Court File No. CV-14-10667-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c. C.43 (as amended)

AND IN THE MATTER OF HANFENG EVERGREEN INC.

SUPPLEMENT TO FIFTH REPORT OF THE RECEIVER DATED NOVEMBER 13, 2017

PURPOSE

1. This supplement to the Fifth Report of the Receiver (the "**Supplemental Fifth Report**") is provided in reference to the Fifth Report of the Receiver dated July 11, 2017 (the "**Fifth Report**"). Capitalized terms not defined in this Supplemental Fifth Report are as defined in the previous reports of the Receiver.

2. The purpose of the Supplemental Fifth Report is to provide this Court with information with respect to:

   (a) A final judgment issued by the Heilongjiang Provincial Court granting the appeal filed by the Receiver for the retention of the Deposit previously paid by New Pengcheng;

   (b) An update on the action commenced by the Receiver (the "**Receiver's Action**") against Mr. Yu Xinduo ("**Mr. Yu**") and Ms. Li Lei ("**Ms. Li**") in the Ontario Superior Court of Justice;

   (c) the Receiver's inquiries regarding the current financial status of the Chinese Subsidiary;

(d) the replacement of Mr. Yu as legal representative of Hanfeng Evergreen Inc.'s ("**Hanfeng**" or the "**Company**") wholly owned subsidiary, Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**"); and

(e) the current status of the claims procedure as set out in the Claims Procedure Order dated September 23, 2014 (the "**Claims Procedure Order**").

3. The Supplemental Fifth Report is organized as follows:

(a) Terms of Reference;

(b) Heilongjiang Provincial Court Decision;

(c) Receiver's Action;

(d) Status of the Chinese Subsidiary;

(e) Replacement of Mr. Yu as Legal Representative; and

(f) Claims Procedure Update.

TERMS OF REFERENCE

4. The Receiver has prepared the Supplemental Fifth Report in its capacity as a court-appointed officer solely for the use of this Court and the stakeholders in these proceedings and will make a copy of the Supplemental Fifth Report available on the Receiver's website at www.ey.com/ca/hanfeng (the "**Case Website**").

5. The Receiver has previously filed with the Court its first report dated September 12, 2014 (the "**First Report**"), the supplement to the First Report dated September 22, 2014 (the "**Supplement to the First Report**"), its second report dated July 17, 2015 (the "**Second Report**"), the supplement to the Second Report dated July 22, 2015 (the "**Supplement to the Second Report**"), its third report dated September 25, 2015 (the "**Third Report**"), its fourth report dated April 4, 2017 (the "**Fourth**

Report") and the Fifth Report. This Court has previously approved the activities of the Receiver as set out in the First Report, the Second Report, the Supplement to the Second Report, and the Third Report. Copies of each of these reports, including the Supplemental Fifth Report as well as motion records and Orders in the receivership proceedings, are or will be available on the Case Website. The Receiver has also established a toll free phone number and e-mail address that are referenced on the Case Website so that parties may contact the Receiver if they have questions with respect to the receivership proceedings.

6. All monetary amounts contained herein are expressed in Canadian dollars, unless otherwise stated.

HEILONGJIANG PROVINCIAL COURT DECISION

7. As described in paragraphs 38 to 42 of the Fifth Report, on or about August 3, 2015, the purported purchaser under the Share Transfer Transaction, New Pengcheng, commenced an action against Hanfeng, the Chinese Subsidiary, Mr. Yu and EY in its personal capacity (the "**Chinese Litigation**") in the City of Harbin Intermediate People's Court (the "**Harbin Intermediate Court**"). In the Chinese Litigation, New Pencheng sought, among other things, the return of the initial deposit in the amount of RMB 12.4 million (approximately $2.48 million[1]) that New Pengcheng had previously paid to the Receiver as part of the Share Transfer Transaction (the "**Deposit**").

8. On February 15, 2017, the Harbin Intermediate Court released its decision (the "**Harbin Court Decision**"), which included, among other things, the following:

    (a) a finding that the Share Transfer Agreement was terminated;

[1] Converted based on the exchange rate of CAD$1.00 = RMB5.00

(b) the requirement for Hanfeng to return the Deposit, plus interest, to the Purchaser; and

(c) a finding that EY, in its personal capacity, was not a party to the Share Transfer Agreement and not personally liable for the return of the Deposit.

9. On March 20, 2017, the Receiver commenced an appeal of the Harbin Court Decision to the Heilongjiang Provincial People's High Court (the "**Heilongjiang Provincial Court**").

10. The Heilongjiang Provincial Court has released its decision dated September 18, 2017 (the "**Heilongjiang Provincial Court Decision**"), granting the appeal by the Receiver and overturning certain parts of the Harbin Court decision. In summary, the Heilongjiang Provincial Court concluded that:

(a) New Pengcheng had breached its contractual obligations under both the Share Transfer Agreement and escrow agreement, and as a result Hanfeng had the right to refuse to proceed with the regulatory approval steps;

(b) The Harbin Court Decision did not clearly determine the underlying facts, and contains errors in the application of law;

(c) Hanfeng is entitled to keep the Deposit, while New Pengcheng's motion for, inter alia, the return of the Deposit, is dismissed;

(d) The Share Transfer Agreement is terminated; and

(e) Court fees of RMB 200,226.04 (approximately $40,000) and an asset preservation fee of RMB 5,000 (approximately $1,000) shall be paid by New Pengcheng.

11. Copies of the Heilongjiang Provincial Court Decision and an unofficial translation are attached as **Appendices** "**A**" and "**B**", respectively.

12. The Receiver initially engaged Mr. Guan of Heilongjiang Honghui Law Firm ("**Honghui**") on an hourly basis to assist with the Share Transfer Transaction. When the Chinese Litigation was commenced, it became apparent to the Receiver that it would require more significant services from Honghui in respect of legal proceedings and other matters in Harbin. In October 2015, the Receiver entered into a fee for service contract with Honghui to i) defend the Chinese Litigation, and ii) seek the court endorsement of the Receiver's authority to replace the legal representative of the Chinese Subsidiary. The contract provides for RMB 500,000 (approximately $100,000) in total fees, including:

    (a) an up-front payment of RMB 320,000 (approximately $64,000) (the "**Up-front Payment**");

    (b) a success fee of RMB 30,000 (approximately $6,000) payable when the legal representative replacement is completed; and

    (c) a second another success fee of RMB150,000 (approximately $30,000) conditional upon the outcome of the Chinese Litigation (the "**Litigation Success Fee**") .

13. The Receiver made the Up-front Payment on or about November 3, 2015. With the issuance of the Heilongjiang Provincial Court Decision, the Litigation Success Fee is now payable; however, it does not form a part of the fees the Receiver is seeking approval of in its motion returnable November 20, 2017.

<u>Dentons Laywer's Letter</u>

14. On October 18, 2017, the Receiver received a letter from Mr. David Moore, counsel to Mr. Yu, attaching a letter from Liu Wenchen ("**Ms. Liu**"), a lawyer at Dentons in the Shahekou District, City of Dalian of Liaoning Province, China regarding the status of the Chinese Litigation (the "**Dentons Lawyer's Letter**"). Attached as **Appendix "C"** is the letter from Mr. Moore enclosing the Dentons Lawyer's Letter.

15. With respect to the Dentons Lawyer's Letter, the Receiver notes the following:

(a) Ms. Liu is not the lawyer at Dentons who represented New Pencheng in the Chinese Litigation. During the Chinese litigation New Pencheng was represented by Ms. Xinyi Li, also of Dentons in the Harbin office in Heilongjiang Province;

(b) Guan Liu ("**Mr. Guan**"), the Receiver's Chinese counsel with respect to the Chinese Litigation, has received no such correspondence in China;

(c) In the Denton's Lawyer's Letter, Ms. Liu takes the position that the Heilongjiang Provincial Court Decision contains an "obvious mistake" and advises that New Pencheng intends to submit an "application for re-trial and correction of the wrong judgment"; and

(d) The Chinese Litigation was tried in Heilongjiang Province, in which the Heilongjiang Provincial Court is the highest court. Ms. Liu appears to practice in a different province, Liaoning Province, which has its own regional judicial system.

16. The Receiver has spoken to its Chinese Counsel, Mr. Guan, who has advised that:

(a) With respect to civil cases, courts in China follow a "two-trial system" under which the decisions of the second instance court are final. In the Chinese Litigation, the Heilongjiang Provincial Court is the court of the second instance, and accordingly, its judgment is final.

(b) New Pencheng does have a right to apply for a re-trial to the China Supreme People's Court within six months. The China Supreme People's Court may or may not grant leave for a retrial after its review; however, under Chinese law the effectiveness of the Heilongjiang Provincial Court Decision is not suspended.

Attached as **Appendix "D"** is a letter from Mr. Guan to the Receiver with respect to Chinese civil procedure.

17. The Receiver continues to retain Mr. Guan to represent it in the Chinese Litigation and to take any steps appropriate to respond to an application for re-trial made by New Pengcheng.

RECEIVER'S ACTION

18. The Fifth Report sets out an overview of:

(a) the Receiver's Action; and

(b) relevant correspondence between the Receiver's counsel and counsel to the defendants.

19. As set out in paragraph 36 of the Fifth Report, after the close of pleadings the defendants in the Receiver's Action served a Motion to Strike certain claims against Mr. Yu and Ms. Li for failing to disclose a cause of action. Following the hearing of the Motion to Strike on September 22, 2017, Cavanagh J. of this Court issued an endorsement dated October 3, 2017 (the "**Motion to Strike Endorsement**"). The Motion to Strike Endorsement stated, among other things, the following:

(a) Certain claims as against Ms. Li related to the causes of action of knowing assistance and knowing receipt are struck;

(b) The defendants' motion is otherwise dismissed; and

(c) The Receiver is granted leave to deliver an amended statement of claim within 30 days.

A copy of the Motion to Strike Endorsement is attached as **Appendix** "**E**".

20. On November 2, 2017, the Receiver delivered an Amended Statement of Claim on Mr. Yu and Ms. Li (the "**Amended Claim**"). Attached as **Appendix "F"** is the Amended Claim.

21. On November 3, 2017, the Receiver's counsel delivered a letter to Mr. Yu's counsel responding to various issues relating to the Receiver's Action and the receivership proceeding that had been raised in various correspondence delivered by Mr. Yu's counsel on October 18, 2017. A copy of the November 3, 2017 letter from the Receiver's counsel is attached as **Appendix "G"**.

STATUS OF CHINESE SUBSIDIARY

22. Mr. Yu and Ms. Li have served a motion record responding to the Receiver's motion returnable November 20, 2017, (a) to approve the activities of the Receiver as set out in the Supplement to the First Report, the Fourth Report and the Fifth Report; and (b) to approve the fees and disbursements of the Receiver and its counsel. At paragraph 18 of the affidavit of Ms. Li sworn October 19, 2017 (the "**Li Affidavit**"), Ms. Li refers to a letter from Mr. Moore to the Receiver dated July 14, 2017 in which he enquired about the Receiver's efforts to liquidate the assets of the Chinese Subsidiary.

23. As set out at paragraph 34 of the Third Report, after it became apparent the Share Transfer Transaction would not close, the Receiver's representatives attempted to gain physical access to the Chinese Subsidiary's facility on or around July 30, 2015. Subsequently, on or around June 6, 2016, the Receiver's representatives attempted again to enter the Chinese Subsidiary's facility. On both occasions, the Receiver' representatives were denied access to the Chinese Subsidiary by security. Further, notwithstanding repeated requests to Mr. Yu and Local Management, the Receiver and its representatives have not received any financial information and records regarding the Chinese Subsidiary for nearly two and a half years.

24. As described at length in the Reports and the Amended Claim, the Receiver's investigations have uncovered information that while under Mr. Yu's control the Chinese Subsidiary has taken on significant loans. These loans appear to exceed the value of the Chinese Subsidiary's assets and remain unpaid as they fall due. Specifically, the Receiver has obtained the following information:

(a) As described in a credit report from the Corporate Credit Information Centre of the People's Bank of China dated June 6, 2016 (the "**Credit Report**") the Chinese Subsidiary had a total indebtedness of over RMB 438 million (approximately $87.6 million) as of March 2016, of which RMB 286.81 million (approximately $57.4 million) was in default. As of June 30, 2015, Local Management reported that the Chinese Subsidiary's total available cash was RMB 74 million (approximately $14.4 million).

The Credit Report shows the Chinese Subsidiary's bank loans fluctuated between RMB 438 million and RMB 694 million from June 2013 to March 2016, all of which had been concealed from Hanfeng and the Receiver. A summary of the indebtedness history of the Chinese Subsidiary extracted from the Credit Report is attached as **Appendix "H"**.

(b) As noted at paragraph 11 of the Supplement to the Second and at paragraph 35(d) of the Fourth Report, the Chinese Subsidiary was involved in at least three lawsuits related to defaults under certain loan and financing arrangements. These resulted in court-approved settlements with the China Industrial Bank pursuant to which the Chinese Subsidiary is obliged to pay approximately RMB 161 million (approximately $32 million) in principal and interest (the "**China Industrial Bank Settlements**").

(c) As noted at paragraph 49 of the Fourth Report, the Chinese Subsidiary has defaulted under certain of its bank loans, resulting in various seizure and recovery actions being brought by its Chinese lenders, including the China Industrial Bank and China Merchant Bank.

(d) On the China Courts' Enforcement Information Website at http://shixin.court.gov.cn (the "**China Court Enforcement Website**"), the Receiver has found the Chinese Subsidiary and Mr. Yu in his capacity as a guarantor for these loans and/or the legal representative of the Chinese Subsidiary are subject to various court judgments and court-approved actions, including the China Industrial Bank Settlements. Attached as **Appendix "I"** are copies of relevant search results (with unofficial translation) from the China Court Enforcement Website.

25. As a result of these bank loans and legal actions, the Chinese Subsidiary is likely insolvent with no residual value for its shareholder, Hanfeng, in a liquidation. Accordingly, the Receiver believes it is critically important to obtain and evaluate full disclosure with respect to the current status of the Chinese Subsidiary in order to assess options.

REPLACEMENT OF MR. YU AS LEGAL REPRESENTATIVE

26. As described in the Reports, the Receiver has sought to, among other things, replace Mr. Yu as legal representative of the Chinese Subsidiary with a view to exercising control over and preserving its assets.

27. As noted at paragraphs 30 and 31 of the Fifth Report, on July 7, 2017, the Receiver wrote to Mr. Yu's counsel setting out its requirements for further information regarding the status of the Chinese Subsidiary and documents to effect the legal representative replacement (the "**July 7 Letter**"). The July 7 Letter is attached to the Fifth Report as Appendix "M".

28. In the July 7 Letter**,** the Receiver reiterated that pursuant to the Order of Justice Conway dated July 24, 2015 (the "**Cooperation Order**"), Mr. Yu was ordered to

provide his full and timely cooperation to the Receiver including "providing unfettered access for [the Receiver's advisor] and his company … to the Chinese Subsidiary's offices and facilities and books and financial records."

29. In light of its investigative findings, the Receiver demanded that Mr. Yu provide certain information and documents regarding the status of the Chinese Subsidiary, including:

(a) Copies of bank statements for all bank accounts of the Chinese Subsidiary for the period from July 2015 to June 2017;

(b) Copies of all agreements in connection with bank loans, credit facilities, factoring entered into and guarantees provided by the Chinese Subsidiary in the past five years;

(c) A list of all legal proceedings, settlements, creditor enforcement actions (regardless of the status of these proceedings) during the period from August 2014 to June 2017;

(d) Internal monthly financial statements and trial balances for the period from June 2015 to June 2017;

(e) A payment/cheque register for the period from August 2014 to June 2017; and

(f) An accounts receivable sub-ledger including transaction details for the period from August 2014 to June 2017.

30. In addition, in the July 7 Letter, the Receiver requested Mr. Yu to provide written authorization permitting the Receiver and its representatives to obtain and confirm information directly with banks, courts and local authorities in respect of the Chinese Subsidiary.

31. Mr. Yu has provided neither the authorization nor any of the documents or information requested by the Receiver.

32. On September 13, 2017, Mr. Yu's counsel wrote to the Receiver offering to provide a signed consent from Mr. Yu to resign as legal representative of the Chinese Subsidiary (the "**Resignation and Consent**") but did not answer any of the questions set out in the July 7 Letter.

33. In a letter dated October 18, 2017 (the "**Resignation Letter**"), Mr. Yu's counsel attached the signed Resignation and Consent of Mr. Yu, a summary of the documents requested in the July 7 Letter and a legal opinion regarding the steps necessary to replace a legal representative in China (the "**Legal Rep Opinion**"). Attached as **Appendix "J"** is the Resignation Letter with attachments.

34. The Resignation Letter (a) states that the executed resignation is all that is required to remove Mr. Yu as legal representative and (b) fails to provide any of the information requested in the July 7 Letter regarding the status of the Chinese Subsidiary.

35. The Receiver notes that the counsel providing the legal opinion with respect to the removal/replacement of a legal representative is from the City of Dalian in Liaoning Province. This is a region distinct from the City of Harbin in Heilongjiang Province, where the Chinese Subsidiary is located. As noted in the Reports, the Chinese Subsidiary requires approval from, among other local agencies, the industry and commerce administration authority of the City of Harbin in Heilongjiang Province.

36. Attached as **Appendix "K"** is a letter from Mr. Guan responding to the Legal Rep Opinion. Mr. Guan notes, among other things, that the approving and registration authorities in the City of Harbin in Heilongjiang Province impose specific document requirements for an application to change a legal representative. These document requirements are detailed in the July 7 Letter. Mr. Guan has confirmed

that certain of the documents must be signed by Mr. Yu and/or stamped with the corporate chops for the Chinese Subsidiary as required by the local authorities.

37. Mr. Guan further notes that the process of replacing a legal representative is basically consistent with that followed by the Chinese Subsidiary to register Mr. Guan as a director of the Chinese Subsidiary in June 2015, as described in the Second Report and the Third Report. At that time, Mr. Yu and the Chinese Subsidiary provided cooperation to effect the director registration by signing and/or stamping all required documents.

38. For the reasons set out above the Receiver states that:

(a) Mr. Yu has failed to comply with the requirements to provide "unfettered access… to the books and financial records of the [Chinese Subsidiary]" under the Cooperation Order;

(b) The Receiver is precluded from assessing options with respect to the Chinese Subsidiary until Mr. Yu provides necessary disclosure regarding its current status; and

(c) Mr. Yu has not satisfied the requirements to be replaced as legal representative of the Chinese Subsidiary.

CLAIMS PROCEDURE UPDATE

39. As described in paragraph 63 of the Fourth Report, the Receiver received 17 non-equity claims with a total face value of $4,307,663 prior to the Claims Bar Date (as defined in the Claims Procedure Order) and one late non-equity claim in the amount of $173.32. The Receiver has also received 68 equity claims.

40. The Receiver has reviewed each of the 17 non-equity claims filed prior to the Claims Bar Date. Of these claims:

(a) four are undisputed by the Receiver;

(b) one has been disallowed with no response;

(c) eight have been disallowed by the Receiver and are subject to a notice of dispute by the claimant;

(d) three claims are subject to settlements between the parties; and

(e) one claim remains under review.

41. The Receiver has disallowed the late non-equity claim with no response from the claimant.

42. The Receiver is in discussions to engage the Honourable Frank Newbould to act as claims officer pursuant to paragraph 20 of the Claims Procedure Order (the "**Claims Officer**"). Mr. Newbould is a former judge of the Ontario Superior Court with extensive experience adjudicating claims between parties.

43. The Receiver anticipates commencing the adjudication of any disputed claims by the Claims Officer in December 2017 or early 2018. At that time, pursuant to paragraph 19(b) of the Claims Procedure Order, the Receiver will provide the Claims Officer with a package consisting of that Claimant's Proof of Claim, the Notice of Revision or Disallowance, the Notice of Dispute and any other materials which may be relevant for the determination of the dispute by the Claims Officer.

44. Pursuant to paragraph 21 and 23 of the Claims Procedure Order, the Claims Officer will determine:

(a) the validity, amount and classification of any Disputed Claims;

(b) any procedural matters with respect to his determination with respect to the Disputed Claims; and

(c) to whom and to what extent the costs of any hearing before the Claims Officer shall be paid.

All of which is respectfully submitted this 13th day of November, 2017.

