HCMP 458/2018

[2021] HKCFI 302

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO 458 OF 2018

IN THE MATTER OF FAR EAST HOLDINGS INTERNATIONAL LIMITED (STOCK CODE: 36)

and

IN THE MATTER OF Section 214 of the Securities and Futures Ordinance (Cap 571)

BETWEEN

SECURITIES AND FUTURES COMMISSION	Petitioner
and	
CHIU DUNCAN	1st Respondent
LUI HUNG KWONG MICHAEL	2nd Respondent
CHIU DEREK	3rd Respondent (discontinued)

Before: Hon G Lam J in Court

Dates of Written Submissions: 18, 20, 21 and 22 January 2021

Date of Judgment: 5 February 2021

JUDGMENT

1. By the petition in these proceedings, the Securities and Futures Commission ("**Commission**") seeks orders under section 214 of the Securities and Futures Ordinance (Cap 571) ("**Ordinance**") for the disqualification of the respondents from acting as a director, liquidator, receiver or manager or being concerned in the management of any company in Hong Kong.

2. The action was discontinued as against the 3rd respondent on 10 December 2020.

3. The Commission and the 1st and 2nd respondents have agreed to seek the disposal of these proceedings by way of the *Carecraft* procedure[1] and have, for that purpose, agreed the facts based on which the court is now asked to make the orders jointly proposed by the parties. The statements of agreed facts between the Commission and the 1st respondent and between the Commission and the 2nd respondent respectively are appended to this judgment and provide the factual bases for the orders made herein.

4. In brief summary, the facts are as follows. The 1st respondent was the Managing Director and Chief Executive Officer of Far East Holdings International Ltd ("**Company**"), and the 2nd respondent was its Company Secretary as well as the Financial Controller of the group consisting of the Company and its subsidiaries. The Company was and still is a company incorporated in Hong Kong whose shares are listed on the Main Board of the Hong Kong Stock Exchange.

5. Between March and September 2007, money in three tranches totalling HK$61 million was transferred from the Company's bank accounts into the bank accounts of its Chairman, the late Mr Deacon Chiu ("**Chairman**"). These transfers were made without prior authorisation by the Board of Directors of the Company. The first two tranches were paid by cheques signed by the 1st respondent on behalf of the Company. The third tranche was transferred by CHATS also on the instruction of the 1st respondent. The relevant payment requisition forms were approved by the 2nd respondent. The 1st and 2nd respondents accept that by making, approving or effecting the transfers without proper authorisation, they misconducted the Company's business and affairs in a manner involving "other misconduct" under section 214(1)(b) of the Ordinance.

6. Part of the money was then used for share subscriptions or share purchases by the

Chairman in relation to 3 listed companies in March, April and October 2007 respectively, who then allocated some of the shares acquired to the Company in arbitrary proportions. There had not been any agreement between the Chairman and the Company on the apportionment of the shares acquired between them. In this regard, the 1st respondent accepts that he breached his fiduciary duty to the Company by failing to act in the best interest of the Company and to avoid putting himself in a position where his duties and interests might conflict, and that this constituted "other misconduct" in the Company's business and affairs under section 214(1)(b). Further or alternatively, the 1st respondent accepts that he misconducted himself by failing to use care, skill and diligence in ensuring that proper records were kept to reflect the respective proportions of the Chairman's and the Company's funds used in each acquisition of shares.

7. In November 2007, $40 million was repaid by the Chairman to the Company and in April 2008, approximately $22.1 million was repaid by him to the Company. It is now accepted that there was "other misconduct" within the meaning of section 214(1)(b) for the 1st respondent unilaterally to decide to keep the unused monies in the Chairman's bank accounts before their repayment. It is also accepted that there was a failure on the part of the 2nd respondent to procure or demand the immediate return of the unused monies, with the result that they were kept in the Chairman's bank accounts in the intervening period without security for the Company, and that this also amounted to "other misconduct" under section 214(1)(b).

8. In the annual report of the Company for 2007 published on about 29 April 2008, the total $61 million transferred was disclosed as an "amount due from a director" and the amount of approximately $22.1 million outstanding was disclosed in the consolidated balance sheet as an "amount due from a director" as at 31 December 2007. The relevant note described the amount due as "unsecured, interest-bearing at 3.67% to 6.00% and repayable on demand. …". It is now accepted that the disclosures made, without a fuller explanation as to the circumstances which led to the $61 million becoming an amount due by the Chairman to the Company, were misleading. There was thus "other misconduct" under section 214(1)(b) on the part of the 1st respondent which resulted in the members of the Company not having been given all the information with respect to the Company's business or affairs that they might reasonably expect.

9. Based on the facts agreed and misconduct admitted, the parties have agreed to propose an order for disqualification for a period of 4 years in the case of the 1st respondent, and 3 years in the case of the 2nd respondent.

10. On the footing of the agreed facts, I find that the jurisdiction to make disqualification orders under section 214 is engaged. The transfers out of the Company's funds without proper authorisation, particularly to the Chairman personally who was a related person, were clearly misconduct in relation to the Company's affairs. Given that the Chairman was his father, the 1st respondent had allowed himself to be put in a position where his duties to the Company and his interests because of his relationship with the Chairman conflicted, and had failed to act in the best interests of the Company. Allowing the funds to remain with the Chairman after the original purpose had lapsed, without any security in favour of the Company, exposed the Company to unnecessary counterparty risks. I accept also that the disclosures in the 2007 annual report of the Company were misleadingly inadequate. All these matters constituted at least "other misconduct" within the meaning of section 214(1)(b) of the Ordinance.

11. In the case of the 1st respondent, I accept the parties' submission that the conduct brings his case within the top end of the lower of the three brackets as explained in the cases such as *Securities and Futures Commission v Cheung Keng Ching* [2011] 4 HKC 453 and *Re Styland Holdings Ltd* [2011] 1 HKLRD 96, i.e. 1 to 5 years, applicable to cases that are not very serious. Although there are a number of contraventions, they arose from the same series of transactions which began from poor corporate governance and ended with ill-advised attempts to deal with the irregularities. The transfers of money were not embezzlement or misappropriations for the 1st respondent's personal gain. The Company did not suffer any actual financial loss as a result. The disclosure of the $61 million as a loan without further explanation deprived the shareholders of the opportunity to scrutinise and appraise the conduct of management, and is therefore a significant matter, but it was done collectively by the Board with the concurrence of the auditors. I also take into account the fact that the material events took place a long time ago and that the 1st respondent had already resigned as a director of the Company in 2011. The 1st respondent has also cooperated with the Commission in seeking the disposal of these proceedings on a consensual basis. In all the circumstances, I consider it appropriate to make a disqualification order against the 1st respondent for the period of 4 years.

