HCMP 2305/2020
[2026] HKCFI 301

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 2305 OF 2020

IN THE MATTER of Superb Summit International Group Limited (奇峰國際集團有限公司) (in liquidation)

and

IN THE MATTER of Section 214 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

SECURITIES AND FUTURES COMMISSION	Petitioner
and	
SUPERB SUMMIT INTERNATIONAL GROUP LIMITED (奇峰國際集團有限公司) (in liq)	1st Respondent
YANG DONGJUN	2nd Respondent
JING BIN	3rd Respondent
WU TAO	4th Respondent
LEE CHI KONG	5th Respondent
CHAN KING CHUNG	6th Respondent
LAM PING KEI	7th Respondent

WONG CHOI FUNG	8th Respondent
LAW WAI FAI	9th Respondent
YEUNG KWONG LUN	10th Respondent
LI JUN	11th Respondent
CHENG MAN FOR	12th Respondent
QIU JIZHI	13th Respondent
CHAN CHI YUEN	14th Respondent
WONG YUN KUEN	15th Respondent
ZHU GUANG QIAN	16th Respondent

Before: Hon Linda Chan J in Court

Dates of Hearing: 20 – 22 August and 1 September 2025

Date of Judgment: 14 January 2026

JUDGMENT

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1. This is the trial of the petition presented on 18 December 2020 (as amended on 26 April 2021) ("**Petition**") by the Securities and Futures Commission ("**SFC**") under s.214 of the Securities and Futures Ordinance (Cap. 571) ("**SFO**") against the following former officers of Superb Summit International Group Limited (奇峰國際集團有限公司) ("**Company**") (in liq) (collectively "**Rs**"):

   (1) The 2nd respondent, Mr Yang Dongjun (楊東軍) ("**R2**"), who was the Chief Executive Officer ("**CEO**") and President of

China region of the Company from 2008 to 2012/2013 and thereafter, a consultant[1]. R2 controlled 22.69% shareholding in the Company, of which 20.18% was held through Magic Stone Fund (China) ("**Magic Stone**") which he owns 80.25%[2];

(2) The 4th respondent, Mr Wu Tao (武濤) ("**R4**"), was an Executive Director ("**ED**") of the Company from 22 October 2012 to 15 September 2014 and a legal consultant/advisor until May 2016[3]; and

(3) The 6th Respondent, Mr Chan King Chung (陳敬忠) ("**R6**"), was the company secretary of the Company from 9 October 2012 to 29 May 2018 and the Chief Financial Officer ("**CFO**") of the Group from December 2012/January 2013 to 29 May 2018[4].

2. As regards the other respondents named in the Petition:

(1) The SFC's claims against the 5th and 7th to 15th respondents ("**R5**", "**R7-R15**") have been disposed by way of *Carecraft* procedure, with disqualification orders made by Harris J against R5 for 10 years; R7, R8, R10 and R15 for a period from 5 to 7 years; and R9, R11-R14 for a period from 2.5 years to 4 years[5];

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1 Petition §12; R3's 1st ROI §§215-219
2 Company's 2015 Interim Report; Shareholding Disclosure as of 3 September 2020
3 1st ROI §§85-86, 100-101; R4's 2nd ROI §§103-108
4 Petition §17; R6's POD §8; R6's 1st ROI §§116-123
5 Reasons for Decision 2 July 2025, [2025] HKCFI 2682 (in respect of R5, R7, R8, R10 and R15) ("**1st *Carecraft* Decision**"); Reasons for Decision dated 18 August 2025, [2025] HKCFI 3713 (in respect of R9, R11-R14)

(2) The SFC has not been able to serve the Petition on the 3rd respondent ("**R3**"), despite repeated attempts to effect service out of the jurisdiction in Mainland China; and

(3) The SFC does not intend to pursue its claim against the 16th respondent ("**R16**"), and invites the court to make no order against him including costs[6].

3. In the Petition, the SFC complains that the following acquisitions were made by the Company in a manner unfairly prejudicial to the interests of some or all of the members of the Company:[7]

(1) **"Forestry Acquisitions"**: The Company acquired 100% shareholding in Green and Good Group Limited, a BVI company ("**GGL**"), in 2 tranches in 2007 and 2009 on the basis that it held various forestry rights located in Mainland China when in fact, some of the forestry rights did not exist:[8]

(a) "**2007 Acquisition**": On 16 May 2007, the Company entered into a Share Sale and Purchase Agreement ("**2007 SPA**") whereby it acquired 70% shareholding in GGL from Superview International Limited ("**Superview**") at HK$ 1.38 billion.[9]

(b) "**2009 Acquisition**": On 10 July 2009, the Company entered into a Conditional Share & Equity Transfer

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6 R16 has been unrepresented and has not participated in the proceedings other than sending various mitigation letters to the SFC dated 4 August 2023 and 8 March 2024. R16 was served with the Petition out of jurisdiction on 22 April 2022 and on 29 June 2022 through the judicial authorities in the Mainland.

7 Petition §128

8 Petition §31

9 Petition §32; Share Sale and Purchase Agreement, clauses. 3.1 & 4.1

Agreement ("**2009 CSTA**") to acquire the remaining 30% shareholding in GGL at the price calculated at 30% of the net asset value of GGL and its subsidiaries ("**GGL Group**") less 16% discount.[10]

(2) "**JFT Acquisition**": On 2 March 2014, the Company through its indirect wholly owned subsidiary, Superb Summit International Energy Holdings Limited ("**SSIE**"),[11] entered into a Share Sale and Purchase Agreement ("**JFT SPA**") to acquire 51% shareholding in Cosmic Summit Limited (普峰有限公司), a Seychelles company ("**Cosmic Summit**"), from Sherri Holdings Resources Limited ("**Sherri Holdings**"), with Mr Jin Jun (金軍) ("**Jin**") as guarantor.[12] The JFT Acquisition was made on the basis that Cosmic Summit indirectly[13] held 80% equity in 北京金菲特能源科技有限公司[14] ("**JFT**") which, in turn, owned the intellectual property rights of a hydrogenation engineering technology ("**Target Technology**"). The SFC contends that the Target Technology had no licensing value, and at least HK$248 million of the consideration paid by the Company was in fact paid to R2 or persons/entities connected with him.

4. In the Petition, the SFC claims a compensation order and a disqualification order against Rs as follows:

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10 Petition §33; Conditional Share & Equity Transfer Agreement, clauses 4 & 12
11 Petition, §41
12 Petition, §41; Share Sale and Purchase Agreement, Recital (1)-(3) & Cl. 3(A)
13 Through its subsidiary, 崇成(上海)能源科技有限公司 (Chongcheng (Shanghai) Energy Technology Company Limited ("**Chongcheng SH**"))
14 Transliteration: Beijing Jinfeite Energy Technology Company Limited, a company established in Beijing

(1) R2 was involved in procuring the Company/SSIE to enter into the 2007 and 2009 Acquisitions and JFT Acquisition[15]. The SFC seeks a disqualification order of 15 years and a compensation order in the amount of HK$842,072,100, being the loss suffered by the Company in the 2009 Acquisition and JFT Acquisition;

(2) R4 was involved in procuring SSIE to enter into JFT Acquisition. The SFC seeks a disqualification order of 12 years and a compensation order in the amount of HK$248 million[16]; and

(3) R6 was involved in procuring SSIE to enter into JFT Acquisition. The SFC seeks a disqualification order of 12 years and a compensation order in the amount of HK$248 million[17].

5. Although Rs filed their respective Points of Defence ("**PODs**") in 2021, none of them have filed any witness statement or expert evidence in these proceedings. Only R6 is represented and appears by counsel, Mr Michael Ng.

6. The only witnesses who attend trial to give evidence are those called by the SFC. They are:

(1) Ms Yip Yuk Yu ("**Ms Yip**"), a case officer in the SFC, who filed an affirmation verifying the Petition on 18 December 2020 ("**Yip 1st**"), a witness statement dated 31 July 2024

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15 Petition §§78, 131-135, 140-143; Petition §§136-139
16 Petition, §§157-162; Petition, §§174-181
17 Petition, §§157-162; Petition, §§174-181

("**Yip WS**") and a supplemental witness statement dated 3 October 2024 ("**Yip SWS**").

(2) Ms Li Wing Ki ("**Ms Li**"), a senior manager in the SFC's enforcement division, who made a witness statement dated 30 July 2024 ("**Li WS**").

(3) Mr Lai Yulong ("**Lai**"), a lawyer qualified to practise in the Mainland. He took part in verifying the "Alleged Forestry Rights" (as defined in §50(1) below) and made a witness statement dated 30 July 2024 ("**Lai WS**").

(4) Ms Stella Hong ("**Hong**"), the former sole shareholder and director of Everjoy Technology Development Corporation ("**Everjoy Technology**"). She made a witness statement dated 22 July 2024 ("**Hong WS**").

(5) Mr Leow Foon Lee ("**Expert**"), who made an Expert Report dated 19 June 2020 on the fair value of the Target Technology.

7. Amongst the above witnesses, only Ms Yip and Ms Li have been cross-examined. The evidence of Lai, Hong and the Expert have not been challenged.

A. FACTUAL BACKGROUND

8. Unless otherwise stated, the following facts are either not in disputed or are indisputable.

A1. Company

9. The Company was incorporated in the Cayman Islands in 2001. The Company changed its name several times[18] and the current name was adopted on 19 September 2012. It has been registered as an oversea company under the former Companies Ordinance (Cap. 32) and thereafter, a non-Hong Kong company under the Companies Ordinance (Cap. 622).[19] Until 2020 when it ceased to carry on business, the Company's head office and principal place of business had been in Hong Kong.[20]

10. As at 20 November 2014, the paid-up capital of the Company was HK$11,958 million[21].

11. On 18 September 2001, the Company's shares were listed on the Main Board of The Stock Exchange of Hong Kong Limited ("**SEHK**") (stock code 01228). On 15 December 2015, trading in the Company's shares was suspended by SEHK at the SFC's direction pursuant to s.8 of Securities and Futures (Stock Market Listing) Rules (Cap. 571V). On 4 June 2020, SEHK cancelled the listing status of the Company pursuant to rule 6.01A of the Listing Rules.[22]

12. The principal business of the Company and its subsidiaries (together "**Group**") was development and management of timber resources in Mainland China and distribution, marketing and sales of a wide range of

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[18] From the date of its incorporation to 25 January 2008, its name was Tak Shun Technology Group Ltd (德信科技集團有限公司). From 25 January 2008 to 19 September 2012, its name was Superb Summit International Timber Company Ltd (奇峰國際木業有限公司). From 19 September 2012, the name was changed to Superb Summit International Group Ltd (奇峰國際集團有限公司): Petition §3

[19] Petition §2

[20] Petition §4

[21] Petition §5

[22] Petition §§7 & 11

timber products. In 2012, the Company diversified its business to bulk resources commodity trading and new energy technology.[23]

13. On 30 April 2021, the Company was struck off the register in the Cayman Islands and was dissolved. Upon the creditors' application, on 26 June 2025, Justice Kawaley made an order to restore the Company to the register, followed by a winding up order and appointment of Joint Official Liquidators over the Company ("**JOLs**") [24].

14. On 4 July 2025, the Company was restored onto the register in the Cayman Islands. One of the purposes of restoring the Company is to enable the Company to take the benefit of any compensation order which may be made by the court in these proceedings. By letter dated 1 August 2025, the JOLs informed the court that the Company adopts a neutral stance to the proceedings and will not attend the trial.

A2. Officers at relevant times

15. At the material times of the Forestry Acquisitions and JL[illegible] Acquisition, the directors and officers of the Company were as follows[25]:

Name	Position	Period
R2 Yang Dongjun (楊東軍)	CEO & President of China region	2008-2012/2013
	Consultant	from 2013
R3 Jing Bin (景濱)	ED, CEO of Group	23/10/2007-25/9/2019
R4 Wu Tao (武濤)	ED	22/10/2012-15/9/2014
	Legal Consultant	2008-5/2016
R5 Lee Chi Kong	ED	10/2/2009-16/7/2014
	Chairman	17/2/2009-16/7/2014

23 Petition §§8-11
24 Reasons for Decision dated 9 July 2025 in [2025] CIGC (FSD) 62
25 Petition §§12-27

(李志刚)	Consultant / Strategic Development Consultant	16/7/2014-15/7/2016
R6 Chan King Chung (陳敬忠)	Company secretary	9/10/2012-29/5/2018
	CFO	2012-29/5/2018
R7 Lam Ping Kei	Co-founder & Chairman	12/9/2001-17/2/2009
	ED	29/1/2001-17/2/2009
R8 Wong Choi Fung (R7's wife)	Co-founder & ED	29/1/2001-23/10/2007
R9 Law Wai Fai	ED	31/7/2001-22/6/2010
	Company Secretary	31/7/2001-2/2/2007
	CFO/Financial Controller	2000-6/2010
R10 Yeung Kwong Lun	ED	1/9/2002-23/10/2007
R11 Li Jun	Vice Chairman & ED	2/2/2007-10/2/2009
R12 Cheng Man For	ED	23/10/2007-22/10/2012
	Company Secretary	2/2/2007-9/10/2012
R13 Qiu Jizhi	Independent Non-Executive Director ("**INED**") & member of Audit Committee	1/12/2005-19/8/2008
R14 Chan Chi Yuen	INED & Chairman of Audit Committee	11/4/2007-24/6/2010
R15 Wong Yun Kuen	INED & member of Audit Committee	11/4/2007-24/6/2010
R16 Zhu Guang Qian	INED & Audit Committee member	19/8/2008-26/11/2010

A3. Forestry Acquisitions

A3.1 2007 Acquisition

16. On 12 April 2007, the Company entered into a letter of intent[26] with Superview for the purpose of acquiring 70% shareholding in GGL ("**LOI**"). The LOI stated, *inter alia*, that (1) GGL's only asset was 100% equity in Leeka Wood Co., Ltd 綠之嘉木業有限公司("**Leeka Wood**"), a company established in the Mainland whose principal business was

[26] In Chinese

development and management of forestry resources within and outside of the Mainland, timber harvesting, and processing, manufacture, marketing and sales of various timber products; and (2) a refundable security deposit of HK$50 million shall be deposited by the Company with the escrow agent.[27]

17. On 16 May 2007, the Company, Superview and its shareholders viz., Mr Yiu Yat On (姚逸安) ("**Yiu**"), Mr Ho Kam Hung ("**Ho**"), and Ms Qian Mingjin ("**Qian**") *qua* guarantors (collectively "**3 Shareholders**")[28] entered into the 2007 SPA whereby the Company agreed to purchase 70% shareholding in GGL from Superview at HK$ 1.38 billion.[29]

18. In the announcement made by the Company on 8 June 2007 ("**2007 Announcement**"), it was stated *inter alia* that:

(1) The consideration of the 2007 Acquisition would be paid by (a) cash (HK$200 million), (b) issuance of 556,247,000 shares (HK$15,311,150), and (c) issuance of convertible notes (HK$929,688,850) convertible into shares at HK$0.45 per share. HK$ 100 million deposit was paid by the Company on 18 April 2007 and 5 June 2007 pursuant to the LOI.[30]

(2) HK$ 300 million worth of convertible notes would be stake-held by the Company as security for the profit guarantee given by Superview and the 3 Shareholders that GGL Group's net

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27 Being Kingston Securities Ltd: Petition §32; LOI §7

28 Recital (B) of 2007 SPA described the 3 Shareholders as the only shareholders of Superview and their respective shareholdings were: Yiu (56%), Ho (25%) and Qian (19%)

29 Share Sale and Purchase Agreement, Cls. 3.1 & 4.1

30 2007 Announcement, p. 4

profit after tax[31] for the years ended 31 December 2007 and 2008 would not be less than HK$300 million ("**Profit Guarantee**"). If the security is not sufficient to cover the shortfall in profits, Superview would be liable to pay to the Company in cash equivalent to the shortfall.[32]

(3) GGL Group possessed about 329,000 Chinese mu (21,933 hectares) of timber resources in various regions in Yunnan, Hunan and Hebei province in the Mainland.[33] Amongst the 6 locations with "forest ownership certificates" said to be owned by Leeka Wood, in respect of the 3 forests located in Jiangcheng, Heishan and Mapu, Yunnan Province with land size of 228,900 mu (representing 69.4% of total land size) ("**Alleged Forests**"), Leeka Wood had "obtained forest ownership certificates from the local forestry government department where the forest land is located but the application for forest ownership certificate from the state forestry department is still in progress".[34]

19. On 3 September 2007, the Company issued a circular ("**2007 Circular**") convening an EGM to consider and approve the 2007 Acquisition, stating that:

(1) In respect of the Alleged Forests, Leeka Wood had "obtained forest ownership letter (i.e. temporary ownership document) from the forestry department of the local government where the forest land is located but the application for forest

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31 Prepared in accordance with Hong Kong GAAP: 2007 Announcement, p. 8
32 2007 Announcement, p. 8
33 2007 Announcement, p. 10
34 2007 Announcement, p. 11

ownership certificate from the forestry department of local government is still in progress".[35]

(2) The market value of GGL Group's assets, as assessed by LCH (Asia-Pacific) Surveyors Ltd ("**LCH**"), was RMB3,279 million, of which RMB2,936 million was the value of "Inventory of Standing Trees".[36]

20. The 2007 Acquisition was completed on 8 October 2007.[37]

A3.2 Shortfall in GGL Group's profits

21. On 27 April 2009, the Company announced that GGL Group had in 2017-2018 sustained a net loss of HK$425,111,000, and Superview/3 Shareholders were obliged to compensate the Group for the shortfall of HK$725,111,000 ("**Shortfall**")[38]. 55% of the Shortfall was settled by Superview by setting-off against (1) the HK$300 million convertibles notes stake-held by the Company and (2) the HK$100 million due to Superview. The remaining Shortfall in the amount of HK$325,111,000 ("**Remaining Shortfall**") would be compensated by cash or other consideration to be agreed.[39]

22. On 9 June 2009, the Company and Superview entered into an agreement to extend the date of payment of the Remaining Shortfall from 9 June 2009 to 8 September 2009 with interest at 6.5% p.a..[40]

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35 2007 Circular, p.14
36 Valuation report of LCH, Appendix V to 2007 Circular, p.195
37 Company announcement dated 15 October 2007, p. 1
38 After set off of the Company's security over the Restricted Convertible Notes: §18 above.
39 Company announcement dated 27 April 2009, pp. 1-3
40 Extension Agreement dated 9 June 2009, cls. 1 & 3

A3.3 2009 Acquisition

23. By the 2009 CSTA dated 10 July 2009, the Company and Superview agreed that:

(1) Superview would sell the remaining 30% shareholding in GGL at a consideration calculated at 16% discount of 30% of the net asset value of GGL Group as at 30 June 2009.[41]

(2) Leeka Wood would sell its 67.7% equity in 綠之嘉木製品制造有限公司("**G&G Wood**") to Superview[42]. G&G Wood is a Sino-foreign joint venture which owned a wood manufacturing plant in Beijing and owed RMB360 million to a bank which was repayable on 29 November 2009 ("**Bank Loan**"). The Bank Loan was guaranteed by 金聯通 ("**JLT**") and G&G Wood/Leeka Wood provided cross-guarantees in favour of JLT[43].

(3) Superview would procure the release of G&G Wood/Leeka Wood's liabilities under the counter-guarantees.[44] The Company agreed to pay to Superview a consideration for the release of the cross-guarantees at 90% of the Bank Loan plus interest accrued up to the completion date of the 2009 CSTA[45].

(4) The Company is entitled to set-off the consideration payable to Superview against the Remaining Shortfall (HK$325,111,000)[46].

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41 2009 CSTA cl. 4 & 12
42 2009 CSTA cl. 15
43 2009 CSTA, Recitals (D)-(G)
44 2009 CSTA cl. 8
45 2009 CSTA cl. 17-18
46 2009 CSTA cl. 14

24. On 23 July 2009, the Company made an announcement ("**2009 Announcement**") stating, *inter alia*, that:

(1) Superview held 30% shareholding in GGL, a subsidiary of the Company and hence was a connected person of the Company under the Listing Rules;[47]

(2) The Company had entered into the 2009 CSTA, which constituted a major transaction and a connected transaction, which required approval of independent shareholders;

(3) Leeka Wood owned forest land of 316,000 mu in the Mainland;[48]

(4) GGL Group's audited consolidated net asset as at 31 December 2008 was HK$2,613 million while its unaudited consolidated net asset as at 31 May 2009 was HK$2,603 million[49];

(5) The consideration of 30% shareholding in GGL would be equivalent to 30% of the net consolidated asset value of GGL Group as at 30 June 2009 with 16% discount and would not be more than HK$850 million, to be paid by setting off against the Remaining Shortfall (HK$335,127,091 inclusive of interest) and issuance of convertible notes at the conversion price of HK$0.05 per share[50];

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47 2009 Announcement p.2
48 2009 Announcement p.14 §2
49 2009 Announcement p.4
50 2009 Announcement p.4

(6) The Company had entered into an agreement to further extend the payment date of the Remaining Shortfall to 29 November 2009;

(7) The consideration for the release of the cross-guarantees was RMB334,076,674.50 and would be paid by the Company issuing convertible notes (with conversion price at HK$0.05 per share) and the remaining interest (RMB54,000) would be paid in cash; and

(8) Upon full conversion of all the convertible notes issued to Superview, Superview's shareholding in the Company would be increased from 0.04% to 31.14%.

25. On 23 October 2009, the Company issued a circular ("**2009 Circular**") stating that:

(1) Superview was wholly owned by Yiu[51];

(2) Leeka Wood owned forest land of 316,000 mu in the Mainland[52];

(3) GGL Group's audited consolidated net asset was HK$2,984 million and HK$2,613 million as at 30 June 2009 and 31 December 2008 respectively (taking into account the consolidated net loss of HK$733.7 million in 2008). The consideration for the 2009 Acquisition would be HK$ 751,990,000, equivalent to 30% of the net asset value of GGL Group with a discount of 16%, to be paid by setting off

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[51] 2009 Circular p.5
[52] 2009 Circular p.17 §2

against the Remaining Shortfall and convertible notes to be issued by the Company [53];

(4) The consideration payable by Superview to Leeka Wood for acquiring 67.7% in G&G Wood would be HK$113,026,000 payable in cash; while the consideration for the release of the cross-guarantees would be HK$389,238,000;

(5) Upon full conversion of all the convertible notes, the sharcholding of Superview in the Company would be increased to 32.95%. [54] In other words, the total amount payable by the Company under the 2009 CSTA to Superview was HK$1,141,228,000.

26. On 29 November 2009, the Company announced that the 2009 Acquisition was completed on that date and the Company paid the following consideration to Superview:

(1) In respect of acquisition of 30% shareholding in GGL, by setting-off against the Remaining Shortfall (and interest accrued) and issuing convertible notes in the amount of HK$416,979,000; and

(2) In respect of the release of thc cross-guarantees, by issuing convertible notes in the amount of HK$381,849,000; and in respect of interest from the date of 2009 CSTA to the date of completion, by cash.[55]

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53 2009 Circular p.8
54 2009 Circular pp. 8, 10 -11, 13
55 Company announcement dated 27 November 2009

A4. JFT Acquisition

27. On 6 June 2013 and 27 August 2013, the Company made 2 announcements on the prospective acquisition of a heavy hydrogenation upgrading project. On 14 February 2014, the Company announced that the proposed acquisition would be a notifiable transaction under Chapter 14 of the Listing Rules and no definitive agreement had been reached.

28. On 2 March 2014, SSIE entered into the JFT SPA with Sherri Holdings (as vendor) and Jin (as guarantor) to acquire 51% of the issued shares in Cosmic Summit on the basis that Cosmic Summit indirectly held 80% equity in JFT, which owned the Target Technology. The consideration was determined by a formula: JFT's equity value[56] x 80% x 51% x discount rate of 95% ("**Formula**") but shall not exceed HK$600 million ("**Consideration**").[57]

29. The JFT SPA was signed by R3 on behalf of the Company (as purchaser), Mr Ng Yat Cheung (吳日章) ("**Ng**") on behalf of Sherri Holdings (as vendor) and Jin (as guarantor).[58]

A4.1. JFT Announcement

30. On 3 March 2014, the Company made an announcement on JFT Acquisition ("**JFT Announcement**") stating *inter alia* that[59]:

(1) Ng owns 100% shareholding in Sherri Holdings (the vendor);

(2) Sherri Holdings owns 100% shareholding in Cosmic Summit;

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56 As appraised in the valuation report issued in accordance with Article 2(A)(vi) of the JFT SPA
57 JFT SPA, cl. 3(A)
58 JFT SPA, p. 6
59 JFT Announcement pp.2 3, 7-8, 10

(3) Cosmic Summit owns 100% equity in Chongcheng SH;

(4) Chongcheng SH, in turn, owns 80% equity in JFT and the remaining 20% is owned by Jin's son;

(5) Sherri Holdings, its ultimate beneficial owner and Jin are "third parties independent of and are not connected with the Company and the connected persons of the Company";

(6) After completion, the Group "will effectively hold 51% of the equity interest in [Chongcheng SH] and effectively holds 40.8% of equity interests in [JFT]";

(7) Jin is the general manager of JFT, the inventor of the Target Technology and "an independent third party and not connected with any connected person of the Company";

(8) JFT "exclusively enjoys the entire intellectual property rights of the Target Technology";

(9) The Consideration is determined by the Formula, with 95% represents a discount to the acquisition and will not be more than HK$600 million;

(10) The Consideration will be paid by cash. SSIE shall pay to Sherri Holdings (a) HK$50 million within 5 business days following the JFT SPA ("**1st Payment**"), (b) 85% of the Consideration less the 1st Payment on completion, and (c) the balance within 5 business days after JFT obtains notice of acceptance from the State Intellectual Property Office in the Mainland ("**IP Office**") in relation to certain patent applications specified in the JFT SPA;

(11) "The Consideration was arrived at after the arm's length negotiations between [SSIE] and [Sherri Holdings]" and will be determined by the valuation report to be issued by Independent Valuer in relation to the value of the equity interests in JFT and the Target Technology as at 31 December 2013; and

(12) The Board considers that "the heavy hydrogenation and upgrading projects enjoys a splendid prospect, the implementation and promotion of which will enable the Group to establishing a foothold in the heavy energy hydrogenation projects. The Group will generate profits through self-built plants, technology licences granted to third parties, technical and promotion cooperation with large-scale petrochemical and coal enterprises in the PRC while sharpening its own competitive edge and expanding its influence".