ERNST & YOUNG INC.
In its capacity as Receiver of
Hanfeng and not in its personal or corporate capacity

Per:

Murray A. McDonald
President

Per:

Brent Beekenkamp
Senior Vice President

This is **Appendix “A”** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

黑龙江省高级人民法院

民 事 判 决 书

中华人民共和国
黑龙江省高级人民法院
民事判决书

(2017)黑民终270号

上诉人（一审被告）：加拿大汉枫常绿有限公司（Hanfeng Evergreen Inc.），住所地加拿大安大略省多伦多市。

委托诉讼代理人：关刘，黑龙江宏珲律师事务所律师。

被上诉人（一审原告）：哈尔滨鹏程肥业有限公司，住所地中华人民共和国黑龙江省尚志市尚志镇尚五路28号。

法定代表人：张敏，该公司总经理。

委托诉讼代理人：李欣怡，北京大成（哈尔滨）律师事务所律师 。

委托诉讼代理人：盛玉涛，北京大成（哈尔滨）律师事务所律师。

一审被告：安永有限公司(Ernst & Young Inc.)，住所地加拿大多伦多市海湾大街222号。

负责人：默理麦克当劳（murray A.McDonald)，该公司主席。

委托诉讼代理人：焦开军，黑龙江宏珲律师事务所律师。

一审被告：汉枫缓释肥料有限公司，住所地中华人民共和国黑龙江省尚志市经济开发区汉枫路 1 号。

法定代表人：于薪铎，该公司董事长。

一审被告：于薪铎，男，1952 年 6 月 15 日出生，汉族，汉枫缓释肥料有限公司董事长，住中华人民共和国辽宁省大连市中山区连庆巷 38 号 3-6。

上诉人加拿大汉枫常绿有限公司（以下简称汉枫常绿公司）因与被上诉人哈尔滨鹏程肥业有限公司（以下简称鹏程肥业公司）、一审被告安永有限公司（以下简称安永公司）、汉枫缓释肥料有限公司（以下简称汉枫肥料公司）、于薪铎股权转让合同纠纷一案，不服哈尔滨市中级人民法院（2015）哈涉外商初字第 7 号民事判决，向本院提起上诉。本院于 2017 年 5 月 15 日立案后，依法组成合议庭，公开开庭进行了审理。上诉人汉枫常绿公司的委托诉讼代理人关刘，被上诉人鹏程肥业公司的委托诉讼代理人李欣怡、盛玉涛，一审被告安永公司的委托诉讼代理人焦开军到庭参加诉讼。一审被告汉枫肥料公司、于薪铎经本院合法传唤未到庭参加诉讼。本案现已审理终结。

汉枫常绿公司上诉请求：撤销一审判决第一、二项，依法改判鹏程肥业公司依据股权转让协议约定履行合同义务，向汉枫常绿公司支付股权交易价款，驳回鹏程肥业公司一审诉讼请求。事实与理由：1. 一审判决适用法律错误。一审判决关于“《股权转让协议书》依法成立，未生效，未生效的协议对签约双方均不具备

法律约束力”的认定错误，依《中华人民共和国合同法》(以下简称《合同法》)第八条规定，依法成立的合同，对当事人具有法律约束力，当事人应按照约定履行义务，不得擅自变更或解除，意思表示一致，合同即成立。2.一审判决认定事实不清。第一，仅认定汉枫常绿公司未履行报批义务，却未认定鹏程肥业公司违约。一审判决错误引用《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》第五条的规定，事实上，鹏程肥业公司未依《股权转让协议书》约定向汉枫常绿公司支付交易总价款15%的付款义务，同时也未依《交易资金托管协议》的约定履行向托管行的托管账户内存入3720万元托管资金的义务，均属违约行为，因此汉枫常绿公司可依《合同法》第六十七条之规定，行使先履行抗辩权。第二，一审判决未全面引用《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》第一条，根据该条法律规定，合同因未经批准而被认定未生效的，不影响合同双方当事人履行报批义务条款及因该报批义务而设定的相关条款的效力。

鹏程肥业公司答辩称：一审判决认定事实清楚，适用法律正确。《股权转让协议书》经签订成立，即使转让合同未经批准，仍应认定“报批”义务在合同成立时即已产生，负有报批义务的一方在合同成立后即应履行报批义务，否则当事人可在获得转让款后通过不协助办理“报批”手续从而恶意阻止合同生效。最高人民法院对此有明确的规定，必须办理批准手续才生效的合同，在一审法庭辩论终结前已办理批准手续的，该合同认定有效。

安永公司发表意见称：依据加拿大安大略省高级法院于2014年8月20日作出的判令，安永公司作为汉枫常绿公司的接管人不产生任何责任或义务。安永公司并非《股权转让协议书》及《交易资金托管协议》的合同当事人，无需履行合同义务及承担责任。

鹏程肥业公司向一审法院提出诉讼请求：1.解除其与汉枫常绿公司签订的《股权转让协议书》；2.汉枫常绿公司、安永公司、汉枫肥料公司、于薪铎连带向鹏程肥业公司返还已支付的5%的转让款1240万元人民币，并自转款之日起至起诉日止按中国人民银行发布的同期贷款利率支付利息652，170元；并继续承担自起诉日起至给付日止的利息；3.诉讼费用由汉枫常绿公司、安永公司、汉枫肥料公司、于薪铎承担。

一审法院认定事实：2014年8月8日，鹏程肥业公司与汉枫常绿公司签订《股权转让协议书》，约定：鹏程肥业公司收购汉枫常绿公司全资子公司汉枫肥料公司100%股权，转让总价款为2.48亿元人民币。其中总价款的80%，即1.984亿元人民币或等值美元应将现金通过汇款方式汇至汉枫常绿公司指定账户；其余的总价款20%，即4960万元人民币应通过鹏程肥业公司开具的承诺付款函支付给汉枫常绿公司。协议签订之日起七个工作日内，鹏程肥业公司向汉枫常绿公司支付总价款的5%即1240万元人民币作为履约保证金；如果鹏程肥业公司未能按照协议的条款规定完成该交易，除相关法律规定汉枫常绿公司可享有的补救措施外，汉枫常绿公司有权保留履约保证金。鹏程肥业公司应于汉枫常绿公

司股东会批准或法庭批准本次股权交易后十个工作日内再支付总价款的15%即3720万元人民币或等值美元。交易完成（协议1.6条约定，汉枫常绿公司在哈尔滨市工商行政管理局登记的协议标的变更到鹏程肥业公司或其指定的子公司名下时，视为交易完成）后十个工作日内，鹏程肥业公司应支付总价款的剩余80%，其中60%用现金支付至汉枫常绿公司指定账户，20%用协议所附承诺付款函支付。

合同签订后，2014年8月20日，加拿大安大略省高级法院商业案件庭批准了上述股权转让协议。

2014年8月28日，鹏程肥业公司委托案外人绿城恒基（集团）有限公司向汉枫常绿公司汇款2,000,140美元（双方均认可该款为案涉1240万元人民币履约保证金）。鹏程肥业公司称由于受到外汇管理规定的限制，此后未再向汉枫常绿公司支付款项。

2015年2月13日，鹏程肥业公司与汉枫常绿公司授权代表人于薪铎、中国民生银行股份有限公司哈尔滨分行签订《交易资金托管协议》，鹏程肥业公司向托管银行存入托管资金1000万元。此笔资金未能汇给汉枫常绿公司，现已被鹏程肥业公司取回。

汉枫常绿公司系在加拿大合法注册并有效存续的股份有限公司；安永公司系在加拿大合法注册及有效存续的有限公司；鹏程肥业公司系在中华人民共和国合法注册并有效存续的有限责任公司。2014年8月20日，加拿大安大略省高级法院作出判令（委任令），任命安永公司担任汉枫常绿公司经营的业务所收购或与该

业务相关所使用的所有资产、各项事业及财产的接管人和管理人。

一审法院认为，汉枫常绿公司及安永公司均是在加拿大合法注册并有效存续的公司，其与鹏程肥业公司因股权转让纠纷提起的诉讼属涉外民事诉讼。依照《中华人民共和国民事诉讼法》第二百五十九条之规定，在中华人民共和国领域内进行涉外民事诉讼，程序方面适用《中华人民共和国民事诉讼法》涉外编的规定。鹏程肥业公司、汉枫常绿公司没有就合同争议达成管辖协议，也没有协议选择处理合同争议所适用的准据法，但由于四被告之一的汉枫肥料公司住所地在中华人民共和国黑龙江省尚志市，依照《中华人民共和国民事诉讼法》第二十一条、《最高人民法院关于涉外民商事案件诉讼管辖若干问题的规定》第一条之规定，一审法院对本案享有管辖权。因本案合同履行地在中华人民共和国境内，依照《中华人民共和国民法通则》第一百四十五条第二款之最密切联系原则的规定，本案在实体方面适用中华人民共和国的法律。

归纳双方当事人的诉辩主张，本案争议焦点是：1.鹏程肥业公司与汉枫常绿公司签订的《股权转让协议书》是否符合法定解除条件；2.如解除条件成就，四被告应承担何种责任。鹏程肥业公司与汉枫常绿公司于2014年8月8日签订的《股权转让协议书》是双方真实意思表示，该协议依法成立。根据《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》第一条规定："当事人在外商投资企业设立、变更等过程中订立的合同，依法律、

行政法规的规定应当经外商投资企业审批机关批准后才生效的，自批准之日起生效；未经批准的，人民法院应当认定该合同未生效。”汉枫肥料公司系外商投资企业，鹏程肥业公司与汉枫常绿公司就汉枫肥料公司股权转让所签订的协议，依法应当经审批机关批准后生效，现该协议未经审批机关批准，故未生效，未生效的协议对签约双方当事人均不具有法律约束力。根据规定，案涉股权转让方汉枫常绿公司与外商投资企业汉枫肥料公司负有报批义务，但至今其未向审批机关履行报批义务，根据《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》第五条规定，“外商投资企业股权转让合同成立后，转让方和外商投资企业不履行报批义务，经受让方催告后在合理的期限内仍未履行，受让方请求解除合同并由转让方返还其已支付的转让款、赔偿因未履行报批义务而造成的实际损失的，人民法院应予支持”，故对股权受让方鹏程肥业公司请求解除合同并由转让方汉枫常绿公司返还已支付的股权转让款及利息损失予以支持。关于利息起算时间问题，如前所述，案涉《股权转让协议书》未生效，汉枫常绿公司占有使用1240万元没有法律依据，由于此笔款项支付时间为2014年8月28日，故应从该日的次日起算利息。关于安永公司、汉枫肥料公司、于薪铎应否承担连带责任问题，因安永公司系汉枫常绿公司财产接管人和管理人、汉枫肥料公司系案涉股权转让的标的公司、于薪铎系案涉《股权转让协议书》汉枫常绿公司一方的授权签字人及汉枫肥料公司的法定代表人，该三方当事人均非案

涉合同的相对人及依法律规定和合同约定应承担相关责任的第三人，鹏程肥业公司主张由安永公司、汉枫肥料公司、于薪铎承担连带给付责任于法无据，不予支持。依据《合同法》第三十二条、《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》第一条和第五条、《中华人民共和国民事诉讼法》第二百五十九条规定，判决：一、解除鹏程肥业公司与汉枫常绿公司于2014年8月8日签订的《股权转让协议书》；二、汉枫常绿公司于判决生效之日起10日内向鹏程肥业公司返还股权转让款1240万元人民币及利息（以1240万元人民币为基数，按照中国人民银行发布的同期同类贷款基准利率计算，自2014年8月29日起至判决确定的自动履行期限内实际给付之日止）；三、驳回鹏程肥业公司其他诉讼请求。

本院二审期间，鹏程肥业公司向本院提交了汉枫肥料公司工商登记档案及哈尔滨市经济合作促进局哈经合审发（2006）26号批复文件。意在证明：汉枫肥料公司在股权转让时经过了哈尔滨市经济合作促进局的审批，故案涉股权转让亦应经过哈尔滨市经济合作促进局的批准才能生效。

汉枫常绿公司对该证据的质证意见为：对真实性无异议，但认为与本案无关，该文件所批复的对象并非本案当事人，审批内容系有关合营事项，而非本案争议的股权转让。

本院的认证意见为：鹏程肥业公司举证的该份证据能够证明汉枫肥料公司在向其他公司转让股权时经过了哈尔滨市经济合作

促进局的审批，但与本案争议的股权转让无关，与本案不具有关联性，本院不予采信。

汉枫常绿公司、安永公司均未向本院提交新证据。

二审另查明：2014年8月8日，汉枫常绿公司（甲方）与鹏程肥业公司（乙方）签订《股权转让协议书》，其中关于付款方式及时间的约定为：3.3.1 协议签订之日起七个工作日内，乙方向甲方支付总价款的5%，即1240万元人民币或等值美元（按付款之日中国人民银行公布的基准汇率折算）；3.3.2 协议 3.3.1 部分所述的付款，甲方将作为履约保证金，如果乙方未能按照本协议的条款规定完成该交易，除相关法律规定甲方可享有的补救措拖外，甲方有权保留履约保证金；3.3.3 甲方股东会批准或法庭批准本次股权交易后十个工作日内，乙方再向甲方支付总价款的15%，即3720万元人民币或等值美元。交易完成后十个工作日内，乙方应支付甲方总价款的剩余80%，即1.984亿元人民币或等值美元。关于股权转让报批及办理手续的约定为：3.4.1 本协议签署之日起45到60日内，甲方应负责组织召开甲方股东会，以征求股东同意完成该交易，或者甲方寻求加拿大法庭批准完成该交易，甲方拟定于该协议签署后两周内寻求法庭对该交易的批准，乙方对此知情；3.4.3 在甲方股东批准完成本次交易之日或者法庭批准了本次交易之日起30个工作日内，甲方应尽商业合理之努力配合乙方完成目标公司董事会的改组，并配合签署股权转让的全部法律文件；3.4.4 在按照协议第 3.4.3 条约定完成本次股权

转让的全部法律文件之起3日内，甲方应向批准机关报批，并协助乙方按照中国法律、法规及时向有关机关办理股权转让登记。

2015年2月11日，中国民生银行股份有限公司哈尔滨分行作为托管方，与买方鹏程肥业公司、卖方汉枫常绿公司签订《交易资金托管协议》，主要内容为：买方在托管行开立人民币托管账户，卖方开立收款账户用于接收由托管账户划入的资金；协议签订后5个营业日内，买方应将人民币3720万元（第一笔托管资金）存入托管账户，更新的营业执照下发之日后10个营业日内，买方应将人民币14880万元（第二笔托管资金）存入托管账户；托管资金用于支付交易合同项下的转让价款，不得用于支付其它未经协议当事人一致同意的其他任何用途；在第一笔托管资金付至收款账户之前，卖方没有义务提交更新营业执照的申请，在第二笔托管资金付至收款账户之前，卖方有权保留全部股权转让批复和更新的营业执照原件。该协议签订后，鹏程肥业公司向托管账户汇入第一笔托管资金款1000万元，剩余2720万元未给付。

二审庭审中，鹏程肥业公司主张未足额支付第一笔托管资金的原因在于汉枫常绿公司未履行报批手续，其担心继续付款可能会造成鹏程肥业公司损失。

汉枫常绿公司在二审庭审中，明确表示同意鹏程肥业公司解除合同的诉讼请求，但认为根据合同约定，其有权保留鹏程肥业公司已交纳的1240万元履约保证金。

除此，本院二审查明的其他事实与一审判决认定的事实一

致。

本院认为，根据双方当事人的诉辩主张，本案争议的焦点问题在于汉枫常绿公司是否有权行使先履行抗辩权。

《合同法》第六十七条规定，当事人互负债务，有先后履行顺序，先履行一方未履行的，后履行一方有权拒绝其履行要求，先履行一方履行债务不符合约定的，后履行一方有权拒绝其相应的履行要求。案涉《股权转让协议书》约定，汉枫常绿公司申请法庭批准本次股权交易后十个工作日内，鹏程肥业公司应支付总价款的15%，即3720万元人民币；在法庭批准本次交易之日起30个工作日内，汉枫常绿公司应配合鹏程肥业公司完成目标公司董事会的改组，并配合签署股权转让的全部法律文件；完成本次股权转让的全部法律文件之起3日内，汉枫常绿公司应向批准机关报批，并协助鹏程肥业公司按照中国法律、法规及时向有关机关办理股权转让登记。据此能够认定，双方约定的履行顺序为：汉枫常绿公司取得加拿大法庭对本次股权交易的批准—鹏程肥业公司向汉枫常绿公司支付3720万元的股权转让款—汉枫常绿公司配合鹏程肥业公司完成目标公司董事会的改组及股权转让法律文件的签署—汉枫常绿公司向批准机关申请批准该次股权交易行为。而鹏程肥业公司既未按《股权转让协议书》约定的时间支付15%的股权转让价款，亦未按资金托管协议约定的时间足额支付第一笔托管资金，其违约在先，汉枫常绿公司有权拒绝其关于向批准机关报批的履行要求。根据《股权转让协议书》的约定，如果

因鹏程肥业公司未按协议约定完成该交易，汉枫常绿公司有权保留1240万元的履约保证金，汉枫常绿公司要求鹏程肥业公司返还履约保证金的理由不能成立，本院不予支持。鹏程肥业公司关于因汉枫常绿公司未履行报批程序，其拒绝支付第一笔股权转让价款系履行不安抗辩权的主张，缺乏法律依据，本院不予支持。鉴于汉枫常绿公司在二审诉讼中同意鹏程肥业公司要求解除《股权转让协议书》的诉讼请求，本院对此予以支持。

2016年9月，全国人大常委会作出《关于修改<中华人民共和国外资企业法>等四部法律的决定》，将不涉及国家规定实施准入特别管理措施的外商投资企业设立及变更事项，由审批改为备案管理。备案管理不同于行政许可，属于告知性备案，不是外商投资企业办理设立及变更手续的前置条件。根据商务部于2016年10月发布的《外商投资企业设立及变更备案管理暂行办法》的规定，对《外商投资产业指导目录》中非限制类和禁止类领域的外商投资企业的设立、变更，不再要求报审批机关批准。故案涉股权变更无需报审批机关批准，一审判决以未经审批机关批准而认定《股权转让协议书》无效，属适用法律错误。

综上，一审判决认定事实不清，适用法律错误，应予纠正。汉枫常绿公司的上诉理由成立，本院对其上诉主张予以支持。依照《中华人民共和国民事诉讼法》第一百七十条第一款第二项的规定，缺席判决如下：

一、维持哈尔滨市中级人民法院（2015）哈涉外商初字第7

号民事判决第一项；

二、变更哈尔滨市中级人民法院（2015）哈涉外商初字第7号民事判决第二项、第三项为：驳回哈尔滨鹏程肥业有限公司的其他诉讼请求。

一、二审案件受理费200,226.04元，财产保全费5000元，由哈尔滨鹏程肥业有限公司负担。

本判决为终审判决。

审 判 长　　马文静
审 判 员　　包雪晶
审 判 员　　李　锐

黑龙江省高级人民法院

二〇一七年九月十八日

本件与原本核对无异

法官助理　　付兴驰
书 记 员　　吕金玲

This is **Appendix "B"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

Heilongjiang Higher People's Court

Civil Judgment

Heilongjiang Higher People's Court of the People’s Republic of China

Civil Judgment

(2017) Heiminzhong No. 270

Appellant (the defendant in the first instance): Hanfeng Evergreen Inc., Canada, address: Toronto, Ontario, Canada.

Designated Agent Ad Litem: Guan Liu, lawyer from Heilongjiang Honghui Law Firm.

Appellee (the plaintiff in the first instance): Harbin Pengcheng Fertilizer Industry Co., Ltd., located at No. 28 Shangwu Road, Shangzhi Town, Shangzhi City, Heilongjiang Province, China.

Legal Representative: Zhang Min, General Manager of the company.

Designated Agent Ad Litem: Li Xinyi, lawyer from Beijing Dacheng (Harbin) Law Firm.

Designated Agent Ad Litem: Sheng Yutao, lawyer from Beijing Dacheng (Harbin) Law Firm.

Defendant in the First Instance: Ernst & Young Inc., located at No. 222, Bay Street, Toronto, Canada.

Person-in-Charge: Murray A. McDonald, Chairman of this company.

Designated Agent Ad Litem: Jiao Kaijun, lawyer from Heilongjiang Honghui Law Firm.

Defendant in the First Instance: Hanfeng Slow Release Fertilizer Co., Ltd., located at No.1 Hanfeng Road, Shangzhi Economic Development Zone, Heilongjiang Province, China.

Legal Representative: Yu Xinduo, Chairman of this company.