12. Many of the above considerations also apply in the case of the 2nd respondent. The degree of his responsibility is lower than that of the 1st respondent. There was likewise no dishonesty or personal gain involved on his part. He left the Company's employ in August 2014. In all the circumstances, I consider it appropriate to make a disqualification order against him for the period of 3 years.

13. Separately, the 1st respondent has applied by summons for an order that notwithstanding the disqualification order to be made against him, he be permitted to continue to be a director of the property or business and be concerned in and take part in the management of 6 companies, namely, (1) Hong Kong Information Technology Joint Council Ltd; (2) Innovate for Future Ltd; (3) Hong Kong Cyberport Management Company Ltd; (4) Hong Kong Squash; (5) Hospital Authority Board; and (6) Lai Yuen Company Ltd. The Commission has given its consent, subject to the determination of the court. The proposed permission has been incorporated into the draft order proposed to the court.

14. The disqualification order to be made herein, following the wording of section 214(2)(d) of the Ordinance, proscribes the 1st respondent from acting as a director "without the leave of the Court". The approach to the exercise of this discretionary power has been discussed by Ng J in *Securities and Futures Commission v Chin Jong Hwa & others* [2020] HKCFI 1457. Among other things, the court will consider the structure of the companies to be "carved out" from the disqualification order, the nature of their businesses and the interests of their shareholders, creditors and employees, and the risks to those persons or to the public involved in the applicant's assuming positions on the board or in management.

15. The 1st respondent has explained that, after resigning from the Company in 2011, he has become increasingly involved in information technology as well as community-related affairs. He has regularly participated in activities to promote the start-up culture in Hong Kong and to help young entrepreneurs. This explains his involvement in companies (1) and (2) above, which are both companies limited by guarantee and do not operate for profit, as well as in company (3), which is a company wholly owned by the Government that manages Cyberport. The 1st respondent is a non-executive director in company (3) and has stated that he will not be involved in its day-to-day operations and financial affairs. Company (4) is likewise a company limited by guarantee and a non-profit organisation, with the object of promoting squash in Hong Kong. The fifth position relates to the Hospital Authority, a statutory body. Within it, the 1st respondent chairs the Smart Hospital Task Group which develops the use of the latest technology and management system to enhance hospital service in Hong Kong. He is not involved in the daily operations or financial affairs of the Hospital Authority. The last company is a private company, set up with the object of rebuilding the "Lai Yuen" brand, the name of the amusement park founded by the 1st respondent's father which was closed in 1997. The 1st respondent has explained that he has been the public face of the rebuilt "Lai Yuen" brand which is closely related with their family in the minds of the public. Lai Yuen Co Ltd has no corporate or business relations with the Company, has no listing plans in the next few years, and has no

present plan to expand its shareholder base (beyond the 1st respondent who is the sole shareholder).

16. The 1st respondent has undertaken forthwith to inform these 6 bodies of the court's judgment and order imposed against him herein.

17. Having regard to all the circumstances including the nature and structure of these companies and the 1st respondent's office within them and the features of the misconduct admitted in the present case, and taking account of the Commission's consent, I exercise my discretion to grant leave to the 1st respondent in relation to these 6 entities.

18. The parties have also agreed orders for costs.

19. I shall therefore make an order in terms agreed between the parties.

(Godfrey Lam)
Judge of the Court of First Instance
High Court

Mr Horace Wong SC, leading Mr Roger Phang, instructed by Securities & Futures Commission, for the Petitioner

Mr Derek Chan SC, leading Mr Mike Lui, instructed by Woo, Kwan, Lee & Lo, for the 1st Respondent

Mr Tony C Y Li, instructed by To, Lam & Co, for the 2nd Respondent

Appendix 1

Statement of Agreed Facts

between the Commission and the 1st Respondent

PART II – STATEMENT OF AGREED FACTS

A. THE COMPANY AND ITS MANAGEMENT

10. The Company was and is at all material times a company incorporated in Hong Kong and listed on the Main Board of the Stock Exchange of Hong Kong Limited.

11. At all times material to this action:

11.1. the Company and its subsidiaries ("**the Group**") was mainly engaged in the business of securities investment, investment holding, property investment and manufacturing and sale of garments;

11.2. the Company had three Executive Directors ("**EDs**"), six Non-Executive Directors ("**NEDs**"), and three Independent Non-Executive Directors ("**INEDs**") on its board of directors ("**the Board**");

11.3. the Chairman of the Company was Deacon Te Ken Chiu, now deceased ("**Deacon Chiu**" or "**the Chairman**");

11.4. the 1st Respondent was the Managing Director and Chief Executive Officer of the Company;

11.5. the EDs of the Company were (i) Deacon Chiu, (ii) the 1st Respondent and (iii) Dennis Chiu;

11.6. the NEDs of the Company were (i) Tan Sri Dato David Chiu, (ii) Daniel Tat Jung Chiu, (iii) the 3rd Respondent, (iv) Desmond Chiu, (v) Margaret Chiu and (vi) Min Tang;

11.7. the INEDs were (i) Dr. Lee G. Lam ("**Dr. Lam**"), (ii) Hing Wah Yim ("**Mr. Yim**"), (iii) Ryan Yen Hwung Fong (who resigned on 30 September 2007) and (iv) Eugene Yun Hang Wang ("**Mr. Wang**") (who was appointed on 1 December 2007);

11.8. the senior management of the Company comprised of the 2nd Respondent only, who was the Company Secretary of the Company and the Financial Controller of the Group;

11.9. the 1st and 3rd Respondents were the sons of the Chairman; and

11.10. the Audit Committee comprised of Dr. Lam, Mr. Yim, Mr. Wang and the 3rd Respondent.

B. THE BANK ACCOUNTS OF THE CHAIRMAN AND THE COMPANY

12. At all material times, the Chairman was the holder of the following bank accounts (collectively, "**the Chairman's Bank Accounts**") which are relevant to these proceedings:

12.1. HSBC Private Bank Account No. 8010-225557-0001 ("**the Chairman's HSBC Account**"); and

12.2. UBS Hong Kong Dollar Account No. 1-167308-0014 ("**the Chairman's UBS Account**").

13. Yung Kim Bing Wendy ("**Wendy Yung**") was the personal assistant to Deacon Chiu. She was an Authorised Agent of Deacon Chiu with full authority to operate the Chairman's HSBC Account, including the authority to transfer funds to herself or any other third party.

