

SFC seeks disqualification orders against former senior executives of China Best Group Holding Limited

31 Jul 2013

The Securities and Futures Commission (SFC) has commenced legal proceedings in the Court of First Instance to disqualify three former senior executives of China Best Group Holding Limited (China Best) (Notes 1 & 2).

The SFC is seeking disqualification orders against Mr Wang Jian Hua, former advisor to the board of China Best, Ms Ma Jun Li, former chairman and executive director of China Best, and Mr Zhang Da Qing, former chief executive officer and executive director of China Best.

The SFC's action follows its investigation into a proposed acquisition of 60% of the equity interest in ChongHou Energy Resources Limited (ChongHou) by China Best's subsidiary, Clearmind Investments Limited (Clearmind), in 2008 (Note 3).

The SFC alleges that Wang, Ma and Zhang had breached their directors' duties to China Best in handling the proposed acquisition resulting in loss to Clearmind and/or China Best. At the material time, Wang was a substantial shareholder of China Best and Ma was his wife.

Specifically, the SFC alleges that:

- The seller in the proposed acquisition, Asset Rich International Limited (Asset Rich), and its ultimate beneficial shareholder were nominees of Wang and therefore not third parties independent of China Best. A total of \$155 million paid by China Best and its subsidiaries to Asset Rich for the purpose of the proposed acquisition ended up being used to discharge Wang's personal loans or paid to Wang's personal company. Wang, therefore, profited from the proposed acquisition and had a material interest in the acquisition. However, Wang failed to disclose any of this to China Best's board of directors.
- China Best falsely represented in two announcements issued on 3 March and 3 December 2008, respectively, that Asset Rich was an independent third party.
- Ma and Zhang failed to inform China Best's board of directors that the ultimate beneficial shareholder of Asset Rich was not an independent third party and had wrongfully authorized the issue of the two announcements.
- When China Best terminated the proposed acquisition following an enquiry by the Stock Exchange of Hong Kong Limited, Asset Rich failed to refund the cash deposit of \$305 million to Clearmind on time. Accordingly, Asset Rich was obliged under the relevant agreement to pay interest accrued on the cash deposit to Clearmind. Wang, however, wrongfully agreed to waive the accrued interest, resulting in loss to Clearmind and/or China Best.

As part of the legal proceedings, the SFC is also seeking court orders that China Best shall bring in its name, or procure Clearmind to bring in its name, court proceedings against Asset Rich to recover the interest accrued on the \$305 million cash deposit.

End

Notes:

1. China Best was listed on the Main Board of the Stock Exchange of Hong Kong Limited on 26 March 1996. The principal activities of China Best's associates and subsidiaries were coal processing, international air and sea freight forwarding and the provision of logistics services as well as trading of securities.
2. The first hearing of the petition presented by the SFC under section 214 of the Securities and Futures Ordinance (SFO) was heard in the Court of First Instance today. Under section 214 of the SFO, the court may, among other things, 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 or resulting in members not having been given all the information that they might reasonably expect.
3. ChongHou held a 60% interest in a sino-foreign joint venture company under PRC laws which was principally engaged in the business of coal mining in Mainland China.
4. A [summary](#) of the material events and the allegations is posted on the SFC website.

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

A. The senior management and directors of the Company involved

1. The 1st Respondent ("**Wang Jian Hua**") was, at all material times, the husband of the 2nd Respondent ("**Ma Jun Li**") and a substantial shareholder of the 4th Respondent, China Best Group Holding Limited ("**the Company**"). In the years 2007 to 2009, Wang Jian Hua had the following (direct and indirect) interest in the share capital of the Company:
 - (a) 2007 – 34.06% held by Best Chance Holdings Limited ("**Best Chance**"), a company incorporated in the BVI and wholly owned by Wang Jian Hua, and 1.42% held and beneficially owned by Wang Jian Hua.
 - (b) 2008 - 30.06% held by Best Chance and 1.25% held and beneficially owned by Wang Jian Hua.
 - (c) 2009 – 30.06% held by Best Chance and 1.25% held and beneficially owned by Wang Jian Hua.
2. Prior to 25 November 2005, Wang Jian Hua was the chairman and an executive director of the Company. On 25 November 2005, Wang Jian Hua resigned as executive director of the Company and Ma Jun Li was elected chairman in his place. Notwithstanding his resignation, at all material times, Wang Jian Hua held the position of Group BOD Advisor and remained part of the Company's senior management.
3. Further, Wang Jian Hua was, at all material times, a director of Clearmind Investments Limited ("**Clearmind**") and Heatwave Industries Limited ("**Heatwave**"). Wang Jian Hua

was also an authorized signatory of the bank accounts of the Company, Clearmind, Heatwave and Fortune Zone International Limited ("**Fortune Zone**").

