing Factory [registration no. 513123000005010];
- Yingjing County Yaos Timber Business [registration no. 513123000004898];
- Yingjing County Xinnan Wood Processing Factory [registration no. 513123000005157]; and
- Yingjing Qinglong Wood Processing Factory [registration no. 513123000004718].

459. It is to be noted that only the registration number for Yingjing Qinglong Wood Processing Factory is the same in both sets of four names.

Fangda Partners

Yingjing County Qinglongxiang Wood Processing Factory

(i) registration no. 5131233705657;

(ii) registration no. 5131233703124.

460. In their opinion, Fangda Partners noted that “the business registration number of Yingjing Qinglongjiang Wood Processing Factory provided by the Yingjing AIC (5131233705657) is different from the business registration number of the business with the same name as set out in Exhibits D and E and in item number 8(a) in paragraph 24 above (5131233703124).”³⁹⁰ Verification work established that the business with the former registration number was established “on 29 November 2005 and deregistered on 28 April 2009”, whereas the effective date of the licence for the latter business registration number was “from 5 July 2006 to 3 July 2010”.³⁹¹ Clearly, the dates overlapped. Having noted that Ms. Liu had said that it was impossible for two different businesses with the same business name to have different registration numbers at the same time, Fangda Partners concluded:³⁹²

“It is therefore likely that... registration number 5131233703124 has never existed and its purported licence in Exhibit D is not genuine.”

461. Of the eight businesses, set out above, for which there was no record of registration

³⁸⁹ Expert Evidence Bundle 4B, pages 2601-2608.

³⁹⁰ Expert Evidence Bundle 4A; page 2378, paragraph 25(a).

³⁹¹ Expert Evidence Bundle 4A; page 2379, paragraph 25(a).

³⁹² Expert Evidence Bundle 4A; page 2379, paragraph 25(a).

with Yingjing AIC, Fangada Partners expressed the opinion that:³⁹³

“...it appears that those businesses have never existed as registered individual businesses... with the Yingjing AIC, as portrayed in the business licences and spreadsheets in Exhibits D and E.”

462. In light of Ms. Liu’s verification work, and having regard to the fact that the purported business licences were stipulated as being “individual businesses”, whereas there was no record of registration of a number of such “individual businesses” with Yingjing AIC, Fangada Partners expressed the opinion that the following businesses, “...are unlikely to be genuine”:³⁹⁴

- Yingjing County Yao’s Timber Business;
- Yingjing County New District Wood Processing Factory;
- Yingjing County Xinnan Wood Processing Factory;
- Yingjing County Sankai District Wood Processing Factory;
- Yingjing County Anjing Wood Processing Factory;
- Yingjing County Fuli Blockboard Processing Factory.

³⁹³ Expert Evidence Bundle 4A; page 2382, paragraph 27.

³⁹⁴ Expert Evidence Bundle 4A; pages 2382-2383, paragraph 29.

CHAPTER 8

Expert evidence-Ms. Winnie Pao

463. The Tribunal received the evidence of Ms Winnie Pao as an expert witness. She submitted two written opinions: (i) 1 March 2018 (90 pages of narrative and 57 pages of Appendices) and (ii) 8 August 2019 (11 pages of narrative and 23 pages of Appendices and attachments).

Curriculum vitae

464. The relevant salient features of Ms Pao's curriculum vitae are: 1980-MBA University of Chicago. 1981-1988 BankAmerica Trust Co. (HK) Limited-head of Investment Management Group. 1991-2001 Director/Founding Partner Worldsec Ltd.-stockbroking, Asian equities. 2001-2007 Executive Director, Hospital Authority-Provident Fund Scheme. 2008-2010 Senior Investment Advisor, Private Banking DBS (HK) Ltd. 2012-2014: Non-Executive Director, Sectoral Asset Management, Director of Fund Management firm. 2001 onwards-trustee Tsui On Provident and Retirement Scheme.

465. Ms. Pao has given expert evidence in other proceedings before this Tribunal as to whether market misconduct had taken place in relation to specified listed securities, namely in relation to:

- (i) the listed securities of *Greencool Technology Holdings Limited*, in respect of the disclosure of false or misleading information, contrary to section 277 of the Ordinance;
- (ii) the listed securities of *Mayer Holdings Limited*, in respect of whether certain information constituted inside information as defined in section 307A of the Ordinance: and
- (iii) the listed securities of *Tianhe Chemicals Group Limited* in respect of the disclosure of false or misleading information, contrary to section 277 of the Ordinance.

Ms. Pao submitted expert reports and gave oral evidence in respect of the proceedings in *Greencool Technology and Mayer Holdings and an expert report in respect of the proceedings in Tianhe Chemicals*.

466. In her first report Ms. Pao addressed a series of questions posed of her by the Commission:

(1.) Specific information

Whether the information identified by the Commission, taken individually, collectively or in any combination was specific information, in the sense of possessing sufficient particularity of being identified, defined and unequivocally expressed, about China Forestry or its listed securities?³⁹⁵

(2.) Who were accustomed or would be likely to deal in the shares?

During the period from 1 December 2010 to 13 January 2011, who were accustomed or would be likely, to deal in the shares of China Forestry?³⁹⁶

(3.) Generally known?

During the period from 1 December 2010 to 13 January 2011, was the specific information identified in question (1) generally known to those persons identified in question (2)?³⁹⁷

(4.) Would it have affected the price of shares?

Had the specific information identified in question (1) been generally known to who were accustomed or would be likely, to deal in the shares of China Forestry [question (2)] at any time during the period from 1 December 2010 to 13 January 2011, would it have affected the price of shares of China Forestry? If so, how and to what extent?³⁹⁸

(5.) Prospectus-information likely induce investors or potential investors to subscribe?

Whether the information identified by the Commission as disclosed in the Prospectus taken individually, collectively or in any combination would likely induce investors or potential investors to subscribe for any shares of China Forestry at its listing?³⁹⁹

(6.) Prospectus and 2009 Annual Results-would information likely induce the sale or purchase or maintain, increase, reduce or stabilise the price of China Forestry shares in April 2010? If so, to what extent would the share price be affected at the time of the issuance of the (i) 2009 Annual Results; (ii) 2009 Annual Report?⁴⁰⁰

³⁹⁵ Expert Evidence Bundle 16; page 11161, paragraph 4.1.

³⁹⁶ Expert Evidence Bundle 16; page 11162, paragraph 4.2.

³⁹⁷ Expert Evidence Bundle 16; page 11162, paragraph 4.3.

³⁹⁸ Expert Evidence Bundle 16; page 11162, paragraph 4.4.

³⁹⁹ Expert Evidence Bundle 16; pages 11163-11164, paragraph 4.5.

⁴⁰⁰ Expert Evidence Bundle 16; pages 11164-11165, paragraph 4.6.

Whether the information identified by the Commission in question (5) as disclosed in the Prospectus, together with information identified by the Commission as disclosed in the 2009 Annual Results as to:

- (a) the group's revenue, profit and turnover generating activities;
- (b) the value, existence and nature of the group's assets;

taken singly, collectively or in any combination would likely:

- (i) induce the sale or purchase in Hong Kong of China Forestry's shares by investors or potential investors; or
- (ii) maintain, increase, reduce or stabilise the price of China Forestry shares in Hong Kong?

If so, how and to what extent would the share price of China Forestry shares be affected at around the time of the issuance of:

- the Annual Results announcement for FY 2009 (i.e. 26 April 2010)?
- the Annual Report (i.e. 30 April 2010)?

(7.) *Prospectus, 2009 Annual Results and 2010 Interim Results-would information likely induce the sale or purchase or maintain, increase, reduce or stabilise the price of China Forestry shares around 27 August and 2 September 2010? If so, to what extent would the share price be affected at the time of the issuance of the (i) Interim Results; (ii) Interim Report?*⁴⁰¹

Whether the information identified by the Commission in question 5 and question 6, taken singly, together with information identified by the Commission as disclosed in the 2010 Interim Results:

- (a) regarding the group's revenue, profit and turnover generating activities; and
- (b) the value, existence and nature of the group's assets taken singly, collectively or in any combination would likely:
 - (i) induce the sale or purchase in Hong Kong of China Forestry shares by investors or potential investors? Or

⁴⁰¹ Expert Evidence Bundle 16; page 11165, paragraph 4.7.

(ii) maintain, increase, reduce or stabilise the price of China Forestry shares in Hong Kong?

If so, how and to what extent would the share price of China Forestry shares be affected, or around the time of the issuance of:

- the Interim Results announcements (i.e. 27 August 2010)? and
- the Interim Report (i.e. 2 September 2010)?

Information taken into account

467. Ms. Pao said that, as instructed by the Commission, in giving her opinion she took into account, for the period from 19 November 2009 (the date of issuance of the Prospectus) to 26 January 2011 (the date of suspension of trading in the shares in China Forestry), the following information:⁴⁰²

- the prevailing market conditions;
- all relevant news and announcements about China Forestry;
- the performance of the shares in China Forestry set out in the Stock Historical Data of China Forestry shares (3 December 2009 to 26 January 2011); and
- all relevant views/commentaries about the shares of China Forestry between November 2009 and January 2011, set out in information obtained by the Commission from the Wisenews database.

(i) Specific information

Prospectus, the 2009 Annual Results and the 2010 Interim Results

468. It was Ms. Pao's opinion that each of the pieces of information which she identified, any combination of that information or all of the information as a whole was specific information about China Forestry or its listed securities, namely:⁴⁰³

- (a) information regarding the two sets of accounts maintained by Kunming Ultra Big (Local Books and HQ Books);

Information in respect of the Prospectus, the 2009 Annual Results and the 2010 Interim Results, namely:

⁴⁰² Expert Evidence Bundle 16; pages 11165-11166, paragraph 4.8.

⁴⁰³ Expert Evidence Bundle 16; pages 11167-11168, paragraph 5.2.

- (b) *misstatements concerning matters pertaining to the Group's profits and revenue*, namely in respect of:
 - (i) the Group's turnover;
 - (ii) the changes in fair value of plantation assets less costs to sell and the reversal of fair value of plantation assets upon logging and sales of the plantation assets;
 - (iii) the Group's profit from operations;
 - (iv) the Group's profit for the stipulated years/periods;
- (c) *misstatements concerning matters pertaining to the Group's turnover generating activities*, namely in respect of:
 - (i) the nature of the Group's turnover generating activities;
 - (ii) the existence of the Group's operating expenses for logging activities;
 - (iii) the existence of logging permits and logging quota permitted, pursuant to which the Group's logging activities were said to be conducted;
 - (iv) the existence of Confirmations confirming that the Group's activities were in compliance with the applicable laws and regulations;
 - (v) the existence of the Group's customers;
- (d) *misstatements concerning the Group's assets (particularly its forestry rights)*, namely in respect of:
 - (i) the Group's forestry rights;
 - (ii) the Group's net assets;
 - (iii) the Group's plantation assets and/or lease prepayments;
 - (iv) the Group's cash and cash equivalents;
- (e) *misstatements concerning the insurance coverage over the Group's forests*, namely in respect of:
 - (i) the existence of insurance policies;
 - (ii) the insurance premiums paid and the associated amortization of insurance premiums;

- (f) *misstatements concerning the quality of the Group's management and quality of the Group's business in the Prospectus.*

In light of those misstatements, the fact that the Group's operations, assets, profits, overall financial position and quality of management were worse than what was disclosed to the public.

(ii) *Other information*

469. In addition, it was Ms. Pao's opinion that information regarding the inquiries and investigations made by KPMG in the course of or arising from its 2010 audit, and/or KPMG's identification of audit issues in the course of or arising from its 2010 audit was specific information.⁴⁰⁴

2010 Audit-KPMG's inquiries and investigations of China Forestry

470. Ms. Pao's evidence and opinions expressed in respect of KPMG's inquiries and investigations of China Forestry arising from the 2010 Audit is dealt with subsequently.

Kunming Ultra Big: Local Books and HQ Books

471. Ms. Pao noted that the announcement of China Forestry, dated 27 April 2012, disclosed that the local office of Kunming Ultra Big kept a set of accounting records (the "Local Books") with different underlying documents from those maintained by the Group's former management at the head office (the "HQ Books"). Those two sets of accounts were maintained for the three years ended 31 December 2008, 2009 and 2010.⁴⁰⁵

472. The HQ Books were used for the purpose of preparing the consolidated financial statements of the Group as disclosed in the Prospectus and the 2009 Annual Results. The Local Books were found to be generally supported by underlying documents, while no supporting documents could be found for the HQ Books. Ms. Pao noted that Mr. Sutton, "...is of the view that the Local Books were more likely to reflect the actual financial position and performance of Kunming Ultra Big for the Relevant period."⁴⁰⁶

473. Ms. Pao said that significant differences were noted between the Local Books and the HQ Books and set out in tabular form "a comparison of the major balances/figures of the two sets of accounting records."⁴⁰⁷ In her oral evidence, Ms. Pao confirmed that the figures that she

⁴⁰⁴ Expert Evidence Bundle 16; pages 11196-11197, paragraphs 6.96 and 6.97(a).

⁴⁰⁵ Expert Evidence Bundle 16; page 11148, paragraphs 3.16-3.17.

⁴⁰⁶ Expert Evidence Bundle 16; page 11149, paragraph 3.18.

⁴⁰⁷ Expert Evidence Bundle 16; page 11148, paragraph 3.17. Appendix 2.

had used were derived from Mr. Sutton's Report.⁴⁰⁸

Who were accustomed, or would be likely, to deal in the shares of China Forestry?

474. In Ms. Pao's opinion, during the period between 1 December 2010 and 13 January 2011, the investor groups who were accustomed, or would be likely, to deal in the shares of China Forestry would include:⁴⁰⁹

- institutional investors;
- fund managers;
- private professional investors; and
- the general investing public.

Generally known?

475. In Ms. Pao's opinion none of the information that she said was specific information was generally known to the above investor groups during the period from 1 December 2010 to 13 January 2011. None of this information was reported in newspaper articles relating to China Forestry in the Wisenews database before or during the relevant period. That information was only revealed after China Forestry shares were suspended.⁴¹⁰

Would it likely affect the price of China Forestry's shares?

476. It was Ms. Pao's opinion that, other than the four pieces of information, all the specific information about China Forestry or its listed securities, which she had identified, if made known to investor groups, identified above, who were accustomed, or would be likely, to deal in the shares of China Forestry at any time during the period from 1 December 2010 to 13 January 2011, either singly on its own, by any combination or collectively as a whole, the price of China Forestry's shares would likely decline materially.⁴¹¹

Likely

477. Ms. Pao said that, in expressing the opinion in her report that, "China Forestry's share price would 'likely' be affected" had the specific information that she had identified been known to the groups of investors at any time during the period from 1 December 2010 to 13

⁴⁰⁸ Transcript 10 October 2023, pages 53-54.

⁴⁰⁹ Expert Evidence Bundle 16; page 11168, paragraph 5.3.

⁴¹⁰ Expert Evidence Bundle 16; pages 11168-11169, paragraph 5.4.

⁴¹¹ Expert Evidence Bundle 16; page 11170, paragraph 5.8.

January 2011:⁴¹²

“I use the word “likely” to mean probable.”

478. In her oral testimony, Ms. Pao’s attention was drawn to the Report of a differently constituted Tribunal in *Mayer Holdings*, in particular to the direction of the Chairman that the phrase “likely”, in that context, meant “real prospect”. Ms. Pao accepted Mr. Jat’s suggestion that the phrase “real prospect” was a lower threshold than “probable”. Not surprisingly, she said that application of the test of “real prospect” did not affect the opinions that she had expressed.⁴¹³

479. Ms. Pao said that she could not predict the extent of the decline related to each of the specific pieces of information, either singly on its own, or by any combination, except to qualify it as material. She said that the extent of the decline depends on when the relevant piece of specific information, or any combination, became generally known to investor groups who were accustomed, or would be likely, to deal in the shares of China Forestry and on:⁴¹⁴

“...many time-sensitive factors, such as the prevailing share price and valuation of China Forestry, the prevailing market condition, the prevailing investors’ sentiment and investors’ perception of the significance of the specific information in the circumstances.”

The four pieces of information

480. The four pieces of specific information, which Ms. Pao said would unlikely have had a material adverse impact on the price of China Forestry’s shares had each of them been generally known singly on its own at any time, during the period from 1 December 2010 to 13 January 2011, were information that:⁴¹⁵

- (i) the profit from operations and profit for Interim 2010 were understated by RMB 398.4 million respectively;
- (ii) the Group’s published cash and cash equivalents balance was understated by RMB19.91 million, or 0.27% of the Group’s NAV, as at 31 December 2008;

⁴¹² Expert Evidence Bundle 16; page 11169, paragraph 5.6.

⁴¹³ Transcript 10 October 2023, pages 78-79.

⁴¹⁴ Expert Evidence Bundle 16; page 11170, paragraph 5.8.

⁴¹⁵ Expert Evidence Bundle 16; page 11169, paragraph 5.5.

- (iii) the Group's published cash and cash equivalents balance was overstated by RMB14.17 million, or 0.15% of the Group's NAV, as at 31 December 2009; and
- (iv) China Forestry falsely disclosed that the relevant forestry authorities issued Confirmations that the Group's logging activities were in compliance with applicable laws and regulations.

481. However, Ms. Pao said that, if at any time during the period from 1 December 2010 to 13 January 2011, the investor groups she had identified had known that misstatements by the Group had been made not only for Interim 2010 but also that the Group had consistently and intentionally made misstatements for the other periods such as FY2008 and FY2009 in respect of:⁴¹⁶

- (i) profit from operations and profit; and/or
- (ii) its cash and cash equivalents balance; and/or
- (iii) the Group had not only made false disclosures about the Confirmations, but had also misstated its forestry rights, and/or misstated the logging permits and quota granted, and/or misstated its logging expenses

investors would be, "...appalled by the Group's dishonesty and would seriously question the integrity of the Group's management. They would likely lose all confidence in the Group."

In those circumstances, it was Ms. Pao's opinion that China Forestry's share price would likely fall materially.⁴¹⁷

Material change

482. It was Ms. Pao's opinion that:⁴¹⁸

"... a material change in the price of a stock is a price movement of 2 or more standard deviations from the average price movement of the stock for the relevant period."

She explained:⁴¹⁹

"The standard deviation is a commonly used statistical tool to measure the dispersion of a data series around its mean (average) value. A low standard deviation indicates that the data points tend to be close to the average while a high standard deviation means

⁴¹⁶ Expert Evidence Bundle 16; page 11169, paragraph 5.6.

⁴¹⁷ Expert Evidence Bundle 16; page 11169, paragraph 5.6.

⁴¹⁸ Expert Evidence Bundle 16; page 11169, paragraph 5.7.

⁴¹⁹ Expert Evidence Bundle 16; page 11179, paragraph 6.10.

that the data points are more spread out. Theoretically, about 68% of all the data points measured fall within one standard deviation from the mean, and about 95% of all the data points measured fall within two standard deviations from the mean. In other words, data points that are found to be two standard deviations or more away from the mean should only occur approximately 5% of the time, and are considered to be statistically significant.

Applying this statistical theory to stock price changes, any change that is over two standard deviations from its mean (average price change) are price changes that are statistically significant, meaning that the change is probably price movements with causes, that is, triggered by rumors, news or events, and not just part of the stock's normal volatility.”

The daily standard deviation of China Forestry shares

483. Ms. Pao described the method she used to calculate the daily standard deviation of China Forestry shares:⁴²⁰

“The daily standard deviation of China Forestry shares from the day of its listing to the day before suspension was 2.95%; the average daily price movement (from the previous trading day's closing) was 0.17%. Hence, I opine that a material daily increase in China Forestry shares would be an increase greater than 6.07% (2 standard deviations + average daily price movement, i.e. $2.95\% \times 2 + 0.17\%$) from the closing price of the previous trading day, and a material daily price decline would be a decline greater than 5.73% (average daily price movement – 2 standard deviations, i.e. $0.17\% - 2.95\% \times 2$) from the closing price of the previous trading day.”

484. Ms. Pao. calculated that a material decline in the price of China Forestry's shares for a daily, weekly and monthly basis meant a fall of over:⁴²¹

- 5.73% on the first day, or
- 13.38% in the first week, or
- 19.08% in the first month

after the information became known and digested by those who were accustomed to deal.

⁴²⁰ Expert Evidence Bundle 16; page 11180, paragraph 6.11.

⁴²¹ Expert Evidence Bundle 16; page 11169, paragraph 5.7.

485. In her oral evidence, in answer to a question from the Chairman as to whether other experts in this area used a standard deviation statistical technique, Ms. Pao said.⁴²²

“Not that I know of. First of all, I do not talk to other expert witnesses.”

She went on to say, “In terms of applying it to an expert opinion, I do not know if others do the same.” Further, when asked if the approach was described in textbooks on the subject, Ms. Pao said “Not specifically, no.” On the other hand, Ms. Pao said that the use of a standard deviation statistical technique to measure the volatility of a stock was, “...very common in the financial world,”⁴²³ She agreed with the suggestion of Mr. Jat that she considered the method applicable in the context of determining materiality.⁴²⁴

486. Subsequently in her testimony Ms. Pao explained how she had come to employ the standard statistical deviation technique:⁴²⁵

“I did that in this report because I tried to answer a question in my instructions as to the extent...of the share price movement and given my sort of academic training which is more on the quantitative side, I tried to adopt a quantitative approach, otherwise is it 10% that’s material or 9 or 8 or 5? I just thought if I could adopt some methodology to come up with some figures I would have tried to better answer that question other than just saying materially.”

The ‘common sense’ approach

487. During her evidence, Ms. Pao was informed that this Tribunal, differently constituted, in its Report in *Mayer* had declined to adopt the, “...statistical and mathematical approach relied upon by Ms. Pao”.⁴²⁶ Rather, the Tribunal accepted the evidence of Mr. Rigby that the reaction of the reasonable investor on being informed of the information, “...cannot be gauged in this way.” The Tribunal, went on to say that it preferred the, “...common sense approach”. Of whether the adoption of a common sense approach would affect her opinions on materiality, Ms. Pao said, “no, absolutely not.” She explained:⁴²⁷

“If a company consistently misstated its profits, assets, et cetera, it’s only common sense that its shareholders, if they were still holding any shares, would rush out and sell

⁴²² Transcript October 2023, page 103.

⁴²³ Transcript 10 October 2023, pages 103-104.

⁴²⁴ Transcript 10 October 2023, page 105.

⁴²⁵ Transcript 10 October 2023, page 116.

⁴²⁶ *Mayer*, paragraph 715.

⁴²⁷ Transcript 10 October 2023, page 115.

any shares they still hold as quickly as possible. So, I mean, that would definitely cause a material drop in the price of the shares.”

Significance of the specific information

488. Of the significance of the specific information, Ms. Pao said that not only did the misstatements and consequent adjustments bring about, “...large quantitative changes to the financial position of the Group”, as compared to the disclosed information, but also the fact that, “...the Group’s most senior management was directly involved in the deliberate fabrication of accounting records, customer list, asset ownerships etc. would have irreparably damaged investors’ confidence in the Group’s management, credibility and integrity.”⁴²⁸

489. In the result, it was Ms. Pao’s opinion that, if all of the specific information she had identified was known to the groups of investors she had identified, at any time during the period from 1 December 2010 to 13 January 2011, that those investors:⁴²⁹

“...would only trust the “true” level of cash and cash equivalents balance in the Group, which was HK\$0.379 per share.”

490. Ms. Pao calculated the share value as being HK\$0.379 per share on the basis that Mr. Sutton had calculated that the adjusted cash and cash equivalents of the Group, as at 30 June 2010, was RMB 1,014,163,079. At that date, there were 3,060,452,000 issued China Forestry shares. Accordingly, the “cash and cash equivalents balance per share was RMB 0.33 or HK \$0.379”, converted at the then prevailing exchange rate.⁴³⁰ In those circumstances, it was her opinion that China Forestry’s share price:⁴³¹

“...would likely at least decline to around HK\$0.38, being a 89.59% decrease from the average closing share price of HK\$3.65 for the period from 1 December 2010 to 13 January 2011.”

Disclosure of false or misleading information inducing transactions

Prospectus-would the specified information likely induce investors or potential investors to subscribe for China forestry shares at its listing?

491. In Ms. Pao’s opinion each of the specified pieces of information disclosed in the

⁴²⁸ Expert Evidence Bundle 16; page 11170, paragraph 5.9.

⁴²⁹ Expert Evidence Bundle 16; page 11170, paragraph 5.10.

⁴³⁰ Expert Evidence Bundle 16; page 11200, paragraph 6.106.

⁴³¹ Expert Evidence Bundle 16; page 11170, paragraph 5.10.

Prospectus singly on its own, together with general background information available to investors or potential investors, would likely induce investors or potential investors to subscribe for China Forestry's shares at its listing, namely information regarding the Group's:⁴³²

- (i) turnover for FY2008, namely RMB 544,947,744;
- (ii) profit from operations for FY2008, namely RMB 5,884,148,296;
- (iii) profit for the year for FY2008, namely RMB 5,881,774,698;
- (iv) rights over, and/or possession of FRCs in respect of, forests in Mainland China, as at 31 December 2008;
- (v) net assets as at 31 December 2008, namely RMB 7,435,350,241; and
- (vi) plantation assets and/or lease prepayments as at 31 December 2008.

492. Ms. Pao said that it was her opinion that all that information, together with other pieces of information such as of the Group's management, disclosed in China Forestry's Prospectus, taken collectively, "...portrayed China Forestry as a leading forestry operator with good growth prospect."⁴³³ Accordingly, all the information collectively would likely induce investors or potential investors to subscribe for China Forestry's shares at its listing. Ms. Pao noted that the IPO of shares in China Forestry was very successful, being 113.8 times oversubscribed.⁴³⁴

Likely

493. Once again, Ms. Pao confirmed, "I use the word "likely" to mean probable."⁴³⁵

Would the specified information in the 2009 Annual Results likely induce the sale or purchase by investors or potential investors or maintain, increase, reduce or stabilise the price of China Forestry shares?

494. In Ms. Pao's opinion each of the specified pieces of information disclosed in the 2009 Annual Results singly on its own, together with the information already disclosed in the Prospectus, would likely induce investors or potential investors to purchase China Forestry shares in Hong Kong and would likely increase the price of those shares at around the time that the 2009 Annual Results were issued. The specified information was information regarding the

⁴³² Expert Evidence Bundle 16; pages 11170-11171, paragraph 5.11.

⁴³³ Expert Evidence Bundle 16; page 11171, paragraph 5.13.

⁴³⁴ Expert Evidence Bundle 16; page 11171, paragraph 5.13.

⁴³⁵ Expert Evidence Bundle 16; page 11171, paragraph 5.11.

Group's:⁴³⁶

- (i) turnover for FY2009, namely RMB793,692,961;
- (ii) operating expenses for logging activities for FY2009, namely RMB185,801,450;
- (iii) profit from operations for FY2009, namely RMB 589,522,663;
- (iv) profit for the year for FY2009, namely RMB 511,630,413; and
- (v) cash and cash equivalents balances as at 31 December 2009, namely RMB 1,706,636,428.

495. In Ms. Pao's opinion, the other information in the 2009 Annual Results to which her attention has been drawn, such as the prepaid insurance premium and amortisation of insurance premium, would unlikely induce the sale or purchase of China Forestry's shares in Hong Kong by investors or potential investors and would have no impact on the share price of China Forestry shares at around the time that the 2009 Annual Results were issued.⁴³⁷

496. Ms. Pao said that she was unable to express an opinion as to the extent of the impact on the share price by each of the pieces of information, as investors reacted to the collective picture rather than to individual pieces of information.⁴³⁸ Nevertheless, in her opinion all of the information, to which her attention had been drawn, collectively confirmed the perception of China Forestry as portrayed in the Prospectus. There had been a successful IPO, so that the company could embark on a profitable growth phase. That, would induce purchase of China Forestry shares by investors or potential investors and would likely increase the price of China Forestry shares at around the time the 2009 Annual Results were issued.⁴³⁹

497. In Ms. Pao's opinion, based on the average share price discount to NAV per share in the trading history of China Forestry and the perception of investors as to the state of affairs of the company, the share price of China Forestry would likely increase at least by 8.46 % from HK \$3.19 to HK \$3.46 at or around the time the 2009 Annual Results were issued.⁴⁴⁰

498. Ms. Pao noted that on the dates that the 2009 Annual Results were issued, 26 April 2010, China Forestry's shares closed at HK \$3.19. Thereafter, the shares rose to close at HK \$

⁴³⁶ Expert Evidence Bundle 16; page 11171, paragraph 5.15.

⁴³⁷ Expert Evidence Bundle 16; page 11172, paragraph 5.17.

⁴³⁸ Expert Evidence Bundle 16; page 11171, paragraph 5.16.

⁴³⁹ Expert Evidence Bundle 16; page 11172, paragraph 5.18.

⁴⁴⁰ Expert Evidence Bundle 16; page 11172, paragraph 5.19.

3.45 on 4 May 2010 before profit-taking took place.

2010 Interim Results-would the specified information likely induce the sale or purchase by investors or potential investors or maintain, increase, reduce or stabilise the price of China Forestry shares?

499. In Ms. Pao's opinion each of the stipulated pieces of information disclosed in the 2010 Interim Results singly on its own, together with the information already disclosed in the Interim Results of 2009, would likely induce investors or potential investors to purchase China Forestry shares in Hong Kong and would likely increase the price of those shares at around the time that the 2010 Interim Results were issued. The stipulated information in respect of the Group was:⁴⁴¹

- (i) turnover for Interim 2010, namely RMB 494,257,281;
- (ii) profit from operations for Interim 2010, namely RMB 428,306,858;
- (iii) profit for the year for Interim 2010, namely RMB 429,294,736.

500. Conversely, in Ms. Pao's opinion the following information disclosed in the 2010 Interim Results, of the Group namely:

- (i) operating expenses for logging activities for interim 2010, namely RMB 131,512,000;
- (ii) net assets as at 30 June 2010, namely RMB 9,862,809,859

together with information already disclosed in the Interim Results of 2009 and the NAV information already available to the market, would likely induce investors to sell China Forestry shares and would likely decrease the price of China Forestry's shares at around the time that the 2010 Interim Results were issued.⁴⁴²

501. In her opinion, save for the pieces of information described above, the other pieces of information drawn to her attention were unlikely to induce the sale or purchase in Hong Kong of China Forestry's shares by its investors or potential investors and would have had no impact on the share price of those shares at the time the 2010 Interim Results were issued, namely before trading on 27 August 2010.⁴⁴³

⁴⁴¹ Expert Evidence Bundle 16; page 11172, paragraph 5.22.

⁴⁴² Expert Evidence Bundle 16; pages 11172-11173, paragraph 5.23.

⁴⁴³ Expert Evidence Bundle 16; page 11173, paragraph 5.25.

502. Ms. Pao said that she was unable to give an opinion as to the impact on the share price caused by each of the pieces of information described above. Investors reacted to the collective picture rather than to single pieces of information.⁴⁴⁴

503. Ms. Pao said that, taken collectively, the information drawn to her attention as disclosed in the 2010 Interim Results showed that the Group was on track to grow as portrayed in the Prospectus. However, it provided no information of unexpected progress. Given that the valuation of China Forestry's shares, as measured by share price discount to the latest reported NAV, was less than its historic average, it was Ms. Pao's opinion that the information collectively would likely induce investors or potential investors to sell China Forestry shares and would likely cause share price to fall.⁴⁴⁵ Ms. Pao said that she was unable to give an opinion as to the appropriate level of discount to NAV per share of China Forestry. Ms. Pao noted that following the issuance of the 2010 Interim Results on 27 August 2010, China Forestry's shares closed 0.6% down at \$3.22 and closed the following trading day of 30 August 2010 at \$ 3.03.

2010 Audit-KPMG's inquiries and investigations of China Forestry

504. In her Reports, Ms. Pao considered the information concerning inquiries and investigations made by KPMG in respect of two sets of documents, namely:

- (i) two sets of forestry logging permits, bearing the same serial numbers for logging in July 2010 in Mangan Forestry Farm, Shuangjiang County; and
- (ii) two certificates, dated 1 January 2011, issued by the respective Forestry Bureau of Liping and Congjiang counties of Guizhou Province relating to Forestry Rights Certificates in the name of Guizhou Wosen, a wholly owned subsidiary of China Forestry.

505. It was Ms. Pao's opinion that, as a forestry company, the amount of, "...logging quota and permits" granted to China Forestry was specific information.⁴⁴⁶ Similarly, it was her opinion that, given that, "...forestry rights and hence forest reserves form the single most important category of assets in a forestry company",⁴⁴⁷ the authenticity of the related Forestry Rights Certificates of China Forestry was specific information.⁴⁴⁸ Moreover, it was her opinion

⁴⁴⁴ Expert Evidence Bundle 16; page 11173, paragraph 5.24.

⁴⁴⁵ Expert Evidence Bundle 16; page 11173, paragraph 5.26.

⁴⁴⁶ Expert Evidence Bundle 16; page 11186, paragraph 6.44.

⁴⁴⁷ Expert Evidence Bundle 16; page 11187, paragraph 6.53.

⁴⁴⁸ Expert Evidence Bundle 16; page 11196, paragraph 6.96.

that, if that information of the queries raised of those logging permits and the Forestry Rights Certificates by KPMG of China Forestry had been known to investors accustomed to or likely to deal in the shares of China Forestry in the period 1 December 2010 to 13 January 2011, it would have caused them serious doubt as to:

“... the authenticity of the reported assets and business activities of the Group.”

In consequence, it was her opinion that China Forestry’s share price would have declined materially.⁴⁴⁹

Ms. Pao’s response to Mr. Cheng’s report

506. In response to the issues taken with those opinions in the report of Mr. Eric Cheng, dated 8 April 2019, in her second report, dated 8 August 2019, Ms. Pao provided a supplemental written opinion in which she addressed the question posed of Mr. Cheng and addressed in his report, namely:⁴⁵⁰

“Had any, all or combination of any of the communication between KPMG and China Forestry recorded in the documents listed and enclosed in Appendix 4 [Mr. Cheng] Appendix IB [Ms. Pao], been generally known to the persons who are accustomed or would be likely to deal in the shares in China Forestry at any time during the period from 1 December 2010 to 12 January 2011, would it have materially affected the price of the shares in China Forestry.”

507. Ms. Pao noted that, in addition, she had been asked to express her opinion of what was said to be Mr. Cheng’s opinion, namely that:⁴⁵¹

(a)

- (i) the communications were plainly fact-finding and not suggestive of any wrongdoing;
- (ii) ordinary investors would not generate any significant market impact on China Forestry’s share price; and

⁴⁴⁹ Expert Evidence Bundle 16; page 11196, paragraph 6.96.

⁴⁵⁰ Expert Evidence Bundle 16; page 11301.

⁴⁵¹ Expert Evidence Bundle 16; page 11294, paragraph 3.2.

(iii) sophisticated and sceptical investors would and should come to the conclusion that, even if the projects involved fraudulent activities, the estimated impact on China Forestry's liquidity, profitability and financial strength would be relatively insignificant having regard to the valuation of the company.

(b) even if investors had known about the irregularities as recorded in the communications, the share price of China Forestry would not be materially affected.

508. Ms. Pao noted that the documentation described in the two Appendices comprised three sets of documents, namely:⁴⁵²

- emails between Ms. Naomi Lau and China Forestry, dated 16 and 17 December 2010, in respect of two different sets of logging permits for July 2010 for the same forest in Shuangjiang, Yunnan;
- two notices from two Forestry Bureaus in Guizhou stating the transfer dates to Guizhou Wosen, which dates were different from those stipulated on Forestry Rights Certificates; and
- a schedule stipulating the dates of discussions between KPMG and China Forestry on those two issues prior to 13 January 2011.

509. For her part, Ms. Pao reiterated the opinion expressed in her first report, summarised above, in particular that information in respect of the authenticity of the Forestry Rights Certificates and irregularities concerning logging permits was specific information which, if known to those accustomed or likely to deal in China Forestry shares, would:

“...cast serious doubts on the authenticity of the reported assets and business activities of the Group”.

In those circumstances, it was Ms. Pao's opinion that China Forestry's shares would, “...likely decline materially.”⁴⁵³

510. Ms. Pao rejected Mr. Cheng's opinion that the communications between KPMG and China Forestry in respect of those documents was “...plainly fact-finding and not suggestive of any wrongdoing”. Similarly, she rejected his opinion that, even if “sophisticated and sceptical investors” would conclude that there were fraudulent activities, given the relative

⁴⁵² Expert Evidence Bundle 16; page 11295, paragraph 4.5.

⁴⁵³ Expert Evidence Bundle 16; page 11296, paragraph 4.8.

insignificance of the impact on the liquidity, profitability and financial strength of China Forestry, they would nevertheless conclude that the estimated impact on the liquidity, profitability and financial strength of China Forestry was relatively insignificant.⁴⁵⁴

Emails between Ms. Naomi Lau and Mr. Zhang Hongyu/Ms. Liu Yana-16 and 17 December 2010: Forestry Logging Permits-Mangan Forestry Farm, Shuangjiang County

511. In her oral evidence, Ms. Pao was taken through the sequence of emails, exchanged between Ms. Naomi Lau and Mr. Zhang Hongyu/Ms. Liu Yana on 16 and 17 December 2010, in respect of Ms. Naomi Lau's enquiry about the circumstances in which two sets of logging permits, dated July 2010, had been issued for the same forest location, namely Mangan Forestry Farm, Shuangjiang County. In her second report, Ms. Pao had noted that, "...KPMG found that the second set of logging permits added up to the same total logging area and logging volume as the first set, i.e. the "supposed" errors were not corrected."⁴⁵⁵ She said that, rather than attributing this to human error as Mr. Cheng had done, for her part, many questions arose:⁴⁵⁶

"If, as China Forestry explained, the size of the logging area and logging volume as stated in the first set of logging permits were wrong and the second set was meant to be obtained to correct the errors, why didn't China Forestry go back to the forestry bureau and request for a correction when they received the second set of logging permits which contained the same total logging area and logging volume (and hence, the same errors) as the first set?"

512. Of her opinion as to the reaction of investors to the explanations offered by Ms. Liu Yana, in her testimony Ms. Pao said:⁴⁵⁷

"Well, the investors looking at this would not see or could not see a satisfactory explanation from China Forestry as to why there were these two sets and the serial numbers were different and "You said you corrected it, so what did you correct?" There really was no response. So I think investors would start having doubts as to whether these logging permits were real, fake or why. I think that would be -- they would start to have qualms about the business. Logging permits are very, very important. Without

⁴⁵⁴ Expert Evidence Bundle 16; page 11296, paragraph 4.9.

⁴⁵⁵ Expert Evidence Bundle 16; page 11296, paragraph 4.11.

⁴⁵⁶ Expert Evidence Bundle 16; page 11296, paragraph 4.12.

⁴⁵⁷ Transcript 10 October 2023, pages 135-136.

logging permits China Forestry cannot harvest the logs on the land. So what's happening, they would start having doubts and uncertainty.”

Ms. Pao said that these were questions that would have been posed by a reasonable investor.⁴⁵⁸

513. Of whether “human error” was an explanation that a reasonable investor would consider, Ms. Pao said:⁴⁵⁹

“No. I think if it were truly human error, China Forestry would be able to explain exactly what were wrong in the first set and then what were corrected in the second set, but there was absolutely no explanation. So the investors were, like, “What is going on? Maybe there is something wrong with these logging permits.”

Guizhou Wosen

514. The Forestry Rights Certificates provided to Mr. Albert Lui on 30 December 2010 by Guizhou Wosen referred to transfer dates of 2008 and 2009. By contrast, the certificates entitled, ‘Illustration on the Time of Transfer of Forestry Rights Certificates to Guizhou Wosen Forestry Development Company Limited’, dated 31 December 2010, and acknowledged as received by Mr. Albert Lui on 1 January 2011, stated that, “...the actual time of transfer was November to December in 2010”, on one certificate, and “November 2010” on the other one. The explanation stated on the certificate was, “...the time stipulated by the forestry rights certificate issuance authority refers to the time when the certificate was issued at the initial stage of the second forestry reform.”

The record of interview of Mr. Albert Lui-15 February 2011

515. Having been taken through the relevant parts of the record of interview by the Commission of Mr. Albert Lui, dated 15 February 2011,⁴⁶⁰ of the circumstances in which he had attended the offices of Guizhou Wosen in Guiyang, Guizhou Province on 28 December 2010, the supply to him on 30 December 2010 of copies of a total of seven Forestry Rights Certificates, which purported to evidence the transfer of forestry rights to Guizhou Wosen in 2008 and 2009, prior to the incorporation of Guizhou Wosen, and the subsequent provision of two certificates stating that the dates on the Forestry Rights Certificates were not the dates of the actual transfer but the dates of the earlier second forestry reform, Ms. Pao said that, if

⁴⁵⁸ Transcript 10 October 2023, page 150.

⁴⁵⁹ Transcript 10 October 2023, page 154.

⁴⁶⁰ Witness Evidence Bundle G1; pages 5366-5371, counter #s 620-727.

possessed of that information, in her opinion investors "...would be more sure than they were before that there was something amiss with these forestry rights certificates."⁴⁶¹

516. She went on to explain that by "amiss" she meant:⁴⁶²

"...something wrong. If these were fake, then what is the legal basis of all the forests supposedly owned by China Forestry? So that goes into how about the plantation assets and that would affect the valuation of the stock tremendously."

517. Ms. Pao said that the issue was of authenticity:

"Did China Forestry really own these forests that they claim they own? If they really had the logging of harvesting logs were they doing it on their forest or somebody else's forest? Questions like that. Of course, the investors at that time did not know that China Forestry did not have any harvesting activities at all."

518. Of the explanation, Ms. Pao said in her report that, rather than attributing it to "human error", as Mr. Cheng had done, for her part questions arose:⁴⁶³

"Why the forestry bureaus did not reissue a set of correct FRCs. Or why didn't China Forestry request for a correction at the time they received the FRCs with errors? The mistakes would have been very apparent. Could it have been that the FRCs were fake and the clarifying notices were fabricated when KPMG brought the discrepancies of the transfer dates to China Forestry's attention? How about all the other FRCs? Would they be problematic as well?"

519. Ms. Pao testified :⁴⁶⁴

"The reason given I think is almost laughable. You imagine, let's say, clerical staff, they are filling out the FRC with a date and the transfer actually took place in November and December 2010. How is it possible that this guy filled in 2008 and 2009? I simply cannot understand that. So I find the reason given totally unbelievable..."

520. She said that, in her opinion, that was not an explanation a reasonable investor would have accepted. In her opinion, "ordinary investors" would have had similar doubts, "After all, these are common-sense questions and doubts that do not require sophisticated analytical

⁴⁶¹ Transcript 12 October 2023, pages 24-36.

⁴⁶² Transcript 12 October 2023, pages 36-37.

⁴⁶³ Expert Evidence Bundle 16; page 11297, paragraph 4.14.

⁴⁶⁴ Transcript 10 October 2023, page 160.

skills.”⁴⁶⁵ She explained that by “ordinary investors” she meant, “retail investors”.⁴⁶⁶

521. Ms. Pao rejected Mr. Cheng’s opinion that, given that none of the available media coverage “suggested anything negative for the company”, that China Forestry’s shares were trading above the initial public offering price of \$2.07 and generally tracking the Hang Seng Index, knowledge of the enquiries and investigations made by KPMG and the responses of China Forestry would “unlikely cause a material negative impact on China Forestry’s share price on or shortly before 13 January 2011.”⁴⁶⁷

522. Ms. Pao said that on the contrary, in her opinion, “I do not believe that investors would be so naive as to brush aside the information that would cast doubt on the legality of China Forestry’s business and assets.” She reiterated her opinion that, if the information had been known generally to the investors, “China Forestry’s share price would decline materially.”⁴⁶⁸

⁴⁶⁵ Expert Evidence Bundle 16; page 11297, paragraph 4.15.

⁴⁶⁶ Transcript 10 October 2023, page 165.

⁴⁶⁷ Specified Persons Bundle A; page 168, paragraph 32.

⁴⁶⁸ Expert Evidence Bundle 16; page 11298, paragraph 4.24.

CHAPTER 9

Expert evidence-Mr. Eric Cheng

523. Between March 2002 and August 2012 Mr. Cheng was head of the Surveillance Department, Enforcement Division of the Commission. The primary objective of the market surveillance programme was to identify possible market irregularities that might involve contraventions of the Ordinance or breaches of duty imposed on persons licensed to conduct business in the securities and futures markets. He was a registered securities dealer in and between April 1990 and July 1997. He has given evidence as an expert witness in the Market Misconduct Tribunal.

524. The Tribunal received the evidence of Mr. Cheng Kai Sum, Eric as an expert witness, called on behalf of the 2nd and 3rd Specified Persons. The Tribunal received his written report, dated 8 April 2019⁴⁶⁹ and some of his oral evidence. However, his cross-examination by the Presenting Officer was incomplete. Having given evidence-in-chief and in cross-examination on 13 May 2023, at his request his further cross-examination was adjourned to a date to be fixed having regard to his availability. Following the withdrawal on 20 September 2023 of Chiu & Partners, as solicitors representing the 2nd and 3rd Specified Persons, the Tribunal did not receive any response to its subsequent direct communications with the 2nd and 3rd Specified Persons.

525. For its part, the Commission wrote, first to Chiu & Partners, dated 11 September 2023, and secondly, to the 2nd Specified Person directly in a letter dated 26 September 2023, noting in each letter that Mr. Eric Cheng, "...has not finished giving evidence, and he needs to continue on the coming scheduled days of the Hearing", inviting confirmation of his availability to give evidence on 10 and 12 October 2023" and, if he was not available on those dates, requesting "...please propose when you will call him again to continue his evidence." The Commission received no response at all to those letters. In the result, Mr. Cheng did not make himself/ was not made available for continued cross-examination by the Presenting Officer.

Ambit of Mr. Cheng's opinion

526. Mr. Cheng said that he had been instructed, on behalf of the 2nd and 3rd Specified

⁴⁶⁹ Specified Persons Bundle A, pages 156-171.

Persons, to give an opinion on the following issue:⁴⁷⁰

“Had any, all or combination of any of the communication between KPMG and China Forestry recorded in the documents listed and enclosed in Appendix 4,⁴⁷¹ being generally known to the persons who are accustomed or would be likely to deal in the shares in China Forestry at any time during the period from 1 December 2010 to 12 January 2011, would it have materially affected the price of the shares in China Forestry.”

527. At the outset of his evidence-in-chief, in response to a question of the Chairman, Mr. Cheng confirmed that his opinion was based on those documents only. His attention was not drawn to the records of interview of Ms. Naomi Lau or Mr. Albert Lui or to the transcript of the oral evidence before this Tribunal of the former.⁴⁷²

Two sets of forestry logging permits bearing the same serial numbers

528. Of the existence of two sets of forestry logging permits, bearing the same serial numbers for logging in July 2010 in Mangan Forestry Farm, Shuangjiang County, and the exchange of emails between Ms. Naomi Lau and Mr. Zhang Hongyu/ Ms. Liu Yana, Mr. Cheng noted that:⁴⁷³

“If the explanation from China Forestry is to be accepted, then there is no *prima facie* evidence to suggest either or both of these documents are false. As suggested in the email exchanges, the total harvesting area and harvesting quantity as evidenced by these permits were the same in both instances, there does not appear to be any incentive for falsifying the second set of documents to replace the first set.”

Mr. Cheng went on to suggest that, “As legal documents in China are often handwritten rather than generated from a central registrar or depository, human errors cannot be ruled out when

⁴⁷⁰ Specified Persons Bundle A; page 160, paragraph 14.

⁴⁷¹ Appendix 4. A copy of records of the enquiries and responses between KPMG and personnel of China Forestry that took place prior to 13 January 2011, the content of which is the same as Appendix 1B of an expert report of Winnie Pao, dated 1 March 2018.

Exhibits Bundle 15B, pages 11195-11214 (*email and attachments* between Naomi Lau: Zhang Hongyu/ Liu Yana-16 and 17 December 2011);

pages 11292-1 to 11292-3 (*two certificates*, dated 31 December 2010, ‘Illustration on the Time of Transfer of Forestry Rights Certificates to Guizhou Wosen Forestry Development Company Limited’); and

pages 11370-11371 (*Schedule*, ‘Discussion of certain matters with personnel of the company/subsidiaries on or prior to 13 Jan 2011: (i) Logging Permits-Mid of Dec 2010 Naomi Lau: Lv Aoqian; (ii) Forest ownership certificates for 31/12/2010 Albert Lui: Zhang Kai; 01/01/2011 Albert Lui: Zhang Kai/ Wang Xin’).

⁴⁷² Transcript 13 May 2023, pages 18-19.

⁴⁷³ Specified Persons Bundle A; page 165, paragraph 24.

the relevant information is transposed.”⁴⁷⁴

529. In his opinion, those accustomed to deal in China Forestry shares, “... would not panic purely because of these email exchanges”.⁴⁷⁵ Of the, “... extremely sceptical investors”, who might reject the explanations, he said “... even if they take the view that these documents might suggest the July 2010 7,000 cubic metres harvesting output for Shuangjiang county forest was completely fabricated, the potential impact on the profit and loss statement of China Forestry would be minimal”, namely “... 2% of the half-year sales or around 1% annualised.”⁴⁷⁶ Mr. Cheng said that it, “... would be unreasonable for investors to take this incident as evidence to show that the company’s books and records have been fabricated in a massive scale.”⁴⁷⁷

530. Of the issue of the materiality of an irregularity that would trigger the sceptical investor’s confidence in the shares of China Forestry, in his oral evidence, Mr. Cheng said, “I would say something leading to fabrication of 10, 15 per cent”. He added, “...more than 10 per cent at least”.⁴⁷⁸

531. In Mr. Cheng’s opinion, “...knowledge about the existence of these two sets of harvesting permits, together with the explanations offered by the company, will unlikely cause a material negative price impact on China Forestry’s share price on or shortly before 13 January 2011.”⁴⁷⁹

532. In cross-examination, Mr. Cheng accepted that the operations of China Forestry were simple: “...they own forests, they cut them down and they sell it to the customers”. He agreed that the description of the need for logging permits to harvest forests, described in the Prospectus, was both easy to understand and obviously important.⁴⁸⁰ The validity of logging permits was obviously important.

533. Mr. Cheng’s attention was drawn to the email exchanges between Ms. Naomi Lau and Ms. Liu Yana on 17 December 2010⁴⁸¹, in particular to Ms. Naomi Lau’s request in an email sent at 12:02, copied to Ms. Linda Chen, a Senior Manager of KPMG, for an explanation:⁴⁸²

⁴⁷⁴ Specified Persons Bundle A; page 165, paragraph 24.

⁴⁷⁵ Specified Persons Bundle A; page 165, paragraph 24.

⁴⁷⁶ Specified Persons Bundle A; page 166, paragraph 25.

⁴⁷⁷ Specified Persons Bundle A; page 166, paragraph 26.

⁴⁷⁸ Transcript 13 May 2023, pages 93-94.

⁴⁷⁹ Specified Persons Bundle A; page 168, paragraph 32.

⁴⁸⁰ Transcript 13 May 2023, pages 30-31.

⁴⁸¹ Transcript 13 May 2023, pages 73-76.

⁴⁸² Exhibits Bundle 15B, page 11231.

“After checking the Logging Licences issued by the Forestry Bureau on two occasions, (we) found that the total area of logging and output approved for July are the same in the Logging Licences issued on two occasions. Could (you) explain the reason (why they) needed to be amended?”

534. In response, Ms. Liu Yana replied first at 1:58 p.m., “As far as I know, the output was changed correspondingly because the area of logging was inconsistent.” Then, at 2:32 p.m., she replied:⁴⁸³

“Hi, we changed to logging by rotation beginning from April.”

535. Mr. Cheng agreed that Ms. Liu Yana’s explanations were different. Further, he said, “On the face I couldn’t associate logging by rotation, exactly how it’s going to change the volume. I just don’t understand.”⁴⁸⁴ He added, “It’s an explanation that I-as I say, personally I can’t associate that with answering the question asked. It also mentioned about April. Why is April important-to the question about something happened in July?”⁴⁸⁵ Finally, Mr. Cheng acknowledged that, “...the answer from the company is wishy-washy. They might not have addressed exactly the question being asked, but whether that will be acceptable or not acceptable is a matter for Naomi Lau to decide.” He agreed that Ms. Liu Yana’s answer was non-responsive to the question.⁴⁸⁶

536. In response to the suggestion by Mr. Derek Chan that, “...a reasonable investor would suspect that some sort of fraudulent manipulation was going on with the company’s logging permits” Mr. Cheng said:⁴⁸⁷

“Partially. I would suggest a reasonable investor would expect the auditor to follow up on these issues and seek explanations, or clarify the explanations.”

537. Nevertheless, Mr. Cheng disagreed with the suggestion that, if the information contained in the communications between KPMG and China Forestry on this issue had been known to investors, China Forestry’s share price would likely have suffered a material decline.⁴⁸⁸ Subsequently, he explained, “...before 12 January, purely on these two email exchanges and to the extent of the possible implication on P & L and the balance sheet, I don’t

⁴⁸³ Exhibits Bundle 15B, page 11234.

⁴⁸⁴ Transcript 13 May 2023, page 76.

⁴⁸⁵ Transcript 13 May 2023, page 77.