31. On 23 March 2014, the Company issued another announcement stating *inter alia* that, according to the valuation report dated 21 March 2014[60], the value of JFT's equity as at 31 December 2013 was RMB 1,283.2 million and the Target Technology's value was RMB 1,237.2 million ("**Valuation**"), and therefore the Consideration would be set at HK$600 million ("**23/3/2014 Announcement**").

32. On 8 April 2014, the Company further announced it had signed "a non-legally binding minutes of cooperation" with China State Shipbuilding Corporation ("**CSSC**"), "an extra large enterprise group

[60] Prepared by Beijing Tian Hai Hua Asset Valuation Firm ("**Tian Hai Hua**")

directly managed by State Asset Regulatory Commission of the People's Republic of China", in relation to cooperation in "industrial application of heavy energy hydrogenation and upgrading engineering technologies".

33. On 30 May 2014, the Company made 2 announcements, stating that:

(1) SSIE and Sherri Holdings had entered into a supplemental deed to amend the terms of the JFT SPA in that (a) the balance of the Consideration in the sum of HK$550 million would be paid by a promissory note which bears interest at 1% p.a. issued on 30 May 2014 with maturity date of 28 February 2015 ("**Promissory Note**"); and (b) Sherri Holdings undertook that JFT would obtain notice of acceptance issued by the IP Office in relation to the patent applications by 30 July 2014 ("**Undertaking**"). Completion of JFT Acquisition took place after signing the supplemental deed ("**30/5/2014 1st Announcement**").

(2) The Company had signed a legally binding cooperation agreement with CSSC "in relation to cooperation in Heavy Energy hydrogenation and upgrading engineering technologies" and its application and innovation in the projects involving in particular, the field of vessels and marine technologies; and the parties will jointly apply to the Chinese Academy of Sciences for the verification of technological achievements in relation to the Production Technologies, and CSSC will have the first pre-emptive right to use such technologies and the first right of refusal in relation to the same ("**30/5/2014 2nd Announcement**").

34. Despite the Undertaking, it was only until 6 November 2018 that the Company announced that the IP Office had authorised 11 patent applications made by JFT of which 3 had been authorised in 2012 and 2013.[61]

35. On 1 March 2015, the Company announced that HK$302 million remained outstanding under the Promissory Note, and the parties had entered into a supplemental deed to extend the maturity date to 28 February 2016 ("**1/3/2015 Announcement**").[62] There is no dispute that the HK$302 million has not been paid by the Company.

B. APPLICABLE PRINCIPLES

36. Against the above background, the SFC contends that the business or affairs of the Company have been conducted in a manner specified in s.214(1)(a)–(d) of the SFO:[63]

(1) oppressive to its members or any part of its members;

(2) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(3) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; and/or

(4) unfairly prejudicial to its members or any part of its members.

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61 Company's announcement dated 6 November 2018
62 Company's announcement dated 1 March 2015
63 Language adopted from *SFC v Zheng Dunmu* [2024] 2 HKLRD 688 §17

B1. Conditions under s.214(1)

37. The SFC has to satisfy 3 conditions for relief under s.214(1) of the SFO:

(1) The corporation is or was a listed corporation.

(2) The business or affairs complained of is that of the corporation. This include the business or affairs of a subsidiary under the control of the listed corporation. The court takes a "realistic approach" in determining whether the affairs of the subsidiary may be regarded as the affairs of the listed corporation.[64]

(3) The conduct complained of falls within one or more heads of misconduct specified in sub-sections (a) to (d).[65]

38. In the present case, the first and second conditions are satisfied. The Company was a listed corporation when the impugned transactions took place. The matters complained of by the SFC concern the business and affairs of the Company and the subsidiary controlled by the Company.

39. As regards the third condition, the SFC relies on s.214(1)(a)-(d) of the SFO. The principles may be summarised as follows:

(1) In respect of s.214(1)(a),[66] "oppressive conduct" typically involves an abuse of majority rights or powers to procure the occurrence or non-occurrence of events that are unfair or

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64 *Re Long Success International (Holdings) Ltd* [2021] HKCFI 624 at §34(2) per Coleman J

65 *SFC v Zheng Dunmu* [2024] 2 HKLRD 688, §18

66 *Re First Natural Foods Holdings Limited*, HCMP 205/2013, 17 February 2017, §§71-75, per DHCJ Hunsworth

prejudicial to the complainants who, by reason of their minority status, can only submit.

(2) As for s.214(1)(b):

(a) "Defalcation" refers to "misapplication, including misappropriation, of any property" of the listed corporation and its subsidiaries/affiliates.[67]

(b) "Misfeasance" is defined as "the performance of an otherwise lawful act in a wrongful manner". The notion of misfeasance overlaps with that of breach of fiduciary duty and covers a director's breach of his duties to exercise reasonable care and diligence in his management of the company, and to act in good faith in the best interests of the company.[68]

(c) "Other misconduct" connotes improper or wrong behaviour, mismanagement, or culpable neglect of duties, and covers the widest range of possible misconduct. It covers the failure of a director to exercise reasonable care and diligence in the management of the company.[69]

(3) Section 214(1)(c) is complementary to other subsections and often arise alongside situations where there is impropriety in the directors' conduct of the affairs of the company including the making of misleading or false announcements and

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67 Section 1, Part 1 of Schedule 1 to the SFO.
68 *SFC v Zheng Dunmu* §20(2); *Re First Natural Foods* §78
69 *SFC v Zheng Dunmu* §§20(3), 21; *Re Long Success* §37

situations requiring publication of periodic financial statements and announcements.[70]

(4) As regards s.214(1)(d), "unfairly prejudicial" conduct does not have to be wrongful *per se*.[71] The touchstone for liability is that the conduct prejudiced the interests of the members of the company.[72] The term covers a range of conduct, from fraud to negligence, and is to be assessed by reference to what one would expect from the management to whom the company's affairs have been entrusted.[73] It is wide enough to cover instances where a listed company has (a) failed to comply with the disclosure requirements, (b) made misleading or false announcements, and (c) failed to publish periodic financial statements and announcements.[74]

40. The SFC bears the legal burden of proving the conduct complained of falls within the scope of s.214(1)(a)-(d) of the SFO.

B2. Where serious allegations are involved

41. Mr Ng refers to the well-established principle that an allegation of fraud must be pleaded with particularity. The principle has been summarized by in *Song Congying v Cheng Wai Kin t/a Shing Shun Foreign Currency Exchange Co* [2020] HKCFI 2751, §§38-40, per DHCJ Jin Pao SC, in this way:

> "38. In relation to pleading fraud, it is a cardinal principle that an allegation of fraud must be pleaded distinctly and with utmost particularity.... Further, an allegation of fraud or

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70 *Re Long Success* at §38; *SFC v Zheng Dunmu* at §22
71 *SFC v Zheng Dunmu* at §23(1)
72 *Re Long Success* at §39
73 *Re Long Success* at §39; *SFC v Zheng Dunmu* at §23(2)
74 *SFC v Zheng Dunmu* at §23(3)

> dishonesty must be sufficiently particularised, and particulars of facts which are consistent with honesty are not sufficient....
>
> 39. An allegation that a party 'knew or ought to have known' is not a clear and unequivocal allegation of actual knowledge and will not support a finding of fraud. It is not treated as making two alternative allegations, but rather a single allegation that he ought to have known....
>
> 40. Therefore, where a claim involving an allegation of dishonesty or fraud requires a plea of actual knowledge, and yet the pleader only makes a "rolled-up" plea, the claim is liable to be struck out for disclosing no reasonable cause of action or being embarrassing...."

42. Where in civil proceedings, an allegation is made of criminal (or similarly) serious misconduct, the *Re H*[75] principle applies. As explained in *Nina Kung v. Wong Din Shin* (2005) 8 HKCFAR 387, *per* Ribeiro PJ:

(1) The party bearing the legal burden of proving the allegation is required to prove it with evidence of a commensurate cogency (§182):

> "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.....Built into the preponderance of probability standard is a generous degree of degree of flexibility in respect of the seriousness of the allegation."

(2) The principle is applicable by analogy to the respondent's evidential burden regarding forgery (§§183-184):

> "operating not as defining a standard of proof, but imposing a standard of cogency which must be satisfied before evidence is considered sufficient to raise a case (here of forgery and of an associated conspiracy) for consideration by the court. When

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[75] *Re H & Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586

> weighing up and assessing the probabilities in relation to the evidence adduced by the respondent as evidence of forgery, the court must bear in mind the seriousness of the misconduct alleged, recognizing that it carries an inherent degree of improbability (§184)."

B3. Drawing inferences

43. The court's approach in drawing inferences may be summarized as follows:

(1) The court adopts a disciplined approach to the drawing of inferences, and would only draw inferences of fraud or serious misconduct where such inferences are compelling. (*Nina Kung,* §187).

(2) Where the court is invited to reach a conclusion of forgery as an inference to be drawn on the basis of circumstantial evidence, any such inference must be properly grounded in the primary facts found (*Nina Kung,* §185).

(3) Where direct proof is not available, "it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference". "If circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise" (*Nina Kung,* §185[76]);

(4) "The facts proved must form a reasonable basis for a definite conclusion affirmatively drawn of the truth of which the

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[76] Citing *Richard Evans and Co Ltd v Astley* (1911) AC 674, 687; *Bradshaw v McEwans Pty Ltd,* unrep., High Court of Australia, 27 April 1951

tribunal of fact may reasonably be satisfied" (*Nina Kung*, §186).

B4. Drawing adverse inferences

44. Where the plaintiff establishes a *prima facie* of misconduct which calls for an answer from the respondents concerned, the court may draw adverse inferences against them:

(1) If the court is satisfied that the evidence before it raises a *prima facie* case which calls for an answer, and the defendant is in a good position to answer the allegations but fails to give evidence, his silence could turn a *prima facie* case into a strong case against him.[77]

(2) The drawing of such inferences is particularly apt where no explanation for their failure to give evidence has been advanced.[78]

(3) Putting it in another way, in the face of unexplained silence, the primary facts may properly be assessed "on the basis that they have consciously been left unexplained".[79]

45. Adverse inferences would be drawn in respect of material issues or critical aspects which a defendant is able, but elected, to withhold from the court:

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[77] *Re South Asia Group (HK) Ltd* [2024] HKCFI 2070, §§76-77 (in the context of breach of directors' fiduciary duties); *Re China Best Group Holding Ltd*, HCMP 745/2013, 29 October 2015, §§91-92 per G Lam J (as he then was) (in the context of directors' disqualification proceedings); *Re Styland Holdings (No 2)* [2012] 2 HKLRD 325, §§17-18 per Barma J

[78] *Re Styland Holdings (No 2)*, §§17-18

[79] *Re China Best Group Holding Ltd*, §92

(1) Where a defendant elected not to give evidence which is material to the issues raised by the parties, the court is entitled to draw all reasonable inferences as to what are the facts which he has chosen to withhold (*British Railways Board v Herrington* [1972] AC 877 at 930G-931B, per Lord Diplock).

(2) Similarly, where the evidence is incomplete and obscure in critical aspects, the silent party's failure to give evidence may convert that evidence into proof on the matters which are within his knowledge. As stated by Lord Sumption JSC in *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 at §44:

> "… There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party's failure to rebut it. For my part I would adopt, with a modification which I shall come to, the more balanced view expressed by Lord Lowry with the support of the rest of the committee in *R v Inland Revenue Comrs, Ex p TC Coombs & Co* [1991] 2 AC 283, 300:
>
> > 'In our legal system generally, the silence of one party in face of the other party's evidence may convert that evidence into proof in relation to matters which are, or are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a *prima facie* case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party, may be either reduced or nullified.'"

46. Further, in the context of a claim for breach of fiduciary duties, once a *prima facie* case is shown that the director acted in breach of fiduciary duties in misapplying company assets, the evidential burden shifts to the director to demonstrate the propriety of the transaction

(*Bishopsgate Investment Management Ltd (in liq) v Maxwell (No 2)* [1994] 1 All ER 261, 265d-f, 269d-e).

B5. Status & admissibility of PODs

47. As regards the status and admissibility of the statements in the PODs, the position is as follows:

(1) Pleadings filed in the High Court, including the PODs, are admissible in evidence to the same extent as the originals pursuant to Order 38 rule 10 of the Rules of the High Court.[80]

(2) Admissions or statements *against* a party's interest are admissible as an exception to the rule against hearsay.[81] Such statements are, subject to question of weight, admissible in evidence against them.[82]

(3) Pleadings verified by statement of truth made by a party would be treated with the same seriousness as an affidavit, as the purpose of statement of truth is to deter sloppy or speculative pleadings and prevent dishonest cases being put forward.[83]

(4) The statements and pleas made in the pleadings form part of the history of the proceedings and may be relied upon by the other parties for that purpose.[84]

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80 SFC Closing §6(2)
81 *Hong Kong Civil Procedure 2026*, §J1/47/4; *Phipson on Evidence*, 21st ed., §4-01
82 SFC Closing §§5, 6(2)
83 *Tong Kin Hing v Auton Mauritius Corp* [2010] 1 HKLRD 77 at §19 per Rogers VP; O.41A r.4(1)(a) of the RHC; *Phipson on Evidence*, 21st ed., §4-26; SFC Closing §§6(3), (4)
84 *Fordadoor Ltd v Wong Kwong Wing & Ors* [2020] HKCFI 85, §§4, 9 per DHCJ William Wong, SC; SFC Closing §6(4)

48. However, where the PODs contain positive averments supportive of Rs' defence and the averments are in dispute or not supported by documentary evidence, such averments would be taken as not proved in the absence of any witness statement or oral evidence given by or on behalf of Rs at trial. This accords with the principle that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the burden of proof in respect of such allegation rests on him (*Phipson on Evidence*, 21st ed., §6-06; *Music Holdings Property HK Ltd* [2020] HKCFI 1312, §55, per Ng J).

C. DISCUSSION ON THIRD CONDITION

C1. Overview

49. Although the parties have prepared an agreed list of issues (which runs to 19 pages), it has not been updated to reflect the fact that the trial only concerns Rs. Worse still, some of the issues framed do not accurately reflect what have been pleaded in the Petition. The task is not made easier given the very lengthy submissions[85] prepared by Ms Sara Tong SC (leading Ms Natalie So), counsel for the SFC. It is not easy to decipher from the many allegations and propositions put forward by Ms Tong what are the real issues which the court has to decide in these proceedings. It therefore falls upon the court to go through the Petition with a view to identifying issues which require determination of the court.

50. In respect of Forestry Acquisitions, the SFC's pleaded case may be summarised as follows:

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85 Which comprise (i) 74-page Skeleton Submissions, (ii) 34-page Closing Submissions, (iii) oral submissions, and (iv) Annex 1 to Closing Submissions and a few tables on Backward Fund Tracing, in addition to statement of Agreed Facts, Agreed Chronology, Agreed Dramatis

(1) Leeka Wood did not own the Alleged Forests or any rights over the Alleged Forests ("**Alleged Forestry Rights**"). The Alleged Forests accounted for 69-72% of the total land size allegedly owned by Leeka Wood, while the Alleged Forestry Rights accounted for 76.64-82.54% of the total value of GGL Group. The Company paid HK$1,678 million (~RMB 1,601 million) for non-existent assets under the 2007 and 2009 Acquisitions[86].

(2) R2 was the ultimate beneficial owner of Superview and the "mastermind" behind the fraud perpetrated through the 2007 and 2009 Acquisitions. He (together with R3) devised a scheme to deceive the Company in entering into the 2007 Acquisition, knowing that Leeka Wood did not possess the Alleged Forestry Rights, and he arranged R3 to join the Company's board and procure the approval of the 2009 Acquisition.[87]

(3) As the Alleged Forestry Rights did not exist, there should be at least HK$2,835 million downward adjustments in assets and HK$33.94 million in revenue in the audited consolidated financial statements of the Group for the year ended 31 December 2014 ("**2014 AFS**"), which would have a material impact on the financial statements of the Group and caused a high degree of uncertainty, and the investing public was misled by the false information reported in the 2014 AFS[88].

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[86] Petition §§74-77, 124-125
[87] Petition §§78-80, 131-135
[88] Petition §§81-82

(4) The Company paid HK$1,678 million (~RMB 1,601 million) for non-existent Alleged Forestry Rights during the course of the 2007 and 2009 Acquisitions[89].

(5) R2 was a shadow director of the Company and acted in breach of his fiduciary duties and/or duty of care, such that he was wholly or substantially or partly responsible for its affairs being conducted in a manner in contravention of s.214(1)(a)-(d)[90].

51. As for JFT Acquisition, the SFC's pleaded case is that it was an elaborate scheme to defalcate and misappropriate the Company's assets by reason of the following matters[91]:

(1) The first HK$100 million paid to Jin on 27 December 2013, 9 and 29 January 2014 ("**First HK$100m**") was sourced from the Company or its nominees[92].

(2) The relevant announcements on JFT Acquisition were false or misleading as they did not disclose anything about the First HK$100m or that it was paid in connection with the acquisition of JFT[93].

(3) The Consideration was "artificially fixed" and was paid to entities unrelated to JFT Acquisition[94] in that:

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89 Petition §125
90 Petition §§140-143
91 Petition §100
92 Petition §§89.1, 91
93 Petition §§90.1, 92-93
94 Petition §100

(a) The Seven Cheques in the total amount of HK$298 million purportedly drawn in favour of Sherri Holdings (copies of which were provided to the SFC) were false as the actual payees of 5 cheques (i.e. Cheque 2 – 6, see §151 below) in the total amount of HK$198 million were not Sherri Holdings, but Everjoy Technology, Zhiku Capital and Everjoy International[95];

(b) The Seven Cheques were intended to hide the fact that only HK$150 million had been paid to Jin, and HK$121.7 million were ultimately channelled to R2, Magic Stone and "members of [R2's] Syndicate" including Yang Jilin, Liang Juan, Yuan Wei and Zhiku Capital[96].

(4) Sherri Holdings was not beneficially owned by Jin but was "associated with those in control of the Company", and Ng held Sherri Holdings as nominee of R2. Payment of HK$250.1 million to entities unrelated to JFT Acquisition and concealment of such payments formed part of a scheme devised by R2 to defalcate and misappropriate the Company's asserts[97], evidenced by the following facts and matters:

(a) The Company's management, R4 and R6, were involved in the operations of Sherri Holdings in that (i) corporate documents of Sherri Holdings, including board resolutions and investment or other cooperation agreements between Sherri Holdings and Zhiku Capital,

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95 Petition §§94-97
96 Petition §§89.2-89.5, 90.2-90.3, 98-99
97 Petition §§101-103

were retrieved from the computers of R4 and R6 and attachments to emails between them; and (ii) R4 was actively involved in Sherri Holdings' cooperation agreement dated 19 June 2014 with Wider Success[98].

(b) Sherri Holdings used China E-Learning's registered office as its correspondence address and bank address[99].

(c) The Company's management in particular R4, was involved in giving instructions to Ng on what steps to take in setting up Cosmic Summit and Chongcheng SH in October 2013, before JFT Acquisition[100].

(d) Cheques 2 – 6 were paid to R2 and/or members of "R2's Syndicate". The Company did not announce any further update on the payment of the remaining balance of the Consideration (HK$302 million) and Sherri Holdings did not complain about not receiving the same[101].

(5) The valuation of the Target Technology at RMB 1,237 million was "unreasonable, grossly overvalued and/or fraudulent", and was part of the scheme to defraud the Company. The Target Technology had nil or minimal value. There should be downward adjustments to the Group's intangible assets from HK$1,239 million to HK$162.5 million as at 31 December 2014[102].

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98 Petition §104
99 Petition §105
100 Petition §106
101 Petition §107
102 Petition §§108-116

(6) The Company suffered a loss of HK$248 million, being HK$298 million paid for JFT Acquisition less HK$50 million paid to Jin under Cheque 7, on the basis that the First HK$100m was the Company's money and appears to have been paid in connection with acquisition of JFT. Alternatively, the Company suffered a loss of HK$121.7 million, being the amount paid to R2, Magic Stone and members of R2's Syndicate[103].

52. As against R2, the SFC claims that:

(1) R2 was the "mastermind" behind the fraud perpetrated against the Company in relation to JFT Acquisition[104].

(2) R2 was actively involved in both ends of JFT Acquisition, and he caused the Company to acquire JFT on unfavourable terms with the ultimate purpose of channelling the Company's funds to himself[105]. Reliance is placed on (a) Sherri Holdings was held by Ng as nominee of R2 and/or members of R2's Syndicate[106]; (b) R2 was responsible for negotiating the terms with Jin in the initial stage of acquisition of JFT[107]; (c) R2 signed Cheques 2 - 6, and was the ultimate recipient of the amounts paid under such Cheques (by himself, or through Magic Stone and members of R2's Syndicate)[108].

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103 Petition §§126-127
104 Petition §131
105 Petition §136
106 Petition §137
107 Petition §138
108 Petition §139

(3) R2 was a shadow director of the Company and acted in breach of his fiduciary duties, or acted fraudulently or in a grossly incompetent manner and/or failed to act in the best interest of the Company and/or breached his duty of care, such that he was wholly or substantially or partly responsible for its affairs being conducted in the manner in contravention of s.214(1)(a)-(d). This is followed by an elaborate plea to the effect that R2 orchestrated, caused and/or procured the Company to enter into the 2007 Acquisition, the 2009 Acquisition and JFT Acquisition to the detriment of the Company which spanned between 2007 and 2014 and involved defalcation and misappropriation of the Company's assets. [109]

53. The SFC's pleaded case as against R4, is as follows[110]:

(1) R4 was actively involved in both ends of JFT Acquisition, and caused the Company to acquire JFT on unfavourable terms with the ultimate purpose of misappropriating the Company's funds in that:

(a) R4 was actively involved in a number of corporate documents in relation to Sherri Holdings including the 1st to 3rd Sherri Documents[111] (as defined in §194(2)-(4) below);

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109 Petition §§140-143
110 Petition §§157-162
111 Petition §104.1-104.2

(b) R4 was directly involved in the affairs of Sherri Holdings and the setting up of Cosmic Summit and Chongcheng SH[112];

(c) R4 was responsible for the due diligence process including site visit and expert review with CSSC in August 2013 and November 2013 respectively, which was "objectionable" given his involvement in Sherri Holdings.

(2) By reason of the above matters, R4 (a) breached his duties as director of the Company, or acted fraudulently or in a grossly incompetent manner and/or failed to act in the best interest of the Company and/or breached his duty of care towards Company; (b) orchestrated, caused and/or procured the Company to enter into JFT Acquisition, with fictitious, artificial or over-exaggerated revenue or business operation at the expense and to the detriment of the Company; (c) failed to properly supervise the business and affairs of the Company and its subsidiaries; and (d) deliberately placed himself in a position of conflict and failed to avoid or inform sharcholders of his actual or potential conflict. He was wholly or substantially, or partly responsible for the business and affairs of the Company to have been carried out in a manner in breach of s.214(1)(a)-(d).

54. As against R6, the SFC's pleaded case is that[113]:

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[112] Petition §106
[113] Petition §§104.1, 113-114, 174-181

(1) R6 was "actively involved in both ends of JFT Acquisition and caused the Company to acquire JFT on unfavourable terms with the ultimate purpose of misappropriating the Company's funds". Reliance is placed on the following acts:

(a) R6 was involved in the affairs of Sherri Holdings, evidenced by a "合作協議(sherri& wider)" dated June 2014 and a "written resolutions to sole director of Sherri Holdings dated 29 July 2014" (together "**2 Sherri Documents**") both retrieved from R6's external hard drive;

(b) As company secretary and CFO of the Company, R6 was "responsible for coordinating the due diligence process and for liaising with Hong Kong lawyers", which was objectionable given his involvement in Sherri Holdings' affairs. At the time when R6 conducted the due diligence, he knew or ought to have known that the Consideration was "significantly overpriced and the value assigned by the Target Technology greatly exceeded the true value of the Target Technology";

(c) R6 was involved in and facilitated the transfer of the First HK$100m to Rosy Song and ultimately to Jin prior to JFT Acquisition, and he *knew* the reason behind the transfer. Reliance is placed on (i) Wong's confirmation that the funds in Holysun Account were "mainly sourced from [the Company]"; (ii) most of the transactions in Holysun Account since 2012 were

related to the Company; and (iii) the Cashflow Document found in R6's external hard drive[114].

