

SFC seeks court orders against founder and former chairman of First Natural Foods

24 Apr 2013

The Securities and Futures Commission (SFC) has commenced legal proceedings in the Court of First Instance against Mr Yeung Chung Lung, founder and former chairman of First Natural Foods Holdings Limited (First Natural Foods) over alleged embezzlement of \$84 million of corporate assets and false accounting (Notes 1 & 2).

The SFC is seeking disqualification orders against Yeung as well as the company's former chief executive officer and executive director, Mr Yang Le, and another former executive director, Mr Ni Chao Peng. Yang is the son of Yeung and Ni is the son-in-law of Yeung (Note 3).

The SFC alleges that Yeung, Yang and Ni had conducted the business or affairs of First Natural Foods in a manner oppressive to its members, involving defalcation, misfeasance or misconduct towards them, resulting in their not having been given all the information they might reasonably expect and/or in a manner unfairly prejudicial to its members and in breach of their duties owed to the company. Specifically, the SFC alleges that:

- In the absence of notice and/or authorization by the board of directors of the company, the withdrawals of approximately \$84 million by Yeung on 18 and 19 December 2008 from First Natural Foods' Mainland bank account amounted to embezzlement of corporate assets;
- The bank statements First Natural Foods provided to its auditors in relation to the audited consolidated results for the year ended 31 December 2007 were false and/or had been fabricated in that while a cash balance of over RMB 674 million was revealed as at 31 December 2007, the bank account statements obtained by the SFC showed a balance of only around RMB 20 million as at 29 December 2007; and
- Yeung, who became unreachable since mid-December 2008, had obstructed investigations by the provisional liquidators including the effort to regain control of the company's main operating subsidiary in the Mainland, Fuqing Longyu Food Development Company Limited (Longyu). In particular, Yeung refused to assist the provisional liquidator in their application for change of Longyu's registration records despite the Fuzhou Intermediate People's Court's ruling in July 2009 that the resolution passed by the provisional liquidators replacing the board of Longyu was valid (Note 4).

The SFC is also seeking orders that Yeung repay \$84 million to the company.

End

Notes:

1. First Natural Foods was listed on the Main Board of the Stock Exchange of Hong Kong Limited on 11 February 2002. The group principally engaged in the manufacturing, processing, selling and trading of food products including frozen and functional food products. Trading of the shares of First Natural Foods was suspended from 15 December 2008 to 5 September 2012. Provisional liquidators were appointed on 7 January 2009 and their duties were discharged on 4 September 2012 upon completion of the restructuring.
2. Under section 214 of the Securities and Futures Ordinance, the court may, inter alia, make orders to disqualify a person from being a director or being involved, directly or indirectly, in the management of any corporation for up to 15 years, if the person is found to be wholly or partly responsible for the company's affairs having been conducted in a manner involving defalcation, fraud, misfeasance or other misconduct towards it or its members.
3. The first hearing of the petition was heard in the Court of First Instance today.
4. In view of the loss of control of Longyu, it had been deconsolidated from the company since 1 July 2008.
5. A [summary](#) of the material events and the allegations is available on the SFC website.

Page last updated : 24 Apr 2013

SFC's Allegations Against Respondents
(an extract from the SFC's Petition filed with the Court)

A. The Company and its subsidiaries ("the Group")

1. First Natural Foods Holdings Ltd ("**the Company**") was incorporated under the Bermuda Companies Act 1981 as an exempted company with limited liability in Bermuda on 27 July 2001 and registered under Part XI of the Companies Ordinance (Cap.32) as an overseas company in Hong Kong on 7 November 2001.
2. The Company's shares have been listed on the Main Board of the Stock Exchange of Hong Kong Limited ("**Stock Exchange**") (Stock Code 1076) since 11 February 2002 and were suspended from trading from 15 December 2008 until 5 September 2012.
3. The Company at all material times up to 3 September 2012 wholly owned the following companies in the People's Republic of China ("**PRC**"):-
 - 3.1 Fuqing Longyu Food Development Company Limited 福清隆裕食品開發有限公司 ("**Longyu**"), the major operating subsidiary;
 - 3.2 Ningbo Dingwei Food Development Company Limited 寧波市頂味食品開發有限公司 ("**Dingwei**"); and
 - 3.3 Jia Jing Commercial (Shanghai) Company Limited 嘉璟商業(上海)有限公司 ("**Jia Jing**"),

which are collectively referred to as "**PRC Subsidiaries**".