14. At all material times the Company was the holder of the following bank accounts (collectively, "**the Company's Bank Accounts**") which are relevant to these proceedings:

14.1. HSBC Private Bank Account No. 8010-233577-0001 ("**the Company's HSBC Account**"); and

14.2. Hang Seng Bank Current Account No. 773-027578-001 ("**the Company's Hang Seng Account**").

C. FUND FLOWS BETWEEN THE CHAIRMAN'S BANK ACCOUNTS AND THE COMPANY'S BANK ACCOUNTS

15. Between March and September 2007, a total of HK$61 million was transferred from the Company's Bank Accounts into the Chairman's Bank Accounts in three tranches ("**the Transfers**").

First tranche

16. On 9 March 2007, a cheque for the sum of HK$15 million was drawn on the Company's Hang Seng Account in favour of the Chairman ("1st Transfer"). The cheque was signed by the 1st Respondent for and on behalf of the Company. The 1st Transfer was described in the Company's accounting record as "Transfer of fund for IPO application China Agri-Industry Holdings Limited" ("China Agri"). On the same day, receipt of the cheque was acknowledged by Wendy Yung and it was then deposited into the Chairman's HSBC Account.

17. As at 31 December 2006, the combined amount of "pledged bank deposits", "deposits held at financial institutions" and "bank balances and cash" of the Company was HK$32,140,810. The amount of the 1st Transfer accordingly represented nearly half of the

total of the Company's deposits, bank balances and cash.

18. Subsequently:

18.1. On 13 March 2007, the sum of HK$30,060,278.40 in the Chairman's HSBC Account was used to subscribe for the shares of China Agri in its initial public offering ("**IPO**"). The Company's funds were therefore pooled together with the Chairman's own funds for the IPO subscriptions.

18.2. Following the IPO allotment, a sum of HK$29,909,977.01 was refunded to the Chairman's HSBC Account on 20 March 2007.

18.3. On 21 March 2007, 40,000 China Agri shares at the IPO share price of HK$3.72 (totaling HK$148,800) were allotted to the Chairman. He then allocated 30,000 shares to the Company at HK$111,600. As a result, the balance of the 1st Transfer which remained in the Chairman's HSBC Account was, or should have been, HK$14,888,400. An entry was made in the Company's General Ledger (as printed out on 1 March 2008) ("Original General Ledger") that on 21 March 2007 the Company purchased 30,000 China Agri shares at HK$111,600.

Second tranche

19. On 2 April 2007, a cheque for the sum of HK$5 million was drawn on the Company's Hang Seng Account in favour of the Chairman ("2nd Transfer"). The cheque was signed by the 1st Respondent for and on behalf of the Company. The 2nd Transfer was described in the Company's accounting record as "Transfer of fund for IPO application of '碧桂園'". Receipt of the cheque was acknowledged by Wendy Yung on 28 March 2007 and it was then deposited into the Chairman's UBS Account on 3 April 2007.

20. Subsequently:

20.1. On 2 April 2007, HK$15,204,039 was transferred from the Chairman's HSBC Account to the Chairman's UBS Account. Disregarding the nominal balance of HK$208.26 which remained in the Chairman's HSBC Account after the transfer, HK$14,888,400 of this sum represented the balance of the 1st Transfer originally remaining in the Chairman's HSBC Account (see paragraph 18.3 above).

20.2. On 20 April 2007, a total of 8,000 shares in Country Garden Holdings Company Limited ("**Country Garden**") were purchased by the Chairman at HK$5.38 per share. He then allocated 7,000 shares to the Company at

HK$37,660. An entry was made in the Original General Ledger that on 20 April 2007 the Company purchased 7,000 Country Garden shares at HK$37,660.

20.3. On 9 April 2008, almost after a year from when the shares were purchased, all the 8,000 Country Garden shares in the Chairman's UBS Account were sold for HK$59,305.84, and on 22 April 2008, 7/8th of the proceeds (i.e. HK$51,892.61) was transferred to the Company.

Third tranche

21. On 24 September 2007, the 1st Respondent and Wendy Yung on behalf of the Company instructed HSBC Private Bank to transfer by CHATS the amount of HK$41 million from the Company's HSBC Account to the Chairman's HSBC Account ("3rd Transfer"). The 3rd Transfer was described in the Company's accounting record as "Fund transfer from HSBC Private C/A - HKD to other receivable for subscription of IPO share". The sum was credited into the Chairman's HSBC Account on 25 September 2007. By this time, a total sum of HK$61 million had been transferred by the Company to the Chairman.

22. Subsequently:

22.1. On 8 October 2007, 670,000 shares in SOHO China Limited ("SOHO China") at HK$8.30 per share were allotted to the Chairman. He then allocated 200,000 shares to the Company at HK$1,676,749.40. An entry was made in the Original General Ledger that on 8 October 2007 the Company purchased 200,000 SOHO China shares at HK$1,676,749.40.

22.2. Between 10 and 15 October 2007, all the SOHO China shares in the Chairman's HSBC Account were sold, but no proceeds of the sale of the 200,000 SOHO China shares allocated to the Company was recorded in the Original General Ledger.

Repayment to the Company

23. On 14 November 2007, a sum of HK$5 million was transferred from the Chairman's HSBC Account to the Company's HSBC Account. Then, on 27 November 2007, a further sum of HK$35 million was so transferred.

24. The total of HK$40 million was allegedly returned to the Company because it required funds to invest in a project in Beijing which required RMB38 million.

25. On 7 April 2008, a sum of HK$8.2 million was transferred by CHATS from the Chairman's UBS Account to the Company's HSBC Account. According to the 1st Respondent, this repayment was also for the same project mentioned in the foregoing paragraph. The transfer was described by the Company's account department as "*Repayment by Mr. Deacon Chiu*".

26. On 25 April 2008, a further sum of HK$13,902,762.04 was paid into the Company's Hang Seng Account.

27. Hence, a total of HK$62,102,762.04 was repaid to the Company, HK$1,102,762.04 of which, for the matters stated below, represented interest on the HK$61 million that was transferred to the Chairman's Bank Accounts.