⁴⁸⁶ Transcript 13 May 2023, pages 87-88.

⁴⁸⁷ Transcript 13 May 2023, page 90.

⁴⁸⁸ Transcript 13 May 2023, page 101.

think one can come to the conclusion that the books were fabricated as worse as what we have seen afterwards. 80 per cent of the assets were not there, everything is fabricated...”⁴⁸⁹

Forestry Rights Certificates in the name of Guizhou Wosen

538. Of the Forestry Rights Certificates in the name of Guizhou Wosen, Mr. Cheng noted that the explanation Notices issued by the Forestry Bureau of Liping and Congjiang counties, namely that the dates on the Forestry Rights Certificates, 2008 and 2009, referred to the original date on which the certificates had been granted, not the date of transfer to Guizhou Wosen, which was November and December 2010. Mr. Cheng suggested that: ⁴⁹⁰

“...China Forestry’s explanation again put the blame to human error and this time they produced documents to support their explanations. If the explanation is to be accepted, there is nothing alarming from these forestry rights certificates.”

539. Of the publicly available information in respect of Guizhou Wosen’s forestry assets, Mr. Cheng noted that the China Forestry 2009 Annual Report stated that China Forestry owned forestry assets in Yunnan and Sichuan only.⁴⁹¹ China Forestry’s 2010 Interim Report, published on 2 September 2010, stated that China Forestry’s, “...acquisition targets will be extended to high-quality forest resources in Yunnan, Guizhou and Chongqing provinces.”⁴⁹² Mr. Cheng pointed out that the Notes to the Interim Financial Report of the Interim Report 2010 stated under the heading, ‘PREPAYMENT FOR FOREST ACQUISITION’, that: ⁴⁹³

“On 16 March 2010, the Group entered into a memorandum of intent to acquire a forest in Guizhou Province, the PRC and RMB 190,338,500 was paid by the Group as a deposit.”

Mr. Cheng said that there was no publicly available information that identified Guizhou Wosen.⁴⁹⁴

540. In those circumstances, Mr. Cheng expressed the opinion that:⁴⁹⁵

“...if the existence of these erroneous forest rights certificates (together with the explanatory notes) were known to people who were accustomed to trade in China

⁴⁸⁹ Transcript 13 May 2023, page 109.

⁴⁹⁰ Specified Persons Bundle A; page 169, paragraph 34.

⁴⁹¹ Specified Persons Bundle A; page 169, paragraph 35.

⁴⁹² Exhibits Bundle 2A, page 1160.

⁴⁹³ Exhibits Bundle 2A, page 1190.

⁴⁹⁴ Specified Persons Bundle A; page 169, paragraph 36.

⁴⁹⁵ Specified Persons Bundle A; page 169, paragraph 37.

Forestry, they would have very little information to assess the possible implications and impacts on the financial position of the company. Even for the most sceptical investors who rejected the explanatory notes and took the view that it would suggest the Guizhou acquisition was a scam, they could only assume the impact to the company would be the loss of RMB 190.34 million deposit paid to the vendor of the Guizhou forest.”

The significance of the loss of the deposit of RMB 190 million

541. Of the significance of a loss of deposit of RMB 190 million, Mr. Cheng pointed out that China Forestry’s Interim Report stipulated cash and bank balances of approximately RMB 1,534.7 million. The deposit paid represented 12.4% of the cash and bank balances. In his opinion, the loss of the deposit. “...should not have a significant impact on the company’s liquidity.”⁴⁹⁶ In addition, Mr. Cheng noted that China Forestry’s balance sheet, as at 30 June 2010, stipulated that the company had net assets of RMB 9,862.81. The deposit represented only 1.9% of those assets. In his opinion, “...the loss of the deposit would not and should not have a devastating impact on the financial position of the company.”⁴⁹⁷

542. In the result, Mr. Cheng concluded that:⁴⁹⁸

“I do not foresee knowledge of these erroneous forest rights certificates would cause material negative price impact on China Forestry’s share price.”

Inquiries/responses-KPMG and China Forestry in respect of the two issues

543. Mr. Cheng said that the enquiries made by KPMG and the responses of China Forestry, including those evidenced by the email exchange between Ms. Naomi Lau and Ms. Liu Yana and the replies of the Guizhou Forestry Bureau, “...do not contain anything to suggest KPMG have rejected the answers. In particular, the authenticity of the relevant documents was not challenged in these communications.”⁴⁹⁹ In the result, he suggested that the communications in isolation were, “...plainly fact-finding and not suggestive of any wrongdoing.”⁵⁰⁰

544. Of the effect of knowledge of those communications on investors accustomed to or likely to deal in the shares of China Forestry, it was his opinion that, “...they would hardly take these communications as indications suggestive of fraudulent activities in the company.” In the

⁴⁹⁶ Specified Persons Bundle A; page 169, paragraph 38.

⁴⁹⁷ Specified Persons Bundle A; page 169, paragraph 38.

⁴⁹⁸ Specified Persons Bundle A; page 169, paragraph 38.

⁴⁹⁹ Specified Persons Bundle A; page 169, paragraph 40.

⁵⁰⁰ Specified Persons Bundle A; page 169, paragraph 41.

result, he concluded, “I do not believe these investors will generate any significant market impact on the market price of China Forestry.”

545. Further, Mr. Cheng said that in his opinion, even “...sophisticated and sceptical investors” would conclude that, “...even if the two projects involved fraudulent activities, the estimated impact on the liquidity, profitability and financial strength of China Forestry would be relatively insignificant to the valuation of the company prevailing then.”⁵⁰¹ In the result it was his opinion, that, “the potential negative impact on the market price caused by this group of investors being informed of the information would be minimal.”

Consequences of the failure of Mr. Eric Cheng to make himself available for further cross-examination

546. It is to be noted that one specific consequence of the failure of Mr. Eric Cheng to make himself available for further cross-examination by the Presenting Officer, and for questioning by the Tribunal, was that the opinions that he expressed in his written report in respect of the Forestry Rights Certificates of Guizhou Wosen were wholly untested.

⁵⁰¹ Specified Persons Bundle A; page 169, paragraph 42.

CHAPTER 10

Expert evidence-Mr. Roderick Sutton

547. The Tribunal received a report⁵⁰², dated 21 June 2017, from Mr. Roderick Sutton, comprising 158 pages of narrative, a list of 56 Appendices and a list of 43 Annexures, together with 8,152 pages of supporting documents. The Tribunal was also provided with Notes of corrections and an update of his curriculum vitae. Mr. Sutton gave oral evidence-in-chief on 12 October 2023, but was not cross-examined on behalf of any of the Specified Persons.

Curriculum vitae

548. At the time that he made the report Mr. Sutton was a Senior Managing Director in the Forensic Accounting and Advisory Service practice at FTI Consulting in Hong Kong. He is a Fellow of the Hong Kong Institute of Certified Public Accountants and a Fellow of Chartered Accountants, Australia and New Zealand. He has practiced in forensic accounting and litigation support and has acted as a Liquidator, Receiver, Administrator and Financial Advisor to companies in business difficulties in Hong Kong and Australia. He has provided expert reports and has given evidence in the Courts of Hong Kong.

The SFC's instructions

549. Mr. Sutton was instructed by the SFC on 13 November 2012 to prepare a report on China Forestry.⁵⁰³ Subsequently the ambit of those instructions was enlarged by further instructions, dated 15 August 2014.⁵⁰⁴ In his report, Mr. Sutton described the ambit of his initial instructions as being:⁵⁰⁵

“...to prepare an expert report opining on the alleged financial irregularities relating to the published accounts of the Group for the financial years ended 31 December 2008 and 2009 and the Interim period ended 30 June 2010 (collectively the “Relevant Period”).”

550. Mr. Sutton said that the published accounts, to which he referred to as the ‘Published Financial Information’, comprised the Prospectus, the 2009 Annual Results (dated 26 April 2010) and the 2010 Interim Results, for the 6 months ended 30 June 2010 (dated 26 August

⁵⁰² Expert Evidence Bundle 5A, pages 2825-3064.

⁵⁰³ Expert Evidence Bundle 6, pages 3926-4002.

⁵⁰⁴ Expert Evidence Bundle 6, pages 4003-4016.

⁵⁰⁵ Expert Evidence Bundle 5A; page 2836, paragraph 1.14.

2010).

551. In preparing his report, Mr. Sutton was instructed to have regard to the, “balances/figures in the financial statements”, including:⁵⁰⁶

- (a) Sales;
- (b) Cash and bank balances;
- (c) Prepaid insurance premium;
- (d) Amortization of insurance expenses; and/or
- (e) Any other balances/figures in the financial statements.

552. Also, he was instructed to identify, “...whether there are any discrepancies, including any overstatements” in those financial statements and, if so, to “...quantify the discrepancies and consider and give an opinion on possible reasons for the discrepancies”. Further, in the event that he identified such discrepancies, he was instructed to give his opinion “...on the materiality and the impact, if any, of the discrepancies on the financial position of the Group for the Relevant Period”, namely the period encompassed by those financial statements.

553. Of the evidence that Kunming Ultra Big maintained two sets of accounting records during the Relevant Period, he was instructed to, “...opine as to which set of accounts reflects (the) true financial position and performance” of Kunming Ultra Big.

Further instructions

554. In further instructions, Mr. Sutton was provided with, “...further evidence in relation to the forestry rights owned by China Forestry during the period of 31 December 2008 to 30 June 2010”. He was instructed that in reviewing the “balances/figures in the financial statements” as detailed earlier, he was to include in that review:⁵⁰⁷

“... the following figures/balances

- (a) Reversal of fair value of plantation assets upon logging and sales of the plantation assets;
- (b) Plantation Assets; and

⁵⁰⁶ Expert Evidence Bundle 6; page 3932, paragraph 35.1.

⁵⁰⁷ Expert Evidence Bundle 6; page 4010, paragraph 23.1.

(c) Lease prepayments.”

555. Also, he was instructed to identify “...whether there are any discrepancies as at the Relevant Dates, including any over statements” in those financial statements for the Group and, if so, to “quantify the discrepancies” and, in the event that he identified such discrepancies, to give his opinion “...on the materiality and the impact, if any, of the discrepancies on the financial position of the Group for the Relevant Dates”.⁵⁰⁸

The listing requirements

556. Mr. Sutton was instructed to give his opinion on whether.⁵⁰⁹

“any overstatements can be identified... in the following figures/balances as at 31 December 2008 in the Prospectus:

- (a) Sales;
- (b) Cash and Bank Balances;
- (c) Prepaid Insurance Premium;
- (d) Amortization of Insurance Expenses;
- (e) Changes in fair value of plantation assets less cost to sell and Reversal of fair value of plantation assets upon logging and sales of the plantation assets;
- (f) Plantation Assets; and
- (g) Lease prepayments.”

557. In the event that he identified overstatements in those figures/balances, Mr. Sutton was asked to give an opinion whether, “...but for the overstatements, individually and collectively... China Forestry would have met the minimum listing requirements pursuant to paragraph 8.05 of Chapter 8 of the Listing Rules” for the listing of its shares on the Main Board of the SEHK.

Two sets of ledgers

558. In Mr. Sutton’s oral testimony, the context of his consideration of the evidence that two sets of ledgers were maintained in China Forestry was set by reference to the Announcement of China Forestry, dated 29 April 2011, which asserted the discovery by the IBC that,

⁵⁰⁸ Expert Evidence Bundle 6; page 4010, paragraphs 23.2-23.3.

⁵⁰⁹ Expert Evidence Bundle 6; page 4010, paragraph 24.

“...almost all of the sales of the Group for the year ended 31 December 2010 were conducted by way of cash transactions.”⁵¹⁰

559. The term ‘HQ Books’ was ascribed to the ledgers provided to KPMG and used as the basis for the published financial statements and the term ‘Local Books’ was ascribed to the ledgers that were first made available in February 2011.

560. The concerns of the IBC were that:

“...(a) the sales proceeds of these cash transactions might not have been deposited into the bank accounts of the Group and the sales revenue of these cash transactions might not have been entirely booked in the accounts of the Group previously presented to the Board; and

(b) Mr. Li Han Chun, together with the former finance team under his control, maintained more than one set of books and accounts for these cash transactions and as a consequence, the actual cash movement was concealed from the Board.”

561. In his report, Mr. Sutton said, “...I found the HQ Books and the Local Books of Kunming Ultra Big to be materially different...”⁵¹¹

562. In his oral evidence, by reference to the Balance Sheet for the year ended 31 December 2009 in the Local Books⁵¹² and in the HQ Books, he⁵¹³ sought to illustrate the differences. In terms of format, he noted that the HQ Books had a blank vertical column in the middle of the Balance sheet, which was not present in the Local Books. In the HQ Books, ‘Biological assets’ were described as being over RMB 1 billion, whereas in the Local Books there was a nil value. In the HQ Books, the closing balance of ‘Monetary assets’ was described as being over RMB 217 million, whereas in the Local Books it was described as being over RMB 203 million.

Cash and Bank Balances

563. In section 5 of his report, Mr. Sutton reviewed the various sets of bank statements that had been obtained, including those obtained by the China Securities Regulatory Commission (“CSRC”), and compared them to the data stipulated in the HQ Books and the Local Books.

⁵¹⁰ Exhibits Bundle 3A, page 1712.

⁵¹¹ Expert Evidence Bundle 5A; page 2846, paragraph 2.5.

⁵¹² Exhibits Bundle 20A, page 14775.

⁵¹³ Exhibits Bundle 21, page 15462.

564. Mr. Sutton set out the comparison.

Table 5.3 – Comparison of bank balances in the CSRC statements, the HQ Books and the Local Books

Huaxia Bank account	HQ Books (RMB) [A]	Local Books (RMB) [B]	CSRC bank Statements (RMB) [C]	Difference between HQ Books and CSRC bank statements (RMB) [D]=[A]-[C]	Difference between Local Books and CSRC bank statements (RMB) [E]=[B]-[C]
FY2008					
Kunming Branch (USD)	23,421,182	88,327,324	88,327,325	(64,906,143)	(1)
Xin Yun Sub-branch (RMB)	45,149,395	139,622	140,173	45,009,222	(551)
Hongta Sub-branch (RMB)	-	11,022	11,032	(11,032)	(10)
Total	68,570,577	88,477,968	88,478,530	(19,907,953)	(562)
FY2009					
Kunming Branch (USD)	214,759,408	169,330,850	169,330,850	45,428,558	-
Xin Yun Sub-branch (RMB)	3,070,742	185,454	185,454	2,885,288	-
Hongta Sub-branch (RMB)	-	18,215	18,223	(18,223)	(8)
Total	217,830,150	169,534,519	169,534,527	48,295,623	(8)
Interim 2010					
Kunming Branch (USD)	349,567,130	161,076,273	161,076,273	188,490,857	-
Xin Yun Sub-branch (RMB)	366,355,772	365,940	369,644	365,986,128	(3,704)
Hongta Sub-branch (RMB)	-	17,254	17,262	(17,262)	(8)
Total	715,922,902	161,459,467	161,463,179	554,459,723	(3,712)

565. Mr. Sutton concluded:⁵¹⁴

“The balances shown in these bank statements as at 31 December 2008 and 2009, and 30 June 2010 agree to the bank balances recorded in the Local Books of Kunming Ultra Big.”

566. Of the comparison of bank balances in the CSRC statements, the HQ Books and the

⁵¹⁴ Expert Evidence Bundle 5A; page 2890, paragraph 5.14.

Local Books, Mr. Sutton said:⁵¹⁵

“The balances in the HQ Books and the CSRC bank statements differ significantly in FY 2008, FY 2009 and Interim 2010, while the balances in the Local Books and the CSRC bank statements are the same, with the exception of minor variances of less than approximately RMB 4,000.”

567. On the other hand, he noted that:⁵¹⁶

“The Huaxia Bank statements obtained by the auditors for FY 2008 and FY 2009 show balances that agree to the bank balances in the HQ Books.”

Misstatements in the published information

568. Of the discrepancies between the Local Books, the HQ Books and the published information, Mr. Sutton said:⁵¹⁷

“I place a higher level of reliance on independent third party evidence used to support a financial statement balance. Therefore, I consider the bank statements sourced directly from the bank without the involvement of China Forestry’s former management (by CSRC, China Forestry’s current management and the auditors in FY 2010), which support the Local Books, to be more reliable than the bank statements that support the bank balances in the HQ Books. Accordingly, I consider the Local Books’ cash and bank balances to be more reliable than the HQ Books’ cash and bank balances.”

569. In the result, he concluded that the cash and bank balances in the published financial information was:⁵¹⁸

- “(i) understated as at 31 December 2008 by RMB 19,912,072;
- (ii) overstated as at 31 December 2009 by RMB 14,167,178; and
- (iii) overstated as at 30 June 2010 by RMB 520,531,532.”

Materiality

570. In Table 5.4, Mr. Sutton addressed the issue of the materiality of the difference between the Group’s published cash and bank balances compared to the difference between that data

⁵¹⁵ Expert Evidence Bundle 5A; page 2892, paragraph 5.15.

⁵¹⁶ Expert Evidence Bundle 5A; page 2892, paragraph 5.16.

⁵¹⁷ Expert Evidence Bundle 5A; page 2894, paragraph 5.20.

⁵¹⁸ Expert Evidence Bundle 5A; page 2894, paragraph 5.21.

stated in the HQ Books and in the Local Books.

Table 5.4 -Group’s published cash and bank balances compared to the difference between the HQ Books and the Local Books

Period	Group’s published cash and bank balance (per Table 4.3) (RMB)	Cash difference between HQ Books and Local Books (per Table 5.1) (RMB)	% to Group’s published cash and bank balances
FY 2008	104,530,763	(19,912,072)	19.05%
FY 2009	1,706,636,428	14,167,178	0.83%
Interim 2010	1,534,694,611	520,531,532	33.92%

571. In his opinion:⁵¹⁹

“For FY 2008 and Interim 2010, the variances are 19.05% and 33.92% respectively. I considered these variances quantitatively material.”

572. By contrast, in his opinion the difference of 0.83% in FY 2009 was “...quantitatively immaterial.”

NAV

573. In Table 5.5 Mr. Sutton addressed the issue of the materiality of the difference between the Group’s published NAV compared to the difference between the data stated in the HQ Books and in the Local Books.

Table 5.5 -Group’s published NAV compared to the difference between the HQ Books and the Local Books

Period	Group’s published NAV (per Table 4.3) (RMB)	Cash difference between HQ Books and Local Books (per Table 5.1) (RMB)	% to Group’s published NAV
FY 2008	7,435,350,241	(19,912,072)	0.27%
FY 2009	9,594,495,207	14,167,178	0.15%
Interim 2010	9,862,809,859	520,531,532	5.28%

⁵¹⁹ Expert Evidence Bundle 5A; page 2895, paragraph 5.24.

574. In his opinion:⁵²⁰

“For FY 2008 in FY 2009, the variances are 0.27% and 0.15%, respectively, which I do not consider quantitatively material.

For Interim 2010, the difference in the cash and bank balances as compared to the Group’s published NAV is 5.28%, which I consider quantitatively material.”

Qualitative materiality

575. Of the issue of the qualitative materiality of the misstatements in the cash and bank balances, it was Mr. Sutton’s opinion that:⁵²¹

“Because the misstatements were caused by falsified bank statements being provided to the auditors and used to support the published financial results of the Group, I consider the misstatements during the Relevant Period to be intentional and thus qualitatively material.”

Materiality: Hong Kong Accounting Standards

576. In paragraph 4.49 of his report, Mr. Sutton set out the definition of materiality as provided for in the Hong Kong Accounting Standards, namely:⁵²²

“Omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size and nature of the item, or a combination of both, could be the determining factor.”

Quantitative materiality

577. Mr. Sutton said that he considered, “...any variances greater than 5% of the Group’s assets/liabilities balance or the Group’s net income as quantitatively material.”⁵²³

Qualitative materiality

578. The Hong Kong Standard on Auditing 240 addresses, ‘The Auditor’s Responsibilities to Consider Fraud in an Audit of Financial Statements’ and provides, if an auditor believes that

⁵²⁰ Expert Evidence Bundle 5A; page 2896, paragraph 5.28.

⁵²¹ Expert Evidence Bundle 5A; page 2896, paragraph 5.29.

⁵²² Hong Kong Accounting Standards, paragraph 7-‘Presentation of Financial Statements’.

⁵²³ Expert Evidence Bundle 5A; page 2886, paragraph 4.53.

“...a misstatement is or may be the result of fraud”, that:⁵²⁴

“...if the matter involves high-level management, even though the amount itself is not material to the financial statements, it may be indicative of a more pervasive problem, for example, implications about the integrity of management.”

579. In those circumstances, the auditor was required to re-evaluate the assessment of risks of material misstatements, reconsider the reliability of evidence previously obtained and consider, “...the possibility of collusion involving employees, management or third parties”.

580. Mr. Sutton said that in assessing qualitative materiality the factors that he considered included, “...the possibility of fraud where there was intent to misrepresent the financial position or results of operations of the Company.”⁵²⁵

Review of Turnover

581. In section 6 of his report, Mr. Sutton reviewed the information of the turnover of China Forestry as described in the published financial information, the HQ Books and the Local Books.

582. Mr. Sutton noted that:⁵²⁶

“...the turnover (after audit adjustments) for Kunming Ultra Big as recorded in the HQ Books for FY 2008, FY 2009 and Interim 2010 was RMB 498,967,811, RMB 793,692,961 and RMB 494,257,281 respectively, whereas the amount recorded in the Local Books were nil, RMB 65,407 and RMB 9,144.

The difference in the turnover between the two sets of books was RMB 498,967,811, RMB 793,627,554 and RMB 494,248,137 for FY 2008, FY 2009 and Interim 2010 respectively.”

583. It was Mr. Sutton’s opinion that:⁵²⁷

“...the turnover (net of VAT) was overstated in the HQ Books and hence the Published Financial Information, for FY 2008, FY 2009 and Interim 2010 by RMB498,967,811,

⁵²⁴ SFC’s Supplemental Bundle; page 387-25, paragraph 88.

⁵²⁵ Expert Evidence Bundle 5A; page 2886, paragraph 4.55.

⁵²⁶ Expert Evidence Bundle 5A; page 2901, paragraph 6.14.

⁵²⁷ Expert Evidence Bundle 5A; page 2913, paragraph 6.57.

RMB 793,627,554 and RMB 494,248,137 respectively (Table 6.2 above) as there is no evidence to support that sales resulting from logging activities occurred.”

Materiality of the misstatements

584. Of the materiality of the misstatements of the turnover (net of VAT) in the HQ Books to the Group’s published turnover; and the net profit as recorded in the published financial information, Mr. Sutton said that:⁵²⁸

“...the overstatements in turnover compared to the turnover disclosed in the Published Financial Information ranged from a variance of 91.56% in FY 2008 to 99.99% in FY 2009 and in Interim 2010, which I consider quantitatively material... the variance of the overstatement of turnover compared to the Group’s published net profit was 8.48%, 155.12% and 115.13% for FY 2008, FY 2009 and Interim 2010, respectively, which I consider material in quantitative terms when compared to the published net profit of the Group.”

Cash transactions

585. Mr. Sutton acknowledged that the material provided to him by the Commission, set out in the ‘List of information and documents’, included: (i) an ‘Account Receivables Ledger of Kunming Ultra Big’⁵²⁹, described as provided to KPMG by Xue Jiang on 2 March 2011, and (ii) ‘Cash records for 2010, provided by Raymond Tong, 7 April 2011’⁵³⁰.⁵³¹

586. For his part, Mr. Sutton said, “I did not place any weight on these two sets of documents.”

587. Mr. Sutton explained:⁵³²

“...so if one were to apply the revenue recognition test in order to determine whether sales actually existed, one would need to see persuasive evidence that this had occurred and in my opinion, there is no such persuasive evidence.

Now, for example, persuasive evidence would be a sale contract, a delivery note, and most importantly, banking the money into a bank account. So the importance of testing things being banked into the banking account are that the bank is an independent record

⁵²⁸ Expert Evidence Bundle 5A; page 2914, paragraph 6.61; and page 2915, paragraph 6.63.

⁵²⁹ Exhibits Bundle 15B, pages 11295-11350.

⁵³⁰ Exhibits Bundle 14B, pages 10584-10615.

⁵³¹ Transcript 12 October 2023, pages 74-76.

⁵³² Transcript 12 October 2023, pages 78-79.

of something that is recorded in the books of the company and, therefore, it can be verified and its existence proved. In the case of these purported accounts receivables, which are also manifested in cash and other parts, there is no record of them: (a) in the ledgers that I have seen; and there is no record of them being deposited in any way into the bank account.

So I have disregarded these because I do not see that there is sufficient and appropriate audit evidence to convince me that there is any veracity to these transactions.”

588. Mr. Sutton said that was the approach required by International Accounting Standard 18, which sets out the tests that need to be met in order to recognise revenue. Further, Mr. Sutton noted that the Notes to the Financial Statements of the 2010 Annual Report of China Forestry had stated that, following Mr. Li Han Chun’s admissions that transactions had been conducted in cash, the IBC.⁵³³

“... was able to locate the Cash Records but has not been able to locate the related supporting documents of Kunming Ultra Big for year ended 31 December 2010 or the Cash Records or related supporting documents relating to before 2010.”

589. The narrative went on to describe the Cash Records as being of “questionable reliability”. Mr. Sutton observed that KPMG, the Independent Auditors, had issued a ‘Disclaimer of Opinion’.⁵³⁴

Plantation Assets

590. In section 8 of his report, Mr. Sutton reviewed the Plantation Assets of China Forestry. He noted from the published financial information that:⁵³⁵

“As at FY 2008, the Group acquired, planted and managed approximately 171,780 hectares of tree plantations located in Sichuan province (12,447 hectares) and Yunnan Province (159,333 hectares).”

591. In the result, Mr. Sutton concluded that:⁵³⁶

“...the plantation assets recorded in the HQ Books, and hence the Published Financial Information, were overstated in the Relevant Period as the payments for acquisition of

⁵³³ Exhibits Bundle 2B, page 1322.

⁵³⁴ Exhibits Bundle 2A, page 1240.

⁵³⁵ Expert Evidence Bundle 5A; page 2928, paragraph 8.1.

⁵³⁶ Expert Evidence Bundle 5A; page 2936, paragraph 8.7.

forests could not be traced to the CSRC bank statements and the FRCs provided by the management of China Forestry could only support part of the forestry areas China Forestry claimed to own.”

Verification of FRCs

Fangda and H & F

592. Of the result of the investigation commissioned by the SFC, in an engagement letter dated 4 June 2013, by Fangda and H & F Information Consultants Limited, Mr. Sutton said that:⁵³⁷

“...revealed that in respect of the Yunnan forests in the IPO Forest List, the relevant forestry bureaus had no corresponding records for those FRCs. In respect of the Sichuan forests, 22 of the 33 FRCs had no corresponding records with the relevant forestry bureaus.”

SFC

593. Mr. Sutton noted that the Commission had conducted its own analysis, “...to verify the FRCs in the IPO List (as at 31 December 2008, 31 December 2009 and 30 June 2010) and the Updated Forest List (as at 31 December 2012).”⁵³⁸ The Commission concluded that, “...only a small proportion of forestry rights could be confirmed as being held by China Forestry at the Relevant Period.”⁵³⁹

FTI

594. Mr. Sutton said that an issue that he had identified was whether the starting date or the issue date of the FRCs should be applied to determining validity. For its part, FTI calculated the starting date by reference to the expiry date, subtracting the term of the forest land usage right.⁵⁴⁰ In the result, he concluded:⁵⁴¹

“Consistent with the SFC’s analysis, my review of the SFC’s results concludes that the hectares of forests supported by the individual FRCs included in the Updated Forest List cannot be matched with the FRCs in the IPO Forest List.”

⁵³⁷ Expert Evidence Bundle 5A; page 2938, paragraph 8.56.

⁵³⁸ Expert Evidence Bundle 5A; page 2939, paragraph 8.57.

⁵³⁹ Expert Evidence Bundle 5A; page 2940, paragraph 8.61.

⁵⁴⁰ Expert Evidence Bundle 5A; page 2940, paragraph 8.64.

⁵⁴¹ Expert Evidence Bundle 5A; page 2941, paragraph 8.68.

595. Having regard to the FTI review, Mr. Sutton concluded that the hectares of forests owned by the Group at the relevant dates were overstated:⁵⁴²

- as at 31 December 2008, by 169,206 hectares (98.5%);
- as at 31 December 2009, by 168,149 hectares (97.9%); and
- as at 30 June 2010, by 157,869 hectares (91.9%).

In his opinion, that was, “quantitatively material”.⁵⁴³

Valuation

596. Having conducted a review of the valuation of the forestry assets, Mr. Sutton calculated the overstatement of plantation assets to the Group’s published NAV.

Table 8.16 - Comparison of overstatement of plantation assets to the Group’s published NAV

Period	Group’s published NAV (per Table 4.3) (RMB)	Overstatement (per Table 8.10) (RMB)	% to Group’s published NAV
FY 2008	7,435,350,241	7,578,000,000	101.92%
FY 2009	9,594,495,207	7,587,000,000	79.08%
Interim 2010	9,862,809,859	6,863,000,000	69.58%

Materiality

597. In Mr. Sutton’s opinion those overstatement and plantation assets were “quantitatively material”.⁵⁴⁴

Financial Statements

598. In section 10 of his report, Mr. Sutton addressed the effect on the published financial information if account was taken of the overstated amounts that he had identified elsewhere in his report. The adjusted accounts were not restated accounts prepared for reporting purposes. Rather, they merely illustrated, “...the Group’s financial position and performance without the overstated amounts.”⁵⁴⁵

⁵⁴² Expert Evidence Bundle 5A; page 2942, paragraph 8.69.

⁵⁴³ Expert Evidence Bundle 5A; page 2951, paragraph 8.92.

⁵⁴⁴ Expert Evidence Bundle 5A; page 2951, paragraph 8.94.

⁵⁴⁵ Expert Evidence Bundle 5A; page 2965, paragraph 10.2.

Summary: Group's adjusted financial statements for FY 2008, FY 2009 and Interim 2010

599. At Appendix 9.0 (Appendix 3 to Report) Mr. Sutton set out a Summary of the Group's adjusted financial statements.⁵⁴⁶ In the narrative of his report he provided Tables reflecting the Consolidated adjusted balance sheets⁵⁴⁷ and Consolidated adjusted income statements⁵⁴⁸ for those periods. Mr. Sutton noted that the adjusted accounts resulted in net losses for FY 2008 (RMB 2.3 billion) and for FY 2009 (RMB 76 million). He explained, "The decrease in the net profit in FY 2008 and FY 2009 primarily resulted from the reversal of gain in fair value of plantation assets of RMB 8.2 billion in FY 2008 and RMB 615 million in FY 2009."⁵⁴⁹

Listing requirements

600. In section 11 of his report, Mr. Sutton considered the effect that the adjustments of the overstatement to the accounts of China Forestry made in section 10 would have had on the ability of China Forestry to meet the Listing Rules⁵⁵⁰ of the Main Board of the SEHK for China Forestry to be listed on 3 December 2009. The Listing Rules required that the issuer meet "...certain basic quantitative and qualitative conditions in order to list". He noted that the quantitative conditions included:⁵⁵¹

- the profits tests; or
- the market capitalisation/revenue/cash flow test; or
- the market capitalisation/revenue test.

Each of the tests required that the applicant satisfied the requirement of:

"(b) management continuity for at least the three preceding financial years"

The profits test

601. The profits tests required that the company demonstrated a trading record of not less than three years during which the profit attributable to shareholders is not less than HK \$20 million in the most recent year, and not less than an aggregate of HK \$30 million in the two preceding years. He noted that the adjusted profit attributable to shareholders for FY 2008 was

⁵⁴⁶ Expert Evidence Bundle 5A, page 3053.

⁵⁴⁷ Expert Evidence Bundle 5A; page 2967, Table 10.1.

⁵⁴⁸ Expert Evidence Bundle 5A; page 2969, Table 10.3.

⁵⁴⁹ Expert Evidence Bundle 5A; page 2970, paragraph 10.17.

⁵⁵⁰ Expert Evidence Bundle 13A, pages 8831-8832. Chapter 8-Equity Securities-Rules 8.05(1), 8.05(2) and 8.05(3).

⁵⁵¹ Expert Evidence Bundle 5A; page 2972, paragraph 11.1.

a loss of RMB 2,262,080,953, the equivalent of which was a loss of HK \$2,538,241,644.⁵⁵²

602. The net profit attributable to the shareholders would not meet the listing requirement.

The market capitalisation/revenue/cash flow test

603. The market capitalisation/revenue/cash flow test required the company to have a market capitalisation of at least HK \$2 billion at the time of listing, revenue of HK \$500 million in the latest year, and a positive cash flow from operations of HK 100 million in aggregate for the three preceding years. He noted that the adjusted revenue for FY 2008 was RMB 45,979,933, the equivalent of HK\$ 51,593,282.⁵⁵³

604. The revenue for the year would not meet the listing requirement.

The market capitalisation/revenue test

605. The market capitalisation/revenue test required a market capitalisation at the time of listing of at least HK \$4 billion and revenue of HK \$500 million in the latest year. The adjusted revenue for FY 2008 was RMB 45,979,933, the equivalent of HK \$51,593,282.⁵⁵⁴

606. The revenue for FY 2008 would not meet the listing requirement.

⁵⁵² Expert Evidence Bundle 5A; Appendix 10.0, page 3060.

⁵⁵³ Expert Evidence Bundle 5A; Appendix 10.1, page 3061.

⁵⁵⁴ Expert Evidence Bundle 5A; Appendix 10.2, page 3062.

CHAPTER 11

Mr. Li Kwok Cheong

607. The Tribunal has received a witness statement, dated 29 March 2019, from Mr. Li Kwok Cheong.⁵⁵⁵ It is voluminous, comprising over 30,000 words in the English translation. In addition, the Tribunal has been provided with the very lengthy records of interview of Mr. Li Kwok Cheong conducted by officers of the Commission on no less than four occasions namely: 23 June 2011; 25 April 2013; 26 April 2013; and 19 June 2013.⁵⁵⁶ The witness statement was anything but a self-contained account of Mr. Li Kwok Cheong's descriptions of events, making reference in over 170 footnotes to account of events that he had given in the 1st, 2nd and 3rd records of interview of Mr. Li Kwok Cheong.

Background

608. Mr. Li Kwok Cheong was the chairman and executive director of China Forestry. Of his personal background, he said that he had been a civil servant in the PRC, although he provided no other details. Then, he had been involved in trading tobacco and investing in artwork.⁵⁵⁷ In August 2001, Beijing Zhaolin Forestry Resources Development Co Ltd was established. He was the sole beneficial shareholder. In July 2003, it purchased its first forest land in Sichuan Province.

Relationship with Mr. Li Han Chun

609. Mr. Li Kwok Cheong said that he first met Mr. Li Han Chun in around 2004. He thought that he was an outstanding graduate of Tsinghua University and had a good understanding of capital markets. He was the founder and managing director of Creative Energy Solutions Holdings Limited, then listed on the Growth Enterprise Market Board of the SEHK. Although he understood that he had no experience in the forestry industry, he understood him to have, "...great experience in group company management".⁵⁵⁸

610. Mr. Li Han Chun joined Beijing Zhaolin in 2004. It is be noted that the China Forestry Prospectus, stated that Mr. Li Han Chun had joined the Group in February 2004.⁵⁵⁹ A contract of employment, dated 1 February 2004, between Mr. Li Han Chun and Beijing Jinfudi Real

⁵⁵⁵ Specified Persons Bundle A, pages 1-178. Mr. Li KC's Witness Statement.

⁵⁵⁶ Witness Evidence Bundle A1, A2 and B1, pages 1-1085.

⁵⁵⁷ Mr. Li KC's Witness Statement, paragraph 9.

⁵⁵⁸ Mr. Li KC's Witness Statement, paragraph 12.

⁵⁵⁹ Core Bundle 1, page 114.

Estate Development Co Ltd, the former name of Beijing Zhaolin, described Mr. Li Han Chun as being employed by the company as a general manager for a term to terminate on 31 January 2007.⁵⁶⁰

611. Mr. Li Kwok Cheong said that, "...from 2006, the management of the group's business was handed over to Li Han Chun completely."⁵⁶¹ Use of the various company chops, such as the one for finance, contracts and company were under the control of Mr. Li Han Chun, at whose request he had handed over his personal legal representative chop to Mr. Li Han Chun's team. He was not informed of its use.⁵⁶² In January 2005, Mr. Li Han Chun had recruited Madam Wu Xiaofen, his cousin, to be the company's Chief Financial Officer and Mr. Zhang Hongyu to be the Chief Resources Officer.⁵⁶³ It is to be noted their employment in those roles was reflected in their three-year employment contracts by Beijing Jinfudi, dated 4 January 2005 and 11 January 2005.⁵⁶⁴

IPO

612. In 2006, given the requirement of substantial capital investment needed in the forestry industry, together with Mr. Li Han Chun and others, consideration was given to listing the company either by way of an acquisition of a shell company or by a new listing application. Mr. Li Han Chun was in favour of the latter, which proposal was pursued.⁵⁶⁵

Restructuring

613. For the purpose of the listing application, the Group underwent restructuring. On 21 December 2007 China Forestry was incorporated in the Cayman Islands, by Kingfly Capital Ltd, Mr. Li Kwok Cheong's wholly-owned company. On that date, Mr. Li Han Chun became an executive director of China Forestry.⁵⁶⁶

614. On 24 December 2007, Sky Famous, a BVI company wholly owned by China Forestry, acquired all the issued shares of Ultra Big Investments Limited ("Ultra Big"), incorporated in Hong Kong. On 7 March 2008, Kunming Ultra Big Forestry Resource Development Co Ltd ("Kunming Ultra Big") was established by Ultra Big as a wholly-foreign-owned enterprise in

⁵⁶⁰ SFC's Supplemental Bundle 1, pages 1 and 15-19.

⁵⁶¹ Mr. Li KC's Witness Statement, paragraph 13.

⁵⁶² Mr. Li KC's Witness Statement, paragraph 31.5.

⁵⁶³ Mr. Li KC's Witness Statement, paragraph 14.

⁵⁶⁴ SFC's Supplemental Bundle 1, pages 31-45-19 and 46-60-19.

⁵⁶⁵ Mr. Li KC's Witness Statement, paragraph 15.

⁵⁶⁶ Mr. Li KC's Witness Statement, paragraph 30.

Yunnan. Agreements dated 19 March 2008 and 17 April 2008 Beijing Zhaolin transferred its forestry rights in Sichuan to Kunming Ultra Big. On 4 September 2008, Beijing Zhaolin was dissolved and deregistered.

Sale of 3.2 million Ching Forestry shares to Top Wisdom by Kingfly

615. On 31 March 2008, Kingfly sold 3,200,000 shares in China Forestry to Top Wisdom Overseas Holdings Limited, a company wholly-owned by Mr. Li Han Chun, for a consideration of US \$32 million. Mr. Li Han Chun made a payment of US\$2 million on 31 March 2008 and agreed to pay the remaining balance of US \$30 million in eight equal yearly instalments, commencing on 31 December 2010. Following the listing, that represented 6.47% of the issued capital of China Forestry.⁵⁶⁷ However, Mr. Li Han Chun made no other payment.

Pre-IPO investments: (i) Carlyle; and (ii) Carlyle and Partners

616. By a First Share Purchase Agreement, dated 30 December 2007, and an Accession and Amendment Agreement, dated 18 March 2008, Carlyle Funds (“Carlyle”) acquired 500,000 China Forestry shares from Kingfly and subscribed for 3.5 million shares in China Forestry.⁵⁶⁸

617. By a Second Share Purchase Agreement, dated 25 June 2009, Carlyle and Partners Group each acquired China Forestry shares from Kingfly and Top Wisdom and also subscribed for China Forestry shares.⁵⁶⁹

Listing on the SEHK

618. On 3 December 2009, China Forestry was listed on the SEHK. Mr. Li Han Chun handled:⁵⁷⁰

“...the matters arising out of the listing application (including the provision of required documents to the professional parties of the listing application due diligence exercise and the arrangement of due diligence interviews etc.)”

Due diligence

619. Of his participation in the due diligence process, Mr. Li Kwok Cheong said that it, “... was very limited. For all of the matters I handed over to Li Han Chun, and I trusted him

⁵⁶⁷ Mr. Li KC’s Witness Statement, paragraph 60.

⁵⁶⁸ Exhibits Bundle 1, page 19.

⁵⁶⁹ Mr. Li KC’s Witness Statement, paragraphs 19 and 20. Exhibits Bundle 1, page 19.

⁵⁷⁰ Mr. Li KC’s Witness Statement, paragraph 23.

completely.”⁵⁷¹ Mr. Li Han Chun was responsible for providing documents to the sponsors and other professional teams, including, “... information relating to financial matters, business, acquisition of forest lands, administration etc.”⁵⁷²

Prospectus

620. Of the preparation and publication of the Prospectus, Mr. Li Kwok Cheong said:⁵⁷³

“I do not understand English and had briefly looked at the Chinese version of the Prospectus. In particular for the section about financial information, I relied on and trusted Li Han Chun for his brief explanation. For the truth and accuracy of the Prospectus contents, I totally relied on Li Han Chun, his team and different professional parties, in particular the joint sponsors as the gatekeepers.”

621. Mr. Li Kwok Cheong said that, given that, “Li Han Chun and his team were also responsible for the aspects of customer and sales (including operation, sales, acquisition, construction, expenditure, payment and approval etc.)” in the result:⁵⁷⁴

“I did not have knowledge as to the details of the 17 clients referred to in the Prospectus. I was only in control of the macro development direction of the Group and forest land trading and did not participate in the actual forest land trading or operation on a micro level.”

622. On the other hand, Mr. Li Kwok Cheong said that he had:⁵⁷⁵

“... visited and inspected all the forest lands held by the Group (including Sichuan province, Yunnan province and Guizhou province) to understand the local forestry resources there and meet up the local government officials to appeal for their support in the Group’s development.”

The role of KPMG

623. Having noted that KPMG was engaged as reporting accountant to conduct the IPO audit and, after listing, had prepared the 2009 Annual Audit, 2010 Interim Audit and the 2010 Annual Audit, Mr. Li Kwok Cheong said that it was KPMG’s responsibility to conduct, “...appropriate

⁵⁷¹ Mr. Li KC’s Witness Statement, paragraph 82.

⁵⁷² Mr. Li KC’s Witness Statement, paragraph 31.

⁵⁷³ Mr. Li KC’s Witness Statement, paragraph 27.

⁵⁷⁴ Mr. Li KC’s Witness Statement, paragraph 31.8.

⁵⁷⁵ Mr. Li KC’s Witness Statement, paragraph 33.

verification of the documents submitted by the team of Li Han Chun and ensuring their authenticity.” He complained that, if KPMG had fulfilled its required professional obligations, it would have discovered, “...the illegal and criminal activity of Li Han Chun and his team before listing, and the Group would not have listed.”⁵⁷⁶

Explanations to KPMG

23 January 2023-KPMG: Mr. Li Kwok Cheong and Mr. Wong Tak Jun

624. Mr. Li Kwok Cheong said that he met with representatives of KPMG and Mr. Wong Tak Jun on 23 January 2023. KPMG outlined numerous issues of non-compliance by the Group. For his part, he said, “This was the time I first had knowledge of the non-compliances issues of the Group. I was shocked.”⁵⁷⁷

(i) Logging permits

625. Of the observation by KPMG, in respect of the logging permits, that the handwriting looked exactly the same on all the logging permits and that the impressions of the chop of the Forestry Bureau were located at the same place on each of the permits, Mr. Li Kwok Cheong acknowledged that he had said:⁵⁷⁸

“There is only one officer responsible for issuing the logging permits in each Forestry Bureau. This might be the reason why the handwriting on the logging permits looked similar.”

(ii) Forestry Rights Certificates of Guizhou Wosen

626. Of the statement by KPMG, in respect of the Forestry Rights Certificates of Guizhou Wosen, that they bore dates in 2008 and 2009, whereas Guizhou Wosen was not set up at that time, Mr. Li Kwok Cheong accepted that he had said:⁵⁷⁹

“...the validity period of forests rights is 30 to 50 years, which would not be extended by any forest rights transfer. As such, the Forestry Bureau might have put the first transfer date as the date of issue, so as to ensure that the validity period matches with the expiry date.”

⁵⁷⁶ Mr. Li KC’s Witness Statement, paragraph 88.

⁵⁷⁷ Mr. Li KC’s Witness Statement, paragraph 95.

⁵⁷⁸ Mr. Li KC’s Witness Statement, paragraph 95.1.

⁵⁷⁹ Mr. Li KC’s Witness Statement, paragraph 95.2.

(iii) Customers' bank accounts-rural credit unions

627. Of the statement by KPMG, that the documents received from China Forestry suggested that all the company's customers had bank accounts in Tibet with the Bank of Communications but the Bank of Communications confirmed that it had no branches in Tibet, Mr. Li Kwok Cheong contended that he had said:⁵⁸⁰

"I was unclear about the problems in connection with the clients' account. However, I genuinely believe that the management of the Group would not be engaged in illegal acts. I agreed to conduct follow-up investigation into the issues raised by KPMG."

628. Whilst the KPMG minutes of that meeting reflect the three matters that Mr. Li Kwok Cheong described, Mr. Li Kwok Cheong did not address another matter described in the minutes that arose in that context, namely his assertion that:⁵⁸¹

"...the customers use bank accounts in rural credit union."

629. Similarly, Mr. Li Kwok Cheong did not address the assertion attributed to him in the minutes, in response to being told that KPMG had checked bank codes of rural credit unions and found that there were conflicts between that search and the bank codes shown in the bank-in slips, namely that:⁵⁸²

"...rural credit union may be using some different bank code. He will investigate it."

(iv) Irregularities and inflated information in the forestry industry

630. Further, Mr. Li Kwok Cheong did not there address the statement attributed to him in the minutes, namely that, "...there are possible irregularities and inflated financial information in the forestry industry and need some time to resolve."⁵⁸³

631. Subsequently, in his witness statement, Mr. Li Kwok Cheong said of this issue: ⁵⁸⁴

"...forestry companies in China would normally over-log, in other words, the actual logging area would normally be larger than that covered by the logging permits. This was a common phenomenon in China, and was the so-called exaggeration that I mentioned."

⁵⁸⁰ Mr. Li KC's Witness Statement, paragraph 95.4.

⁵⁸¹ Exhibits Bundle 15B, page 11396.

⁵⁸² Exhibits Bundle 15B, page 11396.

⁵⁸³ Exhibits Bundle 15B, page 11397.

⁵⁸⁴ Mr. Li KC's Witness Statement, paragraph 98.3.

632. Mr. Li Kwok Cheong acknowledged that the board of directors of China Forestry had received a letter from KPMG, dated 25 January 2011 in which various issues arising in the audit were identified and in respect of which action was requested.

Enquiries of Mr. Li Han Chun of the audit issues identified by KPMG

633. Mr. Li Kwok Cheong said that he had made enquiries of Mr. Li Han Chun of some of the matters identified by KPMG arising from the audit. In his witness statement he did not provide any details of the circumstances in which those enquiries were made. However, in a series of footnotes he made reference to passages in his various records of interview by the Commission.

634. In his first record of interview, Mr. Li Kwok Cheong said that, following the disclosure of the issues discovered by KPMG in the course of their audit, a teleconference board meeting of China Forestry's directors had been held, at which, amongst others Mr. Xiao Feng and Mr. Li Han Chun participated.⁵⁸⁵ In his witness statement, Mr. Li Kwok Cheong asserted that Mr. Li Han Chun had given various explanations.⁵⁸⁶

(i) Huaxia Bank account-the missing RMB 1 billion

- around RMB 530 million was used in the purchase of 400,000 m³ of wood in the north-eastern region, as a hedge;
- RMB 200 million was used to purchase Ling Lang Lin Chi in Yunnan;
- The balance was paid in advance to Zhou Xiaolin to acquire Guizhou forest land.

(ii) Use of cash

A lot of transactions (including sale and purchase of wood logs, acquiring of forest land) required a large amount of cash. In particular, farmers requested to be paid in cash.

(iii) Bank codes

Mr. Li Han Chun said that the issue of bank codes was a mistake made by KPMG.

(i) Insurance

Because PICC and China Forestry could not reach consensus on the premium for

⁵⁸⁵ Witness Evidence Bundle A1; pages 91-94, counter #s 1487-1542.

⁵⁸⁶ Mr. Li KC's Witness Statement, paragraph 99.

insurance contracts, China Forestry had taken out insurance with other insurance companies.

(ii) *logging permits*

Mr. Li Kwok Cheong said that Mr. Li Han Chun and Mr. Zhang Hongyu had admitted that logging permits in respect of 100,000 hectares of forest were, “fake”

(iii) *Forestry Rights Certificates*

Mr. Li Kwok Cheong said that Mr. Li Han Chun had said that Forestry Rights Certificates could be taken to the Forestry Bureau for amendment.

Issue taken with the assertions made by Mr. Li Han Chun to the China Securities Regulatory Commission

635. Mr. Li Kwok Cheong took issue with numerous statements made by Mr. Li Han Chun to the China Securities Regulatory Commission during an interview of him, dated 31 July 2014. In particular, he took issue with the role ascribed to him by Mr. Li Han Chun, namely:⁵⁸⁷

“The company’s Beijing representative office was mainly handled by Li Kwok Cheong, whereas the operations in Yunnan, Sichuan and Guizhou were handled by the responsible persons in those regions. Nominally speaking, the responsible persons from different regions would report to me, but actually all of them would only listen to (the instructions) of Li Kwok Cheong.”

636. Subsequently, Mr. Li Han Chun had asserted that, “...although I was the general manager, all the senior management staff were not under my control and were directly managed by Li Kwok Cheong. I have no understanding of the operations of all branch companies of China Forestry.”⁵⁸⁸

637. For his part, Mr. Li Kwok Cheong said that, “...after the application for listing, Li Han Chun was the person who actually managed and operated the company.”⁵⁸⁹

638. Having been shown copies of 18 Forestry Rights Certificates, part of the 51 Forestry Rights Certificates referred to in the Prospectus, Mr. Li Han Chun asserted to the China

⁵⁸⁷ Witness Evidence Bundle B1, pages 1086-1124 at page 1090.

⁵⁸⁸ Witness Evidence Bundle B1, page 1090.

⁵⁸⁹ Mr. Li KC’s Witness Statement, paragraph 134.1.

Securities Regulatory Commission that:⁵⁹⁰

“The acquisition of forest lands and the application for forestry right certificates were handled by branch companies in different regions, I have never handled any forest land acquisition and forestry right certificate matters, and I have no idea about the authenticity of these forestry right certificates”.

639. Li Kwok Cheong said that he disagreed:⁵⁹¹

“Li Han Chun or Liu Fengcai were the individuals responsible for the entire process of the acquisition of and managing forests... Li Han Chun and Zhang Hongyu were also responsible for discussing matters related to the sales and purchase of forests with forest farmers and their agents. Li Han Chun had also always been responsible for the operations, sales and purchase of forests, and the building of construction sites etc.”

The evidence in relation to the Forestry Rights Certificates

640. In his witness statement, Mr. Li Kwok Cheong took issue with the validity of the opinions given by Fangda Partners in respect of the 51 Forestry Rights Certificates. In effect, he invited the Tribunal to conclude that the Commission had not proved that, “... the 51 forestry rights certificates were fake or forged.”⁵⁹²

641. Mr. Li Kwok Cheong acknowledged that, in respect of many of the 51 Forestry Rights Certificates, the verification process had resulted in a finding that, “...there was no record” of the existence of that particular certificate. Further, he accepted that in the verification process a range of responses had been forthcoming from Forestry Bureau officials that went to the issue of the validity of the certificates, including differences noted in the certificates compared with the Forestry Bureau records as to:⁵⁹³

- the certificate serial numbers and the stipulated area;
- the official seals;
- the absence of certain information;
- the persons named as managers or responsible personnel on the certificates.

⁵⁹⁰ Witness Evidence Bundle B1, page 1110.

⁵⁹¹ Mr. Li KC’s Witness Statement, paragraph 134.8.

⁵⁹² Mr. Li KC’s Witness Statement, paragraph 121.

⁵⁹³ Mr. Li KC’s Witness Statement, paragraph 120.

642. Nevertheless, Mr. Li Kwok Cheong invited the Tribunal to conclude that, "... there are multiple possibilities that can contribute to such findings", namely:⁵⁹⁴

- (i) the local registration and/or enquiry systems... were flawed or contained omissions; National Law might not be effectively implemented in remote geographical areas, such as Yunnan and Sichuan Provinces;
- (ii) there was no legal requirement that forestry bureaus provide enquiry services; different Forestry Bureaus adopted different standards in the disclosure of information on the certificates and specifications in the verification process;
- (iii) some Forestry Bureaus adopted a non-cooperative attitude or even refused to provide information; and
- (iv) there was no legal requirement that required the maintenance of records of Forestry Rights Certificates that had been cancelled.