(2) Further or alternatively, even if R6 did not know the reason behind the transfer of the First HK$100m, he *knew* that the draft JFT Announcement which he circulated to the board, contained inaccurate, false or misleading information given that the transfer of the First HK$100m was not disclosed.

(3) By reason of the above matters, the same rolled up plea against R4 are pleaded against R6.

55. Mr Ng submits that the claims against R6 should be dismissed for the following reasons:

(1) JFT Acquisition was approved by the Board. As R6 was never a director of the Company, he could not have caused the Company to enter into JFT Acquisition;

(2) As regards the specific acts alleged to have been undertaken by R6:

(a) The existence of the Cashflow Document in R6's hard drive cannot possibly prove that R6 executed the transfer of the First $100m to Rosy Song;

(b) There is no evidence to prove that R6 circulated the draft JFT Announcement to the Board;

(c) The 2 Sherri Documents allegedly retrieved from R6's hard drive were dated *after* completion of JFT

[114] Petition §§91.6, 92.1

Acquisition and they related to financing of the Target Technology; and

(d) There is no cogent evidence to prove that R6 had knowledge of JFT Acquisition being a fraud. The 2 Sherri Documents are perfectly consistent with an honest belief that JFT Acquisition was a genuine transaction.

(3) Even if R6 executed the First HK$100m transfer, on the SFC's own case, the transfer was part of the actual consideration paid for JFT Acquisition and, therefore, could not form part of the loss suffered by the Company.

56. The SFC also pleaded a Disclosure Case in the Petition, which is directed to the Company's failure to disclose any further financial information after the publication of the interim financial statements of the Group for the period ended 30 June 2015 ("**2015 IFS**"). This is said to constitute a misconduct under s.214(a) and (d).[115] As no relief is sought against the Company, it is unnecessary to consider the Disclosure Case any further.

C2. Issues for determination

57. On the basis of the case pleaded in the Petition, which is disputed by Rs, the issues which require determination of the court are:

(1) Whether Leeka Wood owned the Alleged Forestry Rights at the time of the 2007 and 2009 Acquisitions (Issue 1).

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[115] Petition §§49, 117-123

(2) If Leeka Wood did not own the Alleged Forestry Rights, (a) whether the relevant announcements on the 2007 and 2009 Acquisitions were false or misleading in material respects; (b) whether the Company's assets and revenue as disclosed in the 2014 AFS were false or misleading in material respects; (c) what loss, if any, was suffered by the Company (Issue 2(a)-(c)).

(3) Whether (a) R2 was the ultimate beneficial owner of Superview; (b) R2 the "mastermind" behind the fraud perpetrated through the 2007 and 2009 Acquisitions; (c) R2 was a shadow director of the Company since he served as CEO/President of China region in 2008; and (d) whether R2 acted in breach of his duties as shadow director of the Company by causing it to enter into the 2007 and 2009 Acquisitions (Issue 3(a)-(d)).

(4) Whether the Target Technology was overvalued and, if so, whether the Company' revenue and profitability as disclosed in the 2014 AFS were false or misleading in material respects; (Issue 4).

(5) In respect of the First HK$100m, (a) what was the fund flow involved; (b) whether it was sourced from the Company, (c) whether it was paid in connection with JFT Acquisition, and (d) whether the relevant announcements on JFT Acquisition were false or misleading in failing to disclose the First HK$100m; and (e) whether R4 and R6 knew of and were involved in arranging payment of the First HK$100m to Jin (Issue 5(a)-(e)).

(6) Whether Sherri Holdings was beneficially owned by Ng or was held by him as nominee of R2 (Issue 6).

(7) (a) whether in respect of the HK$298 million paid by the Company for JFT Acquisition, only HK$50 million was paid to Jin and the balance (HK$248 million) was paid to persons/entities unrelated to JFT Acquisition and, if so, whether such payments constituted defalcation or misappropriation of the Company's assets; and (b) whether the Consideration was artificially fixed to disguise the fact that only HK$50 million was paid to Jin (Issue 7(a)-(b)).

(8) What loss, if any, was suffered by the Company in entering into JFT Acquisition (Issue 8);

(9) Whether R2 orchestrated or perpetrated a fraud on the Company by causing it to enter into JFT Acquisition and, if so, whether he acted in breach of duties as shadow director of the Company (Issue 9).

(10) Whether R4 acted in breach of his duties owed to the Company, and orchestrated or perpetrated a fraud on the Company by causing it to enter into JFT Acquisition (Issue 10).

(11) In respect of R6, (a) whether he owed any fiduciary duties to the Company, (b) whether he was involved in arranging payment of the First HK$100m to Jin, and was responsible for preparing and circulating the JFT Announcement, (c) whether he was involved in preparing the Seven Cheques, (d) whether he was involved in dealing with Sherri Holdings' affairs, and

(e) whether he orchestrated or perpetrated a fraud and acted in breach of fiduciary duties by causing the Company to enter into JFT Acquisition (Issue 11(a)-(e)).

(12) What, if any, relief should be granted against R2, R4 and R6 (Issue 12).

58. I consider these issues in turn.

C3. Issue 1: whether Leeka Wood owned Alleged Forests

59. The uncontradicted evidence adduced by the SFC shows that Leeka Wood never owned the Alleged Forests or the Alleged Forestry Rights.

60. The relevant PRC law governing the use of forestry rights is not in dispute. As explained in Fangda Partners' opinion dated 21 February 2019 ("**Fangda Opinion**"):

(1) Article 3 of the PRC Forest Law and the Regulations on the Implementation of the Forest Law of the PRC provides that ownership of forestry rights is to be registered by the local People's Government at or above the county level, and certificates will be issued to confirm the property rights (所有權) and the usage right (使用權) (§§12-13). An owner of forestry rights owns both the property right and usage right of forests, trees and forest land (§§17, 29).

(2) The State Forestry Bureau of the State Council is the forestry authority at the national level whereas at the local level, it is

the forestry bureau of the People's Government at or above the county level (§42).

(3) As regards the Alleged Forests, the relevant authorities in Yunnan Province are (a) the Forestry Bureau of Jiangcheng Hani and Yi Autonomous County (for Jiangcheng forest); (b) the Forestry Bureau of Lancang Lahu Autonomous County (for Heishan forest); and (c) the Forestry Bureau of Ning'er Hani and Yi Autonomous County (for Mapu forest) (collectively "**Forestry Bureaux**") (§44).

(4) The relevant authorities would issue forestry ownership certificates (林權證) ("**FOCs**") to confirm the property/usage rights in respect of forests, trees and forest land in question if the requisite requirements are met. FOCs would be issued at the initial registration of ownership and every subsequent transfer of ownership (§53).

(5) The relevant law does not provide for issuance of forestry ownership letters ("**FOLs**"). While FOLs may be issued as temporary proof in "uncommon situations", it would only be issued to the entity which is already registered as the owner of the relevant rights (§54).

61. In the present case, the only documents produced by the Company as proof of Leeka Wood's ownership of the Alleged Forestry Rights are 3 FOLs purportedly issued by the Forestry Bureaux on 18, 20 and 22 March 2007 (collectively "**3 FOLs**").

62. The 3 FOLs are forgeries. In its letter dated 16 June 2016, the China Securities Regulatory Commission ("**CSRC**"), having made inquiries with the Forestry Bureaux, confirmed that:[116]

(1) None of the Forestry Bureaux had issued any letters or FOCs to Leeka Wood or its subsidiary, 綠之嘉木業 (普洱) 有限公司[117] ("**Pu'er Sub**") (§2);

(2) The seals affixed on the 3 FOLs were different from the official seals of the Forestry Bureaux (§2); and

(3) The Alleged Forests had never been registered at the Forestry Bureaux, nor had Leeka Wood ever held any registered ownership over any forests in the relevant locations (§3).

63. The SFC engaged Fangda Partners which, in turn, engaged a local law firm[118] to visit each of the Forestry Bureaux with a view to verifying the authenticity of the 3 FOLs. As stated in their report dated 19 February 2019 ("**Jianwei Report**"),[119] the Forestry Bureaux confirmed that they had *never* issued the 3 FOLs and the same were forgeries. Detailed reasons were given by the Forest Burcaux on (1) the discrepancies between the seals affixed on the 3 FOLs and their official seals;[120] and (2) a FOL would only be issued to the registered owner of the forestry rights,[121] but neither Leeka Wood nor the entity to which the Alleged

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116 CSRC Letter dated 16 June 2016, §§2-3

117 Leeka Wood allegedly transferred the Alleged Forestry Rights pursuant to Forestry Right Transfer Contract executed on 30 December 2010 .

118 Jianwei Law Firm, Kunming office

119 Report on Verification of Alleged Forestry Rights dated 19 February 2019

120 Mapu - Lai WS, §8.3; Jianwei Report, pp. 8-10; Jiangcheng - Lai WS §8.12; Jianwei Report, p. 18; and Heishan - Lai WS §8.19; Jianwei Report, p. 32.

121 Fangda Opinion, §54; Lai WS, §8.6

Forestry Rights were transferred[122] had ever registered any forestry rights at, or held any FOC issued by, the Forestry Bureaux.[123]

64. Further, each of the Forestry Bureaux issued an explanatory statement (情況說明) to confirm the findings set out in Jianwei Report.

65. On the basis of the above evidence, I find that Leeka Wood never owned the Alleged Forests or the Alleged Forestry Rights, whether at the time of the 2007 and 2009 Acquisitions or at all.

C4. Issue 2

C4.1 Issue 2(a): whether 2017 and 2019 Announcements/Circulars were false or misleading

66. According to the working papers produced by LCH[124], the total market value of the "land use rights" and the "inventory of trees" held by Leeka Wood as at 30 June 2007[125] and 31 August 2009[126] were as follows:

	Land use rights (RMB million)	**Inventory of trees (RMB million)**	**Land use rights + inventory of trees**
2007 Acquisition			
Total	68.9m	2,936m	3,005m
Alleged Forests	56.7m	2,456m	2,513m
Alleged Forests / Total	82%	84%	83.63%
2009 Acquisition			

122 Purported transferor of the Alleged Forestry Rights to Leeka Wood through a series of transfer agreements

123 Explanatory Statements issued by the Forestry Bureaux

124 Pursuant to the notices issued by the SFC dated 26 May 2017 and 9 June 2017

125 Calculation of % of market value of Alleged Forests as of 30/6/2007 (i.e. 2007 Acquisition) based on breakdown in valuation provided by LCH

126 Calculation of % of market value of Alleged Forests as of 31/8/2009 (i.e. 2009 Acquisition) based on breakdown in valuation provided by LCH

Total	68.2m	3,080m	3,148m
Alleged Forests	55.0m	2,565m	2,620m
Alleged Forests / Total	81%	83%	83.22%

67. In view of the finding that Leeka Wood did not own the Alleged Forests or the Alleged Forestry Rights at the time of the 2007 and 2009 Acquisitions, the 2007 Announcement, the 2007 Circular, the 2009 Accountment and the 2009 Circular issued by the Company in respect of the Forestry Acquisitions, and each of them, containcd false or misleading in material respects:

(a) In the 2007 Announcement, it was stated that (a) GGL Group (via Leeka Wood) possessed 329,000 mu of timber resources in various regions in the Mainland and (b) Leeka Wood had obtained FOCs from local forestry government department[127] (see §18(3) above). In fact, (i) the Alleged Forests representing 69.4% of the total land size were never owned by Leeka Wood and (ii) no FOCs had been issued to Leeka Wood;

(b) In the 2007 Circular, it was stated that (a) Leeka Wood had obtained FOLs from forestry department of the local government in respect of the Alleged Forests, and (b) the market value of GGL Group's inventory of standing trees was RMB 2,936 million[128] (see §19(1)-(2) above). In fact, (i) Leeka Wood had never obtained any FOLs in respect of thc Alleged Forestry Rights and (ii) Leeka Wood's inventory of trees with market value of RMB2,456 million (representing 77% of total market value) did not exist.

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[127] 2007 Announcement, p.8

[128] 2007 Circular pp.12, 14, 21, 195 (valuation report of LCH, Appendix V)

(c) In the 2009 Announcement, it was stated that (a) Leeka Wood owned forest land of about 316,000 mu in the Mainland and (b) GGL Group's audited consolidated net asset as at 31 December 2008 was HK$2,613 million while its unaudited consolidated net asset as of 31 May 2009 was HK$2,603 million (see §24 above). In fact, (i) Leeka Wood did not own the Alleged Forests representing 69.4% of the total land size of the forest alleged owned by Leeka Wood; and (ii) after deducting the market value of the Alleged Forestry Rights (RMB2,620 million), GGL Group would turn from having consolidated net asset of HK$2,603 million to having net liability.

(d) In the 2009 Circular, it was stated that (a) Superview was wholly owned by Yiu; (b) Leeka Wood owned 316,000 mu of forests land in the Mainland; and (c) GGL Group's audited consolidated net asset was HK$2,984 million as at 30 June 2009 and HK$2,613 million as at 31 December 2008 (see §25 above). In fact, (i) Superview was not owned by Yiu, but by R2 (see Section C5.1 below); (ii) Leeka Wood did not own the Alleged Forests or the Alleged Forestry Rights and 69.4% of the forests land said to be owned by Leeka Wood did not exist; and (iii) GGL Group's consolidated net asset as at 30 June 2009 would be HK$364 million (being HK$2,984 million less RMB 2,620 million).

C4.2 Issue 2(b): whether 2014 AFS were false or misleading

68. There is no dispute that since completion of the 2009 Acquisition, all the assets/liabilities and profits/losses of GGL Group had

been consolidated into and formed part of the assets/liabilities and profits/losses of the Group.

69. In the 2014 AFS, it was recorded that the Group owned the following assets, all of which were held by GGL Group:

(1) Biological assets (i.e. inventory of trees) of HK$3,309 million; and

(2) Prepaid land lease of HK$57 million[129].

70. According to the breakdown of "Biological Assets by forest location" and the breakdown of "land use rights" provided by the Company's former solicitors to the SFC on 10 July 2017:

(1) The total value of the forests located in Yunnan province (i.e. Alleged Forestry Rights) was HK$2,786 million, representing 84.2% of the Group's biological assets reported in the 2014 AFS; and

(2) The total value of the land use rights located in Yunnan (i.e. the Alleged Forestry Rights) was HK$49 million, which represented 85.5% of the value of prepaid land lease reported in the 2014 AFS[130].

71. The extent of overstatements of the value of biological assets and prepaid land lease owned by the Group in the amount of HK$2,835 million was very material in that[131]:

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[129] Yip WS §48
[130] Yip WS §§50-55
[131] Per 2014 AFS

(1) It represented 61.4% of the non-current assets of the Group as reported in 2014 AFS, and reduced the non-current assets from HK$4,617 million to HK$1,782 million;

(2) It represented 62.7% of the net assets of the Group as reported in 2014 AFS, and reduced the net assets from HK$4,522 million to HK$1,687 million.

72. The revenue reported in the 2014 AFS had also been overstated and the overstatement was material in that:

(1) The revenue of the Group for the year ended 31 December 2014 was HK$421 million of which the revenue from logging and trading of timbers was HK$34 million (~RMB 27 million).

(2) According to the breakdown of the sales generated from the forests land located in Fengqing and the other 3 locations in Yunnan for the year ended 31 December 2014, only Heishan (located in Yunnan) generated revenue of RMB 27 million in that year.

(3) As Leeka Wood never owned the Alleged Forestry Rights, the entire reported revenue of HK$34 million was false as such revenue did not exist[132].

73. Although the extent of fictitious revenue only represented 8.01% of the total revenue of the Group as reported in the 2014 AFS, it was material given that contrary to the picture portrayed in the 2014 AFS,

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[132] Yip WS §§56-60

in fact, the Group had not been able to generate any revenue from GGL Group.

74. For the above reasons, the assets and revenue reported in the 2014 AFS were false in material respects.

C4.3 Issue 2(c): what loss was suffered by the Company

75. Ms Tong submits that as Leeka Wood did not own the Alleged Forests or the Alleged Forestry Rights at the time of the 2007 and 2009 Acquisitions, a fraud was perpetrated on the Company which constituted defalcation or misappropriation of assets. The Company suffered loss of HK$1,678 million, being the amount paid for non-existent forestry rights[133].

76. As for the 2009 Acquisition, Ms Tong contends that the Company suffered a loss of HK$620,692,546, which is made up of the following[134]:

(1) Total consideration for 2009 Acquisition was HK$751,990,000;

(2) The Alleged Forestry Rights represented RMB 2,620 million or 82.54% of the total value of the forestry assets held by GGL (RMB 3,174 million) at the time of the 2009 Acquisition[135];

(3) As 82.54% was paid for non-existent assets, the loss suffered by the Company was HK$620,592,546, being HK$751,990,000 x 82.54%.

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133 SFC's Skeleton §41
134 SFC's Skeleton §149
135 Based on LCH's working papers

77. It is strictly speaking not necessary for the court to make any finding on what loss was suffered by the Company on the entire 2007 and 2009 Acquisitions as the SFC does *not* claim any loss suffered by the Company from the 2007 Acquisition against R2. Nevertheless, I do not think that the amount of loss puts forward by Ms Tong is correct.

78. According to the announcements made by the Company, the consideration paid by the Company under the 2007 Acquisition was as follows:

(1) Cash in the amount of HK$300 million, new shares in the Company worth HK$15.3 million and convertible notes worth HK$929.7 million (§18(1) above)

(2) However, the 3 Shareholders had to compensate the Company for the Shortfall (HK$725.1 million) pursuant to the Profit Guarantee, 55% of which was paid by setting off against (a) the HK$300 million convertible notes stake-held by the Company; and (b) HK$100 million due to Superview (§21 above).

(3) In other words, the net amount paid by the Company under the 2007 Acquisition was HK$845 million[136].

79. As for the 2009 Acquisition, according to the announcements made by the Company:

(1) The Remaining Shortfall (HK$325.1 million) was set-off against the consideration payable to Superview for release of

[136] Being HK$300m+HK$15.3m+HK$929.7m less HK$400m

the cross-guarantees, which formed part of the 2009 Acquisition (§§21, 23 above).

(2) There is *no* suggestion by the SFC that the disposal of 67.7% equity in G&G Wood by Leeka Wood to Superview was a fraud perpetrated on the Company.

(3) The consideration of the 2009 Acquisition was HK$751.99 million, to be paid by setting off against the Remaining Shortfall (plus interest) and convertible notes to be issued by the Company (§§24(5), 25(3) above).

(4) On completion of the 2009 Acquisition, the Company issued convertible notes to Superview in the amount of HK$416.98 million (§26(1) above).

80. Other than the area of the forests land and the value of the Alleged Forestry Rights, the SFC does not challenge the accuracy of the other statements contained in the announcements made by the Company in respect of the 2007 and 2009 Acquisitions. Nor is there any suggestion that the HK$725.1 million was not in fact paid to the Company pursuant to the Profit Guarantee. That being the position, I do not think that it is right for the court to disregard the amount paid by Superview pursuant to the Profit Guarantee when determining the loss suffered by the Company.

81. On the basis of the net consideration paid under the 2007 and 2009 Acquisitions and the value of the Alleged Forestry Rights (see §66 above), the losses suffered by the Company under the 2007 and 2009 Acquisitions were HK$707 million and HK$347 million respectively, details as follows:

	2007 Acquisition (HK$ million)	2009 Acquisition (HK$ million)	Total (HK$ million)
Net consideration paid	845	417	1,262
Alleged Forestry Rights	83.63%	83.22%	N/A
Loss	**707**	**347**	**1,054**

C5. Issue 3

C5.1 Issue 3(a): whether R2 was beneficial owner of Superview

82. It is the SFC's pleaded case that R2 was the ultimate beneficial owner of Superview[137]. This is denied by R2[138].

83. In my judgment, the objective evidence all points to the conclusion that R2 was the ultimate beneficial owner of Superview from October 2006 and he remained such beneficial owner even after completion of the 2009 Acquisition.

84. First, in October 2006, R2 paid the initial fees for acquiring Superview as an off-the-shelf company using the funds in his personal bank account at Bank of China ("**BOC**")[139].

85. Second, neither Ho and Qian claim to be the owner of the shares in Superview or that they had any involvement in its affairs:

(1) Ho confirmed that he did not know Qian, and he transferred some of the shares held at Superview on 23 March 2007 to Qian upon Yiu's instructions.[140]

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137 Petition §§78-80
138 R2 POD §25
139 Fee note for acquiring Superview dated 16 October 2006 and cheque issued by R2 dated 23 October 2006
140 Ho's ROI #603, 619

(2) Qian said that she did not know from whom she obtained the shares in Superview and she simply signed the relevant documents on Yiu's instructions. She did not know that her shares in Superview were transferred to Yiu on 11 May 2009. By the time Qian gave the 2nd ROI (27 April 2017), she thought that she still held 19% shareholding in Superview.[141]

(3) Neither Ho nor Qian has ever participated in the management of Superview's business or affairs.[142]

(4) Most importantly, neither Ho nor Qian has ever received any dividend or distribution from Superview notwithstanding completion of the 2007 and 2009 Acquisitions.[143]

86. Although the SFC has not been able to locate Yiu such that no ROI of any interview attended by him can be adduced, there is no evidence to suggest that Yiu (or, indeed, any of the 3 Shareholders) has ever provided any funds to support Superview's business. Nor has Yiu ever come forth to claim that he was the owner of any shares in Superview, which would have been the natural thing to do if he were the actual owner of the shares in Superview.

87. Third, the evidence shows that after completion of the 2009 Acquisition, in May 2011, the entire shareholding in Superview was transferred by the 3 Shareholders to R2 for *nominal* consideration. This was done in stages:

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141 Qian's 2nd ROI #268, 270, 290, 304, 331-332, 382-385
142 Ho's ROI, #536, 539, 558-562; Qian's 1st ROI #364-374; Qian's 2nd ROI, #316
143 Ho's ROI, #517-520, 536, 539, 558-562, 583-586, 603; Qian's 1st ROI, #246-249, 364-374; Qian's 2nd ROI, #249-252, 290, 315-318, 382-385, 491-492

(1) On 11 May 2009, Qian and Ho transferred their shares in Superview to Yiu for nominal consideration, whereupon Yiu became the sole shareholder of Superview.[144]

(2) On 13 May 2011, Yiu transferred all his shares in Superview to R2 for nominal consideration (US$100).[145]

(3) Also on 13 May 2011, Superview allotted 7,537 shares to R2 for US$7,537, and 2,363 shares to R3 for US$2,363 and their shareholding in Superview became 76.3% and 23.63% respectively.

(4) On 17 January 2014, R3 transferred 390 shares in Superview to R2 for US$390. Since then, R2 and R3's shareholding in Superview has become 80.27% and 19.73% respectively.

88. There is no evidence to suggest that any consideration, be it nominal or the amount representing the value of the shares transferred or allotted, has ever been paid by the transferees/allotees to the transferors or Superview.

89. The only inference which can be drawn from the above evidence (or the absence thereof) is that R2 was, at all material times from the date Superview was acquired up to 13 May 2011 when he caused Superview to allot 2,363 shares to R3, the sole beneficial owner of Superview and the 3 Shareholders were holding their shares in Superview as nominees of R2.

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144 Superview's Register of Members

145 Superview's Register of Members

C5.2 Issue 3(b): whether R2 was "mastermind" behind 2007 and 2009 Acquisitions

90. It is the SFC's pleaded case[146] that R2 was the "mastermind" behind the fraud perpetrated on the Company through the acquisition of the Alleged Forestry Rights under the 2007 and 2009 Acquisitions, and R2 had since at least 2008 been a shadow director of the Company[147].

91. As regards the "mastermind" allegation, the SFC contends that:

(1) R2 was the ultimate beneficial owner of Superview, and the 3 Shareholders were his nominees.

(2) As ultimate beneficial shareholder behind Superview and given his involvement in Leeka Wood as of March 2006, R2 would have been well aware that Leeka Wood did not own the Alleged Forestry Rights at the material times of the 2007 and 2009 Acquisitions.[148]

(3) Yet, R2 still caused Superview to enter into the 2 successive transactions, selling the entire issued shareholding of GGL to the Company for HK$2.13 billion.

(4) R2 then arranged for R3 to join the Board of the Company following the 2007 Acquisition:[149]

(a) R3 was well acquainted with R2. R3 was apparently nominated to join the board of Leeka Wood in April

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146 Petition §§78, 132-135
147 Petition §§76, 116
148 Petition §133
149 R3 was appointed on 23 October 2007

2004 by R2.[150] R3 became general manager of Leeka Wood in 2006 (when R2 was its legal representative).

(b) R3 was allotted shares in Superview in May 2011, after the 3 Shareholders had dropped out of the picture.

(c) The appointment of R3 as director of the Company from October 2007 onwards facilitated the 2009 Acquisition, despite the non-existence Alleged Forestry Rights which purportedly made up a valuable part of GGL Group's assets.