4. At all material times until December 2008 when the Board of Directors of the Company ("**the Board**") lost or formed the opinion that it had lost control of the PRC Subsidiaries in circumstances as pleaded in Sections C and D below, all or

most of the profit-generating business activities of the Group were carried out through the PRC Subsidiaries with Longyu as the main operating subsidiary generating over 95% of the Group's profits.

B. The 1st, 2nd and 3rd Respondents

5. The 1st Respondent Mr Yeung Chung Lung (“**Yeung**”) was at all material times the Chairman of the Group and an executive director of the Company until 27 August 2009 when the Board resolved that his offices be vacated pursuant to bye-law 89(3) of the Company's Bye-laws on the ground that he had been absent from the meetings of the Board for six consecutive months without obtaining the special leave of absence from the Board. Yeung was the founder of the Group and at all material times responsible for overall planning and strategic development of the Group until 12 December 2008 when he ceased to be contactable by the Board.
6. Yeung was and still is a shareholder of the Company. As at 30 January 2013, he remains beneficially interested in 5,208,312 ordinary shares of the Company (approximately 1.30% of its issued share capital) through Regal Splendid Limited, a limited liability company incorporated in the British Virgin Islands which is wholly owned by Yeung.
7. Mr Yang Le (“**Yang**”), the 2nd Respondent, was at all material times the Chief Executive Officer and executive director of the Company up to 12 December 2008. He is the son of Yeung and was at all material times mainly responsible for overall management, day-to-day operations and quality control of the Group.
8. Mr Ni Chao Peng (“**Ni**”), the 3rd Respondent, was at all material times an executive director of the Company up to 12 December 2008. He is the son-in-law of Yeung and was at all material times mainly responsible for engineering technology and construction design of the Group.
9. Yeung, Yang and Ni were at all material times up to at least 12 December 2008, whether individually or collectively, in full and exclusive control of the

management and day-to-day operations of the PRC Subsidiaries. In terms of their offices:-

- 9.1. Yeung was at all material times the legal representative of Longyu;
- 9.2. Yang was at all material times a director of Longyu and the legal representative of Dingwei and Jia Jing; and
- 9.3. Ni was at all material times a director of the PRC Subsidiaries.

C. Unauthorised publication of false announcement in December 2008

10. As at 12 December 2008, the Board comprised the following officers in addition to Yeung, Yang and Ni:-
 - 10.1. Mr Albert Yip Tze Wai (“**Albert Yip**”), an executive director who joined the Group in December 2001;
 - 10.2. Mr Wong Chi Keung (“**CK Wong**”), an independent non-executive director who joined the Group in November 2007;
 - 10.3. Mr Leung Chiu Shing (“**CS Leung**”), an independent non-executive director who joined the Group in September 2004; and
 - 10.4. Mr Lu Ze Jian (“**ZJ Lu**”), an independent non-executive director who joined the Group in October 2001.
11. On 12 December 2008 (Friday) or at some time shortly before that, without knowledge of or authorisation by the Board, Yeung instructed solicitors Messrs Cheung & Yip to draft and submit to the Stock Exchange for approval and thereafter publication an announcement on behalf of the Company representing to the public, *inter alia*, that:-

- 11.1. the Company had dismissed all employees on 12 December 2008 with immediate effect for the reason that they were not suitable to carry out its business;
 - 11.2. the Company had dismissed Mr Henry Chai Chung Wai (“**Henry Chai**”) with effect from 12 December 2008 as company secretary, qualified accountant and authorised representative;
 - 11.3. the Company could not operate by reason of the dismissal of all its employees; and
 - 11.4. the Company was considering recruiting suitable employees in due course to enable it to operate.
12. Further, on 12 December 2008, Yeung directly or via Messrs Cheung & Yip informed Henry Chai that:-
- 12.1. he had dismissed all the employees of the Company in Hong Kong including but not limited to Henry Chai, Albert Yip, CK Wong and CS Leung with immediate effect; and
 - 12.2. Yang, Ni and ZJ Lu had tendered their resignations and effectively resigned from all offices within the Company.
13. Henry Chai relayed the matters in paragraphs 11 and 12 above to Albert Yip, CK Wong and CS Leung, who at the time did not have knowledge of and had not approved the dismissal or resignation. Having discussed with CK Wong and CS Leung, Albert Yip immediately tried to contact Yeung with a view to ascertaining from him what had happened and to discuss with him the matters in paragraphs 11 and 12 above.
14. However, except that Albert Yip successfully contacted Yeung once by telephone, in which conversation Yeung indicated that he would give the Board

an explanation on the next day, all attempts by the Board to contact Yeung were in vain.