4. In the years 2007 to 2009, the directors of the Company were as follows:-

2007

Executive directors

- (a) Ma Jun Li, Chairman;
- (b) Ng Tang, deputy Chairman;
- (c) The 3rd Respondent ("**Zhang Da Qing**"), Chief Executive Officer (appointed on 5 June 2007);
- (d) Ren Zheng;
- (e) Cheung Hoi Ping;
- (f) Zhang Jun.

Independent non-executive director

- (a) Chung Kwo Ling;
- (b) Sun Yeung Yeung;
- (c) Lee Yuen Kwong.

2008

Executive directors

- (a) Ma Jun Li, Chairman;
- (b) Ng Tang, deputy Chairman;

- (c) Zhang Da Qing, Chief Executive Officer;
- (d) Ren Zheng;
- (e) Cheung Hoi Ping;
- (f) Zhang Jun.

Independent non-executive director

- (a) Chung Kwo Ling;
- (b) Sun Yeung Yeung;
- (c) Lee Yuen Kwong (resigned on 21 August 2008)
- (d) Chan Ngai Sang Kenny (appointed on 21 August 2008).

2009

Executive directors

- (a) Ma Jun Li, Chairman;
- (b) Ng Tang, deputy Chairman;
- (c) Zhang Da Qing, Chief Executive Officer;
- (d) Ren Zheng;
- (e) Cheung Hoi Ping;
- (f) Zhang Jun (resigned on 20 January 2009).

Non-executive directors

- (a) Yao Haixing (appointed on 2 June 2009);

Independent non-executive director

- (a) Chung Kwo Ling;
- (b) Sun Yeung Yeung (resigned on 11 May 2009);
- (c) Chan Ngai Sang Kenny;
- (d) Xing Hua (appointed on 20 July 2009).

B. Other relevant individuals and entities

5. Asset Rich International Limited (“**Asset Rich**”) and its wholly-owned subsidiary ChongHou Energy Resources Limited (“**ChongHou**”) were companies incorporated in the BVI with limited liability on or about 8 June and 25 July 2007 respectively. At all material times: -

- (a) the issued and paid up share capital of ChongHou was US\$1.00, and
- (b) the issued and paid up share capital of Asset Rich at incorporation was US\$2.00, which was only increased to US\$130,000 on 10 June 2008 and remained at that as at 1 October 2008.

6. The ultimate beneficial shareholder of Asset Rich was Ms Zhang Ying (“**Ms Zhang**”), a PRC resident and a junior employee of a member of the Group viz. 北京国華捷亚物流咨询有限公司 in Beijing, PRC (“**CB Beijing**”).

7. On 1 September 2007, Ms Zhang held 50% of Asset Rich via Rich Wisdom Group Limited (“**Rich Wisdom**”), a company incorporated in the BVI and wholly owned by Ms Zhang. As

from 1 October 2008, Ms Zhang became the 100% beneficial shareholder of Asset Rich via Rich Wisdom.

8. On 1 September 2007, Ms Zhang became a director of Asset Rich.
9. At all material times prior to an acquisition made by the Company in 2008 via its wholly-owned subsidiary Clearmind (“**the Acquisition**”), ChongHou was a wholly-owned subsidiary of Asset Rich.
10. By an Equity Transfer Contract 股權轉讓合同 dated 8 September 2007 (“**Equity Transfer Contract**”) and made between the shareholders of 100% of the equity interest in Inner Mongolia Qipanjing Mining Co Limited (“**Qipanjing Mining**”), a limited liability company incorporated in the PRC, as Transferors (“**the Transferors**”) and ChongHou as Transferee, the Transferors agreed to transfer 60% of the equity interest in Qipanjing Mining to ChongHou at the consideration of RMB216m to be settled in cash and upon the terms and conditions set out therein (“**the Qipanjing Mining Acquisition**”).
11. Under the Equity Transfer Contract, the Transferors agreed to turn Qipanjing Coking Company Limited (“**Qipanjing Coking**”), a limited liability company incorporated in the PRC, into a wholly-owned subsidiary of Qipanjing Mining. It was envisaged that, upon due performance of the Equity Transfer Contract, Qipanjing Mining would hold 100% of the equity interest in Qipanjing Coking and would become a sino-foreign joint venture company with 60% of its equity interest to be held by ChongHou.
12. Both Asset Rich and ChongHou were shell companies and did not have internal resources to finance the Qipanjing Mining Acquisition.