92. In my judgment, the totality of the evidence points to the fact that R2 was the person who owned and controlled Superview and its indirect wholly owned subsidiary, Leeka Wood, from the date of their inception all the way up to the completion of the 2007 and 2009 Acquisitions.

93. First, R2 was at all material times up to May 2011, the sole beneficial owner of Superview, and the 3 Shareholders acted as R2's nominees (Section C5.1 above).

94. Second, R2 was involved in and controlled Leeka Wood from the outset, and he made important decisions as to who should be the legal representative and general manager of Leeka Wood, both before and after the 2007 Acquisition:

(1) R2 was appointed as legal representative of Leeka Wood upon its establishment on 29 March 2006.

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[150] R3's 3rd ROI, #424-430

(2) R3 was appointed as general manager of Leeka Wood before January 2007. This could only have been done with the approval of R2, who was the legal representative of Leeka Wood.

(3) R2 was replaced by Yiu as legal representative on 22 January 2007. Again, this could only have been done with the approval of R2 qua legal representative of Leeka Wood.

(4) After completion of the 2007 Acquisition (which took place on 8 October 2007), on 12 December 2007, R3 became a director and legal representative of Leeka Wood, replacing Yiu.[151]

95. Third, it is clear that R3 acted in accordance with R2's directions, and acted as R2's nominee in Leeka Wood:

(1) According to R3, he came to know R2 in April 2004[152], well before R3 was appointed as director of the Company.

(2) Since then, R2 asked R3 to act as take up the position as director of a company and a position in Leeka Wood without any actual involvement, and R3 agreed to do so. In R3's words, R2 said to him "朋友幫個忙吧, 啊, 需要這個 -- 有人的話呢這個-- 這個誤掛一掛你的名字, 用一用你, 呀, 那這樣子的話" and R3 replied "我說 [Okay]啊" Other than letting R2 used his name to take up the position, R3 was not clear about

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[151] Company credit search report of Leeka Wood by Central Business Information Limited at pp.6-7

[152] R3 3rd ROI #424-427

what business Leeka Wood did or who were its shareholders.[153]

(3) R3's answers confirm that it was R2 who asked him to take up the position in Leeka Wood in name only, and R3 lent his name to be used for that purpose.

(4) I find that in agreeing to act in accordance with R2's wish and took up position in Leeka Wood without any actual involvement, R3 acted as R2's nominee.

96. Fourth, it is also clear that R3 continued to enjoy a good relationship with R2, and R3 either agreed to hold shares in Superview as R2's nominee or was rewarded by R2 in the form of shares in Superview. There is no suggestion or evidence that R3 has ever provided any consideration, let alone full consideration, for the shares allotted by Superview to him.

97. Fifth, it was R2 who caused R3 to be appointed as director of the Company, which took effect on 23 October 2007:

(1) By October 2007, R3 had known R2 for 3 ½ years and had agreed to take up positions in different companies in accordance with R2's directions or wishes.

(2) According to R3, it was R2 who asked him to take up the position as director of the Company (then known as 德信) in view of R3's experience in IT related business. Subsequently,

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[153] R3 3rd ROI #410-412, 432-447, 459

R2 mentioned the forestry business and asked R3 to become a director of Leeka Wood[154].

(3) The appointment of R3 as director of the Company took place *before* R2 became the CEO/President of China region in 2008. This confirms that R2 was able to exercise control over important matter of the Company after completion of the 2007 Acquisition, despite the fact that he did not hold any position in the Company or the Group.

(4) The fact that R2 was able to exercise control over important matters concerning the Company was consistent with, and explicable by, the fact that upon completion of the 2007 Acquisition, R2 (through Superview) became a substantial shareholder of the Company holding 16.67% (if none of the convertible notes was converted into shares) to 48.53% (if all the convertible notes were converted into shares in the Company)[155]. R2 could have used that shareholding to cause person of his choice to be appointed as director of the Company.

98. Sixth, it is also clear that R3 continued to enjoy good relationship with R2, and R3 either agreed to hold shares in Superview as R2's nominee or was rewarded by R2 in the form of shares in Superview. There is no suggestion or evidence that R3 has ever provided any consideration, let alone full consideration, for the shares in Superview allotted to him.

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[154] R3 3rd ROI #449-451
[155] 2007 Announcement, p.16

99. For the above reasons, I find that R2 was the person who owned and controlled Superview (and hence GGL Group) at all material times from its inception up to completion of the 2007 and 2009 Acquisitions. As such owner and controller, R2 knew that Leeka Wood did not own the Alleged Forests and Alleged Forestry Rights, but he orchestrated and perpetrated a fraud on the Company by causing Superview to sell 70% and 30% shareholding to the Company under the 2007 and 2009 Acquisitions on the false basis that GGL Group owned the Alleged Forests and the Alleged Forestry Rights. I will deal with the issue of R2's control over the Company in Section C5.3 below.

C5.3 Issue 3(c): whether R2 was shadow director

100. The meaning of shadow director is defined in s.2 of the CO as "a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act". As stated by Coleman J in *Cyberworks Audio Visual Technology Ltd v Mei Ah (IIK) Co Ltd* [2020] HKCFI 398 at §56(7), to establish the allegation, it is necessary to prove that:

(1) the person directed the directors, whether *de jure* or *de facto,* on how to act in relation to the particular sphere of activity of the company relevant to the enquiry;

(2) the directors, or a majority of them, acted in accordance with such directions; and

(3) the directors were accustomed so to act, in a pattern of behaviour in which the board, or a majority of its members, did not exercise any discretion or judgment of its own but

acted in accordance with the directions of others. In other words, the shadow director was the "puppet master pulling the strings of the true directors who are his puppets or stooges".

101. It is the SFC's pleaded case that R2 "was at all material times (and at least 2008 since he served as the Company's CEO/President of the China region in 2008) a shadow director of the Company".[156]

102. The plea is equivocal as it does not state when R2 allegedly began to act as a shadow director of the Company. This is compounded by the submissions of Ms Tong:

(1) Under "R2 was a shadow director of the Company", Ms Tong refers to a host of "factors", which appear to span across the period from 2008 to 2014, and contends that they "show how R2 was the 'puppet master pulling the strings of the true directors who are his puppets or stooges"[157].

(2) Yet in her submissions on "R2's breaches of duties", Ms Tong argues that it was R2 who introduced the opportunity to invest in Leeka Wood and caused/procured the Company to enter into the 2007 and 2009 Acquisitions[158]. This seems to suggest that R2 began to act as shadow director back in 2007 or even before.

(3) In her Closing under "the case against R2", Ms Tong repeats the submissions that "R2 was also at all material times since

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156 Petition §140
157 SFC Skeleton Submissions §§134-140
158 SFC Skeleton Submissions §§141-146

at least 2008 a shadow director of the Company"[159], and seeks to justify the plea on the basis that the SFC "has less clarity about R2's exact role and scope of duties as CEO/President of the China region and/or as a consultant".

(4) Worse still, in her Closing, Ms Tong seeks to run an unpleaded case by arguing that, "to the extent necessary, the SFC also contends that the roles of CEO/President of the China region and consultant also give rise to fiduciary obligations on R2 when assessed objectively, applying the test in *Leader Screws*, §§46-48"[160].

103. In my judgment, the SFC has not pleaded a case that R2 began to act as a shadow director before 2008 or that he owed any fiduciary obligations qua CEO/President of China region for the following reasons:

(1) No material facts or particulars whatsoever have been pleaded in support of a plea that R2 was a shadow director before 2008.

(2) Ms Tong's submission that the SFC has "less clarity about R2's exact role and scope of duties as CEO/President" is a tacit admission that there is no proper basis to allege that R2 was a shadow director of the Company before 2008.

(3) It is not properly open to the SFC to run a new allegation which has never been pleaded, let alone when the new allegation is only raised in Closing.

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159 SFC Closing §10, where she refers to Petition §§76, 116, but neither paragraph is concerned with the plea on shadow director

160 SFC Closing §11

104. Indeed, the plea that R2 was a shadow director of the Company does not add anything of substance to the SFC's case. This is because, if as the SFC contends, R2 was the mastermind behind the 2007 and 2009 Acquisitions, he would be a person "wholly or partly responsible for the business or affairs of the corporation having been [conducted in a manner set out in section 214(1)]" under s.214(2)(d) and against whom the court can grant relief under s.214(2)(e) of the SFO.

105. I turn to consider whether R2 was a shadow director of the Company from 2008.

106. In my view, there is cogent evidence to show that R2 was a shadow director of the Company from 2008 and throughout the period when the Company entered into, and completed, the 2009 Acquisition and JFT Acquisition.

107. First, R3 and R4 (both ED) and R6 (CFO) effectively admitted that they had reported to R2 on important matters, and they acted in accordance with R2's instructions:

(1) R3 admitted that "[he] would (report to) the Chairman or the – as a substantial shareholder, he's the actual controller, right. Everything would be discussed with this substantial shareholder…Yes, [R2] is the actual controller of the company"[161]. Even in around 2013 or 2014 when R2 became a "consultant" of the Company, he "keeps participating in important projects", and R3 would report to him on any important matters; and on "substantial event[s]", it was R2

[161] R3 1st ROI #209-212

who made the final decision as the Company's actual controller.[162]

(2) R4 admitted that he had acted on R2's instructions[163]. R4 said R2 had a "supervisory position", his function was to "supervise the company's general manager, directors, and such these operations of the company", and R2 had power to supervise the directors, in particular R3.[164]

(3) R6 also admitted that "after all, the ultimate…big boss is ah [R2]. That is, the ultimate boss of [the Company and China E-Learning] is ah [R2]".[165] R6 described his role as limited to "carry out instructions from senior management", particularly R2, R3 and R4.[166] R6 claimed that he "took no part in the decision making process" of the Company, and "generally follow instructions from" R2, R3 and R4 in his work.[167]

108. Second, as further described in Section C12-13 below, in respect of JFT Acquisition, R3, R4 and R6 acted in accordance with R2's instructions and took steps to cause the Company to (1) arrange payment of the First HK$100m, (2) enter into the relevant agreements, (3) effect payments of the consideration by Cheques 1-6, all of which were done for R2's personal benefit or purposes.

109. Third, the *de jure* directors of the Company just went along with the proposed 2009 Acquisition and JFT Acquisition, spearheaded by

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162 R3's 1st ROI, #297, 301, 491-492
163 R4 POD §§4.1, 4.3, 4.4(1), 8.2
164 R4's 2nd ROI #1943, 1952, 1955
165 R6's 1st ROI, #3037
166 R6's POD, §§13-14
167 R6's POD, §§15-16

R3 after he became a director and CEO on 23 October 2007, and failed to enquire into the propriety of the Acquisitions or exercise any independent judgment as to whether it was in the interests of the Company to enter into the Acquisitions. Most of the *de jure* directors who had been served with the Petition (i.e. R5, R7-R15) have settled these proceedings with the SFC by *Carecraft* procedure on the basis of their admissions, *inter alia*, that they had failed to take steps to satisfy themselves that proper and reasonable due diligence had been carried out in respect of the relevant transactions, and that they had been (at least) negligent.[168]

110. Fourth, R2 alone had since 2011 the power to control the use of the Company's funds to the exclusion of all the *de jure* directors in that:

(1) He became one of the authorised signatories for all the bank accounts of the Company at BOC in February 2011.[169] Cheques 2-7 in JFT Acquisition were co-signed by R2 and R3.

(2) R3 was empowered to sign cheques for less than HK$100,000. For any cheque with amount over HK$100,000, R3 was required to obtain R2's signature.[170]

(3) Ma Sing (Tony) ("**Ma**"), a senior officer of the Company who reported to R3 and R3, confirmed that even R3, who was in charge of the Group's daily operations, did not have power to remit funds of more than HK$100,000, regardless of the purpose of the payment.[171] This was notwithstanding that the Company apparently had substantial revenue and expenses to

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168 1st *Carecraft* Decision, §§33-34, 39
169 Joint Authorization Amendment Form of the Company with Bank of China dated 11 February 2011
170 R3's 1st ROI #283-284
171 Ma's ROI §§791-797

the tune of ~HK$396 million (cost of sales) and ~HK$664 million (administrative expenses) by 2014.[172]

(4) R2 had power to appoint his son as a signatory of the Company's bank accounts from 2014[173].

C5.4 Issue 3(d): whether R2 acted in breach of duties qua shadow director

111. Ms Tong submits that R2 acted in breach of his duties as shadow director of the Company in respect of the 2007 and 2009 Acquisitions in that:

(1) R2 apparently introduced the opportunity to invest in Leeka Wood to the Company (via R7, who was Chairman of the Company at the time)[174]. In 2008, R2 became CEO/President of China region, and successfully installed R3 as ED and CEO of the Company in October 2007, which would have facilitated R2's further steps to procure the Company to enter into the 2009 Acquisition.

(2) R2 successfully caused/procured the Company to enter into the 2007/2009 Acquisitions, whilst being effectively on the other side of the bargain, *viz.* he was the ultimate beneficial shareholder behind Superview, thereby placing himself in a position of serious conflict of interest and constituting a breach of directors' duties[175].

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172 2014 Annual Report
173 R3 1st ROI #284
174 R7-R8's POD, §26
175 Petition §§141, 142.5-142.6

(3) *A fortiori*, given R2's direct involvement in the fraudulent scheme, he failed to take action to properly supervise the business and affairs of the Company and its subsidiaries, and allowed the Company to engage in such problematic transactions resulting in significant loss. He acted in a grossly incompetent manner and failed to act in the best interests of the Company despite being a shadow director of the same[176].

(4) R2 chose not to file any witness statement. His failure to provide any explanation of his conduct justifies adverse inferences being drawn against him, and his silence would turn a *prima facie* case against him into a strong case (*Re South Asia Group (HK) Ltd* [2024] HKCFI 2070 at §§76-77; *Re Styland Holdings (No 2)* [2012] 2 HKLRD 325 at §§17-18).

112. For the reasons set out below, I find that in causing the Company to enter into the 2009 Acquisition, R2 acted in fraudulent breach of fiduciary duties as shadow director of the Company:

(1) R2 concealed his personal interest and role in Superview from the Board (see Section C5.1 above), and acted in a position of conflict by procuring the Company to enter into the 2009 Acquisition on the false premise that Superview (the vendor) was an independent party;

(2) R2 failed to act in the best interests of the Company in that he knew, but failed to disclose to the Board, that the Alleged Forests and Alleged Forestry Rights did not exist such that the

[176] Petition, §§141, 142.4

value of GGL Group, and hence the consideration to be paid by the Company under the 2009 Acquisition, had been overstated by 83.22% (see §66 above).

(3) R2 through Superview defrauded the Company by causing it to enter into the 2009 Acquisition at a gross overvalue.

C6. Issue 4: whether Target Technology was overvalued & whether 2014 AFS and 2015 IFS were false or misleading

113. It is the SFC's pleaded case that contrary to the Valuation referred to in the 23/3/2014 Announcement, as at 31 December 2013, the Target Technology had no commercial value. Reliance is placed on the opinion of the Expert dated 19 June 2020 ("**Expert Opinion**"), who opines that:

(1) The Target Technology should not have been regarded as a "process technology" at the material time. Due to the infancy of its bench-testing status, at best, it should be considered as a "very early method or process" in a "proof of concept" stage ("**POC**"), i.e. "an early prototype designed to determine feasibility, but does not represent deliverables".[177]

(2) A number of issues undermined the valuation of the Target Technology including:[178]

(a) Issues with its use of feedstock *viz.* the unprocessed material used or converted into fuel, and lack of explanation on how the Target Technology would

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[177] Expert Opinion §4.5.8
[178] Expert Opinion §§4.5.12-4.5.34

handle low-rank coal, the heating requirements of coal-oil slurry, or the costly drying procedures necessary for biomass, all of which would severely limit its feasibility, applications, and hence its value (§§4.5.12-4.5.14);

(b) Lack of information on the process schematics of the Target Technology (§§4.5.16-4.5.17);

(c) Lack of discussion as to the product mix, by-products or production volume/quality/consistency (§§4.5.18-4.5.19);

(d) Lack of documentation or information on commercial-scaling parameters or applications which suggests that potential operating difficulties and technology risks were overlooked. This lack of information on its stability and readiness to be "scaled up" for commercial use and production makes it difficult to assign a value (§§4.5.28, 4.5.31); and

(e) Lack of information about the catalysis aspect in coal liquefaction, despite its importance, which confirmed that the technology was at a POC stage only (§4.5.34).

(3) The discounted cash flow method adopted in the Valuation was not appropriate and some of the assumptions made were invalid and overly optimistic (§4.6.2).

(4) As the Target Technology was at the POC stage, it was difficult to assign any commercial value to it as at 31 December 2013 (§4.6.3, §4.6.41).

114. The Expert Opinion is well reasoned and supported by the empirical and market data referred to by the Expert and has not been challenged by Rs. I accept the Expert Opinion and find that the Target Technology had no or minimal value at the time the Company entered into JFT Acquisition.

115. In the 2014 AFS, the only asset recorded as "Intangible Assets" of the Group was the Target Technology and its value was stated at HK$1,239 million (RMB 1,237 million)[179]. In the 2015 IFS, the value of the "Intangible Assets" was stated at HK$1,188 million[180].

116. In view of the finding that the Target Technology had no or minimal value at the time of JFT Acquisition, the value of assets as recorded in the 2014 AFS and the 2015 IFS would have been overstated by:

(1) HK$1,239 million, representing 22.08% of the total assets of the Group as recorded in the 2014 AFS; and

(2) HK$1,188 million, representing 20.93% of the total assets of the Group as recorded in the 2015 IFS.[181]

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179 2014 AFS p.39. According to Note 22 and Note 45 to 2014 AFS, the Target Technology (described as "Coal-to-oil Production Technologies" was acquired during the year and classified as "Intangible Assets" of the Group: Yip WS §§61-62

180 2015 IFS, p.5

181 Yip WS §§63-67

117. The extent of overstatements of assets was very material and rendered the financial position as portrayed in the 2014 AFS and 2015 IFS to be false or misleading in a very material respect as over 20% of assets did not in fact have any value.

C7. Issue 5: First HK$100m

118. Ms Tong advances 4 reasons which she argues, is sufficient for the court "to draw the irresistible inference that the source of Holysun's funds as paid onward to Rosy Song was the Company – and that the First HK$100m to Jin originated from the Company and was paid in connection with the JFT Acquisition"[182]. I do not agree with her argument, which conflates the issue of *source* of fund with the issue of whether it had any *connection* with JFT Acquisition.

119. Properly analysed, the SFC's case on the First HK$100m involves 3 sub-issues:

(1) *Prior* to the parties entering into the JFT SPA, the First HK$100m originated from the Company had already been paid to Jin (source of fund issue);

(2) The fund flow of the payment of the First HK$100m to Jin involved 4 sets of transfers viz., the Company → Holysun → Rosy Song → Cosmic Summit → Jin (fund flow issue); and

(3) The payment of the First HK$100m was in connection with JFT Acquisition (connection issue).

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[182] SFC Skeleton §§70-84

C7.1 Issue 5(a): Fund flow issue

120. It is not in dispute that at the material times of "Transfers 1 to 4" (as defined in §121 below):

(1) Holysun International Limited ("**Holysun**"), a BVI company, was owned and controlled by Mr Wong Yun Wai (王潤懷)[183] ("**Wong**"), who was its sole shareholder and director. Holysun did not have any employee. Wong was the only person who had knowledge of its affairs[184]. Holysun was a remittance agent for the Company[185].

(2) Ng was the sole shareholder and director of Rosy Song Limited ("**Rosy Song**"), a BVI company.

(3) Ng was also the sole shareholder and director of Sherri Holdings[186], and the sole director of Glowing City Holdings Limited (都耀控股有限公司) ("**Glowing City**"), a BVI company wholly owned by Sherri Holdings[187].

(4) Cosmic Summit was a wholly owned subsidiary of Sherri Holdings.

121. According to the "backward fund tracing" conducted by the SFC based on contemporaneous records of transfers obtained from banks, details of which are set out in Appendix 7 to Yip WS[188] ("**Spreadsheet**"),

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183 According to the registers of director and shareholder provided to HSBC for the purpose of opening a bank account; Wong ROI #76-77

184 Wong ROI #78-85

185 R6 POD §35.1-35.2; R6 1st ROI #2236-2246

186 From 3 September 2013 to 9 July 2014 according to the register of directors and shareholders of Sherri Holdings

187 Company registration documents of Glowing City

188 See also Yip WS §§31-45

the origin of the First HK$100m paid to Jin can be traced back to the funds deposited in Holysun Account and involved 4 sets of transfers:

(1) **"Transfer 1"** (i.e. First HK$100m): On 27 December 2013, 9 January 2014 and 29 January 2014, Jin received 3 cheques issued out of Cosmic Summit's account at HSBC in the amount of HK$30 million, HK$30 million and HK$40 million respectively ("**3 Cheques**").[189] The 3 Cheques were signed by Ng on behalf of Cosmic Summit.

(2) **"Transfer 2"**: On 27 December 2013, 9 January 2014 and 28 January 2014, Cosmic Summit's account at HSBC received 4 transfers from Rosy Song's bank account at Shanghai Commercial Bank and Ng's bank account in BOC in the total amount of HK$99,999,970 (i.e. HK$100 million less bank charges).[190]

(3) **"Transfer 3"**: On 24 and 27 December 2013, Rosy Song's bank account received 2 transfers from Holysun's bank account at BOC ("**Holysun Account**") in the total amount of HK$99,999,960 (i.e. HK$100 million less bank charges).[191]

(4) **"Transfer 4"**: From 20 to 27 December 2013, Holysun Account received a total of HK$104,712,172 from 18 deposits transferred from 10 different accounts[192], and paid out a total

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189 Transfer 1 on Spreadsheet; Exhibit K: Cosmic Summit's bank statements

190 Transfer 2 on Spreadsheet; Exhibit L: Cosmic Summit's bank statements]

191 Transfer 3 on Spreadsheet; Exhibit M: remittance advices issued by Shanghai Commercial Bank to Rosy Song

192 Opened in the name of Arts Electronics, Fulin Electronic, Tianlong, Rong Jin, Nam Shun, Yizhong, HK Sirui, Yuen Fat, Supreme Luck, HK ZD: Transfer 4 on Spreadsheet; Exhibit N: Holysun Account's bank statements

of HK$118.9 million, including HK$99,999,960 transferred to Rosy Song (i.e. HK$100 million less bank charges).[193]

122. The upshot of Transfers 1 to 4 is that the First HK$100m paid to Jin originated from the funds deposited in Holysun Account.

C7.2 Issue 5(b): Source of funds issue

123. This is a hotly contested issue.

124. Ms Tong relies heavily on the various answers given by R6 and Wong during their respective interviews and the "Cashflow Document" (as defined in §127 below) and submits that the irresistible inference to be drawn by the court is that "the origin of Holysun's HK$99.99 million odd paid to Rosy Song has to be the Company"[194].

125. As regards the answers given by Wong and R6 during their respective interviews, it is tolerably clear that Holysun acted as remittance agent of the Company during the period when Transfers 1 to 4 were made, and the funds in Holysun Account including the HK$100 million paid to Rosy Song did *not* belong to Wong.

(1) According to R6:

(a) Holysun ran "a business as remittance agent for transferring funds between Hong Kong and the PRC. From time to time, based on the Company's operational needs, the Company would need to transfer funds between bank accounts in Hong Kong

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193 Transfer 3 on Spreadsheet
194 SFC Skeleton §80(4)

and bank accounts in PRC. In such circumstances, the senior management of the Company, including [R2], [R3] and/or [R4] would instruct [R6] to seek assistance from [Holysun] to perform the task".[195]

(b) When asked by the SFC about the relationship between Holysun and the Company, R6 said that basically the exchanges and remittances of RMB and HKD between Mainland China and Hong Kong were conducted through Holysun and handled by Wong[196].

(c) R6 confirmed that he was "responsible for managing financial activities" of the Company.[197] He accepted that he "might have" given instruction to Wong for Holysun to conduct exchange of HKD and RMB for the Company.[198]

(2) According to Wong:

(a) In the end of 2012, R6 introduced Holysun to the Company and from then onwards, except for a few tens of thousands belonging to Wong, all the monies in Holysun Account were *related* to "Superb Summit" ("同奇峰有關")[199].

(b) The Company's instructions invariably came from R6, and there was *no* other person who would give any

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195 R6 POD §§35.1-35.2
196 R6 1st ROI #2236-2246
197 R6's POD §14
198 R6's 2nd ROI #487-494
199 Wong ROI #675-694

instructions to him in relation to movement of funds in Holysun Account[200].

(c) For money transferred out of Holysun Account, he must have followed the instructions from the Company and usually, it was R6 who would give him the instructions[201].