15. On 13 December 2008 (Saturday), Albert Yip issued a notice to all the members of the Board to convene a meeting at 9:00am on 15 December 2008 (Monday) to discuss, *inter alia*, the matters in paragraphs 11 and 12 above and what follow up actions the Board should take. The Board received no response from Yeung, Yang or Ni and the proposed meeting was never held.
16. Throughout the weekend on 13 and 14 December 2008, Albert Yip tried repeatedly to contact Yeung but did not succeed.
17. On 15 December 2008 (Monday), with a view to obtaining more information about the matters in paragraphs 11 and 12 above, Albert Yip, CK Wong and CS Leung had a meeting with Mr Luke Yip of Messrs Cheung & Yip and received the confirmation by the latter that Yeung had instructed him to draft and submit to the Stock Exchange for its approval and publication the announcement pleaded in paragraph 11 above.
18. Meanwhile, on 15 December 2008, an announcement of the Company dated 12 December 2008 (“**Unauthorised Announcement**”) was published on the website of the Stock Exchange without prior notice to or authorisation by the Board. The Unauthorised Announcement represented to the public that:-
 - 18.1. at the request of the Company, the trading in its shares would be suspended with effect from 9:30am on 15 December 2008 pending the release of announcement relating to price sensitive information of the Company; and
 - 18.2. as at 12 December 2008, Yeung was the only executive director of the Company, which had no independent non-executive director.
19. Further, on 15 December 2008, Messrs Cheung & Yip, presumably acting under the instructions of Yeung, circulated to the Board and the Stock Exchange a

draft announcement of the Company with the headline “*Resignation of Executive Director, Chief Executive Officer, Independent Non-Executive Directors, Members of Audit Committee and Remuneration Committee, Company Secretary, Qualified Accountant and Authorised Representative*”. It was stated in the draft, *inter alia*, that:-

- 19.1. Yang had tendered his resignation with effect from 12 December 2009 as the executive director and Chief Executive Director of the Company due to his personal reason;
- 19.2. Ni had tendered his resignation with effect from 12 December 2009 as the executive director of the Company due to his personal reason;
- 19.3. ZJ Lu had tendered his resignation with effect from 12 December 2009 as the independent non-executive director, member of audit committee and of remuneration committee of the Company due to his personal reason;
- 19.4. Henry Chai had tendered his resignation as the company secretary, qualified accountant and authorised representative of the Company with effect from 12 December 2008 due to his dismissal by the Company;
- 19.5. the Company had dismissed all employees on 12 December 2008 with immediate effect for the reason that the employees were not suitable to carry out the business of the Company;
- 19.6. Yang, Ni, ZJ Lu and Henry Chai confirmed that they did not have any disagreement with the Board and there was no other matter as regards their resignations that needed to be brought to the attention of the shareholders of the Company;
- 19.7. following the resignations of ZJ Lu, the number of independent non-executive directors and of members of audit committee of the Company would fall below the minimum number required under Rule 3.10(1) and

Rule 3.21 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“**Listing Rules**”); and

- 19.8. following the dismissal of its employees, the Company could not operate and was then considering recruiting suitable employees in due course to enable it to operate.
20. Albert Yip, CK Wong and CS Leung expressed to Messrs Cheung & Yip their disagreement with the contents of the draft announcement and asked the latter to withhold its publication. The draft announcement was never published.
21. On 16 December 2008 (Tuesday), Albert Yip, CK Wong and CS Leung, after having met with the Stock Exchange and consulted with their lawyers, were advised to issue an announcement on behalf of the Company to clarify the Unauthorised Announcement.
22. On 17 December 2008 (Wednesday), CS Leung tendered his resignation to the Board on the ground that, in view of the unexpected events, he was unable to discharge his duties as an independent non-executive director of the Company.
23. In view of the Board’s inability to contact Yeung, at about 5:00pm on 17 December 2008, CK Wong issued a notice to all members of the Board to convene an emergency meeting at 6:00pm that day to discuss, *inter alia*, the course of action that the Board should take to protect the assets of the Company and interests of its shareholders, the resignations of directors and the appointment of new directors to fill the vacancies. Members of the Board were invited to attend the meeting by dialing in.
24. Albert Yip and CK Wong arrived at the meeting venue in person at about 6:00pm on 17 December 2008. Yeung, Yang and Ni did not dial in. CK Wong attempted but failed to reach them at their usual contact telephone numbers. Having waited until about 7:00pm without Yeung, Yang or Ni attending personally or dialing in, Albert Yip and CK Wong decided to start the meeting, which was also attended by Henry Chai.