- (a) On or about 28 March 2008, Asset Rich paid HK\$15m to the Transferors only after it had received the same from Clearmind in circumstances pleaded in paragraph 18 below.
- (b) In June 2008, Asset Rich obtained a loan of HK\$250m in Hong Kong from CITIC International Assets Management Limited (“**CITIC**”) pursuant to a loan agreement dated 24 June 2008 (“**the CITIC Loan**”). Of the entire loan amount, up to HK\$235m was expressly earmarked for the purpose of completing the Qipanjing Mining Acquisition. It was only with the assistance of the CITIC Loan that Asset Rich was able to complete the Qipanjing Mining Acquisition in June 2008.

C. The Acquisition

- 13. By a non-legally binding memorandum of understanding 合作意向書 dated 3 March 2008 (“**the MOU**”), Clearmind agreed to purchase and Asset Rich agreed to sell certain equity interest in ChongHou at a consideration dependent on the valuation of the assets of ChongHou, Qipanjing Mining and Qipanjing Coking (collectively “**The Target Group**”). The MOU was entered into by Wang Jian Hua on behalf of Clearmind.
- 14. It was an express term of the MOU that Clearmind would pay HK\$15,000,000 as refundable earnest money to Asset Rich on the date of signing the MOU.
- 15. It was a further express term of the MOU that Asset Rich would procure members of the Target Group and their existing shareholders to provide Clearmind and its designated professionals with information in different aspects, including but not limited to information on corporate organization, finance, laws, mining rights, land and properties,

machinery and facilities and staff to facilitate Clearmind to conduct and complete the due diligence of the Target Group.

16. In an announcement dated 3 March 2008 ("**March 2008 Announcement**"), the Company stated, inter alia, that:

- (a) Clearmind had on that day entered into the MOU with Asset Rich. Pursuant to the MOU, Clearmind intended to acquire from Asset Rich certain equity interest in ChongHou;
- (b) ChongHou held 60% equity interest in Qipanjing Mining, a sino-foreign joint venture company principally engaged in the business of coal mining;
- (c) Qipanjing Mining had one wholly-owned subsidiary viz. Qipanjing Coking, principally engaged in the business of coke processing;
- (d) *To the Company directors' best knowledge information and belief and having made all reasonable enquiry, Asset Rich and its ultimate beneficial owners were third parties independent of the Company and its connected persons (as defined under the Listing Rules). (Emphasis added).*

17. Wang Jian Hua, Ma Jun Li and Zhang Da Qing were responsible for the contents and/or the issue of the March 2008 Announcement.

- (a) According to the minutes of the Company's board of directors meeting held on 3 March 2008 ("**the 3 March 2008 meeting**"),

- (i) a draft of the MOU and of the March 2008 Announcement were tabled before the meeting;
 - (ii) it was resolved at the meeting that the contents of the March 2008 Announcement be approved and that any one director of the Company be authorized to arrange for its publication;
 - (iii) it was recorded that *“to the Company’s directors’ best knowledge information and belief and having made all reasonable enquiry, Asset Rich and its ultimate beneficial owners were third parties independent of the Company and its connected persons (as defined under the Listing Rules)”*.
- (b) Three directors of the Company were present at the 3 March 2008 Meeting viz. Ma Jun Li (by phone), Zhang Da Qing (by phone) and Ng Tang. Further, Wang Jian Hua also attended the meeting (by phone).

18. Subsequently, on or about 20 March 2008, Clearmind paid Asset Rich HK\$15m as refundable earnest money under the MOU. In turn, Asset Rich paid the HK\$15m to the Transferors on or about 28 March 2008.