Defendant in the First Instance: Yu Xinduo, male, born on June 15, 1952, Han Nationality, Chairman of Hanfeng Slow Release Fertilizer Co., Ltd., address: 3-6, No. 38 Lianqing Lane, Zhongshan District, Dalian City, Liaoning Province, China.

The Appellant Hanfeng Evergreen Inc., Canada (hereinafter referred to as Hanfeng Evergreen Inc.), declines to accept the Civil Judgment with a number of (2015) Hashewaishangchuzi No. 7 passed by Harbin Intermediate People's Court in respect of the equity transfer contract dispute case involving the Appellee Harbin Pengcheng Fertilizer Industry Co., Ltd. (hereinafter referred to as Pengcheng Fertilizer Industry Co., Ltd.) and the defendants in the first instance, i.e. Ernst & Young Inc.(hereinafter referred to as Ernst & Young Inc.), Hanfeng Slow Release Fertilizer Co., Ltd. (hereinafter referred to as Hanfeng Fertilizer Co., Ltd.) and Yu Xinduo, and hereby files the appeal to the court. After case filing on May 15, 2017, the court formed collegial panel in accordance with the laws and tried the case in public session. Appearing at the court for debate were Guan Liu, designated agent ad litem of the Appellant Hanfeng Evergreen Inc., Li Xinyi and Sheng Yutao designated agents ad litem of the Appellee Pengcheng Fertilizer Industry Co., Ltd. and Jiao Kaijun, designated agent ad litem of Ernst & Young Inc. as the defendant in the first instance. The defendants in the first instance Hanfeng Fertilizer Co., Ltd. and Yu Xinduo failed to appear at the court for debate after being summoned by the court by law to appear. The case has now come to a close.

The appeal of Hanfeng Evergreen Inc.: to quash Items 1 and 2 in the first-instance judgment, amend the judgment by law to require Pengcheng Fertilizer Industry Co., Ltd. to fulfill its contractual obligations under the *Equity Transfer Agreement* and pay Hanfeng Evergreen Inc. the amount for the equity transaction, and to reject the claims laid by Pengcheng Fertilizer Co., Ltd. in the first instance. Facts and Reasons: 1. Law application mistake in the first instance, the fact finding mistake in the first-instance judgment concerning "the conclusion of *Equity Transfer Agreement*” by law and its failure to become effective, the agreement that failed to become effective not being legally binding on both parties to the agreement”. According to the provisions of Article 8 of the *Contract Law of the People's Republic of China* (hereinafter referred to as the "*Contract Law*"), a contract concluded by law shall be legally binding on the parties to the contract, and the parties shall fulfill their obligations as agreed in the contract and shall not change or cancel the contract arbitrarily. The conclusion of a contract shall be based on the mutual agreement of parties to the contract. 2. Unclear fact-finding in the first instance. First, it is only found that Hanfeng Evergreen Inc. failed to perform approval obligations, but it is not found that Pengcheng Fertilizer Co., Ltd. breached the agreement. In the first-instance judgment, the provisions of Article 5 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises* were misquoted. Actually, Pengcheng Fertilizer Co., Ltd. neither fulfilled its obligation of paying 15% of the total transaction amount to Hanfeng Evergreen Inc. as agreed in the *Equity Transfer Agreement* nor fulfilled its obligation of depositing a trust fund of 37.20 million Yuan in the custodian account in the custodian bank according to the *Transaction* Fund*s Trusteeship Agreement*, constituting its violation, based on which Hanfeng Evergreen Inc. can exercise its counterargument right for security. Second, the provisions of Article 1 of the

Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises were not fully quoted. According to the provisions of this article, the fact that a contract has been determined not to have entered into effect due to its not having been approved shall not affect the performance by the concerned parties of the provisions of the contract on their approval obligations or the validity of the provisions specified therein relating to their approval application obligations.

Pengcheng Fertilizer Co., Ltd. contends: clear fact finding in the first-instance judgment and correct law application. The *Equity Transfer Agreement* has signed and even though the transfer contract hasn't been approved, it should be deemed that the "Approval Application” obligation has been generated since the contract was concluded. The party with the approval application obligation should have perform such obligation immediately after the contract was concluded, or the parties concerned might maliciously prevent the contract from taking effect by not assisting in handing the "Approval Application" procedures after obtaining the transfer amount. According to the definite relevant provisions of the Supreme People's Court, for a contract that can become effective only after approval procedures are handled, if the approval procedures have been handled before the closing of arguments in the court of first instance, the contract shall be deemed to be effective.

Ernst & Young Inc. contends that according to the court order made by Ontario Supreme Court, Canada, Ernst & Young Inc., as the "Receiver" of Hanfeng Evergreen Inc., shall not have any responsibility or obligation. Ernst & Young Inc. is not a party to the *Equity Transfer Agreement* or the *Transaction Funds Trusteeship Agreement*, and it shall not fulfill any contractual obligations or assume any liability.

The claims laid by Pengcheng Fertilizer to the court of first instance: 1. to terminate the *Equity Transfer Agreement* signed between Pengcheng Fertilizer Co., Ltd. and Hanfeng Evergreen Inc.; 2. to require Hanfeng Evergreen Inc., Ernst & Young Inc., Hanfeng Fertilizer Company and Yu Xinduo to return the 5% of the transfer amount that has been paid, i.e. 12.4 million Yuan, pay interests of 652170 Yuan for the period from the date of account transfer to the date of litigation based on the loan interest rate released by the People's Bank of China for the corresponding period repayment and continue to pay the interests for the period from the date of litigation to the date of repayment; 3. the litigation costs should be borne by Hanfeng Evergreen Inc., Ernst & Young Inc., Hanfeng Fertilizer Company and Yu Xinduo.

Fact found by the court of first instance: on August 8, 2014, Pengcheng Fertilizer Co., Ltd. signed the *Equity Transfer Agreement* with Hanfeng Evergreen Inc., in which both parties agreed that Pengcheng Fertilizer Co., Ltd. shall acquire 100% of the equity of Hanfeng Fertilizer Company, a wholly-owned subsidiary of Hanfeng Evergreen Inc., with the total transfer price being 248 million Yuan, 198.4 million Yuan (80% of the total transfer price) of it to be paid by cash remittance to the account designated by Hanfeng Evergreen Inc., the remaining amount of 49.6 million Yuan (20% of the total transfer price) to be paid in the form of payment undertaking letter issued by Pengcheng Fertilizer Co., Ltd. Within 7 working days after the signing of this agreement, Pengcheng Fertilizer Co., Ltd. shall pay 5% of the total transfer price, i.e. 12.40 million Yuan to Hanfeng Evergreen Inc. as performance bond; if Pengcheng Fertilizer Co., Ltd. fails to complete this transaction according to the terms of this agreement, besides enjoying remedial measures according to relevant legal provisions, Hanfeng Evergreen Inc. shall have the right to remain the performance bond. As agreed in the agreement, Pengcheng Fertilizer Co., Ltd. shall pay another 15% of the total transfer price, i.e. 37.20 million Yuan or equivalent amount in US dollars within ten working days after this equity transaction being approved by the shareholders' meeting of Hanfeng Evergreen Inc. or by the court. Within ten working days after this transaction is completed (As agreed in Article 1.6 of this agreement, this transaction shall be deemed completed when Hanfeng Evergreen Inc. has changed the subject of this agreement that is registered in Harbin Municipal Administration for Industry and Commerce to registration under the name of Pengcheng Fertilizer Co., Ltd. or a subsidiary designated by Pengcheng Company), Pengcheng Fertilizer Co., Ltd. shall pay the rest 80% of the total price, of which 60% shall be paid in cash to the account designated by Hanfeng Evergreen Inc. and 20% shall be in the form of the payment undertaking letter attached to this agreement.

After the signing of agreement, on August 20, 2014, the Commercial Case Court of Ontario Superior Court, Canada approved the abovementioned *Equity Transfer Agreement*.

On August 28, 2014, Pengcheng Fertilizer Co., Ltd. entrusted Greentown Henderson (Group) Co., Ltd., which is outside the case, to remit 2,000,140 US dollars (both parties recognized that this sum was the 12.4 million Yuan performance bond involved in this case) to Hanfeng Evergreen Inc. After that, due to the restrictions by the provisions of foreign exchange control, Pengcheng Fertilizer didn't pay any amount to Hanfeng Evergreen Inc.

On February 13, 2015, Pengcheng Fertilizer Co., Ltd. signed the *Transaction* Funds Trusteeship Agreement with Yu Xinduo, authorized representative of Hanfeng Evergreen Inc. and Harbin Branch of China Minsheng Banking Corp. Ltd., and Pengcheng Fertilizer Co., Ltd. deposited trust funds of 10 million Yuan in the custodian bank. This sum hasn't been remitted to Hanfeng Evergreen Inc. and has been recovered by Pengcheng Fertilizer Co., Ltd.

Hanfeng Evergreen Inc. is a legally registered and validly existing company in Canada; Ernst & Young Inc. is a legally registered and validly existing company in Canada; Pengcheng Fertilizer Co., Ltd. is a legally registered and validly existing limited liability company in the People's Republic of China. On August 20, 2014, Ontario Supreme Court, Canada, made a court order (appointment order) appointing Ernst& Young Inc. as the receiver and custodian (referred to as the "Receiver") of all assets, undertakings or properties acquired by the business operated by Hanfeng Evergreen Inc. or used relating to this business.

The court of the first instance is of the opinion that Hanfeng Evergreen Inc. and Ernst &Young Inc. are both legally registered and validly existing companies in Canada and their litigation against Pengcheng Fertilizer Co., Ltd. has arisen from the equity transfer dispute is a foreign-related civil litigation. According to the provisions of Article 259 of the *Civil Procedure Law of the People's Republic of China*, the provisions of the foreign-related civil procedures in the *Civil Procedure Law of the People's Republic of China* shall apply to a foreign-related civil litigation in the territory of the People's Republic of China in terms of procedures. Pengcheng Fertilizer Co., Ltd. and Hanfeng Evergreen Inc. have neither reached a jurisdiction agreement concerning the contract dispute nor chosen a law applicable to the contract dispute through consultation. However, as the residence of Hanfeng Fertilizer Company, one of the four defendants, is in Shangzhi City, Heilongjiang Province, the People's Republic of China, according to Article 21 of the *Civil Procedure Law of the People's Republic of China* and Article 1 of the Provisions of the *Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises*, the court of the first instance has jurisdiction over this case. As the contract involved in this case is performed in e territory of the People's Republic of China, according to the provisions in the closest connection principle in Item 2 of Article 145 of the *General Rules of the Civil Law of the People's Republic of China*, Chinese laws are applicable to this case in terms of entity.

Based on the summarized plea claims of both sides, the dispute focuses are as follows: 1. whether the *Equity Transfer Agreement* signed between Pengcheng Fertilizer Co., Ltd. and Hanfeng Evergreen Inc. meet the statutory conditions for termination; 2. if the termination conditions are met, what liabilities these four defendants should bear. The *Equity Transfer Agreement* signed between Pengcheng Fertilizer Co., Ltd. and Hanfeng Evergreen Inc. on August 8, 2014 is the expression of the true intention of both sides, so this agreement was established by law. According to the provisions in Article 1 of the Provisions of the *Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises*, "Contracts entered into by the parties to an FIE during the course of its establishment, or upon later changes to the FIE or at any other such time, which, in accordance with applicable laws and administrative regulations, shall become effective only approval by the FIE examination and approval authority (the FIE Approval Authority), shall come into effect on the date of such approval; where approval has not been obtained, the people's court shall determine that the contract has not yet become valid." Hanfeng Fertilizer Company is a foreign-invested company, and the agreement signed between Pengcheng Fertilizer and Hanfeng Evergreen Inc. concerning the transfer of the equity of Hanfeng Fertilizer Company shall become effective after approval is obtained from the examination and approval authorities by law. Currently, as this agreement hasn't been approved by the examination and approval authorities yet, it hasn't become effective, so this agreement which is not in force is not legally binding on either party to the agreement. According to the provisions, Hanfeng Evergreen Inc., as the equity transferor, and the foreign-invested enterprise Hanfeng Fertilizer Company involved in this case, shall have the obligation to submit for approval, but they haven't performed their obligations to submit to the examination and approval authorities for approval. According to Article 5 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises*, "After the conclusion of a foreign-invested enterprise equity transfer contract, if the transferor and the foreign-invested enterprise fail to fulfill the obligation of obtaining the approval or fail to do so within a reasonable time limit after receiving an exigent notice form the transferee, and the transferee files a request with the court to resolve the contract and requires the transferor to return the transfer price paid or compensate for the actual losses caused thereto due to its failure to fulfill the obligation of obtaining the approval, the people's court shall uphold such request," the court shall uphold the equity transferee Pengcheng Company's request to terminate the contract and require the transferor Hanfeng Evergreen Inc. to return the paid equity transfer amount and compensate for the interest losses incurred from this. As for the issue concerning the starting time for interest calculation, as mentioned above, the *Equity Transfer Agreement* hasn't become effective yet, Hanfeng Evergreen Inc. has no legal basis for occupation and use of the 12.4 million Yuan involved in this case. As this amount was paid on August 28, 2014, the interest shall be calculated starting from the day after this date. As for the issue whether Ernst & Young Inc., Hanfeng Fertilizer Company and Yu Xinduo should bear joint and several liabilities, as Ernst & Young Inc. is the receiver and custodian of the properties of Hanfeng Evergreen Inc., Hanfeng Fertilizer Company is the target company of the equity transfer involved in this case, and Yu Xinduo is the authorized signatory of Hanfeng Evergreen Inc., one party to the *Equity Transfer Agreement* involved in this case and the legal representative of Hanfeng Fertilizer Company, these three parties are not relative persons of the contract involved in this case or the third persons that should assume relevant liabilities according to legal provisions and contract provisions, there is no basis for Pengcheng Fertilizer Co., Ltd.'s claim that Ernst & Young Inc., Hanfeng Fertilizer Company and Yu Xinduo should bear joint and several repayment liabilities. Therefore, the court shall not uphold it. According to Article 32 of the *Contract Law of the People's Republic of China*, Articles 1 and Article 5 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises* and Article 259 of *Civil Procedure Law of the People's Republic of China*, the judgment is as follows: 1. The *Equity Transfer Agreement* signed on August 8, 2014 between the plaintiff Harbin Pengcheng Fertilizer Industry Co., Ltd. and the defendant Hanfeng Evergreen Inc., Canada, shall be terminated; 2. Hanfeng Evergreen Inc., Canada, shall return the equity transfer amount of 12.4 million Yuan and interest (based on the 12.4 million Yuan, calculated on the basis of the benchmark interest rate for the loan of the same kind over the same period that was released by the People's Bank of China, starting from August 29, 2014 to the actual repayment date within the automatic fulfillment period determined by this judgment); 3. The other claims of Pengcheng Fertilizer Co., Ltd. shall be rejected.

During the second trial of the court, Pengcheng Fertilizer Co., Ltd. submitted the industrial and commercial registration file of Hanfeng Fertilizer Company and the approval document (hajingheshenfa (2006) No. 26) of Harbin Economic Cooperation and Promotion Bureau, with the aim to prove that Hanfeng Fertilizer Company's equity transfer was approved by Harbin Economic Cooperation and Promotion Bureau, so the equity transfer involved in the case shall also become effective after being approved by Harbin Economic Cooperation and Promotion Bureau.

The cross-examination opinion of Hanfeng Evergreen Inc. on the evidence: no objection to the authenticity of the evidence, but it has nothing to do with this case. The object involved in the approved document is not a party involved in this case, and the approval content is relating to joint-venture -related matters, but not the equity transfer involved in this case.

The court's certification opinion: The evidence presented by Pengcheng Fertilizer Co., Ltd. can prove that Hanfeng Fertilizer Company obtained the approval of Harbin Economic Cooperation and Promotion Bureau for equity transfer to other companies, but that it has nothing to do with the equity transfer involved in this case. As it lacks relevance to this case, the court shall not adopt it.

Hanfeng Evergreen Inc. and Ernst & Young Inc. didn't submit new evidence to the court.

It is found in the second instance that on August 8, 2014, Hanfeng Evergreen Inc. (Party A) signed the *Equity Transfer Agreement* with Pengcheng Fertilizer Co., Ltd. (Party B), based on which the payment method and time are agreed as follows: Article 3.3.1: Within 7 working days after the signing of this agreement, Party B shall pay Party A 5% of the total transfer price, i.e. 12.40 million Yuan or equivalent amount in US dollars (calculated on the basis of the benchmark interest rate released by the People's Bank of China on the date of payment); Article 3.3.2: According to the parts relating to payment in Articles 3.3.1, Party A shall use it as performance bond. if Party B fails to complete this transaction according to the terms of this agreement, besides enjoying remedial measures according to relevant legal provisions, Party A shall have the right to remain the performance bond; Article 3.3.3: Party B shall pay Party A another 15% of the total transfer price, i.e. 37.20 million Yuan or equivalent amount in US dollars within ten working days after this equity transaction being approved by Party A's shareholder meetings or by the court. Within ten working days after this transaction is completed, Party B shall pay Party A the rest 80% of total transfer price, i.e. 198.4 million Yuan or equivalent amount in US dollars. The equity transfer approval application and procedures to go through are agreed as follows: Article 3.4.1: Within 45-60 days after agreement signing, Party A shall be responsible for organizing the convening of Party A's shareholders' meeting to seek the shareholders' consent to complete this transaction or Party A shall seek approval from a Canadian court to complete this transaction. Party A was schedule to seek approval from a Canadian court to complete this transaction within two weeks after signing the agreement and Party B is aware of it; Article 3.4.3: within 30 working days after this transaction is approved by Party A's shareholders' or by the court, Party A shall make commercially reasonable efforts to assist Party B in completing the reorganization of the board of the directors of the target company and signing all legal documents for equity transfer; Article 3.4.4: Within 3 days after completing all legal documents for the equity transfer as agreed in Article 3.4.3, Party A shall submit to the examination and approval authorities for approval and assist Party B in handling equity transfer registration with relevant authorities in a timely manner according to Chinese laws and regulations.

On February 11, 2015, Harbin Branch of China Minsheng Banking Corp. Ltd., as the trustee, signed the *Transaction* Funds *Trusteeship Agreement* with the Buyer Pengcheng Fertilizer Co., Ltd. and the Seller Hanfeng Evergreen Inc., with the main contents as follows: the Buyer shall open a RMB custodian bank in the custodian bank and the Seller shall open a receiving account to receive the fund paid from the custodian account; within 5 business days after signing of the agreement, the Buyer shall deposit 37.20 million (the first sum of trust fund) Yuan in the custodian account and within 10 business days after the updated business license is issued, the Buyer shall deposit 148.8 million Yuan (the second sum of trust fund) in the custodian account; the custodian bank shall be used to pay the transfer account under the transaction contract and shall not be used to make payment for other purposes with the unanimous consent of the parties to the agreement; before the first sum of trust fund is paid to the receiving account, the Seller shall have no obligation to submit application for updating the business license, and before the second sum of trust fund is paid to the receiving bank, the Seller shall have the right to retain all equity transfer approvals and the original of the updated business license. After agreement signing, Pengcheng Fertilizer Co., Ltd. paid 10 million Yuan to the custodian account and failed to pay the remaining 27.20 million Yuan.

In the second trial, Pengcheng Fertilizer Co., Ltd. asserted that the reason that it failed to pay the first sum of trust fund in full amount was that Hanfeng Evergreen Inc. didn't fulfill the approval application procedures and Pengcheng Fertilizer Co., Ltd. was worried that continuing to make payment might cause loss to itself.

In the second trial, Hanfeng Evergreen Inc. clearly agreed to Pengcheng Fertilizer Co., Ltd.'s claim to terminate the contract but thought that it had right to remain the performance bond of 12.4 million Yuan paid by Pengcheng Fertilizer Co., Ltd. as agreed in the contract.

In addition, the other facts found by the court in the second instance are consistent with the facts affirmed in the first-instance judgment.

The court is of the opinion that based on the plea claims of both sides, the focus issue disputed in this case lies in whether Hanfeng Evergreen Inc. has the right to exercise the counterargument right for security.