The evidence in relation to logging permits

643. Mr. Li Kwok Cheong took issue with what he said was the evidence led by the Commission that some of the logging permits in the name of China Forestry "were fake or forged". The evidence did not prove that to be the case.⁵⁹⁵

644. There was no legal requirement in China that made provision for enquiries seeking the verification of logging permits. The enquiries that were made were verbal only. He asserted that, "...no verification on the authenticity of the logging permits had been conducted."⁵⁹⁶

Evidence as to the respective roles in China Forestry of Mr. Li Han Chun and Mr. Li Kwok Cheong

645. Mr. Li Kwok Cheong invited the Tribunal to have regard to the descriptions given by various officers and members of staff of China Forestry as to the respective roles in China Forestry of Mr. Li Han Chun and Mr. Kwok Cheong, namely Tong Wai Kit, Cheung Man Yu, Xiao Feng, Wong Tak Jun, Li Zhitong and Wang Weiyong.⁵⁹⁷

646. For example, Mr. Xiao Feng had said of their respective roles:⁵⁹⁸

⁵⁹⁴ Mr. Li KC's Witness Statement, paragraph 121.

⁵⁹⁵ Mr. Li KC's Witness Statement, paragraph 128.

⁵⁹⁶ Mr. Li KC's Witness Statement, paragraph 129.

⁵⁹⁷ Mr. Li KC's Witness Statement, paragraphs 43-45.

⁵⁹⁸ Witness Evidence Bundle C2; page 2224, counter #117.

“...basically, the daily operation of the company was run by the CEO. Normally, the Chairman of the Board himself did not devote much time and effort to the daily operation of the company. The Chairman of the Board himself is a very famous artwork collector in the Mainland. Therefore, he has to manage his own art museum and gallery in the Mainland.... for example, after we had completed our investment in Sichuan, soon afterwards, they expanded the business to Kunming and Guizhou. Well, the Chairman of the Board would personally develop some important relationships in those places. However (regarding) the daily operation, including the acquisition of forest land, logging, plantation, daily communication with supervisory authorities, and so on, basically, most affairs were handled by the CEO himself and his subordinates.”

647. For his part, Mr. Wong Tak Jun said:⁵⁹⁹

“... although Li Kwok Cheong has a significant shareholding (in the company) it seems to me that he is really, that is, detached from the company. He knows more about the general directions of the company, and he may have a closer relationship with the government or stronger local ties. However, I think he isn’t really clear about the operation. This is my own... observation during our meetings.”

648. Of the role of Mr. Li Han Chun, he said:⁶⁰⁰

“I think he’s (the one) who mainly operates this company. Therefore, for example, buying, for example, during our meetings, very often, he mentioned some plans to acquire forest land, or how we could find some new customers in the course of our operation. He did mention such things. He’s really involved in *hands-on* operation of the company. I think, that he is virtually the only person in the whole Board who’s clearest about the main operation of the company.”

Staff of China Forestry recruited by/reporting to Mr. Li Han Chun

649. Mr. Li Kwok Cheong said that many members of the staff of China Forestry had been recruited by and reported to Mr. Li Han Chun. As noted earlier, he recruited Madam Wu Xiaofen and Mr. Zhang Hongyu in January 2005. He introduced Tong Wai Kit, who was the joint Chief Financial Officer (Hong Kong) and the Company Secretary to the company in April 2008. Ms. Lv Aoqian was employed by Mr. Li Han Chun prior to the listing as Director of

⁵⁹⁹ Witness Evidence Bundle C2; page 2359, counter #143.

⁶⁰⁰ Witness Evidence Bundle C2; page 2359, counter #145.

Resources and Administration. She had known Mr. Li Han Chun's wife, "...for a long time". Mr. Wen Guoping was recruited by Mr. Li Han Chun in May 2010 as the temporary Chief Financial Officer.⁶⁰¹

650. Mr. Li Kwok Cheong said of those circumstances that, "...Li Han Chun placed his trusted aides on important positions of the Group, and all senior management members reported to Li Han Chun."⁶⁰²

Mr. Li Han Chun's criminal conviction

651. Twice in his witness statement Mr. Li Kwok Cheong asserted that Mr. Li Han Chun had been convicted of a criminal offence arising from his conduct in respect of China Forestry's monies, namely the transfer of monies on his instructions by Mr. Zhou Xiaolin, the person in charge of Guizhou Changsheng, of RMB 60 million to a friend of Mr. Li Han Chun. He said that Mr. Li Han Chun:⁶⁰³

"...was sentenced to a 3 years' imprisonment for misappropriation of money (with 3 years' suspended sentence) by the Guiyang Nanming People's Court (2011) Nanxing First Trial No. 535) in August 2011."

652. Later in his witness statement, Mr. Li Kwok Cheong gave a different description of the circumstances giving rise to that conviction, namely as arising from Mr. Li Han Chun:⁶⁰⁴

"...requesting Zhou Xiaolin to transfer RMB 30 million each to two of his personal friends' company account (e.g. Zhi Hong International Business Information Beijing Limited and Beijing Gallant Hua Xin Investment Limited)."

Disclosed information-false or misleading

653. Mr. Li Kwok Cheong asserted that he did not know that the Disclosed Information contained material facts that were false and misleading. The Commission had not proved otherwise. He believed that the information disclosed in the documents produced by Mr. Li Han Chun and his team of the information verified by the professional teams, "...were true and accurate". On the face they were "...authentic and accurate". There was no reason to doubt that. The audit process conducted of China Forestry over the several years was undertaken by

⁶⁰¹ Mr. Li KC's Witness Statement, paragraphs 37-40.

⁶⁰² Mr. Li KC's Witness Statement, paragraph 42.

⁶⁰³ Mr. Li KC's Witness Statement, paragraph 70.

⁶⁰⁴ Mr. Li KC's Witness Statement, paragraph 98.1.

“...experienced professional institutions”. Nevertheless, “...they were all ultimately deceived by Li Han Chun and his team.” Similarly, he was deceived.⁶⁰⁵

Negligence/recklessness

654. Mr. Li Kwok Cheong asserted that at all times he had complied with his duties and was not liable for negligence in respect of the false and misleading information in the Disclosed Information. The delegation by the board of directors of overall management of the Group to Mr. Li Han Chun was reasonable having regard to his, “...education background and working experience”.⁶⁰⁶ Reputable professional teams had been engaged during and after listing to conduct appropriate due diligence and audits of China Forestry. Where necessary and appropriate, issues arising in the business had been raised with Mr. Li Han Chun and he had provided, “...explanations which the board considered reasonable”.⁶⁰⁷

655. The misconduct of Mr. Li Han Chun and his team were, “...acts of deliberate concealment and fraud”, of which, together with the professional teams and the other directors, he was oblivious.⁶⁰⁸

656. Mr. Li Kwok Cheong asserted that he was not, “...negligent or reckless as to whether the Disclosed Information was false or misleading.”⁶⁰⁹

Placement of 119 million China Forestry shares by Top Wisdom at the direction of Mr. Li Han Chun

657. Mr. Li Kwok Cheong said that Mr. Li Han Chun had informed him of his intention to sell part of its holding of China Forestry shares, but had not accepted his suggestion that he should sell them to Mr. Li Kwok Cheong. In the event, by a Placing Agreement with Standard Chartered Securities, 119 million China Forestry shares had been sold by Top Wisdom on 12 January 2011 at \$3.35 per share.⁶¹⁰

Purchase by Kingfly of 12 million China Forestry shares on 13 January 2011

658. Mr. Li Kwok Cheong invited the Tribunal to consider as relevant to the issue of his lack of knowledge of, “...any acts that were in serious breach of laws and regulations” by China

⁶⁰⁵ Mr. Li KC’s Witness Statement, paragraphs 136-138.

⁶⁰⁶ Mr. Li KC’s Witness Statement, paragraph 139.1.

⁶⁰⁷ Mr. Li KC’s Witness Statement, paragraph 139.5.

⁶⁰⁸ Mr. Li KC’s Witness Statement, paragraph 139.6.

⁶⁰⁹ Mr. Li KC’s Witness Statement, paragraph 141.

⁶¹⁰ Mr. Li KC’s Witness Statement, paragraph 61.

Forestry, his purchase through Kingfly of 12 million China Forestry shares on 13 January 2011.⁶¹¹ He suggested that, if he had known of the misconduct, he would not have bought shares of China Forestry. On the contrary, he would have sold his shares to avoid losses. That is what Mr. Li Han Chun had done on 12 January 2011.⁶¹²

Investigations into China Forestry: Independent Board Committee, Ernst & Young and Deloitte

659. Mr. Li Kwok Cheong addressed at some length the investigations that had been made by various bodies into China Forestry, namely the Independent Board Committee, Ernst & Young and Deloitte. The IBC had reported on 3 March 2011 and 18 July 2011, Ernst & Young on 29 April 2011 and Deloitte on 2 May 2012, which Reports had been provided to the Commission. In particular, he drew attention to adverse findings made in respect of Mr. Li Han Chun.

IBC-1st Report

660. The Tribunal was invited to note that in its 1st Report the IBC had said of "...senior executives employed by Li Han Chun", that they :⁶¹³

"... had been absent from work and did not cooperate with the investigation for no reason. They had even taken away some important financial/operational information. IBC suspected that all of them are Li Han Chun's accomplices" and that, some of them, including Li Han Chun, "...had deleted a large amount of emails, suspecting they were destroying the evidence."

661. In addition, it was noted that the IBC found that:⁶¹⁴

"...Li Han Chun/Zhang Hongyu had taken away the logging permits, the cash ledgers and supporting document, suspecting that they wanted to conceal the sales volume by cash and make profit from it."

662. Finally, Mr. Li Kwok Cheong said that it was the IBC's preliminary conclusion of Mr. Li Han Chun that, as he did not cooperate with the investigation:⁶¹⁵

⁶¹¹ Exhibits Bundle 3A; pages 1672-1673-'China Forestry's Voluntary Announcement', dated 13 January 2011.

⁶¹² Mr. Li KC's Witness Statement, paragraph 140.

⁶¹³ Mr. Li KC's Witness Statement, paragraph 104.3.

⁶¹⁴ Mr. Li KC's Witness Statement, paragraph 104.5.

⁶¹⁵ Mr. Li KC's Witness Statement, paragraph 104.8.

“...it was suspected that he might have used the Group’s capital for the acquisition of wood logs and forest land. It had not been reflected in the financial statements of the listed company and he might also have instructed Wu Xiaofen to prepare forged financial information to deceive KPMG and the Group. Li Han Chun also used or conspired with Zhou Xiaolin to misappropriate the Group’s funds amounting to not less than RMB 60 million by way of concealment and conducting fraud.”

IBC-2nd Report

663. Attention was drawn by Mr. Li Kwok Cheong to the statement by the IBC in its 2nd Report that:⁶¹⁶

“...IBC had reasons to believe that under the supervision of Li Han Chun, Wu Xiaofen, Zhang Hongyu and certain senior management members controlled/maintained more than one set of accounting books (i.e. HQ Books and Local Books) in respect of Kunming Ultra Big. Li Han Chun had provided documents to explain the cash used in the account of Kunming Ultra Big for the acquisition of forestry assets. After investigation, IBC doubted the authenticity of relevant documents and did not believe in the explanations of Li Han Chun.”

Ernst & Young

664. Similarly, the Tribunal was invited to note that in its report Ernst & Young said that it had, “...found circumstantial evidence of the falsification of documents from the Group’s internal documents.”⁶¹⁷

665. In the concluding paragraph of his witness statement, Mr. Li Kwok Cheong invited the Tribunal to note that:⁶¹⁸

“...the IBC, EY and Deloitte did not reach any conclusion that I have directly participated or prepared the false or misleading information.”

⁶¹⁶ Mr. Li KC’s Witness Statement, paragraph 108.1.

⁶¹⁷ Mr. Li KC’s Witness Statement, paragraph 106.3.

⁶¹⁸ Mr. Li KC’s Witness Statement, paragraph 143.

CHAPTER 12

Mr. Li Han Chun

666. The Tribunal has received a witness statement, dated 9 April 2019, from Mr. Li Han Chun,⁶¹⁹ the transcript of a record of interview conducted of him in Xiamen by the China Securities Regulatory Commission on 31 July 2014⁶²⁰ and the transcript of the oral evidence given by him under affirmation by video-link in January 2020 to the Market Misconduct Tribunal, chaired by Mr. Kenneth Kwok SC.⁶²¹

Background

667. In his witness statement, Mr. Li Han Chun said that he had been born on 10 July 1975. He graduated in 1997 with a Bachelor's degree in engineering from Tsinghua University, having taken courses in heating, ventilation and air-conditioning. From April 1999 to April 2003, he was the general manager of Creative Energy Solutions Holdings Limited ("CES Holdings"), a company listed on the GEM Board of the SEHK. Then, having studied full-time at the School of Architecture of Tsinghua University from 2003 to July 2006, he obtained a Master's degree. In July 2006, he began working as a researcher at Hyperion Enterprise Performance Management Centre of the Guanghua School of Management of Peking University. He was the general secretary of a project entitled, '2007 China Management Innovation Challenge'.⁶²²

Relationship with Mr. Li Kwok Cheong

668. In May 2007, through the introduction of a person who used the Hyperion Research Centre, he first met Mr. Li Kwok Cheong and they dined together. Mr. Li Kwok Cheong informed him of his forestry business, operated through Beijing Zhaolin, claiming that it owned 180,000 mu of forest in Sichuan, had an annual profit of RMB 10 million and had carried out related business in Yunnan for some time. He hoped to find investors to inject capital into the business, following which he hoped to obtain a listing. In that context, he offered Mr. Li Han Chun employment to assist on finance-related matters. For his part, Mr. Li Han Chun expressed his interest and willingness to help.⁶²³

⁶¹⁹ Specified Persons Bundle A, pages 105 to 155-33.

⁶²⁰ Witness Evidence Bundle B1, pages 1086-1147.

⁶²¹ Transcript 15 January 2020, pages 63-95; 16 January 2020, pages 1-89; 17 January 2020, pages 1-92; 23 January 2020, pages 1-27.

⁶²² Mr. Li Han Chun's Witness Statement, paragraphs 3-6.

⁶²³ Mr. Li Han Chun's Witness Statement, paragraphs 13-14.

Introduction to Mr. Xiao Feng

669. Within one or two weeks of that meeting, he and Mr. Li Kwok Cheong had a meeting with Mr. Xiao Feng to discuss financing by Carlyle, for whom the latter was employed as the responsible person of an Asian Growth Fund.⁶²⁴ Mr. Li Kwok Cheong introduced him to Mr. Xiao Feng as an employee, “...who worked in his company for three to four years.”⁶²⁵

670. In cross-examination by Mr. Jat, in the earlier proceedings of which Mr. Kwok was chairman, Mr. Li Han Chun accepted that in asserting that Mr. Li Han Chun had worked for the company for three to four years, Mr. Li Kwok Cheong lied to Mr. Xiao Feng. Also, he accepted that he had not corrected that lie. He agreed that was because it was in his interest to have Carlyle invest in the company.⁶²⁶

671. Mr. Li Han Chun said that, after the initial meeting, there followed several other meetings with Mr. Xiao Feng, during which Mr. Xiao Feng indicated that Carlyle was willing to inject capital into Beijing Zhaolin, on condition that it would list. For his part, Mr. Li Kwok Cheong readily accepted the proposal. Then, Mr. Li Han Chun resigned from his position at Hyperion and joined Beijing Zhaolin in around August 2007.⁶²⁷

Beijing Zhaolin’s Forestry Business

672. Mr. Li Han Chun said that when he joined Beijing Zhaolin, he knew nothing of its forestry business, “All my knowledge of the background and operations of the company was from Li Kwok Cheong.”⁶²⁸ At that time, the management team comprised, “Li Kwok Cheong, Shi Chuansheng and Li Haijun.” Of their roles, he said:⁶²⁹

“Li Kwok Cheong was the founder, the Chairman and the boss of the Company, responsible for the company’s strategy and decision-making. The substantive operation and daily matters were left with Shi Chuansheng and Li Haijun for implementation and management (including implementation of plans for acquisition of all forest land, contacting customers, and application for logging permits with the Forestry Bureaus etc.)”

⁶²⁴ Mr. Li Han Chun’s Witness Statement, paragraph 15.

⁶²⁵ Mr. Li Han Chun’s Witness Statement, paragraph 16.

⁶²⁶ Transcript 16 January 2020, pages 15-16.

⁶²⁷ Mr. Li Han Chun’s Witness Statement, paragraphs 15-16 and 6.

⁶²⁸ Mr. Li Han Chun’s Witness Statement, paragraph 19.

⁶²⁹ Mr. Li Han Chun’s Witness Statement, paragraph 21.

673. Of their relationships, he said that Shi Chuansheng was a former soldier, who had worked for Mr. Li Kwok Cheong for more than 20 years, whereas Li Haijun was a farmer in Sichuan, who had lived in Sichuan for a long time, understood its culture and spoke the local dialect. He was Mr. Li Kwok Cheong's younger brother.⁶³⁰

Pre-IPO investment

674. Agreement was reached with Carlyle for it to invest in Beijing Zhaolin and an investment agreement was signed with them by China Forestry and Kingfly Capital on 30 December 2007. The latter was the newly incorporated vehicle through which Mr. Li Kwok Cheong held his shares in China Forestry, which had been incorporated for purposes of the listing. By a share subscription agreement, dated 25 June 2009, Carlyle and Partners Group made a further investment in the company.

Listing

675. Mr. Li Han Chun said that Mr. Xiao Feng took the leading role in arranging intermediaries for the listing of Beijing Xiaolin: Cazenove Asia was appointed as the sponsor; KPMG was asked to quote for the audit work and then appointed as reporting accountant; lawyers he recommended were engaged for the listing.⁶³¹ The listing, which had been planned for 2008, was postponed because of the financial crisis. However, in 2009 it was decided to resume the listing plan.

Recruitment of staff at China Forestry

676. Mr. Li Han Chun said that, in consequence of the decision to list the business, he formed a team in the Beijing office to work on the listing application. He recruited Madam Wu Xiaofen, Mr. Zhang Hongyu and Madam Ma Xinxu.⁶³²

(i) Madam Wu Xiaofen

Madam Wu was recruited as the joint Chief Financial Officer of the Group. She was his paternal cousin and had been the Chief Financial Officer of a subsidiary of CES Holdings, working in Fuzhou. Although her child, who had been born in February 2005, was still very young, she agreed to join the company and work in Beijing.⁶³³

⁶³⁰ Mr. Li Han Chun's Witness Statement, paragraph 22.

⁶³¹ Mr. Li Han Chun's Witness Statement, paragraph 33.

⁶³² Mr. Li Han Chun's Witness Statement, paragraph 29.

⁶³³ Mr. Li Han Chun's Witness Statement, paragraph 30.

(ii) Mr. Zhang Hongyu

Mr. Zhang Hongyu was recruited as the Chief Resources Officer. He had been Mr. Li's research assistant at the Hyperion Enterprise Performance Management Centre. He was responsible for collating information about forest land, forestry rights and logging permits, together with liaising with Chandler Fraser Keating Ltd, the forestry experts.⁶³⁴ In the listing exercise he provided information to the sponsors and team of intermediaries. He obtained that information from Shi Chuansheng and Li Haijun.⁶³⁵

(iii) Madam Ma Xinxu

Madam Ma Xinxu was recruited to be responsible for the administrative work in the Beijing office. She had worked with Mr. Li Han Chun in CES Holdings, discharging similar duties.⁶³⁶

Mr. Li Han Chun's role in the listing

677. Mr. Li Han Chun acknowledged that he was the "main point of contact" with various parties in the listing. However, he said that since, "...my participation in the actual business operation of the company was very limited" and, "...since I was not responsible for the company's business operations, I would require the persons responsible for the company's operation, including Li Kwok Cheong, Shi Chuansheng and Li Haijun to provide me with the information on the company's business operation."⁶³⁷

678. Mr. Li Han Chun said that he made a site inspection of forest land in Sichuan with intermediaries, as he recalled in December 2007. That was, "... the first time that I personally visited the Company's forest."⁶³⁸ He said that, "...although I spent the majority of time in Beijing, I would often visit the subsidiaries, Kunming Ultra Big and Chengdu Yishang, once every month on average. I would stay for 1 to 2 days every time I visited Yunnan or Sichuan." On those occasions, his itinerary was arranged by either Shi Chuansheng or Li Haijun.⁶³⁹

679. Of his relationship with Shi Chuansheng and Li Haijun, Mr. Li Han Chun said that, although they were his subordinates, "...as far as I knew, they reported directly to Li Kwok Cheong most of the time." In view of their relationship with Mr. Li Kwok Cheong, he said, "I

⁶³⁴ Mr. Li Han Chun's Witness Statement, paragraph 31.

⁶³⁵ Mr. Li Han Chun's Witness Statement, paragraph 43.

⁶³⁶ Mr. Li Han Chun's Witness Statement, paragraph 32.

⁶³⁷ Mr. Li Han Chun's Witness Statement, paragraph 38.

⁶³⁸ Mr. Li Han Chun's Witness Statement, paragraph 40.

⁶³⁹ Mr. Li Han Chun's Witness Statement, paragraph 62.

had never been able to challenge their decisions on the management of the subsidiaries.”⁶⁴⁰

KPMG’s audit work

680. Mr. Li Han Chun said that Madam Wu Xiaofen was, “... mainly responsible for assisting KPMG with its audit work.” She organised and collated information, which she provided to KPMG and dealt with their enquiries. Of his role, Mr. Li Han Chun said, “...I would generally leave it to Wu Xiaofen to respond or coordinate because I was not familiar with the accounts or actual figures.”⁶⁴¹ Of his involvement, he said that was, “...mainly attending the kick-off meetings when the audit work commenced and telling KPMG the company’s outlook.”⁶⁴² He said that Mr. Li Kwok Cheong, “...did not have much involvement in the audit work.”⁶⁴³

China Forestry’s daily operations

(i) Acquisition of forest land

681. The strategic planning of the acquisition of forest land required the instructions or approval from Mr. Li Kwok Cheong. The acquisition of forest land required “...a lot of local knowledge about the forest land and local connections, as well as the need to speak local dialect.” As a result, he said, “...I could not get involved.”⁶⁴⁴ His role was limited to signing documentation required for acquisitions and making payment of the consideration.⁶⁴⁵

(ii) China Forestry’s customers

682. Mr. Li Han Chun said that he was not involved in dealing with China Forestry’s customers. That was the responsibility of Shi Chuansheng and Li Haijun, who were able to speak the local dialect.⁶⁴⁶

(iii) Logging business

683. Mr. Li Han Chun said that, “I did not know much about the logging business”.⁶⁴⁷

⁶⁴⁰ Mr. Li Han Chun’s Witness Statement, paragraph 71.

⁶⁴¹ Mr. Li Han Chun’s Witness Statement, paragraph 47.

⁶⁴² Mr. Li Han Chun’s Witness Statement, paragraph 49.

⁶⁴³ Mr. Li Han Chun’s Witness Statement, paragraph 52.

⁶⁴⁴ Mr. Li Han Chun’s Witness Statement, paragraph 78.

⁶⁴⁵ Mr. Li Han Chun’s Witness Statement, paragraph 80.

⁶⁴⁶ Mr. Li Han Chun’s Witness Statement, paragraphs 81-83.

⁶⁴⁷ Mr. Li Han Chun’s Witness Statement, paragraph 85.

(iv) Forest land insurance

684. Mr. Li Han Chun said that when he joined China Forestry it did not have any insurance for the forest land. That *lacuna* having been identified by a Sponsor during listing, it was agreed that the Company would obtain insurance for the forest land. Shi Chuansheng having told him that he knew people involved in such insurance, he assigned the task to him. He said that subsequently, "...Shi Chuansheng told me that he already purchased insurance for all forest land."⁶⁴⁸

(v) Purchase of timber logs

685. Mr. Li Han Chun said that, "As far as I knew, the Company did not operate any business of purchase or trading of timber logs."⁶⁴⁹ He was aware that Mr. Li Kwok Cheong had accepted a recommendation made by Mr. Xiao Huibo that he acquire a Japanese company in Manzhouli, in north-eastern China, to handle the purchase of timber. For his part Mr. Li Han Chun said, "I was not involved."⁶⁵⁰

Guizhou Wosen

686. Mr. Li Han Chun said that in 2010 he had come to know Mr. Zhou Xiaolin. He had a forestry company in Guizhou. Having introduced him to Mr. Li Kwok Cheong, the latter agreed to engage Mr. Zhou Xiaolin to act as China Forestry's agent to acquire forest land in Guizhou. Then, Mr. Li Kwok Cheong decided to conduct their business through a subsidiary. As a result, at the end of 2010 Guizhou Wosen was set up, managed by Mr. Zhou Xiaolin. He said that the latter reported directly to Mr. Li Kwok Cheong and not to him.⁶⁵¹

KPMG-2009 Annual Audit: reported forged bank statements

687. Mr. Li Han Chun said that he had informed Mr. Li Kwok Cheong of a forgery that had been uncovered by KPMG in the course of the 2009 annual audit. It involved bank statements of Kunming Ultra Big at Ya'an branch of the Industrial and Commercial Bank of China. On investigation it was found that Shi Chuansheng, Li Haijun and Xue Jiang had, "...forged the statements to deceive the Beijing office for convenience and payment of social security insurance. The sums they claimed to be remitted to Kunming Ultra Big's Ya'an branch company were in fact remitted to the personal account of Li Haijun. Given that the amount

⁶⁴⁸ Mr. Li Han Chun's Witness Statement, paragraphs 98-101.

⁶⁴⁹ Mr. Li Han Chun's Witness Statement, paragraph 103.

⁶⁵⁰ Mr. Li Han Chun's Witness Statement, paragraph 104.

⁶⁵¹ Mr. Li Han Chun's Witness Statement, paragraphs 124-129.

involved was very small, it passed KPMG's audit after KPMG learning the underlying reasons.⁶⁵²

Mr. Li Han Chun's placement of his China Forestry shares

- (i) An investment opportunity in an iron ore project

688. Mr. Li Han Chun said that in around September/October 2010 he decided to accept the invitation of a friend to invest in an offshore iron ore project of a China state-owned company. To do so, he needed to raise investment funds. However, on listing he had agreed with China Forestry not to sell his shares for a 'lock-up period'. That expired in early December 2010.⁶⁵³ Shortly afterwards, he asked Ms. Xue Ying of Standard Chartered Securities to prepare a plan for him to sell some of his China Forestry shares to raise US \$20 million. Having been told by Ms. Xue Ying that, given that China Forestry would announce its 2010 Annual Results in around March 2011, he could not sell his holding of China Forestry shares after mid-January 2011, he confirmed that he wished to sell those shares before that date.⁶⁵⁴

Disclosure to Mr. Li Kwok Cheong

689. Mr. Li Han Chun said that he had informed Mr. Li Kwok Cheong of his intention to sell his China Forestry shares so that he could raise US \$20 million. For his part, Mr. Li Kwok Cheong did not agree or object to the proposal.⁶⁵⁵

Additional investment opportunities

690. Subsequently, other investment opportunities arose:

- (ii) investment in a media business; and
- (iii) investment in a private equity investment business.

As a result, on 3 January 2011, he asked Standard Chartered Securities to increase the sale of his China Forestry shares, so that he could raise a total of US \$40 million.⁶⁵⁶

691. Ms. Xue Ying advised him that it would be easier to achieve the sale of the shares if the total sale value was increased to US \$50 million. For his part, he accepted that advice and

⁶⁵² Mr. Li Han Chun's Witness Statement, paragraph 133.

⁶⁵³ Exhibits Bundle 1A; Prospectus, page 150- "...twelve months from the Listing Date".

⁶⁵⁴ Mr. Li Han Chun's Witness Statement, paragraphs 139-141.

⁶⁵⁵ Mr. Li Han Chun's Witness Statement, paragraph 143.

⁶⁵⁶ Mr. Li Han Chun's Witness Statement, paragraph 142.

agreed to a placement of his China Forestry shares so that US \$50 million could be raised.⁶⁵⁷ Given that China Forestry shares had traded in a stable price range in December 2010 and January 2011, he did not raise the issue of the price at which shares were to be placed.

12 January 2011-Placement Agreement

692. On the night of 12 January 2011, having accepted the recommendation of Standard Chartered Securities that the placement be at a discount to the traded price of China Forestry shares, he signed the placement agreement.⁶⁵⁸

13 January 2011

693. On 13 January 2011, Standard Chartered Securities advised him that the placement had been successful.

Mr. Li Han Chun's testimony in January 2020

694. In cross-examination by Mr. Jat at the hearing in the Tribunal chaired by Mr. Kenneth Kwok, Mr. Li Han Chun acknowledged that he had not produced any "...evidence or details of what these other investment opportunities" were, explaining "...At that time, nobody asked me for evidence of these investment opportunities."⁶⁵⁹ He went on to say that, at the time that he had acquired the China Forestry shares, he had an agreement with Mr. Li Kwok Cheong that after the Company was listed, "I would sell the shares on my hands and would pay back to him by instalments."⁶⁶⁰ He accepted that he had not paid anything to Mr. Li Kwok Cheong. He explained:⁶⁶¹

"Because the time was very short at that time because before I had any chance of deploying the money, issues and questions were already raised about China Forestry. So both Mr. Li Kwok Cheong and I were concentrating on resolving these problems and the matter of repayment was put aside and we didn't have a chance of using the money."

⁶⁵⁷ Mr. Li Han Chun's Witness Statement, paragraphs 144-145.

⁶⁵⁸ Mr. Li Han Chun's Witness Statement, paragraph 146.

⁶⁵⁹ Transcript 17 January 2020, page 60.

⁶⁶⁰ Transcript 23 January 2020, page 11.

⁶⁶¹ Transcript 23 January 2020, page 13.

Knowledge of KPMG's discovery of audit issues: 3 December 2010-13 January 2011

695. Mr. Li Han Chun said that throughout the period, from when he initiated the placement of his shares until the completion of the placement, he was unaware of the audit issues that had been discovered by KPMG which were raised subsequently. Throughout the period 3 December 2010 until 13 January 2011, KPMG had never raised their "...audit-related inquiries to me directly." Similarly, "... none of the staff members (including Wen Guoping, Lv Aoqian, Zhang Hongyu or staff in Guizhou) reported to me any inquiries made by KPMG."

696. Mr. Li Han Chun said that he first became aware of the audit issues raised by KPMG during a telephone conference on 14 January 2011.⁶⁶²

Transfer of proceeds of the placement

697. After he had received the proceeds of the placement on 17 January 2011, Mr. Li Han Chun said that he had merely transferred those monies on 25 January 2011 from the securities account of Top Wisdom with Standard Chartered to its bank account with UBS. The funds remained in that account until they were made the subject of an injunction granted to the SFC in February 2011⁶⁶³. The injunction was granted on 2 February 2011.

698. Mr. Li Han Chun invited the Tribunal to consider those circumstances having regard to whether he "...had always known that there was a so-called fraudulent scheme in the Company's books" then, "...in normal circumstances I would definitely try my best to transfer the sale proceeds away after receiving such funds from the placement of shares."⁶⁶⁴

Mr. Li Han Chun's movements after KPMG raised the audit issues

699. Mr. Li Han Chun said that after he had learned of the audit issues raised by KPMG he went to Yunnan immediately, "...to find Shi Chuansheng and investigate the issues". He remained in Yunnan thereafter, other than having gone to Shanghai to attend the UBS Annual Meeting and having returned to Beijing at Lunar New Year, approximately 31 January to 5 February 2011. Whilst in Yunnan he sought to clarify the audit issues with Shi Chuansheng.⁶⁶⁵ He added that Madam Wu Xiaofen and Mr. Zhang Hongyu, "...spent most of their time with me in Yunnan. We certainly didn't go back to the Company's office in Beijing to remove the

⁶⁶² Mr. Li Han Chun's Witness Statement, paragraphs 147-149.

⁶⁶³ Mr. Li Han Chun's Witness Statement, paragraph 150.

⁶⁶⁴ Mr. Li Han Chun's Witness Statement, paragraph 150.

⁶⁶⁵ Mr. Li Han Chun's Witness Statement, paragraph 150.

computer, funds or other information of the Company.”⁶⁶⁶ Mr. Li Han Chun said that during this period he had “...attended the conference calls held by the Board or the independent investigation committee, and tried my best to provide all facts that I knew of to assist the investigation.”⁶⁶⁷

Arrest by Guizhou Public Security Bureau

700. On 24 February 2011, he was arrested by Guizhou Public Security Bureau. That was a few days prior to the date on which he had agreed to meet the Commission in Hong Kong, namely 28 February 2011. As a result, he was unable to meet the Commission. Mr. Li Han Chun said that:⁶⁶⁸

“...after being detained for half a year, I was found partially guilty, and given a suspended sentence.”

Mr. Li Han Chun asserted that, “...the reasons for convicting me were extremely far-fetched.”

Mr. Li Han Chun’s response to the documents presented to the Tribunal by the Commission

(i) Two sets of books-Local Books: HQ Books

701. Mr. Li Han Chun said that as he understood it, the Commission asserted that the, “ ‘HQ Books’ were forged and ‘Local Books’ were real”. He acknowledged that, if that was true, “...China Forestry would never have conducted any logging activities, and the sales volumes in 2009 and 2010 were almost non-existent.” For his part, he said that:⁶⁶⁹

“I did not know any issue regarding the so-called real or forged books. I had never seen the so-called real “Local Books” as currently alleged by the SFC.”

(ii) Inconsistencies in financial statements: cash transactions

702. Of the issue of inconsistencies in the accounts and financial statements, Mr. Li Han Chun recalled that Mr. Shi Chuansheng had told him that, “... it was because many transactions were made in cash, and not duly recorded.” Mr. Shi Chuansheng and Mr. Li Haijun had told him that reflected, “...the actual business operation of the company”.⁶⁷⁰

(iii) Ernst & Young and Deloitte Reports- documents in Word/Excel format

⁶⁶⁶ Mr. Li Han Chun’s Witness Statement, paragraph 165.

⁶⁶⁷ Mr. Li Han Chun’s Witness Statement, paragraph 166.

⁶⁶⁸ Mr. Li Han Chun’s Witness Statement, paragraph 175.

⁶⁶⁹ Mr. Li Han Chun’s Witness Statement, paragraph 154.

⁶⁷⁰ Mr. Li Han Chun’s Witness Statement, paragraph 155(b).

703. Mr. Li Han Chun noted statements had been made in the Ernst & Young and Deloitte Reports that examination of the computers of employees or former employees of China Forestry had revealed that some of the computers, "...once contained bank-in slips, bank reconciliation statements and insurance agreements in Word/Excel formats" and that the Deloitte Report alleged that, "...the creator of some of these documents was shown to be 'Li Han Chun.'" ⁶⁷¹

Mr. Li Han Chun's denials of misconduct

704. Of those statements, Mr. Li Han Chun said: ⁶⁷²

"I had never forged any document of China Forestry, including the documents found by EY and Deloitte in the computers. Further, I had never seen the documents they found ... I had also not given any instruction to anyone to forge any document."

Moreover, he suggested to the Tribunal that, "...it did not make sense for anyone who forged the document to create a forged document in his own name."

705. In cross-examination by Mr. Jat, in the hearing in the Tribunal chaired by Mr. Kenneth Kwok, Mr. Li Han Chun denied the suggestion that the computer that he used in the Beijing office contained editable copies of Huaxia Bank statements in Word format. Similarly, he denied that he was responsible for procuring the falsification of Huaxia Bank statements. ⁶⁷³

706. Mr. Li Han Chun noted that statements had been made in the Ernst & Young report that a document had been found in the computer of Gao Yanqing that described the scope of his work as including, "...affixing the fee collection chop of the Forestry Bureau" and "...affixing the bank chop" on certain documents.

707. For his part, Mr. Li Han Chun said that he had never seen the documents, "...nor had I instructed Gao Yanqing to forge any document." Moreover, he invited the Tribunal to consider the likelihood of someone planning to create false documents to make a written record of the duty to do so. ⁶⁷⁴

708. In addition, Mr. Li Han Chun said that he denied the repeated allegations made by China Forestry in Reports and Announcements that, " 'my team' and I took away the Company

⁶⁷¹ Mr. Li Han Chun's Witness Statement, paragraph 156.

⁶⁷² Mr. Li Han Chun's Witness Statement, paragraph 157.

⁶⁷³ Transcript 17 January 2020, page 9.

⁶⁷⁴ Mr. Li Han Chun's Witness Statement, paragraph 159.

information, funds or computer of the Company”.

Mr. Li Han Chun’s familiarity with the business of China Forestry: the evidence of witnesses

709. Mr. Li Han Chun acknowledged that, “...many SFC witnesses mentioned in their interview records that they thought I was very familiar with the operation of China Forestry, including the company’s finance or sales.” Of that, he explained that he had to:⁶⁷⁵

“...effectively introduce China Forestry to other intermediaries and investors, and attract their investments. It did not mean that I had the actual power to make decisions in the Company, or I would deal with the forestry business operation of the subsidiaries personally.”

Audit issues raised by KPMG: discussions between Mr. Li Han Chun, Mr. Li Kwok Cheong and Mr. Cheung Man Yu

710. Mr. Li Han Chun acknowledged that Mr. Li Kwok Cheong and Mr. Cheung Man Yu had said in their respective records of interview that he had given various explanations to them in respect of various audit issues discovered by KPMG. Of that, Mr. Li Han Chun said:⁶⁷⁶

“Although I recall I had discussed with Li Kwok Cheong and Cheung Man Yu about the audit issues discovered by KPMG at the end of January 2011 in conference calls, it was a long time ago and I did not remember the details of the discussion. However, for any explanations given, I was just conveying Shi Chuansheng’s explanations to me. When I conducted the investigation in Yunnan, Shi Chuansheng showed me around to visit the customers and the officers from the forestry bureaus, and gave different explanations on the issues in many aspects.”

Mr. Li Han Chun’s evidence before the Tribunal chaired by Mr. Kenneth Kwok SC

A. *The date on which Mr. Li Han Chun joined Beijing Zhaolin and the ambit of his duties, responsibilities and work*

711. In cross-examination by Mr. Jat, Mr. Li Han Chun acknowledged that the China Forestry’s Prospectus, which had been registered with the Companies Registry on 19 November 2009, asserted his biographical details as including:⁶⁷⁷

⁶⁷⁵ Mr. Li Han Chun’s Witness Statement, paragraph 162.

⁶⁷⁶ Mr. Li Han Chun’s Witness Statement, paragraph 171.

⁶⁷⁷ Transcript 15 January 2020, pages 87-89. Exhibits Bundle 1A, page 221.

“Mr. Li is also the chief executive officer of our Group responsible for the management of our Group’s daily operations....Mr. Li entered the forest management industry in February 2004 when he joined our Group...He was the co-founder and managing director of Creative Energy Solutions Holdings Limited when it was listed in January 2002 on the Growth Enterprise Market of Hong Kong Stock Exchange, where Mr. Li worked from April 1999 to April 2003...he resigned as a director of that company in April 2003 ... Mr. Li Han Chun obtained a master’s degree from the architecture faculty of Tsinghua University in July 2006.”

712. Also, Mr. Li Han Chun accepted that the Prospectus asserted that:⁶⁷⁸

“Mr. Li Han Chun joined Beijing Zhaolin as a general manager in January 2004. He was responsible for the management of the daily operation of Beijing Zhaolin during the Track Record Period. He was responsible for identifying new forest land and making decisions for acquisition, liaising and negotiating with the potential vendors, formulating policies in connection with sales of timber...”

China Forestry Board Minutes-5 November 2009

713. Mr. Li Han Chun acknowledged his signature on the Minutes of a telephone conference meeting of the board of directors of China Forestry, dated 5 November 2009, at which the Prospectus and Application Forms had been tabled and approved by the board. The Minutes noted that the Chairman informed the meeting that:

“...the Directors would be collectively and individually responsible (with civil and criminal liability) for the accuracy of their contents and any omission of material information...”.

Further, each of the Directors was required to confirm that the information in the Prospectus under the ‘Directors, Senior Management and Employees’, Section, “...with regard to himself/herself was true and accurate and no material facts or consideration had been omitted” and that those biographies were “completely set out” as required by the Listing Rules.⁶⁷⁹

714. In the record of interview recorded of him by China Securities Regulatory Commission, having been shown the minutes of the meetings of the board of directors, dated 4 September

⁶⁷⁸ Transcript 15 January 2020, pages 91-92. Exhibits Bundle 1A, page 149.

⁶⁷⁹ Transcript 15 January 2020, pages 82-85. Exhibits Bundle 7A, pages 4870-4905.

2009 and 5 November 2009, Mr. Li Han Chun said:⁶⁸⁰

“I have participated in (these meetings) and approved the aforesaid matters, and I have reviewed the relevant documents prior to approving (these matters).”

Form B: Declaration and Undertaking with regard to Directors-18 November 2009

715. Mr. Li Han Chun acknowledged that he had signed the Form B: Declaration and Undertaking with regard to Directors, dated 18 November 2009, filed with the SEHK in the listing application of China Forestry in which he “...solemnly and sincerely” declared that the information in the Prospectus was “...true, complete and accurate”. He accepted that the document made very clear the importance of giving accurate, complete and not misleading information to the market.⁶⁸¹

Listing Rules: Qualifications for Listing

716. Mr. Li Han Chun acknowledged that one of the requirements of the Listing Rules for an applicant company for listing was that it satisfy the ‘profit test’, including that an applicant must satisfy, “...management continuity for at least the three preceding financial years”.⁶⁸² He accepted that was to provide confidence for investors that the company was managed by reliable management with a good track record. Nevertheless, he said, “I probably did not pay much attention to it.”

Beijing Jinfudi Real Estate Development Co. Ltd. / Beijing Zhaolin: Minutes of Board of Directors’ meetings and employment contracts

(i) Mr. Li Han Chun’s employment contract with Beijing Jinfudi-1 February 2004

717. Mr. Li Han Chun acknowledged that he had signed an employment contract, dated 1 February 2004, with Beijing Jinfudi in which he was employed as a general manager for a term which terminated on 31 January 2007.⁶⁸³ He agreed that he had signed it in 2007, but that it was backdated to 2004. He accepted that was fraudulent.

(ii) Beijing Jinfudi’s Board of Directors’ Minutes-5 April 2004 to 3 November 2004

718. Mr. Li Han Chun acknowledged that the Beijing Jinfudi’s board of directors’ Minutes, dated 5 April 2004, which he had signed, stated that he was appointed as the general manager

⁶⁸⁰ Witness Evidence Bundle B1, page 1099.

⁶⁸¹ Transcript 15 January 2020, pages 85-87. Exhibits Bundle 7, pages 4948-4958.

⁶⁸² Transcript 15 January 2020, pages 92-93. Exhibits Bundle 3A, page 1917.

⁶⁸³ SFC’s Supplemental Bundle 1, pages 1 to 15-19.

of the company and that he was, “person-in-charge solely responsible for handling matters relating to the valuation and acquisition of forest land”. He accepted that, “...the document itself is a fraudulent one.” In response to the Chairman’s question, Mr. Kenneth Kwok, as to why he had signed the document in those circumstances, Mr. Li Han Chun said:⁶⁸⁴

“In fact, at that time when I was joining the company as a general manager, for the position of general manager at the listed company, we have the consideration that if I only joined the company in 2007, that may have given a perception that I may not have had enough experience, and therefore we backdated my experience to earlier so as to give the outsider a perception of having a richer experience.”

He accepted that was a deliberate decision to mislead the public.

(iii) Wu Xiaofen, Zhang Hongyu and Ma Xinxiu’s employment contracts with Beijing Jinfudi

719. Mr. Li Han Chun accepted that the employment contracts of Madam Wu Xiaofen (as Chief Financial Officer), Mr. Zhang Hongyu (as Chief Resources Officer) and Ms. Ma Xinxiu (as Chief Administrative Officer) with Beijing Jinfudi, dated 4 January 2005, 11 January 2005 and 9 August 2004 respectively, were all fraudulent documents created for the purpose of the listing. Madam Wu Xiaofen and Mr. Zhang Hongyu signed those documents in 2007, not 2005. He accepted that in those circumstances Madam Wu Xiaofen and Mr. Zhang Hongyu must have known that the documents were fraudulent, when they appended their signatures.⁶⁸⁵

Cazenove Asia’s responses to the enquiries of the SEHK in respect of the Prospectus

720. Mr. Li Han Chun acknowledged that he had provided his biographical information set out in a letter, dated 31 July 2008, from Cazenove Asia to the SEHK. He knew that it would be provided to the SEHK. He accepted that it asserted that after he had left CES but prior to joining China Forestry, “Mr. Li had not worked for any company and he spent most of his time during this period on the studies for his master degree.” He accepted that he made no disclosure of his employment by Hyperion Enterprise Performance Management Centre in the period 2006-2007. That was a deliberate omission to mislead the SEHK.⁶⁸⁶

⁶⁸⁴ Transcript 16 January 2020, pages 4-5.

⁶⁸⁵ Transcript 16 January 2020, pages 5-8. SFC’s Supplemental Bundle 1, pages 31 to 45-19; 46 to 60-19; and 16 to 30-19.

⁶⁸⁶ Transcript 16 January 2020, pages 8-11. Exhibits Bundle 4B, pages 3045-3075 at page 3051.

KPMG's Report for the Track Record Period/ Accountants Report in the Prospectus

721. Mr. Li Han Chun acknowledged that the KPMG Accountants report for y/e 31 December 2006, 2007, 2008 and 6 months ended 30 June 2009 noted that he had been paid 'Directors Remuneration' for each of those periods, namely a total of RMB 337,764 and RMB 402,130 in y/e 2006 and 2007 respectively.⁶⁸⁷ He accepted that the description of his remuneration was repeated in the Prospectus in the Accountants Report.⁶⁸⁸ He acknowledged that the information provided to KPMG must have been false. Of why false information had been provided to KPMG, Mr. Li Han Chun said:⁶⁸⁹

"I thought it was the company's operations, businesses and profits that would be important, and also because, as I said, for the purpose of creating an impression of having a longer time experience so that those contents was prepared. I therefore did not think that this was that important."

722. Of why he thought the provision of false information was not important, Mr. Li Han Chun said:⁶⁹⁰

"Because when I joined the company in 2007, the company was then, that is the daily operations were running normally and soundly and those branch companies under the Group, they had their respective responsible persons and also were running soundly, therefore I thought that whether on paper I joined the company 2 years earlier or 2 years later it wouldn't make much of a difference."

723. Of the basis on which he had reached that conclusion, Mr. Li Han Chun said that was because of the briefing that Mr. Li Kwok Cheong had given him when they met. However, he went on to say that subsequently, "I formed an understanding of the company, namely that the company was running normally."⁶⁹¹

Cazenove's Due Diligence interview of Management of Beijing Zhaolin

724. Mr. Li Han Chun acknowledged that he and others had responded to enquiries made by Cazenove in a due diligence interview conducted of the management of Beijing Zhaolin on 12 December 2007. For his part, he had said of his "...routine works and responsibilities" that, "(I

⁶⁸⁷ SFC's Supplemental Bundle 1, pages 126-178 at pages 148-150.

⁶⁸⁸ Exhibits Bundle 1A, pages 386-388.

⁶⁸⁹ Transcript 16 January 2020, page 13.

⁶⁹⁰ Transcript 16 January 2020, page 14.

⁶⁹¹ Transcript 16 January 2020, pages 19-20.

oversee) operations including forest land acquisition, harvesting, talent recruitment” and the company’s routine administrative management. He devoted “a lot of time” on a daily basis to the company.⁶⁹²

CSRC-Record of Interview of Mr. Li Han Chun

725. In his record of interview conducted by the China Securities Regulatory Commission, Mr. Li Han Chun said that Mr. Li Kwok Cheong, “...wanted me to join China Forestry with the primary responsibility of (handling) investment and financing and listing work”. He went on to say, “...I was responsible for the investment and financing operation of the company, including the investment and financing and capital operation business of branch companies in different regions. I was not involved in other operation management affairs and the responsible persons of branch companies in different regions would not report to me.”⁶⁹³

726. Subsequently, having been reminded that the Prospectus asserted that he was responsible for the management of the Group’s daily operations, the following exchange ensued:⁶⁹⁴

“Q. Why did you say you were only responsible for investment and finance after joining the Group? If you are not responsible for the daily operations, why did you agree to make the disclosure in that way in the prospectus?”

A. This is just to comply with the listing requirements. As the CEO of the company, it is difficult to say how I have no knowledge of the company’s operations and no involvement in daily operations. Actually, I would not participate (in the daily operations).”

727. In cross-examination by Mr. Jat, Mr. Li Han Chun said that, “I don’t think that the disclosures on the prospectus were erroneous.” When asked repeatedly why he had not given that answer to the CSRC he said, “What I meant by that was that I have no knowledge of the daily operations of the company, but for the operations of the company as a whole, I was still responsible for.”⁶⁹⁵

⁶⁹² SFC’s Supplemental Bundle 1, pages 114 to 125-27 at pages 125-8 and 125-15.

⁶⁹³ Witness Evidence Bundle B1, page 1088.

⁶⁹⁴ Witness Evidence Bundle B1, page 1123.

⁶⁹⁵ Transcript 16 January 2020, pages 39-46.

B. Mr. Li Han Chun's statements in response to KPMG's disclosure of the audit issues

(i) 14 January 2014 telephone conference call meeting with KPMG

728. In cross-examination, Mr. Li Han Chun accepted that in the telephone conference call meeting with KPMG on 14 January 2011, following the disclosure by KPMG that it appeared from the bank-in slips attached to the vouchers that all China Forestry customers appeared to have bank accounts in Tibet and after the initial response of Mr. Wen Guoping, as reflected in the KPMG Minutes⁶⁹⁶, he had said that:⁶⁹⁷

“...the operation of the rural credit union did not comply with the standard”

Also, he had suggested that KPMG accompany the Company to “...the local customers' rural credit union” to seek an explanation from the branch manager.

729. He agreed that he had not said, before responding to the information, that he did not know what was going on but wished to seek an explanation from Mr. Shi Chuansheng. He explained:⁶⁹⁸

“...first of all, when KPMG raised such an issue, the first thing that Wen Guoping said that it was possible that because ... the customers were using the rural credit union and that's why the banking code may not be the same. So when Wen Guoping provided an answer, I felt that because Wen Guoping was himself a finance person and it was possible that he knew much better about the financial matters, and therefore I said that I think that it is possible and then I would investigate further with the local people.”

730. In response to the suggestion made by Mr. Jat that he knew that his explanation about the rural credit union was in fact untrue, Mr. Li Han Chun said, “No. At that time, I did not know.”⁶⁹⁹

(ii) Steps taken by Mr. Li Han Chun following the 14 January 2011 teleconference

731. In responding to a question from the Chairman, Mr. Kenneth Kwok, of the effect the meeting had on his belief of the accuracy and truth of the Prospectus, Mr. Li Han Chun said:⁷⁰⁰

⁶⁹⁶ Exhibits Bundle 15B, pages 11374-11375.

⁶⁹⁷ Transcript 16 January 2020, pages 84-85.

⁶⁹⁸ Transcript 16 January 2020, page 85.

⁶⁹⁹ Transcript 16 January 2020, page 88.

⁷⁰⁰ Transcript 23 January 2020, page 8.

“I started to begin to feel that there might have been situations kept from me, and therefore I feel that the impact of the meeting was that I started to feel the need to learn and to understand the veracity of the content.”

As a result, he said that immediately, “I called Shi Chuansheng and Li Haijun telling them the issues raised at the meeting that had cast doubts on things, and they replied to me that they promised me that they will reply to me as soon as possible.” They did so and provided answers. He said, “...what I told the third parties and also the independent investigation board committee later on was also based on the answers provided to me by Shi Chuansheng and Li Haijun.”⁷⁰¹

(iii) Beijing Hotel meeting: Mr. Li Kwok Cheong, Mr. Cheung Man Yu, Mr. Xiao Feng and Mr. Li Han Chun

732. In cross-examination, in response to the suggestion that he had attended a meeting in a hotel room in Beijing attended by Mr. Li Kwok Cheong, Mr. Michael Cheung Man Yu and Mr. Xiao Feng, Mr. Li Han Chun said that he could not remember exactly where the meeting was held. However, he accepted that he had told them that the proceeds from the sale of logs were in fact received in cash and that the money was kept by the staff instead of being deposited into the bank. He agreed that he stated that was the position, not that it was a possibility. He said that he remembered that after KPMG had raised the audit issues, “I asked Shi Chuansheng about this, and then I told them that.” Also, he accepted that he had told them that some of the cash was used to buy timber from Russia and buy some new forests. Whilst he accepted that he had not told them that the information came from Mr. Shi Chuansheng, he explained:⁷⁰²

“...I, being the CEO, usually I would tell them directly the information, what the situation was, and I wouldn’t tell them where my source of information would be.”

(iv) 27 January 2011-Meeting of the Board of Directors of China Forestry

733. In cross-examination, Mr. Li Han Chun acknowledged that he had participated in a teleconference meeting of the Board of Directors of China Forestry on 27 January 2011. The China Forestry Minutes of the meeting noted Mr. Li Han Chun’s attendance.⁷⁰³ Of Mr. Xiao Feng’s evidence, in the context of the audit issue of what the balances in the bank were, that he had reassured the board that the monies were definitely in the bank, he said, “I do not

⁷⁰¹ Transcript 23 January 2020, page 9.

⁷⁰² Transcript 17 January 2020, page 4.