19. By an Acquisition Agreement 股權轉讓協議 dated 27 November 2008 (“**the Acquisition Agreement**”), Clearmind agreed to purchase and Asset Rich agreed to sell 60% equity interest in ChongHou at a consideration of HK\$720m and upon the terms and conditions set out therein. The Acquisition Agreement was entered into by Wang Jian Hua on behalf of Clearmind and Ms Zhang on behalf of Asset Rich.

20. In an announcement dated 3 December 2008 ("**December 2008 Announcement**"), the Company stated, inter alia, that:

- (a) Clearmind had on 27 November 2008 entered into the Acquisition Agreement to acquire from Asset Rich 60% equity interest in ChongHou for a total consideration of HK\$720m.
- (b) The Acquisition constituted a very substantial acquisition for the Company under Chapter 14 of the Listing Rules. *As no shareholder had any material interest in the Acquisition, no Shareholder was required to abstain from voting in the SGM in respect of the resolution to approve the Acquisition.*
- (c) *To the best of the directors' knowledge information and belief, having made all reasonable enquiries, each of Asset Rich and members of the Target Group was independent of and not connected with the Company and its connected persons (as defined in the Listing Rules). Asset Rich (and its ultimate beneficial owner(s)) did not have any prior business relationship with the Company and its connected persons. (Emphasis added).*

21. Wang Jian Hua, Ma Jun Li and Zhang Da Qing were responsible for the contents and/or the issue of the December 2008 Announcement.

- (a) According to the minutes of the Company's board of directors meeting held on 26 November 2008 ("**the 26 November 2008 meeting**"),
 - (i) it was recorded that to the best of the directors' knowledge, Asset Rich, ChongHou, Qipanjing Mining, Qipanjing Coking and their respective ultimate

beneficial owners were third parties independent of the Company and its connected persons;

(ii) it was resolved inter alia at the meeting that:

(1) the contents of the Acquisition Agreement were noted and agreed;

(2) the contents of the December 2008 Announcement were approved and that one director of the Company was authorized to sign it off.

(b) Eight directors of the Company were present at the 26 November 2008 Meeting including inter alia Ma Jun Li (by phone) and Zhang Da Qing (by phone). Wang Jian Hua also attended the meeting (by phone).

22. Between 28 November 2008 and 22 January 2009, pursuant to the Acquisition Agreement, the Company and/or its subsidiaries made payments totaling HK\$290m to Asset Rich or to its order as follows:

Date	From	To	Amount (HK\$)
28.11.2008	Fortune Zone	CITIC (per Asset Rich's instructions)	50m
28.11.2008	The Company	CITIC (per Asset Rich's instructions)	50m
1.12.2008	Heatwave	Asset Rich	38m

Date	From	To	Amount (HK\$)
1.12.2008	Fortune Zone	Asset Rich	6m
1.12.2008	The Company	Asset Rich	1m
5.12.2008	Clearmind	Asset Rich	45m
10.12.2008	Clearmind	Asset Rich	45m
16.12.2008	Clearmind	Asset Rich	22m
19.12.2008	The Company	Asset Rich	15m
22.1.2009	The Company	Asset Rich	18m
		TOTAL:	290m

23. In turn, Asset Rich paid,

- (a) between 4 and 18 December 2008, approximately HK\$141.965m on behalf of Wang Jian Hua's personal company Best Chance to Beida Jade Bird Universal Sci-Tech (Cayman) Development Company Limited ("**Jade Bird**"), as repayment of loans previously advanced by Jade Bird to Best Chance; and
- (b) on or about 7 January 2009, approximately HK\$13.034m to Best Chance.

D. Asset Rich's and Ms Zhang's connection with the Company and Wang Jian Hua

24. Contrary to what was stated in the March 2008 announcement and the December 2008 announcement, Asset Rich and its ultimate beneficial owner Ms Zhang were not independent of the Company or its connected person viz. Wang Jian Hua. Instead, Ms Zhang was at all material times related to the Company and both Asset Rich and Ms Zhang were at all material times nominees of Wang Jian Hua and acted on his instructions.