D. DISCOVERY OF IRREGULARITIES BY THE COMPANY'S AUDITORS

28. In the course of the audit of the Company's financial statements for the year ended 31 December 2007, the Company's auditors, Deloitte Touche Tohmatsu ("**Deloitte**"), raised the issue that the transfers of the HK$61 million to the Chairman's Bank Accounts were not supported by any formal agreement or resolutions of the Board. Deloitte was further of the view that the documents provided to them did not reflect the fact that the IPO shares were acquired and held on behalf of the Company.

29. Deloitte requested the Company to provide supporting documents evidencing that the Transfers were authorized and that the Chairman held the IPO shares of China Agri, Country Garden and SOHO China on behalf of the Company.

30. On 15 April 2008, the 2nd Respondent sent an email to Deloitte attaching a schedule entitled "Adjustments for other receivable at Y.E. 31/12/2007". By the schedule, the Company represented to Deloitte that the "other receivables" (referring to the Transfers to the Chairman) had been used to purchase ELNs and shares in Bank of Communications, Bank of China and Lenovo (through the Chairman's Bank Accounts). As such, after making the "adjustment" by attributing those investments to the Company, the "cash" which remained due by the Chairman to the Company was only HK$15,282.10. The loss on the investments as at the year ended 31 December 2007 was HK$474,991.50 ("**the 4.15 Adjustment**").

31. On 18 April 2008, the 1st Respondent phoned Dr. Lam and informed him that the Company's funds had been deposited into the Chairman's Bank Accounts for "*the Company's initial public offer ('IPO') application for new shares, purchase of securities, equity linked notes and other investment activities*". As Dr. Lam was not aware of such matter, he decided to urgently call for a special meeting of the Audit Committee. That

night from 9 p.m. till around midnight, Dr. Lam, Mr. Wang and Mr. Yim (being members of the Audit Committee) held a meeting with the 1st Respondent and the 2nd Respondent to discuss the issues.

32. The 1st and 2nd Respondents reported to Dr. Lam, Mr. Wang and Mr. Yim as follows:

> "*The Company employed Deacon's personal bank accounts in order to obtain a better allocation result of IPO application for new shares. Those funds were not and should not be treated as a loan or finance to a director since Deacon's personal bank accounts had always maintained the bank balances greater than the Company's funds being deposited in them. Obviously, this fully demonstrated that Deacon did not employ the Company's funds for his personal investments or took any advantages of the Company, and Deacon was only doing this in trust to help the Company at Duncan's request. Duncan and Michael pointed out that the Management acted honestly although it was really a regrettable oversight on the part of the Management who should have done the proper trust instrument and disclosure procedures etc. and that when the IPO opportunity presented itself, it was all in a rush and the IPO application process was very dynamic and competitive and Deacon's personal bank accounts were a convenient and ready 'solution', particularly there exists trust and confidence between Deacon and Duncan obviously. Duncan and Michael then apologized for this oversight.*"

33. On 21 April 2008, the Company sent yet another version of "*adjustment*" to Deloitte. According to this latest version, having bought various shares and ELNs through the Chairman's Bank Accounts, the Company actually owed the Chairman HK$1,631,756.82 as at 31 December 2007 ("**the 4.21 Adjustment**").

E. THE 1ST RESPONDENT CONDUCTED THE COMPANY'S BUSINESS OR AFFAIRS IN A MANNER INVOLVING MISCONDUCT

Transfers of HK$61 million to the Chairman's Bank Accounts without proper authorization of the Board

34. The Transfers amounting to a total of HK$61 million were not properly authorized by the Board. Each of the Transfers was effected merely by completing the Company's Requisition for Cheque Payment forms ("**the Cheque Requisition Forms**"), and the relevant cheques and instructions were signed or given by the 1st Respondent. The three Cheque Requisition Forms were filled in by Joe Wong, the then Assistant Accounts Officer, and were approved by the 2nd Respondent, who was neither a director, nor a duly authorized person, to make those payments into the Chairman's Bank Accounts. The Audit Committee was not informed of the making of the Transfers until Dr. Lam was informed sometime in April 2008 as referred to in paragraphs 31 and 32 above.

35. Although the 2nd Respondent stated in his interview with the Petitioner that he was instructed by the 1st Respondent to arrange the Transfers, there were in fact no board resolutions or minutes authorizing the 1st Respondent to do so. The 2nd Respondent's

further contention during the said interview that there was actual board approval through an alleged discussion and agreement between the Chairman and the 1st Respondent is also not supported by any written record.

36. Furthermore, even if the alleged discussion between the Chairman and the 1st Respondent took place, no notice of any Board meeting was given to any other director as required by the Company's Articles of Association ("**the Articles**"). There was also no disclosure of interest to the Board made by either the Chairman or the 1st Respondent, and neither of them were discounted from the quorum or had their votes (if any) excluded as required by the Articles. In this regard, the Articles provided, *inter alia*, as follows:

> (1) Article 74(a): "*A Director… may enter into contracts or arrangements or having dealings with the Company… provided that such Director discloses to the Meeting of the Directors at which such contract, arrangement, or dealing is first taken into consideration…*";
>
> (2) Article 74(b): "*Notwithstanding such disclosure is made in Article 74(a), a Director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting*";
>
> (3) Article 87: "*… Until otherwise determined two Directors shall constitute a quorum… A Director may at any time summon a Meeting of the Directors. Notice of a Meeting of Directors need not be given to a Director who is not in Hong Kong*".
>
> The Transfers (which involved transfers of the Company's funds from the Company's Bank Accounts to the Chairman's Bank Accounts) were arrangements or dealings with the Company in which the Chairman had a material interest. The 1st Respondent was the son of the Chairman and his associate. In the premises, the Chairman and the 1st Respondent were required to disclose their interests to the Board and their votes should not be counted; nor were they entitled to be counted in the quorum present at any Board meeting to consider or approve the Transfers, which in fact never took place.

37. In the premises, the Transfers totaling HK$61 million from the Company's Bank Accounts to the Chairman's Bank Accounts were made without any proper board resolution or authorization. By making, approving or effecting the Transfers without proper authorization, the 1st Respondent has conducted the Company's business and affairs

in a manner involving "other misconduct" under section 214(1)(b) of the SFO.