⁷⁰³ Exhibits Bundle 23A, pages 17121-17127.

remember what exactly original words in which I said this.”⁷⁰⁴

734. Of Mr. Xiao Feng’s evidence that Mr. Li Han Chun had reacted to KPMG’s concerns about the issue of insurance of the forest by saying those concerns were, “ridiculous”, Mr. Li Han Chun accepted that he might have used the word, but explained his response, “...since I gave you the documents but then he said that you didn’t believe in these documents, then you might as well go to the insurer and approach them for an answer.”⁷⁰⁵

⁷⁰⁴ Transcript 17 January 2020, page 2.

⁷⁰⁵ Transcript 17 January 2020, page 29.

A CONSIDERATION OF THE EVIDENCE

CHAPTER 13

A reasonable opportunity to be heard

735. At the outset, it is necessary to consider whether the Specified Persons have been afforded a reasonable opportunity to be heard in these proceedings, as required by section 252(6) of the Ordinance.

(i) Mr. Li Kwok Cheong

The Tribunal chaired by Mr. Kenneth Kwok SC

736. Following the service on Mr. Li Kwok Cheong of the Commission's Notice, dated 3 May 2018, he was represented by ONC Lawyers at the Preliminary Conferences held on 18 October 2018 and 20 November 2018 and thereafter until 5 November 2019 when, on their application, ONC Lawyers were granted leave to cease to act, on the basis that they had no instructions to do so. Thereafter, Mr. Li Kwok Cheong acted in person.

737. In the Tribunal's Directions, dated 20 November 2018, a timetable was set for the filing of evidence and submissions, applications to give evidence by video-link and the substantive hearing dates fixed to commence on 25 November 2019. On 29 March 2019, ONC Lawyers had filed Mr. Li Kwok Cheong's witness statement with the Tribunal. By a letter, dated 8 October 2019, the Chairman, Mr. Kenneth Kwok, refused an application made by ONC Lawyers by letter, dated 30 September 2019, for an extension of time in which to make an application to give evidence by video-link, noting that there was no suggestion that, since the filing of his witness statement, Mr. Li Kwok Cheong had taken any or any reasonable steps to decide whether to make the application.

738. Having informed the Tribunal in an email, dated 19 November 2019, that he was unable to attend the prospective hearing because, for a variety of reasons, he was unable to leave the Mainland, in an email to the Tribunal, dated 25 November 2019, Mr. Li Kwok Cheong sought leave to take part in the hearing by way of video-link. At the hearing on 26 November 2019, the Chairman stated that he did not propose to deal with the application.⁷⁰⁶ By an email to the Tribunal, dated 26 November 2019, Mr. Li Kwok Cheong provided documents he said described the restrictions placed upon him, in particular his inability to leave the Mainland. At

⁷⁰⁶ Transcript 26 November 2019, page 1.

the hearing on 27 November 2019, having adverted to that email, the Chairman repeated his earlier determination not to deal with the matter.⁷⁰⁷ Thereafter, Mr. Li Kwok Cheong did not communicate with the Tribunal and the Tribunal did not communicate with him.

739. By letter to the Commission and King & Wood Mallesons, dated 26 March 2020, having consulted them, in the context of the Covid-19 pandemic, on whether the hearing fixed for 30 and 31 March 2020 for the receipt of oral closing submissions should be dispensed with or adjourned, the Chairman directed that the hearing, “is vacated.” Thereafter, the Tribunal did not communicate with the parties.

The proceedings before this Tribunal

January 2022

740. Having been informed that Mr. Kenneth Kwok had suffered a serious medical setback such that he was unable to continue his duties as Chairman, in particular any further role in completion of the enquiry, by a letter dated 11 January 2022 the Tribunal informed the Commission and King & Wood Mallesons and sought their submissions as to the best way forward. Having failed in its attempts on 14 January 2022 to send that letter, together with a Chinese translation, to Mr. Li Kwok Cheong’s email address, having contacted him by telephone and having secured a functioning email address from him, on 20 January 2022 the Tribunal sent the material to him. Thereafter, Mr. Li Kwok Cheong was copied in all correspondence by the Tribunal with the parties. For his part, by emails to the Tribunal, dated 21 and 22 March 2022, Mr. Li Kwok Cheong provided his responses to the suggestions made by the other parties as to the way forward.

The hearings

741. Although Mr. Li Kwok Cheong did not attend or participate in the hearings of this Tribunal in person or through representatives, we can say at the outset that we have no hesitation in being satisfied that he had a reasonable opportunity to be heard in these proceedings, as required by section 252(6) of the Ordinance.

742. Throughout the proceedings before this Tribunal he was provided with copies of all the materials received by the Tribunal, including the Hearing Bundles, the written Submissions of the parties, the Directions and the transcripts of the proceedings.

⁷⁰⁷ Transcript 27 November 2019, page 1.

743. On two occasions Mr. Li Kwok Cheong informed the Tribunal that he adopted the evidence that had been previously provided to the Tribunal. In addition, on one of those occasions he informed the Tribunal that he had no other evidence to submit.

(i) 7 April 2022

744. By an email, dated 7 April 2022, he informed the Tribunal that, whilst he could no longer afford to pay for counsel:

“The counsel has already made a submission before. I have nothing further to add. All the evidence submitted by my counsel previously will continue to be adopted.”

Clearly, the reference to the evidence, included his own witness statement, dated 29 March 2019, which has been received and considered by this Tribunal.

(ii) 10 November 2022

745. In an email, dated 10 November 2022, albeit that the text was dated 10 October 2022, Mr. Li Kwok Cheong informed the Commission that he resided in Beijing, which he described as being subject to “...rigorous pandemic prevention and control policies, which impose strict restrictions on free travel by residents”, such that he was, “...unable to attend hearing in Hong Kong”. Nevertheless, he went on to state:

“Li Kwok Cheong has no new submissions to make, nor does he have new evidence to submit. The Arbitration Court may conduct a new hearing based on the submissions already made and the evidence already submitted by Li Kwok Cheong.”

29 November 2022: Directions

746. In an email, dated 29 November 2022, the Tribunal provided Mr. Li Kwok Cheong with a copy of the Directions of the same date, which stated that the hearing would commence on 1 February 2023 and directed that any application to give evidence by way of video-link was to be made 21 days before that date.

17 January 2023: personal attendance and participation

747. In a letter to Mr. Li Kwok Cheong, dated 17 January 2023, the Tribunal informed him that it had given Directions to receive the evidence of numerous witnesses by video-link, but had received no such application from him. Of the earlier statement by Mr. Li Kwok Cheong to the Commission in respect of pandemic restrictions rendering him unable to travel to Hong

Kong, the Tribunal said:

“Given that those restrictions have now been relaxed and travel into Hong Kong from the Mainland resumed, do you intend attending and participating in the proceedings in the Tribunal which shall commence on 1 February 2023?”

The Tribunal has received no response whatsoever to that enquiry.

12 October 2023: Directions- written and oral closing submissions

748. By emails from the Tribunal, dated 12 October 2023, Mr. Li Kwok Cheong was provided with a copy of the Directions given by the Chairman of that date in English, together with a Chinese translation. The Directions provided for a timetable for the parties to submit written Closing Submissions and stipulated that oral submissions of the parties would be received by the Tribunal on 1 December 2023 and 4 December 2023.

3 November and 30 November 2023

749. Pursuant to the Directions of the Tribunal, by emails dated 3 November and 30 November 2023, the Commission sent copies of their written Closing Submissions and written Supplemental Closing Submissions to Mr. Li Kwok Cheong. The Commission provided Chinese translations of those written submissions in emails, dated 10 November 2023 and 3 December 2023.

24 November 2023

750. By an email, dated 24 November 2023 the Tribunal informed Mr. Li Kwok Cheong that no written Closing Submissions had been received from him and that the deadline for filing such submissions as 25 November 2023. He was reminded of the directions and that it would receive such oral submissions that the parties wished to make on 1 and 4 December 2023.

Written and oral Closing Submissions

751. The Tribunal received no written or oral closing submissions from Mr. Li Kwok Cheong, who did not attend and was not represented at the hearings held on 1 and 4 December 2023.

A consideration of the evidence

Legal representation

752. The Tribunal has received no evidence whatsoever from Mr. Li Kwok Cheong to support his bare assertion in an email to the Tribunal, dated 7 April 2022, that his financial situation was such that "...I can no longer afford to pay for counsel".

753. Even if Mr. Li Kwok Cheong's financial situation was such that he could not afford to be represented in these proceedings, he was entitled to participate personally and to conduct cross-examination of witnesses. We are sure that he was aware of that.

Personal participation

754. Clearly, throughout the period of ten months from 1 February 2023 to 4 December 2023, over which the Tribunal received evidence and finally written and oral submissions, the previous restrictions imposed in consequence of Covid had been removed, so that in that respect Mr. Li Kwok Cheong was free to travel from the Mainland to Hong Kong to participate in the proceedings. As noted earlier, he did not respond to the Tribunal's suggestion in the email to him, dated 17 January 2023, that was the case in respect of travel restrictions nor to its enquiry as to whether or not he intended, "... attending and participating in the proceedings in the Tribunal which shall commence on 1 February 2023." Certainly, he has not contended otherwise.

Video-link

755. Although Mr. Li Kwok Cheong was informed of the Directions, dated 29 November 2022, which provided that the applications could be made by the parties for evidence to be given by video-link and, although he was reminded in a letter from the Tribunal, dated 17 January 2023, that the Tribunal had granted leave for such evidence to be given by others and it was noted that he had made no such application, the Tribunal received no response from Mr. Li Kwok Cheong. More particularly, Mr. Li Kwok Cheong had been provided by the Tribunal with copies of the correspondence relating to the application made on behalf of Mr. Li Han Chun by a letter, dated 11 January 2023, to give evidence by video-link and the grant of that application on 13 January 2023.

756. We are satisfied that video-link technology, together with the use of electronic documentation, affords an efficient and reliable method by which the evidence of a witness can

be given remotely and received by the Tribunal in Hong Kong.

Conclusion

757. In all the circumstances, we are satisfied that Mr. Li Kwok Cheong had a reasonable opportunity to be heard by the Tribunal, as required by section 252(6) of the Ordinance.

(ii) Mr. Li Han Chun and Top Wisdom

Representation and participation

758. In the proceedings in the Market Misconduct Tribunal, Mr. Li Han Chun and Top Wisdom were represented by solicitors from the date of the service by the Commission, namely 8 May 2018, of the Commission's Notice, dated 3 May 2018, and related materials initiating these proceedings. That continued until his then solicitors, Chiu & Partners informed the Tribunal on 20 September 2023 that they had ceased to act for them. Thereafter, Mr. Li Han Chun and Top Wisdom appear to have been unrepresented and did not participate in these proceedings.

759. Prior to 20 September 2023, Mr. Li Han Chun and Top Wisdom participated in these proceedings as they had in the proceedings before the Tribunal chaired by Mr. Kenneth Kwok, exercising their rights to be represented, to cross-examine witnesses, call their own evidence and make submissions. Mr. Li Han Chun filed a written witness statement, dated 9 April 2019, on his own behalf and on behalf of Top Wisdom. Mr. Li Han Chun gave evidence in January 2020 in the first hearing. Written Opening and Closing Submissions were filed on their behalf in that hearing and written Opening Submissions, dated 26 January 2023, in these proceedings. Throughout they were represented by Mr. Ambrose Ho SC, Mr. Issac Chan and Mr. Francis Chung of counsel.

20 June 2023-change of solicitors

760. By a letter to the Tribunal, dated 20 June 2023, Chiu & Partners informed the Tribunal that they were instructed to act for Mr. Li Han Chun and Top Wisdom, who had terminated the services of King & Wood Mallesons by a notice dated 7 June 2023. In the context of a request for the transfer to them of the documents related to the case, Chiu & Partners claimed that King & Wood Mallesons asserted that Mr. Li Han Chun and Top Wisdom owed them over \$12.2 million for legal services. By a letter to the Tribunal of the same date King & Wood Mallesons confirmed that they had ceased to act for Mr. Li Han Chun and Top Wisdom.

20 September 2023-withdrawal of solicitors and counsel

761. By a letter, dated 20 September 2023, Chiu & Partners informed the Tribunal that, “... our firm and the Counsel team have ceased to act” for Mr. Li Han Chun and Top Wisdom. Of the circumstances in which that had come about, it was stated:⁷⁰⁸

“...because Mr. Li was unable to make payment to us of costs and disbursements already incurred, we indicated that we were unwilling to continue to act, and he instructed us to cease work, and to instruct the Counsel team and our BVI legal advisers to cease work.”

It was noted that the claim by King & Wood Mallesons for \$12.2 million for legal services was unresolved. Further, it was asserted that, in the absence of the release of further monies from the injuncted funds of Top Wisdom, Chiu & Partners had instructions that, “...there would not be any funds for Top Wisdom or Mr. Li to instruct legal advisers in these present proceedings.”⁷⁰⁹

762. No material whatsoever was provided to substantiate the bare assertion that, absent the release of monies from the injuncted funds, no monies were available to Mr. Li Han Chun or Top Wisdom to continue to instruct legal advisers in these proceedings.

763. In a lengthy explanation, the Tribunal was informed that the fact that Top Wisdom had been struck off from the British Virgin Islands Register of Companies, in consequence of which it had been automatically dissolved subsequently, was relevant to the difficulty of making an application for the release of further monies from the injuncted funds.

Communications with Mr. Li Han Chun and Top Wisdom after 20 September 2023

764. Notwithstanding various letters sent by email to them by the Tribunal, no communication was received by the Tribunal from Mr. Li Han Chun and Top Wisdom after the withdrawal of their solicitors and counsel on 20 September 2023. Similarly, the Commission has informed the Tribunal that it received no responses to its emails and postal communication to them.

22 September 2023

765. By a letter sent by email to Chiu & Partners, dated 22 September 2023, copied to Mr.

⁷⁰⁸ Chiu & Partners’ letter to the Tribunal, dated 20 September 2023, paragraph 27.

⁷⁰⁹ Chiu & Partners’ letter to the Tribunal, dated 20 September 2023, paragraph 15.

Li Han Chun and Top Wisdom, the Tribunal acknowledged receipt of the letter stating that they had ceased to act for Mr. Li Han Chun and Top Wisdom. The email addresses of Mr. Li Han Chun and Top Wisdom, to which the copies were sent were the same email addresses to which King & Wood Mallesons copied their former clients their letter to the Tribunal, dated 20 June 2023. In a letter to solicitors acting for the Liquidators of China Forestry, dated 13 October 2023, copied to the Commission, Chiu & Partners confirmed that those email addresses were those of Mr. Li Han Chun.⁷¹⁰

11 September 2023 and 26 September 2023

766. In a letter to the Tribunal, dated 3 October 2023, the Commission attached two letters. The first, dated 11 September 2023, was to Chiu & Partners and the second was to Mr. Li Han Chun not only at a physical address in Budapest, Hungary, but also copied to the email addresses of Mr. Li Han Chun and Top Wisdom referred to above. The letters sought confirmation of a wide range of measures relevant to the resumed hearings in October 2023. In particular, in the second letter Mr. Li Han Chun was asked in English and Chinese:

“(b) Please let us know whether you will attend the Hearing and if so, please inform us of the arrangements as to how you propose to attend.

(c) Please confirm whether you will give evidence in the week of 16 October 2023 through video-link as currently scheduled.”

No response was received by the Commission to either letter.

3 October 2023

767. By a letter sent by email, dated 3 October 2023, to Mr. Li Han Chun at the email addresses referred to above, the Tribunal raised the issue of the scheduled video-link evidence of Mr. Li Han Chun from Budapest. It was noted that leave had been granted by the Tribunal on 13 January 2023 for him to give video-link evidence from Budapest. Directions had been given on 2 June 2023 that the evidence was to commence on 16 October 2023 and to continue on such following days as was required. Mr. Li Han Chun was asked to inform the Tribunal of the location from which he would give such evidence.

768. In addition, the Tribunal offered assistance:

⁷¹⁰ SFC’s Closing Submissions, dated 3 November 2023.

“In the event that you are and will continue to be unrepresented, it may assist you to know that the technical requirements to give evidence by video link are simple: you need access to a computer installed with “Zoom” and “Acrobat Reader” software as well as a speaker and microphone connected to the computer. The Secretary of the Tribunal is in a position to assist you further.”

769. Further, the Tribunal addressed the issue of Mr. Li Han Chun’s access to the Hearing Bundles:

“Your solicitors, King & Wood Mallesons, have been provided with updated versions of the Hearing Bundle. In the event that you do not have possession of the paper or electronic versions of the Hearing Bundle and no longer have access to them, the Tribunal is in a position to provide you with a link from which you would be able to download the electronic version of the Hearing Bundle. In those circumstances the Secretary of the Tribunal is in a position to assist you further.”

No response was received by the Tribunal to that letter.

9 October 2023

770. By a letter, dated 9 October 2023, emailed to Mr. Li Han Chun and Top Wisdom at the addresses referred to above, the Tribunal noted that no response had been received to its letter, dated 3 October 2023, nor had the Commission received any response to its letters dated 11 September 2023 and 26 September 2023. A Chinese translation of the letter was provided on the same day. It was noted that a number of matters were outstanding:

- (i) the availability of Mr. Eric Cheng, called on their behalf, to continue being cross-examined;
- (ii) the resumed cross-examination of Mr. Frank Li, called on behalf of the Commission;
- (iii) confirmation that Mr. Li Han Chun would give evidence by video-link;
- (iv) the issue of whether Mr. Li Han Chun would attend the resumed hearing; and
- (v) the issue of whether or not it was intended to cross-examine Ms. Winnie Pao and Mr. Roderick Sutton, to be called on behalf of the Commission, who were to be called in that sequence beginning on 10 October 2023.

771. The letter concluded:

“If you wish to continue to participate in these proceedings, you ought to respond immediately to the earlier enquiry made of you by the Tribunal and to the various matters raised by the Commission set out earlier.”

No response was received to that letter.

12 October 2023: Directions as to the written and oral Closing Submissions

772. By emails, dated 12 October 2023, to Mr. Li Han Chun and Top Wisdom at the email addresses referred to above, the Tribunal provided a copy of the Directions given by the Chairman in English and a Chinese translation. The Directions provided for the timetable for the parties to submit written Closing Submissions and stipulated that oral submissions of the parties would be received by the Tribunal on 1 December 2023 and 4 December 2023.

24 November 2023

773. By an email, dated 24 November 2023, addressed to Mr. Li Han Chun and Top Wisdom at the email addresses referred to above, the Tribunal informed them that no written Closing Submissions had been received from them and that the deadline for filing such submissions was 25 November 2023. They were reminded that the Tribunal would receive oral submissions from the parties on 1 December 2023 and 4 December 2023.

Written and oral Closing Submissions

774. No written Closing Submissions were filed on behalf of Mr. Li Han Chun and Top Wisdom and they did not attend or participate in the oral submissions made on 1 December 2023 and 4 December 2023.

A consideration of the evidence

Legal representation

775. The Tribunal has received no evidence to support the bare assertion in the letter of Chiu & Partners, dated 20 September 2023, that, in the absence of the release of further monies from the injunctioned funds, “...there would not be any funds for Top Wisdom or Mr. Li to instruct legal advisers in these present proceedings.”

776. The issue of the absence of evidence as to the financial position of Mr. Li Han Chun and Top Wisdom in the context of applications made on their behalf arose twice earlier in the proceedings.

(i) Application for Permanent Stay/Ruling: 24 and 25 October 2022

777. First, the issue arose in the context of the application made on their behalf for a permanent stay of proceedings on 24 October 2022. In support of the application, Mr. Ho contended that there was a “distinct possibility” that they would be unrepresented if the proceedings resumed, given that there was no certainty that monies would be released by the High Court from the injunctioned funds held in the account of Top Wisdom. In that context it was asserted that they, “...do not have alternative means for legal costs for the purpose of the Resumed Hearing.”⁷¹¹ That submission resonated with what had been asserted on their behalf to the Tribunal in a letter from King & Wood Mallesons, dated 4 April 2022, namely that, save for the injunctioned funds, “...our clients did not have other means to conduct their defence in further MMT proceedings.”⁷¹² In rejecting the application, in the Ruling, dated 25 October 2022, the Chairman noted that no evidence had been adduced before the Tribunal to support that mere assertion.⁷¹³

(ii) Application for an adjournment/Reasons for Ruling: 10 and 12 January 2023

778. Secondly, the issue arose on 10 January 2023, when the Chairman refused an application made on behalf of Mr. Li Han Chun and Top Wisdom for an adjournment of the proceedings scheduled to commence on 1 February 2023 to be re-fixed to commence on 12 April 2023. The adjournment was sought pending the hearing in the High Court of an application for a variation of the injunction, to which monies in an account of Top Wisdom was subject, to allow for the release of about \$36 million for legal costs in relation to the rehearing of the MMT proceedings.

779. In a letter to the Tribunal, dated 4 January 2023, seeking the adjournment of the proceedings King & Wood Mallesons informed the Tribunal that, in an affirmation filed on 16 December 2022 in the High Court, the Liquidators of Top Wisdom had objected to the application and contended that, the 2nd Specified Person has, “...not given full or satisfactory disclosure to prove that he and/or the 3rd Specified Person have no other sources for funding the MMT Proceedings.”

780. In the face of the Commission’s objections to the application, including on the basis that no evidence had been filed as to the financial position of Mr. Li Han Chun and Top

⁷¹¹ Skeleton Submissions of the 2nd and 3rd Specified Persons, dated 26 September 2022, paragraph 25.

⁷¹² King & Wood Mallesons’ letter, dated 4 April 2022, paragraph 4(2).

⁷¹³ Ruling: Application for Permanent Stay, dated 25 October 2022, paragraph 60.

Wisdom, during the hearing Mr. Issac Chan sought to file an un-affirmed Chinese affirmation of Mr. Li Han Chun, a translation of which he handed to Mr. Jat only at the hearing. In the face of Mr. Jat's objections to the Tribunal receiving that document, the Chairman declined to receive it.

781. In his Reasons for Ruling, the Chairman said of his determination not to receive the un-affirmed Chinese original and its translation that, in the Ruling refusing the application for a permanent stay of proceedings, the Tribunal had, "...drawn attention to the fact that it had received no evidence as to the availability or otherwise of monies to the 2nd and 3rd Specified Persons to fund legal representation...they were on long-standing notice of what was required, but they had failed to get their tackle in order timeously".⁷¹⁴

Personal participation

782. Even if the financial position of Mr. Li Han Chun and Top Wisdom was such that they could not afford to continue to be represented in these proceedings after 20 September 2023, Mr. Li Han Chun was entitled to participate personally. As a corporate legal person, it was open to Top Wisdom to seek to be represented by an appropriate person. In its letter to them, dated 9 October 2023, the Tribunal had advised them that if they wished to continue to participate in the proceedings, they ought to respond to the matters raised in earlier correspondence by the Commission and the Tribunal about the evidence that remained to be concluded and the evidence that was yet to be led, in particular the scheduled video-link evidence from Mr. Li Han Chun.

Assistance

783. Conscious of the possible difficulties that lay in the way of participating in the proceedings without legal representation, in its letter, dated 3 October 2023, the Tribunal had provided Mr. Li Han Chun and Top Wisdom with a simple description of the mechanics of giving evidence by video link and, more importantly, an offer to provide other assistance within the remit of the Tribunal as required.

784. In those circumstances, we are satisfied that the taking of evidence by video-link from Mr. Li Han Chun, together with the use of electronic documentation in the taking of such evidence, was an efficient and reliable way of obtaining his evidence.

⁷¹⁴ Reasons for Ruling: Application for Adjournment, dated 12 January 2023, paragraph 38.

785. As noted earlier, after 20 September 2023, the Tribunal received no communication whatsoever from Mr. Li Han Chun and Top Wisdom. As a result, the Tribunal does not know why they ceased to participate in these proceedings.

Conclusion

786. In all the circumstances, we are satisfied that Mr. Li Han Chun and Top Wisdom had a reasonable opportunity to be heard, as required by section 252(6) of the Ordinance.

CHAPTER 14

When did Mr. Li Han Chun join China Forestry?

What were his duties, responsibilities and work?

787. It is Mr. Li Han Chun's case, articulated in his witness statement, dated 9 April 2019, and in his evidence in January 2020 to the Tribunal chaired by Mr. Kenneth Kwok, that he had joined China Forestry, Beijing Zhaolin as it was then, in August 2007. In the record of interview conducted of him by China Securities Regulatory Commission, dated 31 July 2014, he said that he became the general manager of Beijing Zhaolin in June 2007, having met Mr. Li Kwok Cheong in May 2007.⁷¹⁵

788. Mr. Li Kwok Cheong had recruited him to handle its, "financing work". Within China Forestry, he was the person-in-charge of the listing project. He was responsible for providing documentation and information to the intermediaries to assist them with the listing application. He was not responsible for the company's business operations and his participation in those operations was very limited. Those responsible for the business operations, including Mr. Li Kwok Cheong, Mr. Shi Chuansheng and Mr. Li Haijun provided him with information on those operations.

False statements and fraudulent documents

789. In his evidence, in cross-examination by Mr. Jat before the Tribunal in January 2020, Mr. Li Han Chun acknowledged that, in signing the board minutes, dated 5 November 2009, he had approved the issue of the Prospectus, in which it was asserted that he had joined Beijing Zhaolin as a general manager responsible for its daily operations in January 2004. It was stated that he was responsible for the management of the daily operation of Beijing Zhaolin during the Track Record Period. In particular, he was responsible for identifying new forest land in making decisions for acquisition, liaising and negotiating with potential vendors. Also, he acknowledged that he had undertaken to the SEHK that the declarations that he made to them as to the Prospectus were true, complete and accurate.

790. Mr. Li Han Chun accepted that his employment contract with Beijing Jinfudi as its general manager, dated 1 February 2004, was backdated and fraudulent. The same was true of the Minutes of that company, dated 5 April 2004, stipulating that he was appointed as its

⁷¹⁵ Witness Evidence Bundle B1, page 1088.

general manager. He said that he had signed those documents deliberately to mislead the public into thinking that he had greater experience than he had actually in the forestry industry. The same was true of the false statements in the Prospectus of his remuneration from the company in the Track Record Period. He did not think that the false statements were important.

791. Mr. Li Han Chun said that the employment contracts of Madam Wu Xiaofen dated 4 January 2005, Mr. Zhang Hongyu, dated 11 January 2005, and Ms. Ma Xinxiu, dated 9 August 2004, were also fraudulent documents created for the listing.

Mr. Li Kwok Cheong

792. For his part, in his witness statement dated 29 March 2019, Mr. Li Kwok Cheong said that Mr. Li Han Chun had joined Beijing Zhaolin in 2004, as evidenced by a contract of employment with Beijing Jinfudi, dated 1 February 2004, in which he was employed as the company general manager. Madam Wu Xiaofen and Mr. Zhang Hongyu had been recruited by Mr. Li Han Chun as employees of the company in January 2005, as evidenced by their respective contracts of employment.

Other evidence as to Mr. Li Han Chun's employment by China Forestry: his duties, responsibilities and work

(i) Mr. Xiao Feng

793. In 2007 Mr. Xiao Feng was an executive director of Carlyle Asia Growth Fund. Subsequently, following Carlyle's acquisition of shares initially in Beijing Zhaolin and then in China Forestry he became a non-executive director of China Forestry. He participated in the lengthy record of interview conducted of him by the Commission on 15 February 2011 and gave evidence before the Tribunal chaired by Mr. Kenneth Kwok on 3 and 4 December 2019. The Tribunal has the record of interview and a transcript of his earlier evidence. He gave evidence before this Tribunal over three days in April 2023.

794. In his evidence before this Tribunal, Mr. Xiao Feng was reminded of the description in the Prospectus of Mr. Li Han Chun, in particular the statement that he had joined Beijing Zhaolin as a general manager in January 2004, that he was responsible for the management of the daily operations of Beijing Zhaolin during the Track Record Period. Further, that it was asserted that Mr. Li Han Chun had entered the forest management industry in February 2004. Next, he was taken to passages of Mr. Li Han Chun's witness statement in which it was stated that Mr. Li Han Chun had joined Beijing Zhaolin only in August 2007. Mr. Xiao Feng said

that the description in the Prospectus of Mr. Li Han Chun's employment with the company was consistent with what he understood it to be prior to the listing application.⁷¹⁶ Conversely, he said that he was surprised that it was asserted that Mr. Li Han Chun had begun his employment with the company only in August 2007.⁷¹⁷

Mr. Xiao Feng's dealings with Mr. Li Han Chun

795. Mr. Xiao Feng said that, having been introduced to Mr. Li Kwok Cheong in August 2007, negotiations had followed with Mr. Li Kwok Cheong and Mr. Li Han Chun in respect of Carlyle making an investment in Beijing Zhaolin's forestry business. A term sheet was issued, but negotiations terminated, probably in September 2007⁷¹⁸, when the company pursued raising finance by a bank loan.

796. Subsequently, at the behest of Cazenove Asia, negotiations resumed, a new term sheet was issued in what he recalled was December 2007 and Carlyle began the process of due diligence on the company. That included a site visit to forests in Sichuan by the Carlyle 'Deal team', of whom he was one, Mr. Li Han Chun, Mr. Zhang Hongyu and Ms. Ma Xinxiu, together with representatives of KPMG.

797. Having been reminded of what he had said in his record of interview of the role and responsibilities of Mr. Li Han Chun, in particular that:⁷¹⁹

"...according to the contact (between) us and (our) understanding, basically, the daily operation of the company was run by the CEO. Normally, the Chairman...did not devote much time and effort to the daily operation of the company."

Mr. Xiao Feng explained how he had come to that understanding:⁷²⁰

"Well, through my interaction with himself and his management team... And throughout our periodical communication after our investment, and also our very intensive communication during the IPO preparation process, and we also did...a couple of site visits during the due diligence process and also before IPO, and the CEO himself and also some of his management team kept us company during our site visit, and it seems to me that they knew the local situation very well, and also they knew the

⁷¹⁶ Transcript 17 April 2023, page 60.

⁷¹⁷ Transcript 17 April 2023, page 59.

⁷¹⁸ Mr. Xiao Feng's Record of Interview; Witness Evidence Bundle C2, page 2219 at counter #87.

⁷¹⁹ Witness Evidence Bundle C2, page 2224. Record of interview at counter #117.

⁷²⁰ Transcript 17 April 2023, pages 64-65.

local regulators very well. So it occurred to me that the CEO and his management team really knew what they were doing.”

Due diligence pre-IPO

(i) Sichuan Forest visit

798. Having been reminded that in his record of interview he had described a “...three to four days trip” to Sichuan as part of Carlyle’s due diligence, Mr. Xiao Feng said that he thought the visit was in September or October 2007.⁷²¹ Of Mr. Li Han Chun’s role in that visit, he said:⁷²²

“...he kept us company during our field trip to Sichuan, so that took I think one week, so we were together every day, from morning to evening, and we talked a lot during the way, during the trip, and he introduced us, including KPMG people, to the local management, and he introduced us to a couple of the local officials from local authorities, and he made a lot of introduction to how they conducted business activities such as logging, harvesting and, you know, how promising this business could be in the future and all that.

So I think, during the due diligence process it was very intensive communication back and forth.”

(ii) Interviews with senior management, industry experts and experts from the forestry bureau

799. Mr. Xiao Feng said that Carlyle had conducted “a lot of interviews” with senior management, including Madam Wu Xiaofen and Mr. Zhang Hongyu, industry experts and a couple of experts from the Forestry Bureau. Of that, he said:⁷²³

“...most of the time it was Li Han Chun himself who made the connection for us, and I think seven or eight out of ten times, he was also there present with our due diligence meeting or interview with the industry experts and he would act (add?) to what the industry experts told us from time to time with his own knowledge from the industry, during our due diligence.”

⁷²¹ Transcript 19 April 2023, page 78.

⁷²² Transcript 19 April 2023, page 78.

⁷²³ Transcript 19 April 2023, pages 79-80.

Quarterly reports: Mr. Li Han Chun to Mr. Xiao Feng

800. In addition, Mr. Xiao Feng said that he had a telephone call quarterly with Mr. Li Han Chun, in which the latter provided him with an update of substantial matters. He used the information supplied to provide an internal report within Carlyle of their investment.⁷²⁴ He said that the telephone conversations took "...20 to 30 minutes", during which Mr. Li Han Chun briefed him, "...about the latest progress financially and operationally, and some of the, for example, new businesses or new plantations or new logging permits that they were trying to obtain from local authorities...".⁷²⁵ In cross-examination, Mr. Xiao Feng agreed with the suggestion of Mr. Ho that it was apparent from the conversations that Mr. Li Han Chun had, "...done his homework, prepared for these reporting sessions and was able to give you a general picture of the company."⁷²⁶ In re-examination, Mr. Xiao Feng said that after the listing his communication with the company, "...was mainly through the contact point of the CEO himself."⁷²⁷

The scope of Mr. Li Han Chun's work

801. Having been reminded that, in his witness statement, Mr. Li Han Chun had asserted under the heading, '**Scope of work did not involve or touch upon operation in the forestry industry**', that:⁷²⁸

"My main responsibility in the company was to handle the Company's application for listing. In addition, my team and I were stationed in the Beijing representative office, so I had never had substantial participation in the company's forestry operations...".

Mr. Xiao Feng said that he did not agree with the statement.⁷²⁹

"That's in conflict with my understanding. I think it's recorded in my ROI that- he often travelled down to the provinces like, Yunnan, Guizhou and Sichuan, and probably for the better half of the whole month he would be there, down there, working locally... So I don't think his statement here is totally true."

802. In respect of Carlyle's due diligence process, the following interchange ensued between

⁷²⁴ Mr. Xiao Feng's Record of Interview; Witness Evidence Bundle C2, page 2226 at counter #127. Transcript 17 April 2023, pages 63-64.

⁷²⁵ Transcript 17 April 2023, pages 65-66.

⁷²⁶ Transcript 17 April 2023, page 135.

⁷²⁷ Transcript 19 April 2023, page 48.

⁷²⁸ Mr. Li Han Chun's Witness Statement, paragraph 12(b).

⁷²⁹ Transcript 17 April 2023, page 73.

Tribunal Member, Mr. Johnny Chan, and Mr. Xiao Feng:⁷³⁰

Q. ...What are the key things that you were looking at when you decided to invest in this company?

A. Management-wise, I think we need to have people with in-depth knowledge and working experience with this industry that could make ourselves comfortable about his capability to carry on the management of the company. So it means the quality of the management was one of the most important things that we would look at. So by quality of the management, it would mean two things: one is industry knowledge, industry know-how, and the other thing is did he or she manage well in his past working experience. So those two aspects.”

803. Of the opinion that he formed at that time of Mr. Li Kwok Cheong and Mr. Li Han Chun, Mr. Xiao Feng said:⁷³¹

“I think it was positive. We were quite impressed. But at that time we knew that Chairman’s involvement in the business was not significant and he actually openly confessed that to us, that he had his art business to take care of, so he would entrust the management to Mr. Li Han Chun, who he was quite positive about his performance, and through our communication with Li Han Chun, Zhang Hongyu, Ma Xinxiu, Madam Wu Xiaofen we thought this was a young, energetic but devoted team, so we were, like, we were persuaded and convinced into this investment to a large part by the quality of the team.”

804. Subsequently, Mr. Xiao Feng confirmed that Mr. Li Han Chun had been present when Mr. Li Kwok Cheong had said that he would entrust the management of the company to Mr. Li Han Chun. The latter made no objection to the statement.⁷³²

805. Mr. Xiao Feng said of Mr. Li Han Chun:⁷³³

“...my impression was that the CEO was like, a seasoned manager, and he knew the industry very well, and actually, you know, at the time we did the due diligence, I knew

⁷³⁰ Transcript 19 April 2023, pages 66-67.

⁷³¹ Transcript 19 April 2023, page 67.

⁷³² Transcript 19 April 2023, page 87.

⁷³³ Transcript 19 April 2023, page 69.

very little about this industry, so most of the industry knowledge I think were educated by the CEO himself to me...”

(ii) Ms. Xue Ying

806. The Tribunal has received a record of interview, dated 24 February 2011, conducted of Ms. Xue Ying by the Commission. She was a director of Corporate Finance in the Cazenove, Beijing Representative office. Subsequently, Cazenove was taken over by Standard Chartered Securities.

China Forestry IPO

807. Ms. Xue Ying became involved in the China Forestry IPO in October 2007, having been introduced to the company and Mr. Li Han Chun by Mr. Xiao Feng.⁷³⁴ Following discussions with Mr. Li Han Chun and Mr. Li Kwok Cheong, a mandate was signed in November 2007, after which there was a “kick-off of this IPO process”.⁷³⁵ Her duties included, “...liaison, communication with Mainland clients” including China Forestry. She was not involved directly in the due diligence work by Cazenove. That was done by her colleagues in Hong Kong whereas, “...I mainly only served the purposes of liaison, communication.” She agreed that Mr. Li Han Chun acted as a contact point in relation to all topics regarding the overall IPO project.⁷³⁶

The role of Mr. Li Han Chun in the listing process: 2007-2009

808. Of her understanding of Mr. Li Han Chun’s role in China Forestry throughout the listing process from 2007 up until the end of 2009, she said:⁷³⁷

“...I feel that he, as the CEO, basically everything in this aspect would be supervised by him, including business, finance, administration. Everything was taken charge of by him.”

809. Of the basis of that statement, she said of the enquiries raised by the lawyers and the various professional parties in the due diligence process, which she communicated to the company, that:⁷³⁸

⁷³⁴ Ms. Xue Ying’s Record of Interview; Witness Evidence Bundle E2, page 3878 at counter #s 46-59.

⁷³⁵ Witness Evidence Bundle E2; pages 3879-3880, counter #s 87-91.

⁷³⁶ Witness Evidence Bundle E2; pages 3882-3883, counter #s 126-127.

⁷³⁷ Witness Evidence Bundle E2; page 3884, counter #149.

⁷³⁸ Witness Evidence Bundle E2; pages 3884-3885, counter #153.

“...what I saw was that basically it was the CEO who arranged for people (under) him to provide this kind of information, including finance, business, acquisition of forest land, as well as some matters related to administration. They were all basically done by people arranged by him. Since under him there was a CFO, and then there was...a director responsible for forest acquisition, and also an executive director. These... few people all reported to him. Hence, I feel that as far as his duties are concerned it should be that everything in the company was supervised by him.”

(iii) Mr. Michael Cheung Man Yu

810. Mr. Michael Cheung Man Yu testified that, whilst he was employed by UBS from 2007 in handling the sponsor’s side of IPOs, after UBS had become a joint-Sponsor of China Forestry’s IPO, he became involved in its IPO in around August or September 2009. His role was to update its financial data in its Prospectus. Having been reminded that in his first record of interview, dated 9 February 2011, he had said of his work in that respect, “...for local matters, at that time I mainly dealt with the CEO Li Han Chun, and under him there were Zhang Hongyu.”⁷³⁹ Mr. Michael Cheung described what he understood at that time to be Mr. Li Han Chun’s responsibilities:⁷⁴⁰

“At that moment, almost he will join the meetings and he is the major contact with the CEO, and if we have some information we need to collect from the company, we have to contact CEO and then he sometimes will guide us to somebody to give us information...At that moment, based on my understanding, he should be responsible to manage, operate the company.”

811. Having been reminded of the description of Mr. Li Han Chun in the Prospectus, in particular that he had been the general manager of the company since January 2004, “...responsible for the management of the daily operation” of the company, Mr. Michael Cheung said that it was his observation, when he took up his role in the second half of 2009, that Mr. Li Han Chun was, “...the key person to manage the whole company.”⁷⁴¹

812. Having begun to work for China Forestry informally in January 2011, Mr. Michael Cheung participated in various meetings attended by KPMG, including a conference call meeting on the evening of 26 January 2011. The KPMG Minutes noted that, in response to

⁷³⁹ Witness Evidence Bundle C1; page 1725, counter #164.

⁷⁴⁰ Transcript 19 April 2023, page 106.

⁷⁴¹ Transcript 19 April 2023, page 108.

concerns expressed by KPMG about obtaining sufficient reliable information from Mr. Li Han Chun, Mr. Michael Cheung said, "...more than 90% operations were managed by the CEO."⁷⁴²

813. Of the basis of that statement, Mr. Michael Cheung testified that it was:⁷⁴³

"Based on my observation and communication, once auditor asked the issue, I asked the CEO, and then he can reply me almost he know the things going on. So I think he just believed may be over 90% operating by CEO."

He confirmed that by "communication", he meant questions he asked of Mr. Li Han Chun.

(iv) Ms. Janette Yu

814. Ms. Janette Yu Wai Sum was the KPMG Engagement partner in the 2009 Annual Audit and the 2010 Audit of China Forestry. As such, it was part of her role to communicate with the senior management of China Forestry. Having been reminded of the description in the Prospectus of Mr. Li Han Chun's role in China Forestry⁷⁴⁴, she agreed that the description accorded with her understanding of his role, in particular that, as chief executive officer, he was responsible for the management of the Group's daily operations.⁷⁴⁵

815. Of the basis of her understanding of Mr. Li Han Chun's role, Ms. Janette Yu explained:⁷⁴⁶

"For 2009 and 2010, because of the various issues identified that we considered that has to be drawn to the attention of the senior management and need the involvement of the senior management to assist us in providing the relevant information for us to complete the audit, that's why I have contacted Li Han Chun for quite a number of times in 2009 and 2010 audit, in particular during the stage of finalisation."

816. Of the frequency of her contact with Mr. Li Han Chun in the 2009 Annual Audit, Ms. Janette Yu said, "I would contact Li Han Chun whenever we got some issues that need to seek the assistance, maybe say five to ten times a week."⁷⁴⁷

817. She agreed that in both the 2009 Annual Audit and the 2010 Audit she made contact

⁷⁴² Exhibits Bundle 15B, pages 11404-11408 at page 11407.

⁷⁴³ Transcript 19 April 2023, pages 159-160.

⁷⁴⁴ Transcript 14 April 2023, pages 14-15.

⁷⁴⁵ Transcript 14 April 2023, pages 14-15.

⁷⁴⁶ Transcript 14 April 2023, pages 15-16.

⁷⁴⁷ Transcript 14 April 2023, page 16.

with him in those circumstances on business as well as in respect of financial matters. Similarly, she agreed that he appeared to be the person-in-charge and knowledgeable of China Forestry's day-to-day operations.⁷⁴⁸

3 December 2010-pre-audit meeting

818. Having been reminded of the KPMG Minutes of the two parts of the Pre-Audit meeting between KPMG staff members, of whom she was one, and senior officers of China Forestry on 3 December 2010, Ms. Janette Yu acknowledged that in the first meeting, held in the absence of Mr. Li Han Chun, Mr. Wen Guoping and Mr. Zhang Hongyu articulated difficulties in acceding to the requests made by KPMG in respect of various issues and said, in relation to some of those issues, that they wished to discuss the matter further with Mr. Li Han Chun.⁷⁴⁹

819. Of those responses of Mr. Wen Guoping and Mr. Zhang Hongyu she said, "Yes, they need to report to CEO Li." She explained, that is why normally the engagement managers talked to the Chief Financial Officer or the Chief Resources Officer, whereas "...I would call CEO Li."⁷⁵⁰

820. Ms. Janette Yu agreed that in the second part of the meeting Mr. Wen Guoping had reported to Mr. Li Han Chun the discussions held in the first part of the meeting. She said that for his part, Mr. Li Han Chun had agreed to facilitate the requests that had been made by KPMG.

Conclusion

821. We have no hesitation at all in rejecting Mr. Li Han Chun's assertions that he did not join China Forestry until August 2007. The evidence of Mr. Xiao Feng of his dealings with Mr. Li Han Chun in the months that followed their meeting in August/September 2007 is powerful compelling evidence to the contrary. In that period, he was conducting due diligence on Carlyle's investment in China Forestry. We accept his evidence that an important factor in the analysis he made of China Forestry was the assessment of Mr. Li Han Chun's knowledge and working experience in the forestry industry. That was the assessment of a professional investor. It is clear that Mr. Xiao Feng made extensive inquiries, including the site visits to the Sichuan forest, and interviews of management and experts in reaching his determination that Mr. Li Han Chun was a seasoned manager who knew the industry very well.

⁷⁴⁸ Transcript 14 April 2023, pages 16-17.

⁷⁴⁹ Exhibits Bundle 15A, pages 11078-11083. Transcript 14 April 2023, page 94.

⁷⁵⁰ Transcript 14 April 2023, page 96.

822. Mr. Xiao Feng's evidence of the role of Mr. Li Han Chun in China Forestry during the process of the IPO is wholly consistent with and supported by the evidence of Ms. Xue and Mr. Michael Cheung.

823. Similarly, we have no hesitation in rejecting Mr. Li Han Chun's assertion that his role in China Forestry was primarily in respect of the listing project and that he was not involved in the operations side of the business. Again, Mr. Xiao Feng's evidence is compelling evidence to the contrary. Throughout the more than three years during which they worked together, it is clear that Mr. Xiao Feng was fully justified in his opinion that Mr. Li Han Chun was actually performing the role of general manager of the operations of China Forestry. His evidence of the role of Mr. Li Han Chun in China Forestry is wholly consistent with and supported by the evidence of Mr. Michael Cheung and Ms. Janette Yu.

824. On the other hand, we accept Mr. Li Han Chun's admission in cross-examination, in the hearing conducted by Mr. Kenneth Kwok as chairman, that he authorised the publication of false statements in the Prospectus that he had been employed by Beijing Zhaolin as general manager from January 2004. We accept his evidence that his purported employment contract with Beijing Jinfudi, the earlier iteration of Beijing Zhaolin, and the board minutes purporting to support that employment were false and fraudulently back dated to mislead the public and the SEHK into accepting that he played that role throughout the Track Record Period, when he had not done so. Similarly, we accept that his admission that Madam Wu Xiaofen and Mr. Zhang Hongyu had not been employed by Beijing Jinfudi in 2005 as Chief Financial Officer and Chief Resources Officer respectively, as stated falsely in the Prospectus and purportedly evidenced in their respective contracts of employment with Beijing Jinfudi. They too had been falsely and fraudulently back dated for the same reason.

CHAPTER 15

The forestry assets of China Forestry

825. In response to a request of the Chairman that the parties identify, "... the issues that arise in the expert evidence"⁷⁵¹, by a letter, dated 28 April 2023, King & Wood Mallesons identified the "...key areas of expert evidence that are in dispute by the 2nd and 3rd Specified Persons."

Legal expert evidence as to PRC Law

826. Of the evidence to be called by the Commission in respect of PRC law, including the oral evidence of Mr. Frank Li, issue was taken as to:

- (a) whether he was a suitable expert witness, in light of:
 - (i) the fact that the expert evidence originates from the SFC's instructions to Fangda as its legal advisor in these proceedings, not as an independent legal expert.
 - (ii) the assertion that he did not possess, "...substantial expertise in the PRC forestry law and practice."
 - (iii) the fact that he did not have any involvement in the preparation of Fangda's opinion on Verification of Forestry Rights, dated 6 August 2015.
- (b) whether the opinion on Verification of Forestry Rights has any probative value as to the relevant forestry ownership of China Forestry at the material time, given that the opinion did not proffer any expert opinion on:
 - (i) the reliability of the information obtained during the verification process carried out by Beijing H & F in Yunnan and Sichuan Provinces; and
 - (ii) the authenticity of the Forestry Rights Certificates and the information set out in the lists of other Forestry Rights Certificates provided by China Forestry.

827. It is necessary that the Tribunal has regard to the issues that were raised there because, in the event, cross-examination of Mr. Frank Li on 21 June 2023 by Mr. Ho on behalf of the 2nd and 3rd Specified Persons was incomplete and was never completed. That was because, it having been necessary for him to be asked to return in October 2023 to continue his evidence, on the dates fixed for the hearing to continue, namely 10 and 12 October 2023, the 2nd and 3rd

⁷⁵¹ Transcript 21 April 2023, page 148.

Specified Persons were no longer legally represented nor did they participate personally in the proceedings.

The provenance and foundations of the opinions of Mr. Frank Li

828. Mr. Frank Li said in his oral evidence that he had been asked to act as a witness in respect of PRC law in this Tribunal in October 2016.⁷⁵² There is no dispute that earlier, by an Engagement letter between the Commission and Peter Yuen & Associates, dated 4 June 2013, the former had been engaged to act as the Commission’s legal advisor in connection with the verification and notarisation of 51 China Forestry Rights Certificates in the PRC. The agreement required that they engage H & F.

829. Fangda Partners, who acted in association with Peter Yuen & Associates,⁷⁵³ provided three written opinions, including an opinion in respect of the Verification of Forestry Rights Certificates in the Yunnan and Sichuan Provinces, dated 6 August 2015, 11 September 2015, and 5 May 2016. Mr. Frank Li was not involved in the compilation of those three reports, all of which were compiled before he was asked to act as an expert witness in October 2016. Those reports were compiled by others within Fangda Partners.

The role of Mr. Frank Li

830. Of his role, Mr. Frank Li testified that, “Before I agree to act as the expert witness, I read and review these first three reports and I agree with.”⁷⁵⁴ He agreed that he had no personal knowledge of the matters stated in Ms. Guo’s Statutory Declaration, the two H & F reports and the Notary Public certificates.⁷⁵⁵ For his part, he compiled the fourth report, dated 19 January 2017 and did so together with Peter Yuen as co-supervising partner.

831. In response to the suggestion that Fangda Partners had not been engaged by the SFC to give independent expert evidence, “...for this investigation”, Mr. Frank Li said:⁷⁵⁶

“From my understanding, we have been engaged by SFC to give evidence as the legal expert witness, otherwise I won’t be here.”

832. He agreed that he was to, “...opine on the PRC law.”

⁷⁵² Transcript 21 June 2023, pages 59-60.

⁷⁵³ Transcript 21 June 2023, page 69.

⁷⁵⁴ Transcript 21 June 2023, page 56.

⁷⁵⁵ Transcript 21 June 2023, pages 59-62.

⁷⁵⁶ Transcript 21 June 2023, page 72.

Duty to the Tribunal

833. On the day before he gave evidence on 20 January 2020, in the proceedings chaired by Mr Kenneth Kwok, Mr. Frank Li provided a Declaration, dated 19 January 2020, of the duties that he owed to the Tribunal, in particular that, "...my duty in giving evidence is to assist the Market Misconduct Tribunal.... and that this duty overrides any obligation to the party by whom I am engaged or the party who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty."⁷⁵⁷ Further, he confirmed that he had read the Code of Conduct for Expert Witnesses set out in Appendix D of the Rules of the High Court and stated that he agreed to comply with the duties set out in paragraphs 2 to 4 as being duties owed to the Tribunal. Paragraph 2 provides for a duty, "...to help the Court impartially and independently on matters relevant to the expert's area of expertise."

834. In his oral testimony, Mr. Frank Li confirmed that he understood that to be his duty.⁷⁵⁸ When asked if others at Fangda had made similar declarations, he said "I haven't seen any others."⁷⁵⁹ The Tribunal has not been provided with any such declarations.

Expertise

835. Having been awarded LLB and LLM degrees from the School of Law of the University of Fudan, Mr. Frank Li joined Fangda Partners in 2003, qualified as a PRC practising lawyer in 2005 and became a partner of Fangda in 2010. He was a partner when he testified in May and June 2023. He had received a Postgraduate Diploma in Common Law from the University of Hong Kong.

Practice Areas

836. In cross-examination, Mr. Frank Li acknowledged that, as described in his *curriculum vitae*⁷⁶⁰, his main practice area was Dispute Resolution. He also practised in Litigation and Arbitration matters. He acknowledged that did not involve forestry matters. However, as described in his CV, under the heading 'Compliance and Investigation', he had been involved in assisting offshore regulatory bodies in verifying assets in the PRC and issuing legal opinions. That work included verification of Forestry Rights Certificates in Yunnan Province which was

⁷⁵⁷ SFC's Supplemental Bundle 1, page 328.

⁷⁵⁸ Transcript 15 May 2023, pages 36-37.

⁷⁵⁹ Transcript 21 June 2023, page 73.

⁷⁶⁰ SFC's Supplemental Bundle 1, pages 329-321.

performed in 2017-2020.⁷⁶¹ Mr. Lai Yulong, an employee of Fangda was involved in the physical verification work assisted by local lawyers, as was required in Yunnan, to produce the legal opinion and notary certificates. Mr. Frank Li was the supervising partner.⁷⁶²

The authenticity of the FRCs/the information on the Lists of those certificates and the reliability of the information obtained by H & F during the verification process

‘Verification of the Forestry Rights Certificates’ - the ambit of Fangda’s opinion

837. In the opinion of Fangda in respect of the ‘Verification of Forestry Rights Certificates’, dated 6 August 2015, it was stated in terms that the legal opinion was given on, “...prerequisites, assumptions and restrictions”.⁷⁶³ They included that the copies of the FRCs provided to Fangda were copies of the originals obtained by the Commission, that the information contained in the Lists was consistent with the information contained in the respective FRCs and that they did not contain significant omissions or misleading information. Most particularly, it was stated to be provided on the assumption that:

“...the verbal replies given by the staff of the relevant forestry authorities during the course of the Verification Work are true, accurate and complete, without any significant omission or misleading information.”

838. The structure of that opinion clearly evidenced the ambit and nature of the opinion, namely that it addressed the law of the PRC in respect of various topics. It did not seek to address the reliability of the information obtained by H & F. On the other hand, the opinion did note that, although the law stated that the records of the registration of Forestry Rights Certificates shall be made available to the public upon request:⁷⁶⁴

“...the PRC has not yet established a nationwide system or organization for the verification of, and the enquiry service for, Forestry Rights Certificates.”