25. The Board resolved at the 17 December 2008 meeting as follows:-
- 25.1. resignations of Yang, Ni and ZJ Lu as directors of the Company be accepted and became effective on 12 December 2008;
 - 25.2. resignation of CS Leung as a director of the Company be accepted and became effective from 3:00pm on 17 December 2008;
 - 25.3. resignation tendered by Henry Chai at the meeting as the company secretary and qualified accountant of the Company be approved, as a result of which he also ceased to be its authorised representative;
 - 25.4. Mr Leung King Yue be appointed as an independent non-executive director, a member of the audit committee and a member of the remuneration committee of the Company;
 - 25.5. CK Wong be authorised to take all steps and actions necessary to protect the assets of the Company; and
 - 25.6. CK Wong be authorised to make an announcement on behalf of the Board to clarify the Unauthorised Announcement, the status of the Company and the Board, and all other relevant matters deemed price sensitive under or in compliance with the Listing Rules.
26. After close of the meeting of the Board on 17 December 2008, Albert Yip tendered his resignation as an executive director of the Company, which the Board accepted and became immediately effective.
27. On about 19 December 2008 (Friday), CK Wong on behalf of the Board caused an announcement dated 18 December 2008 to be made of, *inter alia*, the matters in paragraphs 25 and 26 above.
28. As at 19 December 2008, the Company:-

- 28.1. had only one executive director, namely Yeung;
- 28.2. had no qualified accountant and company secretary, in breach of Rule 3.24 and Rule 8.17 of the Listing Rules respectively;
- 28.3. had only one authorised representative, in breach of Rule 3.05 of the Listing Rules;
- 28.4. had only two independent non-executive directors, in breach of Rule 3.10 of the Listing Rules; and
- 28.5. had an audit committee comprising only two members, in breach of Rule 3.21 of the Listing Rules.

D. Appointment of the Provisional Liquidators

29. On about 19 December 2008, the Board appointed Mr Matthew Tang Chi Chung as an independent non-executive director, a member of the audit committee and a member of the remuneration committee of the Company with immediate effect. As a result, the Company restored compliance with Rule 3.10 and Rule 3.21 of the Listing Rules.
30. On about 22 December 2008 (Monday), the Board further appointed with immediate effect Mr Warren Lee Wa Lun (“**Warren Lee**”) as an executive director and the authorised representative; Mr Lo Wai On (“**WO Lo**”) as an independent non-executive director, a member of the audit committee and a member of the remuneration committee of the Company, as a result of which the Company restored compliance with Rule 3.05 of the Listing Rules.
31. After their appointment, Warren Lee and WO Lo visited the offices of the Group in Fuzhou but were denied entry by the security staff present at the premises. Their requests to the banks in the PRC for information relating to the bank accounts of the PRC Subsidiaries were also declined for the purported

reason that they were directors of the Company only and not of the PRC subsidiaries. As a result, the Board was unable to ascertain the assets of the Group and had in effect lost control of the PRC subsidiaries.

32. Further, the Board and the bank creditors of the Company had a meeting on 29 December 2008 in which the latter unanimously requested that an independent special review or audit of the Company's accounts be carried out immediately. However, for the reasons stated above, the Board was simply unable to gain access to sufficient information about the books, accounts and finances of the Company and the PRC Subsidiaries such that a true and accurate state of affairs of the Group could not be ascertained.
33. In order to preserve the assets of the Group, the Board resolved to cause the Company to petition for its winding-up and apply for the appointment of provisional liquidators.
34. On 7 January 2009, the Company presented and filed with the Court a winding-up petition in HCCW No.11 of 2009 and an application for the appointment of joint and several provisional liquidators. The Provisional Liquidators were appointed on the same day.
35. Investigations by the Provisional Liquidators and the SFC have led to and resulted in the discovery of matters in Sections E to H below.