126. Ms Tong submits that Holysun's role as remittance agent of the Company is corroborated by the records of payments, which show that the amounts paid into and out of Holysun Account were roughly the same:

(1) During the period from 3 to 31 December 2013, the amount paid into Holysun Account was HK$132,734,863 while the amount paid out was HK$131,601,399;

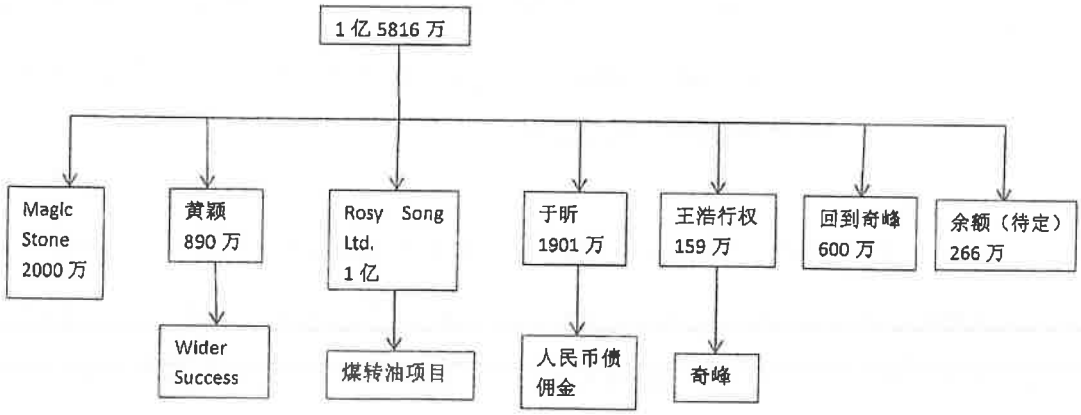
(2) During the period from 20 to 27 December 2013, the amount paid into Holysun Account was HK$107,596,179 while the amount paid out (including the HK$99,999,960 paid to Rosy Song) was HK$118,909,594[202].

127. As for the document saved in the external hard drive belonged to R6 ("**Cashflow Document**")[203], its contents were as follows:

"2013 年 12 月 20 日 - 2014 年 1 月 2 日人民币 1.25 亿折换成港币 1 亿 5816 万元的资金走向:
1. Magic Stone 2000 万 (20、30/12 各 1000 万);
2. 黄穎 890 万 (20/12 付) → Wider Success
3. Rosy Song Ltd (吴日章) 1 亿 (24/12 付 6000 万、27/12 付 4000 万); → 煤转油项目

200 Wong ROI #1031-1032
201 Wong ROI #226-229
202 As summarized in Appendix 8 to Yip WS
203 The hard drive was seized by the SFC at the Company's office premises. In R6 POD §35.6, he does *not* dispute that the hard drive belonged to him and admitted that it was used to back up documents from his laptop (which he lost), but R6 denies having any knowledge of the Cashflow Document

4. 于昕 1901 万 (30/12 付 1500 万、2/1 付 401 万); → 人民币债佣金(1500 万人民币);
5. 回到奇峰（商贸）600 万 (31/12 付);
6. 王浩行权 159 万;
7. 剩余 266 万。



128. Ms Tong places much emphasis on the fact that the Cashflow Document was found in a hard drive belonging to R6 and was seized at the Company's office premises. She also relies on the following contents of the Cashflow Document:

(1) Point 3 refers to "Rosy Song Ltd (吴日章) 1 亿 (24/12 付 6000 万、27/12 付 4000 万); → 煤转油项目".

(2) The dates of 24 and 27 December 2013 and the amounts of HK$60 million and HK$40 million effectively map directly onto Holysun's 2 payments to Rosy Song. It cannot be a coincidence that the Cashflow Document (originating from the Company) precisely described the 2 remittances from Holysun to Rosy Song in December 2013.

(3) Though the Cashflow Document does not spell out explicitly who provided HK$158.16 million in question, one can *infer*

the Company was supposed to be making such payments given that:

(a) The purported payments to Rosy Song were said to be for 煤转油项目 (coal-to-oil project) – *i.e.* part of the Target Technology, and an aspect expressly referred to in the 30/5/2014 2nd Announcement. In other words, the payment of HK$10 million to Rosy Song is expressly couched in terms of being *for* the coal-to-oil project which the Company was seeking to acquire as of early 2014.

(b) Additionally, HK$6 million was described in the flowchart as "*returning*" to (回到) 奇峰 by 31 December 2013. 奇峰 is the Chinese name of the Company. One would not use the term "*return*" unless the money originally came *from* the Company.

129. On the other hand, Mr Ng submits that the SFC fails to adduce sufficient evidence to show that the First HK$100m was paid out by the Company for the following reasons:

(1) Under cross-examination, Ms Yip (who has forensic accounting experience of over 20 years) admits that the auditors of the Company[204] gave unqualified opinion on the audited consolidated financial statements for the year ended 31 December 2013 ("**2013 AFS**") and the 2014 AFS. If the

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[204] Messrs. Parker Randall CF (HK) CPA Ltd for 2013 AFS; Messrs. McMillan Woods SG CPA Ltd for 2014 AFS

First HK$100m was paid out by the Company but unaccounted for, the auditors would not have given an unqualified opinion on the 2013 AFS and 2014 AFS.

(2) There is no direct evidence, such as banking records, which show that the funds were paid out by the Company.

(3) The "backward tracing" carried out by the SFC stops at Holysun Account. The funds in Holysun Account came from 18 transfers, but the SFC has not traced further into these transfers even though the transferor are Hong Kong companies, as confirmed by Ms Yip.

(4) The Cashflow Document retrieved from R6's hard drive makes no express reference to any funds flowing from the Company.

(5) The SFC adduces no evidence to show that 奇峰（商贸）is the Company or its subsidiary.

(6) The phrase "回到奇峰（商贸）" in point 5 is ambiguous and is open to more than one interpretation. The mere fact that funds were stated to be "returned to" 奇峰（商贸） does not axiomatically mean that the funds were originally remitted from 奇峰（商贸）, let alone the Company. It is equally reasonable to interpret it as meaning that funds had been borrowed from and were "returned to" 奇峰（商贸）. The phrase should also be contrasted with the reference to "奇峰" following the textbox stating "王浩行权 159 万". Such funds were *not* described as being "returned" to "奇峰", and is

inconsistent with the SFC's hypothesis that the funds were originated from the Company based on the phrase "回到奇峰（商贸）".

(7) The mere fact that point 3 made reference to "煤转油项目" does *not* mean that the First HK$100m was from the Company. Even if it was somehow related to JFT Acquisition, there is no basis to suggest that such funds must have been paid by the Company. It is equally probable that such prepayment(s) were made by someone else, *e.g.*, R2, R3, and/or his associates.

(8) None of the interviewees asserted that the First HK$100m came from the Company. In particular, when Wong was asked about the source of the First HK$100m, he only said, "Don't -- don't know. (I'm) not clear about (it)".[205] He never said that the First HK$100m came from the Company. In any event, Wong's ROI should be given no or minimal weight as there is no proper reason for not calling him as witness.

(9) The belated reference to "備用金" during Ms Yip's oral testimony is not mentioned in her WS *or* her verifying affidavit. Nor is there any evidence to show that the First HK$100m was part of the alleged "備用金".

130. In my judgment, the primary facts as established by the evidence is *not* sufficient for the court to draw an inference that the First HK$100m came from the Company:

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[205] Wong ROI #969-970. For the relevant context, *see* #939-970

(1) There is no banking record or accounting record which shows that the First HK$100m came from the Company or that it was the Company's asset.

(2) Nor is there any evidence to show that the 18 inward transfers into Holysun Account from 20 to 27 December 2013 (Transfer 4) were made by the 10 different transferors (see §121(4) above) on behalf of the Company or that the funds in question belonged to the Company.

(3) It is clear from Wong's answers that he did *not* know the source of funds deposited into Holysun Account. All that he said is all the payments into and out of Holysun Account were "*related to*" the Company, not that they belonged to the Company.

(4) The contents of the Cashflow Document only show that the 2 transfers on 24 and 27 December 2013 in the total amount of HK$100 million from Holysun Account to Rosy Song (Transfer 3) were for "coal-to-oil" project, which I find to be a reference to JFT Acquisition as the same description was used in the Company's 30/5/2014 2nd Announcement on JFT Acquisition.

(5) The contention that the First $100m was paid to Jin as part of the Consideration for JFT Acquisition is inconsistent with:

(a) The 30/5/2014 1st Announcement, which stated that as at 30 May 2014, only HK$50 million had been paid, and the balance (HK$550 million) would be paid by a promissory note (see §33(1) above); and

(b) The SFC's case that of the HK$600 million Consideration payable for JFT Acquisition, only HK$298 million was paid by the Company, and the balance in the amount of HK$302 million was never paid (see §§35, 51(4)(d) above).

(6) For completeness, I do not think that Mr Ng's contention based on the 2013 AFS and 2014 AFS is right. To start with, it is not properly open to counsel to raise a factual issue as to whether or how the First HK$100m was recorded in the 2013 or 2014 AFS when no such issue has ever been pleaded in R6's POD. In any event, the contention is misconceived. The 2013 and 2014 AFS only showed the assets of the Company (and the Group) as at 31 December 2013 and 2014, and the assets did not have to be held in the Company's name. If certain fund was held by an agent on behalf of the Company, the same could have been recorded as an account receivable of the Company.

C7.3 Issue 5(c): Connection issue

131. There is ample evidence to show that the First HK$100m paid to Jin on 27 December 2013, 9 and 29 January 2024 was paid in connection with JFT Acquisition, and R4 and R6 were aware of, and involved in arranging, the payment to Jin.

132. First, the contents of the Cashflow Document show that the sums of HK$60 million and HK$40 million paid to Rosy Song on 24 and 27 December 2013 were for the purpose of JFT Acquisition (coal-to-oil project was part of the Target Technology described in the 30/5/2014 2nd

Announcement). There is no suggestion that other than JFT Acquisition, there was any other project involving Ng, Cosmic Summit, the Company or Jin which bore the description 煤转油项目 (coal-to-oil project).

133. Second, the fund flow shows that HK$100 million came from Holysun Account (Transfer 4), which was then transferred to Rosy Song (Transfer 3), and further transferred to Cosmic Summit (Transfer 2) and ultimately transferred to Jin (Transfer 1). The only common factor between Holysun, Ng, Cosmic Summit and Jin was their connection with the Company and JFT Acquisition.

134. Third, the fund flow and usage described in the Cashflow Document in particular points 3 and 5 and the flow chart, were all concerned with the Company.

135. Fourth, the fact that the First HK$100m paid to Jin was in connection with JFT Acquisition is also supported by another document "关于与金先生的合作过程" ("**Jin Document**") found in R4's laptop[206], which stated as follows:

(a) In Spring 2013, Ng[207] was introduced to Jin and came to know that Jin had been researching and testing the Target Technology (described as "新型煤制油项目") (§1).

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[206] According to the meta data of Jin Document, the author of Jin Document was "Tommy" (R4's name) and was created on 9 February 2015 02:06pm and last saved at 03:57pm on the same date. R4 claims that Jin Document was prepared by him in August 2016 based on Ng and Jin's oral narratives: R4 POD §3, and Ng also claimed that he held the shares in Sherri Holdings as nominee of Jin: Ng ROI #368

[207] Jin Document appears to have been drafted as a document written by Ng as reference was made to the person signing JFT SPA on behalf of Sherri Holdings, which was Ng

(b) At that time, the Company (described as "一家上市公司(奇峰国际)" had been discussing with Jin about the acquisition, and an overseas fund had expressed intention in acquiring (§2).

(c) In October and November 2013, due to reasons of anti-corruption, PetroChina's (described as "中石油") cooperation with Jin was suspended temporarily, while the due diligence and decision making process of the Company had been taking a relatively long time. At that time, Ng and Jin began to explore the possibility for Ng to participate in the project and the way forward (§3).

(d) As Jin wanted to keep the transaction offshore, after negotiations, both parties agreed that Ng would use his company, Sherri Holdings, to acquire JFT ("金非特") and after financing, pay HK$100 million to Jin. Once JFT could be sold to the listed company or relevant investment institutions, the consideration received, after deducting HK$100 million and the relevant costs, would be allocated between the 2 parties in the ratio of "[ ] and [ ]". In respect of the sharing of the net consideration, someone (whose identity is unknown) commented whether it can be kept confidential and not mentioned ("能否保密不提") (§4).

(e) On 27 December 2013, 9 January 2014 and an unspecified date in January 2014, Cosmic Summit paid HK$100 million to Jin in 3 tranches (§5);

(f) In February 2014 after Chinese New Year, the Company and Jin began substantive negotiations on specific acquisition

details and the consideration, and finally agreed that the Company would acquire 51% of the shares in Cosmic Summit held by Sherri Holdings, and Jin would be the guarantor of the whole transaction. The transaction price would be determined based on the valuation price, but not more than HK$600 million (§6);

(g) On 2 March 2014, Ng on behalf of Sherri Holdings executed the "股份买卖协议" (i.e. JFT SPA) (§7).;

(h) CSSC joined the project in April-May 2014 and expressed strong intention to cooperate in the next step of the project and long-term considerations, whereupon Jin and Ng agreed that the subsequent consideration would be paid gradually by way of a promissory note and, therefore, on 30 May, Ng executed a supplemental agreement on behalf of Sherri Holdings (§8); and

(i) As at 18 February 2015, Sherri Holdings received from the listed company a total of HK$298 million as payment of the consideration for the acquisition of 51% equity interests in Cosmic Summit (§9).

136. I have considerable doubt on the truthfulness of the contents of the Jin Document as it was only created by R4 on 9 February 2015 (rather than August 2016 as R4 claims) and on its face, appears to be a reconstruction of how Sherri Holdings/Ng came to acquire JFT in their own right, which I find to be untrue for the reasons discussed in Section C8 below. It does however provide an independent confirmation (at §§4-5)

that the First HK$100m paid to Jin in 3 tranches on 27 December 2013 and January 2014 were paid for the purpose of JFT Acquisition.

137. For all the above reasons, I find that the First HK$100m paid to Jin on 27 December 2013, 9 January 2014 and 29 January 2014 were payments in connection with JFT Acquisition.

C7.4 Issue 5(d): whether failure to disclose First HK$100m

138. None of the announcements made by the Company on JFT Acquisition referred to the fact that the Company was involved in arranging the payments of the First HK$100m paid to Jin more than 2 months *prior* to JFT Acquisition.

139. I find that the JFT Announcement was misleading and inaccurate in the following aspects:

(1) There was no disclosure of the fact that the Company was involved in arranging payment of the First HK$100m to Jin more than 2 months before the JFT SPA and the JFT Announcement;

(2) Contrary to the statement that Sherri Holdings and its ultimate beneficial owner were "third parties independent of and are not connected with the Company and the connected persons of the Company" (see §30(5) above), in fact, Sherri Holdings was beneficially owned by R2 and was held by Ng as R2's nominee (see Section C8 below); and

(3) Contrary to the statement that "the Consideration was arrived at after arm's length negotiations between [SSIE] and [Sherri

Holdings]" (see §30(11) above), in fact, the management of the Company including R2, R4 and R6 were involved in both ends of JFT Acquisition and acted on behalf of the Company (and hence SSIE) and Sherri Holdings, and they caused the Company to be involved in arranging payment of the First HK$100m to Jin more than 2 months before the JFT SPA and the JFT Announcement.

C7.5 Issue 5(e): whether R4 and R6 were involved

140. In my judgment, R4 was aware of, and was involved in, arranging the payment of the First HK$100m to Jin for the following reasons:

(1) R4 was the person who created the Jin Document. He is the only person who can speak to the Jin Document including when and how he came to know of the matters stated therein, the circumstances under which it was created and why none of the matters stated therein had been disclosed by the Company in the announcements on JFT Acquisition, but he chose not to file any witness statement or give any evidence in these proceedings.

(2) The court is only left with the objective fact that it was R4 who created the Jin Document and the answer given by R6 that R4 was part of the "senior management" of the Company (alongside R2 and R3) who would give instructions to R6 when the Company required conversion of RMB and remittance of funds between the Mainland and Hong Kong (see §144 below).

(3) Against the aforesaid objective facts and R4's silence, the court is entitled to draw an adverse inference that (a) R4 was privy to, and knew of, JFT Acquisition including the involvement of Sherri Holdings/Ng and the payment of the First HK$100m to Jin in December 2013 and January 2014; and (b) it was R4 who instructed R6 to arrange funds for the purpose of paying the First HK$100m to Jin.

141. As for R6, the Cashflow Document found in his external hard drive located at the office of the Company *prima facie* supports the SFC's contention that R6 was aware of, and was involved in arranging the payment of the First HK$100m to Jin for the purpose of JFT Acquisition, and R6 knew the fund flow involved in making the payment.

142. Mr Ng strongly disputes this. He contends that the SFC has not provided any information and metadata concerning the Cashflow Document, notwithstanding R6 has taken issue with the creation, source and the material time he became aware of the Cashflow Document[208]. He suggests various possibilities on how the Cashflow Document found its way to R6's computer[209].

143. The complaint has no merit.

(1) A forensic copy of the metadata of the Cashflow Document was provided by the SFC to R6 on 30 August 2021 upon his request. It was also disclosed by the SFC in the list of

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[208] R6 POD §35.6
[209] R6's Opening §§42-44

document filed on 4 May 2022[210]. R6 had full opportunity to examine and investigate the provenance of the Cashflow Document and to adduce evidence to contradict the SFC's case had there been a proper basis to do so.

(2) The metadata show that the Cashflow Document was created and last saved on 3 January 2014 at 01:19pm, and last printed on the same day at 01:16pm. The "author" and "last saved by" was the same person. *Prima facie,* these suggest that it was R6 who created, saved and printed the Cashflow Document on 3 January 2014.

(3) R6 is best placed to explain how the Cashflow Document came to be saved in his computer and external hard drive and printed on 3 January 2014, but he chose not to file any witness statement or give evidence in these proceedings. The court is entitled to draw an adverse inference against R6 that the evidence which he could give, but elected to withhold, from the court would be supportive of the SFC's case that R6 was involved in arranging the First HK$100m paid to Jin, and he knew that the payment was in connection with JFT Acquisition.

144. Further, the fact that R6 was involved in arranging the payment of the First HK$100m to Jin is corroborated by the following facts:

(1) It was R6 who introduced Holysun to the Company in end 2012 and from then onwards, Holysun acted as remittance

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[210] Under SFC's list of documents dated 4 May 2022 item 1247. A forensic copy of the same was also provided to R6 on 30 August 2021 upon his request even before discovery to assist him with the preparation of his POD. See SFC's letter dated 11 August 2025

agent for the Company and all the monies in Holysun Acount were related to the Company (see §125(2)(a) above).

(2) R6 said that he was the person who acted on the instructions from "senior management of the Company" including R2, R3 and/or R4 whenever funds needed to be transferred between Hong Kong and the Mainland and he would seek assistance from Holysun (see §125(1)(a) above).

C8. Issue 6: whether Sherri Holdings was beneficially owned by Ng

145. Ng was the sole shareholder and director of Sherri Holdings from 3 September 2013 until 9 July 2014 when he transferred the entire shareholding in Sherri Holdings to Ms Liang Juan (梁雋) ("**Liang Juan**") for US$1[211].

146. Although all the announcements made by the Company on JFT Acquisition and the Jin Document suggest that Ng was the ultimate beneficial owner of Sherri Holdings (and hence its subsidiary, Cosmic Summit), Ng did *not* claim ownership over Sherri Holdings. When asked by the SFC about the transfer of Sherri Holdings to Liang Juan for US$1, Ng claimed that he had been acting as a nominee of Jin, and he signed the JFT SPA and supplemental deed pursuant to such nominee arrangement. After signing the supplemental deed (on 30 May 2014), Ng informed Jin that for health reason, he wanted to retire whereupon Jin found another nominee, Liang Juan, to become the sole shareholder of Sherri Holdings.[212]

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211 Register of Members of Sherri Holdings
212 Ng's ROI, #639-679

147. While I accept that Ng was *not* the beneficial owner of Sherri Holdings and he only acted as nominee, I do not accept Ng's assertion that he held the shares in Sherri Holdings as nominee of Jin for the following reasons:

(1) The assertion that Ng acted as a nominee of Jin is inconsistent with the contents of the Jin Document, which suggest that Ng was the counter-party who used Sherri Holdings to acquire the Target Technology from Jin.

(2) The assertion (and the reason therefor) makes no sense. There was simply no reason for Jin to ask Ng to hold the shares in Sherri Holdings as his nominee. Jin was independent of the Company and he was perfectly entitled to hold the shares in Sherri Holdings (a BVI company) in his own name, should he wish or need to do so. No explanation, let alone plausible explanation, was provided by Ng as to why Jin would have asked Ng to hold the shares in Sherri Holdings as his nominee.

(3) The assertion is also contradicted by the fact that of the HK$298 million actually paid by the Company for JFT Acquisition, only HK$50 million was paid to Jin. The remaining HK$248 million was paid to R2's companies (Zhiku Capital, Everjoy Technology and Everjoy International as to HK$198 million, Sections C9.2-9.3 below). Had the shares in Sherri Holdings been held by Ng as nominee of Jin, the entire amount of HK$298 million would have been paid to and received by Jin.

(4) The fact that the ultimate recipients of 83% of the actual consideration paid by the Company for JFT Acquisition were paid to persons/entities controlled by or related to R2 is consistent with, and I so find, that at all material times, the beneficial owner of Sherri Holdings was R2.

148. The finding that Ng held the shares in Sherri Holdings as nominee of R2 is corroborated by the following objective facts, each of which points to R2 being the common connection:

(1) Sherri Holdings used the address of the head office and principal place of business of China E-Learning[213] (of which R2 was a substantial shareholder, see §164(2) below) for all its correspondence from the time it was acquired as an off-the-shelf company on 3 September 2013[214]. The only connection between Sherri Holdings/Ng and China E-Learning was R2;

(2) R4 was directly involved in dealing with the internal affairs of Sherri Holdings including the setting up of Cosmic Summit and Chongcheng SH (see §194 below). Again, the only connection between R4 and Sherri Holdings was R2;

(3) The acquisition of Sherri Holdings' subsidiary, Glowing City, and the corporate documents were handled by R2's secretary, Liang Juan (see §161(2) below); and

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[213] At 26/F Office Tower, Convention Plaza. See China E-Learning's Annual Reports for 2012-2015
[214] Written resolutions of the first director of Sherri Holdings dated 3 September 2013 signed by Ng

(4) Ng was involved in holding the directorship in other companies owned and controlled by R2 (Everjoy Technology, Everjoy International) (see §154(2)-(3) below).

C9. Issue 7: whether HK$248 million paid under JFT Acquisition constituted defalcation of Company's assets

149. Before considering Issues 7(a)-(c), it is necessary to consider the primary facts relating to payment of HK$298 million under JFT Acquisition.

C9.1 Seven Cheques

150. In response to the SFC's request for documents relating to the payment of the Consideration to Sherri Holdings, on 4 February 2015, the Company provided copies of 7 cheques ("**Seven Cheques**") and the corresponding payment requisition forms ("**Payment Forms**") which, on their face, show that HK$298 million had been paid by the Company to Sherri Holdings as part of the consideration for JFT Acquisition.

(1) Details of the Seven Cheques are as follows:

Date	Bank	Cheque No.	Co-signed by	Amount (HK$)
27/2/2014	BOC[215]	174788	R3[216]	50 million
29/10/2014	Hang Seng	006363	R2/R3	30 million
29/10/2014	Hang Seng	006361	R2/R3	64 million
29/10/2014	Hang Seng	006364	R2/R3	64 million
6/11/2014	Hang Seng	836387	R2/R3	20 million
6/11/2014	Hang Seng	836388	R2/R3	20 million
2/2/2015	Hang Seng	099089	R2/R3	50 million
Total				**298 million**

[215] The cheque bore the former name of the Company "Superb Summit Intl Timber Co Ltd"
[216] It is not clear who was the other signatory of the cheque

(2) The Payment Forms (and each of them) were signed by R6 as "reviewer" (審核人) and approved by R3 as "approver" (批準人). The particular (費用摘要) referred to "Sherri Holdings Resources Ltd" and the following description:

Date	Particular	Cheque No.	Amount (HK$)
27/2/2014	代奇峰國際能源支付收購普峰有限公司51%股權的訂金(煤制油項目)	174788	50 million
29/10/2014	償還承兌票據款項(代 SSIE)	006363	30 million
29/10/2014	償還承兌票據款項(代 SSIE)	006361	64 million
29/10/2014	償還承兌票據款項(代 SSIE)	006364	64 million
6/11/2014	償還承兌票據款項(代 SSIE)	836387	20 million
6/11/2014	償還承兌票據款項(代 SSIE)	836388	20 million
2/2/2015	償還承兌票據款項(煤制油項目)[217]	099089	50 million
Total			**298 million**

151. However, the documents obtained by the SFC from the banks showed a different picture. It revealed that the 7 cheques actually issued and cleared were as follows:

Date	Bank	Cheque No.	Payee	Co-signed by	Amount (HK$)
27/2/2014 **(Cheque 1)**	BOC[218]	174788	Sherri Holdings	R3[219]	50 million
29/10/2014 **(Cheque 2)**	Hang Seng	006363	Zhiku Capital	R2/R3	30 million

[217] The words in parenthesis were handwritten
[218] The cheque bore the former name of the Company "Superb Summit Intl Timber Co Ltd"
[219] It is not clear who was the other signatory of the cheque

29/10/2014 **(Cheque 3)**	Hang Seng	006361	Everjoy Technology	R2/R3	64 million
29/10/2014 **(Cheque 4)**	Hang Seng	006364	Everjoy International	R2/R3	64 million
6/11/2014 **(Cheque 5)**	Hang Seng	836387	Everjoy International	R2/R3	20 million
6/11/2014 **(Cheque 6)**	Hang Seng	836388	Everjoy Technology	R2/R3	20 million
2/2/2015 **(Cheque 7)**	Hang Seng	099089	Sherri Holdings	R2/R3	50 million
Total					**298 million**

152. In other words, of the Seven Cheques provided to the SFC, only the first and last cheques were genuine in the sense that the amounts were actually paid to Sherri Holdings, and the second to the sixth cheques were *never* paid to Sherri Holdings (collectively "**Purported Cheques**").