839. That statement resonated with the cryptic observation by Greater China Appraisal Limited in the Property Valuation of the Prospectus, namely that although they had been provided with copies of the FRCs, “... due to the current registration system of the PRC, no investigations have been made for the legal title or any liabilities attached to the properties.”⁷⁶⁵

⁷⁶¹ Transcript 21 June 2023, page 64.

⁷⁶² Transcript 21 June 2023, pages 65-68.

⁷⁶³ Expert Evidence Bundle 1A; page 3, paragraph 3.

⁷⁶⁴ Expert Evidence Bundle 1A; page 17, paragraphs 29-30.

⁷⁶⁵ Exhibits Bundle 1A, page 425.

840. Further, it was noted that, "...the county forestry bureaus we visited did not provide standardised and uniform services." Rather, "...each forestry bureau adopts a different set of procedures." Generally, the information had been provided orally by the forestry bureaus, "...by providing simple "yes" or "no" answers, with some simple explanations."⁷⁶⁶ It was noted that there were instances, particularly in the verification of the information in the Lists/spreadsheets of FRCs that the enquiries were met with unwillingness to cooperate or the refusal to verify all the information. Those instances had been documented by H & F.⁷⁶⁷

A consideration of the submissions

841. We have no hesitation in accepting Mr. Frank Li's evidence that in testifying he does so as an independent expert wholly cognisant of his duties to this Tribunal. We accept that, having been engaged in 2016 to act as an independent expert to give evidence to this Tribunal, he reviewed the three opinions in which he was not involved in the compilation and having done so adopted the opinions stated.

Expertise

842. We accept that Mr. Frank Li is a well-qualified, very experienced PRC lawyer. Clearly, his practice is broadly based. He did not present himself as having specialised in forestry law. On the other hand, he had practised in that area of law, in particular in relation to the validity of the claims of ownership of forest assets. The opinions which he has either adopted or compiled and supported in his evidence to the Tribunal represent very largely a collation of the relevant statutory and regulatory provisions in the PRC relevant to the various issues arising, in particular in respect of Forestry Rights Certificates, Logging Permits and the role in the PRC of Notaries Public.

843. Significantly, it is to be noted that, in such challenge as has been articulated in respect of Mr. Frank Li's expertise in PRC forestry law, he has not been cross-examined at all by Mr. Ho on the basis that any of the statements of law made in those opinions was wrong or was misleading, in particular because he failed to take into account other relevant legislation or regulations.

844. It is not surprising that he did not express any view as to the reliability of the information obtained by H & F. That is a factual matter, not a matter in which the expression of a legal

⁷⁶⁶ Expert Evidence Bundle 1A; page 19, paragraph 35.

⁷⁶⁷ Expert Evidence Bundle 1A; pages 19-20, paragraph 37.

opinion would be appropriate or of any assistance.

Conclusion

845. We accept that he is qualified to give expert opinion evidence in the areas to which he speaks and we are prepared to and do act on his evidence.

The reliability of the evidence of the investigations of the forestry assets of China Forestry

846. As Mr. Jat suggested in his written Closing Submissions,⁷⁶⁸ although directed at the failure of Mr. Frank Li to give an opinion on the matter, the real criticism of the 2nd and 3rd Specified Persons appears to have been the reliability of the verification work.

The verification work

847. The verification work was addressed in the reports of H & F, the Statutory Declaration of Ms. Guo Jingwen and the numerous certificates of the Notaries Public who were present at the multiple verification exercises. In respect of the Notary Public certificates issued in Sichuan Province, there is in addition the audio recording of the enquiries conducted at the various forestry bureaus. Further, there is now available the transcript of those audio recordings compiled by Ms. Li Cissy, a member of staff of the Commission, attached to her statement, dated 18 October 2023.

848. On the other hand, not a single witness has been called to give oral evidence of the enquiries made of the various forestry bureaus and their answers.

Notaries Public

849. In determining the weight to be given to the evidence in respect of the verification exercises, we note the opinion of Mr. Frank Li that, in Mainland China, a Notary Public may be called upon to witness a verification exercise and that it is common practice to adduce such evidence, which is "...rarely challenged in the legal proceedings."⁷⁶⁹ We note that legislation provides that "...a notarised civil act, fact or document of legal significance shall be taken as the basis of establishing the facts". On the other hand, the law also provides in various provisions that there may be a challenge on the basis that, "...there is strong evidence indicating the contrary", or "...there is any evidence to the contrary which suffices to overturn the

⁷⁶⁸ SFC's written Closing Submissions, paragraph 48.2.

⁷⁶⁹ Transcript 15 May 2023, page 52.

notarisation.”⁷⁷⁰

850. It is to be noted that, although in his witness statement, dated 29 March 2019, Mr. Li Kwok Cheong took issue with the reliability of the process of the verification of the FRCs, he has not sought to adduce any evidence to substantiate those complaints.⁷⁷¹ Similarly, although those representing the 2nd and 3rd Specified Persons take issue with the reliability of the verification process, they have not sought to adduce evidence to support that submission.

851. We have regard to what we accept is the practice in the Mainland in respect of Notary Public certificates, as described by Mr. Frank Li. In affording weight to the findings stated in those certificates of the enquiries made of the various forestry bureaus, we take into account the broad, general support that is to be found of those findings in the reports of H & F and the Statutory Declaration of Ms. Guo Jingwen, all of which evidence we reviewed at length earlier. We accept that the audio recordings of those enquiries attached to the Sichuan Notary Public certificates are direct evidence of what occurred in those enquiries, reflected in the transcript and its translation. Again, that evidence is supportive of the findings stated in the Notary Public certificates.

852. We are mindful that, whilst the results of the enquiries have been recorded by various parties in terms that support each other, the crucial question is the accuracy of the information that was provided by the forestry bureaus as to whether or not records of the questioned FRCs were to be found in their records. That information was provided orally, although in some instances supporting documents were supplied.

853. Again, we have regard to the fact that these enquiries were made of multiple forestry bureaus in two provinces on multiple occasions. It is to be noted that, although the Yingjing Forestry Bureau in Sichuan advised that no information could be provided in respect of the six FRCs presented to them by H & F, because of an ongoing criminal investigation, the enquiries made of all the other forestry bureaus did not result in any one of the other FRCs being identified as registered in their records.

Conclusion

854. In the result we are satisfied that the overwhelming majority of Forestry Rights

⁷⁷⁰ Expert Evidence Bundle 4A; page 2097, paragraph 10. Article 36 of the Notarisation law and; Article 59 of the Civil Procedure Law.

⁷⁷¹ Mr. Li Kwok Cheong’s Witness Statement, paragraph 121.

Certificates presented by China Forestry in the IPO process and referred to in detail in the Prospectus, the copies of which were presented to the forestry bureaus, were not genuine.

855. It follows that the multiple statements in the Prospectus in respect of stipulated FRCs that China Forestry had obtained the forestry land use rights, in respect of stipulated areas of forest⁷⁷² and the asserted valuation were false.⁷⁷³

⁷⁷² Exhibits Bundle 1A, page 191: Prospectus,

“For each of our forests in Sichuan, we own the forest trees, the rights to use the forest land and the rights to use the trees. Our rights are evidenced in the relevant forestry right certificates and are protected under the PRC Forestry Law.”

See page 192 in respect of Yunnan forests.

⁷⁷³ Exhibits Bundle 1A, pages 307, 428-432 and 434-470: Prospectus, Financial Information; and Appendix IV “Property Valuation”- Greater China Appraisal Limited.

CHAPTER 16

Logging Permits, Customers, Insurance and Bank Balances

(i) *Logging Permits*

856. The first Fangda opinion, dated 6 August 2015, also addressed the law relevant to the requirement for the grant of logging permits to undertake logging activities in the PRC and the documents required to be provided to the authorities in making an application for such a logging permit. Article 32 of the Forest Law requires that any person who wished to undertake any logging activities in the PRC must first obtain a logging permit.⁷⁷⁴

Application for and the issue of a Logging Permit

857. Article 30 of the Regulations of the Forest Law together with Article 5 of the Administrative Provisions for Logging and Reforestation of Forest required that an applicant for the issue of a Logging Permit submits to the Forestry Bureau various documents, including:⁷⁷⁵

“(a) the Forestry Rights Certificate showing that applicant is the owner of the property rights or usage rights for the relevant forests or wood being the subject of the proposed logging work.”

858. In consequence, Fangda expressed the opinion, adopted and endorsed by Mr. Frank Li that:⁷⁷⁶

“...only an owner of the property rights or usage rights for the relevant Forest or wood is entitled to apply for a Logging Permit.”

Verification

859. It was noted that, “The Forest Law and the Regulations of the Forest Law do not contain any specific rules or regulations with respect to the verification of Logging Permits.”⁷⁷⁷ In consequence, it was observed, “...if there is a need to verify the Logging Permits, it will be necessary to contact the relevant forestry bureau which issued the relevant permits to confirm the procedures for making such enquiries.”

⁷⁷⁴ Expert Evidence Bundle 1A; page 21, paragraph 42.

⁷⁷⁵ Expert Evidence Bundle 1A; page 22, paragraph 43.

⁷⁷⁶ Expert Evidence Bundle 1A; page 22, paragraph 44.

⁷⁷⁷ Expert Evidence Bundle 1A; page 23, paragraph 46.

Notary Public certificates

860. The Notary Public certificates stipulated that the matters to be notarised were the verification of duplicates of Forest Registration Certificates⁷⁷⁸. They do not address such enquiries as were made at the time of that verification work in respect of the issue of logging permits.

Shuangjiang Logging Permits

Emails: Ms. Naomi Lau and Mr. Zhang Hongyu/Ms. Liu Yana on 16 and 17 December 2010

861. The issue of the two sets of logging permits with duplicated serial numbers, 0215144-0215147, but inconsistent data, issued in respect of forest areas in Shuangjiang in Yunnan Province was raised in the email exchange between Ms. Naomi Lau and Mr. Zhang Hongyu/Ms. Liu Yana on 16 and 17 December 2010. In an email Ms. Naomi Lau had provided Ms. Liu Yana with copies of those two sets of permits, together with a schedule. As noted earlier, the explanations provided to Ms. Naomi Lau by Ms. Liu Yana were wholly unsatisfactory. The final attempt at explanation, namely that the anomaly was explained by a change to, "... logging by rotation beginning from April" was absurd. As Ms. Pao noted in her evidence, the series of obfuscating answers provided by Ms. Liu Yana gave rise to obvious questions, not least why China Forestry had not returned the logging permits to the Forestry Bureau on receipt of the second set of logging permits and sought corrections. Also, as Ms. Pao said in her evidence, it gave rise to obvious concerns about the validity of the logging permits and the impact on the business of China Forestry.

KPMG and China Forestry meetings: 22 and 23 January 2011

862. The issue was revisited in the meeting between KPMG and China Forestry on 22 January 2011 and the meeting on 23 January 2011, attended by Mr. Li Kwok Cheong.

Dehong meeting: 16 February 2011

863. At the meeting on 16 February 2011 in a residential dwelling in Dehong, which was described as a branch of Kunming Ultra Big, the matter was canvassed again. The minutes noted that Mr. Shi Chuansheng and Mr. Zhang Hongyu brushed aside Ms. Naomi Lau's enquiry as to whether or not the company had noted that there were two sets of logging permits with duplicated serial numbers. Mr. Zhang Hongyu responded in the negative to Ms. Naomi Lau's

⁷⁷⁸ Expert Evidence Bundle 2, page 807. Expert Evidence Bundle 3A, page 1432, for example.

specific question as to whether there had been any harvesting in Shuangjiang in 2010. He repeated that denial. Subsequently, although Ms. Naomi Lau did not note the statement in the minutes she prepared, Mr. Zhang Hongyu declared that "...some logging permits were fake".

3 March 2011: Shuangjiang Forestry Bureau

864. KPMG pursued their enquiries and on 3 March 2011 held a meeting with Mr. Hu Fasen, the Head of Forestry Bureau of Shuangjiang and Secretary of the Leading Party Members Group. The meeting was described in two sets of minutes, dated 3 March 2011, namely KPMG minutes⁷⁷⁹ and those of Jun He Law Offices.⁷⁸⁰ Mr. Albert Lui and Mr. Oliver Chung of KPMG, and members of staff of Ernst & Young, Squire, Sanders & Dempsey and Jun He Law Offices attended the meeting.

865. Having been provided with copies of logging permits, with the serial numbers 0215143-0215147 and 0215144-0215148, all dated 21 June 2010, Mr. Hu Fasen said that the logging permits were fake. The person named as having issued the logging permits, Zhang Xincui, was not a member of the staff of Shuangjiang Forestry Bureau. No logging permits had been issued to Kunming Ultra Big in 2010 or in the three years in which Mr. Hu Fasen had been Head of Bureau.

Conclusion

866. We accept that evidence and we are satisfied that those Shuangjiang Forestry Bureau logging permits were false. That finding validates Mr. Zhang Hongyu's admission to Ms. Naomi Lau, in the face of her persistent questioning, at the meeting in Dehong that some logging permits were 'fake'.

867. More broadly, given our finding that most of the Forestry Registration Certificates described in the Prospectus were not genuine and China Forestry did not have lawful property rights or usage rights to the forest land or property rights or usage rights for forests or wood, we are satisfied that corresponding logging permits were also not genuine.

868. It follows that the statements in the Prospectus that China Forestry applied for logging permits to local Forestry Bureaus and harvested within the amounts permitted under those logging permits was false. The 51 Forestry Registration Certificates referred to in the

⁷⁷⁹ Exhibits Bundle 16, pages 11863-11872.

⁷⁸⁰ Exhibits Bundle 16, pages 12068-12083.

Prospectus all purported to have been issued in 2008. Of the harvesting in 2008 and 2009 (up to 30 June 2009), it was asserted that.⁷⁸¹

<u>Year</u>	<u>Actual logging amount (m³)</u>	<u>Maximum amount Permitted under logging permits (m³)</u>
2008	519,928	519,928
2009(up to 30 June 2009)	356,730	356,730

(ii) *Customers*

869. The genuineness of the entities identified to KPMG by China Forestry as customers was an issue addressed in the evidence the Tribunal received.

China Forestry's 19 customers in 2008

870. KPMG obtained from China Forestry a 'Customer List' for the first half of 2008, which listed 19 customers by name only.⁷⁸²

China Forestry's 17 customers in 2009 and 2010

871. In the course of KPMG's audit of China Forestry for FY 2010, China Forestry provided bank-in slips as evidencing payments to China Forestry made by all their seventeen customers in 2010. The primary information was collated into a schedule entitled 'Summary of Customer's Bank a/cs', to which was attached the bank-in slips.⁷⁸³ During the course of their fieldwork in Beijing in November 2010 KPMG reviewed the bank-in slips.⁷⁸⁴ The schedule identified each customer by name and province, either Sichuan or Yunnan, together with details of their account opening branch and account numbers. Ms. Anthea Han initialled the schedule, as having reviewed it on 21 December 2010.⁷⁸⁵ Ms. Naomi Lau said that the 17 customers were the same 17 customers identified by China Forestry as their customers in 2009.⁷⁸⁶ A KPMG schedule collated information on the attached copies of 17 business licences provided by China Forestry to KPMG for the six months up to 30 June 2009.⁷⁸⁷

⁷⁸¹ Exhibits Bundle 1A, page 16.

⁷⁸² Exhibits Bundle 9A, pages 6509-6518.

⁷⁸³ Core Bundle 3, pages 1245-1300.

⁷⁸⁴ Transcript 10 February 2023, page 105. Ms. Naomi Lau.

⁷⁸⁵ Transcript 9 May 2023, page 64. Ms Anthea Han.

⁷⁸⁶ Transcript 10 February 2023, page 117.

⁷⁸⁷ Exhibits Bundle 12B, pages 9229-9264.

Bank-in slips: customers' bank accounts in Tibet

872. The fact that KPMG had identified from the bank-in slips of all their customers provided by China Forestry described the customers as having bank accounts in Tibet was raised in a telephone conference call between KPMG and Mr. Li Han Chun and others on 14 January 2011. Mr. Wen Guoping and Mr. Li Han Chun said that customers had accounts with rural credit unions.⁷⁸⁸

873. No issue was taken with the evidence of Ms. Naomi Lau and Ms. Anthea Han that KPMG's enquiries established that the bank codes stipulated on the bank-in slips referred to bank accounts of all 17 customers with the Bank of Communications in Lhasa, Tibet, on which it was stated they remitted payments to China Forestry. However, there was no branch of the Bank of Communications in Lhasa. The bank-in slips and the information stated on them were false. We accept that evidence.

Business Licences

874. The Fangda opinion, dated 5 May 2016, describes the different forms in which business enterprises may operate in the PRC, including: (i) a limited company; (ii) an Individual Business; (iii) an Individual Proprietorship Enterprises ("IPE").⁷⁸⁹

875. *The Administration of Registration of Individual Industrial and Commercial Households*, which came into effect on 1 November 2011, provides that the Administration of Industry and Commerce ("AIC") is the authority responsible for the registration of individual businesses and the issuance of related business licences.

876. Individual Businesses are required to be registered. The representative of an Individual Business is described as, an 'Operator'.

877. With effect from 1 January 2000, IPEs were regulated by the *Law of the PRC on Individual Proprietorship Enterprises*. They are required to be registered. The representative of an IPE is described as, 'the person-in-charge'.

878. Once registered, either as an Individual Business or an IPE, a business cannot change to the other form of enterprise without deregistering the first form of business before registering

⁷⁸⁸ Exhibits Bundle 15B, pages 11374-11375.

⁷⁸⁹ Expert Evidence Bundle 4A; pages 2344-2346, paragraphs 9-17.

the business in a new form.

879. Companies were regulated by the *Company Law of the PRC* with effect from 1 January 2006. *Regulations of the PRC on the Administration of Company Registration*, which came into effect on 1 July 1994, require that a company be registered with the AIC. A legal representative shall be appointed when a company is incorporated.

880. As noted earlier, the ambit of the enquiry by Fangda into business licences of China Forestry's customers, described in its opinion dated 5 May 2016, was to ascertain whether named businesses had been registered with the AIC and verify the Business Licence purportedly issued to those businesses.

881. The Commission provided Fangda with two sets of copies of different Business Licences, one in Yunnan and the other in Sichuan:

- Exhibit A - nine copies of 'Business Licence for Individually Owned Business', in which an Operator was named and one 'Business Licence for Legal Person' in Yunnan, in which the legal representative was named.
- Exhibit B is a summary of the information.
- Exhibit C - a schedule of a list of nine businesses in Yunnan with similar names to those in Exhibit B.
- Exhibit D - eight copies of 'Business Licence for Individually Owned Industrial and Commercial Household' in Sichuan, in each of which an Owner was named.
- Exhibit E is a summary of the information in exhibit D.

882. Of particular significance of the Fangda investigation was the finding of enquiries made in Sichuan that eight of the business names were not registered with Yingjing AIC and the opinion expressed in consequence that it appeared that those businesses, "...have never existed as registered individual businesses".⁷⁹⁰

883. In a statement, dated 20 January 2016, Ms. Liu Manlu, of Sichuan Tongxing Law Office, described having made enquiries on several occasions of Yingjing AIC and having witnessed the staff of the AIC checking against first, the name of the business and then secondly, the

⁷⁹⁰ Expert Evidence Bundle 4B; page 2358, paragraph 27.

Business Licence registration number.⁷⁹¹ Attached to her statement, as Attachment III, was a description of the results of each of those enquiries to which the two Chops, one of Yingjing AIC and the other entitled, 'Registration of Individually Owned Industrial and Commercial Business', had been applied.⁷⁹² Under the heading 'Details' the results were stated to be, "It is confirmed that there is no such Individually-owned Industrial and Commercial Business." Each confirmation was dated 5 February 2015. Attachment IV documented the description of three of the individually owned businesses in which there had been a "Cancellation" of the registration.⁷⁹³ The same two Chop impressions were made on the documents, which were dated 3 February 2015.

884. Of course, critical to the finding was the accuracy of the information supplied by the AIC in response to enquiries as to whether or not businesses named in a Business Licence and the Business Licence registration number were registered with AIC. In respect of this evidence, there is no support to be found in the certificate of a Notary Public and added weight thereby to be given to the evidence. However, the findings are entirely consistent with our earlier acceptance of the evidence that the Bank-in slips provided to KPMG by China Forestry as evidence of payment by the named customers from stipulated banks and bank accounts provided false information.

Conclusion

885. In the result, we are satisfied that most of the entities that China Forestry had identified to KPMG as being customers, in particular buyers of their logs, were either non-existent or were not genuine customers of China Forestry. Assertions in the Prospectus that in FY 2008 and 1HFY 2009 China Forestry had 19 and 17 customers respectively were false.

(iii) Insurance

Prospectus

886. In the Business section of the Prospectus the topic of the insurance coverage of China Forestry's forest assets was addressed:⁷⁹⁴

⁷⁹¹ Expert Evidence Bundle 4B, pages 2566-2608 at pages 2568-2569.

⁷⁹² Expert Evidence Bundle 4B, pages 2587-2592.

⁷⁹³ Expert Evidence Bundle 4B, pages 2593-2599.

⁷⁹⁴ Exhibits Bundle 1A, page 214.

“It is our policy to maintain an insurance coverage on all our forests (including all newly acquired forests), subject to the terms and conditions of the insurance policies, for loss of trees arising from fire, hail, floods, snow, pests and theft.”

In addition, it was asserted that:

“As at the latest Practicable Date⁷⁹⁵, we were insured under the insurance policies then in effect, in an amount of approximately RMB 20,464 million. Given that the forest is our important assets, we will, taking into account the insurance premiums and the possibility of risks to be covered under the insurance policy, regularly review the sufficiency of our insurance coverage.

For each of the three financial years ended 31 December 2006, 2007 and 2008 and the six months ended 30 June 2009, our Group paid an aggregate of approximately RMB 3.0 million, RMB 13.3 million, RMB 15.9 million and RMB 6.0 million, respectively, for insurance premiums.”

887. Of the amortisation of insurance premium, it was asserted:⁷⁹⁶

“Amortisation of insurance premium increased by 199.3% from RMB 3.3 million in the 2008 first half to RMB 9.7 million in the 2009 first half.... We use the same insurance carrier for both our Sichuan and Yunnan forests”.

PICC

888. PICC (PICC Property and Casualty Company Limited Siping City Branch First Operation Department) was identified in the Prospectus as the insurance provider to Beijing Zhaolin, the rights and obligations in all of which effective policies, it was stated, had been transferred to Kunming Ultra Big by an amendment agreement between the three companies, dated 11 March 2008.⁷⁹⁷

2009 Annual Report

889. In China Forestry’s 2009 Annual Report, in the Management Discussion and Analysis section, it was asserted:⁷⁹⁸

⁷⁹⁵ Exhibits Bundle 1A; page 42, dated 14 November 2009.

⁷⁹⁶ Exhibits Bundle 1A, pages 283-284.

⁷⁹⁷ Exhibits Bundle 1A, page 602. Appendix VII: Statutory and General Information, C1(g).

⁷⁹⁸ Exhibits Bundle 2A, page 1069.

“We have taken out insurance policies to insure the forest against disasters, such as fire, flood and snow etc. The increase of insurance premium amortised from RMB 9.9 million for the year ended 31 December 2008 to RMB 19.9 million for the year ended 31 December 2009, representing an increase of 101.0% mainly due to the increase in forest area and the full year amortisation of insurance premium for the forests in Yunnan acquired in March 2008 and July 2008.”

Interim Report 2010

890. In China Forestry’s Interim Report 2010, earlier statements as to the insurance of forest assets were reasserted⁷⁹⁹:

“The Group enters into a number of insurance policies for its plantation assets and these policies typically run for a period of 1 year to 4 years.”

KPMG’s enquiries into China Forestry’s forest insurance

Ms. Linda Chen Yu Lin

891. Ms. Linda Chen Yu Lin, then a Senior Manager of KPMG, who had begun her career with KPMG in Beijing in 1999, explained in a record of interview conducted of her by the Commission on 22 February 2011 how she became involved in enquiries made of PICC as to the validity of insurance contracts claimed to have been issued by them to Beijing Zhaolin and Kunming Ultra Big.⁸⁰⁰ She had first become involved with China Forestry in connection with the issue of ‘Senior Notes’ at the end of October 2010. She did not know much about the business and wanted to learn more. At the end of November 2010, she made a telephone call to the First Business Department of PICC in Siping City in Jilin Province and was introduced to Ms. Zhou Lihua, whom she advised that KPMG were enquiring into the validity of an insurance policy issued to Beijing Zhaolin, given that it had been dissolved. She informed her that she would send an audit confirmation letter in due course.⁸⁰¹

3 December 2010: Pre-Audit meeting-KPMG and China Forestry

892. The KPMG minutes of the Pre-audit meeting with China Forestry, dated 3 December 2010, noted that Ms. Linda Chen advised China Forestry that, in the course of the audit, KPMG

⁷⁹⁹ Exhibits Bundle 2A, page 1191.

⁸⁰⁰ Witness Evidence Bundle G1, pages 5545-5634.

⁸⁰¹ Witness Evidence Bundle G1; pages 5606-5607, counter #s 869-890.

would send audit confirmation letters to PICC to confirm the status of forest insurance.⁸⁰²

Audit confirmation letter

893. Ms. Linda Chen said⁸⁰³ that, on 4 January 2011, KPMG issued an audit confirmation letter to PICC, albeit dated 1 December 2010, marked for the attention of Ms. Zhou Lihua.⁸⁰⁴ The letter was addressed to First Operation Department of Siping City Branch, PICC, 2/F, Retired Cadres Activity Centre, No. 202, Nan Xinhua Avenue, Tiexi District, Siping, Jilin. Attached to the letter were copies of 29 insurance policies apparently issued in the name of PICC, in which 15 of the policyholders were described as Beijing Zhaolin and 14 as Kunming Ultra Big. The audit confirmation letter, to which the seal of Kunming Ultra Big had been affixed, stated that those documents, "...are extracted from our relevant documents and records" and invited PICC to confirm that, "...the data and terms are true and correct" and to return the letter to the stipulated address of KPMG in Beijing.

22 January 2011: KPMG's meeting with Professor Wong Tak Jun

894. The KPMG minutes of the meeting on 22 January 2011 of KPMG and Professor Wong Tak Jun of China Forestry, which Ms. Linda Chen attended, summarised the steps that were taken after the audit confirmation letter had been sent to PICC. First, it was stated that China Forestry had forest insurance contracts with, "...PICC Property and Casualty Company Limited, Sipin Branch first operation department." Then, it was noted:⁸⁰⁵

"Audit team sent an audit confirmation request to PICC to confirm the insurance policies of the Company. On 10 January 2011, audit team called Ms. Zhou of PICC and she confirmed that she had received KPMG's confirmation request. On 11 January 2011, audit team called Ms. Zhou and she said that she could not confirm these insurance contracts easily from the system and she needs more time to check the original documents. Ms. Zhou advised that the 5th-8th digits of the policy number of insurance contract issued by the first operation department of PICC Sipin branch should be "2203", but not "0000" as shown in some of the insurance contracts.

On 12 January 2011, audit team received returned confirmation from PICC. According to the speed post record, the confirmation was sent out on 10 January 2011. Audit team

⁸⁰² Exhibits Bundle 15A; page 11082, paragraph 2.

⁸⁰³ Witness Evidence Bundle G1; pages 5607-5608, counter #s 890-902.

⁸⁰⁴ Exhibits Bundle 29A, pages 22313-22314.

⁸⁰⁵ Exhibits Bundle 15B, pages 11383-11384.

called Ms. Zhou again on 12 January 2011. Ms. Zhou said that she could not identify these contracts from the system and she agreed to return the original copy of the confirmation request to audit team.

On 13 January 2011, Ms. Zhou advised that she could not locate the original copy of the confirmation.” [Paragraphs added.]

895. In her record of interview, Ms. Linda Chen said that she was the person who had spoken to Ms. Zhou on those occasions. She explained that, in the afternoon of 12 January 2011, a colleague in KPMG’s Beijing office advised her by telephone of the receipt at the KPMG Beijing office of the returned confirmation letter. Those documents were then scanned and sent to her at KPMG’s Hong Kong office. Ms. Linda Chen noted that the ‘EMS Worldwide Express Mail Service’ envelope stated that it had been accepted on 10 January 2011 and bore the address Nan Xinhua Avenue, Tiexi District, Siping, Jilin, from which she concluded that the sender of the enclosed confirmation letter was, Ms. Zhou Lihua.

896. Ms. Linda Chen said that following the receipt of those documents, nevertheless she had called Ms. Zhou on 12 January 2011. Ms. Zhou informed her that she was unable to check the information, but agreed to return the original confirmation letter. On 13 January 2011 she informed Ms. Linda Chen that she could not find the confirmation letter.⁸⁰⁶

SFC’s enquiries into China Forestry’s forest insurance

SFC Notices to PICC and their replies

897. By a notice, dated 4 April 2011, the Commission required PICC to provide a list of all insurance policies entered into between PICC, its branch offices or its subsidiaries and Beijing Zhaolin and Kunming Ultra Big for the years ended 31 December for 2006, 2007, 2008 and 2009 and for the six months ended 30 June 2009 and 2010.⁸⁰⁷

898. In its reply to the Commission, dated 15 April 2011, Ms. Eliza Man Kam Ching, the Company Secretary of PICC, said that no insurance policy had been entered into with Kunming Ultra Big in that period and identified only one insurance policy entered into with Beijing Zhaolin, namely policy number: PMAA 200622030093000002, which commenced on 31 May 2006 and expired on 30 May 2010 in respect of a forest area in E’bian, Leshan, Sichuan

⁸⁰⁶ Witness Evidence Bundle G1; pages 5607-5610, counter #908.

⁸⁰⁷ Core Bundle 3, pages 1394-1397.

Province.⁸⁰⁸

899. By a notice, dated 27 May 2011, to which was attached various appendices, the Commission required PICC to provide answers in respect of a series of questions.⁸⁰⁹

Appendix 1: List of insurance policies PICC: Beijing Zhaolin/Kunming Ultra Big

900. Appendix 1 was a List, stated to be of all 48 insurance policies entered into by Beijing Zhaolin and Kunming Ultra Big with PICC Siping City Branch First Operation Department during the period 2003 to 2010.⁸¹⁰ All the 29 insurance policies, in which Beijing Zhaolin was named as the policyholder, were stated to have commenced on dates on and between 31 August 2003 and 31 December 2007 and were for a period of 4 years. (Items 1-29 of the Appendix). All the 19 insurance policies, in which Kunming Ultra Big was named as the policyholder, were stated to have commenced at dates on and between 11 April 2008 and 1 December 2010 were all stated to be for a period of one year. (Items 30-48 of the Appendix).

PICC were required to confirm whether those insurance policies existed and, if so, to provide other information.

Appendices 2-8: Forestry Insurance Policies

901. Appendices 2-8 included 7 sets of forestry insurance policies which were listed in Appendix 1.⁸¹¹

PICC were asked to confirm whether the 7 sets of forestry insurance policies were issued by PICC and, if not, to provide information as to the differences in the format of the documents.

Appendices 9 and 10: transfer of rights/obligations in PICC insurance policies

902. Attached to Appendix 9, were copies of a Supplemental Agreement, dated 11 March 2008, with a Supplemental Insurance Novation Agreement, dated 4 June 2008, entered into between First Operation Department of PICC, Siping, Kunming Ultra Big and Beijing Zhaolin. Attached to Appendix 10, was a copy of an Insurance Novation Agreement, dated 11 March 2008.⁸¹²

⁸⁰⁸ Core Bundle 3, pages 1411-1413.

⁸⁰⁹ Core Bundle 3, pages 1414-1446.

⁸¹⁰ Exhibits Bundle 29A, pages 21778-21781 and 21982-21999.

⁸¹¹ Exhibits Bundle 29A, pages 21782-21878 and 22000-22197.

⁸¹² Exhibits Bundle 29A, pages 21879-21888 and 22198-22213.

PICC were required to confirm whether PICC had entered into those agreements and, if so, acting through whom.

Appendices 11 to 18: audit confirmation letters

903. Appendices 11 to 18 were audit confirmation letters addressed to First Operation Department of Siping City Branch of PICC in relation to insurance policies purchased by Kunming Ultra Big and Beijing Zhaolin with First Operation Department of PICC, Siping.

(i) Addresses

- The audit confirmation letters in Appendices 11 to 13 were addressed to No. 10, Nan Xinhua Avenue, Tiexi District, Siping, Jilin 136000.
- The audit confirmation letters in Appendices 14 to 17 were addressed to 6th Committee, 1st Group, Jiefang Street, Tiedong District, Siping City, Jilin Province.
- The audit confirmation letter in Appendix 18, sent at the direction of Ms. Linda Chen in January 2011, was addressed to 2/F, Retired Cadres Activities Centre, No. 202, Nan Xinhua Avenue, Tiexi District, Siping, Jilin.

(ii) Audit confirmation letters

All the audit confirmation letters, sent in the name of either Beijing Zhaolin or Kunming Ultra Big, bore the chop impression of the respective company and stated that the information set out in the attachment had been "...extracted from our relevant documents and records". PICC were invited to return the letter of confirmation directly to KPMG. Attached to the audit confirmation letters in Appendices 11 to 17 were Schedules, containing details by reference to policy numbers of insurance policies taken out by the respective company as at a stipulated date. The details included the areas of forest, the periods of the policies and the total amount insured.

Appendices 11 and 12: audit confirmation letters-Beijing Zhaolin

904. The audit confirmation letters in Appendices 11 and 12 were sent in the name of Beijing Zhaolin and were dated 17 April 2008. One concerned the year-end period of 31 December for each of the years 2005, 2006 and 2007, to which was attached a Schedule which made reference to 13 insurance policies. The other concerned the period 31 March 2007 to 31 March 2008, to which was attached a Schedule which made reference to 23 insurance policies. A manuscript signature in the name of Zhang Hongyu appeared on the chop impression of Beijing Zhaolin

on each audit confirmation letter.

Audit confirmation letters-Kunming Ultra Big

Appendix 13-as at 30 June 2008

905. The audit confirmation letter, dated 9 October 2008, in Appendix 13 was sent in the name of Kunming Ultra Big. Attached to the letter was a Schedule of 31 insurance policies and related details, as at 30 June 2008. A manuscript signature in the name of Zhang Hongyu appeared on the chop impression of Kunming Ultra Big on the audit confirmation letter.

Appendix 14-as at 31 December 2008

906. The audit confirmation letter, dated 1 April 2009, in Appendix 14 was sent in the name of Kunming Ultra Big. Attached to the letter was a Schedule of 32 insurance policies and related details, as at 31 December 2008. A manuscript signature in the name of Zhang Hongyu appeared on the chop impression of Kunming Ultra Big on the audit confirmation letter.

Appendix 15-as at 30 June 2009

907. The audit confirmation letter, dated 31 July 2009, in Appendix 15 was sent in the name of Kunming Ultra Big. Attached to the letter was a Schedule of 29 insurance policies and related details, as at 30 June 2009. The name Luo Ying was written on the envelope, as the 'Sender', by which the audit confirmation letter was returned to KPMG.⁸¹³

Appendix 16-as at 31 December 2009

908. The audit confirmation letter, dated 6 April 2010, in Appendix 16 was sent in the name of Kunming Ultra Big. Attached to the letter was a Schedule of 34 insurance policies and related details, as at 31 December 2009. A manuscript signature in the name of Zhang Hongyu appeared on the chop impression of Kunming Ultra Big on the audit confirmation letter.

Appendix 17-as at 31 December 2009

909. The audit confirmation letter, dated 2 March 2010, in Appendix 17 was sent in the name of Kunming Ultra Big. Attached to the letter was a Schedule of 34 insurance policies and related details, as at 31 December 2009 (mistranslated as 31 December 2008). A manuscript signature in the name of Wu Xiaofen appeared on the chop impression of Kunming Ultra Big on the audit confirmation letter.

⁸¹³ Exhibits Bundle 29A, page 22275.

PICC were required, amongst other things, to confirm whether the audit confirmations were confirmed and returned by First Operation Department of PICC, Siping.

Appendices 13 and 15

910. Of Appendix 13 and Appendix 15, amongst other matters, PICC were required to state whether:

- (i) the address, Jiefang Street, Tiedong District, Siping City, Jilin Province is an address of First Operation Department of PICC, Siping or other branch of PICC;
- (ii) Group 1, 6th Committee is a division of First Operation Department of PICC, Siping; and
- (iii) Luo Ying is a member of staff of First Operation Department of PICC, Siping and, if not, whether Luo Ying was a member of staff of other branches of PICC.

9 June 2011

911. In a reply to the Commission, dated 9 June 2011, on behalf of PICC Ms. Eliza Man Kam Ching wrote:⁸¹⁴

(i) *As to Appendix 1: insurance policies*

“1. The 48 insurance policy numbers listed in Appendix 1 do not exist in our company.”

(ii) *As to Appendices 2-8: audit confirmation letters*

“2a. None of the documents in Appendices 2-8 was issued or signed by our company.

b. Insurance policy numbers in the documents in Appendices 2-8 do not comply with our company’s rules for policy numbers...

There is no such branch code as 10030083 in our company.

3. Our company’s Siping City Branch First Operation Department did not sign these agreements...

4b. Our company’s Siping City Branch First Operation Department has not confirmed and responded to the above audit inquiry and verification requests...

⁸¹⁴ Core Bundle 3, pages 1447-1452.

- d. (i) Jiefang Street, Tiedong District, Si Ping, Jilin is not the address of our company's Si Ping City Branch First Operation Department, nor is it the address of any of our branches.
- (ii) Liuweiyizu is not in the branch network of our company's Si Ping City Branch First Operation Department. As far as we know, Liuweiyizu is a geographical name.
- (iii) LUO Ying is neither a staff of our company's Si Ping City Branch First Operation Department."

Ms. Eliza Man Kam Ching

Appendices 9 and 10: the transfer of insurance policies-Beijing Zhaolin to Kunming Ultra Big

912. In a record of interview, dated 19 July 2011, conducted by the Commission, Ms. Eliza Man Kam Ching confirmed that the sets of documents, the one a Supplemental Agreement, dated 11 March 2008, with a Supplemental Insurance Novation Agreement, dated 4 June 2008, and the other an Insurance Novation Agreement, dated 11 March 2008, which documents that were included as Appendices 9 and 10 in the Commission's Notice to PICC, dated 27 May 2011, were documents that had not been signed by the staff of First Operation Department, Siping City branch. She had confirmed that with the staff of that branch.⁸¹⁵ It is to be noted that, although the Supplemental Agreement bore the chop impression of PICC in two places, and the chop impression on the Insurance Novation Agreement over the part of the document that requires the chop of PICC to be affixed, there are no manuscript signature or initials on the document.

913. In a subsequent record of interview, dated 1 August 2011, Ms. Eliza Man Kam Ching said:⁸¹⁶

"...the First Operation Department did not stamp any chop on them. Also, generally, to change a policyholder, they would not do it in the form of this agreement. It is done in the form of an endorsement... It is absolutely not done in the form of such agreement."

The address of PICC in Siping City

914. In her second record of interview, Ms. Eliza Man said that the address stipulated on

⁸¹⁵ Witness Evidence Bundle H2; pages 6633-6634, counter #s 193-202.

⁸¹⁶ Witness Evidence Bundle H2; pages 6667-6668, counter #s 68-72.

some of the letters of audit confirmation, namely 10, Nan Xinhua Avenue, Tiexi District, Siping was not an address at which the First Operation Department of PICC had ever operated. Similarly, she said that the address stipulated on other letters of audit confirmation, namely 6th Committee, 1st Group, Jiefang Street, Tiedong District, Siping City had never been used by PICC.

915. Ms. Eliza Man confirmed that the address to which Ms. Linda Chen had directed KPMG's audit confirmation letter, in January 2018, namely No. 202, Nan Xinhua Main Street, Tiexi District, Siping was the address of Siping City First Operation Department.⁸¹⁷

January 2011 audit letter of confirmation

916. Of the evidence of KPMG, that the audit letter of confirmation sent in January 2011 to that address had been returned, in an envelope dated 10 January 2011, to the KPMG office in Beijing with a stamped impression on the document of the chop of PICC⁸¹⁸, Ms. Eliza Man said that inquiries had been made of First Operation Department. It was confirmed that such an audit confirmation letter had been received, but no reply had been made. In particular, "...they have never stamped the chop on such audit confirmation".⁸¹⁹

A consideration of the evidence

KPMG: provenance of insurance policies of Beijing Zhaolin and Kunming Ultra Big

917. We are satisfied that the insurance policies in the name of Beijing Zhaolin and Kunming Ultra Big and the related information to which reference has been made earlier were provided to KPMG by China Forestry over a number of years in their role in the IPO and as auditor of the company.

918. It is to be noted that in the email exchange about logging permits between Ms. Naomi Lau and Ms. Liu Yana in December 2010, in a postscript to an email, dated 16 December 2011, Ms. Liu Yana wrote:⁸²⁰

"Attached please find one set of forest insurance contract renewed in December."

The attachment is not available to the Tribunal. However, it is to be noted that the List of 48 insurance policies set out in Appendix 1 of the Commission's notice to PICC, dated 27 May

⁸¹⁷ Witness Evidence Bundle H2; page 6668, counter #s 73-82.

⁸¹⁸ Exhibits Bundle 29A, pages 21933 and 21965.

⁸¹⁹ Witness Evidence Bundle H2; page 6669, counter #s 93-104.

⁸²⁰ Exhibits Bundle 15B, pages 11227-11228.

2011, describes one insurance policy only, at item 47, that commenced on 1 December 2010.⁸²¹

919. It is to be noted that each of the audit confirmation letters sent to PICC asserted that, “... the data, details and information” contained in the Attachments were extracted from the, “documents and records” of Beijing Zhaolin and Kunming Ultra Big respectively. All of the audit letters of confirmation bore the chop impression of the respective company. Five of the audit letters of confirmation bore the manuscript signature in the name of Zhang Hongyu and one that of Madam Wu Xiaofen.

Falsity of the insurance policies

920. We have no hesitation in accepting the evidence of Ms. Eliza Man, as set out in her records of interview and her written replies to the Commission, that no insurance contract had been entered into between PICC and Kunming Ultra Big. Further, that only one insurance contract had been entered into between PICC and Beijing Zhaolin, that being one that was entered into on 31 May 2006. It is to be noted that the insurance policy to which Ms. Eliza Man referred is not one that was listed on the List of 48 insurance policies set out in Appendix 1 of the Commission’s notice, dated 27 May 2011.

Falsity of the audit letters of confirmation

921. It follows, that the assertion that insurance policies had been entered into by the two companies with PICC, as set out in the Schedules to the audit confirmation letters, was also false.

922. We accept Ms. Eliza Man’s evidence that PICC did not have an office at no. 10 Nan Xinhua Avenue, Tiexi District, Siping. It is to be noted that was the address given of PICC in all of the copies of insurance policies provided in the notice dated 27 May 2011. Three of the audit confirmation letters were sent to that address. Similarly, we accept her evidence that the address, 6th Committee, 1st Group, Jiefeng Street, Teidong District, Siping City was also not an address of PICC. Four of the audit letters of confirmation were sent to that address.

923. Clearly, the falsification involved the return of audit confirmation letters purportedly endorsed by PICC, when it had not done so. Equally clearly, the success of the fraudulent scheme in presenting false information to KPMG required organisation and careful management over several years. Fictitious addresses of PICC were falsely stipulated in

⁸²¹ Exhibits Bundle 29A, pages 21780 and 21996-21997.

insurance policies, with the consequence that KPMG sent audit confirmation letters to those addresses. In due course, having been received at those addresses, the audit confirmation letters were returned to KPMG falsely stating that PICC confirmed the accuracy of the information stated in those letters.

Conclusion

924. We are satisfied that there is overwhelming evidence that there was a substantial, sustained falsification of documents advanced by China Forestry to support its false claims of having insured its forestry assets. It was sustained in respect of falsification of false endorsements by PICC of audit confirmation letters over the period from 17 April 2008 to 2 March 2010, the dates on the audit confirmation letter, set out in Appendix 11 and Appendix 17 respectively of the Commission's notice of 27 May 2011. It was sustained later in 2010 by the falsification of information as to insurance policies asserted to have been made in October, November and December 2010, as set out in the List of 48 insurance policies. The propagation of falsehoods was brazen, culminating in Ms. Liu Yana forwarding to Ms. Naomi Lau in an email, dated 16 December 2010, a copy of a forest insurance contract she claimed falsely had been renewed in December 2010. Finally, on 12 January 2011, the false confirmation of the KPMG audit letter was received by KPMG's Beijing office.

925. At the KPMG meeting with Professor Wong on 23 January 2011, Mr. Nicholas Chan, of Squire, Sanders & Dempsey posed the prescient question to the meeting:⁸²²

“Why would the Company not enter into the insurance contract? Is it for saving the insurance premium or because the Company does not own the forest?”

926. In reaching those conclusions, we have not had regard to or relied on the statements made in the Ernst & Young report, dated 29 April 2011, that:⁸²³

“...various documents relating to PICC insurance in Word version (i.e. changeable format) were found on the common PC used by the Finance Department in Beijing Rep Office or in the Finance Manager (Gao Yanqing “Gao”).”

Reference was then made to the discovery of particular Word version documents of China Forestry insurance invoices and Forest insurance contracts in a Microsoft Excel version.

⁸²² Exhibits Bundle 15B, page 11389.

⁸²³ Exhibits Bundle 17, page 12690.

927. We have not had regard to the bare assertions in the report because it was not supported by any written statement, record of interview or oral evidence by any witness called by the Commission. In particular, none of the documents said to have been found on the computers were themselves made available in the version of the report provided to the Tribunal. That was in the context of the long-standing challenge by the 2nd and 3rd Specified Persons to what was asserted in the report in respect of the examination of computers in the Beijing office of China Forestry. During the hearing, at the request of the Tribunal, the Commission identified four of the authors of the Ernst & Young report. It was not suggested that they were not available to provide evidence to the Tribunal.

(iv) Bank balances

KPMG's enquiries: 2011

928. Having first raised its concerns with China Forestry, in a meeting on 14 January 2011, about the validity of Bank pay-in slips, reflecting payments by China Forestry's customers to China Forestry, and the validity of the accounts of those customers, in a letter to the Board of Directors of China Forestry, dated 25 January 2011, in an Appendix KPMG raised their concerns about the validity of the claimed bank balances of China Forestry:⁸²⁴

“1. Huaxia Bank account of Kunming Ultra Big Forestry Resource Development Co., Ltd. (“Kunming Ultra Big”)

The documents provided to us by the company disclose that the balances maintained at the above company's bank accounts with Huaxia Bank as at 31 December 2010 amounted to approximately RMB 1,200 million (being RMB 745 million and USD 71 million)”.

929. In the context of KPMG's concerns about payments by China Forestry's customers and the explanations given by China Forestry's management, KPMG wrote:

“Accordingly, we have serious doubts about the authenticity of the bank statements and Bank pay-in slips provided to us in support of the Group's sales receipts for the year.

It is therefore critically important that we receive independent reliable confirmation from the bank to check the recorded sales receipts and to audit the year-end balances of cash recorded in the company's records.”

⁸²⁴ Exhibits Bundle 15B, pages 11399-11403 at page 11401.

Mr. Albert Lui

930. In a record of interview, dated 15 February 2011, conducted by the Commission, Mr. Albert Lui Tze Ho, then an assistant manager of KPMG, said that, on 26 and 27 January 2011, he had obtained bank confirmations, as at 31 December for the years 2008, 2009 and 2010, for the account of Kunming Ultra Big at the Xinyun branch and Kunming branch of Huaxia Bank.⁸²⁵

27 January 2011

931. In a letter to the Board of Directors of China Forestry, dated 27 January 2011, KPMG noted:⁸²⁶

“We have now received a bank confirmation and other documents from Huaxia Bank in respect of the balances as at 31 December 2010 held on behalf of Kunming Ultra Big Forestry Resources Development Co., Ltd. This shows that the cash balance was RMB 233 million (being RMB 0.3 million and USD 35.8 million) in contrast to the balance of RMB 1,200 million (RMB 745 million and USD 71 million-see our letter of 25 January 2011) shown in the documents provided to us for the purposes of our audit.”

932. One of the bank confirmations which Mr. Albert Lui had obtained from the Xinyun branch of Huaxia Bank on 26 January 2011, which he marked to that effect on the document, stated the balances of Kunming Ultra Big, as at 31 December 2010, as being US \$ 35,819,994.94 and RMB 316,275.95.⁸²⁷

CSRC: Bank statements of Kunming Ultra Big’s account with Huaxia Bank

933. Ms. Yip Yuk Yu, Denise, now an Associate Director in the Enforcement Division of the Commission, testified that, following a request of the Commission, she had obtained from the China Securities Regulatory Commission bank statements of Kunming Ultra Big’s account with Huaxia Bank.⁸²⁸ They had been provided to Mr. Roderick Sutton. Extracts of those bank statements were set out at Annexure 6 of his report.⁸²⁹

934. In her 2nd affirmation, dated 20 April 2023, Ms Yip said that the request of the CSRC

⁸²⁵ Witness Evidence Bundle G1; pages 5374-5376, counter #s 791-829.

⁸²⁶ Exhibits Bundle 16, page 11815.

⁸²⁷ Exhibits Bundle 16, pages 11661 and 11634.

⁸²⁸ Transcript 3 February 2023, pages 67-69.

⁸²⁹ Expert Evidence Bundle 8A, pages 5153-5220.

had been made by letter by the Commission, dated 13 May 2011.⁸³⁰ The request included the provision of bank statements for stipulated bank accounts at Huaxia Bank in the period on and between 1 January 2006 and 31 March 2011, namely:

Xinyun Sub-Branch

Account # 863-8011-2661 RMB account

Kunming Sub-Branch

Account #432 0000 2819 100000 539 Capital Account

Account #48432 0000 2830 10000 1060 Capital Time Deposit Account

Account #48432 0000 2830 10000 1161 Capital Time Deposit Account

935. By a letter, dated 13 March 2012, CSRC provided the Commission with copies of those requested bank statements of Kunming Ultra Big with Huaxia Bank⁸³¹.

Mr. Roderick Sutton

936. In his report, Mr. Sutton listed the documents provided to him by the Commission, which list included bank statements for the accounts listed above for the periods described below:⁸³²

Account #863-8011-2661 (RMB)-21 April 2008 to 6 September 2011;

Account #432 0000 2819 10000 0539 (USD)-27 March 2008 to 21 June 2011;

Account #48432 0000 2830 10000 1060 (USD)-24 January 2010 to 6 May 2011; and

Account #48432 0000 2830 10000 1161 (USD)-24 January 2010 to 6 May 2011.

(i) Bank statements provided by China Forestry to KPMG

937. A handwritten entry at the beginning of a set of bank statements in the name of Huaxia Bank in the accounts of Kunming Ultra Big for the year 2010 stated:⁸³³

“Huaxia bank statement (RMB)

Provided by Wu Xiao Fen in early Jan 2011”

938. The bank statements state on their face they were in respect of the account of Kunming

⁸³⁰ Supplementary Exhibits Bundle, Exhibit 16; page 9, paragraph 31. Exhibits Bundle 23, pages 17377-17424 at Annex 4 page 17420.

⁸³¹ Supplementary Exhibits Bundle, Exhibit 16, pages 94-96.

⁸³² Expert Evidence Bundle 5; Appendix 2.0, page 2996 and Items 101, 105-107.

⁸³³ Exhibits Bundle 14, pages 10616-10674 at page 10645.

Ultra Big at the Sub-Branch of Xinyun of Huaxia Bank for account numbers:

- (i) 4835 20000 18011 0000 2661;
- (ii) 4843 20000 28191 00000 539.

The closing balance, as at 31 December 2010, for the first account was stated to be RMB 745,283,863.28 and for the second account USD 71,491,290.27.⁸³⁴

939. Ms. Naomi Lau testified that she had made the manuscript notation at the top of the set of bank statements. She was not sure now whether the set of bank statements had been given to her personally by Madam Wu, but she said that she was the person who usually handed over such documents.⁸³⁵

(ii) Bank confirmations obtained by KPMG with China Forestry

Mr. Jackie Lee: Xinyun Sub-Branch of Huaxia Bank-9 April 2010

940. In an interview conducted by the Commission on 2 December 2011, Mr. Jackie Lee confirmed that in the period from 2008 to August 2010 he had worked as a manager of KPMG. As part of the FY 2009 audit of China Forestry by KPMG, on 9 April 2010 he attended the Xinyun Sub-Branch of Huaxia Bank in Kunming to obtain a reprint of copies of bank statements and to obtain a bank confirmation in respect of an account of Kunming Ultra Big.⁸³⁶

941. Mr. Jackie Lee's record made for KPMG of the 'Site visit', dated 15 April 2010, stated that he had visited the branch together with Mr. Li Han Chun and that the request made of Mr. Wang Shixin, the branch manager, was for the provision of, "...all bank statements from Jan 2009 to current."⁸³⁷ The enquiry was made because there was a discrepancy in the stated bank account number. The purpose of the request was to "...make sure the bank statements could match with those provided to us by the client."⁸³⁸ The bank statements were reprinted and given to him by bank staff.⁸³⁹ The Site visit record noted, "...checked the bank statements with our record with satisfactory result."