E. False accounting

36. On 22 April 2008, the Board announced the Group's audited consolidated results for the year ended 31 December 2007. The results showed that the Group was financially strong and had a very high level of cash and cash equivalents as follows:-

	As at 31 December 2007 (in RMB)	As at 31 December 2006 (in RMB)
Turnover	739,484,000	545,739,000

Gross profit	334,215,000	248,527,000
Profit after taxation	131,035,000	138,006,000
Cash and cash equivalents	724,683,000	673,797,000
Net assets	1,083,565,000	890,933,000

37. Most of the Group's cash and cash equivalents were at all material times held by the subsidiaries in the PRC. As indicated in the Company's 2007 Annual Report, the allocation of cash and cash equivalents between the Company and its subsidiaries as at 31 December 2007 and 31 December 2006 was as follows:-

	As at 31 December 2007 (in RMB)	As at 31 December 2006 (in RMB)
The Group	724,683,000	673,797,000
The Company	26,612,000	93,100,000

38. Further, as announced by the Board on 18 September 2008, the Group's unaudited consolidated results for the six months ending on 30 June 2008 showed that it still retained very high level of cash and cash equivalents:-

	As at 30 June 2008 (in RMB)	As at 31 December 2007 (in RMB)
Cash and cash equivalents	792,886,000	724,683,000
Net assets	1,189,007,000	1,083,565,000

39. According to the announcements in paragraphs 36 to 38 above and the Company's 2007 Annual Report, the Group had deposited its cash in the banks in the PRC and licensed banks in Hong Kong, and the purposes of its cash management were to give more flexibility to meet its working capital requirements and to fund its capital expenditures.
40. According to CCIF CPA Limited ("CCIF"), the auditors in Hong Kong of the Company for the years 2006 and 2007, most of the Group's cash was held in the bank account of Longyu (No.00757608091001) at the Bank of China Fuqing Branch ("**Longyu BOC Account**").

41. In the course of their audit of the Group's accounts for the years 2006 and 2007, CCIF obtained from the accounts department of Longyu copies of statements of the Longyu BOC Account ("**CCIF Copies of Longyu BOC Account**"). To verify information shown in the CCIF Copies of Longyu BOC Account, CCIF sought and obtained directly from the staff of the Bank of China Fuqing Branch written confirmations of bank balances in the Longyu BOC Account showing balances of RMB 557,854,489.57 and RMB 674,389,662.67 in the Longyu BOC Account on 31 December 2006 and 31 December 2007 respectively. The balance sheets and profit and loss accounts of Longyu for the years 2006 and 2007 obtained by CCIF from the accounts department of Longyu showed similar levels of cash.
42. It was based on the documentation and verified figures referred to in paragraph 41 above that CCIF prepared the consolidated results of the Group for the year ended 31 December 2007. According to CCIF, they did not have reason at the time to question the authenticity of the documentation provided by the accounts department of Longyu and/or the staff of the Bank of China Fuqing Branch because:-
- 42.1. CCIF's staff had checked the originals of the bank statements and scrutinised all transactions by checking them against the original pay-in slips;
- 42.2. CCIF's staff had done a reasonableness test to confirm the interest income and checked them against each of the interest pay-in slips issued by the bank; and
- 42.3. CCIF's staff had obtained directly from the staff of the Bank of China Fuqing Branch written confirmations of bank balances in the Longyu BOC Account without involving the staff of Longyu.
43. However, in the course of its investigations, the SFC has through the China Securities Regulatory Commission ("**CSRC**"), a ministry-level unit authorised and directly under the State Council in the PRC for regulating the securities and

futures markets in the PRC, obtained the statements of Longyu's BOC Account for the period from 1 December 2007 to 31 December 2008 ("**CSRC Copies of Longyu BOC Account**") from the Bank of China Fuqing Branch.

44. The CSRC Copies of Longyu BOC Account demonstrate balances in the Longyu BOC Account drastically different from those shown in the CCIF Copies of Longyu BOC Account in that:-

44.1. the bank balances in the Longyu BOC Account as at 29 December 2007 and 30 June 2008 were only RMB 20,154,839.83 and RMB 34,250.92 respectively; and

44.2. the bank balances in the Longyu BOC Account never exceeded RMB 28,000,000 throughout the period from 1 December 2007 to 31 December 2008.

45. The SFC has shown the CSRC Copies of Longyu BOC Account to Albert Yip, CK Wong, CS Leung and the officer of CCIF responsible for the audit of the Group's accounts for the years 2006 and 2007. None of them was aware at any material time of the drastically lower level of cash in the Longyu BOC Account as shown in the CSRC Copies of Longyu BOC Account, or has been shown or seen any bank or account record of Longyu showing the same.

46. The SFC shall rely on the CSRC Copies of Longyu BOC Account in these proceedings as representing truthfully and accurately the balances in the Longyu BOC Account as at 31 December 2007 and 30 June 2008.

47. It is the case of the SFC herein that:-

47.1. the figures shown in the CCIF Copies of Longyu BOC Account (as verified against documentation provided by the staff of the Bank of China Fuqing Branch) were false or the CCIF Copies of Longyu BOC Account had been fabricated; and

47.2. given their exclusive control of Longyu's management and day-to-day operations, Yeung, Yang and/or Ni at all material times knew or should have known the matters in paragraph 47.1 above.