It is stipulated in Article 67 of the *Contract Law of the People's Republic of China*, "Where both parties have obligations toward each other and there is an order of priority in respect of the performance, and the party who is to perform first fails to perform, the party who is to perform later has the right to reject the other party’s demand for performance. If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is to perform later has the right to reject the other party’s demand for corresponding performance." As agreed in the *Equity Transfer Agreement*, Pengcheng Fertilizer Co., Ltd. shall pay 15% of the total price, i.e. 37.20 million Yuan within ten working days after Hanfeng Evergreen Inc.'s application to court for equity transaction approval; within 30 days after this transaction is approved by court, Hanfeng Evergreen Inc. shall assist Pengcheng Fertilizer Co., Ltd. in completing the reorganization of the board of the directors of the target company and signing all legal documents for equity transfer; within 3 days after completing all legal documents for the equity transfer, Hanfeng Evergreen Inc. shall submit to the examination and approval authorities for approval and assist Pengcheng Fertilizer Co., Ltd. in handling equity transfer registration with relevant authorities in a timely manner according to Chinese laws and regulations. Based on which it can be concluded that the performance order as agreed by two sides is as follows: Hanfeng Evergreen Inc. to obtain the Canadian court's approval of this equity transaction - Pengcheng Fertilizer Co., Ltd. to pay Hanfeng Evergreen Inc. a transfer amount of 37.2 million Yuan - Hanfeng Evergreen Inc. to assist Pengcheng Fertilizer Co., Ltd. in completing the reorganization of the board of the directors of the target company and signing all legal documents for equity transfer - Hanfeng Evergreen Inc. to apply to the approval authorities for approval of this equity transaction act. However, Pengcheng Fertilizer Co., Ltd. neither paid 15% of the equity transfer amount at the time as agreed in the *Equity Transfer Agreement* nor paid the first sum of trust fund in full amount at the time as agreed in the *Transaction* Funds *Trusteeship Agreement*, failing to perform its obligations as agreed first, so Hanfeng Evergreen Inc. shall have the right to refuse to fulfill its obligation to apply to the approval authorities for approval as required by Pengcheng Fertilizer Co., Ltd. As agreed in the *Equity Transfer Agreement*, if Pengcheng Fertilizer Co., Ltd. fails to complete the transaction as agreed in the agreement, Hanfeng Evergreen Inc. shall have the right to retain the performance bond of 12.4 million Yuan. Therefore, Pengcheng Fertilizer Co., Ltd. [Translator note: - the court decision appears to have mixed these two entities in this place] has no rational reason to require Hanfeng Evergreen Inc. to return the performance bond and the court shall not uphold it. Pengcheng Fertilizer Co., Ltd's refuse to pay its first sum of equity transfer amount due to Hanfeng Evergreen Inc.'s failure to go through application approval procedures is the claim of unsafe right of defense, and the court shall not uphold it due to the lack of legal basis. In view of the fact that Hanfeng Evergreen Inc. agreed to Pengcheng Fertilizer Co., Ltd.'s claim to terminate the *Equity Transfer Agreement* in the litigation of second instance, the court shall uphold it.

In September 2016, the Standing Committee of the National People's Congress (NPC) made the *Decision on Amending Four Laws including the Law of the People's Republic of China on Foreign-Capital Enterprises*, subjecting the formation or modification of foreign-funded enterprise which doesn't involve the implementation of special access management measures as prescribed by the state to recordation administration in lieu of approval. The recordation administration is different from administrative license, and it is informative recordation, not a prerequisite for foreign-funded enterprises handling establishment and modification procedures. According to the provisions of the *Interim Measures of the Administration of Establishment and Modification Registration of Foreign-Funded Enterprises* released by Commerce Department on October 2016, the establishment and modification of the foreign-funded enterprises not involved in restricted or prohibited industries specified in the

Catalogue for the *Guidance of* Foreign *Investment Industries* shall not be submitted to the examination and approval authorities for approval again. Therefore, the equity modification involved in this case does not require the approval from the examination and approval authorities. That the *Equity Transfer Agreement* was affirmed to be invalid in the first-instance judgment due to not being approved by the examination and approval authorities is a law application error.

To sum up, the fact of unclear fact-finding and wrong law application in the first-instance judgment shall be correct. Hanfeng Evergreen Inc.'s reason for appeal is tenable, so the court shall uphold its appeal. According to the provisions of Item 2, Section 1, Article 170 of the *Civil Procedure* Law of the People's *Republic of China,* the default judgment is as follows:

1. To maintain Item 1 of the Civil Judgment (2015) Hashewaishangchuzi No. 7 of Harbin Intermediate People's Court;

2. To modify Items 2 and 3 of the Civil Judgment (2015) Hashewaishangchuzi No. 7 of Harbin Intermediate People's Court as reject the other claims of Harbin Pengcheng Fertilizer Co., Ltd.

The fees of 200,226.04 Yuan for accepting the case in the first instance and second instance and the property preservation fees of 5,000 Yuan shall be borne by Harbin Pengcheng Fertilizer Co., Ltd.

This judgment shall be final judgment.

Presiding Judge: Ma Wenjing

Judge: Bao Xuejing

Judge: Li Rui

Heilongjiang Higher People's Court

September 18, 2017

This copy is the same as the original.

Judgment Assistant: Fu Xingchi

Court Clerk: Lv Jinling

This is **Appendix "C"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

MOORE BARRISTERS
PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
Kenneth G. G. Jones, LL.B.
Nicholas P. Reinkeluers, B.A., J.D.

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October 18, 2017

VIA EMAIL to dmurdoch@stikeman.com

Dan Murdoch
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Dear Mr. Murdoch:

Re: Yu Xinduo et al ats Ernst & Young
Court File No. CV16-11325-00CL

1. I am advised that a letter has been circulated to the parties in the Chinese legal proceedings regarding a further appeal.

2. My clients' concerns about the ramifications of the Chinese legal proceedings include (a) potential exposure of Yu as a party to the proceedings and guarantor, and (b) the ability of the Plaintiff in the lawsuit against my clients to cover any costs in those proceedings, if same are dismissed.

3. As mentioned previously, I do not fully understand the procedures by which notices are given and documents are circulated by or in respect of the Chinese Court proceedings. I presume the above referenced letter has been sent to your client or to its counsel, but in case not, a copy is attached (in Mandarin and English). Similarly, I am not familiar with the further appeal rights, if any, which exists. Has your client received the above communications, and if so, what is its position regarding same?

4. Finally, and in any event, in light of what may be a potential uncertainty regarding the status/availability of the deposit funds, can you advise whether the Receiver agrees that the normal principles/jurisprudence regarding the Receiver's responsibility for the opposing

parties' legal fees, when the estate does not have sufficient assets to cover same, are applicable to the lawsuit against my clients?

5. Thank you for your consideration of the above.

Yours very truly,

MOORE BARRISTERS

David Moore

David C. Moore
DCM/rn

Enclosures (2)

大成 DENTONS

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116021, Dalian, China

大成 Salans FMC SNR Denton McKenna Long
dentons.cn

北京大成（大连）律师事务所
律 师 函

本律师函不影响权利人的任何权利和义务

致　加拿大汉枫常绿有限公司（Hanfeng Evergreen Inc），
　　安永有限公司(Ernst & Young Inc.)
　　汉枫缓释肥料有限公司
　　于薪铎 先生：

北京大成（大连）律师事务所受哈尔滨鹏程肥业有限公司（以下简称委托人）的委托，就委托人已支付的汉枫缓释肥料股权转让款事宜，特郑重致函如下：

一、委托人因收购汉枫缓释肥料股权与贵公司签订《股权转让协议》，并已经支付了人民币 1240 万元的股权转让款，后因该协议解除没有继续履行，股权收购未完成，贵公司收取的股权转让款也未归还给委托人。

二、委托人就上述事宜已经起诉贵公司要求返还股权转让款，该案件已经由黑龙江省高级人民法院二审做出民事判决书，没有支持委托人请求返还转让金的诉请。

三、经询问案件有关情况和审阅了相关证据之后，本律师认为二审法院黑龙江省高级人民法院做出的（2017）黑民终字 270 号判决存在明显错误：1、二审法院错误的认为《股权转让协议》未能履行是因为委托人未能按时付款，但本律师在查阅了中国相关法律规定后发现，未能付款的原因是贵公司迟迟未能办理中国政府有关机关的批复，没有批复委托人是无法完成境外汇款的，二审法院未能认清事实，错误的认定

委托人违约。2、《股权转让协议》已经解除，依据《最高人民法院关于审理外商投资企业纠纷案件若干问题的规定》，在协议解除之时，双方的《股权转让协议》因没有获得政府批复是未生效的，未生效的协议即代表合同约定条款未生效，对双方都没有法律约束力，5%的履约保证金约定自然不能再适用。二审法院忽略这一事实，适用法律错误。

鉴于二审法院作出如此错误的裁判文书，依据《中华人民共和国民事诉讼法》第二百条:当事人的申请符合下列情形之一的，人民法院应当再审:......(二)原判决、裁定认定的基本事实缺乏证据证明的;........(六)原判决、裁定适用法律确有错误的;

据此，本律师认为委托人完全可以上述法律规定向中华人民共和国最高人民法院按照审判监督程序提起再审申请，纠正二审法院错误的判决。贵公司切莫错误理解中国二审终审制，认为黑龙江省判决是不可更改的判决。

四、鉴于以上情况，本律师强烈建议贵公司不要随意处置委托人已经支付的 1240 万元的股权转让款。黑龙江省高院做出的判决存在明显错误，很有可能被最高人民法院按照审判监督程序予以纠正，如果在此之前，贵公司过早处置股权转让款，一旦案件被纠正，双方势必会进入到另一个追偿纠纷中，届时对贵我双方都会产生不必要的麻烦和巨额法律费用。因此强烈建议贵公司暂时不要处置委托人的股权转让款，待中国最高人民法院的裁定结果来决定如何处置，委托人善意提醒贵公司，希望贵公司能考虑我方建议。

本律师已经接受委托人的委托代为提起再审申请，相关材料已经准备妥当，下周就会联合其他委托律师向最高人民法院提起再审申请，稍候会将最高人民法院的受理案件通知书等其他相关文件发给贵公司。审判监督程序才是法律最后的救济手段，请贵公司耐心等待最高院的审

大成 DENTONS

理结果再行处置委托人股权转让款。

以上建议望贵公司慎重考虑！予以采纳！

特此函告！

北京大成（大连）律师事务所

律师：刘文琛

2017年10月13日

联系方式：刘文琛律师，15542370577

大成 DENTONS

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大成 Salans FMC SNR Denton McKenna Long
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大成 Salans FMC SNR Denton McKenna Long Lawyer's Letter

This Lawyer's Letter does not affect any rights or obligations of the oblige

To: Hanfeng Evergreen Inc.

Ernst & Young Inc.

Mr. Yu Xinduo

As engaged by Harbin Pengcheng Fertilizer Co., Ltd. (hereinafter referred to as the "Entruster"), with respect to the fund already paid by the Entruster for the purpose of acquiring the equity share of Hanfeng Slow-Release Fertilizer ("Fund"), 大成 Salans FMC SNR Denton McKenna Long hereby issued the official letter as below:

I. The Entruster entered into the Equity Share Transfer Agreement with your company for the purpose of acquiring the equity share of Hanfeng Slow-Release Fertilizer, and has already paid RMB 12,400,000 as partial consideration. The equity acquisition was not able to be accomplished due to the termination of the Agreement, yet the Fund received by your company was not returned to the Entruster.

II. The Entruster has already brought the above case to court requiring your company to return the Fund, and civil judgment was issued by Heilongjiang High People's Court at retrial without supporting the litigation request of the Entruster for returning the Fund.

III. Upon inquiry of the relevant situation about this case and review of the relevant evidence, I believe that there is obvious mistake in the (2017)

HMZZ No. 270 Judgment issued by the appellate court Heilongjiang High People's Court: 1. The appellate court misjudged that the inability to execute the Equity Share Transfer Agreement is caused by the Entruster's inability to pay in due time, however, I looked up the relevant laws and regulations of PRC and found out that the inability to make payment is caused by your consistent delay in obtaining the approval from relevant government departments of PRC, and without approval it is not possible for the Entruster to make fund transfer overseas. The appellate court failed to see the fact and misjudged the Entruster for breaching the contract. 2. The Equity Share Transfer Agreement has already been terminated. As per the Provisions of the Supreme People's Court on Various Issues Concerning the Trial of Cases Involving Disputes Relating to Foreign Invested Enterprises, when the Agreement is terminated, the Equity Share Transfer Agreement between the two parties was invalid due to the lack of government approval, and the invalid agreement represents the invalid terms in the Contract, which shall not be binding to both parties, thus the 5% performance guarantee bond is no longer applicable. The appellate court neglected this fact and applied the wrong law.

Given the wrong Judgment made by the appellate court, based on Article 200 of Civil Litigation Law of the People's Republic of China, if the application of the party falls into the following category, the people's court shall conduct retrial:... (ii) the facts recognized in the original judgment or verdict lack supporting evidence; ... (vi) the original judgment or verdict applied wrong laws;

Based on the above, I believe that the Entruster is fully entitled to submit application for retrial and correction of the wrong judgment of the appellate court to the Supreme People's Court of The People's Republic of China according to the Procedure for Trial Supervision in compliance with the above regulations. Your company shall not misunderstand the two-tier trial system of China, and believe that the judgment of Heilongjiang is not reversible.

IV. Given the above, I strongly recommend your company not to dispose the RMB 12,400,000 Fund already paid by the Entruster at your free will. There is obvious mistake in the judgment of Heilongjiang High People's Court, which is very likely to be corrected by the Supreme People's Court of The People's Republic of China according to the Procedure for Trial Supervision. If your company disposes the above Fund before that, once the case is corrected, the two parties will be involved in another compensation claim dispute, and unnecessary trouble and large amount of legal cost will incur for both the two parties. Thus we strongly recommend your company not to dispose the Fund of the Entruster temporarily till the judgment of the Supreme People's Court of The People's Republic of China. This is a kind reminder to your company from the Entruster, and hope that our recommendation could be considered by your company.

I have already accepted the engagement of the Entruster to submit the application for retrial, prepared the relevant materials for submission to the Supreme People's Court of The People's Republic of China together with other counsels next week, and will send you the notice for accepting the case issued by the Supreme People's Court and other relevant documents. The Procedure for Trial Supervision is the last legal remedy measure, please wait patiently for the trial result of the Supreme People's Court before disposing the Fund of the Entruster.

Your careful consideration and acceptance of the above recommendation is appreciated.

大成 Salans FMC SNR Denton McKenna Long

Counsel:

Oct. 13, 2017

Contact Info:

Liu Wenchen: 15542370577

This is **Appendix "D"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

关于黑龙江省高级人民法院民事判决书的说明

姚先生：

黑龙江省高级人民法院（简称“黑龙江省高院”）于2017年9月18日作出（2017）黑民终270号民事判决书（简称“省高院判决”），支持汉枫常绿有限公司的上诉主张，认定其有权保留哈尔滨鹏程肥业有限公司（简称“鹏程”）支付的1240万元履约保证金。省高院判决已经发生法律效力。

在审理民事诉讼时，中国的各级人民法院遵循“两审终审制”。黑龙江省高院在本案审理过程中是二审法院，作出的判决是终审判决。《中华人民共和国民事诉讼法》第一百七十五条规定：**第二审人民法院的判决、裁定，是终审的判决、裁定。**

如鹏程认为省高院判决含有错误，有权利申请向上一级人民法院（在本案中为最高人民法院）申请再审。依据《中华人民共和国民事诉讼法》第一百九十九条规定：当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审；**当事人申请再审的，不停止判决、裁定的执行。**第二百零五条规定：当事人申请再审，应当在判决、裁定发生法律效力后**六个月内提出**。

在省高院判决作出之后，目前为止我所**没有**接到鹏程律师的任何消息和材料。

特此说明。

黑龙江宏珲律师事务所
关刘 律师 关刘
2017年10月29日

宏珲
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ENGLISH TRANSLATION

Clarification re the Civil Judgement of Heilongjiang Provincial People's High Court

Dear Mr. Yao:

The Heilongjiang Provincial People's High Court (the "Heilongjiang Provincial Court") issued a final judgement dated September 18, 2017 (the "Provincial Court Judgement") supporting the appeal by Hanfeng Evergreen Inc. for the retention of a deposit in the amount of RMB 12.4 million previously paid by Harbin Pengcheng Fertilizer Co., Ltd ("Penghceng"). The Provincial Court Judgement is legally effective.

In trying civil cases, the people's courts in China follow a system of the second instance court being the last court of instance. The Heilongjiang Provincial Court is the court of the second instance in this legal proceeding, and therefore its judgement is final. Article 157 of the *Civil Procedure Law of China* (the "Civil Procedure Law") provides that **judgements and orders from the second instance court shall be final**.

If Pengcheng considers the Provincial Court Judgement contains error, it has the right to apply to a people's court at the next higher level (in this case, China Supreme People's Court) for a retrial. In accordance with Article 199 of the Civil Procedure Law, a party may apply to a higher court for retrial if this party thinks the judgement or order contains error; however, the **execution of the judgement or order is not suspended when the party applies for a retrial**. Article 205 of the Civil Procedure Law provides that an application for retrial shall be made within **6 months** after the relevant judgement or order becomes effective.

To date we **have not received** any communication from Pengcheng's counsel since the issuance of the Provincial Court Judgement.

Heilongjiang Honghui Law Firm

Lawyer Guan Liu

Signature

October 29, 2017

Add：中国•黑龙江省哈尔滨市南岗区康顺街 3 号 3 层
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This is **Appendix "E"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

CITATION: Ernst & Young Inc. v. Xinduo, 2017 ONSC 5911
COURT FILE NO.: CV-16-11325-00CL
DATE: 20171003

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ERNST & YOUNG INC. in its capacity as Court Appointed Receiver of HANFENG EVERGREEN INC., Plaintiff

AND:

YU XINDUO and LEI LI, Defendants

BEFORE: Cavanagh J.

COUNSEL: *Daniel S. Murdoch* and *Genna Wood*, for the Plaintiff

David C. Moore and *Karen M. Mitchell*, for the Defendants

HEARD: September 22, 2017

ENDORSEMENT

Introduction

[1] The Plaintiff was appointed as receiver and manager of Hanfeng Evergreen Inc. ("Hanfeng") by a 2014 court order and brings this action in that capacity on behalf of Hanfeng and creditors of Hanfeng.

[2] According to the Statement of Claim, Hanfeng, through its wholly-owned subsidiaries, was a developer and producer of value-added fertilizers in the People's Republic of China ("China"). Hanfeng has no independent operations and exists solely as a holding company for certain operating entities located in China. Hanfeng Slow-Release Fertilizer Co., Ltd. ("Hanfeng China") provides slow-release fertilizer products for landscaping projects and agriculture in China. Hanfeng China is a wholly-owned subsidiary of Hanfeng.

[3] In this action, the Plaintiff seeks restitution or damages to recover in excess of $150 million from the Defendants Xinduo Yu ("Yu") and from his wife, Lei Li ("Lei"). The Plaintiff's claims against Yu are founded in alleged breaches of fiduciary duties, fraud, conversion and unjust enrichment. The Plaintiff's claims against Lei are founded in alleged knowing assistance and knowing receipt. The Plaintiff claims damages and declaratory relief against both Defendants, jointly and severally, for alleged fraudulent misrepresentation.

[4] The Defendants move for an order:

a. Striking out and dismissing the claims against Lei set out in paragraphs 1 (b) and (c) (ii) and 53-54 of the Statement of Claim and an order striking out and dismissing the claims and allegations against Lei set out in paragraph 31 of the Plaintiff's Reply.

b. Striking out and dismissing the claims against Yu set out in paragraphs 1 (a) (i) and (ii), 1 (c)(ii), 8, 9, 30-36, 44 and 49-52 of the Statement of Claim.

[5] The Defendants submit that the claims against them that are the subject of this motion are based on bald conclusions without any supporting facts, are an abuse of process, and fail to disclose any causes of action. The Defendants bring this motion under rule 21 of the *Rules of Civil Procedure* and they also rely upon rules 25.06 (1), 25.06 (2), 25.06 (5), 25.06 (8), 25.08, and 25.11 of the *Rules of Civil Procedure*.

[6] For the following reasons, paragraphs 1(b), 1(c)(ii) (as against Lei), 53 and 54 of the Statement of Claim are struck out, with leave granted to the Plaintiff to deliver an amended Statement of Claim. In other respects, the Defendants' motion is dismissed.