942. Having taken the bank confirmation to the Bank, he had given it to a cashier who had gone upstairs in the bank and returned to present him with the bank statements and the bank

⁸³⁴ Exhibits Bundle 14, pages 10642 and 10644.

⁸³⁵ Transcript 10 February 2023, pages 139-143.

⁸³⁶ Witness Evidence Bundle G2; pages 5792-5871 at pages 5860-5861, counter #s 1131-1144.

⁸³⁷ Exhibits Bundle 13B, pages 10113-10114.

⁸³⁸ Witness Evidence Bundle G2; page 5862, counter #1170.

⁸³⁹ Witness Evidence Bundle G2; page 5862, counter #1172.

confirmation.⁸⁴⁰ He identified his initials on the bank confirmation, which stated in manuscript, “Collected by Jackie Lee... from Wang Shixin of Kunming Xinyun Sub-Branch of Huaxia Bank *directly* on 9/4/2010.” The bank confirmation referred to two bank accounts and stipulated the balance as at 31 December 2009, namely:

4835200001801 10000 2661	RMB 3,070,741.83
484320000 28191 00000 539	US Dollar 31,451,833.36

943. Of the fact of the presence of Mr. Li Han Chun at the visit to the Bank, Mr. Jackie Lee said, “...it’s because he was in Kunming at that time.” Of his role in the visit, he said that, at the time of his meeting with Mr. Wang, Mr. Li Han Chun was present, “...just listening”.

Mr. Derek Lam: Xinyun Sub-Branch of Huaxia Bank-21 April 2010

944. In a record of interview conducted by the Commission on 21 February 2013, Mr. Derek Lam Kau Lap said that in 2008 he had been employed as an accountant by KPMG. As part of the FY 2009 audit of China Forestry by KPMG, on 21 April 2010, he attended the Xinyun Sub-Branch of Huaxia Bank in Kunming to obtain copies of bank statements of an account of Kunming Ultra Big, 4835200001801 10000 2661, for the period 1 April 2008 to 31 December 2009.⁸⁴¹

945. Having met Madam Wu, the client’s Chief Financial Controller, he and his colleague travelled together with her to the Bank. On arrival, their party was taken to the room of the President of the branch, Mr. Wang Shixin, who was asked to provide copies of the bank statements of the account. Subsequently, the copies of the bank statements, to which had been affixed the chop of Xinyun Sub-Branch of Huaxia Bank in Kunming, was given to him.⁸⁴² He did not witness the documents being copied or the chop affixed to them.⁸⁴³

946. Mr. Lam said that he had written on the first page of the set of bank statements, for the period 1-30 April 2008, that he had obtained the set of bank statements from, “... President Wang Shixin of Kunming Xinyun Sub-Branch of Huaxia Bank” and noted the date as 21/4/10.⁸⁴⁴ The statements were for account number 4835200001801 10000 2661 of Kunming Ultra Big for the period 1 April 2008 to 31 December 2009. The last entry, namely 31

⁸⁴⁰ Witness Evidence Bundle G2; pages 5867-5868, counter #s 1240-1246.

⁸⁴¹ Witness Evidence Bundle H1; pages 6258-6260, counter #s 87-132.

⁸⁴² Witness Evidence Bundle H1; pages 6264-6265, counter #s 198-212.

⁸⁴³ Witness Evidence Bundle H1; page 6269, counter #s 269-270.

⁸⁴⁴ Exhibits Bundle 13A, pages 9460-9545.

December 2009, stipulated a balance of RMB 3,070,741.83.

Documents obtained independently of China Forestry

(i) CSRC

947. By contrast, the bank statements obtained by CSRC of the Kunming Ultra Big account 1801 10000 2661 at the Xinyun Sub-Branch of Huaxia Bank, for the year 1 January 2009 to 31 December 2009, stipulated a closing balance on 31 December 2009 of RMB 185,454.29.⁸⁴⁵

(ii) KPMG

948. The bank confirmation letter obtained by Mr. Albert Lui for the Kunming Ultra Big account 4835200001801 10000 2661 stipulated the closing balance to be RMB 185,454.29, as at 31 December 2009.⁸⁴⁶ That, of course, was exactly the same amount stipulated in the bank statements obtained by CSRC, but is wholly different from the amount of RMB 3,070,741.83 stipulated in the bank confirmation obtained by Mr. Jackie Lee on 9 April 2010 and stated in the bank statement obtained by Mr. Derek Lam.

Accounting records of Kunming Ultra Big-2010 provided to KPMG

First set

949. A handwritten entry at the beginning of a set of 4 pages of accounts, described as the Balance Sheet and Income Statement, as at 31 December 2010, for Kunming Ultra Big stated:⁸⁴⁷

“First set of Accounting Records of KMUB, provided by Wu Xiao Fen in early Jan 2011

(mgt account)”

Under the heading ‘Monetary assets’, in the Balance Sheet it was asserted that the Opening Balance for the year 2010 was RMB 217,858,765.64 and the Closing Balance, as at 31 December 2010, was RMB 1,218,809,451.49.

Second set

950. A handwritten entry at the beginning of a set of 4 pages of accounts, described as the

⁸⁴⁵ Expert Evidence Bundle 8A, pages 5132 and 5178.

⁸⁴⁶ Exhibits Bundle 15B, pages 11556-11572 at pages 11557 and 11564.

⁸⁴⁷ Exhibits Bundle 15B, pages 11351-11355.

Balance Sheet and Income Statement, as at 31 December 2010, stated:⁸⁴⁸

“Second set of Accounting Records of KMUB, provided by Xue Jiang on 2 March 2011”

Under the heading ‘Monetary assets’, in the Balance Sheet it was asserted that the Opening Balance for the year 2010 was RMB 203,691,587.83 and the Closing Balance, as at 31 December 2010, was RMB 237,582,543.13.

Mr. Xue Jiang

951. In a record of interview, conducted by the Commission on 17 January 2014, Mr. Xue Jiang confirmed that he was employed as an accountant in Kunming Ultra Big in Kunming from December 2008. He prepared accounts from documents provided to him by the Beijing office, of which Madam Wu Xiaofen was the Chief Financial Officer and Mr. Gao Yanqing was a Financial Manager. He said that he had provided KPMG with documents as requested in 2011, although he could not remember the specific details of the contents of the set of documents.⁸⁴⁹

The reliability and veracity of the bank statements

952. In considering and determining what reliability could be reposed in the different bank statements that had been obtained, in particular in respect of Kunming Ultra Big’s account with Huaxia Bank, Mr. Sutton contrasted the bank statements that had been obtained with the involvement of China Forestry’s former management, including those obtained by KPMG together with China Forestry’s management in respect of FY 2008 and FY 2009, with those that had been obtained “...without the involvement of China Forestry’s former management”. Of the latter, he included the bank statements obtained by (i) CSRC; (ii) China Forestry’s current management; and (iii) the auditors in FY 2010. He said that he considered those statements “more reliable”.⁸⁵⁰

953. We agree with the validity of that approach. In particular, we regard as reliable and accurate the bank statements provided by CSRC and the confirmations and bank statements obtained from the Xinyun Sub-Branch and the Kunming Sub-Branch of Huaxia Bank by Mr. Albert Lui on 26 and 27 January 2011.

⁸⁴⁸ Exhibits Bundle 15B, pages 11356-11360.

⁸⁴⁹ Witness Evidence Bundle D2; pages 2980-3025, counter #s 563-586.

⁸⁵⁰ Expert Evidence Bundle 5A; page 2894, paragraph 5.20.

Conclusion

954. It is clear that a comparison, with the bank statements and bank confirmations obtained by CSRC and by KPMG, independently of China Forestry, with the bank statements provided to KPMG “in early Jan 2011” by Madam Wu Xiaofen leads inevitably to the conclusion that the statements provided by Madam Wu were materially false.

955. We accept that the Closing Balance, as at 31 December 2010, for the three accounts of Kunming Ultra Big at Huaxia Bank, denominated in US Dollars, was US \$35,819,994.94. It was comprised of balances of \$30,006,436.36⁸⁵¹, \$3,008,135.14⁸⁵², and \$2,005,423.44⁸⁵³. There was a balance of RMB 316,275.95 in the RMB denominated account.⁸⁵⁴ As KPMG noted in its letter to the Board of Directors of China Forestry, dated 27 January 2011, the total amount in cash in the bank accounts expressed in RMB was about RMB 233 million, not the approximately RMB 1.2 billion falsely stipulated in the bank statements provided by Madam Wu Xiao Fen.

Interim Results 2010

956. In the Interim Report 2010, it was asserted that, as at 30 June 2010, “...the Group’s cash and bank balances were approximately RMB 1,534.7 million.”⁸⁵⁵

957. Mr. Sutton noted that the, “On balance sheet bank account balances (with bank statements provided by CSRC...” stipulated a balance of RMB 975,794,358 and, having allowed for “Off balance sheet bank account balances” of RMB 59,618,974, the difference between the published Interim Report results was RMB 499,035,642.⁸⁵⁶ The published figures were an overstatement by that amount. That represented 32.52% of the Group’s published cash and bank balances, or 5.06% of the Group’s published NAV, and was mainly attributable to Kunming Ultra Big. In Mr. Sutton’s opinion, the overstatement was quantitatively material.⁸⁵⁷ We accept that opinion.

958. In reaching our conclusions as to the balances in the accounts of Kunming Ultra Big at the Xinyun Sub-Branch and Kunming Sub-Branch of Huaxia Bank, we have not had regard to

⁸⁵¹ Exhibits Bundle 16, page 11616: account # 4843 20000 20191 00000 539.

⁸⁵² Exhibits Bundle 16, page 11616: account # 4843 20000 10000 1060.

⁸⁵³ Exhibits Bundle 16, page 11616: account # 4843 20000 2830 10000 1161.

⁸⁵⁴ Exhibits Bundle 15B, page 11478: account # 863 8011 2661.

⁸⁵⁵ Exhibits Bundle 2A, pages 1165 and 1192.

⁸⁵⁶ Expert Evidence Bundle 5A; page 3063, Appendix 11.0.

⁸⁵⁷ Expert Evidence Bundle 5A; page 2895, paragraph 5.26.

or relied on the statements made in the Ernst & Young report, dated 29 April 2011, that a forensic review of the data imaged from computers of China Forestry, “in the Beijing Rep Office... identified certain supposedly third-party prepared documents in Microsoft Word/Excel (i.e. changeable format)”. In particular, that the documents included, “... Bank statements (without bank chops) in Word or Excel version...found on the common PC used by the Finance Department.” The bank statements identified included those for the account of Kunming Ultra Big at Huaxia Bank.⁸⁵⁸

959. We did not have regard to that material for the reasons set out earlier in this report in respect of references in the Ernst & Young report to a material said to have been located on the computers of China Forestry.

⁸⁵⁸ Exhibits Bundle 17, pages 12687-12688.

CHAPTER 17

HQ Books and Local Books

HQ Books

960. In her witness statement, dated 28 February 2018, Ms. Denise Yip said that the Commission had obtained from China Forestry, “A full set of the HQ Books” of Kunming Ultra Big for the years 2008, 2009 and 2010.⁸⁵⁹

Local Books

Mr. Xue Jiang

961. In a record of interview conducted by the Commission, dated 17 January 2014, when shown the accounts books for Kunming Ultra Big for 2008⁸⁶⁰ and 2009⁸⁶¹ (Local Books), Mr. Xue Jiang said that, although he had not read them in detail, they were consistent with the accounts that he had prepared for Kunming Ultra Big.⁸⁶² In respect of the account books for Kunming Ultra Big for 2010⁸⁶³ (Local Books) Mr. Xue Jiang confirmed that he had prepared those accounts for Kunming Ultra Big.⁸⁶⁴

962. By contrast, Mr. Xue Jiang denied that he had ever seen or heard of the account books for Kunming Ultra Big (HQ Books) for 2008, 2009 and 2010.⁸⁶⁵ Furthermore, he denied that he had ever seen the set of Huaxia Bank statements for two of Kunming Ultra Big’s accounts, one in \$US and the other in RMB, at the Xinyun Sub-Branch for 2010. He said that, “...the balance is not correct... the amount is much larger”.⁸⁶⁶ The set of documents was marked, “... provided by Wu Xiao Fen in early Jan 2011”.⁸⁶⁷

Mr. Sutton’s Report

963. In his Report Mr. Sutton reviewed both the Local Books and the HQ Books of Kunming Ultra Big in considerable detail.

⁸⁵⁹ Witness Evidence Bundle H2; pages 6915-6955 at page 6921, paragraph 22.

Exhibits Bundle 20A, pages 14533-14772; Exhibits Bundle 21, pages 15319-15705; and Exhibits Bundle 22C, pages 16599-17024.

⁸⁶⁰ Exhibits Bundle 19B, pages 14373-14532.

⁸⁶¹ Exhibits Bundle 20B, pages 14784-15318.

⁸⁶² Witness Evidence Bundle D2; pages 2980-3070 at page 3005, counter #s 513-520.

⁸⁶³ Exhibits Bundles 21 and 22, pages 15718-16598.

⁸⁶⁴ Witness Evidence Bundle D2; page 3019, counter #s 826-835.

⁸⁶⁵ Witness Evidence Bundle D2; page 3012, counter #s 669-678.

⁸⁶⁶ Witness Evidence Bundle D2; pages 3013-3015, counter #s 707-734.

⁸⁶⁷ Exhibits Bundle 14B, pages 10645-10701.

Local Books

Of the Local Books, he concluded:⁸⁶⁸

“Based on my review of the available documents and of Kunming Ultra Big’s accounting records for cash and bank balances, the plantation assets, turnover, VAT payables and prepaid insurance premiums, the Local Books more likely reflect the actual financial position and performance of Kunming Ultra Big. There is some uncertainty, however, based on the available supporting documentation, as to the nature of payments for plantation acquisitions even though the payments in relation to these transactions were reconciled to the corresponding CSRC bank statements. This is because third party documentation supporting the plantation assets relating to each of the payments in the Local Books was not provided.”

HQ Books

964. Of the HQ Books, Mr. Sutton said:⁸⁶⁹

“As the HQ Books were relied upon in the preparation of the Group’s audited consolidated financial statements in the Relevant Period, I conclude that the financial statements as published were overstated by the amounts described in this report.”

Kunming Ultra Big’s bank balances

965. Having compared the bank balances described in the Huaxia Bank statements of Kunming Ultra Big obtained by CSRC, the HQ Books and the Local Books Mr. Sutton said that there were significant differences between the HQ Books and the Local Books. The bank balances described in the Local Books were the same as that described in the bank statements obtained by the CSRC⁸⁷⁰, whereas the bank balances described in the HQ Books differed significantly.⁸⁷¹

CSRC bank statements: HQ Books: Local Books

(i) FY 2008

966. In FY 2008, the bank statements obtained by CSRC stipulated an overall bank balance of RMB 88,478,530, whereas the HQ Books described bank balances of RMB 68,570,577. The

⁸⁶⁸ Expert Evidence Bundle 5A; page 2974, paragraph 12.3.

⁸⁶⁹ Expert Evidence Bundle 5A; page 2974, paragraph 12.4.

⁸⁷⁰ Expert Evidence Bundle 5A; page 2890, paragraph 5.14.

⁸⁷¹ Expert Evidence Bundle 5A; page 2888, paragraph 5.8.

Local Books describe overall bank balances of RMB 88,477,968. The overall bank balance described in the HQ Books was RMB 19,907,953 less than that stipulated in the bank statements.

(ii) FY 2009

967. In FY 2009, the bank statements obtained by CSRC described overall bank balances of RMB 169,534,527, whereas the HQ Books described overall bank balances of \$217,830,150. The Local Books described overall bank balances of RMB 169,534,519. The overall bank balance described in the HQ Books was RMB 48,295,623 more than that stipulated in the bank statements.

(iii) Interim Report 2010

968. The bank statements obtained by CSRC for the Interim Report 2010 period, 1 January to 30 June 2010, described overall bank balances of RMB 161,463,179, whereas the HQ Books described overall bank balances of 715,922,902. The Local Books described overall bank balances of RMB 161,459,467. The overall bank balance described in the HQ Books was RMB 554,459,723 more than that stipulated in the bank statements.

Turnover

969. As noted earlier, Mr. Sutton identified significant differences between the HQ Books and the Local Books in respect of the turnover that was recorded in respect of FY 2008, FY 2009 and Interim 2010. In his summary of his review of turnover, he noted:⁸⁷²

- “(i) I was unable to match by reference to the date and amount, deposits in the CSRC bank statements to the sales settlements recorded in the accounts receivable ledger in the HQ Books...;
- (ii) I was able to match the Local Books’ cash sales settlement receipts to entries in the petty cash ledger of the Local Books, and to a corresponding deposit in the CSRC bank statements...;
- (iii) I traced the source of funds in the Kunming Ultra Big’s Huaxia Bank Xin Yun Sub-Branch RMB account to the Huaxia Bank Kunming Branch USD account. The origin of those funds was the capital injections from Ultra Big Investment, and was not generated from sales...”

⁸⁷² Expert Evidence Bundle 5A; page 2912, paragraph 6.54.

970. Of the source of those funds, Mr. Sutton said that, in turn, that the provenance of those monies were three deposits by way of capital injections of \$US from Ultra Big Investment, the sole shareholder of Kunming Ultra Big, namely:⁸⁷³

Table 6.4 – Deposits to the Huaxia Bank Kunming Branch USD account

Date	Amount (USD)	Amount (RMB)
27 Mar 2008	22,000,000	154,286,000
22 Sep 2009	28,000,000	191,209,200
10 Jun 2010	20,000,000	136,562,000
Total	70,000,000	482,057,200

971. Mr. Sutton concluded that, “...the deposits recorded in Kunming Ultra Big’s Huaxia Bank Xin Yun Sub-branch RMB account bank statements were not generated from sales activities but were funds transfers from Huaxia Bank Kunming Branch USD account...”

Sales and settlements

972. Mr. Sutton noted:⁸⁷⁴

“(v) The Local Books have internal supporting documents for cash sales and settlements, albeit there is no third party evidence... The turnover reported in the FY 2009 SAIC report corresponds with the turnover recorded in the Local Books.”

973. By contrast, having noted that there was, “...no evidence to support the logging activities in the HQ Books”,⁸⁷⁵ Mr. Sutton said that his review indicated that:⁸⁷⁶

“...the sales transactions recorded in the HQ Books are not supported by sufficient and appropriate accounting evidence. Additionally, the source of the settlements of the sales transactions recorded in the HQ Books is in fact from the capital injections from Ultra Big Investment rather than sales to customers.”

974. In consequence, as noted earlier, Mr. Sutton concluded that:⁸⁷⁷

⁸⁷³ Expert Evidence Bundle 5A; pages 2904-2905, paragraphs 6.27-6.31.

⁸⁷⁴ Expert Evidence Bundle 5A; page 2913, paragraph 6.54.

⁸⁷⁵ Expert Evidence Bundle 5A; page 2913, paragraph 6.54(vi).

⁸⁷⁶ Expert Evidence Bundle 5A; page 2913, paragraph 6.55.

⁸⁷⁷ Expert Evidence Bundle 5A; page 2913, paragraph 6.57.

“...the turnover (net of VAT) was overstated in the HQ Books, and hence the Published Financial Information, for FY 2008, FY 2009 and Interim 2010 by RMB 498,967,811, RMB 793,627,554 and RMB 494,248,137, respectively as there is no evidence to support the sales resulting from logging activities occurred.”

Conclusion

975. We readily accept his analysis together with his related opinion that the overstatement of turnover, which represented 91.56%, 99.99% and 99.99% respectively for those three periods, and the overstatement of turnover in relation to the group’s published net profit, namely 8.48%, 155.12% and 115.13% respectively, were quantitatively material.⁸⁷⁸

Plantation Assets

976. Mr. Sutton noted that the Plantation asset balances as recorded in the HQ Books were significantly higher than those recorded in the Local Books in FY 2008, FY 2009 and Interim 2010:⁸⁷⁹

Table 8.4 - Plantation Assets Balances - HQ Books and Local Books

Period	HQ Books (RMB)	Local Books (RMB)	Differences (RMB)
FY 2008	1,097,564,711	52,208,000	1,045,356,711
FY 2009	1,060,106,766	122,442,360	937,664,406
Interim 2010	1,041,377,793	256,602,765	784,775,028

Payments for the acquisition of Plantation assets

977. In his review of the records of payments for the acquisition of Plantation assets, Mr. Sutton noted:⁸⁸⁰

“The CSRC bank statements of the Huaxia Bank Xin Yun Sub-branch RMB account do not support the settlement of the trade payable transactions recorded in the HQ Books.”

⁸⁷⁸ Expert Evidence Bundle 5A; pages 2914-2915, paragraphs 6.59-6.63.

⁸⁷⁹ Expert Evidence Bundle 5A; page 2933, paragraphs 8.26-8.27.

⁸⁸⁰ Expert Evidence Bundle 5A; page 2936, paragraph 8.42.

By contrast, Mr. Sutton noted:⁸⁸¹

“...the CSRC bank statements of the Huaxia Bank Xin Yun Sub-branch RMB account indicates that the payment records in the bank statements agreed with the settlement of prepayments in the Local Books.”

Forestry Rights Certificates

978. Mr. Sutton noted that there had been a number of verification exercises in respect of the 5 FRCs stipulated in the Prospectus and asserted to have been held by China Forestry at 31 December 2008, 31 December 2009 and June 2010. As noted earlier, he concluded that the hectares of forest owned by China Forestry were overstated, as at 31 December 2008, 31 December 2009 and 30 June 2010 by 98.5%, 97.9% and 91.9% respectively.⁸⁸²

⁸⁸¹ Expert Evidence Bundle 5A; page 2936, paragraph 8.43.

⁸⁸² Expert Evidence Bundle 5A; page 2942, paragraph 8.69.

CHAPTER 18

Mr. Li Han Chun's knowledge of the false or misleading statements by China Forestry

979. As noted earlier, we have found that there was an extensive use of false documentation by China Forestry in the conduct of its business, which extended to all the core components of the business. It involved the sustained falsification and use of documents. They were used to misrepresent the truth in making false or misleading statements, in particular to KPMG. Prominent among those advancing those false documents were Madam Wu Xiaofen and Mr. Zhang Hongyu, respectively the Chief Financial Officer and Chief Resources Officer of China Forestry. They formed a pyramid of a hierarchy in which Mr. Li Han Chun was at the apex.

Relationship between Mr. Li Han Chun, Madam Wu Xiaofen and Mr. Zhang Hongyu

980. Madam Wu Xiaofen and Mr. Zhang Hongyu were both recruited by Mr. Li Han Chun to the employment of China Forestry. Madam Wu Xiaofen was his cousin and had worked as the Chief Financial Officer in a subsidiary company of CES Holdings, of which Mr. Li Han Chun had been managing director. The Prospectus described both of them as graduates of Tsinghua University and of a similar age.⁸⁸³ In his witness statement, Mr. Li Han Chun said that Mr Zhang Hongyu had been his research assistant at the Hyperion Enterprise Performance Management Centre, at which Mr. Li Han Chun claimed he had worked for parts of 2006 and 2007. By contrast, the Prospectus described Mr. Zhang Hongyu as having become employed by China Forestry in January 2005 and made no mention of Hyperion.

The hierarchy

981. The hierarchical nature of their relationship is eloquently illustrated by the first of the two Pre-audit meetings, dated 3 December 2010, between KPMG and China Forestry, which Madam Wu Xiaofen and Mr. Zhang Hongyu attended, but at which Mr. Li Han Chun was absent. During the meeting, Ms. Janette Yu and Ms. Linda Chen, respectively a partner and a senior manager of KPMG, articulated a range of requests of China Forestry to facilitate their 2010 audit. It is clear that the requests reflected the intention of KPMG to subject China Forestry to a much greater degree of audit scrutiny than hitherto. Notwithstanding their senior positions within China Forestry, both Madam Wu Xiaofen and Mr. Zhang Hongyu said that they were unable to determine whether some of those requests could be accommodated and indicated that they would discuss the matter with Mr. Li Han Chun. Mr. Zhang Hongyu

⁸⁸³ Exhibits Bundle 1A, pages 221 and 224.

deferred to Mr. Li Han Chun, having indicated that difficulties lay in the way of the request to visit the Forestry Bureaux to inspect logging permits and forestry registration certificates. For her part, Madam Wu Xiaofen deferred to Mr. Li Han Chun in respect of the request of KPMG to inspect and compare the original bank pay-in slips against the requested printout of bank statements at the bank.

982. That behaviour of Madam Wu Xiaofen resonated with the testimony of Mr. Xiao Feng that, although Mr. Li Han Chun had told him that he and Madam Wu had been friends for many years, he had the impression that, "...without the prior approval or permit from the CEO himself... neither Wen Guoping nor Wu Xiaofen would tell me what I asked for on the financial side."⁸⁸⁴

983. At the dinner which followed the afternoon meeting, Mr. Li Han Chun agreed to arrange the requested meetings for KPMG.

984. To anyone within China Forestry who knew of the extent of the use of false documents by China Forestry, KPMG's requests to make site visits, and the other areas in which they stated they would make enquiries, were all related to areas in which false documents had been used extensively. Relevant to that dilemma for them, was the fact that KPMG indicated at the meeting that it intended to conduct audit fieldwork from 17 January 2011 to 22 February 2011.

Madam Wu Xiaofen's conduct

985. Madam Wu Xiaofen and her staff were responsible for the provision of a range of false financial information to KPMG, including false bank statements, and bank pay-in slips.

Bank statements

986. We accept the evidence of Ms. Naomi Lau that, in early January 2011, Madam Wu Xiaofen had provided the false bank statements for the period 1 January 2010 to 31 December 2010 for the USD and RMB accounts of Kunming Ultra Big at Xinyun Sub-Branch of Huaxia Bank. The documents falsely asserted that the balances were respectively over RMB 745 million and over USD 71 million. In fact, as noted earlier, Mr. Albert Lui discovered on making an independent enquiry of the bank on 26 and 27 January 2011, that the true balances were RMB 316,275.95 and USD 35,819,994.94.

987. On 21 April 2010, Madam Wu Xiaofen accompanied Mr. Derek Lam, an accountant of

⁸⁸⁴ Transcript 17 April 2023, pages 140-141.

KPMG, to the Xinyun Sub-Branch of Huaxia Bank in Kunming, where she introduced him to the Bank President Wang Shixin, who provided him with bank statements, bearing the impression of the chop of the Sub-Branch of the bank, for the RMB account of Kunming Ultra Big for the period 1 April 2008 to 31 December 2009. The statements were false. Mr. Derek Lam said that he concluded from the speed at which, following their arrival, the parties reached the President, that the meeting had been pre-arranged. Not all of the documents were obtained on the first visit to the Bank. Madam Wu Xiaofen accompanied him again when he returned to the Bank on the next day to collect the remaining documents.

Bank pay-in slips

988. We accept Ms. Naomi Lau's evidence that the Bank pay-in slips, marked 'copies of originals', that were discovered to bear banking codes for a non-existent branch of Bank of Communications in Lhasa, Tibet had been inspected at the end of November 2010 in the Systems review in the Beijing Rep office of China Forestry.⁸⁸⁵ KPMG were checking payments made to China Forestry by their customers. She had seen the original pink version of the document, of which poor photocopies only were available to the Tribunal.⁸⁸⁶ The documents, bore a chop impression of the Xinyun Sub-Branch of Huaxia Bank Kunming Branch, and purported to evidence payments to China Forestry by all 17 of their customers. The information was entirely false.

Management accounts

989. The management accounts, comprising a Balance Sheet and Income Statement, for 2010 were provided by Madam Wu Xiaofen to KPMG and described as having been provided in "early Jan 2011".⁸⁸⁷ In a record of interview, Ms. Naomi Lau explained that she had approached Ms. Wu Xiaofen directly for documents such as management accounts and ledgers.⁸⁸⁸ The information in the management accounts was false, for example in respect of Monetary Assets said to be RMB 1,218,809,451.49 as the Closing Balance as at 31 December 2010.

Insurance: audit confirmation letters

990. Although most of the audit confirmation letters sent to the false address of PICC bore

⁸⁸⁵ Exhibits Bundle 15A, pages 11238-11292.

⁸⁸⁶ Transcript 10 February 2023, pages 113-114.

⁸⁸⁷ Exhibits Bundle 15A, pages 11351-11354.

⁸⁸⁸ Witness Evidence Bundle G1; page 5144, counter #s 560-564.

the manuscript signature of Zhang Hongyu over the chop impression of Kunming Ultra Big, the manuscript signature on the audit confirmation letter, dated 2 March 2010, was in the name of Madam Wu Xiaofen. Attached to the letter was a schedule of 34 insurance policies, all of which were false.

Zhang Hongyu's conduct

Logging permits and Forestry Rights Certificates

991. Ms. Naomi Lau testified that she had requested the provision of logging permits and forestry rights certificates in the course of the 2009 audit from Mr. Zhang Hongyu directly. His staff provided the documents.⁸⁸⁹ Given the provenance of the logging permits, Ms. Naomi Lau made first contact with Mr. Zhang Hongyu by telephone on 16 December 2010 in respect of the two sets of Shuangjiang forestry permits in which KPMG had identified irregularities. He directed that further enquiries be pursued with Ms. Liu Yana. She provided obfuscatory and ultimately false explanations in the ensuing email exchange on 16 and 17 December 2010 with Ms. Naomi Lau, in the course of which she forwarded Ms. Naomi Lau a false insurance policy asserting that it was a renewal of an insurance policy of Kunming Ultra Big with PICC.

992. It is to be remembered that at the meeting on 16 February 2011 of KPMG, China Forestry and others at the residential premises described as the Dehong branch of Kunming Ultra Big, in face of persistent questioning by Ms. Naomi Lau in respect of the duplicate sets of logging permits for Shuangjiang, Mr. Zhang Hongyu admitted that some logging permits were “fake”. He was correct to do so. Those logging permits were not genuine.

993. Mr. Jackie Lee said in his record of interview that, in the course of the 2009 audit, Mr. Zhang Hongyu had arranged for KPMG to inspect the original Forestry Rights Certificates in the Beijing office of China Forestry.⁸⁹⁰ We have found that the overwhelming majority of those certificates, in fact all of those that were permitted to be inspected in the enquiries conducted through Fangda, were false.

Business licences

994. In her first record of interview, Ms. Naomi Lau said that 17 business licences valid for the year ended 31 December 2009⁸⁹¹ had been provided, at the request of KPMG, by a Ms. Lu

⁸⁸⁹ Transcript 23 March 2023, pages 65-66.

⁸⁹⁰ Witness Evidence Bundle G2; pages 5854-5855, counter #s 1040-1052.

⁸⁹¹ Exhibits Bundle 13A, pages 9720-9789.

of the Resources Department of China Forestry in respect of all 17 Kunming Ultra Big's customers for that year.⁸⁹² Ms. Naomi Lau testified that, whilst travelling in a car with Mr. Zhang Hongyu to make visits to the supposed customers of China Forestry, he had told her that the business licences that China Forestry had provided KPMG were "fake" and instructed her not to show them to the supposed customers adding, "Don't ask too many questions, they are evading tax".⁸⁹³

Insurance: audit letters of confirmation to PICC

995. The manuscript signature of Mr. Zhang Hongyu was written over the chop of Kunming Ultra Big on four of the audit letters of confirmation sent in the name of the company to two of the false addresses of PICC. Attached to each of those audit letters of confirmation were details of false insurance contracts between Kunming Ultra Big and PICC.

Mr. Li Han Chun's conduct

996. We have rejected Mr. Li Han Chun's assertion in his witness statement and his evidence in the Tribunal of which Mr. Kenneth Kwok was chairman to the effect that he played a limited role in the operations of China Forestry. We are satisfied that he did perform the role of general manager of the operations of the company. He closely directed and monitored the operations of his subordinates, Mr. Zhang Hongyu and Madam Wu Xiaofen respectively in the two key Departments of China Forestry, namely the Resources Department and the Finance Department.

997. It is to be noted that, although the Prospectus of China Forestry reported that, as at 30 June 2009, it had 400 employees, 80% of those employees were described as forest workers. There were only 5 employees in Finance, 17 in Administration and 46 in Resources Management.⁸⁹⁴ The Interim Report 2010 said that there were only 322 employees.⁸⁹⁵

998. We accept the evidence of Mr. Jackie Lee of the attendance of Mr. Li Han Chun at the Xinyun Sub-Branch of Huaxia Bank in Kunming on 10 April 2010, on the occasion when the President of the Bank, in the presence of Mr. Li Han Chun, provided Mr. Jackie Lee with what purported to be copies of the bank statements of the RMB account of Kunming Ultra Big. It is most telling evidence. The bank statements were false. Obviously, it was highly unusual, if not extraordinary, that the Chief Executive Officer of China Forestry should accompany a junior

⁸⁹² Witness Evidence Bundle G1; page 5196, counter #s 1402-1411.

⁸⁹³ Transcript 23 March 2023, pages 118-124.

⁸⁹⁴ Exhibits Bundle 1A, page 227.

⁸⁹⁵ Exhibits Bundle 2A, page 1166.

accountant of KPMG in performing that apparently mundane audit task. On the other hand, his conduct spoke volumes not only of his relationship with Huaxia Bank in Kunming but also of the importance he attached to what, on its face, was an innocuous request for the provision of bank statements by KPMG.

Mr. Li Han Chun's responses to enquiries by KPMG and by officers and directors of China Forestry

999. We are satisfied that Mr. Li Han Chun's initial and subsequent sustained responses to enquiries made by KPMG, beginning in the telephone conference of 14 January 2011, of the unfolding irregularities that they had discovered in China Forestry were intended to be obfuscatory and were false. The information provided by China Forestry to KPMG of the bank and customer account codes of their alleged customers was false. The response of Mr. Wen Guoping to the information that all of the Bank accounts were in Tibet, immediately and unambiguously endorsed by Mr. Li Han Chun, in the telephone conference of 14 January 2011, that the apparent irregularities were explained by customers having opened bank accounts in rural credit unions, was false. Notwithstanding Mr. Li Han Chun's contention to the contrary in his evidence in the Tribunal chaired by Mr. Kenneth Kwok, that explanation was not offered on the basis of it being, "possible". If it had been advanced with a qualification, that would have been reflected in KPMG's minutes. It was not. We are satisfied that no such *caveat* was advanced. It was simply asserted, entirely falsely, as the fact.

Changing explanations

1000. We accept the evidence of Mr. Xiao Feng that, in the discussions of the Board of Directors of China Forestry, following receipt of the KPMG letter, dated 25 January 2011, identifying irregularities, Mr. Li Han Chun asserted that the 17 customers identified to KPMG did exist and were long-term customers of the company. He said that in the 1980s they had opened rural credit co-operative accounts, long before the unified banking coding system had been established. He persisted with that assertion, suggesting that KPMG approach the rural credit cooperatives to inspect those accounts. Of the issue of the balances in China Forestry's accounts with Huaxia Bank, Mr. Li Han Chun said the balances were those described in the documents provided by China Forestry to KPMG, namely a total of RMB 1,200 million.⁸⁹⁶ Of the issue taken with the validity of Kunming Ultra Big's insurance policies, Mr. Li Han Chun

⁸⁹⁶ Witness Evidence Bundle C2; pages 2268-2269, counter #563.

said that KPMG's behaviour was "ridiculous". Of the similarity of handwriting and positioning of chop impressions on logging permits, Mr. Li Han Chun said that the local officials copied the documents in that way to save themselves trouble.

26 January 2011

1001. The KPMG minutes of the telephone conference call held with Mr. Michael Cheung and Professor Wong in the evening of 26 January 2011 noted that, in the afternoon, KPMG had obtained bank confirmations from Huaxia Bank in Kunming for three years, including FY 2010, for the accounts of Kunming Ultra Big. In contrast to the management accounts provided by China Forestry, the bank confirmations stipulated balances of RMB 0.3 million and USD 36 million, rather than RMB 745 million and USD 71 million.

1002. Mr. Xiao Feng said that, in response to the new information, Mr. Li Han Chun, "...tell some new stories and new details."⁸⁹⁷ In explaining the difference in the bank balances, Mr. Xiao Feng said that Mr. Li Han Chun gave two reasons:⁸⁹⁸

"The first one was that part of the money was used to purchase timber logs. That was in the North-East like Suifenghe and Manzhouli... The reason why there was such a big difference was that, the money missing was (in fact) distributed over few tens... even over 100 personal bank cards."

1003. The KPMG minutes of the meeting on 26 January 2011 noted that Mr. Michael Cheung said that Mr. Li Han Chun had advised him that the discrepancies in the bank balances was to be accounted for by, "...purchase of wood logs" and "...purchase of new forests which have not yet been recorded by the Company".⁸⁹⁹ Earlier, the minutes noted that Mr. Michael Cheung said that Mr. Li Han Chun had explained that:⁹⁰⁰

"...certain cash transactions have not been properly and timely recorded. The Bank accounts were held by some individuals under "Debit Card Accounts" kept by the individuals, which were used when selling harvested logs. Separate books were maintained... some of the bank transactions did not exist."

⁸⁹⁷ Witness Evidence Bundle C2; page 2274, counter #601.

⁸⁹⁸ Witness Evidence Bundle C2; page 2260, counter #487.

⁸⁹⁹ Exhibits Bundle 15B, page 11405.

⁹⁰⁰ Exhibits Bundle 15B, page 11404.

The number of China Forestry customers

1004. Mr. Xiao Feng said that in the context of Mr. Li Han Chun's explanation about cash transactions, "According to him, the actual situation was, actually, there were many cash accounts, and these cash accounts were not just being held by 17 customers. They were being held by 40 to 50 customers..."

1005. It is to be noted that the KPMG minutes of the meeting of 26 January 2011 resonated with Mr. Xiao Feng's attribution of that explanation to Mr. Li Han Chun. The minutes noted that Mr. Michael Cheung had asserted that, "...there should be more than 40 genuine ultimate customers."⁹⁰¹ Mr Michael Cheung testified that Mr. Li Han Chun was the provenance of that information.⁹⁰²

1006. We do not accept Mr. Li Han Chun's assertion in his witness statement that the first time that he knew of the audit issues discovered and raised by KPMG were during the telephone conference with them on 14 January 2011.⁹⁰³ Similarly, we do not accept his general assertion that in giving the explanations offered to KPMG, Mr. Xiao Feng and Mr. Michael Cheung in respect of the audit issues he was, "...just conveying Shi Chuansheng's explanations to me."⁹⁰⁴ On none of the multiple occasions on which Mr. Li Han Chun advanced explanations of this kind did he qualify the provenance of the information as not being personal, but coming from Mr. Shi.

1007. It was Mr. Li Han Chun's account that, in response to learning of the audit irregularities on 14 January 2011, he had travelled to Yunnan, where he had spent most of his time thereafter until his arrest seeking explanations to the various audit issues raised by KPMG.⁹⁰⁵ In cross-examination in giving evidence, in January 2020 in the Tribunal chaired by Mr. Kenneth Kwok, Mr. Li Han Chun acknowledged that in advancing the explanation for the differences in the bank balances between the management accounts and the bank statements obtained on 26 January 2011, he had claimed that cash had been obtained for the sale of logs, which he said had been used to buy timber from Russia and buy new forests. He said that the information came from Mr. Shi Chuansheng. In accepting that he had not provided the information as to the provenance of the explanation that he had asserted, Mr. Li Han Chun claimed that was a

⁹⁰¹ Exhibits Bundle 15B, page 11405.

⁹⁰² Transcript 20 April 2023, page 135.

⁹⁰³ Mr. Li Han Chun's Witness Statement, paragraph 149.

⁹⁰⁴ Mr. Li Han Chun's Witness Statement, paragraph 171.

⁹⁰⁵ Mr. Li Han Chun's Witness Statement, paragraph 150.

practice he adopted as Chief Executive Officer. Whatever might have been his practice, in light of the alarming irregularities identified by KPMG in January 2011 we have no doubt that, if Mr. Li Han Chun had no knowledge of them, that is the first thing that he would have asserted. Further, in those circumstances, no doubt he would have identified the provenance of the information on which his explanations were based. He did neither. Instead, he provided a litany of false explanations.

Mr. Li Han Chun's cooperation with enquiries

28 January 2011

1008. The China Forestry minutes, dated 28 January 2011, noted that Mr. Li Han Chun and Madam Wu Xiao Fen had ceased their duties in order to devote their energies to assisting in responding to the issues raised by KPMG.⁹⁰⁶ However, Mr. Xiao Feng said that in fact, in discussions with him, Mr. Li Han Chun made it clear that his cooperation in recovery of data relating to cash transactions was conditional upon his own personal interests being safeguarded. Mr. Xiao Feng said that to the best of his memory he received a phone call from Mr. Li Han Chun directly to that effect.⁹⁰⁷

1009. In evidence, in the Tribunal chaired by Mr. Kenneth Kwok, he testified that Mr. Li Han Chun had said:⁹⁰⁸

“...that for the recovery of the data and also the cash transactions, his collaboration and his willing (ness?) to work with it was required. However, if his personal interests were not safeguarded, then he would not have the motivation to recover these data...”

1010. Mr. Xiao Feng explained that Mr. Li Han Chun had said specifically that, “...he could not be the person or the only person who should shoulder the major responsibilities for all the irregularities.”⁹⁰⁹

1011. We have no hesitation at all in accepting Mr. Xiao Feng's evidence that Mr. Li Han Chun was not cooperative with the enquiries made by the Independent Board Committee.

Conclusion

1012. In the result, we are satisfied that throughout his employment by China Forestry and its

⁹⁰⁶ Exhibits Bundle 23A, page 17151.

⁹⁰⁷ Transcript 18 April 2023, page 97.

⁹⁰⁸ Transcript 3 December 2019, page 28.

⁹⁰⁹ Transcript 18 April 2023, page 84.

earlier iterations, Mr. Li Han Chun knew of the wholesale use of false documents and false statements made by his subordinates in the company.

CHAPTER 19

Mr. Li Han Chun's sale of China Forestry shares-12 January 2011

Mr. Li Han Chun's instructions to Ms. Xue Ying/ Standard Chartered Securities

13 December 2010-sell US \$20 million worth of China Forestry shares

1013. In a record of interview, dated 24 February 2011, conducted of her by the Commission Ms. Xue Ying, then the Director of Corporate Finance of Standard Chartered Securities Representative office in Beijing, said that on 13 December 2010, whilst they were dining together in Beijing, Mr. Li Han Chun informed her that, given that the 'lock-up' which had restrained his ability to sell his China Forestry shares had ended, he wanted to sell about US \$20 million worth of shares because, "...he had some better investments".⁹¹⁰ She had not asked him about the investments. He indicated that it was possible that he would leave China Forestry⁹¹¹. He said that he had, "a very good investment opportunity".⁹¹²

1014. Ms. Xue Ying sent an email, at 14:39 on 13 December 2010, to her colleagues in Hong Kong describing that meeting:⁹¹³

"...he wants to sell part of his shares asap. I told him it might be a better timing in the beginning of Jan. as investors are not willing to buy at the year end. According to our last internal discussion, he could sell his shares before mid of Jan. if they plan to announce year end result by mid of March. So it would be sometime in the first two weeks in Jan. Currently he is considering to sell shares worth USD 20m minimum (approximately 20% of total shares he owns)."

1015. In an email on 13 December 2010, in response to an enquiry from the Hong Kong office as to his expectations of pricing, Ms. Xue Ying wrote:⁹¹⁴

"He didn't say any expectation. I guess he can accept current price, otherwise he won't ask me to sell it for him asap."

14 December 2010: application forms for Standard Chartered Bank accounts

1016. As was required to advance the proposed sale, Mr. Li Han Chun set about opening

⁹¹⁰ Witness Evidence Bundle E2; page 3888, counter #224.

⁹¹¹ Witness Evidence Bundle E2; page 3914, counter #522.

⁹¹² Witness Evidence Bundle E2; page 3889, counter #228.

⁹¹³ Specified Persons Bundle C, page 623.

⁹¹⁴ SFC's Supplemental Bundle 3, page 12.

several accounts with Standard Chartered Bank. A signature in Mr. Li Han Chun's name on one such account opening form was dated 14 December 2010.⁹¹⁵

15 December 2010: Mr. Li Kwok Cheong's reaction

1017. Ms. Xue Ying said that, having indicated to Mr. Li Han Chun that she would do so, she spoke to Mr. Li Kwok Cheong on 15 December 2010 and informed him of Mr. Li Han Chun's proposed sale of a tranche of China Forestry's shares, to the value of US \$20 million. He indicated that there was no problem with the proposal.⁹¹⁶

17 December 2010

1018. In an exchange of emails with the Hong Kong office on 17 December 2010, in which the Hong Kong office had enquired, "Does Li Zong need to sell it before year end?? The discount will be much wider given investors pretty much have closed books for year end. Can he do it in Jan?? Also does he have a price target in mind?", Ms. Xue Ying replied:⁹¹⁷

"He can wait until Jan. If the discount is smaller. Li doesn't have any price target, but he cares about discount rate."

3 January 2011: Mr. Li Han Chun's instructions to sell US \$40 million worth of shares

1019. Ms. Xue Ying said that, when she met Mr. Li Han Chun, on 3 January 2011, he told her that he now wished to sell US \$40 million worth of China Forestry shares, explaining he had two investment opportunities, each of about USD 20 million. In answer to her enquiry about the nature of the investment opportunities, Mr. Li Han Chun explained that one was a media company and the other a private equity fund.⁹¹⁸

4 January 2011: Mr Li Han Chun's agreement to sell US \$50 million worth of shares

1020. In an email exchange, dated 4 January 2011, Ms. Xue Ying advised her Hong Kong office of Mr. Li Han Chun's revised proposal noting that he had, "...asked me if he could sell shares worth USD 40m this week instead of USD 20m he planned before as he needs to make some investment in a couple of projects." In reply, the Hong Kong office said, "...can we suggest to bump up the deal size to US \$50mn (so we get league table credit as well)."⁹¹⁹ In an

⁹¹⁵ Exhibits Bundle 18B, page 13539.

⁹¹⁶ Witness Evidence Bundle E2; page 3896, counter #296.

⁹¹⁷ SFC's Supplemental Bundle 3, pages 14-15.

⁹¹⁸ Witness Evidence Bundle E2; page 3890, counter #238.

⁹¹⁹ SFC's Supplemental Bundle 3, page 17.

immediate response to that suggestion by the Hong Kong office, Ms. Xue Ying replied, “I just spoke with Li Zong who agreed to sell US 50 mn.” Of the issue of the selling price, she said, “...he can accept the recent price range and an approximately 5% discount.”

1021. In response to an enquiry from the Hong Kong office as to, “...why he needs to cash out”, in an email, dated 4 January 2011, Ms. Xue Ying provided the explanation given to her by Mr. Li Han Chun about the investment projects:⁹²⁰

“...one is a media company will be operating by his close friends; another one is to invest in a small PE fund running by some professionals.”

1022. Ms. Xue Ying said that she had passed on to Mr. Li Han Chun the advice of the Hong Kong office that, to attract institutional investors, it would be easier to sell US \$50 million worth of shares, but warned that to do so might raise investor concerns that he might leave China Forestry. Mr. Li Han Chun agreed and indicated that he could undertake not to leave the company and said that the prospective 2010 Annual Results, to be released at the end of March, were, “very good”.⁹²¹

1023. In a further exchange of emails with the Hong Kong office on 4 January 2011, Ms. Xue Ying advised them that Mr. Li Han Chun was prepared to commit to a “...six-month lock-up” on the sale of the balance of his holding of China Forestry shares and asserted that:⁹²²

“Li Zong will stay. So PLs. DO NOT release any information regarding his departure, it’s not the case anymore.”

The pledge of some of Mr. Li Han Chun’s shares

1024. Having informed Mr. Li Kwok Cheong of Mr. Li Han Chun’s newly stated intention to sell China Forestry shares to the value of US \$50 million, Ms. Xue Ying said that he was, “a bit upset... it might have a big impact on the company’s share price”.⁹²³ Mr. Li Kwok Cheong told her that part of Mr. Li Han Chun’s holding of China Forestry shares was pledged to him, but added that, if the sale of China Forestry shares was to a value of US \$50 million only, it should not affect the pledged shares.⁹²⁴

1025. Under the heading ‘Substantial Shareholders’, the Prospectus described Kingfly Capital,

⁹²⁰ SFC’s Supplemental Bundle 3, page 18.

⁹²¹ Witness Evidence Bundle E2; page 3891, counter #242.

⁹²² SFC’s Supplemental Bundle 3, pages 21-22.

⁹²³ Witness Evidence Bundle E2; page 3896, counter #302.

⁹²⁴ Witness Evidence Bundle E2; page 3902, counter #364.

a company wholly-owned and controlled by Mr. Li Kwok Cheong, as holding a security interest in respect of 75,000,023 China Forestry shares as the “chargee” and Top Wisdom as the “charger”.⁹²⁵ That description was repeated in the 2009 Annual Report⁹²⁶ and the 2010 Interim Report⁹²⁷ of China Forestry. Ms. Denise Yip noted in her witness statement, dated 28 February 2018, that the security interest provided security for the continuing obligation to pay the balance of the purchase price for the 3.2 million China Forestry shares sold by Kingfly Capital to Mr. Li Han Chun on 31 March 2008.⁹²⁸

10 January 2011-Mr. Li Han Chun’s transfer of 119 million China Forestry shares to Standard Chartered Securities

1026. Ms. Xue Ying said that the transfer of Mr. Li Han Chun’s shares to an account of Standard Chartered Securities did not occur until 10 January 2011.⁹²⁹ That was a pre-requisite to selling the shares.

Price and fees

1027. Mr. Li Han Chun indicated that he sought a discount to the range of share price of only 5% and a fee for Standard Chartered Securities of 1%. For its part in a term sheet, dated 12 January 2011, Standard Chartered Securities offered a sliding scale with a discount of greater than 6%, matched by a fee of 1%, whereas a discount of between 5% and 6%, including 6%, was matched by a 1.5% fee and a discount of between 4% and 5%, including 5%, was matched by a 2% fee.⁹³⁰ Mr. Li Han Chun agreed. Ms. Xue Ying said that, in the event, in order to execute the sale, it had proceeded at a discount of 6.9%.⁹³¹

12 January 2011: Placing Agreement-Top Wisdom/Standard Chartered Securities

1028. Ms. Xue Ying identified Mr. Li Han Chun’s signature on the Placing Agreement between Top Wisdom and Standard Chartered Securities, dated 12 January 2011.⁹³² The agreement involved the placing of 119 million China Forestry shares of the 194,175,000 China Forestry shares that Mr. Li Han Chun asserted he owned beneficially. Ms. Xue Ying said that

⁹²⁵ Exhibits Bundle 1A, page 235.

⁹²⁶ Exhibits Bundle 2A, page 1089.

⁹²⁷ Exhibits Bundle 2A, pages 1169-1170.

⁹²⁸ Witness Evidence Bundle H2; page 6916, paragraph 9.

⁹²⁹ Witness Evidence Bundle E2; page 3892, counter #250.

⁹³⁰ SFC’s Supplemental Bundle 3, page 79.

⁹³¹ Witness Evidence Bundle E2; page 3894, counter #264.

⁹³² Exhibits Bundle 18B, pages 13591-13622.

she had obtained his signature to that page of the document in Beijing.⁹³³

Due diligence

1029. Although it was not part of her duties, Ms. Xue Ying said that she had been present at a telephone conference in which a normal due diligence interview had been conducted of Mr. Li Han Chun prior to the placement. It had proceeded normally. The due diligence record stated the interview of Mr. Li Han Chun was conducted between 3:30 p.m. and 4:00 p.m. on 12 January 2011 and that Ms. Xue Ying, Mr. Bernard Cheung and Mr. Nelson Chou of Standard Chartered Securities were in attendance, together with Ms. Jacqueline Li of Baker & McKenzie. Mr. Li Han Chun responded on behalf of the Vendor, Top Wisdom Limited.⁹³⁴

1030. Mr. Nelson Chou testified that he had compiled the record of the due diligence exercise.⁹³⁵ Mr. Li Han Chun confirmed that Top Wisdom was in possession of 194,175,000 China Forestry shares, that the number of shares to be sold were 119 million and that those shares were not subject to any restrictions. He asserted that there was, no “material non-public information” that would render the transaction an insider dealing under the Ordinance. Of the use of the share proceeds by Top Wisdom, Mr. Li Han Chun said the proceeds were:⁹³⁶

“To provide capital to Mr. Li Han Chun for his private investment. Those investments do not come into competition with the business principally engaged in by China Forestry.”

The placement

1031. Ms. Xue Ying said that, after the market closed at 4 p.m. on 12 January 2011, Standard Chartered Securities began to contact investors to place the shares.

12 January 2011: China Forestry’s Announcement

1032. In an announcement, dated 12 January 2011, China Forestry described the sale of 119 million China Forestry shares, “...to not less than six professional, institutional and/or individual investors” in a Placing agreement with Standard Chartered Securities by Top Wisdom, of which Mr. Li Han Chun was owner, on 12 January 2011. That sale of shares represented 3.89% of the existing issued share capital of the company. Top Wisdom now held

⁹³³ Witness Evidence Bundle E2; page 3912, counter #495.

⁹³⁴ Exhibits Bundle 18B, pages 13548-13555.