Lack of any agreement on the apportionment of investments and profits/losses between the Company and the Chairman

38. Both the Chairman and the Company used the Chairman's Bank Accounts to subscribe for IPOs. However, there was no agreement between the Chairman and the Company as to how any IPO shares successfully subscribed for would be apportioned between them.

39. In his interviews with the Petitioner, the 1st Respondent claimed that the apportionment was on a pro-rata basis, but admitted that he did not actually keep track of how much of the Chairman's and how much of the Company's money was used for each subscription.

40. The actual ratios of apportionment between the Chairman and the Company in respect of the three subscriptions of IPO shares were as follows:

IPO Shares	**Total allotment**	**No. of Shares allocated to the Company**	**Ratio of apportionment between the Chairman and the Company**
China Agri	40,000	30,000	1:3
Country Garden	8,000	7,000	1:7
SOHO China	670,000	200,000	2.35:1

41. In respect of the China Agri shares, it was the Chairman who had in fact contributed more for the subscription (i.e. HK$15,060,278.40 compared with HK$15,000,000 from the Company). In relation to the SOHO China shares, it was the Chairman who was allocated with more shares than the Company.

42. In the premises, the actual ratios of apportionment were wholly arbitrary and the 1st Respondent and the Chairman had decided on and/or applied the same without due and

proper regard to the actual amount of the Company's money used to subscribe for the IPO shares. In doing so, the 1st Respondent was in breach of his fiduciary duty to the Company by failing to act in the best interests of the Company, and in failing to avoid putting himself in a position where his duties and interest may conflict, such that he has conducted the Company's business and affairs in a manner involving "other misconduct" under section 214(1)(b) of the SFO.

43. Further and/or alternatively, the 1st Respondent misconducted himself by failing to use care, skill and diligence in ensuring that proper records were kept to fairly and accurately reflect the respective proportions of the Chairman's and the Company's funds that were used in each subscription of IPO shares.

Failure to return the Unused Monies to the Company in a timely manner

44. Notwithstanding that a total of HK$61 million was transferred from the Company's Bank Accounts to the Chairman's Bank Accounts, only HK$1,825,949 worth of IPO shares had been allocated to the Company. The funds that had not been used for subscription of IPO shares (the "**Unused Monies**") ought to have been returned to the Company but were retained in the Chairman's Bank Accounts.

45. The 1st Respondent claimed that he had discussed the matter with Wendy Yung and instructed her to keep the Unused Monies in the Chairman's Bank Accounts for future IPO subscriptions. Wendy Yung told the Petitioner in her interview that had the 1st Respondent not instructed her to keep the Unused Monies in the Chairman's Bank Accounts, she would have transferred them back to the Company.

46. Quite apart from the making of the Transfers which were not properly authorised, the 1st Respondent's subsequent unilateral decision to keep the Unused Monies in the Chairman's Bank Accounts was a further misapplication of the Company's funds amounting to "other misconduct" under section 214(1)(b) of the SFO. The failure to procure or demand the immediate return of the Unused Monies and allowing it to be kept in the Chairman's Bank Accounts without any security had exposed the Company to unnecessary counterparty risks for no commercial benefits.

F. THE 1ST RESPONDENT'S MISCONDUCT RESULTED IN THE COMPANY'S MEMBERS NOT HAVING BEEN GIVEN ALL THE INFORMATION WITH RESPECT TO ITS BUSINESS OR AFFAIRS AS THEY MIGHT REASONABLY EXPECT

False and/or misleading disclosure of the HK$61 million as an "amount due from a

director"

47. At a meeting of the Audit Committee held on 22 April 2008, a Mr. Fong Hup of Deloitte presented the auditor's views on two possible scenarios for the disclosure in the Annual Report 2007 of the fact that the Company's funds have been deposited into the Chairman's Bank Accounts, namely:

Scenario 1

(i) The Company's investment activities in the Chairman's Bank Accounts be treated as the Chairman's private and personal transactions so that no late adjustments were required in the Original General Ledger;

(ii) Interest should be charged at prevailing market interest rates for the Company's funds deposited into the Chairman's Bank Accounts;

(iii) Deacon Chiu be required to settle the outstanding balance of the "amount due from a director" as at 31 December 2007 before the date of the Board meeting on 25 April 2008;

(iv) Deloitte would issue a clean audit report provided that proper and adequate disclosures are made in the accounts; and

(v) The Company would be responsible for responding to the Stock Exchange's queries in respect of the "amount due from a director" as at 31 December 2007 in the Annual Report 2007.

Scenario 2

(i) The Company's investment activities in the Chairman's Bank Accounts be considered as investment activities carried out by Wendy Yung on behalf of the Company in a *bona fide* way through an investment agent account;

(ii) Under such circumstances, late journal adjustments for the Company's investment activities in the Chairman's Bank Accounts should be accounted for in the financial statements and the auditor would have a limited scope of work in the assessment of the completeness of the Company's investment activities; and

(iii) Deloitte would issue a qualified audit report.

48. The Audit Committee unanimously resolved on 22 April 2008 that Scenario 1 be recommended to the Board for approval and adoption. Late adjustments were then made to reverse the allocation of IPO shares to the Company and to charge back interest from the

Chairman. After the late adjustments, the amount due from the Chairman was worked out to be HK$22,102,762.04.

49. Immediately thereafter, the Company sent an Audit Confirmation dated 23 April 2008 to the Chairman, seeking confirmation that as at 31 December 2007, the amount due from him to the Company was HK$22,102,762.04. The Audit Confirmation was signed and confirmed by the Chairman.

50. On 25 April 2008 at around 12:51 p.m., a total sum of HK$13,902,762.04 was paid into the Company's Hang Seng Account, described in the Company's receipt voucher as "*Repayment by Mr. Deacon Chiu*".

51. By letter dated 25 April 2008 signed by the Chairman and the 1st Respondent, they caused the Company to confirm to Deloitte that as at the year ended 31 December 2007, the outstanding balance due by the Chairman was HK$22,102,762, with a maximum balance of HK$61,945,945 outstanding during the year.

52. On the same day at 3:00 p.m., a Board meeting of the Company was held. The directors who attended the Board meeting, namely, the 1st Respondent, the 3rd Respondent, Dr. Lam, Mr. Wang and Mr. Yim, unanimously resolved that Scenario 1 above be approved and adopted. The Board further resolved that "*the Company's funds being deposited into Deacon's personal bank accounts (per Enclosure 1) for the Company investment activities be and are hereby approved, ratified and confirmed in all respects*".