Procedural History

[7] The following is the procedural history of this action:

a. The Statement of Claim was issued on March 22, 2016.

b. The Defendants served a Notice of Intent to Defend dated April 21, 2016.

c. The Defendants served a Demand for Particulars with respect to the misrepresentations alleged in the Statement of Claim on May 11, 2016 and, when this demand was served, counsel for the Defendants expressed that there would likely be other allegations in the Statement of Claim in respect of which particulars are necessary.

d. On June 16, 2016, the Plaintiff provided a Response to the Demand for Particulars and requested the Statement of Defence by no later than June 27, 2016.

e. On June 23, 2016 the Defendants served a notice of motion in respect of a motion for an order striking out paragraphs 7, 10, 13, 26, 29, 45 and 46 of the Statement of Claim and, in the alternative, an order directing that the Plaintiff deliver particulars in relation to these paragraphs. The motion was adjourned to allow the Plaintiff to provide particulars.

f. On September 6, 2016 the Plaintiff served a Second Response to Demand for Particulars and requested delivery of the Defendants' Statement of Defence. The motion that had been brought did not proceed.

g. On September 14, 2016 the Defendants served a Request to Admit with respect to certain documents listed on the Plaintiff's website with respect to Hanfeng. The Plaintiff's Response to Request to Admit was served on December 6, 2016. The Plaintiff requested delivery of the Statement of Defence within seven days.

h. The Statement of Defence was delivered on January 5, 2017. At the hearing of this motion counsel for the Defendants advised that before the Statement of Defence was delivered he advised counsel for the Plaintiff that its delivery was without prejudice to the right of the Defendants to move under rule 21 for an order striking out paragraphs of the Statement of Claim and dismissing the claims in these paragraphs. In several paragraphs of the Statement of Defence, the Defendants plead that the Plaintiff's claims are unsupported by any pleadings of material facts and constitute bare, conclusory allegations that constitute an abuse of process, failed to disclose any cause of action, and should be struck out (see, for example, paragraphs 18, 19, 62-65, 69-71, 74, and 92).

i. The Plaintiff's Reply was delivered on or about May 30, 2017.

j. The Defendants brought this motion promptly after the Reply was delivered. The Notice of Motion in respect of this motion is dated June 12, 2017.

Timing of this Motion

[8] I raised with the Defendants' counsel during his reply submissions whether it is procedurally permissible for the Defendants to bring this motion after having already (i) brought a motion attacking other paragraphs of the Statement of Claim, and (ii) delivered a statement of defence. Counsel for the Plaintiff had not objected to my hearing this motion on its merits on the ground that the *Rules of Civil Procedure* do not prohibit a rule 21 motion after delivery of a statement of defence.

[9] Rule 21.02 requires that a motion under rule 21.01 shall be made "promptly". Here, after service of the Statement of Claim and receipt of particulars that were demanded, the Defendants moved promptly to strike out certain paragraphs of the Statement of Claim pursuant to rules 25.06 (8), 25.10, and 25.11 of the *Rules of Civil Procedure*. The Defendants did not move at that time to strike out the paragraphs of the Statement of Claim that are the subject of this motion.

[10] There is authority for the proposition that serial attacks on a pleading should be discouraged because to allow such a process would result in a multiplicity of proceedings. In *Tribar Industries Inc. v. KPMG LLP*, 2009 CarswellOnt 1235, Brown J., as he then was, wrote:

> 29 I dismiss this part of Mr. Chiappetta's motion for two reasons. First, the jurisprudence shows a strong aversion to multiple attacks on the same pleading. As stated in *Slan v. Beyak* (1973), 3 O.R. (2d) 295 (Ont. Master), "the general rule is that there should be one opportunity only afforded to a party to attack his opponent's pleading. Such attack should include a prayer for all remedies in the alternative so that the matter may be dealt with without a multiplicity of proceedings and thereby conform with the general rules of the Court...": see also, *Millgate Financial Corp. v. BF Realty Holdings Ltd.*, [2003] O.J. No. 1309 (Ont. S.C.J.), at para. 36.

The second reason given by Brown J. for his decision does not relate to the motion before me.

[11] In *Millgate Financial Corp. v. BF Realty Holdings Ltd.*, 2003 CarswellOnt 1243, the Defendants successfully moved to strike out certain paragraphs of the statement of claim and, later in the proceeding, moved again to strike out another paragraph of the statement of claim. The Plaintiff submitted that having initially chosen not to seek to strike out this paragraph, the Defendants should not be allowed to object to this paragraph on the ground that it has not been adequately pleaded. Cullity J. accepted this submission and, also citing *Slan v. Beyak* (1973), 3 O.R. (2d) 295, held that a second attack on the pleading should not be permitted.

[12] I agree with these authorities that multiple attacks on a pleading should not be encouraged. In this case, however, the Defendants reserved a right to do so and the Plaintiff does not object to the hearing of this motion on its merits.

[13] This motion was also brought after the Statement of Defence had been delivered. In *Schulz v. Johns*, 2014 CarswellOnt 638, Perell J. addressed the timing of a motion to strike out a statement of claim as disclosing no reasonable cause of action. Perell J. expressed his agreement with a decision of Brown J. in *Bell v. Booth Centennial Healthcare Linen Services*, [2006] O.J. No. 4646 that the practice of delivering a statement of defence and then a rule 21.01(1)(a) or (b) motion should be discouraged. Perell J. wrote that leave can be granted to bring the motion to strike the statement of claim notwithstanding that the defendant has delivered a statement of defence, and he referenced a line of authorities that suggests that leave is not necessary where the statement of defence expressly or implicitly disputes that a cause of action has been shown: *Schulz*, at para. 11.

[14] In this case, as noted, the Defendants pleaded in several paragraphs of the Statement of Defence that the Plaintiff's claims are unsupported by any pleading of material facts and constitute bare, conclusory allegations that constitute an abuse of process, fail to disclose any cause of action, and should be struck out.

[15] I agree that the practice of delivering a statement of defence and then moving to strike out all or some paragraphs of the statement of claim should be discouraged. In the circumstances of this case, however, given the Defendants' reservation of a right to so move and their pleadings that certain allegations in the Statement of Claim are unsupported by pleadings of material facts, I address the Defendants' motion on its merits.

General Principles

[16] On a motion under rule 21.01(1)(b), the test to be applied is whether, assuming the facts pleaded are true, it is plain and obvious that a plaintiff's statement of claim discloses no reasonable cause of action. In respect of such a motion, in *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45, McLachlin C.J. wrote, at para. 22:

> A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven [citation omitted]. No evidence is admissible on such a motion [citation omitted]. It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may

> not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[17] The test is a stringent one. Only if the action is certain to fail because the pleading contains a radical defect should the relevant portions be struck out: *Hunt v. T & N plc*, 1990 CarswellBC 759 (S.C.C.) at para. 36.

[18] Rule 25.11 provides that the court may strike out or expunge all or part of a pleading on the ground that the pleading "... (b) is scandalous, frivolous or vexatious; or (c) is an abuse of the process of the court." In *Cerqueira v. Ontario*, [2010] O.J. No. 3037 Strathy J., as he then was, wrote at para. 13:

> I also note the observation of Epstein J., as she then was, in *George v. Harris*, above, at para. 20:
>
>> The next step is to consider the meaning of "scandalous", "frivolous" or "vexatious". There have been a number of descriptions provided in the multitude of authorities decided under this or similar rules. It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to a document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious. In addition, documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters, will be rejected in their entirety.

[19] In *Carny Timber Co. v. Pabedinskas*, Strathy J., as he then was, wrote at para. 17 that "[t]he common thread of the criteria of Rule 25.11 is that the facts pleaded are irrelevant to the issues before the court, or are so prejudicial that the pleading or portion thereof should be struck in spite of their relevance." As Strathy J. wrote at para. 15, "Rule 25.11 permits the court to surgically excise all or part of the offending pleading".

[20] Rule 25.06 (1) provides that "[e]very pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, not the evidence by which those facts are to be proved." In *Spasic Estate v. Imperial Tobacco Ltd.*, 2003 CarswellOnt 707 Brennan J. wrote at para. 31 that "[i]t is vital, when undertaking a Rule 25.06 analysis, not to confuse material facts, evidence, and particulars, although the distinction can admittedly be precarious".

[21] Rule 25.06(8) provides that "[w]here fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred." The particulars must set out precisely what each allegation of such wrongful act is, and the when, what and by whom and to whom of the relevant circumstances: *Balanyk v. University of Toronto*, 1999 CanLII 14918, at para. 28.

[22] The function of particulars is to limit the generality of pleadings and thus to define the issues which have to be tried and as to which discovery must be given. Each party is entitled to know the case to be made against him or her at the trial and to have such particulars of the opponent's case as will prevent him or her from being taken by surprise: *Antonacci v. Great Atlantic & Pacific Co. of Canada Ltd.* (2000), 181 D.L.R. (4th) 577 (Ont. C.A.) at para. 34.

[23] In *Pennyfeather v. Timminco Ltd.*, 2011 ONSC 4257, at para. 60, Perell J. described the role of particulars, quoting from J.W. Morden and P.M. Perell, *The Law of Civil Procedure in Ontario* (1st ed.) (Markham, LexisNexis Canada Inc., 2010) at p. 347:

> In between material facts and evidence, is the concept of "particulars". Particulars are additional details that enhance the material facts, and particulars have a role to play different from just being evidence [citation omitted]. Particulars are ordered primarily to clarify a pleading sufficiently to enable the adverse party to frame his or her answer, and their secondary purpose is to prevent surprise at trial [citation omitted]. Particulars have the effect of providing information that narrows the generality of pleadings [citation omitted]. Particulars define the issues, enable preparation for trial, prevent surprise at trial and facilitate the hearing [citations omitted]. A function of particulars to a statement of claim is to define the claim sufficiently to allow a defendant to respond intelligently to it [citations omitted].

In *Pennyfeather*, at para. 61, Perell J. wrote that particulars for pleadings are normally ordered only if: (a) they are not within the knowledge of the party demanding them; and (b) they are necessary to enable the other party to plead his or her response.

Analysis

Pleadings in Relation to Claims against Yu

[24] I first address the pleadings in the Statement of Claim that relate to claims against Yu that the Defendants seek to strike out.

[25] Under the heading "Yu Dissipates Hanfeng China's Assets", the Plaintiff alleges two types of improper dissipation of Hanfeng China's assets. I first address the pleadings that relate to claims based upon alleged "Dissipated Funds" as that term is defined in the Statement of Claim.

[26] In paragraphs 30-32 and 49-52 of the Statement of Claim, the Plaintiff pleads:

> 30. During the course of the Receivership Proceedings, Yu advised and assured the Receiver that Hanfeng China's operations had been dormant since

April 2014. However, the Receiver discovered that between August 2014 and June 2015, Hanfeng China incurred millions of RMB in expenses, significantly more than would be expected for a nonproducing manufacturing facility (the "**Dissipated Funds**").

31. Despite requests from the Receiver and in breach of his obligations as legal representative and orders of this Court, Yu has refused to provide the Receiver with Hanfeng China's financial records and access to Hanfeng China's bank accounts. As a result, the Receiver has been unable to ascertain what happened to the Dissipated Funds, but it appears that Yu has absconded with them.

32. At least RMB 27 million has been dissipated from Hanfeng China during this period and the Receiver is concerned that the amount of the Dissipated Funds continues to grow.

49. Yu caused Hanfeng China to spend or otherwise dissipate the Dissipated Funds, without any legitimate business purpose, thereby depriving Hanfeng of rightful possession. Yu further caused Hanfeng China to obtain the Loans, for which there was no legitimate business purpose, and absconded with the proceeds of the Loans, thereby depriving Hanfeng of rightful possession. Yu was not entitled to the benefit of any of the Dissipated Funds or the Loans.

50. Yu's subsequent transfer or use of the Dissipated Funds and the Loans amount to a conversion of funds for which Yu is liable.

51. Yu has wrongfully obtained the funds advanced under the Loans and the Dissipated Funds. Yu is not entitled to these wrongfully obtained funds. The Receiver seeks restitution of all such amounts that Yu obtained.

52. Yu has been unjustly enriched by receipt of the funds advanced under the Loans and the Dissipated Funds, to the detriment of Hanfeng China and its sole shareholder Hanfeng. There is no juristic reason for Yu's enrichment since he has no legal or equitable right to these funds.

[27] The Defendants do not move for additional particulars of statements in the Statement of Claim. Their submission is that the claims pleaded in relation to the "Dissipated Funds" are so lacking in pleadings of material facts that they cannot stand. The Defendants do not oppose a term of the order they seek that would grant leave to the Plaintiff to amend the Statement of Claim, and they submit that the fact that the Plaintiff has, in the alternative to its main submission that the motion should be dismissed, requested such relief shows that the Plaintiff has knowledge of additional facts that could be pleaded.

[28] I do not agree that whether the Plaintiff has knowledge of additional factual details with respect to the expenses that comprise the "Dissipated Funds" or the "Loans", which it could provide by way of an amended Statement of Claim, or through particulars, is a material consideration on this motion. The outcome of the Defendants' motion does not depend on

whether the Plaintiff is or is not in possession of additional factual details with respect to these matters. The question before me is not whether additional particulars should be ordered (under Rule 25.10), but whether the claims that are the subject of this motion are so lacking in pleadings of material facts which, if proven, establish legally complete causes of action, that it is plain and obvious that the Statement of Claim discloses no such causes of action.

[29] The Plaintiff's claims in relation to the alleged "Dissipated Funds" are founded in causes of action for breach of fiduciary duty, fraud, conversion and unjust enrichment.

[30] A claim for breach of fiduciary duty must disclose the material facts to support the alleged fiduciary relationship, the duties owed, the breach of the duties and the damage: *Vicor Mechanical Ltd. v. Pegah Construction Ltd.*, [2009] O.J. No. 5268, at para. 12.

[31] Conversion requires the wrongful taking, using or destroying of goods inconsistent with the title of the owner. There must be a voluntary act in respect of another's goods that amounts to a usurpation of the owner's proprietary or possessory rights. The constituent elements of the tort are: a wrongful act, involving a chattel, consisting of handling, disposing or destruction of the chattel, with the intent or effect of denying the title of another person: *Vicor Mechanical*, at para. 13.

[32] A cause of action for unjust enrichment has three elements: an enrichment of the defendant, a corresponding deprivation of the plaintiff, and an absence of any juristic reason for the enrichment: *Becker v. Pettkus*, [1980] 2 S.C.R. 834 at p. 848.

[33] With respect to their motion to strike out and dismiss the claims pleaded in relation to the "Dissipated Funds", the Defendants submit:

a. No facts are pleaded to show which expenses comprise the figure of at "least RMB 27 million", or the date, amount, purpose or other facts about any of the expenses allegedly incurred by Hanfeng China. In addition, no facts are pleaded to show any improper purpose or any other material facts to indicate how or why or which disbursements were made dishonestly.

b. No material facts or pleaded to support the conclusion that Yu had any involvement in the expenses incurred by Hanfeng China or the disbursement of any part of the unspecified RMB 27 million.

c. The Plaintiff admits that it "has been unable to ascertain what happened to the Dissipated Funds", but nonetheless concludes that "it appears that Yu has absconded with them". The Statement of Claim does not contain any pleading of material facts to support this "appearance".

d. The Plaintiff has not pleaded any material facts to support the allegations that Yu absconded with, much less received, any of the so-called "Dissipated Funds" and, moreover, it is clear on the face of the Statement of Claim that the Plaintiff's claim that Yu "absconded" with these funds is a speculative conclusion.

[34] With respect to the claims pleaded in relation to the "Dissipated Funds", the Plaintiff submits:

a. The "specific expenses", including their "date, amounts, purpose or other facts" that comprise the RMB 27 million of Dissipated Funds constitute evidence, not material facts. The Statement of Claim pleads that Yu advised the Receiver that Hanfeng China's had been dormant since April 2014, that the expenses that are challenged were incurred after that date, between August 2014 and June 2015, and that the amount of such expenses is significantly more than what would be expected for a nonproducing manufacturing facility.

b. The Statement of Claim pleads that Yu was the legal representative of Hanfeng China with responsibility for the overall activities of the company, and this is sufficient to plead Yu's involvement in the alleged "Dissipated Funds".

c. The Plaintiff has pleaded that Yu converted the Dissipated Funds for his own use. The Statement of Claim pleads that Yu has refused to provide the Plaintiff with Hanfeng China's financial records and access to Hanfeng China's bank accounts.

[35] I do not agree with the Defendants' submission that the pleadings in respect of the alleged "Dissipated Funds" consist of bald, conclusory allegations such that it is plain and obvious that the Statement of Claim discloses no reasonable cause of action against Yu. The Plaintiff pleads as a fact that Hanfeng China, while its operations were dormant, incurred expenses. The Plaintiff pleads as a fact that Yu caused Hanfeng China to spend or otherwise dissipate amounts used to pay for such expenses "thereby depriving Hanfeng China of rightful possession" of such amounts. The Plaintiff pleads that Yu transferred or used the "Dissipated Funds".

[36] In my view, the factual matters in respect of which the Defendants submit that the Statement of Claim is deficient in relation to the alleged "Dissipated Funds", specifically, the specific expenses, and the dates, amounts, purpose or other facts about such alleged expenses, are not essential facts that are required in order for the Plaintiff to plead a legally complete cause of action for breach of fiduciary duty, conversion, or unjust enrichment in respect of the alleged "Dissipated Funds". These factual matters are additional details that would enhance the material facts that are pleaded. If pleaded, or provided separately as particulars, they would have the effect of providing information that narrows the generality of the facts pleaded in the Statement of Claim. If the Defendants had moved for particulars, these additional details would have qualified as particulars.

[37] I agree with the Plaintiff's submission that the Plaintiff has adequately pleaded that Yu was involved with the expenses alleged to have resulted in the "Dissipated Funds" by pleading that he is the legal representative of Hanfeng China and responsible for the overall activities of Hanfeng China.

[38] In my view, assuming the facts pleaded to be true, it is not plain and obvious that the Statement of Claim discloses no reasonable cause of action against Yu for breach of fiduciary

duty, conversion, or unjust enrichment in relation to the amounts of money allegedly expended by Hanfeng China and described in the Statement of Claim as the "Dissipated Funds".

[39] The second type of allegedly improper dissipation of the assets of Hanfeng China that is pleaded in the Statement of Claim relates to alleged "Loans" that are described in paragraphs 33-36 of the Statement of Claim. These paragraphs read:

> 33. The Receiver also discovered that under the control and direction of Yu, including while the company was purportedly dormant, Hanfeng China obtained approximately RMB 600,000,000 through various loans and other agreements as follows:
>
> (a) RMB 170 million from the Harbin Branch of Industrial Bank Co., Ltd.;
> (b) RMB 220 million from China Construction Bank;
> (c) RMB 190 million from China Merchants Bank;
> (d) RMB 20 million from the Bank of East Asia (collectively the "**Loans**").
>
> 34. None of the Loans are reflected in the internal financial statements of Hanfeng China, and Yu has denied the existence of the Loans.
>
> 35. While the Receiver has determined based on available information that approximately RMB 600 million was borrowed by Hanfeng China under the Loans, none of the borrowed funds are (or ever have been) held by Hanfeng China. Due to Yu's actions, the Receiver has been unable to ascertain precisely what happened to these funds, but it appears that Yu has absconded with them.
>
> 36. The Loans are in default and remain outstanding liabilities for Hanfeng China. Lawsuits have been filed against Hanfeng China for recovery of the defaulted loan amounts.

[40] In relation to these paragraphs, the Defendants submit:

a. The Statement of Claim does not plead any facts relating to the dates, terms or purpose of the Loans. No facts are pleaded in relation to any alleged involvement by Yu in negotiating, arranging, accepting or otherwise participating in the Loans. No material facts are pleaded to support any receipt, use, or other benefit of any kind obtained by Yu in connection with the "Loans".

b. In paragraph 35 of the Statement of Claim, the Plaintiff admits that it has been unable to ascertain what happened to any proceeds derived from the Loans but concludes that it "appears that Yu has absconded with them".

c. The pleadings in relation to the "Loans" consist of bald, conclusory allegations and speculative assumptions that disclose no reasonable cause of action for breach of fiduciary duty, conversion or unjust enrichment.

[41] The Plaintiff submits that the "dates, terms or purpose" of the Loans constitute evidence, not material facts. The Statement of Claim specifies that the Hanfeng China Loans were procured after April 2014, and provides their amounts and the banks that made the loans. The Plaintiffs have pleaded that Yu is the legal representative of Hanfeng China and responsible for the overall activities of Hanfeng China, such that he would have access to Hanfeng China's accounting records and banking records and, as a result, that particulars of the Loans would be within his knowledge. The Plaintiff has pleaded that Yu caused Hanfeng China to obtain the Loans, for which there was no legitimate business purpose, and that he absconded with the proceeds of the Loans.