25. Further, contrary to what was stated in the December 2008 announcement, a shareholder of the Company viz. Wang Jian Hua had a material interest in the Acquisition in the sense that -

- (a) the whole or substantially the whole profits that Asset Rich would have made if the Acquisition had been completed would have belonged beneficially to him;
- (b) a substantial part of the monies received by Asset Rich under the Acquisition Agreement were intended to be used and were in fact used to discharge his personal loans or were paid directly to his personal company - Best Chance.

26. In support of the averments pleaded at paragraphs 24 and 25 above, the SFC relies upon the following:

- (a) Ms Zhang was a junior employee of CB Beijing and on its payroll between July 2006 and August 2008. It was inherently unlikely that Ms Zhang had the capability or the means to orchestrate Qipanjing Mining Acquisition.

- (b) Asset Rich was a shell company incorporated only in June 2007 with a modest share capital and did not have the internal resources to finance the Qipanjing Mining Acquisition. Asset Rich only managed to pay the deposit of HK\$15 million for the Qipanjing Mining Acquisition after it had received the same amount from Clearmind pursuant to the MOU in March 2008. It was inherently unlikely that Asset Rich itself had the capability to obtain outside resources to finance the Qipanjing Mining Acquisition.
- (c) Wang Jian Hua and Ms Zhang came to know each other by reason of her employment with CB Beijing. Wang Jian Hua signed Ms Zhang's labour contract on behalf of CB Beijing.
- (d) It was Wang Jian Hua who informed Zhang Da Qing of Qipanjing Mining Acquisition and the availability of ChongHou's equity interest for sale ("**the Project**").
- (e) It was Wang Jian Hua who together with Zhang Da Qing introduced the Project to the Company's board and was involved in the Project including due diligence matters.
- (f) It was Wang Jian Hua who introduced Ms Zhang to CITIC International Assets Management Limited ("**CITIC**") with a view to obtaining the CITIC Loan. It was only with the CITIC Loan that Asset Rich was able to complete Qipanjing Mining Acquisition in June 2008.
- (g) It was Wang Jian Hua who introduced Ms Zhang to a Hong Kong solicitors firm viz. Hammonds ("**Hammonds**") to represent Asset Rich about the CITIC Loan.

- (h) Wang Jian Hua took an active part in the structuring and negotiation of the CITIC Loan, as well as the giving of instructions to Hammonds. Wang Jian Hua also instructed another executive director of the Company to review certain financial information in relation to the CITIC loan.
- (i) It was Wang Jian Hua who signed cheques drawn by Heatwave to settle two feenotes issued by Hammonds to Asset Rich in May and June 2008 in connection with the CITIC Loan.
- (j) It was Wang Jian Hua who signed cheques drawn by Heatwave's account made payable to "cash" which were used to settle Asset Rich, ChongHou and Rich Wisdom's company secretarial fees on a number of occasions throughout 2008. Smartfaith Services Limited ("**Smartfaith**") was a BVI agent in Hong Kong that provided company secretarial services to Asset Rich, ChongHou and Rich Wisdom. In contrast, Wang Jian Hua also signed cheques drawn on Heatwave's account to settle Smartfaith's fees in respect of secretarial services provided to companies of the Group and his personal company Best Chance, but those cheques were crossed cheques made payable to Smartfaith.
- (k) When Ms Zhang opened an account for Asset Rich with the Standard Chartered Bank ("**the SCB account**") in Hong Kong on 27 November 2008, she put down the Hong Kong Office as its correspondence address. Between January 2009 and April 2010, monthly statements of the SCB account were sent to the Hong Kong Office. The SCB account was used to handle very substantial amounts of monies (i.e. the cash consideration paid to Asset Rich under the Acquisition Agreement and Asset Rich's payments out referred to in paragraphs 22 and 23 above.

- (l) Shortly after Asset Rich had received the cash consideration under the Acquisition Agreement, it paid:
 - (i) approximately HK\$141.965m to the lender of Best Chance between 4 and 18 December 2008 to discharge Best Chance's loans; and
 - (ii) approximately HK\$13.034m directly to Best Chance on or about 7 January 2009.

- (m) Wang Jian Hua justified the aforesaid payments made by Asset Rich to or on behalf of Best Chance on the basis that by a loan agreement in writing dated 5 December 2008, Ms Zhang agreed to grant him an unsecured personal loan of HK\$155 million for a fixed term of one year with interest at the rate of 10% per annum. As the term of the loan was for one year, it should have been due for repayment in December 2009. Wang Jian Hua stated, however, that he had not yet repaid the loan.