153. As the issuing banks and cheque numbers of the Purported Cheques and Cheques 2-6 actually issued and cleared by the banks are *identical*, the Purported Cheques must be forgeries, and must have been created for the purpose of concealing the identity of the actual recipients of HK$198 million from the SFC. The only issue is whether Rs (or any of them) were involved in creating the Purported Cheques.

C9.2 Zhiku Capital, Everjoy Technology & Everjoy International

154. Details of the shareholders and directors of Zhiku Capital Investment Limited (智庫資本投資有限公司) ("**Zhiku Capital**"), Everjoy Technology and Everjoy International Media Corporation ("**Everjoy International**") are as follows:

(1) Zhiku Capital[220]:

[220] Incorporated in the BVI on 3 April 2007 and changed to its present name on 17 September 2009 as per certificate of change of name; Register of members and directors of Zhiku Capital

Name	Shareholder	Director
Yiu	3/11/2009 – 6/5/2013	27/10/2008 – 3/11/2009
Liang Juan	--	3/11/2009 – 9/9/2010
Pan Ying	--	9/9/2010 – 13/7/2011
Liang Xucan (梁旭灿)	6/5/2013 onwards	13/7/2011 onwards

(2) Everjoy Technology[221]:

Name	Shareholder	Director
Hong	3/11/2009 – 20/12/2012	3/11/2009 - 20/12/2012
Wei Jianya		20/12/2012 - 19/11/2013
Chen Hong		20/12/2012 – 14/2/2014
Yuan Wei		19/11/2013 – 12/3/2014
Ng		12/3/2014 onwards
China E-Learning Group Limited ("**China E-Learning**")	20/12/2012 – 12/3/2014	--
Glowing City	12/3/2014 onwards	--

(3) Everjoy International[222]:

Name	Shareholder	Director
R5	1/12/2009 – 20/12/2012	1/12/2009 – 20/12/2012
Yuan Wei	--	19/11/2013 – 12/3/2014
Ng	--	12/3/2014 onwards
China E-Learning	20/12/2012 – 12/3/2014	--
Glowing City	12/3/2014 onwards	--

221 Register of members and directors of Everjoy Technology
222 Register of members and directors of Everjoy International

155. At the times the Company issued Cheques 2-6 and paid HK$198 million to Zhiku Capital, Everjoy International and Everjoy Technology:

(1) the sole shareholder/director of Zhiku Capital was Liang Xucan;

(2) the sole shareholder of Everjoy Technology was Glowing City while the sole director was Ng; and

(3) the sole shareholder of Everjoy International was Glowing City while the sole director was Ng.

156. For the reasons which follow, I find that Liang Xucan was R2's nominee in holding the shares and directorship in Zhiku Capital:

(1) Yiu was R2's nominee in holding the shares in Superview (see Section C5.1 above). Yiu transferred the shares in Zhiku Capital to Liang Xucan for nominal consideration. The transfer of shares from Yiu to Liang Xucan for nominal consideration is consistent with the fact that both of them were nominees holding the shares for the same principal;

(2) There is no evidence to suggest that Liang Xucan has paid any consideration for the shares transferred to him;

(3) Liang Xucan was R2's driver.[223] There is no evidence to suggest that he has provided any capital to, or withdrawn any fund from, Zhiku Capital;

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[223] Ma ROI #1830-1839

(4) Zhiku Capital's bank account at HSBC was at all times under the control of Liang Juan (R2's secretary), who was the sole signatory of the account (see §161(5) below);

(5) During the period from 2014 to 2015, R2 made various deposits (from HK$2 million to HK$15 million) into and withdrawals from Zhiku Capital's bank account at HSBC;[224]

(6) R2 was the ultimate recipient of a majority of the HK$198 million paid by the Company for JFT Acquisition to the extent that they are traceable (see Section 9.3 below); and

(7) A document found on R6's external hard drive titled 情况说明 described Zhiku Capital as "our company" ("我们一家名字为智库资本投资有限公司").

157. As for Glowing City, although its sole director of was Ng, I find that Glowing City was at all times beneficially owned by R2 and Ng only acted as R2's nominee in holding the directorship, having regard to the fact that:

(1) Glowing City was a wholly owned subsidiary of Sherri Holdings, which I find to be beneficially owned by R2 and was held by Ng as nominee of R2; and

(2) Glowing City was acquired by Liang Juan (R2's secretary) as an off-the-shelf company, and she handled the appointment of Ng as its first director in October 2013[225].

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224 Cheques and payment records of Zhiku Capital bank account at HSBC

225 Letter from Uni-1 Corporate Services Ltd to Liang dated 16 October 2013 providing the company kit of Glowing City to Liang for her to arrange Ng to complete and sign the confirmation agreement

158. As R2 was the beneficial owner of Zhiku Capital, Everjoy Technology and Everjoy International at the time the Company issued Cheques 2-6 to them (as I so find), it follows that he was the ultimate recipient of the HK$198 million paid by the Company.

159. Indeed, there is ample evidence to show that R2 was at all material times the beneficial owner of Zhiku Capital, Everjoy Technology and Everjoy International, and the companies were under the control of R2's nominees, both before and after Cheques 2-6 were paid by the Company, as discussed in §§160 - 166 below.

160. First, the objective evidence shows that Zhiku Capital, Everjoy Technology and Everjoy International had been managed at the same office and their bank accounts were controlled by Liang Juan (R2's secretary):

(1) The 3 companies used the same office at 3306 West Tower, Shun Tak Centre, 168-200 Connaught Road Central ("**Shun Tak Office**") as their place of business in the account opening documents submitted to HSBC in July and September 2011. The Shun Tak Office was the head office and principal place of business of China E-Learning in 2011-2012[226]; and

(2) The 3 companies appointed Liang Juan as an authorised signatory of its bank account at HSBC with authority to authorise payment of any amount by signing singly (see next paragraph).

161. Liang Juan:

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[226] China E-Learning's Annual Reports for 2010-2011

(1) was an executive director of China E-Learning from 1 April 2008 to 18 May 2009;

(2) worked as a "secretary" according to the account opening documents submitted by Everjoy International to HSBC in September 2011[227];

(3) was described by R4 as his colleague in R4's email to Ng in October 2013;

(4) handled the acquisition of Glowing City and the appointment of Ng as first director in October 2013[228];

(5) was a director of Zhiku Capital from 3 November 2009 to 9 September 2010 and the only authorised signatory of its bank account opened in July 2011 at HSBC;[229]

(6) was one of the authorised signatories of the bank account opened by Everjoy International at HSBC in September 2011[230] (R5 was the other signatory) with authority to authorise payment of any amount by signing singly;

(7) was one of the authorised signatories of the bank account opened by Everjoy Technology at HSBC in September 2011[231] (Hong was the other signatory) with authority to authorise payment of any amount by signing singly;[232]

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227 Account opening form dated 26 September 2011 submitted by Everjoy International to HSBC, p.3
228 Letter from Uni-1 Corporate Services Ltd to Liang dated 16 October 2013 providing the company kit of Glowing City to Liang for her to arrange Ng to complete and sign the confirmation agreement
229 Account opening document dated 26 July 2011 submitted by Zhiku Capital to HSBC
230 Account opening document dated 26 September 2011 submitted by Everjoy International to HSBC
231 Account opening document dated 26 September 2011 submitted by Everjoy International to HSBC
232 Account opening document dated 26 September 2011 submitted by Everjoy Technology

(8) became the sole shareholder and director of Sherri Holdings on 9 July 2014 after Ng transferred his share in Sherri Holdings to her for US$1[233]; and

(9) travelled with R2 and his son, Yang Jilin (楊季霖) ("**Yang Jilin**") to Singapore in October 2014 with air ticket paid by the Company.[234]

162. The only reasonable inference to be drawn from the fact that Liang Juan was entrusted with, and did assume the aforesaid roles in respect of China E-Learning, Zhiku Capital, Everjoy Technology, Everjoy International and Sherri Holdings is that at all material times she acted in accordance with R2's instructions and she was R2's nominee in holding all these roles.

163. Second, the sole shareholder and director of Everjoy Technology from 3 November 2009 to 20 December 2012, Hong, confirmed that she did *not* own the shares in Everjoy Technology and only acted as a nominee in that:

(1) She met R5 in 2004 at an event unrelated to the Company[235];

(2) She became the sole shareholder and director of Everjoy Technology from its incorporation as "nominee shareholder and director"[236];

(3) She was not involved in negotiating the sale of Everjoy Technology to China E-Learning as announced on 14

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233 Register of Members of Sherri Holdings
234 Invoice for air tickets dated 9 October 2014
235 Hong WS §3
236 Hong WS §§8, 23

February 2012. Nor did she receive the HK$21 million consideration paid by China E-Learning, albeit she signed some documents for converting HK$2 million convertible notes into shares in China E-Learning according to R5's instructions[237];

(4) She was given some shares in China E-Learning when it was listed in 2007, which she agreed to share with R5 as to 50% each. The shares were sold in September 2014 for HK$3.2 million and she transferred half of the proceeds to R5 and kept the balance[238]; and

(5) She signed documents authorising the opening of bank account at HSBC for Everjoy Technology at R5's request, and became an authorised signatory. She passed all account opening documents and password to R5 and never executed any bank transactions for Everjoy Technology's bank account[239].

164. China E-Learning:

(1) was a company listed on the GEM Board of HKEx (stock code 8055); and

(2) had R2 as its substantial shareholder from 2008 to 2016, who was interested in 43.48% shareholding in 2008[240], 12.86% in 2013[241] and 7.9% in 2014.[242]

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237 Hong WS §§12-19
238 Hong WS §§5-6, 20-22
239 Hong WS §§9-11
240 China E-Learning's 2008 Annual Report, p.17
241 China E-Learning's 2013 Annual Report, p.25
242 China E-Learning's 2014 Annual Report p.31

165. Third, the sole director of Everjoy Technology and Everjoy International from 19 November 2013 to 12 March 2014, Yuan Wei, was a close associate of R2 in that:

(1) He was appointed and acted as the *only* executive director of China E-Learning on 19 November 2013 until 15 September 2014 when Yang Jilin (R2's son) was appointed as executive director;[243]

(2) worked at the Shun Tak Office; and

(3) was the contact person handling the signing of documents by Hong on 19 August 2014 relating to conversion of HK$2 million convertible notes issued by China E-Learning[244]

166. Fourth, Everjoy Technology and Everjoy International remained under the control of R2, both before and after Cheques 2-6 were paid by the Company to them:

(1) According to the announcement dated 14 February 2012, both companies were acquired by China E-Learning from Hong (for HK$21 million) and R5 (for HK$75.6 million) respectively, with part of the consideration paid by convertible notes issued by China E-Learning[245].

(2) According to the announcement dated 31 October 2013, both companies were disposed by China E-Learning to Glowing City allegedly due to unsatisfactory performance.[246]

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243 China E-Learning's 2013 Annual Report 2013, p.90; 2014 Annual Report 2014 p.26
244 Hong WS §§16-17
245 Hong WS §12-13; Announcement made by China E-Learning on 14 February 2012 (HKY-2)
246 Hong WS §§25-26; Announcement made by China E-Learning on 31 October 2013 (HKY-6)

(3) Glowing City was beneficially owned by R2, and its sole director (Ng) was R2's nominee (see §157 above).

C9.3 Issue 7(a): whether HK$248 million paid to unrelated parties constituted misappropriation of Company's assets

167. The banking records obtained by the SFC reveal that the entire HK$100 million received by Sherri Holdings (under Cheques 1 and 7) was subsequently transferred to Zhiku Capital and Jin as to HK$50 million each, in that Sherri Holdings:

(1) transferred HK$19,999,985 to Glowing City on 14 March 2014, which then transferred HK$20 million to Zhiku Capital on the same day;

(2) transferred HK$30 million to Zhiku Capital on 11 March 2014; and

(3) issued a cheque for HK$50 million to Jin on 6 February 2015.

168. The SFC's case is that Jin received the First HK$100m which was part of the Company's asset, and taking into account the HK$50 million received from Sherri Holdings on 6 February 2025, the total amount received by Jin was HK$150 million.

169. For the reasons explained in Section C7.2 above, I do not think that there is sufficient evidence to show that the First HK$100m came from or belonged to the Company.

170. In my judgment, the real issue is not how much Jin received as consideration for JFT Acquisition, but whether the Company has suffered any loss in JFT Acquisition and, if so, the extent of the loss.

(1) Once the evidence shows that the Company's assets were paid to Zhiku Capital, Everjoy Technology and Everjoy International, none of which were parties to JFT Acquisition, *prima facie,* the payments constituted misappropriation of the Company's assets.

(2) The burden is on Rs to justify the propriety of the payments, but they have not given any evidence or adduced any documents to discharge such burden.

(3) As there is no evidence to contradict the *prima facie* case established by the SFC, I find that the HK$248 million paid by the Company under Cheque 1 (HK$50 million) and Cheques 2-6 (HK$198 million) constituted misappropriation of the Company's assets.

171. The SFC has adduced much evidence on what it contends to be the ultimate recipients of the HK$248 million paid by the Company under Cheques 1-6. For the reasons explained in the last paragraph, I do not think that the SFC has to prove that the ultimate recipients of the HK$248 million were persons/entities related to R2. For completeness, I set out below the evidence adduced by the SFC.

172. According to the (unchallenged) fund flow analysis carried out by the SFC based on the documents provided by the banks[247], the ultimate recipients of HK$248 million (under Cheques 1-6) were as follows:

Cheque	Ultimate Recipient	Amount

[247] Yip WS §§26-27

(HK$)		HK$
Cheque 1 (50 million)	Zhiku Capital	50 million
Cheque 2 (30 million)	R2	3 million (SG$500,000)[248]
	Yang Jilin	3 million (SG $500,000)
	Liang Juan	3 million (SG $500,000)
	Magic Stone	5 million
	Zhiku Capital	15 million
	Yuan Wei	2.68 million
	Christie's Hong Kong Ltd	1.0625 million
Cheque 3 (64 million)	Global Petrochemical International Trading Limited ("**Global Petrol**")	63.7 million (RMB 50 million)
Cheque 4 (64 million)	Global Petro	63.7 million (RMB 50 million)
Cheque 5 (20 million)	Zhiku Capital	20 million
Cheque 6 (20 million)	Zhiku Capital	20 million
Total received by R2 or R2' associates		**121.68 million**

173. The SFC contends that the ultimate recipient of HK$248 million was R2, and he received the aforesaid amounts through persons and entities related to or controlled by him. In my judgment, it is indisputable that these persons and entities were related to or controlled by R2 such that they should be regarded as R2's associates for the following reasons:

[248] The amounts stated in parentheses in this column were the amounts and currencies actually transferred

(1) Yang Jilin is R2's son. In 2014, he was brought by R2 into the Company and was appointed as a bank signatory who, together with R3, could authorise any payment of over HK$100,000[249]. He was appointed as executive director of China E-Learning on 8 July 2014 (during which R2 was a substantial shareholder of China E-Learning). He was appointed as executive director of the Company on 15 September 2014[250].

(2) Magic Stone is a Cayman company in which R2 owned 80.25% of its issued shares[251].

(3) Liang Juan was R2's nominee and acted in accordance with his instructions, see §162 above.

(4) Zhiku Capital was beneficially owned and controlled by R2, see §156, 160-162 above.

(5) Yuan Wei was a close associate of R2, see §165 above.

C9.4 Issue 7(b): whether Consideration was artificially fixed

174. Having regard to the following facts and matters, I find that the Consideration for JFT Acquisition was artificially fixed to disguise the fact that only HK$50 million was paid to Jin:

(1) The Target Technology was overvalued (Section C6 above).

(2) Sherri Holdings, the counterparty to JFT Acquisition, was at all material times beneficially owned by R2, and its affairs

249 R3's 1st ROI #284
250 2014 AFS, p. 13
251 2015 IFS, pp. 28-30

were managed by R2's nominee (Ng) (Section C8 above) and the Company's officers, R3, R4, R5, and R6, acted in accordance with R2's directions and instructions (Section C12-13 below).

(3) The HK$248 million paid by the Company for JFT Acquisition constituted misappropriation of assets (Section C9.3 above).

(4) Jin only received HK$50 million from the Company, and the balance of the consideration in the amount of HK$248 million was paid to 3 companies who were not parties to JFT Acquisition, and there is no evidence to show that the HK$248 million (or any part thereof) was ever paid to or received by Jin (Section C9.3 above).

C10. Issue 8: what loss was suffered by the Company

175. On the SFC's pleaded case, the loss suffered by the Company under JFT Acquisition was HK$248 million alternatively, HK$121.7 million received by R2 or "R2 Syndicate" (see table at §172 above).

176. There is *no* alternative case that the Target Technology was worthless (as the Expert says) such that the loss suffered by the Company was the entire sum of HK$298 million paid under JFT Acquisition. In her Closing, Ms Tong confirms that the SFC does not allege that the Target Technology was fictitious but contends that at the time of JFT Acquisition, the Target Technology was at an infant and unproven stage such that no

commercial value could be assigned to it and the gross overvaluation was part and parcel of the fraudulent scheme[252].

177. For the reasons explained in §170 above, I find that the loss suffered by the Company as a result of entering into JFT Acquisition was HK$248 million.

C11. Issue 9: whether R2 orchestrated a fraud on Company

178. Ms Tong submits that by reason of the following facts and matters, R2 was the "mastermind" behind JFT Acquisition, which was a fraud perpetrated on the Company[253]:

(1) R2 was the true owner behind Sherri Holdings. JFT Acquisition was effectively a scheme to channel monies to benefit R2[254] and he received a large part of the Consideration paid by the Company.

(2) According to the Chronology of Events prepared by the Company on JFT Acquisition ("**JFT Chronology**"), R2 participated in (a) the initial discussions with Jin in March 2013 (alongside R3); (b) the discussion on the feasibility of the technical aspects of the project in April 2013; (c) visit of laboratory and on-site plant at Panjin City (盤錦市) of Liaoning Province on 6-7 August 2013 (with R4); (d) the discussion in Beijing on the feasibility and importance of the project on 2 September 2013; (e) the expert review in Beijing on 22 November 2013 (with R3); (f) the site visit to Panjin

252 SFC Closing §12(2)(b)
253 SFC Skeleton §§102-110; SFC Closing §§9-11
254 Petition §101

City on 31 July 2014 (with R3-R4); and (g) a visit to Zhuhai for site selection on 10 November 2014 (with R3-R4).On 5 June 2013, R4 participated in the signing of the letter of intent with Jin[255].

(3) R2 was one of the 2 signatories of each of the Purported Cheques and Cheques 2-7.

(4) Since at least 2008 R2 had been a shadow director of the Company and he acted in breach of his duties as such shadow director by causing the Company to enter into JFT Acquisition for his personal benefit.

179. In my judgment, there is overwhelming evidence in support of the SFC's case that R2 was the mastermind who orchestrated JFT Acquisition and through such Acquisition, misappropriated HK$248 million from the Company.

180. First, R2 was a shadow director of the Company from 2008 and throughout the period when the Company (through SSIE) entered into JFT Acquisition, and the senior management including R3, R4 and R6 admittedly acted in accordance with R2's instructions. Since 2011, R2 had power to control the use of the Company's funds to the exclusion of all the *de jure* directors (see §§106-110 above).

181. Second, R2 was according to the JFT Chronology actively involved in JFT Acquisition from the negotiations stage all the way up to and after completion including having multiple meetings with Jin. As a result of such involvement, R2 must knew that the Target Technology was

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255 R4's 2nd ROI #851-858

still at an infant stage and did not have substantial commercial value, but he continued to cause the Company to enter into JFT Acquisition.

182. Third, R2 used Ng as his nominee to hold the shares and directorship in Sherri Holdings and caused it to enter into JFT Acquisition on the false premise that Sherri Holdings was an independent party and had no connection with the Company or its officers (see Section C8 above).

183. Fourth, R2 used his nominees (Liang Xucan and Ng) to hold the shares and directorship in Zhiku Capital, Everjoy Technology and Everjoy International so as to conceal the fact that he was the true owner of these companies (see §§154-157 above).

184. Fifth, R2 co-signed Cheques 2-6, knowing full well that the HK$248 million would be paid to his companies, viz., Zhiku Capital, Everjoy Technology and Everjoy International, and ultimately to his benefit (see §§151, 158-167, 172-173 above).

185. Sixth, R2 also co-signed the Purported Cheques so as to conceal from the SFC the fact that HK$198 million had in fact been paid to 3 companies which were wholly unrelated to JFT Acquisition (see §§150-153 above).

186. The above acts of R2 constituted a fraudulent breach of fiduciary duties owed to the Company.

C12. Issue 10: whether R4 perpetrated a fraud & acted in breach of duties

187. The case against R4 scattered in different parts of Ms Tong's submissions[256]. In her Closing, Ms Tong makes the following points.

188. First, the fact that R4 (ED of the Company) was involved in both the affairs of the Company and Sherri Holdings constituted a potential conflict of interest[257]:

(1) As early as October 2013, R4 assisted Ng in setting up Cosmic Summit and Chongcheng SH on R2's instructions.

(2) An unsigned and undated document titled 投资合作协议书 between Sherri Holdings and Zhiku Capital was found in R4's computer, suggesting that he had some role in preparing or considering Sherri Holdings' draft investment agreements.

(3) He sent a draft 擔保抵押承諾協議 (for Sherri Holdings to provide security for Wider Success) to Ng on 13 June 2014, and facilitated Ng's transfer of his entire shareholding in Sherri Holdings to Liang Juan in July 2014 for nominal consideration.

(4) The Jin Document was found in R4's computer.[258]

189. It is to be inferred from the above that:

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256 SFC Skeleton, section E4, F4. SFC Closing section B2

257 Petition §§157-160

258 The metadata, showing the author as "Tommy" and the document was created and last saved on 9 February 2015.

(1) R4 knew that R2 was behind Sherri Holdings and JFT Acquisition, and that Ng was a nominee. He also knew about the First HK$100m paid to Jin (as he drafted the Jin Document).[259]

(2) Given his awareness of the above, the purported due diligence on which he admittedly "took the lead"[260] was obviously problematic – not least because (despite his knowledge) R4 never made any disclosure to the other directors (or shareholders) or flagged any irregularity.

(3) On this basis, the SFC contends he acted fraudulently (or at least in a grossly incompetent manner and in breach of his fiduciary duties and duties of care). As a result of his breaches, the Company's affairs have been conducted in a manner *per* section 214(1) of the SFO.

(4) R4 has failed to answer the above allegations other than the bare assertions in his POD.

190. Second, the SFC maintains that R4 negligently approved JFT Acquisition, despite the blatant overvaluation of the Target Technology. Notably, the valuation of the Target Technology by Tian Hai Hua at RMB 1,237 million represents over 126,000% of JFT's net asset value (RMB 975,000)[261] at the material time, for which no explanation is provided. The

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259 R4's POD, §3
260 See SFC's Opening, §§153 155.
261 Table 2 at Tian Hai Hua's valuation report

SFC also relies on §2 of its POR[262], as supported by the Expert's unchallenged evidence to the effect that:

(1) A reasonable director reviewing the Tian Hai Hua report and related documents would realise that no approved patents had been obtained by JFT at the time of valuation.[263] Further, there was only a total of 11 (unapproved) patents listed in Tian Hai Hua report, despite the Board[264] supposedly noting the Target Technology's IP rights as a reason for the acquisition[265].

(2) The Target Technology was at a very early and unproven stage. The Tian Hai Hua report only gave the technology's "maturity" a score of 10 out of 100. A reasonable director reviewing the report ought to have questioned how the Target Technology could be licensed/commercialised, and why the DCF method was an appropriate methodology for valuation[266].

(3) It follows from the above that any assumptions adopted in the valuation for scaling up would be entirely uncertain[267].

(4) The cost assumptions in Tian Hai Hua's report were also unclear and unsubstantiated. Given the extremely substantial valuation of approximately RMB 1,237 million, any reasonable director would have considered the costs associated with developing and scaling up the technology. Had one looked into this, it would have revealed the deficiencies of the report[268].