[42] I do not agree with the Defendants' submission that the Plaintiff's pleadings in respect of the alleged "Loans" consist of bald, conclusory allegations, such that the Statement of Claim discloses no reasonable cause of action against Yu. The Plaintiff pleads as a fact that Hanfeng China, while it was under the control and direction of Yu, including while it was purportedly dormant, obtained approximately RMB 600,000 through various loans and other agreements. The identities of the lenders in respect of four loans are pleaded as facts. The amount of each of the four loans is pleaded as a fact. The Plaintiff pleads as a fact that none of the borrowed funds are (or have ever been) held by Hanfeng China. Although in paragraph 35 the Plaintiff pleads that "it appears that Yu has absconded with" the borrowed funds, this must be read together with paragraph 49 where the Plaintiff pleads as a fact that Yu "absconded with the proceeds of the Loans ...". By so pleading, the Plaintiff has alleged that Yu took for himself the proceeds of the Loans to Hanfeng China. This is a factual assertion and not, as the Defendants submit, a speculative conclusion.

[43] I regard the dates, terms, or purpose of the Loans to be additional details that would enhance the material facts that have been pleaded and, if particulars had been requested, such details would qualify as particulars. However, assuming that the facts pleaded in the Statement of Claim are true, it is not plain and obvious that the Statement of Claim discloses no reasonable cause of action against Yu for breach of fiduciary duty, conversion or unjust enrichment in respect of the "Loans".

Pleadings in Relation to Claims against Lei

[44] The Defendants submit that the Plaintiff has failed to plead the required elements of the "knowing assistance" and "knowing receipt" causes of action against Lei.

[45] In respect of these claims, the Statement of Claim reads:

> 1. The plaintiff claims:
>
> (b) as against the Defendant, Lei Li ("Lei"):
>
> (i) restitution or damages, in the amount of Canadian currency sufficient to purchase RMB 630,000,000 for knowing assistance and knowing receipt;
>
> (c) as against both Defendants, jointly and severally:

(ii) a declaration that all monies belonging to Hanfeng Slow-Release Fertilizer Co., Ltd. and wrongfully obtained by Yu and/or held by Lei are held in a constructive trust in favour of the Plaintiff;

46. Lei fraudulently misrepresented the identity of the Purchaser and actively concealed material facts about the true identity of the Purchaser and Yu's relationship to the Purchaser, all with intent to induce Hanfeng to enter into the Share Transfer Agreement, thereby injuring Hanfeng or knowing that injury was likely.

53. Lei knowingly received and retained the benefits of the Loans and Dissipated Funds, which Yu wrongfully obtained.

54. In addition, or in the alternative, Lei knowingly assisted Yu to wrongfully obtain the benefits of the Loans and the Dissipated Funds. Hanfeng has suffered harm as a result of Li's knowing assistance and knowing receipt and is entitled to damages and/or restitution.

[46] In addition, the Plaintiff has provided details that enhance the facts pleaded by delivery of two responses to demands for particulars.

[47] The constituent elements of the tort of knowing assistance in breach of fiduciary duty are:

a. The existence of a fiduciary duty;

b. The fiduciary breached its duty fraudulently and dishonestly;

c. A stranger to the fiduciary relationship had actual knowledge of both the fiduciary relationship and the fiduciary's fraudulent and dishonest conduct (the stranger's knowledge of the misconduct must be actual (as opposed to constructive), which includes wilful blindness to the breach or recklessness in the failure to recognize the breach); and

d. The stranger participated in or assisted the fiduciary's fraudulent and dishonest conduct.

See *Harris v. Leikin Group Inc.*, 2011 ONCA 790, at para. 8.

[48] The Defendants submit that the Plaintiff has admitted that it has no actual knowledge of a defendant's breach of trust and, therefore, a claim based on knowing assistance is untenable. The Defendants rely upon paragraphs 31 and 34 of the Statement of Claim in support of this submission. The Defendants also submit that the Plaintiff has pleaded bald, conclusory statements of the elements of the cause of action unsupported by necessary pleadings of material facts.

[49] The Plaintiff submits that:

a. The Statement of Claim pleads in paragraphs 4 and 37 that a fiduciary duty was owed by Yu to Hanfeng China as he was a member of its Board and as its legal representative.

b. The Statement of Claim pleads in paragraph 44 that Yu breached his fiduciary duties by (i) fraudulently misrepresenting the identity of a potential purchaser of Hanfeng China in an attempt to secure Hanfeng China's assets for his own personal benefit, and (ii) frustrating the Plaintiff's efforts to protect Hanfeng China's assets while dissipating them for his personal gain.

c. The second response to the Defendants' demand for particulars includes the factual statement that Lei knew Yu was a director of Hanfeng as a result of her attendance at Board meetings.

d. The Plaintiff has pleaded at paragraph 46 of the Statement of Claim Lei's participation in Yu's alleged breach of fiduciary duty by misrepresenting the identity of the potential purchaser, alleging that Lei fraudulently misrepresented the identity of the Purchaser and actively concealed material facts about the true identity of the Purchaser and Yu's relationship to the Purchaser. The Plaintiff pleads that these representations were made with the intent to induce Hanfeng to enter into the Share Transfer Agreement and that Lei knowingly assisted Yu to wrongfully obtain the benefits of the Loans and Dissipated Funds.

[50] I have already addressed the adequacy of the Statement of Claim in respect of the causes of action pleaded against Yu in relation to the alleged "Dissipated Funds" and the alleged "Loans", and I concluded that these causes of action were adequately pleaded. I do not agree with the Defendants' submission that the Plaintiff has made an admission, through its pleading, that it has no actual knowledge of Yu's breach of fiduciary duty. The Plaintiff's pleading in paragraph 31 of the Statement of Claim that it "has been unable to ascertain what happened to the Dissipated Funds" must be read with the factual assertions in paragraphs 32, 49 and 50 of the Statement of the Statement of Claim where the Plaintiff pleads that at least RMB 27 million has been dissipated from Hanfeng China during the period of time between August 2014 and June 2015, that Yu caused Hanfeng China to "spend or otherwise dissipate the Dissipated Funds", and that Yu transferred or used the Dissipated Funds.

[51] The Plaintiff pleads as a fact that Yu is a member of the Board of Hanfeng China and its legal representative and, based upon these factual pleadings, the Plaintiff pleads that Yu owed a fiduciary duty to Hanfeng China. The Plaintiff pleads that Yu (i) fraudulently misrepresented the identity of a potential purchaser of Hanfeng China with the intent to induce Hanfeng to enter into a share transfer agreement, and (ii) frustrated the Plaintiff's efforts to protect Hanfeng China's assets while dissipating them for his personal gain. Based upon these factual pleadings, the Plaintiff pleads that Yu breached his fiduciary duties. These paragraphs are adequate pleadings of material facts that, if proven, would establish the first two elements of the cause of action of knowing assistance.

[52] I agree that the Plaintiff has provided particulars to enhance the pleadings of Lei's knowledge that Yu owed fiduciary duties to Hanfeng China through paragraphs 4 (d), (e), (h), (k), and (n) of its Second Response to Particulars in which the Plaintiff provided particulars of Lei's attendances with Yu at Board meetings of Hanfeng China through which, the Plaintiff submits, it may be inferred that Lei knew that Yu was a director of Hanfeng. Pursuant to Rule 25.06(8), knowledge of an allegation of breach of trust may be alleged as a fact without pleading the circumstances from which it is to be inferred. The pleadings in the Statement of Claim supported by the particulars provided are adequate pleadings of the third constituent element of the cause of action of knowing assistance.

[53] The fourth constituent element of the tort of knowing assistance is that the stranger participated in or assisted the fiduciary's fraudulent and dishonest conduct.

[54] The Plaintiff has not pleaded that Lei is liable for the tort of knowing assistance in relation to Yu's alleged breach of fiduciary duty in respect of the claims related to the identity of the proposed purchaser of Hanfeng China. The cause of action against Lei as pleaded in paragraph 46 of the Statement of Claim is for fraudulent misrepresentation, and this claim has not been attacked on this motion.

[55] In respect of the claims against Lei for knowing assistance related to the "Dissipated Funds" and the "Loans", the Plaintiff pleads only that Lei "knowingly assisted Yu to wrongfully obtain the benefits of the Loans and the Dissipated Funds". The Plaintiff does not allege that Lei caused Hanfeng China to dissipate the "Dissipated Funds", or that she took for herself the proceeds of the "Loans". The Plaintiff's bare allegation that Lei "knowingly assisted Yu to wrongfully obtain the benefits of the Loans and the Dissipated Funds", without pleading the actions that she took to so assist him, does not allow the Defendants to evaluate whether such acts qualify as assistance.

[56] In my view, this pleading in paragraph 54 of the Statement of Claim constitutes a bare allegation that does not meet the minimum level of material fact disclosure required by rule 25.06(1) and should be struck out as scandalous under rule 25.11.

[57] In *Pradhan v. Bank of Montreal*, 2012 ONSC 2229, Horkins J. identified the constituent elements of the tort of knowing receipt and wrote, at para. 142:

> Knowing receipt arises in circumstances where the third party has received trust monies for his or her personal benefit. A series of Supreme Court of Canada cases have confirmed the essential elements of a knowing receipt cause of action. To succeed, the plaintiff must prove the following:
>
> > (1) That the property received was subject to a trust in favour of the plaintiff [citation omitted].
> >
> > (2) That the property was taken from the plaintiff in breach of the trust. It does not matter of the breach of the trust was fraudulent [citations omitted].

> (3) That the defendant had knowledge of facts sufficient to put a reasonable person on notice or inquiry of the breach of trust (constructive knowledge) [citation omitted].
>
> (4) That the defendant received the trust property and applied the property for its own use and benefit [citation omitted].

[58] In respect of the cause of action pleaded against Lei for knowing receipt, the Defendants submit that the Statement of Claim does not adequately plead Lei's receipt of trust property for her own use and benefit and that paragraphs 53 and 54 of the Statement of Claim do not include sufficient pleadings of material facts to meet the minimum level of factual disclosure required by rule 25.06 (1).

[59] The Plaintiff submits that (i) it has pleaded at paragraph 53 of the Statement of Claim that Lei received the benefit of Hanfeng China's property, and (ii) that the property is subject to a trust is a legal consequence of Yu's breach of fiduciary duty.

[60] In my view, the pleading that "Lei knowingly received and retained the benefits of the Loans and Dissipated Funds, which Yu wrongfully obtained" is a bare allegation that does not meet the minimum level of material fact disclosure required by rule 25.06 (1). There are no allegations of acts by Lei to receive and retain the benefits of the amounts in question that, allegedly, Yu wrongfully obtained. The Statement of Claim does not contain pleadings of material facts that would allow the Defendants to evaluate whether, based upon the facts pleaded, Lei did, in fact, receive and retain the benefit of the "Dissipated Funds" and the "Loans". Paragraph 53 of the Statement of Claim should be struck out as a bare and, therefore, scandalous pleading pursuant to rule 25.11.

[61] When paragraphs 53 and 54 of the Statement of Claim are struck out pursuant to rule 25.11, it is plain and obvious that the Statement of Claim discloses no reasonable cause of action against Lei for knowing assistance or knowing receipt, or for a constructive trust remedy for monies belonging to Hanfeng China and wrongfully held by Lei, and that paragraphs 1(b) and 1(c)(ii) (as against Lei) must be struck out under rule 21.01(1)(b).

[62] The Defendants also move to strike out paragraph 31 of the Plaintiff's Reply pleading. In paragraph 31, the Plaintiff pleads, with respect to Lei:

> However, the Receiver has been precluded from preserving, liquidating or realizing on the assets of Hanfeng China as a result of Yu and Lei's failure to cooperate with the Receiver's requests regarding access to and the administration of Hanfeng China, as described herein.

[63] The Defendants submit that (i) this pleading contains no material facts to support the claim against Lei, (ii) this claim is improperly made in a reply pleading, and (iii) this allegation is bare and should be struck out pursuant to rule 25.11.

[64] The Plaintiff submits that paragraph 31 of the Reply does not make a claim against Lei but only responds to the Defendants' allegations in paragraph 101 of the Statement of Defence

that the Plaintiff failed to mitigate its damages. The Plaintiff submits that, therefore, paragraph 31 of the Reply is a proper pleading.

[65] The pleading at paragraph 101 of the Statement of Defence that the Plaintiff failed to take reasonable steps to implement a liquidation of the assets of Hanfeng China and thereby failed to mitigate its damages is made by both Defendants. I agree with the Plaintiff's submission that paragraph 31 of the Reply is not a claim against Lei, but is properly a pleading in reply to paragraph 101 of the Statement of Defence. I would not strike out this paragraph of the Reply.

[66] The Defendants do not oppose a term of an order striking out portions of the Statement of Claim that the Plaintiff be granted leave to deliver an amended Statement of Claim. In the circumstances, I grant leave to the Plaintiff to deliver an amended Statement of Claim within 30 days of the release of this decision.

Disposition

[67] For the foregoing reasons:

a. Paragraphs 1(b), 1(c)(ii) (as against Lei), 53, and 54 of the Statement of Claim are struck out.

b. The Plaintiff is granted leave to deliver an amended Statement of Claim within 30 days.

c. The Defendants' motion is otherwise dismissed.

[68] I encourage the parties to resolve the costs of this motion. If they are unable to do so, the Defendants may make brief written submissions within 20 days. The Plaintiff may make brief written submissions within 15 days of receipt of the Defendants' submissions. If so advised, the Defendants may make very brief reply submissions within 5 days of receipt of the Plaintiff's submissions.

Cavanagh J.

Cavanagh J.

Date: October 3, 2017

This is **Appendix "F"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

Court File No. CV16-11325-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

ERNST & YOUNG INC.
in its capacity as Court Appointed Receiver
of HANFENG EVERGREEN INC.

Plaintiff

- and -

YU XINDUO and LEI LI

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $4,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date November 2, 2017

Issued by ________________________
Local registrar

Address of court office
330 University Avenue
7th Avenue
Toronto, Ontario

TO: YU XINDUO
306 Russell Hill Road
Toronto, ON M4V 2T6

LEI LI
306 Russell Hill Road
Toronto, ON M4V 2T6

CLAIM

1. The plaintiff claims:

(a) as against the Defendant, Yu Xinduo ("**Yu**"):

(i) restitution or damages, in the amount of Canadian currency sufficient to purchase Chinese Yuan Renminbi (RMB) 630,000,000 for breach of fiduciary duties owed to Hanfeng Evergreen Inc., fraud, conversion or unjust enrichment;

(ii) damages for breach of fiduciary duty in an amount of Canadian currency sufficient to purchase RMB 235,600,000;

~~(b) as against the Defendant, Lei Li ("**Lei**"):~~

~~(i) restitution or damages, in the amount of Canadian currency sufficient to purchase RMB 630,000,000 for knowing assistance and knowing receipt;~~

(b) as against the Defendant, Lei Li ("**Lei**"):

(i) restitution or damages, in the amount of Canadian currency sufficient to purchase RMB 630,000,000 for knowing assistance of breach of fiduciary duty;

(c) as against both Defendants, jointly and severally:

(i) damages for fraudulent misrepresentation in an amount of Canadian currency sufficient to purchase RMB 235,600,000;

(ii) a declaration that all monies belonging to Hanfeng Slow-Release Fertilizer Co., Ltd. and wrongfully obtained by Yu ~~and/or held by Lei~~ are held in a constructive trust in favour of the Plaintiff;

(iii) aggravated, exemplary and punitive damages in the amount of $500,000;

(iv) special damages in an amount to be determined in advance of trial, for costs, including but not limited to those incurred by the Plaintiff in connection with Court approval and monitoring of the Share Transfer Agreement (defined below) and in connection with the delays to the Share Transfer Transaction (defined below) caused by Yu and Lei as well to investigate the activities of Yu and Lei and to preserve the assets of Hanfeng Slow-Release Fertilizer Co., Ltd.;

(v) the costs of this action plus applicable taxes;

(vi) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43 ("***CJA*"**); and

(vii) such further relief and other relief as counsel may advise and this Honourable Court deem just.

Parties

2. Hanfeng Evergreen Inc. ("**Hanfeng**") is incorporated under the laws of Ontario with its registered head office in Toronto. Through its wholly-owned subsidiaries, Hanfeng was a developer and producer of value-added fertilizers in the People's Republic of China ("**China**"). Hanfeng has no independent operations and exists solely as a holding company for certain operating entities located in China.

3. Hanfeng Slow-Release Fertilizer Co., Ltd. ("**Hanfeng China**") provides slow-release fertilizer products for landscaping projects and agriculture in China. Hanfeng China is a wholly-owned subsidiary of Hanfeng.

4. Yu is a resident of Ontario and is the founder and former CEO of Hanfeng, who owns and controls approximately 20.4% of Hanfeng ′s shares. At all material times, Yu was a director of Hanfeng. Yu is also the legal representative of Hanfeng China, a position that makes Yu responsible for the overall activities of Hanfeng China under Chinese law.

5. Lei is the spouse of Yu, is a resident of Ontario and is a former director and officer of Hanfeng.

6. Ernst & Young Inc. is a professional services firm and was appointed as receiver and manager of Hanfeng (the "**Receiver**") on August 20, 2014 pursuant to an Order under section 101 of the *CJA* and in that capacity brings this action on behalf of Hanfeng and creditors of Hanfeng.

Overview

7. On or about August 8, 2014, Hanfeng entered into a share transfer agreement pursuant to which a purchaser would purchase its shares of Hanfeng China. Unbeknownst to Hanfeng, Yu and Lei fraudulently misrepresented the identity and corporate history of the purchaser with the result that Hanfeng believed it was entering into the share transfer agreement with an established and reputable company, when in fact the purchaser was a shell corporation established and controlled by Yu.

8. Prior to the appointment of the Receiver and during his tenure as a director of Hanfeng, Yu breached his fiduciary duties to Hanfeng and his duties to Hanfeng China by taking out a series of loans on behalf of Hanfeng China, the proceeds of which he converted for his own use or otherwise improperly dissipated to the detriment of Hanfeng and Hanfeng China.

9. Following the appointment of the Receiver, Yu continued to breach his duties to Hanfeng and Hanfeng China by frustrating the efforts of the Receiver to close the share transfer agreement, hindering the appointment of a new legal representative for Hanfeng China and improperly retaining and dissipating Hanfeng China property, all in breach of orders of this Court.

Background

The Share Transfer Agreement

10. In June 2014, Yu and Lei forwarded a letter of intent dated June 16, 2014 to the Board of Directors of Hanfeng (the "**Board**") on behalf of a potential purchaser (the

"**Purchaser"**) expressing interest in acquiring Hanfeng China from Hanfeng (the "**Letter of Intent**"). The Letter of Intent was purportedly authored by Heilongjiang Pengcheng Fertilizer Co., Ltd. ("**HLJ Pengcheng**"), a well-known, well-capitalized and reputable fertilizer company in China. Yu and Lei also represented to the Board that the Purchaser was HLJ Pengcheng and that the Purchaser was a third party purchaser at arm's-length to Hanfeng China.

11. The Board retained Deloitte LLP to conduct due diligence on HLJ Pengcheng and prepare a fairness opinion with respect to the proposed transaction.

12. On August 8, 2014, following negotiations, Hanfeng and the Purchaser entered into a share transfer agreement (the "**Share Transfer Agreement**") and certain related agreements pursuant to which Hanfeng agreed to transfer all its equity shares of Hanfeng China to the Purchaser in consideration for payment of RMB 248,000,000 (approximately C$50 million) (the "**Share Transfer Transaction**"). Eighty percent of the purchase price was payable in cash and 20% was payable by way of a non-interest bearing promissory note to be issued by the Purchaser in favour of Hanfeng.

13. As detailed below, Yu and Lei misrepresented and concealed the true identity of the Purchaser. Contrary to the Defendants' representation, the Purchaser was not HLJ Pengcheng (Heilongjiang Pengcheng Fertilizer Co. Ltd.), but rather was a shell corporation with a confusingly similar name, Heilongjiang Harbin Pengcheng Fertilizer Co. Ltd. ("**Harbin Pengcheng**"**),** set-up by Yu and others.