53. By reason of the above, when the Company published its Annual Report 2007 on or about 29 April 2008, the HK$61 million subject of the Transfers was disclosed as an "amount due from a director", contrary to the Cheque Requisition Forms, the Original General Ledger, and the actual nature and purpose of the Transfers as confirmed by the 1st Respondent, the 2nd Respondent, Karen Kwan and Wendy Yung in their interviews held with the Commission. Furthermore, in the Consolidated Balance Sheet for the year ended 31 December 2007, the amount of HK$22,102,762 was purportedly disclosed as an "*amount due from a director*" as at 31 December 2007. Note 28 to the Consolidated Financial Statements described the details of the amount due from a director and recorded that the "Maximum amount outstanding during the year" was HK$61,945,945. The amount due was purportedly stated as "*unsecured, interest bearing at 3.67% to 6.00% and repayable on demand. The amount has been fully settled subsequent to the balance sheet date*", but no such terms as to interest had in fact ever been discussed or agreed between the Company and the Chairman.

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54. In the premises, the Chairman and the 1 Respondent caused the Company to disclose to the Company's members and shareholders the HK$61 million as an "*amount due from a director*" without a fuller explanation or disclosure as to the circumstances which led to that amount becoming an amount due by the Chairman to the Company, which was misleading in the circumstances and amounted to "other misconduct" under section 214(1)(b) of the SFO, and resulted in the members of the Company not having been given all the information with respect to the Company's business or affairs that they might reasonably expect.

Appendix 2

Statement of Agreed Facts

between the Commission and the 2nd Respondent

PART II – STATEMENT OF AGREED FACTS

A. THE COMPANY AND ITS MANAGEMENT

10. The Company was and is at all material times a company incorporated in Hong Kong and listed on the Main Board of the Stock Exchange of Hong Kong Limited.

11. At all times material to this action:

11.1. the Company and its subsidiaries ("**the Group**") was mainly engaged in the business of securities investment, investment holding, property investment and manufacturing and sale of garments;

11.2. the Company had three Executive Directors ("**EDs**"), six Non-Executive Directors ("**NEDs**"), and three Independent Non-Executive Directors ("**INEDs**") on its board of directors ("**the Board**");

11.3. the Chairman of the Company was Deacon Te Ken Chiu, now deceased ("**Deacon Chiu**" or "**the Chairman**");

11.4. the 1st Respondent was the Managing Director and Chief Executive Officer of the Company;

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11.5. the EDs of the Company were (i) Deacon Chiu, (ii) the 1 Respondent and (iii) Dennis Chiu;

11.6. the NEDs of the Company were (i) Tan Sri Dato David Chiu, (ii) Daniel Tat Jung Chiu, (iii) the 3rd Respondent, (iv) Desmond Chiu, (v) Margaret Chiu and (vi) Min Tang;

11.7. the INEDs were (i) Dr. Lee G. Lam ("**Dr. Lam**"), (ii) Hing Wah Yim ("**Mr. Yim**"), (iii) Ryan Yen Hwung Fong (who resigned on 30 September 2007) and (iv) Eugene Yun Hang Wang ("**Mr. Wang**") (who was appointed on 1 December 2007);

11.8. the senior management of the Company comprised of the 2nd Respondent only, who was the Company Secretary of the Company and the Financial Controller of the Group;

11.9. the 1st and 3rd Respondents were the sons of the Chairman; and

11.10. the Audit Committee comprised of Dr. Lam, Mr. Yim, Mr. Wang and the 3rd Respondent.

B. THE BANK ACCOUNTS OF THE CHAIRMAN AND THE COMPANY

12. At all material times, the Chairman was the holder of the following bank accounts (collectively, "**the Chairman's Bank Accounts**") which are relevant to these proceedings:

12.1. HSBC Private Bank Account No. 8010-225557-0001 ("**the Chairman's HSBC Account**"); and

12.2. UBS Hong Kong Dollar Account No. 1-167308-0014 ("**the Chairman's UBS Account**").

13. Yung Kim Bing Wendy ("**Wendy Yung**") was the personal assistant to Deacon Chiu. She was an Authorised Agent of Deacon Chiu with full authority to operate the Chairman's HSBC Account, including the authority to transfer funds to herself or any other third party.

14. At all material times the Company was the holder of the following bank accounts (collectively, "**the Company's Bank Accounts**") which are relevant to these proceedings:

14.1. HSBC Private Bank Account No. 8010-233577-0001 ("**the Company's HSBC Account**"); and

14.2. Hang Seng Bank Current Account No. 773-027578-001 ("**the Company's Hang Seng Account**").

C. FUND FLOWS BETWEEN THE CHAIRMAN'S BANK ACCOUNTS AND THE COMPANY'S BANK ACCOUNTS

15. Between March and September 2007, a total of HK$61 million was transferred from the Company's Bank Accounts into the Chairman's Bank Accounts in three tranches ("**the Transfers**").

First tranche

16. On 9 March 2007, a cheque for the sum of HK$15 million was drawn on the Company's Hang Seng Account in favour of the Chairman ("**1st Transfer**"). The cheque was signed by the 1st Respondent for and on behalf of the Company. The 1st Transfer was described in the Company's accounting record as "*Transfer of fund for IPO application China Agri-Industry Holdings Limited*" ("**China Agri**"). On the same day, receipt of the cheque was acknowledged by Wendy Yung and it was then deposited into the Chairman's HSBC Account.

17. As at 31 December 2006, the combined amount of "pledged bank deposits", "deposits held at financial institutions" and "bank balances and cash" of the Company was HK$32,140,810. The amount of the 1st Transfer accordingly represented nearly half of the total of the Company's deposits, bank balances and cash.

18. Subsequently:

18.1. On 13 March 2007, the sum of HK$30,060,278.40 in the Chairman's HSBC Account was used to subscribe for the shares of China Agri in its initial public offering ("**IPO**"). The Company's funds were therefore pooled together with the Chairman's own funds for the IPO subscriptions.

18.2. Following the IPO allotment, a sum of HK$29,909,977.01 was refunded to the Chairman's HSBC Account on 20 March 2007.

18.3. On 21 March 2007, 40,000 China Agri shares at the IPO share price of HK$3.72 (totaling HK$148,800) were allotted to the Chairman. He then allocated 30,000 shares to the Company at HK$111,600. As a result, the balance of the 1st Transfer which remained in the Chairman's HSBC Account was, or should have been, HK$14,888,400. An entry was made in the Company's General Ledger (as printed out on 1 March 2008) ("**Original General Ledger**")

that on 21 March 2007 the Company purchased 30,000 China Agri shares at HK$111,600.