F. Embezzlement by Yeung of HK\$84,880,000 from the Company

48. The Company at all material times until 24 February 2009 had a deposit account (No.9830213001851) with the Xiamen International Bank (“**XIB Account**”) of which Yeung was the sole authorised signatory.
49. In the course of their investigations, the Provisional Liquidators through their lawyers in the PRC learnt from the staff of the Xiamen International Bank that sums of HK\$84,000,000 in total had been withdrawn from the XIB Account in December 2008. However, the Provisional Liquidators checked the Company's books and records at its office in Hong Kong and could not locate any record of the said withdrawal.
50. In the course of its investigations, the SFC through the CSRC obtained statements of the XIB Account for the period from 1 January 2006 to 31 December 2008. The bank statements showed that there were withdrawals at the instructions of Yeung of HK\$28,000,000 on 18 December 2008 and HK\$19,800,000 and HK\$37,080,000 on 19 December 2008 of a total of HK\$84,880,000.
51. The sums of HK\$28,000,000, HK\$19,800,000 and HK\$37,080,000 were remitted, at the instructions of Yeung, respectively to the bank accounts at Chiyu Banking Corporation Ltd in Hong Kong of three Hong Kong companies, viz. Citiasia International Limited, Skywell Holdings Limited and China Trend International Investment Limited.
52. In the course of their investigations, the Provisional Liquidators learnt that the Xiamen International Bank had advanced certain loans to Longyu and the Company had pledged its deposits at the XIB Account as security for those

loans; and the withdrawal of the said HK\$84,880,000 occurred soon after Longyu's repayment of the loans in November 2008.

53. The Xiamen International Bank refused to disclose to the Provisional Liquidators documents relating to the said loans advanced to Longyu and the transactions shown in the statements of the XIB Account for the period from 1 January 2006 to 31 December 2008, on the ground that Yeung had requested the Xiamen International Bank not to disclose any information about the XIB Account to the Provisional Liquidators.
54. Upon the instructions of Yeung, the XIB Account was closed on about 24 February 2009.
55. Enquiries by the SFC with Henry Chai and individuals who were members of the Board at the time of the said withdrawal suggested that none of them was at any time aware of the same.
56. It is the case of the SFC herein that the withdrawals of sums totaling HK\$84,880,000 on 18 and 19 December 2008 had been effected by Yeung in the absence of notice to and/or authorisation by the Board.

G. Obstruction to investigation by the Provisional Liquidators

57. The Provisional Liquidators encountered a series of problems during their investigations as follows:-
 - 57.1. On 2 February 2009, the Provisional Liquidators wrote to Yeung, Yang and Ni seeking information about the Company. Yeung and Ni never replied. On about 6 February 2009, Yang informed the Provisional Liquidators over the phone that he had resigned from the offices in the PRC Subsidiaries and he would not disclose any other information relating to the Group. The representatives of the Provisional Liquidators visited at the PRC addresses of Yeung, Yang and Ni, but could not locate them.

- 57.2. The Provisional Liquidators paid a visit to the residence of Yeung in Hong Kong with a view to ascertaining if there were any books and records of the Group stored there, but found that the apartment had been surrendered to the landlord on 10 February 2009.
- 57.3. Yeung requested the Xiamen International Bank not to provide any information about the accounts of the Company including the XIB Account to the Provisional Liquidators.
- 57.4. The Provisional Liquidators wrote to the Bank of China Fuqing Branch requesting the provision of information relating to the bank accounts of Longyu but did not receive any reply.
58. In addition, Yeung engaged in litigation with the Provisional Liquidators in the PRC over the control of Longyu.
- 58.1. For the purpose of regaining the control of Longyu, on 14 January 2009, the Provisional Liquidators replaced the board of First China Technology (Hong Kong) Limited China (HK) ("**First China HK**") – a company incorporated in Hong Kong on 13 December 2007 as the holding company of Longyu – with Mr Stephen Liu Yiu Keung and then passed a resolution to replace the board of Longyu with the Provisional Liquidators and another officer of Ernst & Young Transactions Limited.
- 58.2. The Provisional Liquidators then applied through their lawyers in the PRC to the State Administration of Industry and Commerce in Fuqing ("**Fuqing SAIC**") for registration of the newly constituted board of Longyu. However, the Fuqing SAIC refused to process the application on the ground that they did not have the company seal and registration certificates of Longyu.
- 58.3. As a result, the Provisional Liquidators commenced proceedings in Fuzhou on behalf of First China HK against Yeung for, *inter alia*,

recovery of the properties of Longyu including its company seal and registration certificates. On about 11 March 2009, the Fuzhou Intermediate People's Court accepted the statement of claim filed on behalf of First China HK.