14. The Receiver later discovered that although the Letter of Intent was purportedly authored by HLJ Pengcheng and its negotiations were purportedly conducted with authorized representatives of HLJ Pengcheng, in fact HLJ Pengcheng had no knowledge of the Letter of Intent or the Share Transfer Agreement and had no involvement in the negotiations with Hanfeng.

The Receivership Proceedings

15. On August 20, 2014, Hanfeng commenced an application (the "**Application**") in the Ontario Superior Court of Justice seeking appointment of Ernst and Young Inc.

as receiver and manager of the assets, undertakings and property of Hanfeng pursuant to section 101 of the *CJA* (the "**Receivership Proceedings**").

16. At the time of the Application, Hanfeng's principal asset was the issued and outstanding shares of Hanfeng China**.** According to Hanfeng, it was unable to continue business as a going concern due to the significant business issues with Hanfeng China. Hanfeng China had lost its business relationship with its single largest customer, had no prospect of reviving that relationship and faced insurmountable operational challenges, including a lack of demand for its products and deteriorating facilities, inventories and other assets.

17. On the Application, Hanfeng also sought and obtained an order approving the Share Transfer Agreement and Share Transfer Transaction and providing for the vesting of all of the Shares in the Purchaser free and clear of any encumbrances upon the completion of the Share Transfer Transaction.

Purchaser Fails to Make Payments

18. Under the terms of the Share Transfer Agreement, the Purchaser was obligated to make payment of the purchase price as follows:

(a) 5% of the total purchase price within seven business days of the date of the Share Transfer Agreement (the "**Deposit**");

(b) 15% of the total purchase price within ten business days of the date of Court approval of the Share Transfer Agreement (the "**Interim Payment**");

(c) 60% of the total purchase price within ten days upon the closing of the Share Transfer Transaction; and

(d) 20% of the total purchase price in promissory note to be assigned to Yu (on account of approximately 20.4% of Hanfeng China's shares owned or controlled by Yu) within ten days upon the closing of the Share Transfer Transaction.

19. The Deposit was paid, albeit late, on August 28, 2014.

20. The Purchaser failed to make the Interim Payment that was due on September 3, 2014 pursuant to the Share Transfer Agreement. The Purchaser initially blamed the failure to make the Interim Payment on its inability to obtain timely regulatory approvals required under Chinese law to procure and export foreign currency from China.

21. In the face of the Purchaser's failure to meet its payment obligations and given Yu's involvement in dealing with the Purchaser prior to the Receivership Proceedings, the Receiver engaged Yu to, among other things, facilitate communication with the Purchaser.

22. On February 11, 2015, in a good faith attempt to solve the purported regulatory issues and facilitate payment of the balance of the purchase price under the Share Transfer Agreement, the Receiver authorized Yu, on behalf of the Receiver, to enter into an escrow agreement (the "**Escrow Agreement**") with the Purchaser pursuant to which the Purchaser agreed to make the outstanding payments under the Share Transfer Agreement.

23. The Purchaser failed to make the payments required under the Escrow Agreement. The Receiver was initially informed by the Purchaser that the delay in funding the escrow account was caused by its office closure during the Chinese New Year holiday season between February 14 and March 6, 2015. However, the Purchaser later advised it was unable to make the Interim Payment on time due to its tight liquidity related to the seasonality of its business, and requested an extension of time to meet its obligations under the Escrow Agreement.

24. After numerous discussions, on March 23, 2015 the Purchaser committed to a new timeframe to fund the Interim Payment in three installments by April 30, 2015. The Purchaser again failed to meet this commitment.

Receiver's Continued Efforts to Close the Share Transfer Transaction

25. Notwithstanding the Purchaser's continued failure to meet its payment obligations under the Share Transfer Agreement, the Receiver made continued efforts to move the Share Transfer Transaction forward, including:

(a) engaging in extensive discussions with the Purchaser and Yu by phone and email in order to break through the purported impasse;

(b) meeting with Yu in person in Toronto on December 22, 2014 and May 4, 2015;

(c) requesting an in-person meeting with the Purchaser (the Purchaser requested to meet in Toronto, but subsequently advised that its representatives' visa applications were rejected by the Canadian Embassy in Beijing);

(d) requesting an in-person meeting in China, to which the Purchaser did not respond; and

(e) sending a letter dated May 22 to the Purchaser demanding the Purchaser fulfill its obligations under the Share Transfer Agreement and the Escrow Agreement.

New Information Concerning Identity of the Purchaser

26. During the course of its efforts to close the Share Transfer Transaction, the Receiver learned that contrary to the representations of Yu and Lei, the party it had been dealing with as Purchaser was not HLJ Pengcheng but rather was Harbin Pengcheng, a shell company with a confusingly similar name that is controlled by Yu.

27. Unlike HLJ Pengcheng, which is a well-established company, Harbin Pengcheng is not an operating company and was only registered on August 4, 2014 – four days before the Share Transfer Agreement was signed.

28. The Receiver further discovered that there is no connection whatsoever between HLJ Pengcheng and Harbin Pengcheng.

29. At all material times, Yu and Lei misrepresented the identity of the Purchaser and concealed Yu's personal connection to Harbin Pengcheng.

Yu Dissipates Hanfeng China's Assets

30. During the course of the Receivership Proceedings, Yu advised and assured the Receiver that Hanfeng China's operations had been dormant since April 2014. However, the Receiver discovered that between August 2014 and June 2015, Hanfeng China incurred millions of RMB in expenses, significantly more than would be expected for a nonproducing manufacturing facility (the "**Dissipated Funds**").

31. Despite requests from the Receiver and in breach of his obligations as legal representative and orders of this Court, Yu has refused to provide the Receiver with Hanfeng China's financial records and access to Hanfeng China's bank accounts. As a result, the Receiver has been unable to ascertain what happened to the Dissipated Funds, but it appears that Yu has absconded with them.

32. At least RMB 27 million has been dissipated from Hanfeng China during this period and the Receiver is concerned that the amount of the Dissipated Funds continues to grow.

33. The Receiver also discovered that under the control and direction of Yu, including while the company was purportedly dormant, Hanfeng China obtained approximately RMB 600,000,000 through various loans and other agreements as follows:

(a) RMB 170 million from the Harbin Branch of Industrial Bank Co., Ltd;

(b) RMB 220 million from China Construction Bank;

(c) RMB 190 million from China Merchants Bank;

(d) RMB 20 million from the Bank of East Asia (collectively the "**Loans"**)

34. None of the Loans are reflected in the internal financial statements of Hanfeng China, and Yu has denied the existence of the Loans.

35. While the Receiver has determined based on available information that approximately RMB 600 million was borrowed by Hanfeng China under the Loans, none of the borrowed funds are (or ever have been) held by Hanfeng China. Due to Yu's actions, the Receiver has been unable to ascertain precisely what happened to these funds, but it appears that Yu has absconded with them.

36. The Loans are in default and remain outstanding liabilities for Hanfeng China. Lawsuits have been filed against Hanfeng China for recovery of the defaulted loan amounts.

Yu's Obligations

37. Yu was a member of the Board beginning in 2003. As a member of the Board, Yu owed Hanfeng fiduciary duties, including but not limited to a duty to act in good faith in the best interest of Hanfeng. Yu is also the legal representative of Hanfeng China, with responsibility under Chinese law for the administration of the company in accordance with its corporate purpose and authority to act on behalf of the company, e.g., to enter into third party transactions and other agreements.

38. In breach of his fiduciary duties to Hanfeng and his duties as legal representative of Hanfeng China, Yu failed to cooperate with the Receiver and failed to provide the Receiver with operational and financial information as requested.

39. In May 2015, as a result of Yu's failure to cooperate with the Receiver, the Receiver's ongoing investigation regarding Yu's connection to Harbin Pengcheng and concerns about deterioration of Hanfeng China's assets, the Receiver took steps to remove Yu as the legal representative and a director of Hanfeng China. Yu refused to cooperate with the Receiver's steps to register a new legal representative.

40. On July 24, 2015, in the course of the Receivership Proceedings, the Honourable Mr. Justice Conway ordered Yu to provide full and timely cooperation to the Receiver

including, but not limited to, providing the new legal representative with unfettered access to Hanfeng China's offices, facilities, books and financial records (the "**July 24th Order**").

41. On July 31, 2015, in the course of the Receivership Proceedings, the Honourable Mr. Justice Hainey further ordered Yu to provide full and timely cooperation to the Receiver including, but not limited to, surrendering of all of Hanfeng China's chops, and surrendering all of Hanfeng China's corporate licenses, certificates and registrations (the "**July 31st Order**").

42. Despite numerous requests, and in breach of both the July 24th Order and the July 31st Order, Yu has refused to co-operate with the appointment of a new legal representative, refused to provide the Receiver with access to the books and records of Hanfeng China, including financial records, bank accounts and loan information, excluded the Receiver's representatives from physically accessing Hanfeng China's facilities and otherwise prevented the Receiver from exercising any of the rights inherent in Hanfeng's ownership of Hanfeng China.

43. Yu has offered a number of purported excuses and justifications for Harbin Pengcheng's delay closing the Share Transfer Transaction and his own failure to co-operate with the Receiver. The explanations provided are not credible and are inconsistent with information gathered in the course of the Receivership Proceeding.

Breach of Fiduciary Duties

44. Yu breached his fiduciary duties to Hanfeng by misrepresenting the identity of the Purchaser in an attempt to secure Hanfeng China's assets for his own personal benefit. Yu further breached his fiduciary duties by frustrating the Receiver's efforts to protect Hanfeng China's assets for the benefit of Hanfeng and its shareholders while simultaneously dissipating Hanfeng China's assets for his personal gain. Hanfeng has suffered damages, the full particulars of which will be provided prior to trial, for which Yu is liable as a result of his breaches of fiduciary duty detailed herein.

Deceit and Fraudulent Misrepresentation

45. Despite his legal and/or equitable obligations to Hanfeng, Yu fraudulently misrepresented the identity of the Purchaser and actively concealed material facts about the true identity of the Purchaser and Yu's relationship to the Purchaser, all with intent to induce Hanfeng to enter into the Share Transfer Agreement, thereby injuring Hanfeng or knowing that injury was likely.

46. Lei fraudulently misrepresented the identity of the Purchaser and actively concealed material facts about the true identity of the Purchaser and Yu's relationship to the Purchaser, all with intent to induce Hanfeng to enter into the Share Transfer Agreement, thereby injuring Hanfeng or knowing that injury was likely.

47. Hanfeng entered into the Share Transfer Agreement with the Purchaser in reliance upon Yu and Lei's misrepresentations and as a result of their active concealment of material information.

48. Hanfeng has suffered damages, the full particulars of which will be provided prior to trial, for which Yu and/or Lei are liable as a result of the deceit or fraudulent misrepresentations committed by Yu and Lei and relied upon by Hanfeng and/or the Receiver as described herein.

Conversion

49. Yu caused Hanfeng China to spend or otherwise dissipate the Dissipated Funds, without any legitimate business purpose, thereby depriving Hanfeng of rightful possession. Yu further caused Hanfeng China to obtain the Loans, for which there was no legitimate business purpose, and absconded with the proceeds of the Loans, thereby depriving Hanfeng of rightful possession. Yu was not entitled to the benefit of any of the Dissipated Funds or the Loans.

50. Yu's subsequent transfer or use of the Dissipated Funds and the Loans amount to a conversion of funds for which Yu is liable.

Restitution

51. Yu has wrongfully obtained the funds advanced under the Loans and the Dissipated Funds. Yu is not entitled to these wrongfully obtained funds. The Receiver seeks restitution of all such amounts that Yu obtained.

Unjust Enrichment

52. Yu has been unjustly enriched by receipt of the funds advanced under the Loans and the Dissipated Funds, to the detriment of Hanfeng China and its sole shareholder Hanfeng. There is no juristic reason for Yu's enrichment since he has no legal or equitable right to these funds.

Knowing Assistance and Knowing Receipt

~~53. Lei knowingly received and retained the benefits of the Loans and Dissipated Funds, which Yu wrongfully obtained.~~

~~54. In addition, In addition, or in the alternative, Lei knowingly assisted Yu to wrongfully obtain the benefits of the Loans and the Dissipated Funds. Hanfeng has suffered harm as a result of Lei's knowing assistance and knowing receipt and is entitled to damages and/ or restitution.~~

55. In addition, or in the alternative, Lei knowingly assisted Yu in his breach of fiduciary duties owed to Hanfeng and Hanfeng China.

56. As set out in paragraph 37 above, as both a board member and Hanfeng's legal representative in China, Yu owed fiduciary duties to Hanfeng and Hanfeng China.

57. Yu breached his fiduciary duties in a fraudulent and dishonest manner, as set out in paragraph 44 above.

58. Lei was a paid consultant of Hanfeng and the most senior management representative in the Toronto office. She was herself a fiduciary of Hanfeng. Lei was aware that Yu was a fiduciary of Hanfeng and Hanfeng China.

59. Yu informed Lei in respect of the Dissipated Funds and the Loans, and the strategy of inducing Hanfeng to enter into the Share Transfer Transaction so that Yu could benefit personally from the receipt of the Dissipated Funds and the Loans. Lei participated and assisted Yu in this fraudulent and dishonest conduct. In her role as a paid consultant of Hanfeng and the most senior management representative in the Toronto office, Lei was directly involved in providing information to the Receiver relating to the Purchaser and Hanfeng China's financial information. Lei knowingly provided false or incorrect information, or was wilfully blind to the incorrectness of the information that she was providing. To assist Yu in his breach of fiduciary duties, Lei failed to cooperate with the Receiver's requests regarding access to information related to Hanfeng China.

60. Hanfeng has suffered harm as a result of Lei's knowing assistance of Yu's breach of fiduciary duty and is entitled to damages and/or restitution.

Punitive Damages

61. The misconduct of the Defendant as described herein has been high-handed, deliberate, officious and malicious as to justify an award of punitive damages.

Special Damages

62. In the circumstances described above, the Plaintiff is entitled to special damages for, *inter alia*, the cost of investigating the Defendants' conduct, costs associated with preserving Hanfeng China's assets in the face of Yu's dissipation thereof and costs incurred in Court approval and monitoring of the Share Transfer Transaction as well as costs incurred as a result of delays in closing that transaction.

63. The Receiver pleads and relies upon the *CJA*.

64. The Plaintiff proposes that this action be tried at Toronto.

November 2, 2017

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Tel: 416-869-5230

Lawyers for the Plaintiff

Ernst & Young Inc., in its capacity as Court Appointed Receiver of Hanfeng Evergreen Inc.
Plaintiff

and

Yu Xinduo et al.
Defendants

Court File No. CV16-11325-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

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Lawyers for the Plaintiff

This is **Appendix "G"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

Stikeman Elliott

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November 3, 2017
File No. 131522.1002

BY EMAIL

Moore Barristers
Suite 1600
393 University Avenue
Toronto, ON M5G 1E6

Attention: Mr. David C. Moore

Dear Mr. Moore:

Re: Hanfeng Evergreen Inc. (Re) – Court File No. CV-14-10667-00CL

I write in respect of the fee approval motion returnable November 20, 2017 and your various correspondence dated October 18, 2017.

Fee Approval Motion

The motion record for the approval of the fees of the Receiver and its counsel was served on July 11, 2017. You delivered responding materials on October 19, 2017, a day later than ordered by the Court, in the form of an affidavit of Lei Li. Based on our review of Ms. Lei's affidavit, the Receiver is of the view that it does not include any evidence relevant to the approval of the fees of the Receiver and its counsel. While we have received various other correspondence from you, which is addressed below, you have not otherwise advised us of the basis for your clients' objection to the fee approval outside of generalized commentary made by you in the cross-examinations of Mr. Pukier and Mr. Beekenkamp held this week. We require that you advise, with particularity, as to the basis of your clients' objections to the fee approval, including any objections to quantum, hourly rates, timekeepers, particular work performed, or other objections, by Tuesday, November 7, 2017, so that the Receiver has an opportunity to address your objections in advance of the November 20 hearing.

During your cross-examinations of Mr. Pukier and Mr. Beekenkamp, you asked many questions that were refused or taken under advisement. The transcript of these cross-examination are not scheduled to be delivered until Thursday of next week. Mr. Murray of our office attempted to keep track of the undertakings, refusals and questions taken under advisement during the cross-examinations. Attached is a chart of those questions, with the caveat that the chart is unofficial. The Receiver does not intend to answer refused questions and I expect will not answer many of the questions taken under advisement, subject of course to any direction of the Court. If it is your intention to seek to compel answers to these questions, a 9:30 scheduling appointment needs to be scheduled for a date as early as possible next week to address timing and process. While we acknowledge that supplementary information was provided to you on Monday of this week, the vast majority of these questions relate to matters known to you at the latest when materials were served on July 11, 2017. The Receiver's position will be that the

Stikeman Elliott

November 20 hearing should not be delayed as a result of requests for answers and information made for the first time this week.

Resignation and Consent of Mr. Yu

You delivered to me 4 letters on October 18, 2017. In one of those letters, you delivered a signed Resignation and Consent from Mr. Yu, which followed a letter from you dated September 13, 2017, when you first advised (in response to our correspondence from July 7, 2017) what Mr. Yu was prepared to do to effect the replacement of a legal representative and/or director of Hanfeng China. As you know, what Mr. Yu has delivered is not in accordance with the Receiver's request. The Receiver is obtaining legal advice from Chinese counsel and will be delivering a supplemental report to the Court in advance of the November 20 hearing addressing this issue.

Second Request to Inspect

In another letter received October 18, 2017, you reiterated your second request to inspect documents pursuant to Rule 30.04(3). Those documents, making up 244 pages, were delivered to you this week. However, the manner in which you are conducting the defence of this litigation does not accord with the efficient and orderly practice contemplated by the Rules. We understand the decision of Cavanagh J. on your motion to strike to be a recognition of this. It is customary for requests to inspect under Rule 30.04(2) to be made prior to the close of pleadings. Requests to inspect under Rule 30.04(1) have, in my experience, been subsumed by the present practice in civil litigation to concurrently deliver productions of all documents referred to in an affidavit of documents. Your approach of delivering requests to inspect after the close of pleadings but before the delivery of affidavits of documents serves no practical purpose that I can surmise and only increases the costs of the litigation. Meanwhile, your decision to serve a motion to strike after the close of pleadings, which Cavanagh J. questioned, has delayed the preparation of a discovery plan in accordance with Rule 29.1. Now that the motion to strike has been decided and (as of yesterday) an Amended Statement of Claim delivered, we will move forward with the preparation of a discovery plan by which further document production in the litigation will be governed.

Chinese Legal Proceedings

In a further letter dated October 18, 2017, you forwarded a letter from the Purchaser's Chinese counsel (Dentons) about a purported further appeal of the final order issued by the Heilongjiang High People's Court. We find it curious that while this letter is addressed to Hanfeng Evergreen Inc., Ernst & Young and Mr. Yu (without addresses for any of the purported recipients), and is dated October 13, 2017, it did not come to the attention of the Receiver until we received it from you, and the Receiver's Chinese counsel has not received a copy of it. The Receiver will address the Denton's letter in a supplemental report to be delivered prior to the November 20 hearing.

In this letter you ask the question "whether the Receiver agrees that the normal principles/jurisprudence regarding the Receiver's responsibility for the opposing parties' legal fees, when the estate does not have sufficient assets to cover same, are applicable to the lawsuit against my clients." We spoke to this during the cross-examination of Mr. Beekenkamp. We understand your position to be that the Receiver should be personally liable for such costs. The Receiver's position, supported by the normal principles/jurisprudence, is that it is acting in good faith bringing the action against your clients and is acting within the authority granted to it by the Court in its appointment order, and that in such circumstances it is not personally liable for costs in the event there are insufficient funds in the estate.