- (n) It was inherently unlikely that Ms Zhang was able to grant a loan to Wang Jian Hua for such a large sum. Further, even if, which is not admitted, such a loan was genuine, it was inherently unlikely that Ms Zhang was willing to grant such an unsecured personal loan to Wang Jian Hua for a fixed term of one year unless she was accustomed to act and did act on Wang Jian Hua's instructions.

- (o) Wang Jian Hua's failure to disclose to the Company's board of directors the aforesaid payments made by Asset Rich to the lender of Best Chance and/or Best Chance, or the alleged personal loan from Ms Zhang to him. On the contrary, both Wang Jian Hua and Asset Rich, by Ms Zhang, had signed written confirmations to

the Company to the effect that no part of the HK\$305 million cash received by Asset Rich under the Acquisition Agreement had directly or indirectly been paid to any bank account of Wang Jian Hua.

- (p) Wang Jian Hua was present at a meeting with Mr Wong Lik Ping (“**Wong**”) and Ms Zhang to negotiate the terms of the HK\$320 million loan to be made by Wong to Ms Zhang to fund the repayment of the cash deposit to the Company.
- (q) Notwithstanding the clear terms of the deed of termination, Wang Jian Hua had purportedly on behalf of Clearmind entered into a waiver agreement for no consideration.

E. Unenforceable waiver agreement on interest accrued

27. On 11 August 2009, the Company issued an announcement (“**the 2009 Announcement**”) in which the Company stated, inter alia, that:

- (a) Since not all the conditions of the Acquisition had been fulfilled or waived, the Acquisition could not be completed before the long stop date of 30 June 2009 pursuant to the Acquisition Agreement. Accordingly, the Acquisition Agreement was terminated;
- (b) The reasons for the termination of Acquisition Agreement were that (i) the Board was not satisfied with the due diligence on the complaints referred to in two letters from the SEHK to the Company dated 11 June 2009 and 14 July 2009 respectively; and (ii) the expiry of the long stop date pursuant to the Acquisition Agreement;

- (c) On 11 August 2009, Clearmind and Asset Rich entered into a deed of termination pursuant to which Asset Rich was to repay the whole amount of the HK\$305m made by Clearmind to Asset Rich under the Acquisition Agreement (“**Cash Deposit**”) to Clearmind within 30 days from the date of the Deed.

28. The deed of termination referred to in the 2009 Announcement was dated 11 August 2009 (“**the Deed of Termination**”) and entered into by Wang Jian Hua on behalf of Clearmind and Ms Zhang on behalf of Asset Rich. Clearmind and Asset Rich agreed to terminate inter alia the Acquisition Agreement upon the terms and conditions set out therein.

29. It was an express term of the Deed of Termination that:

- (a) Asset Rich should refund the Cash Deposit in full by one-off payment to Clearmind within thirty days upon the execution of the Deed;
- (b) If Asset Rich refunded the Cash Deposit in full by one-off payment to Clearmind within thirty days upon the execution of the Deed, it would not be obliged to pay interest accrued before the refund of the Cash Deposit;
- (c) If Asset Rich failed to refund the Cash Deposit in full by one-off payment within thirty days upon the execution of the Deed, it should pay to Clearmind interest accrued before the refund of the Cash Deposit (accrued at 5% per annum or other annual interest rate otherwise agreed between Asset Rich and Clearmind in writing).