⁹³⁵ Transcript 6 February 2023, pages 24-28.

⁹³⁶ Exhibits Bundle 18B; page 13551, paragraph 9.

75,175,000 shares, approximately 2.46% of the issued share capital. Further, it noted that Mr. Li Han Chun had indicated that, "...he currently has no intention to leave the company after this transaction."⁹³⁷

14 January 2011: Contract Note-Standard Chartered Securities/Top Wisdom

1033. In a Contract Note, dated 14 January 2011, Standard Chartered Securities advised Top Wisdom that:⁹³⁸

- they had sold 119 million China Forestry shares at \$3.35 per share;
- with a 'Trade Date' of 13 January 2011;
- a 'Settlement Date' of 17 January 2011;
- 'Gross Consideration' of \$398,650,000; and
- 'Settlement Amount Due' of \$398,219,458.

1 February 2011: Top Wisdom's Standard Chartered Bank statement

1034. A Standard Chartered Bank 'Monthly Transaction Statement', dated 1 February 2011, in the name of Top Wisdom, Customer No. 400188162, reflected the transaction and described the Closing Balance at 1 February 2011 as being \$398,219,458.⁹³⁹

25 January 2011: transfer of monies by Top Wisdom from Standard Chartered Bank to UBS

1035. In her witness statement, Ms. Denise Yip said that, "On 25 January 2011 Top Wisdom transferred approximately HK \$394 million from its account at SCB to UBS."⁹⁴⁰ No document was referred to or exhibited to support those assertions.

Mr. Xiao Feng

1036. For his part, Mr. Xiao Feng said that he had first learned of Mr. Li Han Chun's intention to sell some of his China Forestry shares in the course of their regular quarterly review conversation on China Forestry. The conversation took place on a date after the KPMG dinner of 3 December 2010 and before Christmas 2010. Mr. Li Han Chun told him that he intended to sell shares, to a total value of US \$20 to \$30 million in order to raise proceeds to enable him to pay the monies due to Mr. Li Kwok Cheong for shares that he had bought from him prior to

⁹³⁷ Exhibits Bundle 3A, pages 1666-1667.

⁹³⁸ Exhibits Bundle 18B, page 13661.

⁹³⁹ Exhibits Bundle 18B, page 13662.

⁹⁴⁰ Witness Evidence Bundle H2; page 6917, paragraph 12.

the IPO.⁹⁴¹ He said that he was facing time pressure and had to sell the shares between late December and early January.⁹⁴²

1037. Mr. Xiao Feng said that when he informed Mr. Li Kwok Cheong of Mr. Li Han Chun's intention, he said simply that he was not surprised.⁹⁴³

1038. In his oral evidence, Mr. Xiao Feng agreed that the Prospectus had described the terms of that sale and purchase of shares.⁹⁴⁴ It was stated that, having agreed to buy 3,200,000 China Forestry shares from Mr. Li Kwok Cheong and having paid the first instalment of US \$2 million on 31 March 2008, it was agreed that the balance of US \$30 million would be paid by eight equal payments on the 31st day of December every year, starting from 2010. Of course, that provision required only that the next payment by Mr. Li Han Chun to Mr. Li Kwok Cheong be of only US \$3,750,000 and that payment be made on 31 December 2010.

Negative market reaction

1039. Mr. Xiao Feng said that when he learned of the fact that Mr. Li Han Chun had sold as much as 119 million China Forestry shares he was, "...a bit angry" and so he had telephoned him on 13 January 2011.⁹⁴⁵ The market had reacted negatively. Mr. Li Han Chun explained that he had sold more shares because he needed US\$10 million to \$20 million more to invest in an iron ore mine in Mongolia.⁹⁴⁶ Also, Mr. Li Han Chun said that Cazenove (Standard Chartered Securities) had advised him that investment banks would not be interested in a block trade of shares of less than US \$50 million.

1040. Of the market reaction, Mr. Xiao Feng said, "...the market responded very negatively on that day and the following day of trading". People who had invested in the IPO process called and asked him why the Chief Executive had sold such a large tranche of shares.⁹⁴⁷ 'Stock Historical Data' for trading in China Forestry shares on the SEHK stipulated that, having closed on the SEHK on 12 January 2011 at \$3.60 per share, China Forestry shares closed at \$3.14 per share at the close of business on 13 January 2011, a drop of 12.78%. The daily low trading price that day was \$2.92 per share. That was against a rise in the overall market on the Hang

⁹⁴¹ Witness Evidence Bundle E; page 2246, counter #331.

⁹⁴² Witness Evidence Bundle E; page 2249, counter #357.

⁹⁴³ Witness Evidence Bundle E; page 2247, counter #349.

⁹⁴⁴ Exhibits Bundle 1A, page 149.

⁹⁴⁵ Transcript 17 April 2023, page 117.

⁹⁴⁶ Witness Evidence Bundle E; page 2248, counter #351.

⁹⁴⁷ Transcript 19 April 2023, page 72.

Seng Index.⁹⁴⁸

13 January 2011: China Forestry's Announcement

1041. In an announcement, dated 13 January 2011, the Board of China Forestry acknowledged the "...decrease in the price of the shares on 13 January 2011" and asserted that the Board was "...not aware of any reason for such movement". Further, it was noted that Kingfly Capital, a company wholly-owned by Mr. Li Kwok Cheong had purchased 12 million China Forestry shares in the market on 13 January 2011 and that he, the Carlyle Group and the executive directors of the Company are "...confident in the future and prospect of the Company."⁹⁴⁹

26 January 2011: China Forestry's Announcement-trading in its shares suspended

1042. In an announcement, dated 26 January 2011, China Forestry announced that trading in its shares had been suspended with effect from that morning, "...pending the publication of an announcement in relation to price sensitive information of the company."⁹⁵⁰ Trading in its shares never resumed.

28 January 2011: China Forestry Board meeting-the proceeds of sale of Mr. Li Han Chun's shares

1043. The minutes of the China Forestry Board meeting held by telephone conference, dated 28 January 2011, in which Mr. Li Kwok Cheong, Mr. Li Han Chun and Mr. Xiao Feng participated, noted that it had been resolved that an independent committee be established and that its "...composition, the assignment of duties and the next step forward" were as described in Annex 1.⁹⁵¹ Under the title 'Next Step Forward', one of the topics Annex 1 addressed was:

"Disposal of the net (proceeds) from the placement of shares by CEO".

Of that, it was noted:⁹⁵²

"-Other than the *USD 20m* required for investing in a mineral project in Outer Mongolia, *CEO* agreed to retain the remaining *USD 31m* and to include independent executive director Mr. Liu Chan as signing authority of that bank (account)

⁹⁴⁸ Expert Evidence Bundle 16, pages 11251-11257 at page 11257. Stock Historical Data.

⁹⁴⁹ Exhibits Bundle 3A, pages 1672-1673.

⁹⁵⁰ Exhibits Bundle 3A, page 1675.

⁹⁵¹ Exhibits Bundle 23A, page 17139.

⁹⁵² Exhibits Bundle 23A, page 17150.

-Equity acquired from investing in the mineral project in Outer Mongolia is to be kept under the custody of the listed company”

2 February 2011: Injunction

1044. On 2 February 2011, the Commission obtained an injunction in the High Court restraining Top Wisdom and Mr. Li Han Chun from disposing of assets of Top Wisdom and Mr. Li Han Chun without the consent of the Court of up to \$398,219,458.⁹⁵³ The account of Top Wisdom at Standard Chartered Bank and its account at UBS AG were identified specifically in the Order.

A consideration of the evidence

Different explanations for the sale

1045. Clearly, Mr. Li Han Chun gave different explanations to different people for the reasons for his sale of part of his holding of China Forestry shares. On the one hand, first he told Ms. Xue Ying that he wished to sell China Forestry’s shares to a value of US\$20-30 million to raise money for an investment. By contrast, at about the same time, he told Mr. Xiao Feng, whose evidence we accept, that he needed to sell part of his holding of China Forestry shares, which he stipulated as being US\$ 20-30 million in total value, in order to pay Mr. Li Kwok Cheong monies owed from the earlier sale of those shares to him. He said that he needed to do so in late December 2010 or early January 2011. He accepted that he did not make or try to make any payment to Mr. Li Kwok Cheong, notwithstanding that Top Wisdom had received a payment of US \$51 million. In any event, in so far as he might have needed to raise monies to pay Mr. Li Kwok Cheong on 31 December 2010, he was required to pay only US \$3.75 million.

1046. Although Mr. Li Han Chun eventually identified specifically two business investment projects to Ms. Xue Ying in early January 2011, when required by Standard Chartered Securities to explain the use to which the proceeds would be put, namely investments in a media business and in a private equity fund, he accepted that he has never produced any evidence whatsoever to substantiate those bare assertions. Disingenuously, in his evidence in the Tribunal chaired by Mr. Kenneth Kwok, he protested that he had never been asked to do so.

1047. Again, by contrast, on 13 January 2011, Mr. Li Han Chun provided an entirely different

⁹⁵³ SFC’s Opening Submissions. Appendix A: Chronology of Key Events.

explanation to Mr. Xiao Feng for the increased size of the sale of his shareholding of China Forestry shares, asserting that it was, in part, due to an investment of US \$10-20 million he wished to make in a Mongolian iron ore mine. Once again, Mr. Li Han Chun has never produced any evidence to substantiate that assertion, albeit that it appears that subsequently it was advanced to the board of directors of China Forestry, given the steps that were outlined in the China Forestry minutes, dated 28 January 2011, to seek to secure any equity resulting from any such investment.

1048. In his account to the CSRC in his record of interview, Mr. Li Han Chun provided yet another reason for the sale of his China Forestry shares, asserting that because his relationship with Mr. Li Kwok Cheong had deteriorated after China Forestry was listed in December 2009, “I thought about leaving”. He contended that in those circumstances, having been introduced by a friend to an investment proposal, “...involving a mining project of a Mainland state enterprise in a foreign country”, he proposed to sell part of his holding of China Forestry shares.⁹⁵⁴ Again, Mr. Li Han Chun has never produced any evidence to substantiate that assertion. Although Mr. Li Han Chun went on to assert to CSRC that he had not sold all his shareholding because of a concern that it might impact the market if he did so, he did not go on to acknowledge that in fact he had sold all but about 175,000 of his China Forestry shares that were not subject to the pledge of 75,000,023 shares to Mr. Li Kwok Cheong.

25 January 2011: the transfer of the proceeds of the placement to Top Wisdom’s account with UBS

1049. Although the Commission accepts Mr. Li Han Chun’s evidence that he caused the transfer of the proceeds of the placement from the account of Top Wisdom at Standard Chartered Bank to the account of Top Wisdom at UBS on 25 January 2011, Mr. Li Han Chun has given no explanation for why he had done so. He had been aware of the irregularities in China Forestry identified by KPMG since his meeting with them on 14 January 2011. The ambit and the seriousness of those irregularities widened quickly. Following Mr. Li Han Chun’s request in Beijing on 24 January 2011, Mr Michael Cheung flew to Hong Kong and had a meeting with KPMG on the morning of 25 January 2011, after which he had received KPMG’s letter of that date and following which he had telephone conferences with Mr. Li Han Chun and Mr. Li Kwok Cheong. As a result, at the meeting on 26 January 2011, Mr. Michael Cheung provided KPMG with a litany of obfuscatory and false explanations to the serious

⁹⁵⁴ Witness Evidence Bundle B1, page 1117.

irregularities identified by KPMG, the provenance of which was Mr. Li Han Chun.

1050. We accept that it is to be acknowledged that, from the fact that Mr. Li Han Chun was able to transfer the proceeds of the placement from the account of Top Wisdom with Standard Chartered Bank to its account at UBS, it is to be inferred that he had the ability to transfer the proceeds elsewhere and, in particular, out of the jurisdiction. As Mr. Li Han Chun pointed out in his witness statement, he did not do so and had not done so by the time that an injunction was obtained from the High Court restraining those monies on 2 February 2011. Relevant to that fact is the evidence that the board of directors of China Forestry appear to have embarked on taking active steps to restrain the disposal of the proceeds of the placement, as evidenced by the minutes of 28 January 2011. The agreement reached between Mr. Li Han Chun and the board of directors suggests that Mr. Li Han Chun appeared to be engaging in a cooperative bargain with the board.

1051. We are satisfied that, given our finding that Mr Li Han Chun knew of the propagation of multiple false statements and documents by China Forestry over several years as to its business, Mr. Li Han Chun was acutely aware of the imminent dangers that lay ahead of discovery of that conduct following the Pre-audit meeting with KPMG on 3 December 2010. As Mr. Li Han Chun knew full well, the range of enquiries by KPMG that he was compelled to agree to arrange to facilitate encompassed many of the areas in which there had been rampant falsification of documentation, namely arranging:⁹⁵⁵

- the site visit to the forestry bureaux (including the forests acquired before 2010 on sample basis) to confirm the forest ownership at 31 December 2010, the logging volume and logging permits being issued for the year.
- the audit team to visit the logging operation, including the application of logging permit from bureau, site visit to Company's customers for sales confirmation.
- bank confirmation in person, obtain sample of bank statements and bank-in slips from banks.

1052. Disclosure of some or even one of the multiple false statements made over several years as to China Forestry's business, for example the genuineness of the 51 Forestry Rights Certificates, would expose reality and spell disaster to the value of China Forestry shares, including those held by Mr. Li Han Chun. We are satisfied that it was with that knowledge that,

⁹⁵⁵ Exhibits Bundle 15B, page 11083.

on 13 December 2010, Mr. Li Han Chun solicited the support of Ms. Xue Ying to sell part of his holding of China Forestry shares.

1053. Shortly afterwards, in the exchange of telephone calls and multiple, persistent emails between Ms. Naomi Lau and Mr. Zhang Hongyu and Ms. Liu Yana on 16 and 17 December 2010, the validity of two sets of logging permits issued for Shuangjiang was called into question. The validity of logging permits was one of the topics of audit enquiry identified at the meeting of 3 December 2010. We are satisfied that Mr. Li Han Chun would have been informed, at least of the broad nature, of the unresolved concerns of KPMG about the validity of that set of logging permits. The anticipated dangers of disclosure were now real.

1054. Similarly, we are satisfied that Mr. Li Han Chun would have been informed, at least in broad terms, of the irregularities identified by KPMG to the management of Guizhou Wosen in Congjiang, Guizhou Province in respect of Forestry Rights Certificates that were produced to KPMG on 30 December 2010. The date of transfer of the certificate pre-dated the incorporation of Guizhou Wosen by several years. Again, the validity of Forestry Rights Certificates was one of the topics of audit enquiry identified by KPMG at the meeting of 3 December 2010.

Insider Dealing-section 270

1055. There is no dispute that at the material time China Forestry was a publicly listed corporation and that, as a director and chief executive officer, Mr. Li Han Chun was connected with the corporation. Similarly, there is no dispute that Mr. Li Han Chun's knowledge is attributable to Top Wisdom, which company was wholly owned and controlled by Mr. Li Han Chun.

Relevant information

(i) Specific information

1056. We are satisfied that information that a wide range of statements published by China Forestry as to its business were false statements supported by false documents, in particular as to the genuineness of: forestry rights certificates; logging permits; customers and sales; bank balances, turnover and profit; capital assets and insurance of forest assets was relevant information. We accept that the range of specific information in that regard was as described

by Madam Pao in her report⁹⁵⁶ and encompassed the Group's profits and revenue, and turnover generating activities and assets.

(ii) Not generally known

1057. That information was generally not known to persons who were accustomed or would be likely to deal in the listed securities of China Forestry.

Knowledge

1058. We are satisfied that the information was known to Mr. Li Han Chun to be inside information, in particular, if known to those who were accustomed or who would likely deal in the listed securities of China Forestry, it would likely materially affect the price of China Forestry shares.

Likely to materially affect the price

1059. We are satisfied, not only on the basis that there was a real prospect but also on the basis that it was more likely than not, that the information would materially affect the price of China Forestry shares.

Section 271(3): innocent purpose defence

1060. Having regard to the directions of the Chairman, in particular as to the judgments of the majority in the Court of Final Appeal in *SFC v Yiu Hoi Ying, Charles*, we are satisfied that Mr. Li Han Chun and Top Wisdom have not established the 'innocent purpose defence' provided by section 271(3) of the Ordinance, namely that the purposes for which Mr. Li Han Chun dealt in China Forestry shares did not include the purpose of securing or increasing a profit or avoiding or reducing a loss for himself by using the relevant information described above. Indeed, we are satisfied that Mr. Li Han Chun did sell his shares for that proscribed purpose.

Conclusion

1061. Accordingly, we are satisfied that Mr. Li Han Chun and Top Wisdom engaged in market misconduct contrary to section 270(1) of the Ordinance.

The loss avoided

1062. We accept Ms. Pao's opinion that, if the specific information that we have found was known to Mr. Li Han Chun had been known to those who were accustomed or would be likely

⁹⁵⁶ Expert Evidence Bundle 16; pages 11167-11168, paragraph 5.2.

to deal in the shares of China Forestry, they would only do so having regard to the “true level of cash and cash equivalent balance in the Group”, which she calculated to be \$ 0.379 per share. We accept her opinion that, in those circumstances, the price at which China Forestry shares would have traded would be around \$0.38 per share.

1063. Mr. Li Han Chun caused Top Wisdom to sell 119 million China Forestry shares at \$3.35 per share. The loss avoided thereby was \$2.97 per share, namely a total of \$353,430,000.

CHAPTER 20

Mr. Li Kwok Cheong's knowledge of the false or misleading statements made by China Forestry

The role of Mr. Li Kwok Cheong

Prospectus

1064. The Prospectus described Mr. Li Kwok Cheong as having, "...entered the forest management industry in 2003...and up to now he has accumulated approximately 6 years' experience in forestry business." It noted that, as a result of his forestry experience and business profile, he had been admitted as a council member by the China Council for the Promotion of Environment and Forestry ("CCPEF"), a non-profit association managed by the State Forestry Administration of the PRC. That allowed Mr. Li Kwok Cheong, "... to participate at national level discussions and policies about the development of the forestry industry in China."⁹⁵⁷

CCPEF

1065. It was asserted that China Forestry had, "...established good relationships with professional bodies in forestry industry such as CCPEF."⁹⁵⁸

- (i) Mr. Li Zhi Tong, a vice-chairman of the CCPEF since 2001, had acted as a consultant, advising on forestry matters, from 19 April 2005 to April 2008. He had given only general advice during the 'Track Record Period' advising, "...on how some local authorities would generally interpret and implement some forestry-related laws" and through him China Forestry, "...became acquainted with some local government officials and other industry participants in some projects."⁹⁵⁹ His consultancy had not been renewed on its expiry, but he had been appointed a non-executive director of China Forestry on 3 April 2008.
- (ii) Mr. Meng Fan Zhi, the secretary of the CCPEF from 2001, had been a consultant of China Forestry for three years from 2008 to 2011.⁹⁶⁰ He was engaged as a consultant from 7 April 2008 to April 2011, together with Mr. Ma Lu Yi, the deputy Dean of the Graduate School of Beijing Forestry University, to advise, "...in

⁹⁵⁷ Exhibits Bundle 1A, page 18.

⁹⁵⁸ Exhibits Bundle 1A, page 222.

⁹⁵⁹ Exhibits Bundle 1A, page 239.

⁹⁶⁰ Exhibits Bundle 1A, page 224.

relation to the potential acquisition of forests and the compliance of forestry laws.”⁹⁶¹

Mr. Li Zhi Tong

1066. In his record of interview by the Commission, dated 23 June 2011, Mr. Li Kwok Cheong acknowledged that he had recommended that Mr. Li Zhi Tong be appointed an executive director. In the process of, “...working our way for listing...we just approached...Meng Fan Zhi, because we were his members”. He recommended, “several experts who were specialized in the forestry (industry).” They included Mr. Li Zhi Tong.⁹⁶²

1067. In a record of interview conducted by the Commission, dated 23 July 2014, Mr. Li Zhi Tong confirmed that he had become the vice-chairman of CCPEF in 2012. Prior to that he had been head of the Forest Security Bureau from 1988 to 1998. He came to know Mr. Li Kwok Cheong in 2005, after he joined as a council member of the CCPEF. He agreed to his suggestion to become his company’s consultant to coordinate with local authorities and to communicate with the Forestry Department. He said that before the listing, “I went to Yunnan and-wherever with him, but they were inspections.” He explained:⁹⁶³

“For example, when we went to Yunnan and he wanted to buy forest land, then I would pull strings for him since I was familiar with the local forestry department-the forestry bureau of the province. We did it through the province and government departments like this, and he would have an understanding of the forestry condition before he decided whether to buy or not. Such string-pulling would be (mainly my job).”

1068. Mr. Li Zhi Tong said that he accompanied Mr. Li Kwok Cheong on inspections to Yunnan, to the forestry bureau of Kunming City and even to a visit to the head of Forestry Bureau of Wenshan City. He gave advice to Mr. Li Kwok Cheong after the inspections. However, he was not involved in the actual purchase of forest land.

1069. He did not even know Mr. Li Han Chun until two or three months before the listing. He was not familiar with him and they had no relationship. Mr. Li Han Chun did not accompany him and Mr. Li Kwok Cheong on their inspections.

1070. In 2008, he had been appointed a non-executive director of China Forestry. His duty

⁹⁶¹ Exhibits Bundle 1A, page 64.

⁹⁶² Witness Evidence Bundle A1; pages 55-56, counter #s 879-892.

⁹⁶³ Witness Evidence Bundle D2; page 3128, counter #190.

was to give advice on the requirements of the forestry industry policy, to help China Forestry build a good relationship with the local forestry bureaux and to give advice on forestry management.⁹⁶⁴

1071. In a consideration of ‘Risk Factors’ in the Prospectus , it was stated:⁹⁶⁵

“We are heavily dependent on our executive officers and management for the success of our operations. Our ability to negotiate successfully with the forest owners for our forest rights and to acquire high-quality forests, depends on the skills, relationships, and reputation of our senior management, particularly our chairman Mr. Li Kwok Cheong and our executive director, Mr. Li Han Chun.”

In addition, it was noted, “We also rely on the expertise and advice of our consultants. Mr. Meng Fan Zhi and Mr. Ma Lu Yi currently act as our forestry consultants.”

1072. Under the heading, ‘Executive Directors’, it was stated of Mr. Li Kwok Cheong that, having “...acquired his first piece of forest in China through Beijing Zhaolin in 2003”, and having described his shareholding in a private company, namely Beijing Shi Ji Qiang Cultural and Arts Limited, he has, “...actively participated in the management of our Group and will allocate all of his time on our Group upon the Listing.”⁹⁶⁶

2009 Annual Report

1073. Under the heading, ‘Corporate Governance Report’, the roles of the chairman and chief executive officer were described:⁹⁶⁷

“The roles of chairman and the chief executive officer are held separately by Mr. Li Kwok Cheong and Mr. Li Han Chun, respectively, and their roles and responsibilities are separate. The chairman is responsible in leading the Board in forming the Group’s strategies and policies and for organising the business of the Board, ensuring its effectiveness and setting its agenda but not involved in the day-to-day business of the Group. The chief executive officer is directly in charge of the daily operations of the Group and are (sic) accountable to the Board for the financial and operational performance of the Group.”

⁹⁶⁴ Witness Evidence Bundle D2; page 3155, counter #637.

⁹⁶⁵ Exhibits Bundle 1A, page 63.

⁹⁶⁶ Exhibits Bundle 1A, pages 220-221.

⁹⁶⁷ Exhibits Bundle 2A, page 1094.

Mr. Xiao Feng

1074. As noted earlier, Mr. Xiao Feng's evidence resonated with that description of their respective roles. He confirmed that the opinion he had formed, during the process of due diligence prior to Carlyle's investment in China Forestry, of the respective roles of Mr. Li Kwok Cheong and Mr. Li Han Chun was that the:⁹⁶⁸

“...chairman's involvement in the business was not significant and he actually openly confessed that to us, that he had his art business to take care of, so he would entrust the management to Mr. Li Han Chun, who he was quite positive about his performance.”

In re-examination, Mr. Xiao Feng confirmed that Mr. Li Han Chun was present when Mr. Li Kwok Cheong had said that he would entrust the management of the business to Mr. Li Han Chun. The latter did not demur.⁹⁶⁹

1075. Of the opinion that he formed of the relationship between Mr. Li Kwok Cheong and Mr. Li Han Chun, Mr. Xiao Feng testified:⁹⁷⁰

“I just got the impression that... the chairman and himself knew each other pretty well, because the chairman knew about his family, his wife, his newly born kid, the CEO knew about the business, the museum, the gallery, that the chairman wanted to set up and whose artworks the chairman wanted to buy and all that. It seems to me that they knew each other pretty well, especially the details in their personal lives, the two knew each other very well. That's the impression to me.”

Ms. Xue Ying

1076. Ms. Xue Ying said in her record of interview that the opinion that she formed of the role of Mr. Li Kwok Cheong, in the more than two years, from October 2007 to December 2009 that she was involved as a director of Corporate Finance in the Beijing representative office of Cazenove in the IPO of China Forestry, was that:⁹⁷¹

“...he was mainly in charge of making major decisions. Of minor matters in general, the Chairman delegated and let the CEO decide. Only big decisions required

⁹⁶⁸ Transcript 19 April 2023, page 67.

⁹⁶⁹ Transcript 19 April 2023, pages 87-88.

⁹⁷⁰ Transcript 19 April 2023, page 70.

⁹⁷¹ Witness Evidence Bundle E2; page 3884, counter #149.

communication with the Chairman and (things) could only be (done) with the consent of the chairman.”

Professor Wong Tak Jun

1077. In his record of interview, dated 23 March 2011, Professor Wong Tak Jun, who had been an independent non-executive director of China Forestry since its listing on 3 December 2009 but who had been appointed a director on 3 April 2008, said of his understanding of the role of Mr. Li Kwok Cheong, that:⁹⁷²

“...although Li Kwok Cheong has a significant shareholding (in the company) it seems to me that (he is) really... detached from (the company). He knows more about the general directions of the company, and he may have a close relationship with the government or stronger local (ties). However, I think he isn’t really clear about the operation.”

The key personnel in China Forestry

1078. It was a constant refrain of Mr. Li Kwok Cheong’s witness statement that an understanding of his role in China Forestry, in contrast to the role of Mr. Li Han Chun, was to be gained by having regard to the evidence that key personnel in China Forestry had been recruited by and reported to Mr. Li Han Chun.⁹⁷³ In consequence, it was asserted that, “...all teams (including branch offices, Beijing, Hong Kong) were basically teams that were assigned or mobilised by him.” Further, Mr. Li Kwok Cheong contended that the determination of the issue of his knowledge of and participation in the making of false statements, fabricating of documents and their propagation was to be made by having regard to that evidence.

Relationship with key personnel in China Forestry

1079. In his first record of interview by the Commission, Mr. Li Kwok Cheong said that, in preparation for the IPO, the assets of Beijing Zhaolin had been transferred to Kunming Ultra Big. Also, the team of personnel recruited by Mr. Li Han Chun were transferred. By contrast, his brother, Mr. Li Hai Jun, was the only person he caused to be transferred.

Li Hai Jun

1080. Mr. Li Hai Jun was described in the Prospectus as the Chief Sales Officer of the Group,

⁹⁷² Witness Evidence Bundle C2, page 2359, counter#143.

⁹⁷³ Mr. Li Kwok Cheong’s Witness Statement, paragraphs 31.9 and 37-42.

responsible for sales and marketing management, having joined the Group in February 2008. Prior to that he had been the personal assistant of Mr. Li Kwok Cheong for about 3 years. He had graduated from Sichuan Agricultural University in 1992, having completed studies in forestry and thereafter had worked in forestry management, and the harvesting and sale of timber.⁹⁷⁴

1081. In his evidence, Mr. Xiao Feng said that he had been received by Mr. Li Hai Jun in Sichuan when Carlyle had conducted a due diligence visit in 2007.⁹⁷⁵

Mr. Li Hai Jun's misconduct

KPMG's 2009 audit: bank statements of China Forestry's account with the Ya'an branch of ICBC

1082. In the course of the KPMG audit of China Forestry in April 2010 for the financial year 2009, irregularities were discovered in bank statements for the account of Kunming Ultra Big provided by China Forestry, purporting to be from the Ya'an Branch of ICBC in Sichuan Province. That precipitated enquiries by KPMG and independent accountants. In the result, it was determined that Mr. Li Hai Jun, the manager of the Ya'an branch of China Forestry, had "...tampered with the bank statements given to the audit team in order to support fictitious transactions". In particular it was noted in the Summary of audit issues, that:⁹⁷⁶

"(Certain wages and welfare given to forest farmers was fictitiously recorded as having been transferred through Ya'an bank account when in fact they were paid by cash from the manager's personal account.) The audit committee has been notified and an internal investigation is being conducted by the Company."

1083. Of the latter statement, the Summary noted, "The company has hired independent third party to assist in conducting an internal investigation. We have obtained and review the reports (S12) with satisfactory result."⁹⁷⁷

9 April 2010: KPMG site visit to the Ya'an branch of ICBC

1084. For her part, Ms. Naomi Lau said that on 9 April 2010 she had visited the Ya'an branch of ICBC and obtained copies of bank statements for January to June 2009. She made a note of

⁹⁷⁴ Exhibits Bundle 1A, page 224.

⁹⁷⁵ Transcript 17 April 2023, page 142.

⁹⁷⁶ Exhibits Bundle 14A; page 10293, paragraph 6-KPMG's Summary of Audit Issues.

⁹⁷⁷ Exhibits Bundle 14A, page 10294.

the fact of her receipt of the bank statements on one of the pages.⁹⁷⁸ The visit was reflected in KPMG minutes.⁹⁷⁹ Those bank statements were compared with 12 pages of bank statements for the whole year, January to December 2009, provided earlier to KPMG by Mr. Gao Yanqing of China Forestry.⁹⁸⁰ Each of those pages bore the chop impression of, ‘Ya’an City Industrial and Commercial Bank of China, Kang Zang Sub-Branch.’ Ms. Naomi Lau marked those statements, ‘Falsified bank statements obtained from client during final audit’. The latter bank statements purported to reflect credits to the account on a monthly basis of between RMB 200,000 to RMB 350,000. By contrast, the bank statements obtained from the bank reflected quite different and much smaller deposits and less activity in the account.

KPMG: 2009 Audit-Sequence of Events

1085. The KPMG record, ‘Sequence of Events’ noted that Ms. Naomi Lau’s report to KPMG of the discovery of different bank statements for the same account and period of time at ICBC had been reported to China Forestry’s Audit Committee on 10 April 2010. They had been advised that the outstanding issues might not be resolved by 12 April 2010, the date on which China Forestry was scheduled to announce its 2009 results. KPMG reminded China Forestry that it was the company’s responsibility to ensure that the financial statements are fairly stated and the audit completed before the results were announced. Further, that KPMG would not be in a position to issue a clean audit opinion before the completion of China Forestry’s internal investigation into the matter. In consequence, it appears that the SEHK agreed to China Forestry’s request that the announcement of its results be postponed for two weeks, namely until 26 April 2010. On 16 April 2010, Mr. Li Han Chun advised KPMG that China Forestry had engaged two mainland CPAs to conduct the investigation. The final entry in the ‘Sequence of Events’ noted that, on 26 April 2010, “...signed reports on investigation results received from local audit firms.”⁹⁸¹

21 April 2010: KPMG meeting with Mr. Shi Chuansheng and Madam Wu Xiaofen

1086. The KPMG minutes of the meeting between Mr. Shi Chuansheng, Madam Wu Xiaofen and Mr. Albert Lui, and others from KPMG, on 21 April 2010 noted that:⁹⁸²

⁹⁷⁸ Exhibits Bundle 13A, pages 9569-9572.

⁹⁷⁹ Exhibits Bundle 13B, page 10120.

⁹⁸⁰ Exhibits Bundle 13A, pages 9573-9596. Witness Evidence Bundle G1; page 5187, counter #1258.

⁹⁸¹ Exhibits Bundle 14A, pages 10346-10351.

⁹⁸² Exhibits Bundle 14A, pages 10235 and 10237.

- “7. Shi Chuansheng confirmed that he and Li Hai Jun are aware of the modification of bank vouchers of the Company and bank statements of Sichuan Ya’an. He stated that the funds (i.e. the salaries of forest farmers) are transferred to the personal bank accounts of Li Hai Jun for convenience sake. Li Hai Jun can distribute the salaries to forest farmers in a more efficient way with the funds transferred to his personal bank accounts. In order to comply with the Group’s policy, they modify the payee on the bank vouchers of the Company and bank statements of Sichuan Ya’an.
8. Shi Chuansheng confirmed that he and Xue Jiang, Accountant of the company, Li Hai Jun, and Wang Ying Ping, Accountant of Sichuan Ya’an, are involved in the aforementioned transactions.”

CPA Investigation reports: Sichuan Yongdaohe and Yunnan Zhida

1087. As noted earlier, two Mainland CPA firms were instructed to make enquiries into the irregularities discovered by KPMG in respect of Kunming Ultra Big’s account with the Ya’an Sub-Branch of ICBC, namely Yongdaohe CPA, in Sichuan Province, and Zhida CPA, in Yunnan Province.

1088. In its report, 22 April 2010, Yongdaohe stated that it had found that Mr. Li Hai Jun had forged various documents, including records purporting to reflect purchasing of Social Security; records of payment of salaries to workers through the bank; and ICBC bank statements purporting to be in respect of the account of Kunming Ultra Big.⁹⁸³

1089. In its report, dated 24 April 2010, Zhida CPA noted that, after Kunming Xukun CPA had informed Mr. Li Han Chun on 17 April 2010 that it, “...was not confident that it could complete the investigation in time”, with Mr. Li Han Chun’s approval, Zhida had taken up the investigation. Zhida found that Mr. Li Hai Jun arranged with Mr. Shi Chuansheng:⁹⁸⁴

“...to help transfer the funds of the company to his personal account in Zunyi, Guizhou province. He would withdraw cash from this person (al) account to pay salaries to the forest workers and deposit the balance into the bank account of Ya’an branch of Kunming Ultra Big... to pay for normal expenses and reserves to avoid audit and examination by the head office and accounting organisation.”

⁹⁸³ Exhibits Bundle 14A, page 10253.

⁹⁸⁴ Exhibits Bundle 14A, page 10327.

It noted, “As to the account of Ya’an branch, there were no other problems except the forgery of accounting documents by Li Hai Jun.”⁹⁸⁵

Mr. Li Kwok Cheong’s knowledge of Mr. Li Hai Jun’s misconduct

1090. In response to being asked in his first record of interview if, after KPMG had discovered irregularities in its audit in April 2010, he was aware that China Forestry had commissioned investigations by two Mainland accounting firms into payments made in cash, but not properly reflected in China Forestry’s accounts, involving Mr. Li Hai Jun and Mr. Shi Chuansheng, Mr. Li Kwok Cheong said, “...my recollection is not deep”. He said that he had not asked either of them about the matter. He understood that his younger brother, “...specifically did wrong. But as to what he had done, I really don’t quite understand.” He added, “... regarding Li Hai Jun, there was a punishment, right? There was deduction of his wages or what, because I didn’t quite understand about it.” He complained, “...it was Li Han Chun who set him up.”⁹⁸⁶

1091. In context, it is to be remembered that the KPMG enquiries and report to the Audit Committee were made immediately before China Forestry was scheduled to announce its 2009 Results. Similarly, the two investigation reports by the Mainland accountants were made available only two days before China Forestry’s postponed date of that announcement. In the event, the announcement was made on 26 April 2010.⁹⁸⁷

1092. The discovery of forged bank statements provided to its auditors by China Forestry was clearly a matter that might have impacted on the willingness of KPMG to sign off their report. No doubt, that is why a second firm of Mainland accountants was appointed, when the first firm indicated that it might not be able to complete the investigation report as expeditiously as required.⁹⁸⁸ Mr. Li Kwok Cheong signed the minutes of the China Forestry’s board of directors meeting, dated 26 April 2010, at which KPMG’s auditor’s report for the year was received and approved, as was the Annual Report 2009 and the Result Announcement.⁹⁸⁹

1093. In those circumstances, we are satisfied that Mr. Li Kwok Cheong did know not only about the enquiries into his brother’s conduct but also the results. We do not accept his statements in his record of interview to the contrary. They were entirely disingenuous. The forgery of statements of the company’s bank account and the supply of those false documents

⁹⁸⁵ Exhibits Bundle 14A, page 10328.

⁹⁸⁶ Witness Evidence Bundle A1; pages 172-175, counter #s 2826-2873.

⁹⁸⁷ Exhibits Bundle 2B, pages 1563-1601.

⁹⁸⁸ Exhibits Bundle 14A, page 10323.

⁹⁸⁹ Exhibits Bundle 23A, pages 17058-17061.

to the auditors was a most serious matter for a publicly listed company, of which Mr. Li Kwok Cheong was chairman.

Mr. Li Kwok Cheong's explanations to KPMG's audit enquiries in January 2011

23 January 2011: KPMG meeting in Hong Kong attended by Mr. Li Kwok Cheong

1094. Mr. Li Kwok Cheong travelled to Hong Kong to attend the meeting at the offices of KPMG at 8/F Prince's Building on 23 January 2011. Clearly, the meeting was of importance. Mr. Xiao Feng said that he had been contacted, whilst he was in Hainan, by Mr. Li Kwok Cheong who invited him to fly to Hong Kong to join the meeting. He was unable to do so because of his business in Hainan.⁹⁹⁰ In an email, Professor Wong had also invited him to attend. However, in the event, only Mr. Li Kwok Cheong and Professor Wong of China Forestry attended the meeting.

22 January 2011

1095. Prior to the meeting of 23 January 2011, Professor Wong attended a meeting with KPMG at Chinese University on the afternoon of Saturday, 22 January 2011, at which the four issues to be raised at the meeting attended by Mr. Li Kwok Cheong on 23 January 2011 were discussed, namely:

- the validity of the bank codes stipulated on bank-in slips for payments by customers to China Forestry's account with Huaxia Bank in Kunming;
- audit confirmations of forest insurance policies of China Forestry with PICC; the validity of (i) different logging permits with identical handwriting and chop impressions in the same place; and (ii) different sets of logging permits with the same serial numbers for the same forests, but different particulars, provided to KPMG by China Forestry on different dates, namely July and December 2010; and
- the validity of forestry rights certificates issued in the name of Guizhou Wosen, with dates predating the incorporation of the Guizhou Wosen subsidiary.

1096. KPMG said that the information provided by Mr. Wen Guoping on 20 January 2011 that six of China Forestry's customers had bank accounts in a rural credit union in Luxi City had been investigated and rejected: the bank code of that rural credit union was different from the bank code on the bank-in slips provided to KPMG by China Forestry. In addition, KPMG

⁹⁹⁰ Witness Evidence Bundle C2; pages 2234-2235, counter #199.

said that Huaxia Bank had said that the impression of the bank chop made on bank statements provided by China Forestry was not one used by the Bank. Further, the format of those bank statements was different from the format used in all other Huaxia Bank statements in Yunnan encountered by KPMG.

Fraud

1097. At the conclusion of the meeting, KPMG informed Professor Wong that it was concerned that fraud had been committed by the Company or the Company's management and advised him to obtain independent legal advice. For his part, Professor Wong said that he began to worry that there was a serious problem and contacted Mr. Raymond Tong, asking him to tell Mr. Li Kwok Cheong to come to meet KPMG.⁹⁹¹

23 January 2011

1098. At his request, Professor Wong attended a meeting at KPMG's offices in Hong Kong at 4:30 p.m. on 23 January 2011, immediately prior to the meeting arranged for the attendance of Mr. Li Kwok Cheong. The four topic headings addressed in the previous day were revisited.

Bank balances

1099. In response to the enquiries from Squire, Sanders & Dempsey, KPMG advised that according to the bank statements provided by China Forestry there was a balance in its bank accounts with Huaxia Bank at 31 December 2010 of around RMB 1.2 billion, but that had not been checked pending provision of the requisite authorisation by China Forestry to the Bank.

1100. In context, it is to be remembered that KPMG had first raised with China Forestry various audit issues in a telephone conference meeting on 14 January 2011. Mr. Li Han Chun, Mr. Wen Guoping and Mr. Raymond Tong participated in that meeting, at which the issue of bank codes stipulated on Bank pay-in slips for payments by customers to China Forestry's account with Huaxia Bank in Kunming was raised. Mr. Li Han Chun and Mr. Wen Guoping had contended that the apparent irregularities of the bank codes were explained by the fact that the Bank accounts were with rural credit unions. For his part, Mr. Xiao Feng said that, although he was not informed of the details, he had been informed in telephone calls that KPMG had found audit irregularities by either or both Mr. Li Kwok Cheong and Mr. Li Han Chun.⁹⁹²

⁹⁹¹ Witness Evidence Bundle C2; pages 2379-2380, counter #393.

⁹⁹² Transcript 17 April 2023, pages 77-78.

23 January 2011

1101. At the meeting at 5:40 p.m. on 23 January 2011, attended by Mr. Li Kwok Cheong, KPMG once again addressed the four separate topics canvassed in the earlier meetings. Professor Wong denied that he had talked to Mr. Li Kwok Cheong about the audit problems prior to that meeting.⁹⁹³

Bank codes

1102. Of the issue of bank codes, in face of the statement that KPMG had "...concern on the customer's bank accounts", Mr. Li Kwok Cheong reiterated the explanation given in the earlier meeting by Mr. Li Han Chun and Mr. Wen Guoping, namely that China Forestry's customers use bank accounts in rural credit unions. It is to be noted that Mr. Li Kwok Cheong did not assert lack of knowledge or lack of information on the issue. He did not say that, as Chairman of the company, he was not involved in the day-to-day operations issues. Rather, he advanced an unqualified assertion of fact. The assertion was false. In doing so, he added his weight to the existing false assertions made by Mr. Wen Guoping and Mr. Li Han Chun.

1103. Even in face of the explicit repudiation of his assertion by KPMG, on the basis that their enquiries established the bank codes of rural credit unions did not match those on the bank-in slips, albeit that he now conceded that he, "...didn't know the details", Mr. Li Kwok Cheong merely said he did not think that the management of the company would conduct any illegal acts and persisted with his explanation for the irregularity, namely the use of rural credit unions, now claiming that they might be using a different bank code.

Logging permits

1104. Of the concern of KPMG that different sets of logging permits were in the same handwriting with chop impressions placed at the same place, Mr. Li Kwok Cheong asserted that each Forestry Bureau assigned one person to issue logging permits, with the result that the handwriting on different permits was similar. Once again, he did not assert lack of knowledge of information. Rather, he made that unqualified assertion of fact. In doing so, he asserted a familiarity with the process of the issue of logging permits.

Forestry Rights Certificates

1105. Of the explanation given earlier by China Forestry, that the fact that the forestry rights

⁹⁹³ Witness Evidence Bundle C2; page 2385, counter #469.

certificates issued in the name of Guizhou Wosen bore issue dates of 2008 and 2009, which preceded the incorporation of Guizhou Wosen, namely that the Forestry Bureau stipulated the first transfer date as the date of issue, Mr. Li Kwok Cheong explained that the Forestry Bureau might use the first transfer date as the issue date in order to match the expiry date of the certificate.

Possible irregularities and inflated financial information

1106. Having asserted that Chinese agriculture was very backward, that the management of China Forestry was not very experienced and that KPMG, "...should not make a conclusion too quickly", Mr. Li Kwok Cheong went on to say that there were possible irregularities and inflated financial information in the forestry industry which needed some time to resolve.

25 January 2011

1107. Not surprisingly, Mr. Li Kwok Cheong's reference to possible irregularities and inflated financial information was the subject of focus in KPMG's letter, dated 25 January 2011, to the board of directors of China Forestry:⁹⁹⁴

"...we need the Company to clarify the nature of such alleged practices and the extent to which any such alleged practices may be present in the Group's financial records..."

29 January 2011

1108. The response of China Forestry to KPMG's enquiry, in a letter, dated 29 January 2011, signed on behalf of the board by Mr. Li Kwok Cheong, asserted that at the meeting of 23 January 2011, Mr. Li Kwok Cheong was referring to "...known practice in the PRC forestry industry that some of the forest operators in this industry would harvest a larger area of forest than what they are permitted." The letter went on to deny that China Forestry had engaged in such practice.⁹⁹⁵

1109. We accept that there is considerable force in the Commission's submission that Mr. Li Kwok Cheong's explanation for his statements at the meeting of 23 January 2011 makes no sense. What was the point of making the observation in response to specific, stipulated audit irregularities, if it had no actual relevance at all to China Forestry's conduct? On the other hand, it was relevant, if it was an acknowledgement of knowledge of irregularities and inflated

⁹⁹⁴ Exhibits Bundle 15B, page 11403.

⁹⁹⁵ Exhibits Bundle 16, pages 11817-11818.

financial information by China Forestry. We are satisfied that it was the latter.

Forestry rights certificates

1110. Highly relevant to the issue of the validity of forestry rights certificates issued in the name of Kunming Ultra Big and Guizhou Wosen, in particular Mr. Li Kwok Cheong's assertions in respect of the latter in the meeting with KPMG on 23 January 2011, is his acceptance that,⁹⁹⁶

“I had visited and inspected all the forest lands held by the Group (including Sichuan province, Yunnan province and Guizhou province) to understand the local forestry resources there and meet up (with?) the local government officials...”

1111. In his second record of interview by the Commission, to which reference was made in his witness statement, Mr. Li Kwok Cheong said that he had made visits to look at the forest lands acquired by China Forestry and to do so had been to “...Yunnan, Sichuan and Guizhou.” He had been there, “... many times over the years”.⁹⁹⁷ He agreed that he had been doing that since 2004. Of the purpose of his visits, he said:⁹⁹⁸

“I also had to go to have a look. Our land was concentrated in ...the forest land was mainly in a few prefectures in Yunnan, namely Leshan, Ya'an and Liangshan and there were some counties in each of the prefectures, say Yongjing, E'bian, Meigu these counties. I've been there. I also had to go there to have a look. What's more, (I) communicated with the leaders of the local government, so as to understand its policies, which differed in every place, province and city.”

1112. Of relevance to a determination of the role actually performed by Mr. Li Kwok Cheong is the evidence that he recommended the appointment of Mr. Li Zhi Tong, the vice-chairman of CCPEF, as a non-executive director, the description in the Prospectus of whose contribution to China Forestry was that it facilitated China Forestry's acquaintance with some local government officials. Clearly, on Mr Li Zhi Tong's evidence, which we accept, Mr. Li Kwok Cheong was personally actively involved in developing China Forestry's business and progressing its IPO application.

1113. It is to be remembered that many of the 51 forestry rights certificates found not to be

⁹⁹⁶ Mr. Li Kwok Cheong's Witness Statement; page 104-16, paragraph 33.

⁹⁹⁷ Witness Evidence Bundle A2; page 434, counter #s 1127-1129.

⁹⁹⁸ Witness Evidence Bundle A2; page 434, counter #1125.

authentic in the enquiries made by Fangda and those assisting them were issued by forestry bureaux located in the very prefectures and counties that Mr. Li Kwok Cheong said he had visited to inspect forest lands, meet with local officials and discuss policies. Given that Mr. Li Kwok Cheong was the founder of the forestry business of what became China Forestry, which had acquired forest lands before Mr. Li Han Chun ever joined the company, and the fact that he had an ongoing huge personal financial interest in China Forestry through his majority shareholding, such conduct of Mr. Li Kwok Cheong was entirely understandable. The validity and authenticity of the forestry rights certificates was the core of the asset value of China Forestry. However, Mr. Li Kwok Cheong's conduct belies his repeated assertions that the acquisition of forest land and the handling of documentation was all left to Mr. Li Han Chun and third-party professionals, such that he had reasonable grounds to believe that the certificates were, "... authentic, legitimate and valid."⁹⁹⁹ We reject those assertions.

⁹⁹⁹ Mr. Li Kwok Cheong's Witness Statement; page 104-74, paragraph 127.

CHAPTER 21

Disclosure of false or misleading information inducing transactions

I. Prospectus

Authorization of disclosure, circulation or dissemination

1114. There is no dispute that, on 5 November 2009, as members of the board of directors of China Forestry, Mr. Li Kwok Cheong and Mr. Li Han Chun authorised the disclosure, circulation and dissemination of the China Forestry Prospectus, which was published on 19 November 2009.¹⁰⁰⁰ Earlier, at a meeting of the board of directors of China Forestry on 4 September 2009 they had approved the making of the third application for listing and the draft Prospectus.¹⁰⁰¹

1115. The Prospectus stated, beneath the rubric, ‘DIRECTORS’ RESPONSIBILITY FOR THE CONTENTS OF THIS PROSPECTUS’:¹⁰⁰²

“Our directors collectively and individually accept full responsibility for the accuracy of the information contained in this prospectus and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement in this prospectus misleading.”

1116. The minutes of the directors meeting, dated 5 November 2009, stated that Mr. Li Kwok Cheong had informed the meeting that, in respect of the Prospectus:¹⁰⁰³

“The directors would be collectively and individually responsible (with civil and criminal liability) for the accuracy of their contents and any omission of material information, as at the date of its publication”.

1117. The minutes went on to note that the directors confirmed that they:¹⁰⁰⁴

“...had read the Prospectus comprehensively and understood the same in full and accepted full individual and collective responsibility for the contents and the accuracy of the information given therein. The directors further confirmed that:

¹⁰⁰⁰ Exhibits Bundle 7A, pages 4870-4905.

¹⁰⁰¹ Exhibits Bundle 5, page 3689.

¹⁰⁰² Exhibits Bundle 1A, page 77.

¹⁰⁰³ Exhibits Bundle 7A; page 4881, paragraph 7.1.

¹⁰⁰⁴ Exhibits Bundle 7A; page 4886, paragraph 7.13.

- (i) having made all reasonable enquiries, to the best of their knowledge and belief, there were no other facts the omission of which would make any statement in the Prospectus misleading,
- (ii) all expressions of belief, opinion, expectations or opinion in the Prospectus in relation to the company and its prospects were bona fide and properly held and had been made after due and proper consideration of all material facts,
- (iii) they were satisfied that the Prospectus complied with all the requirements set out in the Listing Rules, the Companies Ordinance, the Stock Market Listing Rules, the SFO and all the listing requirements of the Stock Exchange,
- (iv) the Prospectus contained such particulars and information, according to the particular nature of the Group, which were necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, management, prospects and financial position of the Group and its profits and losses and of the rights attaching to such securities at the time of the investor's application,
- (v) the Prospectus neither contains any untrue statement of a material fact nor omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading,
- (vi) he would promptly inform the other Directors and the Underwriters if he subsequently became aware of any reason to doubt any of the foregoing.”

[Text reconfigured to set out items (i) to (vi) separately.]

False or misleading information

1118. We accept Mr. Sutton's evidence that key components of the Profit and Loss account and Balance Sheet for FY 2008 were overstated and required to be adjusted significantly, namely:¹⁰⁰⁵

	31-Dec-2008	
PROFIT AND LOSS	Original	Adjusted
Turnover	544,947,744 ¹⁰⁰⁶	45,979,933
PROFIT/(LOSS) FROM OPERATING ACTIVITIES	5,884,148,296	(2,259,707,355)
NET PROFIT	5,881,774,698	(2,262,080,953)

¹⁰⁰⁵ Expert Evidence Bundle 5A; page 3053, Appendix 9.0: 'Summary the Group's adjusted financial statements for FY 2008, FY 2009 and Interim 2010 (RMB)'.

¹⁰⁰⁶ Exhibits Bundle 1A, page 25-'Summary Consolidated Income Statements'.

31-Dec-2008		
<u>BALANCE SHEET</u>	Original	Adjusted
NET ASSETS	7,435,350,241 ¹⁰⁰⁷	(323,360,910)
Lease prepayments	225,826,779	4,283,589
Plantation assets	7,693,000,000	115,000,000

1119. We are satisfied that the Prospectus contained multiple pieces of information that were false or misleading as to material facts, in particular financial information.

Listing Rules

(1) Profit Test

1120. We accept Mr. Sutton's opinion that, given the adjustment to the Profits for FY 2008 to a loss of RMB 2,262,080,953 from the claimed profit of RMB 5,881,774,698, China Forestry would not have met the requirements of the Profit test of the 'Qualifications for Listing' of the SEHK Main Board Listing Rules¹⁰⁰⁸, namely that the "profit...in respect of the most recent year, be not less than HK\$20,000,000."

(2) Market capitalization/revenue/cash flow Test (3) Market capitalization/revenue Test

1121. Similarly, we accept Mr. Sutton's opinion that, given the adjustment to the Turnover for FY 2008 to RMB 45,979,933 from a claimed Turnover of RMB 544,947,744, China Forestry would not have met the requirement of the Market capitalization/revenue/cash flow test, namely "a revenue of at least HK\$500,000,000 for the most recent audited financial year."¹⁰⁰⁹ Finally, we accept Mr. Sutton's opinion that, for the same reason, China Forestry would not have met the Market capitalization/revenue test.¹⁰¹⁰

Effect of the disclosure of false or misleading information

1122. Obviously, the primary purpose of the publication of the information in the Prospectus was to induce others to subscribe for China Forestry shares. We accept Ms. Pao's opinion that

¹⁰⁰⁷ Exhibits Bundle 1A, page 28-'Summary Consolidated Balance Sheets'.