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262 Responding to R4's POD, §§1.1-1.3, 5.3
263 Only 2 patents had been submitted (not approved) and the rest were not even submitted.
264 Minutes of board meeting held on 2 March 2014
265 POR to R4's POD §2.2.1; Expert Report, §§4.6.39-4.6.40
266 POR to R4's POD §§2.2.2-2.2.4; Expert Report, §§1.4, 4.5.8, 4.5.27, 4.6.2-4.6.8, 4.6.12-4.6.16
267 POR to R4's POD §§2.2.6-2.2.7; Expert Report, §§4.5.20-4.5.31, 4.6.26-4.6.32
268 POR to R4's POD §2.2.5; Expert Report, §§4.6.12-4.6.16

191. In my view, it is not properly open to the SFC to pursue a cause of action based on negligence or breach of duty of care against R4 (as alleged in §2 of the POR) when *no* such cause of action, let alone particulars of negligence alluded to in Ms Tong's Closing (set out in the last paragraph) have been pleaded in the Petition. Although there is a rolled up plea in the Petition which refers to R4 "breached his duties as director" or "acted in a grossly incompetent manner" and/or "breached his duty of care towards the Company" (see §53(2) above), no material facts or particulars of negligence have been pleaded. It is well-established that a rolled up plea is defective (*Aktieselskabet Dansk Skibsfinansiering v Wheelock Marden & Co. Ltd*, HCMP 2625/1988, 15 December 1989, pp.9-10).

192. The case which has been pleaded against R4 is one that he was actively involved in both ends of JFT Acquisition, and caused the Company to acquire JFT on unfavourable terms with the ultimate purpose of misappropriating the Company's funds. In so acting, R4 acted in breach of his fiduciary duties owed to the Company as he failed to act in the best interest of the Company and placed himself in a position of conflict (see §53(1)-(2) above).

193. For the reasons which follow, I find that R4 was actively involved in the fraudulent scheme orchestrated by R2 for the purpose of misappropriating HK$248 million from the Company through JFT Acquisition.

194. First, R4 was actively involved in dealing with the affairs of Sherri Holdings, both before and after completion of JFT Acquisition:

(1) In October 2013, R4 sent emails giving instructions to Ng on how to set up Cosmic Summit (as a subsidiary of Sherri Holdings), and then to set up a Mainland subsidiary for Cosmic Summit (i.e. Chongcheng SH), the subject of which he described as "Coal-to-oil project".

(2) A draft 投资合作协议书 dated February 2014 between Sherri Holdings and Zhiku Capital in respect of cooperation in making investment ("**1st Sherri Document**") was found on R4's computer.[269] The metadata shows that the 1st Sherri Document was created by R4 on 10 February 2015.

(3) On 10 June 2014, R4 sent an email to Ng enclosing an unsigned written resolutions of Sherri Holdings approving the creation of a charge over 49% issued share capital of Cosmic Summit in favour of an "Investor"[270] as security for HK$300 million notes to be issued by Wider Success Holdings Limited ("**Wider Success**") to the Investor ("**2nd Sherri Document**").

(4) On 13 June 2014, R4 sent to Ng a document titled 擔保抵押承諾協議 dated June 2014 between Sherri Holdings and Wider Success, which stated that (a) Sherri Holdings held 49% shareholding in Cosmic Summit and the remaining 51% shareholding was sold to the Company for HK$600 million, and (b) Wider Success was a substantial shareholder of the Company holding 14% of its issued shares[271] ("**3rd Sherri Document**"). Under the 3rd Sherri Document, Sherri Holdings

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269 The metadata shows the author was "Tommy" and the document was created and last saved on 10 February 2015.

270 Cheer Hope Holdings Ltd

271 Recital (A)-(C) of 3rd Sherri Document

agreed to charge its 49% shareholding in Cosmic Summit as security for the HK$300 million notes to be issued by Wider Success to CCBI International Securities Limited.

(5) On 10 July 2014, R4 facilitated the change of nominee shareholder of Sherri Holdings by preparing and sending a draft share transfer agreement (股份轉讓契約) to Ng for the purpose of transferring all the shares in Sherri Holdings from Ng to Liang Juan[272] ("**4th Sherri Document**"). In his email to Ng, R4 introduced Liang Juan as his colleague. This shows that the transferee was not chosen by Ng but by R4 (who said that he acted on R2's instructions).

(6) The Jin Document was created by R4 in February 2015.

195. Despite his extensive involvement, at *no* time did R4 raise any concern or issue as to why he had to be involved in dealing with the affairs of the counterparty to JFT Acquisition. The only inference which can be drawn is that R4 *knew* that Sherri Holdings was at all material times beneficially owned by R2 and Ng was only R2's nominee. Such inference is consistent with and corroborated by the following facts and matters:

(1) When asked by the SFC about his involvement in setting up Sherri Holdings' subsidiaries in October 2013, R4 said that he had been instructed by R2 to assist Ng in setting up the subsidiaries[273]. R4 has not been able to explain why as an ED of the Company, he considered it appropriate to deal with the

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[272] Email from R4 to Ng dated 10 July 2014 attaching draft share transfer agreement
[273] R4's POD §4.4(1)

counterparty's affairs, particularly when the Company at that stage did not have any interests in JFT.

(2) Although R4 denies having participated in Sherri Holdings' affairs and asserted that his possession of the 1st to 4th Sherri Documents was "normal" and "reasonable" given JFT Acquisition and his role as an officer of the Company responsible for its legal matters,[274] such assertion does not begin to explain why he considered it "normal" and "reasonable" to be involved in the affairs of the counterparty.

(3) The metadata show that the 1st to 4th Sherri Documents and the Jin Document were created by R4 even though none of the transactions described therein concerned the Company. R4 is in the best position to explain why he prepared these Documents but he chose not to do so.

196. Second, R4 had extensive involvement in various meetings and discussions relating to the Target Technology and JFT project as representative of the Company well before JFT Acquisition,[275] he must had acquired knowledge that the Target Technology was still at an infant stage and did not have much commercial value at the time:

(1) In June 2013, R4/R3 (on behalf of the Company) signed a letter of intent with Jin.

(2) In August 2013, R4/R2 (on behalf of the Company) visited the laboratory and on-site plant of JFT project and met with

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274 R4's POD §§4.1, 4.3

275 Save where otherwise indicated, the involvement of R4 described in this paragraph is based on JFT Chronology

some experts, and attended a meeting with CSSC representatives. He (and R3) signed a cooperation framework agreement with JFT and China Shipbuilding Industry Complete Logistics Co Ltd[276].

(3) In November 2013, R4/R2 (on behalf of the Company) attended an expert review of JFT project held by CSSC.

(4) In December 2013, R4/R3 (on behalf of the Company) participated in the testing of finished products and testing equipment arranged by General Administration of Quality and Supervision, Inspection and Quarantine.

(5) In January 2014, R4/R3 (on behalf of the Company) attended inspections on the finished products of JFT project commissioned by the Company[277].

(6) On 15 January 2014, R4/R3 (on behalf of the Company) appointed CCB International Capital Ltd as financial adviser of JFT Acquisition.

(7) On 20 January 2014, R4/R3 (on behalf of the Company) appointed Shandong Qiyang Petrochemical Engineering Co Ltd to prepare a pre-feasibility research report.

(8) On 14 February 2014, R4/R6 (on behalf of the Company) attended a project launch meeting with intermediaries.

(9) On 18 February 2014, R4/R3 (on behalf of the Company) participated in discussion on cooperation on JFT project in

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276 R4's POD §5.3, R4's 2nd ROI #878-893. JFT Chronology

277 The year stated in JFT Chronology is "January 2013" which appears to be a typo as this event took place between Dec 2013 and 14 January 2014

respect of application and innovation in ship and marine engineering area.

197. Despite his knowledge about the infancy stage of the Target Technology and the lack of commercial value, R4 never brought these matters to the attention of the Board or raised any concern about the valuation of the Target Technology or the Consideration payable by the Company for JFT Acquisition. The only inference which can be drawn is that he knew that JFT Acquisition was a fraudulent scheme orchestrated by R2 for the purpose of misappropriating funds from the Company.

198. Third, worse still, as an ED and the only director in the Board having legal background, R4 admittedly "took the lead" in the due diligence and background check of Sherri Holdings and its assets/business[278] and continued to participate in each of the events leading to JFT Acquisition *without* disclosing the fact that Sherri Holdings was not an independent party (whether by reason of R2's ownership or R4's own involvement in dealing with its affairs) and that he was in a position of conflict:

(1) From 24-29 February 2014, R4/R3/R6 (on behalf of the Company) participated in discussion with Ng (representing Sherri Holdings) and Jin (representing JFT) on equity acquisition agreement in relation to JFT.

(2) On 2 March 2014, all EDs and INEDs participated in Board meeting via teleconference approving JFT Acquisition, and the JFT SPA was signed by R3 on behalf of the Company.

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[278] R4's 1st ROI #2100-2109

(3) On 10 March 2014, R3/R6 (on behalf of the Company) paid HK$50 million to Sherri Holdings.

(4) On 10 March 2014, R4 (on behalf of the Company) received legal due diligence report issued by Global Law Office.

(5) On 23 March 2014, R4/R3/R6 (on behalf of the Company) dealt with the comfort letters issued by the financial advisor and the auditors.

199. By suppressing the fact that he was in position of conflict on the one hand, and continued to act on behalf of the Company in negotiating the terms of JFT Acquisition, dealing with the financial advisers, auditors and agent appointed by the Company (including those engaged for conducting due diligence of Sherri Holdings), attending Board meeting of the Company and approving the JFT Announcement and JFT Acquisition on the other hand, R4 was instrumental in causing the Company to enter into JFT Acquisition on unfavourable terms. He was an active participant of the fraudulent scheme through which R2 misappropriated HK$248 million from the Company.

200. In acting in the above manner, R4 acted in fraudulent breach of his fiduciary duties owed to the Company in that:

(1) R4 knew that the true owner of Sherri Holdings was R2 but failed to disclose such fact to the Board or the shareholders of the Company and, instead, approved the JFT Announcement which stated, falsely, that Sherri Holdings was an independent party and the consideration was arrived at after arm's length negotiations.

(2) R4 knew he was in a position of conflict but continued to act for the Company without disclosing the conflict and refraining from participating in the negotiations and approval of JFT Acquisition.

(3) R4 knew that the Target Technology was still at infancy stage and did not have much commercial value but failed to bring such fact to the attention of the Board. In so acting, R4 completely disregarded the interests of the Company.

C13. Issue 11: R6's involvement in JFT Acquisition

201. The case against R6 is put by Ms Tong in this way[279].

202. The starting point is that as CFO and company secretary at the material time, R6 was indisputably responsible for the business and affairs of the Company. In *Re Anxin-China Holdings Ltd* [2025] HKCFI 839, §26, Anthony Chan J (as he then was) described the role of a CFO as follows:

> "26. The importance of the CFO in a listed company cannot be understated. He or she is the goalkeeper in respect of the finance of the company. The investing public rely on the integrity and reliability of the management and CFO to safeguard the company's financial interests."

203. On R6's own admission, he was in charge of "managing financial activities" (as CFO), and to "ensure that all regulations governing activities of the Company were being complied with" and that "the information disclosed in such announcements [of the Company] were as

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[279] SFC Skeleton, section F5

accurate as possible in view of the information available to [him] at [the] time" (as company secretary).[280]

204. Indeed, despite R6's attempts to distance himself from the decision-making process of the Company,[281] the evidence suggests that he played a much more important role than what he has sought to portray:

(1) R5 (Chairman and ED of the Company at the material time) described R6 as part of a "core team" alongside *inter alios* R3 who together were responsible for decision-making in the Company. [282]

(2) R6 also worked with R4 to deal with the legal aspects of JFT Acquisition, being in charge of contacting the Hong Kong lawyers and was responsible for coordinating due diligence with external parties.[283]

205. In view of the above, R6 plainly owed fiduciary duties as a senior officer of the Company[284]:

(1) Objectively assessed, R6 stood in a position *vis-à-vis* the Company where legitimate expectations existed that he would not utilise his personal position in a way which is adverse to the interests of the principal (*Leader Screws Manufacturing Company Ltd v Huang Shunkui* [2021] HKCFI 141 at §§46-48 (per Au-Yeung J))[285].

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280 R6's POD, §§13-14, 16
281 See R6's POD, §15
282 R5's 1st ROI, #469-474, 671. POR to R6's POD, §§2.1-2.2
283 R4's 2nd ROI #1129, 1131. POR to R6's POD, §2.3.1
284 Petition §28
285 POR to R6's POD §2.2

(2) An employee entrusted with the company's money is likely to owe fiduciary duties in relation to the money, even if he is a junior employee (*Leader Screws* at §49), let alone someone like R6 who was the CFO of the Company with oversight over the Company's finances.

206. In any event, as an officer/employee of the Company, R6 owed duties of care at common law to act with due care and skill, and to acquire sufficient knowledge and understanding of the Company and its subsidiaries' business so as to enable him to properly discharge his functions (*Employment Law and Practice in Hong Kong*, 2nd ed, 2016, at §§3.028-3.033).

207. It is against the above context that R6's actions must be considered. Ms Tong highlights the following, which illustrate R6's participation in the fraudulent scheme[286], and points to the fact he was *not* merely negligent or incompetent in discharging his duties as CFO or company secretary:

(1) R6's involvement in the First HK$100m paid to Jin and the falsity of the JFT Announcement[287];

(2) R6's role in preparing the Seven Cheques[288]; and

(3) R6's involvement in Sherri Holdings' affairs[289].

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286 Petition §§180, 181.1-181.2
287 SFC Skeleton, section F5.1; SFC Closing, section C2
288 SFC Skeleton, section F5.2; SFC Closing, section C3
289 SFC Skeleton, section F5.3; SFC Closing, section C4

C13.1 Issue 11(a): whether R6 owed fiduciary duties

208. For the same reason explained in §191 above, I do not think that it is open to the SFC to pursue a cause of action based on negligence or breach of duty of care against R6. In any event, I do not see how the SFC can claim a compensation order against R6 based on breach of duty of care when there is no plea on causation in the Petition. It is well established that the common law rules as to causation, foreseeability and remoteness apply to a claim for breach of duty of care (*Libertarian Investments Ltd v Hall* (2013) 16 HKCFAR 681 at §77).

209. Mr Ng contends that the SFC fails to adduce proper evidence to show that R6 owed fiduciary duties to the Company for the following reasons:

(1) R6 was not a director of the Company. The starting point for determining whether R6 owed any fiduciary duties to the Company, and if so, what duties, is his contract of employment (*Jeremy Michael Ranson v Customer Systems PLC* [2012] EWCA Civ 841, §§25-26, *per* Lewison LJ).[290]

(2) R6's contract of employment is particularly pertinent in the present case. The SFC's own understanding is that he only worked on a part-time basis and received around HK$60,000/month. Ms Yip did not challenge the accuracy of R3's statement that R6 was engaged on a part-time basis because he had some other affairs of his own[291].

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[290] Citing *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 97 (Privy Council); cited by *Leung Cha See* at §87, *per* Mimmie Chan J.

[291] R3 1st ROI #389

(3) Ms Yip agrees that R6's employment contract is relevant to assessing his role and admits that the SFC did not adduce his contract of employment as evidence. No legitimate explanation was proffered by SFC for not adducing R6's contract of employment.

210. I am unable to agree with Mr Ng's arguments.

211. It is not in dispute that R6 was at the material times of JFT Acquisition the CFO and company secretary of the Company. In his POD, R6 admitted that:

(1) As company secretary, his duties "were to carry out instructions from senior management of the Company, in particular [R2], [R3] and [R4]. Given that the Company is a listed company, [R6] was also responsible to [*sic*] ensure that all regulations governing activities of the Company were being complied with."[292]

(2) As CFO of the Company, "he was also responsible for managing financial activities whilst following instructions and directions from senior management of the Company, in particular from [R2], [R3] and [R4] from time to time."[293]

(3) R6 would "ensure that announcements were timely made in compliance with various regulations and rules. He would also ensure that the information disclosed in such announcements

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[292] R6 POD §13
[293] R6 POD §14

were as accurate as possible in view of information available to [R6] at the time."[294]

(4) The duties owed by him were governed by the law of Cayman Islands, the law of the place of incorporation of the Company.[295] There is *no* plea that the law of Cayman Islands is in any way different from the law of Hong Kong in this respect.

212. The SFC does not have to prove the terms of employment as it does not form part of its pleaded case against R6. Rather, it is R6 who contends that despite his position as CFO and company secretary, he only owed limited duties to the Company given that he only worked on a part-time basis and his monthly salary was HK$60,000. The evidential burden is on R6 to adduce evidence on the terms of his employment including any contract of employment (if existed) made between him and the Company. He has not discharged such burden.

213. In my judgment, although R6 was not a director, he was entrusted with the fiduciary power to scrutinise and control the use of the Company's funds:

(1) As can be seen from the Payment Forms, in respect of each payment the Company made for JFT Acquisition, R6 *qua* CFO had to sign as "reviewer" (審核人) before the same could be submitted to a director for approval.

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294 R6 POD §16
295 R6 POD §17

(2) In this context, the nature of R6's power *qua* CFO in reviewing and endorsing payment was analogous to that of a trustee entrusted with the funds of the principal, in that they both owed fiduciary duties to the principal in respect of the use of the funds under their control. Such fiduciary duties required R6 to exercise the power of reviewing and endorsing payment for a proper purpose and in the interests of the Company, and he could not exercise the power for any collateral or improper purpose or against the interests of the Company.

C13.2 Issue 11(b): R6's involvement in First HK$100m & JFT Announcement

214. For the reasons explained in Section C7.3 and C7.4 above, I find that (1) the First HK$100m paid to Jin on 27 December 2013, 9 and 29 January 2024 was in connection with JFT Acquisition; and (2) the JFT Announcement was misleading and inaccurate in *inter alia* failing to disclose the fact that the Company was involved in arranging payment of the First HK$100m to Jin more than 2 months before the JFT SPA and the JFT Announcement.

215. I also find that R6 was aware of, and was involved in arranging the payment of the First HK$100m to Jin for the purpose of JFT Acquisition and he knew the fund flow involved in making the payment (see §§141-144 above).

216. I turn to consider R6's involvement in the JFT Announcement.

217. Ms Tong submits that R6 was responsible for the JFT Announcement. Reliance is placed on the following matters:

(1) R6's own pleaded case that he would ensure the information disclosed in announcements was as accurate as possible in view of the information available to him at the time.[296]

(2) R6's plea that "the information disclosed in relevant announcements was true and accurate and was based on his knowledge derived from the information available to him at the material time…"[297], and he denies that the contents of the JFT Announcement contained inaccurate, false or misleading information[298]. There is no plea that R6 was not involved in preparing the draft JFT Announcement.

(3) R4 said that R6's role as company secretary included circulating draft announcements to directors before they were finalised[299].

(4) R6 also said that he arranged for a financial adviser or lawyer to draft the announcement, after which he would review it, to make sure the contents were accurate[300].

(5) Although Mr Ng refers to R3's answer that the draft announcements could have been sent by the lawyers to the directors directly[301], but the *mechanics* of circulation are not

296 R6 POD §16
297 R6 POD §34.3, Petition §90.1.1
298 R6 POD §48.6
299 R4 2nd ROI #586-599
300 R6 1st ROI #231
301 R3 2nd ROI #2020

relevant. Lawyers act on instructions, and in this case, no doubt on the instructions of R6 given his role as company secretary.

218. Mr Ng submits that the SFC's pleaded case against R6 is that he *circulated* the draft JFT Announcement to the Board, and he did so with actual knowledge that it contained inaccurate, false and/or misleading information. There is no sufficient evidence to prove that R6 circulated the draft JFT Announcement to the Board for the following reasons:

(1) There is no direct evidence (*e.g.*, email or WeChat records) to show that R6 circulated the draft announcement to the Board.

(2) During cross examination, Ms Yip accepts that the counters of the ROIs identified by SFC[302] do not show that the draft JFT Announcement was circulated by R6 to the Board.

(3) Notably, when asked about the circulation of the JFT Announcement, R3 said that the draft was circulated by lawyers.[303]

219. In my judgment, it is clear that R6 was responsible for preparing and circulating the JFT Announcement to the Board for approval for the following reasons:

(1) It is R6's own pleaded case that as CFO of the Company, he would ensure that announcements were made in compliance with various regulations and rules, and the information

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302 Being Wu 1st ROI #2466-2483 (referred to in Yip's Aff §113); Wu 2nd ROI #597 (identified by Ms Tong during R6's oral opening).

303 R3 2nd ROI #2020. For relevant context #1997-2020

disclosed was as accurate as possible in view of the information available to him at the time (see §211 above). This is a tacit acceptance that R6 was responsible for preparing all draft announcements to be made by the Company and ensuring that the contents were accurate.

(2) Mr Ng's contention that R6 was not responsible for preparing and circulating the draft JFT Announcement to the Board is inconsistent with R6's own pleaded case and is not supported by any evidence.

(3) Mr Ng's reliance on R3's answers as to how draft announcements were sent to the Board does not take the matter any further. In any event, read in context, R3's answers concerned the manner in which draft announcements were usually sent to the directors before they were released, and he said it could be sent by email or in the chat group and the lawyer could release the draft directly[304]. The mere fact that the draft could be sent by the lawyers to the directors directly is irrelevant as the lawyers prepared the draft announcements based on instructions, and the instructions could only have come from R6 - he was admittedly the person involved in instructing and working with lawyers over due diligence and regulatory and compliance matters involved in JFT Acquisition.

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[304] R3 2nd ROI #2016-2020

C13.3 Issue 11(c): R6's role in preparing Seven Cheques

220. As stated in §§150-153 above, the Purported Cheques must have been forged for the purpose of concealing from the SFC the identity of the actual payees of Cheques 2-6. The only question is whether R6 was aware of and was involved in preparing Cheques 2-6 and the Purported Cheques.

221. In his POD, R6 avers that he "held a genuine and honest belief that the [Seven Cheques] (the ones with Sherri Holdings named as payee) were drawn for the purpose of JFT Acquisition". R6 admits that he was involved in preparing the Seven Cheques following the "normal procedure for issuing cheques" as follows[305]:

(1) R6 received oral instructions from R2, R3 and/or R4 to prepare cheques for payment with information as to payee and amount of payment. R6 was presented with relevant payment requisition form together with cheques prepared by accounting department. Before signing on the payment requisition form, R6 would review the information contained in the payment requisition form as well as the cheques and would sign on it indicating his approval.

(2) The cheques presented to R6 would be the original unsigned cheque or copy of the cheques already signed, and he would ensure that the information contained in the payment requisition form matches with the information shown on the cheques before signing on the form.

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[305] R6's POD §§38.1-38.5

(3) R6 had no knowledge of the allegedly false or misleading nature of the Seven Cheques or the actual payees of Cheques 2-6 and the ultimate recipients of Cheques 1-7. R6 has never seen Cheques 2-6 issued in favour of Zhiku Capital, Everjoy International and Everjoy Technology.

222. The SFC's reply to the above plea is as follows[306]:

> "…as CFO, [R6] must or ought to have confirmed in its books and financial records and ensured that the actual recipients of the amount under the [Seven Cheques] (as per, for instance, bank statements) were indeed the named payees as (a) contained in the payment requisition forms which he signed; and (b) shown on the cheques which he has seen and confirmed to be matching with the payment requisition forms he signed. Any alleged failure to do so is inherently improbable and, if at all believable, would amount to a serious dereliction of his duties as an officer of the Company".

223. At his interview, R6 himself described the payment process as a very formal procedure, which involved payment requisition form and supporting documents except routine payment like rental, and he would review the payee's name and the amount of the cheque to see if it was correct before forwarding it to R3 and R2 (if payment was over HK$100,00) for approval and signature[307].

224. In her Opening, Ms Tong attempts to run an unpleaded case of gross incompetence and/or negligence against R6 in respect of the Seven Cheques in this way[308]:

(1) In the Company's letter dated 17 November 2015 to the SFC (signed by R2), it was alleged that the Company had delivered

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306 POR to R6's POD §6.2
307 R6's 1st ROI, #790-839
308 SFC Skeleton section F5.2

Cheques 2-6 to Sherri Holdings with payee left blank, and was subsequently provided by Sherri Holdings with the Purported Cheques (with payee as Sherri Holdings) and the Company was not aware of the difference in payee until the SFC pointed it out in its letter dated 12 November 2015[309].

(2) R3 asserted the request for issuing blank cheques was made to the "finance department", and the Company did discuss the request internally and considered that the request was controllable as it would write down exact amount to be paid on the cheques[310].

(3) R6 said that R3 had on occasions asked him to prepare blank cheques, and even once mailed an entire cheque book to him, he could not remember the details.[311]

(4) Ma (senior officer who reported to R6) confirmed he had previously given blank cheques to R6 as requested.[312]

(5) Even assuming R6 was not specifically involved in inputting the names of the ultimate payees (Zhiku Capital etc.) onto the Seven Cheques (or the subsequent diversion of monies to R2 and his syndicate), he was grossly incompetent and/or negligent in discharge of his duties as CFO and company secretary:

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309 Company's letter to SFC dated 17 November 2015 §2(1)-(5)
310 R3's 1st ROI #2671
311 R6's 1st ROI #841-880
312 Ma's ROI #1052-1063

(a) The Seven Cheques involved payment of HK$298 million in respect of a substantial acquisition. Various announcements were issued by the Company (under R6's purview) updating the public on the Company's payment status.

(b) One would have expected a responsible and diligent officer to be, *inter alia*, checking bank statements and obtaining requisite proof as required, to ensure that the cheques had in fact been received and cashed by Sherri Holdings as the intended payee designated on the payment requisition forms[313].