30. In breach of the Deed of Termination, Asset Rich failed to pay the Cash Deposit to Clearmind within thirty days upon the execution of the Deed i.e. on or before 10 September 2009. By reason of the aforesaid, Asset Rich was liable to pay Clearmind accrued interest on the Cash Deposit under the terms of the Deed of Termination and/or the Acquisition Agreement.
31. By a letter dated 11 September 2009, the Company's solicitors demanded from Asset Rich repayment of the Cash Deposit together with interest to Clearmind.
32. Eventually, on 28 & 29 September 2009, after Ms Zhang had obtained a personal loan of HK\$320m from a Wong pursuant to a loan agreement dated 27 September 2009, Wong refunded the Cash Deposit to the Company and/or its subsidiaries on behalf of Asset Rich, without interest.
33. In further breach of the Deed of Termination and/or the Acquisition Agreement, Asset Rich failed to pay any accrued interest on the Cash Deposit to Clearmind.
34. On or about 26 September 2009, Wang Jian Hua, purportedly on behalf of Clearmind, orally agreed to waive the accrued interest if Asset Rich repaid the Cash Deposit in full on or before 30 September 2009 ("**Waiver Agreement**").
35. The Waiver Agreement was unsupported by consideration and was legally unenforceable. Despite the aforesaid, Clearmind failed to take legal action and the Company failed to procure Clearmind to take legal action against Asset Rich for the recovery of accrued interest on the Cash Deposit. In the premises, Clearmind and/or the Company have suffered loss.

F. Misconduct by Wang Jian Hua, Ms Ma and Zhang Da Qing

Misconduct of Wang Jian Hua

36. At all material times, Wang Jian Hua held the position of the Group's BOD Advisor and remained part of the Company's senior management. He was also a director of a number of its subsidiaries including Clearmind. As such, Wang Jian Hua owed a duty of fidelity to the Company and the Group.
37. The SFC avers that Wang Jian Hua had diverted to himself a corporate opportunity i.e. the acquisition of 60% of Qipanjing Mining, and devised a scheme to conceal it, for his own personal benefit and at the expense of the Company ("**the Scheme**").
38. The Scheme involved Asset Rich and Ms Zhang acting as Wang Jian Hua's nominees. Under the Scheme, Wang Jian Hua procured Asset Rich's wholly-owned subsidiary ChongHou to acquire a 60% interest in Qipanjing Mining at the price of RMB216 million. The acquisition of 60% of Qipanjing Mining was financed by the Company's own monies and the CITIC Loan, which loan was to be repaid by the Company's own monies and/or assumed by the Company. Wang Jian Hua then arranged for the Company to buy from Asset Rich a 60% interest in ChongHou. In buying 60% of ChongHou, the Company was effectively acquiring only a 36% interest in Qipanjing Mining, at the significantly higher price of HK\$720m.
39. Wang Jian Hua had intended to make and would have made a substantial profit from the Scheme but for the termination of the Acquisition Agreement.
40. In using Asset Rich and Ms Zhang as his nominees, Wang Jian Hua had intended to conceal his potential secret profit and/or material interest in the Acquisition.

41. Before, during and after the Acquisition, Wang Jian Hua, in serious dereliction of his duty of fidelity to the Company, had failed to fully disclose the facts and matters pleaded in paragraphs 24 and 25 above i.e. his connection with Asset Rich and Ms Zhang and his potential secret profit from and/or material interest in the Acquisition.

42. In particular, Wang Jian Hua had failed to disclose the aforesaid to the Company's board of directors before or during the 3 March 2008 meeting or the 26 November 2008 meeting when the contents of the March 2008 Announcement and the December 2008 Announcement were approved.

Misconduct of Ma Jun Li and Zhang Da Qing

43. The Acquisition took place at a time when Ma Jun Li was the Company's Chairman and Zhang Da Qing was the Company's Chief Executive Officer, with responsibility for overseeing all aspects of the Company's business and affairs.

44. As directors of the Company, Ma Jun Li and Zhang Da Qing owed the following duties to the Company:

- (a) to act in good faith and in the best interests of the Company;
- (b) to properly inform themselves about the Company's affairs; and
- (c) to exercise reasonable care and diligence in the management of the Company.

45. As Chief Executive Officer of the Company, Zhang Da Qing was responsible for the day-to-day management of all aspects of the Company's business and affairs.

46. In further dereliction of their duties to the Company aforesaid, Ma Jun Li and Zhang Da Qing had wrongfully authorized the issue of the March 2008 Announcement and the December 2008 Announcement which were false or misleading in a material particular.

47. In further dereliction of their duties to the Company aforesaid, Ma Jun Li and Zhang Da Qing had wrongfully approved the Waiver Agreement and/or failed to procure Clearmind to take legal action against Asset Rich for the recovery of accrued interest on the Cash Deposit despite the fact that the Waiver Agreement was unsupported by consideration and was legally unenforceable, resulting in loss to Clearmind and/or the Company.