Second tranche

19. On 2 April 2007, a cheque for the sum of HK$5 million was drawn on the Company's Hang Seng Account in favour of the Chairman ("**2nd Transfer**"). The cheque was signed by the 1st Respondent for and on behalf of the Company. The 2nd Transfer was described in the Company's accounting record as "*Transfer of fund for IPO application of '*碧桂園*'*". Receipt of the cheque was acknowledged by Wendy Yung on 28 March 2007 and it was then deposited into the Chairman's UBS Account on 3 April 2007.

20. Subsequently:

20.1. On 2 April 2007, HK$15,204,039 was transferred from the Chairman's HSBC Account to the Chairman's UBS Account. Disregarding the nominal balance of HK$208.26 which remained in the Chairman's HSBC Account after the transfer, HK$14,888,400 of this sum represented the balance of the 1st Transfer originally remaining in the Chairman's HSBC Account (see paragraph 18.3 above).

20.2. On 20 April 2007, a total of 8,000 shares in Country Garden Holdings Company Limited ("**Country Garden**") were purchased by the Chairman at HK$5.38 per share. He then allocated 7,000 shares to the Company at HK$37,660. An entry was made in the Original General Ledger that on 20 April 2007 the Company purchased 7,000 Country Garden shares at HK$37,660.

20.3. On 9 April 2008, almost after a year from when the shares were purchased, all the 8,000 Country Garden shares in the Chairman's UBS Account were sold for HK$59,305.84, and on 22 April 2008, 7/8th of the proceeds (i.e. HK$51,892.61) was transferred to the Company.

Third tranche

21. On 24 September 2007, the 1st Respondent and Wendy Yung on behalf of the Company instructed HSBC Private Bank to transfer by CHATS the amount of HK$41 million from the Company's HSBC Account to the Chairman's HSBC Account ("**3rd Transfer**"). The 3rd Transfer was described in the Company's accounting record as "*Fund transfer from HSBC Private C/A - HKD to other receivable for subscription of IPO share*". The sum was credited into the Chairman's HSBC Account on 25 September 2007.

By this time, a total sum of HK$61 million had been transferred by the Company to the Chairman.

22. Subsequently:

22.1. On 8 October 2007, 670,000 shares in SOHO China Limited ("**SOHO China**") at HK$8.30 per share were allotted to the Chairman. He then allocated 200,000 shares to the Company at HK$1,676,749.40. An entry was made in the Original General Ledger that on 8 October 2007 the Company purchased 200,000 SOHO China shares at HK$1,676,749.40.

22.2. Between 10 and 15 October 2007, all the SOHO China shares in the Chairman's HSBC Account were sold, but no proceeds of the sale of the 200,000 SOHO China shares allocated to the Company was recorded in the Original General Ledger.

Repayment to the Company

23. On 14 November 2007, a sum of HK$5 million was transferred from the Chairman's HSBC Account to the Company's HSBC Account. Then, on 27 November 2007, a further sum of HK$35 million was so transferred.

24. The total of HK$40 million was allegedly returned to the Company because it required funds to invest in a project in Beijing which required RMB38 million.

25. On 7 April 2008, a sum of HK$8.2 million was transferred by CHATS from the Chairman's UBS Account to the Company's HSBC Account. According to the 1st Respondent, this repayment was also for the same project mentioned in the foregoing paragraph. The transfer was described by the Company's account department as "*Repayment by Mr. Deacon Chiu*".

26. On 25 April 2008, a further sum of HK$13,902,762.04 was paid into the Company's Hang Seng Account.

27. Hence, a total of HK$62,102,762.04 was repaid to the Company, HK$1,102,762.04 of which, for the matters stated below, represented interest on the HK$61 million that was transferred to the Chairman's Bank Accounts.

D. DISCOVERY OF IRREGULARITIES BY THE COMPANY'S AUDITORS

28. In the course of the audit of the Company's financial statements for the year ended 31 December 2007, the Company's auditors, Deloitte Touche Tohmatsu ("**Deloitte**"), raised the issue that the transfers of the HK$61 million to the Chairman's Bank Accounts were

not supported by any formal agreement or resolutions of the Board. Deloitte was further of the view that the documents provided to them did not reflect the fact that the IPO shares were acquired and held on behalf of the Company.

29. Deloitte requested the Company to provide supporting documents evidencing that the Transfers were authorized and that the Chairman held the IPO shares of China Agri, Country Garden and SOHO China on behalf of the Company.

30. On 15 April 2008, the 2nd Respondent sent an email to Deloitte attaching a schedule entitled "*Adjustments for other receivable at Y.E. 31/12/2007*". By the schedule, the Company represented to Deloitte that the "other receivables" (referring to the Transfers to the Chairman) had been used to purchase ELNs and shares in Bank of Communications, Bank of China and Lenovo (through the Chairman's Bank Accounts). As such, after making the "*adjustment*" by attributing those investments to the Company, the "*cash*" which remained due by the Chairman to the Company was only HK$15,282.10. The loss on the investments as at the year ended 31 December 2007 was HK$474,991.50 ("**the 4.15 Adjustment**").

31. On 18 April 2008, the 1st Respondent phoned Dr. Lam and informed him that the Company's funds had been deposited into the Chairman's Bank Accounts for "*the Company's initial public offer ('IPO') application for new shares, purchase of securities, equity linked notes and other investment activities*". As Dr. Lam was not aware of such matter, he decided to urgently call for a special meeting of the Audit Committee. That night from 9 p.m. till around midnight, Dr. Lam, Mr. Wang and Mr. Yim (being members of the Audit Committee) held a meeting with the 1st Respondent and the 2nd Respondent to discuss the issues.

32. The 1st and 2nd Respondents reported to Dr. Lam, Mr. Wang and Mr. Yim as follows:

> "*The Company employed Deacon's personal bank accounts in order to obtain a better allocation result of IPO application for new shares. Those funds were not and should not be treated as a loan or finance to a director since Deacon's personal bank accounts had always maintained the bank balances greater than the Company's funds being deposited in them. Obviously, this fully demonstrated that Deacon did not employ the Company's funds for his personal investments or took any advantages of the Company, and Deacon was only doing this in trust to help the Company at Duncan's request. Duncan and Michael pointed out that the Management acted honestly although it was really a regrettable oversight on the part of the Management who should have done the proper trust instrument*

and disclosure procedures etc. and that when the IPO opportunity presented itself, it was all in a rush and the IPO application process was very dynamic and competitive and Deacon's personal bank accounts were a convenient and ready 'solution', particularly there exists trust and confidence between Deacon and Duncan obviously. Duncan and Michael then apologized for this oversight."