- 58.4. On 28 July 2009, the Fuzhou Intermediate People's Court ruled in favour of First China HK and held that the resolution replacing the board of Longyu was valid and ordered Yeung to assist First China HK in its application for change of Longyu's registration records. However, the Fuzhou Intermediate People's Court refused to order Yeung to surrender the company seal and registration certificates of Longyu on the ground that the appointed individuals remained strangers to Longyu before its registration records were changed.
- 58.5. On 2 September 2009, Yeung filed an appeal against the decision of the Fuzhou Intermediate People's Court. His appeal was heard on 19 November 2009 before the Higher People's Court of Fujian Province. On 18 January 2010, the Provisional Liquidators were informed that the Higher People's Court of Fujian Province had handed down its judgment on 21 December 2009 upholding the decision of the Fuzhou Intermediate People's Court.
- 58.6. Yeung did not appeal against the decision of the Higher People's Court of Fujian Province but refused to assist or cooperate with the Provisional Liquidators in their application to the Fuqing SAIC for change of Longyu's registration records. This led to an application by the Provisional Liquidators to the Fuzhou Intermediate People's Court for enforcement of the decision of the Fuzhou Intermediate People's Court.
- 58.7. On 12 April 2010, the Fuzhou Intermediate People's Court issued an enforcement notice to the Fuqing SAIC. However, the changes of the board and the legal representative of Longyu sought by the Provisional Liquidators remained not effected despite the issuance of an enforcement notice by the Fuzhou Intermediate People's Court.

- 58.8. In view of the above, the Provisional Liquidators wrote to the Fujian Provincial Department of Foreign Trade and Economic Cooperation Bureau (“**Fujian FTECB**”), the Hong Kong Economic and Trade Office in Guangdong of the Government of the Hong Kong Special Administrative Region (“**HKETO**”) and the Ministry of Commerce of the PRC informing the difficulties which they had encountered and seeking their assistance in replacing the board and the legal representative of Longyu.
- 58.9. In August 2010, the HKETO wrote to the Fujian FTECB and the Higher People’s Court of Fujian Province.
- 58.10. In view of the failure of Fuqing FTECB to respond to their request, the Provisional Liquidators instructed their lawyers in the PRC to sue the Fuqing FTECB in the Fuqing People’s Court to enforce the decision of the Fuzhou Intermediate People’s Court. However, the Fuqing People’s Court refused to accept or handle the claim by the Provisional Liquidators.

H. Dispossession of the PRC Subsidiaries

59. On 13 January 2009, the Provisional Liquidators visited the factory of Longyu in Fuqing and similar to the experience of Warren Lee and WO Lo, they were denied access by the security staff present thereat. On the same day, their representatives visited the former registered office of Longyu and found that it had become vacant. It was not until 16 February 2009 that the representatives of the Provisional Liquidators, withholding their identities, finally managed to enter into the factory of Longyu and found that it was still in operation. On 28 April 2009, the representatives visited the factory of Longyu again and confirmed that it remained in operation.
60. On 14 January 2009, the Provisional Liquidators visited the office of Jia Jing in Shanghai and found that it was vacant with doors locked. They then visited the

retail shops of Jia Jing and found that they had ceased to operate. Subsequent land search revealed that the registered office of Jia Jing had become owned by an unknown individual.

61. The Provisional Liquidators further discovered that the former registered office of Jia Jing had become the registered address of and been occupied by a PRC company in the name of 上海樂信源國際貿易有限公司 (“**Le Xin Yuan**”), which was the former name of Jia Jing. It was found that the workers at the said former registered office remained the same despite the change of name. A company search on Le Xin Yuan revealed that one of its two shareholders bears the surname Ni.
62. On 16 January 2009, the Provisional Liquidators visited at the registered address of Dingwei in Ningbo and found that there was only a vacant plot of land with a small hut.
63. The Provisional Liquidators made enquiries with the major customers of Longyu relating to their business with Longyu. One customer, PanaPesca USA Corporation, informed the Provisional Liquidators that Longyu had represented to them that it was a separate company from and unconnected with the Company.
64. Company searches conducted in the PRC on Longyu revealed that Yang and Ni had been replaced by Yang Jin Hua (a director of Jia Jing) and Ye Neng Di (the legal representative of Le Xin Yuan) as directors only on 10 July 2009, while Yeung remained as its legal representative and director.
65. In view of the loss of control of the PRC Subsidiaries as described above, they have been deconsolidated from the Group since 1 July 2008.