¹⁰⁰⁸ Expert Evidence Bundle 13A, page 8831. Listing Rules, Chapter 8.05(1). Expert Evidence Bundle 5A; page 3060, Appendix 10.0.

¹⁰⁰⁹ Expert Evidence Bundle 13A, page 8831. Listing Rules, Chapter 8.05(2). Expert Evidence Bundle 5A; page 3061, Appendix 10.1.

¹⁰¹⁰ Expert Evidence Bundle 13A, pages 8831-8832. Listing Rules, Chapter 8.05(3). Expert Evidence Bundle 5A; page 3062, Appendix 10.2.

each of the six pieces of information asserted in the Prospectus and described above, together with assertions that China Forestry possessed forestry rights arising from 51 forestry rights certificates, individually or collectively would: ¹⁰¹¹

“...likely induce investors or potential investors to subscribe for China Forestry’s shares at its listing.”

We accept her evidence that consequence was more likely than not. Clearly, that included the consequence being a “real prospect”.

In explaining that opinion, Ms. Pao said that, taken collectively, the information, “...portrayed China Forestry as a leading forestry operator with good growth prospect.” She noted that, in fact, the Offer was oversubscribed by 113.8 times.

II. 2009 Annual Results.

Authorization of disclosure, circulation or dissemination

1123. At a meeting of the board of directors of China Forestry on 26 April 2010, attended by Mr. Li Kwok Cheong and Mr. Li Han Chun, the board of directors approved and adopted the 2009 Annual Report and the 2009 Results Announcement and authorised their publication.¹⁰¹²

False or misleading information

1124. We accept Mr. Sutton’s evidence that, once again, key components of the Profit and Loss account and Balance Sheet for FY 2009 were overstated and required to be adjusted, namely including:

	31-Dec-2009	
PROFIT AND LOSS	Original	Adjusted
Turnover	793,692,961	65,407
Operating expenses for logging activities	(185,801,450)	-
PROFIT/(LOSS) FROM OPERATING ACTIVITIES	589,522,663	2,042,646
NET PROFIT	511,630,413	(75,849,604)

¹⁰¹¹ Expert Evidence Bundle 16; pages 11170-11171, paragraph 5.11.

¹⁰¹² Exhibits Bundle 23A, pages 17058-17061.

31-Dec-2009		
BALANCE SHEET	Original	Adjusted
Cash and cash equivalents	1,706,636,428	1,692,469,250

1125. We are satisfied that China Forestry's 2009 Annual Report¹⁰¹³ and the 2009 Results Announcement¹⁰¹⁴ contained multiple pieces of information that were false or misleading as to material facts, in particular financial information.

Effect of the false or misleading information

1126. We accept Ms. Pao's opinion that each of the five pieces of information described above and set out in the 2009 Annual Report and the 2009 Results announcement singly on its own, but together with the information disclosed in the Prospectus, would:¹⁰¹⁵

“...likely induce investors or potential investors to purchase China Forestry's shares in Hong Kong, and would likely increase the price of China Forestry's shares in Hong Kong at or around the time of issuance of the 2009 Annual Results.”

We accept her evidence that consequence was more likely than not. Clearly, that included the consequence being a “real prospect”.

1127. Further, we accept Ms. Pao's opinion that, if the five pieces of information were considered collectively, together with the other pieces of information identified in paragraph 4.6 of her report, it would likely have the same effect.¹⁰¹⁶ In explaining that opinion, Ms. Pao said that the information collectively, “...confirmed investor's perception of China Forestry as portrayed in the Prospectus. With a successful IPO, the Group could embark on a profitable growth phase”.¹⁰¹⁷

¹⁰¹³ Exhibits Bundle 2A, pages 1051-1148.

¹⁰¹⁴ Exhibits Bundle 2B, pages 1563-1601.

¹⁰¹⁵ Expert Evidence Bundle 16; pages 11171-11172, paragraph 5.15.

¹⁰¹⁶ Expert Evidence Bundle 16; pages 11164-11165, paragraph 4.6.

(a)

(v) the changes in fair value of plantation assets less costs to sell and reversal of fair value of plantation assets upon logging and sales of the plantation assets as at 31 December 2009;

(b)

(i) the Group's forestry rights as at 31 December 2009;

(ii) the Group's prepaid insurance premium and amortization of insurance premium as at 31 December 2009;

(iii) the Group's net assets as at 31 December 2009; and

(iv) the Group's plantation assets and/or lease prepayments as at 31 December 2009.

¹⁰¹⁷ Expert Evidence Bundle 16; page 11172, paragraph 5.18.

1128. It was Ms. Pao's opinion that, based on, "...the average share price discount to NAV per share in the trading history of China Forestry and investors' perception of the state of affairs at China Forestry" that, at or around the time of issuance of the 2009 Annual Results, "...the share price of China Forestry would likely at least increase by 8.46% from HK \$3.19 to HK 3.46".¹⁰¹⁸

1129. Ms. Pao calculated that China Forestry shares traded at an average discount of 26.93% to its NAV per share since listing to the time of issuance of the 2009 Annual Results. The closing price of China Forestry shares on 26 April 2010, namely \$3.19, was a discount of 32.56% on China Forestry's latest reported NAV per share, namely RMB 4.16 which was the equivalent of \$4.73. Accordingly, it was her opinion that the price at which the shares were traded would increase to trade around the historic average discount of 26.93% to NAV per share.¹⁰¹⁹

1130. In vindication of that opinion, Ms. Pao noted that on 26 April 2010 China Forestry's shares closed on the SEHK at \$3.19 but, after the announcement of the 2009 Annual Results, rose to close at \$3.45 on 4 May 2010, an increase of 8.15%.

III. 2010 Interim Results/2010 Interim Report

Authorization of disclosure, circulation or dissemination

1131. A meeting of the board of directors of China Forestry on 26 August 2010, attended by Mr. Li Kwok Cheong and Mr. Li Han Chun, approved the 2010 Interim Report and 2010 Interim Results announcement and authorised their publication.¹⁰²⁰

False or misleading information

1132. We accept Mr Sutton's evidence that, once again, key components of the Profit and Loss account and Balance Sheet for Interim 2010, up to 30 June 2010, were overstated and required to be adjusted, namely including:

¹⁰¹⁸ Expert Evidence Bundle 16; page 11172, paragraph 5.19.

¹⁰¹⁹ Expert Evidence Bundle 16; page 11217, paragraph 7.75 and page 11228, paragraph 7.116.

¹⁰²⁰ Exhibits Bundle 23A, pages 17104-17106.

<u>30-Jun-2010</u>		
BALANCE SHEET	Original	Adjusted
Plantation assets	7,875,000,000	1,012,000,000
NET ASSETS	9,862,809,859	2,464,757,777

<u>30-Jun-2010</u>		
PROFIT AND LOSS	Original	Adjusted
Turnover	494,257,281	9,144
Profit/(Loss) from operating activities	428,306,858	826,969,637
NET PROFIT	429,294,736	827,684,515

1133. We are satisfied that China Forestry's 2010 Interim Report¹⁰²¹ and the 2010 Interim Results announcement¹⁰²² contained information that was false or misleading as to material facts, in particular financial information.

Effect of disclosure of the false or misleading information

1134. The Consolidated Income Statement and the Consolidated Balance Sheet in the 2010 Interim Results set out the comparative figures for the 6 months ended 30 June 2009 and as at 30 June 2010 and 31 December 2009 respectively.¹⁰²³

Consolidated Income Statement

	<u>Six months ended 30 June</u>		
	<u>2010</u> RMB (Unaudited)	<u>2009</u> RMB (Unaudited)	% Change
Turnover	494,257,281	373,247,913	+32.42%
Operating expenses for logging activities	(131,512,000)	(95,346,650)	+37.93%
Profit from operations	428,306,858	487,873,500	-12.21%
Profit for the period	429,294,736	432,070,640	-0.64%

¹⁰²¹ Exhibits Bundle 2A, pages 1153-1199.

¹⁰²² Exhibits Bundle 2B, pages 1602-1651.

¹⁰²³ Exhibits Bundle 2A, pages 1173-1175.

Consolidated Balance Sheet

	As at 30 June 2010 RMB (Unaudited)	As at 31 December 2009 RMB (Unaudited)
Plantation assets	7,875,000,000	7,767,000,000
Net Assets	9,862,809,859	9,594,459,207

1135. It was Ms. Pao's opinion that each of the three pieces of financial information described above in the Profit and Loss account and published in the 2010 Interim Results announcement and in the 2010 Interim Report singly on its own, but together with other information disclosed in the interim results of 2009:¹⁰²⁴

“...would likely induce investors or potential investors to purchase China Forestry's shares in Hong Kong, and would likely increase the price of China Forestry's shares in Hong Kong at or around the time of issuance of the 2010 Interim Results.”

(i) Turnover

Turnover for the six months, ended 30 June 2010, for Interim 2010 was up 32.42% over the six months, ended 30 June 2009, for Interim 2009.

(ii) Profit from operations

Ms. Pao said that although the interim profit from operations had dropped 12.21%, the figures included the unrealised gain from revaluation of the Group's plantation assets. Excluding the changes in fair value of plantation assets less costs to sell and reversal of the fair value of plantation assets upon logging and sales of the plantation assets, the “true profit” for Interim 2010 was RMB 320,499,728. That compared with the “true profit” for Interim 2009 of RMB 246,955,264 was an increase of 29.78%. That was a “respectable” increase in profit from operations.¹⁰²⁵

(iii) Profit for the period

Ms. Pao said that, although the profit for the period had dropped 0.64%, the “true profit”, after making adjustments to remove the effect of plantation assets revaluation, described earlier, was

¹⁰²⁴ Expert Evidence Bundle 16; page 11172, paragraph 5.22.

¹⁰²⁵ Expert Evidence Bundle 16; page 11221, paragraphs 7.89-7.90.

an increase of 68.18% from \$191,152,404 for Interim 2009 to \$321,487,606 for Interim 2010.¹⁰²⁶

1136. On the other hand, Ms. Pao identified two pieces of information which she said, singly on their own, but together with other information disclosed in the Interim Results of 2009, "...would likely induce investors to sell China Forestry's shares and would likely decrease the price of China Forestry's shares at or around the time of issuance of the 2010 Interim Results." That information was:

- (i) the Group's operating expenses for logging activities, namely RMB 131,512,000; and
- (ii) the Net Asset Value of the Group, as at 30 June 2010, namely RMB 9,862,809,859.

(i) Operating expenses for logging activities

1137. The increase in operating expenses for logging activities, 37.93%, was greater than the increase in turnover, 32.42%. Accordingly, China Forestry's operating margin had deteriorated. That would be seen as negative news by investors.¹⁰²⁷

(ii) NAV

1138. Ms. Pao said that the significance of the Net Asset Value, as at 30 June 2010, was that, "...the valuation of China Forestry's shares (as measured by the share price discount to the latest reported NAV per share) was less than its historical average."¹⁰²⁸ NAV was calculated by dividing the net assets at the end of a financial period by the weighted average number of shares outstanding. On 31 December 2009, it was RMB 4.16 per share, and RMB3.22 on 30 June 2010. In the period on and between 27 August 2010 and 2 September 2010, on a 'Closing' basis, China Forestry's shares traded in the range of \$3.00 to \$3.22 per share, the equivalent of RMB 2.62 to RMB 2.81, namely at a discount of around 12.73% to 18.63% to the NAV as per the 2010 Interim Results. Prior to the release of those results they traded at an average discount to the latest reported NAV of 31.51%. The share price discount of between 12.73% and 18.63% was, "meaningfully less than the historical average, hence the shares would not be perceived as cheap". That would induce the sale of China Forestry shares and cause the traded price to

¹⁰²⁶ Expert Evidence Bundle 16; page 11222, paragraphs 7.92-7.93.

¹⁰²⁷ Expert Evidence Bundle 16; page 11220, paragraph 7.87.

¹⁰²⁸ Expert Evidence Bundle 16; pages 11172-11173, paragraphs 5.23-5.26.

decrease.¹⁰²⁹

Collective impact of the information disclosed in the 2010 Interim Results

1139. Having identified individual factors, some of which on their own were likely to induce buying of China Forestry shares, some of which on their own were likely to induce selling of China Forestry shares and some of which were neutral in that respect, Ms. Pao said that in her opinion:

“...the information collectively would likely induce investors or potential investors to sell China Forestry’s shares and would likely cause the share price of China Forestry to fall.”¹⁰³⁰

1140. Subsequently, having confirmed her opinion of the negative impact singly of the information in respect of increased operating expenses for logging and the discount at which China Forestry shares traded to NAV, Ms. Pao said:¹⁰³¹

“I believe that investors would be more forgiving when taking the big picture into consideration. After all, the information was only for the six months after the Group’s listing in December 2009.”

On the other hand, she observed that the Interim Results, “...did not contain any information depicting unexpected progress in China Forestry’s business activities.”

1141. In the result, Ms. Pao persisted in her opinion that, collectively the information in the 2010 Interim Results, would likely induce investors to sell China Forestry shares.

1142. For her part, Ms. Pao noted that, as some vindication of that opinion, the 2010 Interim Results announcement having been made before trading began on 27 August 2010, China Forestry shares fell that day, to close 0.6% down, and fell further on the next day of trading on 30 August 2010 to close 5.9% down.¹⁰³²

Conclusion

1143. With great respect, we do not accept Ms. Pao’s opinion that collectively the information contained in the 2010 Interim Results would likely induce investors or potential investors to

¹⁰²⁹ Expert Evidence Bundle 16; pages 11224-11225, paragraphs 7.102-7.103.

¹⁰³⁰ Expert Evidence Bundle 16; page 11173, paragraph 5.26.

¹⁰³¹ Expert Evidence Bundle 16; page 11229, paragraph 7.122.

¹⁰³² Expert Evidence Bundle 16; page 11173, paragraph 5.28.

sell China Forestry shares and would likely cause the share price of China Forestry to fall. The 2010 Interim Results showed a trend of increasing turnover (25%) and net profit (68%), when annualised and compared with FY 2009. However, this increase would have been expected by investors who had bought shares in the IPO, in which a large amount of capital had been raised, given that the company had been marketed and promoted as a growth company, in an acquisitive mode, with a large portfolio of forestry assets. Indeed, as observed earlier, Ms. Pao had noted that the Prospectus, "...portrayed China Forestry as a leading forestry operator with good growth prospects" and added that, "... the Offer was oversubscribed by 113.8 times."

1144. Investors would reasonably conclude that the "growth story", that they bought into in the IPO, was being delivered by the management, as promised. It is not obvious that investors would view the published financial information in the 2010 Interim Results as negative and disappointing to investors, and thereby likely to induce investors to sell their shares or not buy more shares, nor as exceeding expectations and thereby a positive sign. Investors' expectations were simply met.

1145. In the result, in our judgement, the collective effect of the information in the 2010 Interim Results was neutral and not likely to induce investors to sell or purchase China Forestry shares.

Knowing, or being reckless or negligent as to whether, disclosed information is false or misleading as to material facts

Mr. Li Han Chun

(i) Prospectus; (ii) 2009 Annual Report; and (iii) 2010 Interim Results/2010 Interim Report

1146. In the record of interview conducted of Mr. Li Han Chun by China Securities Regulatory Commission, dated 31 July 2014, the minutes of China Forestry's board meetings dated 4 September 2009 and 5 November 2009, together with the minutes of the board meetings, dated 26 April 2010 and 26 August 2010, at which the 2009 Annual Report and 2010 Interim Results/2010 Interim Report respectively had been approved, were produced to him. He was asked if he had participated in the meetings, approved the resolutions and if he had reviewed those documents before doing so. Mr. Li Han Chun replied:¹⁰³³

¹⁰³³ Witness Evidence Bundle B1, page 1099.

“I have participated in (these meetings) and approved the aforesaid matters, and I have reviewed the relevant documents prior to approving (these matters).”

1147. Given his earlier assertions in that interview that he had, “... no understanding of the operations of all branch companies of China Forestry”, he was asked by the interviewer:

“If you were not familiar with the business of China Forestry, how could you confirm the truthfulness of the Prospectus and the results for 2009 and half year results for 2010?”.

Mr. Li Han Chun responded, “I relied on the information provided by various branch companies.”

1148. In cross-examination, in the hearing chaired by Mr. Kenneth Kwok, given his evidence that, notwithstanding what was asserted in the Prospectus, he did not join China Forestry until 2007, Mr. Li Han Chun’s attention was directed to the requirement in the Listing Rules of management continuity in the three years of the ‘Track Period’. He responded, “I probably did not pay much attention to it.” However, he went on to say:¹⁰³⁴

“What I pay more attention was more on the operating results.”

[Italics added.]

The operating results for the Track Record period of the 3 years ended 31 December 2006, 2007, and 2008 and the six months ended 30 June 2009 were set out succinctly in several pages of the Prospectus.¹⁰³⁵

1149. Of the information in those documents Mr. Li Han Chun said:¹⁰³⁶

“I feel that the Prospectus and also the Annual Results of 2010 (2009?) and the Interim of 2011 (2010?) All these facts and information contained therein were provided by the third parties and therefore I did not, I myself, try to prove or try to provide evidence of its veracity.”

¹⁰³⁴ Transcript 15 January 2020, pages 92-93.

¹⁰³⁵ Exhibits Bundle 1A, pages 25-28.

¹⁰³⁶ Transcript 15 January 2020, pages 71-72.

Mr. Li Kwok Cheong

Prospectus

1150. Of the issue of his knowledge of the falsity of the statements made in the Prospectus, in his witness statement Mr. Li Kwok Cheong asserted that he had delegated all matters relating to the Listing application to Mr. Li Han Chun. For his part, he said:¹⁰³⁷

“Moreover, I do not understand English and had briefly looked at the Chinese version of the prospectus. In particular for the section about financial information I relied on and trusted Li Han Chun for his brief explanation. For the truth and accuracy of the prospectus contents, I totally relied on Li Han Chun, his team and different professional parties, in particular the joint sponsors as the gatekeepers.”

1151. Although in articulating his case in his witness statement, Mr. Li Kwok Cheong cited various references to passages in his first record of interview, in fact what he had stated in that interview belies the bare assertions he made in his witness statement. In that interview, when he was asked, “Did you read the contents of the Prospectus?”, Mr. Li Kwok Cheong responded simply, “I did read it.”¹⁰³⁸ He went on to say that, “...after the Chinese version was read”, he received an explanation regarding the English version.¹⁰³⁹

1152. On the other hand, when asked if he had paid heed to the financial data of China Forestry in the Prospectus, Mr. Li Kwok Cheong asserted that he had not done so. Moreover, he said, “Nobody ever mentioned it.” But, when reminded that he had accepted that he had read the Chinese version of the Prospectus and that the Prospectus did contain financial data, Mr. Li Kwok Cheong conceded that he had read it and said, “I probably understood it.” In addition, he said that Mr. Li Han Chun had briefly explained it to him.¹⁰⁴⁰

1153. Mr. Li Kwok Cheong went on to acknowledge that a board meeting had been held to discuss the final version of the Prospectus, a copy of which had been signed. He conceded, “I roughly knew some of it. I roughly knew about it.”¹⁰⁴¹

¹⁰³⁷ Specified Persons Bundle A; pages 104-1 to 104-87 at page 104-11, paragraph 27.

Mr. Li Kwok Cheong’s Witness Statement.

¹⁰³⁸ Witness Evidence Bundle A1; page 40, counter #632.

¹⁰³⁹ Witness Evidence Bundle A1; page 41, counter #640.

¹⁰⁴⁰ Witness Evidence Bundle A1; pages 41-42, counter #s 645-668.

¹⁰⁴¹ Witness Evidence Bundle A1; page 45, counter #s 711-722.

2009 Annual Report and 2010 Interim Report/Interim Results

1154. The minutes of the meeting of the board of directors of China Forestry, dated 26 April 2010, record the attendance of Mr. Li Kwok Cheong and other directors and note that they approved and adopted the 2009 Annual Report and the 2009 Results Announcement and authorised their publication.¹⁰⁴² The minutes of meeting of the board of directors of China Forestry, dated 26 August 2010, record the attendance of Mr. Li Kwok Cheong and other directors and note that they approved the 2010 Interim Report and 2010 Interim Results Announcement and authorised their publication.¹⁰⁴³

1155. In a record of interview conducted by the Commission, dated 23 June 2011, Mr. Li Kwok Cheong said that, in respect of the Interim Report and the Annual Report, Mr. Li Han Chun, but no one else, communicated with him, mentioning them briefly.¹⁰⁴⁴ In his witness statement, dated 29 March 2019, he asserted that he raised his suspicions with Mr. Li Han Chun of the validity of the statement that Group income for FY 2009 was RMB 880 million.¹⁰⁴⁵

A consideration of the evidence

1156. Earlier, we rejected Mr. Li Han Chun's assertions in his witness statement, record of interview conducted by CSRC and his evidence in the hearing chaired by Mr. Kenneth Kwok of the limited role that he contended he played in the business of China Forestry, in particular in its business operations. We found that, in fact, he performed the role of general manager of the operations of China Forestry and that throughout his employment by China Forestry he knew of the wholesale use of false documents and false and misleading statements made by his subordinates in the company.

Knowledge of false or misleading information disclosed in the Prospectus

1157. We are satisfied that Mr. Li Han Chun knew that the information, the disclosure of which he authorized in the Prospectus, including that in respect of FY 2008 and 1H FY 2009 to 30 June 2009, as described earlier, was false or misleading as to material facts. The information was likely to induce investors to purchase China Forestry shares and increase the price of those shares. In particular, Mr. Li Han Chun knew that the statements that China Forestry "...had obtained relevant forestry rights certificates" and, "...own the trees, the rights

¹⁰⁴² Exhibits Bundle 23A, pages 17058-17061.

¹⁰⁴³ Exhibits Bundle 23A, pages 17104-17106.

¹⁰⁴⁴ Witness Evidence Bundle A1; page 51, counter #s 810-816.

¹⁰⁴⁵ Specified Persons Bundle A; page 104-28, paragraph 62.

to use the trees”¹⁰⁴⁶, as at 30 June 2009, in respect¹⁰⁴⁷ of 171,780 hectares of forest was false or misleading.

Reckless or negligent disclosure of false or misleading information in the Prospectus

1158. Alternatively, if we are in error in finding Mr. Li Han Chun knew that the information in the Prospectus was false or misleading as to material facts, nevertheless we are satisfied that Mr. Li Han Chun was reckless in authorising the disclosure, circulation or dissemination of that information. In the further alternative, we are satisfied that in doing so he was negligent.

1159. In response to an enquiry by the Chairman as to what steps he had taken to verify the accuracy of the Prospectus, in his evidence in the Inquiry chaired by Mr. Kenneth Kwok, Mr. Li Han Chun said, “I inclined to rely more on the third-party intermediaries charged with the mandate of the listing process, and therefore relied more on the investigative reports.” He added, “I don’t think there were any other steps taken. I don’t think there were any other specific things.”¹⁰⁴⁸

Conclusion

1160. Accordingly, we are satisfied that, in authorising the disclosure, circulation or dissemination of the Prospectus in those circumstances, Mr. Li Han Chun engaged in misconduct, contrary to section 277(1) of the Ordinance.

2009 Annual Report

Knowledge of false or misleading information disclosed in the 2009 Annual Report

1161. We are satisfied that Mr. Li Han Chun knew that the information in the 2009 Annual Report, as described earlier, the disclosure of which he authorised, was false or misleading as to material facts. That information was likely to induce investors to purchase China Forestry shares and was likely to increase the price of those shares.

Reckless or negligent disclosure of false or misleading information in the 2009 Annual Report

1162. Alternatively, if we are in error in finding that Mr. Li Han Chun knew that the information in the 2009 Annual Report was false or misleading as to material facts, nevertheless we are satisfied that Mr. Li Han Chun was reckless in authorising the disclosure,

¹⁰⁴⁶ Exhibits Bundle 1A, pages 191 and 193.

¹⁰⁴⁷ Exhibit Bundle 1A, page 7.

¹⁰⁴⁸ Transcript 23 January 2020, page 4.

circulation or dissemination of that information. In the further alternative, in doing so he was negligent.

Conclusion

1163. Accordingly, we are satisfied that Mr. Li Han Chun engaged in misconduct, contrary to section 277(1) of the Ordinance.

2010 Interim Results/2010 Interim Report

Knowledge of false or misleading information disclosed in the 2010 Interim Results

1164. We are satisfied that Mr. Li Han Chun knew that the information, identified earlier, in the 2010 Interim Results/2010 Interim Report, for FY 2010 as at 30 June 2010, the disclosure of which he authorized on 26 August 2010, was false or misleading as to material facts.

Induce sale or purchase of China Forestry shares

1165. However, as explained earlier, we are not satisfied that the information was likely to induce investors either to sell or purchase China Forestry shares and, thereby, likely to either decrease or increase the price of China Forestry shares.

Mr. Li Kwok Cheong

Prospectus

Knowledge of false or misleading information disclosed in the Prospectus

1166. We have no hesitation in rejecting the assertions made by Mr. Li Kwok Cheong in his witness statement and in his record of interview, in which he disclaimed knowledge of the financial information contained in the Prospectus, published on 19 November 2009.

1167. The gravamen of the financial information identified by Mr. Sutton and Ms. Pao, set out earlier, was contained in three or four pages of the pithy 'Summary of Consolidated Financial Information' in the Prospectus. It was simple. It was readily digestible and understandable. The information for FY 2008 described huge increases in the RMB value stipulated in key areas compared with FY 2007.

Consolidated Income Statements

Years ended 31 December

	2007	2008
	(RMB)	(RMB)
<u>Profit and Loss</u>		
Turnover	160,318,269	544,947,744
Profit from operations	783,555,246	5,884,148,296
Profit for the year	783,729,340	5,881,774,698

Consolidated Balance Sheets

As at 31 December

	2007	2008
	(RMB)	(RMB)
Lease prepayments	31,468,446	225,826,779
Plantation assets	1,338,200,000	7,693,000,000
Net assets	1,390,547,468	7,435,350,241

1168. The publication of the Prospectus on 19 November 2009 represented a major milestone in the long journey towards the IPO embarked on by Mr. Li Kwok Cheong and Mr. Li Han Chun several years earlier. Much time, effort and expense had been expended in achieving that goal. The genesis of the IPO application was discussions between Mr. Li Kwok Cheong, Mr. Li Han Chun and Mr. Xiao Feng in the latter part of 2007. Mr. Li Kwok Cheong had proved to be undaunted by setbacks and had been persistent and resolute in his efforts to obtain an IPO. He had advanced RMB 8 million to China Forestry for its “listing expenses”.¹⁰⁴⁹ A pot of gold awaited him at the end of the rainbow. In the event that the IPO was successful, he stood to benefit financially enormously. He had every reason to be interested, and none to be disinterested, in the contents of the Prospectus, in particular the financial information that might attract the attention of potential subscribers of China Forestry’s shares.

The first application

1169. The first application to be listed was approved on 3 April 2008 at a meeting of the board of directors of China Forestry, attended by Mr. Li Kwok Cheong and Mr. Li Han Chun.¹⁰⁵⁰ The draft Prospectus described financial information for three financial years, up to 31

¹⁰⁴⁹ Exhibits Bundle 1A, page 299. Prospectus-Financial Information.

¹⁰⁵⁰ Exhibits Bundle 4A, pages 2411-2420.

December 2007.¹⁰⁵¹ It was asserted that China Forestry had, "...forestry rights over approximately 71,786 hectares of forests as at 31 March 2008."¹⁰⁵² By a letter, dated 26 September 2008 to the SEHK that application was postponed.¹⁰⁵³

The second application

1170. A second application, together with a revised Prospectus, was filed with the SEHK on 11 November 2008.¹⁰⁵⁴ However, by a letter to the SEHK, dated 5 December 2008, that application was postponed.¹⁰⁵⁵

The third application

1171. A third application was filed with the SEHK by a letter dated 4 September 2009.¹⁰⁵⁶ At a meeting of the board of directors of China Forestry, attended by Mr. Li Kwok Cheong and Mr. Li Han Chun, approval was granted for that application to be made.¹⁰⁵⁷

1172. Accepting Mr. Li Kwok Cheong's admission, in his first record of interview, that he had read the Chinese version of the Prospectus, we are satisfied for the reasons that we have set out earlier that he knew that it contained false or misleading information, as identified earlier. The information was readily understandable, particularly for Mr. Li Kwok Cheong who had been in the business throughout. Now, it was asserted that, as at 30 June 2009, China Forestry had obtained relevant forestry rights certificates in respect of 171,780 hectares of forest, and for FY 2008 had a Turnover of RMB 544,947,744; Profits of RMB 5,881,774,698; and Net Assets, as at 31 December 2008, of RMB 7,435,350,241. All that information was false or misleading as to material facts. The information was likely to induce investors to subscribe for China Forestry shares.

Reckless or negligent disclosure of false or misleading information in the Prospectus

1173. Alternatively, if we are in error in finding that Mr. Li Kwok Cheong knew that the information in the Prospectus was false or misleading as to material facts, nevertheless we are satisfied that Mr. Li Kwok Cheong was reckless in authorising the disclosure, circulation or dissemination of that information. In the further alternative, in doing so he was negligent.

¹⁰⁵¹ Exhibits Bundle 3B, pages 1984-2408.

¹⁰⁵² Exhibits Bundle 3B, page 2076.

¹⁰⁵³ Exhibits Bundle 5, page 3621.

¹⁰⁵⁴ Exhibits Bundle 5, page 3624.

¹⁰⁵⁵ Exhibits Bundle 5, page 3647.

¹⁰⁵⁶ Exhibits Bundle 5, page 3649.

¹⁰⁵⁷ Exhibits Bundle 5, page 3689.

1174. On his own case, Mr. Li Kwok Cheong had delegated to Mr. Li Han Chun the handling of, "...matters arising out of the listing application (including the provision of required documents to the professional parties for the listing application due diligence exercise and the arrangement of due diligence interviews etc)".¹⁰⁵⁸ Further, he asserted, "...my participation in the due diligence process was very limited. For all of the matters I handed over to Li Han Chun, and I trusted him completely."¹⁰⁵⁹ That conduct was inconsistent with the assertions made in the minutes of the board of directors of China Forestry, dated 5 November 2009¹⁰⁶⁰, and in the Prospectus¹⁰⁶¹ by the directors that:

"... having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement in this prospectus misleading."

He had made no enquiries.

1175. The Prospectus acknowledged that, "Our Directors collectively and individually accept full responsibility for the accuracy of the information contained in this prospectus".

Conclusion

1176. Accordingly, we are satisfied that Mr. Li Kwok Cheong engaged in misconduct, contrary to section 277(1) of the Ordinance.

2009 Annual Report

Knowledge of false or misleading information disclosed in the 2009 Annual Report

1177. We are satisfied that Mr. Li Kwok Cheong knew that the information in the 2009 Annual Report, as described earlier, the disclosure of which he authorized on 26 April 2010, was false or misleading as to material facts. The information was likely to induce investors to purchase China Forestry shares and thereby likely to increase the price of those shares.

Reckless or negligent disclosure of false or misleading information in the 2009 Annual Report

1178. Alternatively, if we are in error in finding that Mr. Li Kwok Cheong knew that the information in the 2009 Annual Report was false or misleading as to material facts,

¹⁰⁵⁸ Specified Persons Bundle A; page 104-10, paragraph 23. Mr. Li Kwok Cheong's Witness Statement.

¹⁰⁵⁹ Specified Persons Bundle A; page 104-42, paragraph 82. Mr. Li Kwok Cheong's Witness Statement.

¹⁰⁶⁰ Exhibits Bundle 7A; page 4886, paragraph 7.13.

¹⁰⁶¹ Exhibits Bundle 1A, page 77.

nevertheless we are satisfied that Mr. Li Kwok Cheong was reckless in authorising the disclosure, circulation or dissemination of that information. In the further alternative, in doing so he was negligent.

1179. On his own case, Mr. Li Kwok Cheong said that as the Group prepared to publish the 2009 Annual Report he had concerns about the veracity of information:¹⁰⁶²

“I had suspected whether the Group income for the year of 2009 really amounted to RMB 880 million.”

1180. The turnover of China Forestry reported for FY 2009 in the 2009 Annual Results announcement and in the 2009 Annual Report was RMB 793,692,961. As the announcement stated that represented an increase of “... approximately RMB 248.8 million, or approximately 45.7% as compared to approximately RMB 544.9 million in 2008.”

1181. In his second record of interview, Mr. Li Kwok Cheong was informed that “the revenue of Kunming Ultra Big in 2009 shown in the accounts of the head office was 880 million...some 880 million.” That was a reference to the ‘Profit Statement’ of Kunming Ultra Big for 2009 in which ‘Revenue from main business’ was stated to be 881,881,067.94¹⁰⁶³. For his part, he said that, in respect of the reported revenue of Kunming Ultra Big, in advance of the publication of the 2009 Annual Report, “in (20)09 I already kind of harboured suspicions” that it might be fabricated. Mr. Li Han Chun had reported to him “what situation was generally.” He claimed that he had raised the matter with Mr. Li Han Chun, who said, “So far so good. He said some large logging organisations were entrusted-logging- with dealing with it.” However, Mr. Li Kwok Cheong acknowledged that he had not verified the reported revenue by reading bank statements or by asking relevant staff who were in charge. When asked why he had not done so, Mr. Li Kwok Cheong said simply, “I don’t know.” He added, “...at that time, there wasn’t even one person. I needed to reorganise a team to reinvestigate into his work in order to verify. I think it was still quite difficult at that time.”¹⁰⁶⁴

Conclusion

1182. Accordingly, we are satisfied that Mr. Li Kwok Cheong engaged in misconduct, contrary to section 277(1) of the Ordinance.

¹⁰⁶² Specified Persons Bundle A; page 104-28, paragraph 62. Mr. Li Kwok Cheong’s Witness Statement.

¹⁰⁶³ Exhibits Bundle 21, page 15581.

¹⁰⁶⁴ Witness Evidence Bundle A2; pages 576-577, counter #s 3100-3109.

2010 Interim Results/Interim Report

Knowledge of false or misleading information disclosed in the 2010 Interim Results/2010 Interim Report

1183. We are satisfied that Mr. Li Kwok Cheong knew that the information, identified earlier, in the 2010 Interim Results/Interim Report, for FY 2010 as at 30 June 2010, the disclosure of which he authorized on 26 August 2010, was false or misleading as to material facts.

Reckless or negligent disclosure of false or misleading information in the 2010 Interim Report

1184. Alternatively, if we are in error in finding that Mr. Li Kwok Cheong knew that the information in the 2010 Interim Report/2010 Interim Results was false or misleading as to material facts, nevertheless we are satisfied that Mr. Li Kwok Cheong was reckless in authorising the disclosure, circulation or dissemination of that information. In the further alternative, in doing so he was negligent.

Conclusion

Induce sale or purchase of China Forestry shares

1185. However, as explained earlier, we are not satisfied that the information was likely to induce another person either to sell or purchase China Forestry shares and thereby likely to reduce or increase the price of those shares.

Orders

1186. On a date to be fixed, the Tribunal will receive such submissions as the parties may wish to make as to the imposition by the Tribunal of consequential orders.



Mr Michael Lunn, GBS

(Chairman)



Mr Chan Kwok-chung, Johnny

(Member)



Dr Wong Wai-ye, Pauline

(Member)

Dated the 2nd day of August 2024

Appendix 1

Schedule 1Financial Information Disclosed in the Prospectus, 2009 Annual Results and
2010 Interim Results and the Adjusted Financial Position

	<u>2008 Annual Results</u> <u>(for FY 2008)</u>		<u>2009 Annual Results</u> <u>(for FY 2009)</u>		<u>2010 Interim Results</u> <u>(for HY 2010)</u>	
	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>
Turnover ¹	544,947,744 ²	45,979,933	793,692,961	65,407	494,257,281	9,144
Operating expenses for logging activities ³	145,559,950	0	185,801,450	0	131,512,000	0
Changes in fair value of plantation assets less costs to sell	6,024,364,199 ⁴	(2,165,640,151)	681,338,794	66,335,769	470,616,665	855,164,307
Reversal of fair value of plantation assets upon logging and sales of the plantation assets	(384,853,771)	0	(607,994,691)	0	(362,809,535)	0
Profit/(loss) from operations	5,884,148,296	(2,259,707,355)	589,522,663	2,042,646	428,306,858	826,696,637
Overall net profit/(loss)	5,881,774,698	(2,262,080,953)	511,630,413	(75,849,604)	429,294,736	827,684,515
Plantation assets	7,693,000,000	115,000,000	7,767,000,000	180,000,000	7,875,000,000	1,012,000,000

¹ Turnover represented the sales value of goods supplied to customers less value added tax, returns and trade discounts.

² All figures in RMB, unless otherwise stated.

³ Consisting of costs of harvesting, such as labour costs, and costs associated with applying for logging permits (also called forest maintenance fees).

⁴ RMB6,635,132,871 upon initial acquisition of the plantation assets less RMB610,768,672 during the year.

	<u>2008 Annual Results</u> <u>(for FY 2008)</u>		<u>2009 Annual Results</u> <u>(for FY 2009)</u>		<u>2010 Interim Results</u> <u>(for HY 2010)</u>	
	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>	<u>Disclosed</u> <u>Figures</u>	<u>Adjusted</u> <u>Financial</u> <u>Position</u>
Lease prepayments ⁵	225,826,779	4,283,589	218,104,308	6,062,671	214,243,072	28,924,269
Net assets/ (liabilities)	7,435,350,241	(323,360,910)	9,594,459,207	1,891,874,834	9,862,809,859	2,464,757,777
Cash and cash equivalents	104,530,763	124,442,835	1,706,636,428	1,692,469,250	1,534,694,611	1,014,163,079
VAT payable	69,748,189	<i>Nil</i>	114,644,539	<i>Nil</i>	71,392,719	<i>Nil</i>
Prepaid insurance premium	21,324,175	79,878	17,479,682	23,494	13,176,261	<i>Nil</i>
Amortisation of insurance premium	(9,929,155)	(56,385)	(19,900,918)	(56,384)	(10,426,576)	(23,494)

⁵ Payments to acquire land use rights in connection with new forest acquisitions. These were carried at cost less accumulated amortisation and impairment losses. Amortisation was charged to the income statements on a straight-line basis over the lease terms.

Appendix 2

For FY2008:

	HQ Books (RMB)	Local Books (RMB)	Difference (RMB)
Cash and Bank Balances	68,572,753	88,484,825	(19,912,072)
Net Asset Value	497,465,540	150,593,513	346,872,027
Turnover	536,524,528	-	536,524,528
Profit/(loss)	343,197,540	(3,692,487)	346,890,027

For FY2009:

	HQ Books (RMB)	Local Books (RMB)	Difference (RMB)
Cash and Bank Balances	217,858,766	203,691,588	14,167,178
Net Asset Value	1,274,893,945	338,736,814	936,157,131
Turnover	881,881,068	65,407	881,815,661
Profit/(loss)	586,219,205	(3,065,898)	589,285,103

For Interim 2010¹:

	HQ Books (RMB)	Local Books (RMB)	Difference (RMB)
Cash and Bank Balances	716,007,994	195,476,462	520,531,532
Net Asset Value	1,827,389,571	470,858,011	1,356,531,560
Turnover	549,174,757	9,144	549,165,613
Profit/(loss)	380,933,626	(4,440,803)	385,374,429

For the year ended 31 December 2010:

	HQ Books (RMB)	Local Books (RMB)	Difference (RMB)
Cash and Bank Balances	1,218,809,451	203,691,588	1,015,117,863
Net Asset Value	2,392,773,308	338,736,814	2,054,036,494
Turnover	1,244,190,291	9,144	1,244,181,147
Profit/(loss)	818,502,895	(11,995,952)	830,498,847

¹ The figures for the interim period ended 30 June 2010 were extracted from the HQ Books and the Local Books for the year 2010.

Appendix 3

Appendix 9.0

China Forestry Holdings Company Limited



Summary the Group's adjusted financial statements for FY2008, FY2009 and Interim 2010 (RMB)

BALANCE SHEET		31-Dec-2008		
		Original	Adjustment	Adjusted
1	Property, plant and equipment, net	6,951,089	-	6,951,089
2	Lease prepayments	225,826,779	(221,543,190)	4,283,589
3	Plantation assets	7,693,000,000	(7,578,000,000)	115,000,000
4	Prepayment for forest acquisition	-	-	-
	NON-CURRENT ASSETS	7,925,777,868	(7,799,543,190)	126,234,678
5	Inventories	-	-	-
6	Other receivables	37,580,311	(21,244,296)	16,336,015
7	Cash and cash equivalents	104,530,763	19,912,072	124,442,835
8	Other financial assets	-	-	-
	CURRENT ASSETS	142,111,074	(1,332,224)	140,778,850
9	Other payables - current	311,485,494	(42,164,264)	269,321,230
	CURRENT LIABILITIES	311,485,494	(42,164,264)	269,321,230
	NET CURRENT ASSETS / (LIABILITIES)	(169,374,420)	40,832,040	(128,542,380)
	TOTAL ASSETS LESS CURRENT LIABILITIES	7,756,403,448	(7,758,711,151)	(2,307,703)
10	Other payables - non current	321,053,207	-	321,053,207
	NON-CURRENT LIABILITIES	321,053,207	-	321,053,207
	NET ASSETS	7,435,350,241	(7,758,711,151)	(323,360,910)
11	Share capital	232,245	-	232,245
12	Retained profits / (Accumulated losses)	6,928,083,175	(7,758,711,151)	(830,627,976)
13	Reserves	507,034,821	-	507,034,821
	SHAREHOLDERS' EQUITY/ (DEFICIENCY)	7,435,350,241	(7,758,711,151)	(323,360,910)

PROFIT AND LOSS		31-Dec-2008		
		Original	Adjustment	Adjusted
14	Turnover	544,947,744	(498,967,811)	45,979,933
15	Reversal of fair value of plantation assets upon logging and sales of the plantation assets	(384,853,771)	384,853,771	-
	GROSS PROFIT	160,093,973	(114,114,040)	45,979,933
16	Other operating income	119,636	-	119,636
17	Amortisation of insurance premium	(9,929,155)	9,872,770	(56,385)
18	Amortisation of lease prepayments	(4,916,734)	4,830,019	(86,715)
19	Auditor's remuneration	(132,468)	-	(132,468)
20	Changes in fair value of plantation assets less costs to sell	6,024,364,199	(8,190,004,350)	(2,165,640,151)
21	Consultancy fees	(21,048,083)	-	(21,048,083)
22	Depreciation	(230,112)	-	(230,112)
23	Loss on disposal of fixed assets	-	-	-
24	Foreign exchange loss	(3,053,644)	-	(3,053,644)
25	Operating expenses for logging activities	(145,559,950)	145,559,950	-
26	Other operating expenses	(14,286,072)	-	(14,286,072)
27	Rental expenses of properties	(1,366,471)	-	(1,366,471)
28	Staff costs	(98,198,144)	-	(98,198,144)
29	Travelling expenses	(1,708,679)	-	(1,708,679)
	PROFIT/(LOSS) FROM OPERATING ACTIVITIES	5,884,148,296	(8,143,855,651)	(2,259,707,355)
30	Finance income/ (costs)	(2,373,598)	-	(2,373,598)
	PROFIT BEFORE TAX	5,881,774,698	(8,143,855,651)	(2,262,080,953)
31	Tax	-	-	-
	NET PROFIT	5,881,774,698	(8,143,855,651)	(2,262,080,953)
	RETAINED PROFIT/(ACCUMULATED LOSS) BROUGHT FORWARD	1,046,308,477	-	1,046,308,477
	Adjustment to retained profit/(accumulated loss)	-	385,144,501	385,144,501
	RETAINED PROFIT / (ACCUMULATED LOSS) CARRIED FORWARD	6,928,083,175	(7,758,711,151)	(830,627,976)

Appendix 9.0

China Forestry Holdings Company Limited



Summary the Group's adjusted financial statements for FY2008, FY2009 and Interim 2010 (RMB)

Private and Confidential

BALANCE SHEET		31-Dec-2009		
		Original	Adjustment	Adjusted
1	Property, plant and equipment, net	22,121,973	-	22,121,973
2	Lease prepayments	218,104,308	(212,041,637)	6,062,671
3	Plantation assets	7,767,000,000	(7,587,000,000)	180,000,000
4	Prepayment for forest acquisition	-	-	-
	NON-CURRENT ASSETS	8,007,226,281	(7,799,041,637)	208,184,644
5	Inventories	-	-	-
6	Other receivables	55,321,994	(17,456,187)	37,865,807
7	Cash and cash equivalents	1,706,636,428	(14,167,178)	1,692,469,250
8	Other financial assets	-	-	-
	CURRENT ASSETS	1,761,958,422	(31,623,365)	1,730,335,057
9	Other payables - current	174,725,496	(128,080,630)	46,644,866
	CURRENT LIABILITIES	174,725,496	(128,080,630)	46,644,866
	NET CURRENT ASSETS / (LIABILITIES)	1,587,232,926	96,457,265	1,683,690,191
	TOTAL ASSETS LESS CURRENT LIABILITIES	9,594,459,207	(7,702,584,373)	1,891,874,834
10	Other payables - non current	-	-	-
	NON-CURRENT LIABILITIES	-	-	-
	NET ASSETS	9,594,459,207	(7,702,584,373)	1,891,874,834
11	Share capital	20,797,400	-	20,797,400
12	Retained profits / (Accumulated losses)	7,439,713,588	(7,702,584,373)	(262,870,785)
13	Reserves	2,133,948,219	-	2,133,948,219
	SHAREHOLDERS' EQUITY/ (DEFICIENCY)	9,594,459,207	(7,702,584,373)	1,891,874,834

PROFIT AND LOSS		31-Dec-2009		
		Original	Adjustment	Adjusted
14	Turnover	793,692,961	(793,627,554)	65,407
15	Reversal of fair value of plantation assets upon logging and sales of the plantation assets	(607,994,691)	607,994,691	-
	GROSS PROFIT	185,698,270	(185,632,863)	65,407
16	Other operating income	2,590,962	-	2,590,962
17	Amortisation of insurance premium	(19,900,918)	19,844,534	(56,384)
18	Amortisation of lease prepayments	(7,722,471)	7,509,887	(212,584)
19	Auditor's remuneration	(985,316)	-	(985,316)
20	Changes in fair value of plantation assets less costs to sell	681,338,794	(615,003,025)	66,335,769
21	Consultancy fees	(7,860,613)	-	(7,860,613)
22	Depreciation	(213,058)	-	(213,058)
23	Loss on disposal of fixed assets	-	-	-
24	Foreign exchange loss	(3,168,077)	-	(3,168,077)
25	Operating expenses for logging activities	(185,801,450)	185,801,450	-
26	Other operating expenses	(33,631,036)	-	(33,631,036)
27	Rental expenses of properties	(2,004,392)	-	(2,004,392)
28	Staff costs	(16,777,851)	-	(16,777,851)
29	Travelling expenses	(2,040,181)	-	(2,040,181)
	PROFIT/(LOSS) FROM OPERATING ACTIVITIES	589,522,663	(587,480,017)	2,042,646
30	Finance income/ (costs)	(77,892,250)	-	(77,892,250)
	PROFIT BEFORE TAX	511,630,413	(587,480,017)	(75,849,604)
31	Tax	-	-	-
	NET PROFIT	511,630,413	(587,480,017)	(75,849,604)
	RETAINED PROFIT/(ACCUMULATED LOSS) BROUGHT FORWARD	6,928,083,175	(7,758,711,151)	(830,627,976)
	Adjustment to retained profit/(accumulated loss)	-	643,606,795	643,606,795
	RETAINED PROFIT / (ACCUMULATED LOSS) CARRIED FORWARD	7,439,713,588	(7,702,584,373)	(262,870,785)

Appendix 9.0

China Forestry Holdings Company Limited



Summary the Group's adjusted financial statements for FY2008, FY2009 and Interim 2010 (RMB)

BALANCE SHEET		30-Jun-2010		
		Original	Adjustment	Adjusted
1	Property, plant and equipment, net	23,812,704	-	23,812,704
2	Lease prepayments	214,243,072	(185,318,803)	28,924,269
3	Plantation assets	7,875,000,000	(6,863,000,000)	1,012,000,000
4	Prepayment for forest acquisition	190,338,500	-	190,338,500
	NON-CURRENT ASSETS	8,303,394,276	(7,048,318,803)	1,255,075,473
5	Inventories	130,017	-	130,017
6	Other receivables	54,927,634	(13,006,183)	41,921,451
7	Cash and cash equivalents	1,534,694,611	(520,531,532)	1,014,163,079
8	Other financial assets	179,996,014	-	179,996,014
	CURRENT ASSETS	1,769,748,276	(533,537,715)	1,236,210,561
9	Other payables - current	210,332,693	(183,804,436)	26,528,257
	CURRENT LIABILITIES	210,332,693	(183,804,436)	26,528,257
	NET CURRENT ASSETS / (LIABILITIES)	1,559,415,583	(349,733,279)	1,209,682,304
	TOTAL ASSETS LESS CURRENT LIABILITIES	9,862,809,859	(7,398,052,082)	2,464,757,777
10	Other payables - non current	-	-	-
	NON-CURRENT LIABILITIES	-	-	-
	NET ASSETS	9,862,809,859	(7,398,052,082)	2,464,757,777
11	Share capital	20,797,400	-	20,797,400
12	Retained profits / (Accumulated losses)	7,869,008,324	(7,398,052,082)	470,956,242
13	Reserves	1,973,004,135	-	1,973,004,135
	SHAREHOLDERS' EQUITY/ (DEFICIENCY)	9,862,809,859	(7,398,052,082)	2,464,757,777
		-	1	-

PROFIT AND LOSS		30-Jun-2010		
		Original	Adjustment	Adjusted
14	Turnover	494,257,281	(494,248,137)	9,144
15	Reversal of fair value of plantation assets upon logging and sales of the plantation assets	(362,809,535)	362,809,535	-
	GROSS PROFIT	131,447,746	(131,438,602)	9,144
16	Other operating income	568,197	-	568,197
17	Amortisation of insurance premium	(10,426,576)	10,403,082	(23,494)
18	Amortisation of lease prepayments	(3,861,236)	3,365,658	(495,578)
19	Auditor's remuneration	(774,620)	-	(774,620)
20	Changes in fair value of plantation assets less costs to sell	470,616,665	384,547,642	855,164,307
21	Consultancy fees	(2,062,108)	-	(2,062,108)
22	Depreciation	(2,214,218)	-	(2,214,218)
23	Loss on disposal of fixed assets	(29,286)	-	(29,286)
24	Foreign exchange loss	2,223,218	-	2,223,218
25	Operating expenses for logging activities	(131,512,000)	131,512,000	-
26	Other operating expenses	(11,235,158)	-	(11,235,158)
27	Rental expenses of properties	(1,200,564)	-	(1,200,564)
28	Staff costs	(11,595,446)	-	(11,595,446)
29	Travelling expenses	(1,637,756)	-	(1,637,756)
	PROFIT/(LOSS) FROM OPERATING ACTIVITIES	428,306,858	398,389,779	826,696,637
30	Finance income/ (costs)	987,878	-	987,878
	PROFIT BEFORE TAX	429,294,736	398,389,779	827,684,515
31	Tax	-	-	-
	NET PROFIT	429,294,736	398,389,779	827,684,515
	RETAINED PROFIT/(ACCUMULATED LOSS) BROUGHT FORWARD	7,439,713,588	(7,702,584,373)	(262,870,785)
	Adjustment to retained profit/(accumulated loss)	-	(93,857,489)	(93,857,489)
	RETAINED PROFIT / (ACCUMULATED LOSS) CARRIED FORWARD	7,869,008,324	(7,398,052,082)	470,956,242
		-	-	-

Appendix 4

Material received by the Tribunal

Hearing Bundles	22,679 pages
Expert Evidence Bundles	11,324 pages
<ul style="list-style-type: none"> • Ms. Pao's Reports: (i) 41,226; and (ii) 3,536 words. • Mr. Sutton's Report: 47,264 words. 	
Witness Evidence Bundles	
<ul style="list-style-type: none"> • 52 records of interview/translations of 35 witnesses; statements of 2 witnesses. 	6,955 pages
<ul style="list-style-type: none"> • Specified Persons: 	1,147 pages
Li KC-four records of interview/translations-1,085 pages.	
Li HC-one record of interview/translations-62 pages.	
Specified Persons' Bundles: A-C	
<ul style="list-style-type: none"> • witness statements/translations-Li KC and Li HC. 	276 pages
<ul style="list-style-type: none"> • Mr. Eric Cheng's expert report with exhibits/translations. 	505 pages
Transcripts of the hearing chaired by Mr. Kenneth Kwok SC.	1,593 pages
SFC's Supplementary Exhibits Bundle	673 pages
Supplementary exhibits and one box file of documents with 3 CDs enclosed.	858 pages
Translation of transcription of audio recording of FRCs verification-Sichuan.	246 pages
Written Opening Submissions/Appendices	
<ul style="list-style-type: none"> • Commission 	297 pages
<ul style="list-style-type: none"> • Li HC/Top Wisdom 	51 pages
Written Closing Submissions	
<ul style="list-style-type: none"> • Commission 	74 pages
Substantive Hearing-25 days.	
Commission's oral Opening/Closing submissions-4 days.	
Oral evidence-13 witnesses testified over 21 days.	