(c) Had R6 checked, he would have uncovered that 5 cheques were in fact *not* drawn to Sherri Holdings. Instead, on his own admission, he was entirely ignorant of all this happening under his nose[314]. Indeed, the SFC submits that it is simply improbable that R6 was somehow oblivious of it all: the irresistible inference is that he must have conducted relevant checks against the Company's books and records, and as such been well aware that a large part of the relevant funds were not paid to Sherri Holdings. Yet he did not at any point flag this to the Company's other directors or cause further enquiries to be made.

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313 POR to R6's POD §6.2
314 R6 POD §38.5

225. Unsurprisingly, Mr Ng objects to the SFC running an unpleaded negligence claim against R6 in respect of the Seven Cheques[315].

226. In her closing, Ms Tong does not retract her arguments and submits that the SFC has "presented a compelling case regarding R6's breaches of duties of reasonable care and skill, given how he was directly involved in the purported issuance of the Seven Cheques through the contemporaneous payment requisition forms which he signed, but yet failed to realise the discrepancies as to the payees"[316].

227. In my view, it is not open to the SFC to run an unpleaded case of negligence raised only in Ms Tong's Opening when none of the matters set out in §224 above have been pleaded in the Petition.

228. In my judgment, R6 was aware of, and was involved in causing the Company to pay HK$298 million by way of Cheques 1-7, for the following reasons.

229. First, the SFC has discharged the burden of proving that Cheques 1-7 were the cheques *actually* issued by the Company and cleared by the banks, while the Purported Cheques were forgeries (see §§150-153 above).

230. As the SFC has established a *prima facie* case that the issue of Cheques 2-6 to Zhiku Capital, Everjoy Technology and Everjoy International (who were not parties to JFT Acquisition) constituted misappropriation of assets, the burden is on the officers involved in reviewing and causing Cheques 2-6 to be issued to justify the propriety of

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315 R6 Closing §§27.1, 28-29
316 SFC Closing sections C3.1-3.2

these Cheques but none of them (including R6) has come forth to explain, let alone justify the Cheques so issued.

231. Second, R6 has pleaded to the Seven Cheques in his POD in that (see §221 above):

(1) R6 was admittedly involved in preparing the Seven Cheques, including checking the name of the payee and the amount of the cheques and signing on the Payment Forms.

(2) R6 was presented with the Seven Cheques (with Sherri Holdings as payee) at the time when he reviewed and signed on the Payment Forms. This is a positive defence that he had been misled into signing the Payment Forms. In respect of such plea, R6 bears the evidential burden to satisfy the court that he has been so misled but he has not done so.

232. Third, the court is entitled to take into account the fact that R6 is in the best position to explain how the Seven Cheques and Cheques 2-6 came about but he chose to withhold such evidence. This is particularly so when R6's defence is inherently improbable as the cheque numbers on the Seven Cheques are identical to those on Cheques 2-6. It was impossible for the same cheques to have been issued by the Company twice. An adverse inference can be drawn against R6 that the evidence which he could give would not be supportive of his defence.

C13.4 Issue 11(d): R6's role in Sherri Holdings' affairs

233. Ms Tong submits that the court should draw a reasonable inference that R6 was involved in Sherri Holdings' internal affairs all along

(including when the due diligence process for JFT Acquisition in which R6 was involved, was taking place) taking into account the following facts and matters[317]:

(1) R6's possession of the 2 Sherri Documents shows that he was involved in Sherri Holdings' internal affairs at least in June/July 2014 – in circumstances where such involvement is unexplained and contrary to commercial sense. By that time, JFT Acquisition had been completed,[318] there was no reason why R6 as CFO and company secretary would be dealing in *drafts* of Sherri Holdings' documents, particularly when those drafts did not concern the Company or its finance:

(a) The draft 合作協議 does refer to Wider Success' intention to support SSIE's energy technology project at Recital (C). But that in itself did not explain why the Company would be involved in the dealings between Sherri Holdings and Wider Success for that purpose or otherwise.[319] Any suggestion that R6 could have obtained the document from Wider Success[320] is neither pleaded nor supported by evidence. In any event, R6 was the CFO/company secretary of the Company (not Wider Success, which was one of the Company's shareholders).

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317 SFC Closing section C4

318 Completion took place on 30 May 2014 as per 30/5/2014 1st Announcement

319 The SFC also submits the draft 合作協議 is contrary to commercial sense. Sherri Holdings agrees to provide a charge over its remaining 49% interest in Cosmic Summit to CCBI to secure Wider Success' liabilities (Clause 2.1) – but Wider Success was purportedly funding SSIE in order to *inter alia* enable SSIE to pay Sherri Holdings. This is entirely circular: Sherri Holdings is effectively offering security in order to fund SSIE to pay itself.

320 R6's Opening, §70.3.

(b) The unsigned resolution of Sherri Holdings is even less explicable. If the Company was being notified of Sherri Holdings' new bank signatory as a matter of record-keeping, surely *signed* resolution would be provided.[321]

(2) R6 placed himself in a position of conflict given his dual roles within both Sherri Holdings and the Company at the material time[322].

234. In his Opening, Mr Ng contends that[323]:

(1) The SFC has not adduced any evidence on the source of the 2 Sherri Documents.

(2) The existence of the Sherri Documents in R6's external hard drive is equally consistent with R6's honesty and/or absence of knowledge of the alleged fraud given that (a) Schedule 3 clause A(iii) of JFT SPA, Sherri Holdings undertook inter alia to "timely notify [SSIE] of all material adverse changes relating to [Sherri Holdings]; (b) after completion, Sherri Holdings remained a 49% shareholder of Cosmic Summit, it is normal that information relating to the Target Technology would be shared among the Company and Sherri Holdings; (c) R6 could well have received the 合作協議 from the Company

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321 R6's Opening at §70.1 also postulates this could be due to Sherri Holdings' undertaking in the JFT SPA to notify SSIE of material adverse changes relating to Sherri Holdings. This argument is unmeritorious. For one, change in account signatory is hardly a material adverse change. Second, any notification ought not be in a form of a draft resolution. Third, the undertaking was "*before Completion*" (which was in May 2024, before the date of such draft resolution).

322 Petition §181.4

323 R6 Opening section E1

or its parent company (Wider Success) without any involvement in Sherri Holdings' affairs; (d) the written resolution concerns change of Sherri Holdings' signatures arrangement and it is perfectly normal for R6 to have received information concerning change of Sherri Holdings' signatories.

(3) The 2 Sherri Documents dated June/July 2014, months after transfer of the First HK$100m or completion of JFT Acquisition. They could not constitute evidence of R6's state of mind at the time of the payment of the First HK$100m.

(4) Despite the SFC's extensive investigation, only 2 documents relating to Sherri Holdings in R6's hard drive could be identified. The significant absence of documents relating to Sherri Holdings is more consistent with R6 having no involvement in Sherri Holdings and had inadvertently received the 2 Sherri Documents.

235. I do not accept Mr Ng's contentions:

(1) R6's hard drive was disclosed by the SFC in its list of documents filed on 4 May 2022 and a forensic copy of the same was provided to R6 on 24 August 2021. R6 also confirmed by letter dated 8 September 2021 that he had engaged an external technician to access the contents of the hard drive.

(2) The various conjectures advanced by Mr Ng (see §234(2) & (4) above) are not supported by any evidence and fall to be rejected.

236. In my judgment, the fact that R6 had possession of the 2 Sherri Documents created by him in June/July 2014 shows that he was involved in dealing with the internal affairs of Sherri Holdings at the time. His conduct cries out for explanation given that:

(1) Sherri Holdings was the counter-party to JFT Acquisition and was allegedly a party independent of the Company and its directors.

(2) Although JFT Acquisition was stated to have been completed on 30 May 2014, Sherri Holdings remained a counter-party whose interest was not fully aligned with the Company given that (a) it had given the Undertaking to obtain notice of acceptance issued by the IP Office by 30 July 2014, which it failed to comply until 6 November 2018; and (b) by 1 March 2015, HK$302 million of the Consideration remained outstanding (see §§33(1), 34-35 above).

(3) As CFO and company secretary of the Company, R6 had no reason to be involved in dealing with the internal affairs of Sherri Holdings (or for that matter, the affairs of Wider Success) at all.

237. Despite the existence of the 2 Sherri Documents showing his involvement in dealing with Sherri Holdings' internal affairs, R6 fails to come forth to explain why he saw fit to prepare the 2 Sherri Documents

and why as CFO/company secretary of the Company, he was not in a position of conflict in dealing with Sherri Holdings' affairs. The fact that R6 created the 2 Sherri Documents apparently without raising any issue or concern at the time (no such evidence has been adduced) shows that he was aware that Sherri Holdings was not independent of the Company but was a company related to, if not controlled by, R2.

C13.5 Issue 11(e): whether R6 perpetrated the fraud & acted in breach of fiduciary duties

238. In summary, R6 was involved in the fraud orchestrated by R2 by way of JFT Acquisition (with the active involvement and assistance rendered by R4) in that:

(1) R6 was aware of, and was involved in arranging the payment of the First HK$100m to Jin for the purpose of JFT Acquisition including the fund flow involved in making the payment (see §§214-215 above);

(2) R6 was responsible for preparing and circulating the draft JFT Announcement to the Board, which contained false information (as I so find) (see §214, 219 above);

(3) R6 was aware of, and was involved in causing the Company to pay HK$298 million by way of Cheques 1-7, of which HK$198 million (under Cheques 2-6) were paid to parties unrelated to JFT Acquisition (see §§228-232 above); and

(4) R6 was involved in Sherri Holdings' internal affairs in at least June/July 2014 when he created the 2 Sherri Documents, despite his knowledge that Sherri Holdings was the

counterparty to JFT Acquisition and there was no reason for R6 to be involved in dealing with its affairs, whether before or after completion of JFT Acquisition (see §§236-237 above).

239. The only issue is whether R6's involvement in the fraud constituted a breach of fiduciary duties owed to the Company. In my view, it clearly did.

240. As CFO of the Company, R6 was entrusted with the fiduciary power to review and control the use of the Company's funds, and he owed fiduciary duties to ensure that the Company's funds would only be used for the proper purpose and in the best interests of the Company (see Section C13.1 above).

241. R6 acted in breach of his fiduciary duties in that he allowed HK$298 million to be paid by the Company when he knew that:

(1) The First HK$100m had already been paid to Jin more than 2 months before the Board considered the JFT SPA but such fact had never been disclosed to the Board and the public;

(2) Sherri Holdings was not independent of the Company and, instead, was a company related to, if not controlled by R2;

(3) The JFT Announcement was false in stating that Sherri Holdings was independent and the Consideration had been negotiated on an arm's length basis;

(4) Cheques 1 and 7 would be paid to Sherri Holdings, which was not independent of the Company; and

(5) Cheques 2-6 would be paid to entities which were not parties to JFT Acquisition.

C14. Issue 12: relief

242. The third condition for relief under s.214(1) of the SFO is satisfied:

(1) As against R2, for the reasons set out in Sections C3 – C6, C7.1-C7.4, C8-C11 above.

(2) As against R4, for the reasons set out in Sections C7-C10 and C12 above.

(3) As against R6, for the reasons set out in Sections C7-C10 and C13 above.

243. The SFC seeks a compensation orders under s.214(2)(e) of the SFO against R2, R4 and R6.

244. It is not in dispute that for the court to make a compensation order, it has to find "some causal connection between the breach and the loss to the Company" though the rules on causation are of varying strictness depending on the type of duty and breach in question, and the amount of compensation has to be readily ascertainable (*SFC v Wong Wai Kwong David* [2021] HKCA 897, §§19-21 & 43, per Kwan VP).

245. Where a fiduciary acted in breach of his fiduciary duties, the test for causation is as follows:

(1) Once "the plaintiff has shown a loss arising out of a transaction to which the breach was material, the plaintiff is entitled to recover unless the defendant fiduciary, upon whom is the onus, shows that the loss or damage would have occurred in any event, ie without any breach on the fiduciary's part" (*Libertarian,* §82; *Zhang Hong Li v DBS Bank (Hong Kong) Ltd* (2019) 22 HKCFAR 392, §118).

(2) "Where the plaintiff provides evidence of loss flowing from the relevant breach of duty, the onus lies on a defaulting fiduciary to disprove the apparent causal connection between the breach of duty and the loss (or particular aspects of the loss) apparently flowing therefrom." (*Libertarian,* §93)

(3) In applying the "but for" test of causation for breach of fiduciary duty, the court takes a common sense view with the full benefit of hindsight. All that is required of the plaintiff is to show that loss or particular aspects of the loss would appear to flow from the breach" (*Libertarian*, §§76, 93 & 96). "Once the apparent causal connection is established, the onus lies on the defaulting fiduciary to disprove this" (*Libertarian*, §91).

246. The causation test is plainly satisfied as against R2, who is found to have been acted in fraudulent breach of fiduciary duties as shadow director in causing the Company to enter into the 2009 Acquisition and orchestrating and perpetrating a fraud on the Company through JFT Acquisition.

247. I make a compensation order against R2 in the amount of HK$595 million, being the loss suffered by the Company as a result of:

(1) The 2009 Acquisition in the amount of HK$347 million (see §81 above); and

(2) JFT Acquisition in the amount of HK$248 million (see §§170, 177 above).

248. As for R4, the causation test is also satisfied. He is found to have acted in fraudulent breaches of fiduciary duties as director of the Company in causing the Company to enter into JFT Acquisition.

249. I make a compensation order against R4 in the amount of HK$248 million.

250. As for R6, Mr Ng submits that even if R6 breached any duty, "the SFC has adduced no evidence of causation for the pleaded and unpleaded claims at all". In particular, the SFC decided not to call Cheung Wai Tak (and INED) who was involved in approving the JFT SPA. In any event, the SFC plainly cannot establish any "but for" causation for the following reasons:

(1) For the First $100m payment, the SFC's case is that the HK$100m was the actual consideration paid to acquire JFT[324]. There is no evidence that but for the alleged execution of the First $100m payment by R6, the Board would not have approved the JFT SPA.

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[324] Petition §126

(2) For the JFT Announcement, there is similarly no evidence that but for the alleged circulation of the draft JFT Announcement by R6, the Board would not have approved JFT Acquisition.

(3) For Cheques 1-7, even if R6 complied with the alleged duty[325], the funds would have already been cashed and gone. The alleged breach of duty plainly did not cause the loss of HK$248 million.

(4) For the Non-Disclosure Case, the JFT Announcement merely reflected the Board's decision to approve the JFT SPA. The failure to disclose the First HK$100m would not have caused the alleged loss.

251. On the other hand, Ms Tong submits that the causation elements for breach of duty of care are all made out in that:

(1) But for R6's failure in properly checking the payees, Cheques 2-6 would not have been issued to the actual payees. This loss is clearly foreseeable, and the fact that the Company ultimately lost HK$198 million is a direct consequence of R6's failure.

(2) R6 has tried to sidestep the above by (i) taking a pleading point as to §6.2 of the POR; and (ii) arguing that, by the time R6 could have checked who the actual recipients were, the money would have already been paid (so there is no causation). None of these points withstand to scrutiny:

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[325] Pleaded in §6.2 of POR to R6 POD

(a) §6.2 of the POR pleads *inter alia* that R6 ought to have "ensured that the actual recipients of the amount under the [Cheques 1-7]…were indeed the named payees" as contained in the Payment Forms and the actual cheques he had seen. In other words, the SFC's case is not confined to only the follow-up exercise *after* the cheques are banked in.

(b) But for R6's failure to properly check the payees on the Payment Forms matched the actual payees on Cheques 1-7, he could have prevented at least Cheques 2 - 6 from being issued.

(c) Even if the court considers that R6 could not have done much to affect the payment in relation to Cheque 1 (paid to Sherri Holdings), that at most reduces the loss caused by HK$50 million[326] (*i.e.* at least a loss of HK$198 million would still have been caused (HK$248 million less HK$50 million)).

252. Ms Tong's submissions only fall to be rejected as there is no plea in the Petition on a claim for breach of duty of care or how R6's alleged breach of duty of care caused the Company to suffer the loss of HK$248 million as contended by her.

253. The real issue is whether R6's breach of fiduciary duties caused the Company to suffer the loss of HK$248 million.

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[326] This HK$50 million would still be covered by the SFC's claim for compensation in respect of the breaches relating to the First HK$100m.

254. In my judgment, the SFC has shown a case that the Company has suffered a loss of HK$248 million which flowed from the Company having entered into JFT Acquisition. R6's breach of fiduciary duties was material in that:

(1) Each of the matters discussed in §241 above raised serious question as to the propriety of JFT Acquisition. Instead of raising question as to the propriety of JFT Acquisition and preventing the Company's funds to be used for the purpose of JFT Acquisition, R6 endorsed and signed the Payment Forms, thereby allowing the Company to issue Cheques 1-7 and pay away HK$298 million of its funds for the purpose of JFT Acquisition, of which only HK$50 million was in fact paid to Jin.

(2) Without R6's involvement in endorsing and signing on the Payment Forms, Cheques 1-7 would not have been issued by the Company.

255. The onus is on R6 to disapprove the apparent casual connection between his breach of fiduciary duties and the loss suffered by the Company, but he adduces no evidence at trial. It follows that the "but for" test is satisfied for the court to make a compensation order against R6.

256. I make a compensation order against R6 in the amount of HK$248 million.

257. The liability of R2, R4 and R6 to compensate the Company in the amount of HK$248 million is joint and several.

258. The SFC seeks a disqualification order against each of R2, R4 and R6.

259. As against R2, I agree with Ms Tong that a disqualification period of 15 years is appropriate, taking into account the following matters:

(1) R2 was the mastermind of the fraudulent schemes perpetrated against the Company to misappropriate its assets for his own benefit. This places his case in the top bracket in terms of disqualification period, as a particularly serious case (*Re Long Success,* §40).

(2) The wide-spanning nature of R2's fraud which covered a period from 2009 to 2014 and involved 2 separate acquisitions which caused substantial loss to the Company. The very serious nature of the misconduct, which involved fraud and dishonesty on the part of R2, who is found to have caused, directed and perpetrated the fraudulent schemes.

(3) R2's fraud is more egregious than the respondents in *Re Sound Global* (who was found to have embezzled HK$85 million from the company and was disqualified for 12 years) and *Re First Natural Foods Holdings* (who did not derive any personal benefit from the fraudulent scheme and was disqualified for 12 years) as R2 was the ultimate beneficiary behind the 2009 Acquisition and JFT Acquisition.

(4) Such self-dealing by a substantial shareholder who operated behind the scenes as a shadow director cannot be condoned by the court.

(5) As a matter of deterrent, and to act as protection for the public, the maximum disqualification period is justified for this exceptional case.

260. As for R4, a period of 12 years disqualification is justified:

(1) R4's role and participation in the fraudulent scheme pertaining to JFT Acquisition places him in the top bracket of disqualification period.

(2) The amount involved in JFT Acquisition and his role in Sherri Holdings.

(3) The case against R4 is similar to the severity of cases like *Re Sound Global* and *Re First Natural Foods Holdings*.

261. In respect of R6, Mr Ng submits that taking into account the following matters, R6 should at most be disqualified as a director of listed company for 1.5 years:

(1) In *Re Anxin-China Holdings* [2025] HKCFI 839 cited by Ms Tong, the CFO (who was not a director, §19) was only disqualified for 3 years (§30). In that case, (a) the negligence was described as *"nothing short of breath-taking"* (§25), (b) there was an "overstatement of the Group's cash position over no less than 5 years" (§27), and (c) other authorities which set the disqualification periods of 2 years and 1.5 years were taken into account (§22).

(2) In the present case, none of the alleged breaches by R6 caused any loss to the Company.

(3) R6 did not pocket a single penny from the alleged fraud.

(4) It is highly unlikely that any dishonesty of R6 can be proved.

(5) R6 was not a director of the Company. He was only engaged on a part-time basis earning a salary of HK$60,000/month. He was not in charge of the day-to-day management.

(6) R6 is 63 years old. The risk of recommitting misconduct is low.

(7) R6 had never been disqualified before.

(8) The alleged breaches were only related to a listed company. This is particularly so in relation to the alleged non-disclosure of information, which only concerns one public announcement.

(9) The seriousness of KC Chan's alleged breach is nothing comparable to that in *Re Anxin-China* and the authorities cited in §22.

262. In my judgment, a disqualification period of 12 years against R6 is appropriate, having regard to the following facts and matters:

(1) The importance of the CFO in a listed company being "the goalkeeper in respect of the finance of the company. The investing public rely on the integrity and reliability of the

management and CFO to safeguard the company's financial interests" (*Anxin-China*, §26).

(2) R6's role as being in charge of "managing financial activities" (as CFO), and to "ensure that all regulations governing activities of the Company were being complied with" and that "the information disclosed in such announcements [of the Company] were as accurate as possible in view of the information available to [him] at [the] time" (as company secretary).[327]

(3) R6's responsibility as the officer in charge of contacting the Hong Kong lawyers and coordinating due diligence of JFT Acquisition with external parties,[328] which were supposed to serve an important function of detecting irregularity and impropriety of JFT Acquisition.

(4) R6's knowledge and involvement in the payment of the First HK$100m to Jin, preparing and circulating the JFT Announcement to the Board, endorsing and allowing Cheques 1-7 to be issued by the Company and dealing with the internal affairs of Sherri Holdings.

263. As for interest, the SFC claims interest on the compensation orders at HSBC prime lending rate plus 2% from the date of the Petition to

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[327] R6's POD, §§13-14, 16

[328] R4's 2nd ROI, #1129, 1131. POR to R6's POD, §2.3.1

the date of judgment,[329] and thereafter at judgment rate, in line with the order made in *SFC v Zheng Dunmu,* §27. No argument has been advanced by Mr Ng in respect of interest.

264. While the court may award compound interest where a trustee or fiduciary has misappropriated funds which the court assumes would have been used by him to earn profits (*Libertarian*, §142), the SFC has not claimed compound interest in the Petition. Instead, the SFC only claims simple interest at the rate and for the period described in the last paragraph.

265. I therefore order simple interest on the amount payable by R2, R4 and R6 on their respective compensation order from the date of the Petition to the date of this Judgment and, thereafter, at judgment rate until payment.

D. DISPOSITION

266. For all the above reasons, I make the following order:

(1) As against R2, a compensation order in the amount of HK$595 million and a disqualification order[330] of 15 years from the date of this Judgment;

(2) As against R4, a compensation order in the amount of HK$248 million (jointly and severally with R2 and R6) and a

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329 The starting point is that interest can be awarded for all or any part of the period starting on the date when the cause of action arose (*SFC v Tong Shuk Lun* §39). In other words, the SFC is entitled to claim interest starting from the date(s) on which the Company suffered loss. However, given the potential complexity of calculation, the SFC only seeks interest from the date of the Petition.

330 In the terms proposed by the SFC in §a and b of §§1, 3 and 5 of the draft order submitted to the court on 1 September 2025

disqualification order of 12 years from the date of this Judgment;

(3) As against R6, a compensation order in the amount of HK$248 million (jointly and severally with R2 and R4) and a disqualification order of 12 years from the date of this Judgment;

(4) Simple interest shall accrue on the amount payable under the compensation order as against R2, R4 and R6 from the date of the Petition (i.e. 18 December 2020) to the date of this Judgment and, thereafter, at judgment rate until payment.

(5) The Company do within 7 days of receipt of any sum paid by Rs in compliance with the compensation order notify the SFC of the payment and provide supporting documents of the receipt to the SFC.

267. As for costs, there be no order as to costs as between the SFC and R16.

268. As between the SFC and Rs, I make a cost order *nisi* that:

(1) Rs do pay to the SFC the costs of and occasioned by the Petition, to be taxed on an indemnity basis, with certificate for 2 counsel.

(2) Rs do pay to the Company the costs of and occasioned by the Petition, to be taxed on an indemnity basis.

(3) For taxation purpose, I apportion the costs of and occasioned by the Petition up to and including the PTR, as between Rs and the other respondents, to be 50% and 50%. Thereafter, all the costs incurred by the SFC shall be treated as costs payable by Rs.

(4) For taxation purpose, as between R2, R4 and R6, the SFC's costs are to be apportioned as to 60%, 20% and 20% respectively to reflect the difference in the cases advanced by the SFC against them and the fact that only R6 appears at trial to contest the claim.

269. It seems to me that costs should be ordered on a higher scale to reflect the gravity of the misconduct as found by the court, which involved fraudulent schemes orchestrated and perpetrated by senior officers of the Company and flagrant breaches of fiduciary duties on their part.

(Linda Chan)
Judge of the Court of First Instance
High Court

Ms Sara Tong SC leading Ms Natalie So, instructed by Securities and Futures Commission, for the Petitioner

Mr Michael Ng, instructed by Mun Lee Ming Law Firm, Hong Kong, for the 6th Respondent

Ms Euchine Ng, instructed by Mun Lee Ming Law Firm, Hong Kong, for the 6th Respondent, to appear on 20 August 2025 only

The 1st Respondent is not represented and excused

The 2nd Respondent is not represented and absent

The 4th Respondent is not represented and absent

The 16th Respondent is not represented and absent