I. Liability of Yeung, Yang and Ni

66. By reason of the matters in Section C above, Yeung has:-

- 66.1. acted in a grossly incompetent or negligent manner;
 - 66.2. acted in breach of Rule 3.08(f) of the Listing Rules in failing to apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company; or
 - 66.3. conducted the business or affairs of the Company in a manner involving misfeasance or misconduct towards the Company, its members or part of its members other than himself.
67. By reason of the matters in Section E above, Yeung has:-
- 67.1. acted in a fraudulent, or in a grossly incompetent or negligent manner;
 - 67.2. acted in breach of his fiduciary duties owed to the Company;
 - 67.3. acted in breach of Rule 3.08(a), (b) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; and apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company; or
 - 67.4. conducted the business or affairs of the Company in a manner:-
 - 67.4.1. involving fraud, misfeasance or misconduct towards the Company, its members or part of its members other than himself;
 - 67.4.2. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

67.4.3. unfairly prejudicial to its members or any part of its members.

68. By reason of the matters in Section F above, Yeung has:-

68.1. acted in a fraudulent, or in a grossly incompetent and/or negligent manner;

68.2. acted in breach of his fiduciary duties owed to the Company;

68.3. acted in breach of Rule 3.08(a), (b), (d) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; avoid actual and potential conflicts of interest and duty; and apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company; and/or

68.4. conducted the business or affairs of the Company in a manner:-

68.4.1. involving defalcation, fraud, misfeasance or misconduct towards the Company, its members or part of its members other than himself;

68.4.2. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

68.4.3. unfairly prejudicial to its members or any part of its members.

69. By reason of the matters in Section G above, Yeung has:-

69.1. acted in a grossly incompetent and/or negligent manner;

69.2. acted in breach of his fiduciary duties owed to the Company;

- 69.3. acted in breach of Rule 3.08(a), (b), (d) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; avoid actual and potential conflicts of interest and duty; and apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company; and/or
- 69.4. conducted the business or affairs of the Company in a manner:-
 - 69.4.1. involving misfeasance or misconduct towards the Company, its members or part of its members other than himself;
 - 69.4.2. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
 - 69.4.3. unfairly prejudicial to its members or any part of its members.
- 70. By reason of the matters in Section H above, Yeung has:-
 - 70.1. acted in a grossly incompetent or negligent manner;
 - 70.2. acted in breach of his fiduciary duties owed to the Company;
 - 70.3. acted in breach of Rule 3.08(a), (b), (d) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; avoid actual and potential conflicts of interest and duty; and apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company; or
 - 70.4. conducted the business or affairs of the Company in a manner:-
 - 70.4.1. oppressive to its members or any part of its members;

70.4.2. involving misfeasance or misconduct towards the Company, its members or part of its members other than himself;

70.4.3. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

70.4.4. unfairly prejudicial to its members or any part of its members.

71. By reason of the matters in Section E above, Yang and Ni have:-

71.1. acted in a fraudulent, or in a grossly incompetent or negligent manner;

71.2. acted in breach of their fiduciary duties owed to the Company;

71.3. acted in breach of Rule 3.08(a), (b) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; and apply such degree of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience and holding their offices within the Company; or

71.4. conducted the business or affairs of the Company in a manner:-

71.4.1. involving fraud, misfeasance or misconduct towards the Company, its members or part of its members other than himself;

71.4.2. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

71.4.3. unfairly prejudicial to its members or any part of its members.

72. By reason of the matters in Section H above, Yang and Ni have:-
- 72.1. acted in a grossly incompetent or negligent manner;
 - 72.2. acted in breach of their fiduciary duties owed to the Company;
 - 72.3. acted in breach of Rule 3.08(a), (b), (d) and (f) of the Listing Rules in failing to act honestly and in good faith in the interests of the Company as a whole; act for proper purpose; avoid actual and potential conflicts of interest and duty; and apply such degree of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience and holding their office within the Company; or
 - 72.4. conducted the business or affairs of the Company in a manner:-
 - 72.4.1. oppressive to its members or any part of its members;
 - 72.4.2. involving misfeasance or misconduct towards the Company, its members or part of its members other than himself;
 - 72.4.3. resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
 - 72.4.4. unfairly prejudicial to its members or any part of its members.