33. On 21 April 2008, the Company sent yet another version of "*adjustment*" to Deloitte. According to this latest version, having bought various shares and ELNs through the Chairman's Bank Accounts, the Company actually owed the Chairman HK$1,631,756.82 as at 31 December 2007 ("**the 4.21 Adjustment**").

E. THE 2ND RESPONDENT CONDUCTED THE COMPANY'S BUSINESS OR AFFAIRS IN A MANNER INVOLVING MISCONDUCT

Transfers of HK$61 million to the Chairman's Bank Accounts without proper authorization of the Board

34. The Transfers amounting to a total of HK$61 million were not properly authorized by the Board. Each of the Transfers was effected merely by completing the Company's Requisition for Cheque Payment forms ("**the Cheque Requisition Forms**"), and the relevant cheques and instructions were signed or given by the 1st Respondent. The three Cheque Requisition Forms were filled in by Joe Wong, the then Assistant Accounts Officer, and were approved by the 2nd Respondent, who was neither a director, nor a duly authorized person, to make those payments into the Chairman's Bank Accounts. The Audit Committee was not informed of the making of the Transfers until Dr. Lam was informed sometime in April 2008 as referred to in paragraphs 31 and 32 above.

35. Although the 2nd Respondent stated in his interview with the Petitioner that he was instructed by the 1st Respondent to arrange the Transfers, there were in fact no board resolutions or minutes authorizing the 1st Respondent to do so. The 2nd Respondent's further contention during the said interview that there was actual board approval through an alleged discussion and agreement between the Chairman and the 1st Respondent is also not supported by any written record.

36. Furthermore, even if the alleged discussion between the Chairman and the 1st Respondent took place, no notice of any Board meeting was given to any other director as required by the Company's Articles of Association ("**the Articles**"). There was also no disclosure of interest to the Board made by either the Chairman or the 1st Respondent, and

neither of them were discounted from the quorum or had their votes (if any) excluded as required by the Articles. In this regard, the Articles provided, *inter alia*, as follows:

(4) Article 74(a): "*A Director… may enter into contracts or arrangements or having dealings with the Company… provided that such Director discloses to the Meeting of the Directors at which such contract, arrangement, or dealing is first taken into consideration…*";

(5) Article 74(b): "*Notwithstanding such disclosure is made in Article 74(a), a Director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting*";

(6) Article 87: "*… Until otherwise determined two Directors shall constitute a quorum… A Director may at any time summon a Meeting of the Directors. Notice of a Meeting of Directors need not be given to a Director who is not in Hong Kong*".

The Transfers (which involved transfers of the Company's funds from the Company's Bank Accounts to the Chairman's Bank Accounts) were arrangements or dealings with the Company in which the Chairman had a material interest. The 1st Respondent was the son of the Chairman and his associate. In the premises, the Chairman and the 1st Respondent were required to disclose their interests to the Board and their votes should not be counted; nor were they entitled to be counted in the quorum present at any Board meeting to consider or approve the Transfers, which in fact never took place.

37. In the premises, the Transfers totaling HK$61 million from the Company's Bank Accounts to the Chairman's Bank Accounts were made without any proper board resolution or authorization. By making, approving or effecting the Transfers without proper authorization, the 2nd Respondent has conducted the Company's business and affairs in a manner involving "other misconduct" under section 214(1)(b) of the SFO.

F. FURTHER ISSUES ARISING FROM OR IN CONNECTION WITH THE 2ND RESPONDENT'S MISCONDUCT

Lack of any agreement on the apportionment of investments and profits/losses between the Company and the Chairman

38. Both the Chairman and the Company used the Chairman's Bank Accounts to

subscribe for IPOs. However, there was no agreement between the Chairman and the Company as to how any IPO shares successfully subscribed for would be apportioned between them.

39. In his interview with the Petitioner, the 2nd Respondent stated that there was no predetermined ratio of apportionment although there was allegedly a discussion between the 1st Respondent, Wendy Yung and himself that the actual ratio would favour the Company.

40. The actual ratios of apportionment between the Chairman and the Company in respect of the three subscriptions of IPO shares were as follows:

IPO Shares	**Total allotment**	**No. of Shares allocated to the Company**	**Ratio of apportionment between the Chairman and the Company**
China Agri	40,000	30,000	1:3
Country Garden	8,000	7,000	1:7
SOHO China	670,000	200,000	2.35:1

41. In respect of the China Agri shares, it was the Chairman who had in fact contributed more for the subscription (i.e. HK$15,060,278.40 compared with HK$15,000,000 from the Company). In relation to the SOHO China shares, it was the Chairman who was allocated with more shares than the Company.

Failure to return the Unused Monies to the Company in a timely manner

42. Notwithstanding that a total of HK$61 million was transferred from the Company's Bank Accounts to the Chairman's Bank Accounts, only HK$1,825,949 worth of IPO shares had been allocated to the Company. The funds that had not been used for subscription of IPO shares (the "**Unused Monies**") ought to have been returned to the Company but were retained in the Chairman's Bank Accounts.

43. The 1st Respondent claimed that he had discussed the matter with Wendy Yung and instructed her to keep the Unused Monies in the Chairman's Bank Accounts for future IPO subscriptions. Wendy Yung told the Petitioner in her interview that had the 1st Respondent not instructed her to keep the Unused Monies in the Chairman's Bank Accounts, she would have transferred them back to the Company.

44. Quite apart from the making of the Transfers which were not properly authorised, the failure to procure or demand the immediate return of the Unused Monies and allowing it to be kept in the Chairman's Bank Accounts without any security had exposed the Company to unnecessary counterparty risks for no commercial benefits, and amounted to "other misconduct" under section 214(1)(b) of the SFO.

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[1] This consensual procedure is named after the English case of *Re Carecraft Construction Co Ltd* [1994] 1 WLR 172, and has been adopted in Hong Kong in numerous cases concerned with disqualification orders under section 214 of the Ordinance.

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