Stikeman Elliott

Yours truly,

Daniel S. Murdoch

DM/ey

cc: Brian Pukier, *Stikeman Elliott LLP*
Brent Beekenkamp, *Ernst & Young Inc.*
Allen Yao, *Ernst & Young Inc.*

This is **Appendix "H"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

Hanfeng Slow-Release Fertilizer Co., Ltd. (Corporate ID: 76905821-X)
Indebtedness History
06-Jun-16
Source: Corporate Credit Information Centre of the People's Bank of China

RMB Millions	Jun-13	Sep-13	Dec-13	Mar-14	Jun-14	Sep-14	Dec-14	Mar-15	Jun-15	Sep-15	Dec-15	Mar-16
Total Indebtedness	566.54	400.00	619.00	569.00	450.00	685.00	631.59	694.30	692.30	646.32	616.32	438.31
Indebtedness under Default								36.49	139.31	295.32	442.82	286.81

This is **Appendix “I”** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

Http;//shixin.court.gov.cn

序号	被执行人姓名/名称	立案时间	案号	查看
1	汉枫缓释肥料有限公司	2016年09月26日	(2016)黑01执00445号	[查看]
2	汉枫缓释肥料有限公司	2016年07月08日	(2016)黑01执00308号	[查看]
3	汉枫缓释肥料有限公司	2016年07月08日	(2016)黑01执00307号	[查看]
4	汉枫缓释肥料有限公司	2016年04月13日	(2016)黑01执151号	[查看]
5	汉枫缓释肥料有限公司	2016年01月27日	(2016)黑01执64号	[查看]
6	汉枫缓释肥料有限公司	2016年01月19日	(2016)苏0102执261号	[查看]
7	汉枫缓释肥料有限公司	2016年01月08日	(2016)黑0110执59号	[查看]
8	汉枫缓释肥料有限公司	2015年12月04日	(2015)哈执字第00525号	[查看]
9	汉枫缓释肥料有限公司	2015年11月05日	(2015)泰中执字第00342号	[查看]

首页 上一页 下一页 尾页 页 1/1 共9条

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	哈尔滨市中级人民法院
省份：	黑龙江
执行依据文号：	2016黑哈证执字第4号执行证书。2016黑执29号执行裁定
立案时间：	2016年09月26日
案号：	(2016)黑01执00445号
做出执行依据单位：	哈尔滨公证处
生效法律文书确定的义务：	
被执行人的履行情况：	全部未履行
失信被执行人行为具体情形：	其他有履行能力而拒不履行生效法律文书确定义务的
发布时间：	2016年11月20日

关闭

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	哈尔滨市中级人民法院
省份：	黑龙江
执行依据文号：	（2015）哈民三商初字第 76 号
立案时间：	2016 年 07 月 08 日
案号：	(2016)黑 01 执 00308 号
做出执行依据单位：	哈尔滨市中级人民法院
生效法律文书确定的义务：	本金 36488324.17 元，利息 855068.35 元；诉讼费减半收取 113033.63 元，由被告汉枫缓释肥料有限公司承担。
被执行人的履行情况：	全部未履行
失信被执行人行为具体情形：	其他有履行能力而拒不履行生效法律文书确定义务的
发布时间：	2016 年 10 月 20 日

关闭

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	哈尔滨市中级人民法院
省份：	黑龙江
执行依据文号：	（2015）哈民三商初字第 77 号
立案时间：	2016 年 07 月 08 日
案号：	(2016)黑 01 执 00307 号
做出执行依据单位：	哈尔滨市中级人民法院
生效法律文书确定的义务：	给付原告借款 4000 万元及利息 944584.71 元；案件受理费 243811 元，减半收取 121905.5 元，由被告汉枫缓释肥料有限公司负担。
被执行人的履行情况：	全部未履行
失信被执行人行为具体情形：	其他有履行能力而拒不履行生效法律文书确定义务的
发布时间：	2016 年 10 月 20 日

关闭

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	哈尔滨市中级人民法院
省份：	黑龙江
执行依据文号：	2015 黑高商初字第 11 号民事调解书
立案时间：	2016 年 04 月 13 日
案号：	(2016)黑 01 执 151 号
做出执行依据单位：	
生效法律文书确定的义务：	一、各方当事人确定截止 2015 年 8 月 24 日，汉枫公司尚欠招商银行哈分行借款本金 139,306,998.30 元，其中流动资金借款本金 95,000,000.00 元，承兑汇票垫付款本金 44,306,998.30 元；二、汉枫公司于 2015 年 9 月 30 日前向招商银行哈分行给付承兑汇票垫付款本息 49,092,096.37 元，其中承兑汇票垫付款本金 44,306,998.30 元，罚息 4,785,098.07 元，汉枫江苏公司、亚联公司、于薪铎、北大荒汉枫公司同意对上述 49,092,096.37 元承担连带给付责任；
被执行人的履行情况：	全部未履行
失信被执行人行为具体情形：	其他有履行能力而拒不履行生效法律文书确定义务的
发布时间：	2016 年 09 月 25 日

关闭

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	哈尔滨市中级人民法院
省份：	黑龙江
执行依据文号：	(2015)哈民三商初字第 78 号
立案时间：	2016 年 01 月 27 日
案号：	(2016)黑 01 执 64 号
做出执行依据单位：	
生效法律文书确定的义务：	一、被告汉枫缓释肥料有限公司给付原告兴业银行股份有限公司哈尔滨分行借款 8000 万元及利息 2,449,208.22 元；二、如被告汉枫交换式肥料有限公司逾期给付上述借款本息，原告兴业银行股份有限公司哈尔滨分行有权对被告黑龙江北大荒汉枫农业发展有限公司抵押的十五处房产，折价或者以拍卖、变卖价款优先受偿；三、被告汉枫缓释肥料（江苏）有限公司、扬州亚联钢管有限公司、于薪铎对上述第一项承担连带清偿责任；
被执行人的履行情况：	All Non-compliance
失信被执行人行为具体情形：	has the capability to pay, but refuses to fulfill obligations under legally effective documents
发布时间：	September 25, 2016

关闭

关闭

被执行人姓名/名称:	汉枫缓释肥料有限公司
身份证号码/组织机构代码:	76905821-X
法定代表人或者负责人姓名:	于薪铎
执行法院:	南京市玄武区人民法院
省份:	江苏
执行依据文号:	(2015)玄商初字第 01557 号
立案时间:	2016 年 01 月 19 日
案号:	(2016)苏 0102 执 261 号
做出执行依据单位:	南京市玄武区人民法院
生效法律文书确定的义务:	一、被告汉枫缓释肥料（江苏）有限公司应于本判决发生法律效力之日起十日内向原告徽商银行股份有限公司南京珠江路支行偿还借款本金 2400 万元以及利息、罚息、复利（暂计算至 2015 年 10 月 13 日，利息、罚息、复利为 1018063.29 元，自 2015 年 10 月 14 日至实际给付之日，按照月利率 0.9100001%的标准计算罚息），并支付律师费 10 万元； 二、原告徽商银行股份有限公司南京珠江路支行有权分别在 2880 万元、1580 万元、1300 万元限额内对被告汉枫缓释肥料（江苏）有限公司名下产权证号分别为姜堰字第 80019943 号、姜国用 2011 第 5139、5140 号位于姜堰市经济开发区天目西路 88 号房产、位于姜堰市经济开发区双寿村的土地扣除先前抵押限额外折价或者以拍卖、变卖所得价款优先受偿； 三、被告汉枫缓释肥料有限公司在 2880 万元限额内对被告汉枫缓释肥料（江苏）有限公司的上述债务承担连带保证责任； 四、驳回原告徽商银行股份有限公司南京珠江路支行的其他诉讼请求。 如果未按本判决指定的期间履行给付金钱义务，被告应当按照《中华人民共和国民事诉讼法》第二百五十三条的规定，加倍支付延迟履行期间的债务利息。 本案案件受理费 167390 元、保全费 5000 元，合计 172390 元由二被告负担。 如不服本判决，可在本判决送达之日起十五日内，向本院递交上诉状，并按对方当事人的人数提交副本，上诉于江苏省南京市中级人民法院。同时根据国务院《诉讼费用交纳办法》的有关规定，向江苏省南京市中级人民法院预交上诉案件受理费。江苏省南京市中级人民法院开户银行：南京市农业银行鼓楼支行；账号：10105901040001276。
被执行人的履行情况:	全部未履行
失信被执行人行为具体情形:	有履行能力而拒不履行生效法律文书确定义务
发布时间:	2017 年 10 月 11 日

关闭

被执行人姓名/名称:	汉枫缓释肥料有限公司

身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	
执行法院：	哈尔滨市香坊区人民法院
省份：	黑龙江
执行依据文号：	暂无
立案时间：	2016 年 01 月 08 日
案号：	(2016)黑 0110 执 59 号
做出执行依据单位：	
生效法律文书确定的义务：	
被执行人的履行情况：	全部未履行
失信被执行人行为具体情形：	其他有履行能力而拒不履行生效法律文书确定义务的
发布时间：	2016 年 09 月 25 日

被执行人姓名/名称：	汉枫缓释肥料有限公司
身份证号码/组织机构代码：	76905821-X
法定代表人或者负责人姓名：	于薪铎
执行法院：	江苏省泰州市中级人民法院
省份：	江苏
执行依据文号：	(2015)泰中商初字第 00045 号
立案时间：	2015 年 11 月 05 日
案号：	(2015)泰中执字第 00342 号
做出执行依据单位：	江苏省泰州市中级人民法院
生效法律文书确定的义务：	一、被告汉枫缓释肥料（江苏）有限公司于本判决生效后十日内偿还原告中国银行股份有限公司姜堰支行借款本金 3000 万元、利息 396666.67 元及逾期利息（自 2014 年 12 月 17 日起至本判决确定的给付之日止以 3000 万元本金按年利率 7.84%计算），并赔偿原告中国银行股份有限公司姜堰支行律师代理费 45 万元；二、被告汉枫缓释肥料有限公司对被告汉枫缓释肥料（江苏）有限公司的上述偿还义务承担连带清偿责任； 三、被告尚志市华宇农业发展有限公司在其应付的账款 38976000 元限额内对被告汉枫缓释肥料（江苏）有限公司在本判决第一项所确定的债务范围内向原告中国银行股份有限公司姜堰支行承担连带清偿责任。 如果被告未按本判决指定的期间履行给付上述款项的义务，应当依照《中华人民共和国民事诉讼法》第二百五十三条之规定，加倍支付迟延履行期间的债务利息。 案件受理费 197922 元、保全费 5000 元由被告汉枫江苏公司、汉枫公司共同负担（该款原告中行姜堰支行已预交，被告汉枫江苏公司、汉枫公司在履行本判决时一并支付给原告中行姜堰支行）。 如不服本判决，可在判决书送达之日起十五日内，向本院递交上诉状，并按对方当事人的人数提出副本，上诉于江苏省高级人民法院，同时根据《诉讼费交纳办法》的有关规定，向该院预交上诉案件受理费。江苏省高级人民法院开户行：中国农业银行南京山西路支行，帐号：10-113301040002475。
被执行人的履行情况：	部分未履行
已履行：	扣划汉枫缓释肥料（江苏）有限公司银行存款 331131.2 元，扣除执行费，余款已全部转付申请执行人。
未履行：	尾款未给付
失信被执行人行为具体情形：	违反财产报告制度,其他有履行能力而拒不履行生效法律文书确定义务
发布时间：	2016 年 04 月 21 日

关闭

Summary of Information from China Court Enforcement Information Website

http://shixin.court.gov.cn

November 6, 2017

Currency: RMB

Obligations of Chinese Subsidiary under Court Judgements and Settlements					
Bank	Principal	Interest	Other	Total	Joint Liability
Industrial Bank	36,488,325	855,068	113,034	37,456,427	N/A
Industrial Bank	40,000,000	944,585	121,906	41,066,490	N/A
Industrial Bank	80,000,000	2,449,208		82,449,208	Yu Xinduo and Others
Merchant Bank	139,306,998	4,785,098		144,092,096	Yu Xinduo and Others
	295,795,323	9,033,959	234,939	305,064,222	

Joint Liability Assumed by Chinese Subsidiary re Hanfeng Slow-Release (Jiangsu) Co., Ltd				
Bank	Principal	Interest	Other	Total
HuiShang Bank	28,800,000			28,800,000
Bank of China	30,000,000	396,667	450,000	30,846,667
	58,800,000	396,667	450,000	59,646,667

Unofficial Translation of Search Results

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#	Debtor Name	Filing Time	File #	Details
1	Hanfeng Slow-Release Co., Ltd	September 26, 2016	(2016)黑 01 执 00445 号	[查看]
2	Hanfeng Slow-Release Co., Ltd	July 8, 2016	(2016)黑 01 执 00308 号	[查看]
3	Hanfeng Slow-Release Co., Ltd	July 8, 2016	(2016)黑 01 执 00307 号	[查看]
4	Hanfeng Slow-Release Co., Ltd	April 13, 2016	(2016)黑 01 执 151 号	[查看]
5	Hanfeng Slow-Release Co., Ltd	January 27, 2016	(2016)黑 01 执 64 号	[查看]
6	Hanfeng Slow-Release Co., Ltd	January 19, 2016	(2016)苏 0102 执 261 号	[查看]
7	Hanfeng Slow-Release Co., Ltd	January 8, 2016	(2016)黑 0110 执 59 号	[查看]
8	Hanfeng Slow-Release Co., Ltd	December 4, 2015	(2015)哈执字第 00525 号	[查看]
9	Hanfeng Slow-Release Co., Ltd	November 5, 2015	(2015)泰中执字第 00342 号	[查看]

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Harbin Intermediate People's Court
Province:	Heilongjiang
Court Documents:	2016 黑哈证执字第 4 号执行证书。2016 黑执 29 号执行裁定
Filing Time:	September 26, 2016
File Name:	(2016)黑 01 执 00445 号
Entity issuing the documents:	Harbin Notarial Office
Obligations under legally effective documents:	
Debtor Performance:	All Non-compliance
Debtor Activities:	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date:	November 20, 2016

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Harbin Intermediate People's Court
Province:	Heilongjiang
Court Documents:	2015）哈民三商初字第 76 号
Filing Time:	September 26, 2016
File Name:	(2016)黑 01 执 00445 号
Entity issuing the documents:	Harbin Notarial Office
Obligations under legally effective documents:	Principal of RMB 36488324.17; interest of RMB 855068.3; ourt fees halved at RMB 113033.63 shall be paid by Hanfeng Slow-Release Co., Ltd.
Debtor Performance:	Non-compliance
Debtor Activities:	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date:	November 20, 2016

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Harbin Intermediate People's Court
Province:	Heilongjiang
Court Documents:	（2015）哈民三商初字第 77 号
Filing Time:	July 8, 2017
File Name:	(2016)黑 01 执 00445 号
Entity issuing the documents:	Harbin Intermediate People's Court
Obligations under legally effective documents:	Repay the plaintiff RMB 40 million and interest RMB 9444584.71; the court fee is halved at RMB 121905.5 and shall be paid by Hanfeng Slow-Release Co., Ltd .
Debtor Performance:	All Non-compliance
Debtor Activities:	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date:	November 20, 2016

Debtor subject to enforcement：	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID：	76905821-X
Legal Rep or Person in Charge：	Yu Xinduo
Court：	Harbin Intermediate People’s Court
Province：	Heilongjiang
Court Documents：	2015 黑高商初字第 11 号民事调解书
Filing Time：	2016 年 04 月 13 日
File Name：	(2016)黑 01 执 151 号
Entity issuing the documents：	
Obligations under legally effective documents：	1. All parties confirmed that as of August 24, 2015, Hanfeng Slow-Release owed principal of RMB139,306,998.30 to Harbin Branch of China Merchants Bank, of which RMB 95,000,000.00 was the principal of a working capital loan and RMB 44,306,998.30 was the principal of a draft. 2. Before Sept 30, 2015, Hanfeng Slow-Release shall repay China Merchants Bank Harbin Branch RMB 49,092,096.37 in principal and interest of acceptance draft, of which RMB 44,306,998.30 was the principal of acceptance draft and RMB4,785,098.07 in penalty interest. Hanfeng Jiangsu, Yalian, Yu Xinduo and the Beidahuang Hanfeng company agreed to assume the joint liability of RMB 49,092,096.37;
Debtor Performance：	All Non-compliance
Debtor Activities：	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date：	September 25, 2016

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Harbin Intermediate People's Court
Province:	Heilongjiang
Court Documents:	(2015)哈民三商初字第 78 号
Filing Time:	January 27, 2016
File Name:	(2016)黑 01 执 64 号
Entity issuing the documents:	
Obligations under legally effective documents:	1. Defendant Hanfeng Slow-Release Fertilizer Co., Ltd. shall repay the plaintiff Industrial Bank Co., Ltd. Harbin Branch with RMB 80 million in principal and RMB 2,449,208.22 in interest; 2. If the defendant Hanfeng Slow-Release Fertilizer Co., Ltd. fails to pay the principal and interest of the loan mentioned above, the plaintiff Industrial Bank Co., Harbin Branch has the right to enforce against the 15 properties mortgaged by the defendant Heilongjiang Beidahuang Hanfeng Agricultural Development Co., Ltd., and shall have priority claim against the proceeds; 3. Defendants Hanfeng Slow Release Fertilizer (Jiangsu) Co., Ltd., Yangzhou Yalian Steel Tube Co., Ltd., and Yu Xinduo assume the joint liability.
Debtor Performance:	All Non-compliance
Debtor Activities:	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date:	September 25, 2016

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Nanjing Xuanwu District Court
Province:	Jiang Su
Court Documents:	(2015)玄商初字第 01557 号
Filing Time:	2016 年 01 月 19 日
File Name:	(2016)苏 0102 执 261 号
Entity issuing the documents:	Nanjing Xuanwu District Court
Obligations under legally effective documents:	1) The defendant Hanfeng slow-release fertilizer (Jiangsu) Co., Ltd. shall repay the loan principal of RMB 24 million and the interest, penalty interest, and other costs to the plaintiff, Huizong Bank Co., Ltd. Nanjing Zhujiang Road Branch within ten days from the date of the legal effect of this judgment. Compound interest (temporarily calculated to October 13, 2015, interest, penalty interest, compounded interest of RMB 1018063.29 yuan, from October 14, 2015 to the date of actual payment, in accordance with the monthly interest rate of 0.9100001% standard calculation penalty), and pay the lawyer Fees 100000 yuan; 2) The plaintiff Huishang Bank Co., Ltd. Nanjing Zhujiang Road Branch have the right, not exceeding RMB 28.8 million yuan, RMB 15.8 million yuan and RMB 13 million yuan, to properties of the defendant Hanfeng slow release fertilizer (Jiangsu) Co., Ltd. No. Jiangyan No. 80019943, Jiang Guo 2011 No. 5139,5140 located in Jiangyan Economic Development Zone, No. 88 Tianmu West Road real estate, located in Jiangyan Economic Development Zone Shuishou Village land deduction of the previous mortgage limit Outside the discount or the auction, the sale of the proceeds received priority compensation; 3) The defendant Hanfeng Slow-Release Fertilizer Co., Ltd. within 28.8 million yuan limit on the defendant Hanfeng slow release fertilizer (Jiangsu) Co., Ltd. The debt Assuming responsibility for joint and several guarantees; 4) Dismissed the plaintiff Huishang Bank Co., Ltd. Nanjing Zhujiang Road Branch of other claims. If the obligation to pay money is not fulfilled

	within the period specified in this judgment, the defendant shall double the interest on the debt during the period of deferred execution according to Article 253 of the Civil Procedure Law of the People's Republic of China. The case acceptance fee of 167,390 yuan, 5,000 yuan preservation fee, a total of 172,390 yuan by the two defendants. If they do not accept the judgment, they may file an appeal with our court within 15 days from the date of service of this judgment and submit a copy of the appeal according to the number of the other parties and appeal to the Intermediate People's Court of Nanjing, Jiangsu Province. At the same time, in accordance with the relevant provisions of the State Council's "Procedures for Payment of Litigation Costs," the Nanjing Intermediate People's Court of Jiangsu Province filed an appeal for appeal fees. Intermediate People 's Court of Nanjing City, Jiangsu Province Bank: Nanjing Agricultural Bank Drum Tower Branch; Account number: 10105901040001276.
Debtor Performance：	All Non-compliance
Debtor Activities：	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date：	October 11, 2017

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	
Court:	Harbin Xiangfang District People' s Court
Province:	Heilongjiang
Court Documents:	暂无
Filing Time:	January 8, 2016
File Name:	(2016)黑 0110 执 59 号
Entity issuing the documents:	
Obligations under legally effective documents:	
Debtor Performance:	All Non-compliance
Debtor Activities:	Other - has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date:	2016 年 09 月 25 日

Debtor subject to enforcement:	Hanfeng Slow-Release Co., Ltd
ID or Corporate ID:	76905821-X
Legal Rep or Person in Charge:	Yu Xinduo
Court:	Jiangsu Province Taizhou City Intermediate People' s Court
Province:	Jiangsu
Court Documents:	(2015)泰中商初字第 00045 号
Filing Time:	2015 年 11 月 05 日
File Name:	(2015)泰中执字第 00342 号
Entity issuing the documents:	Jiangsu Province Taizhou City Intermediate People' s Court
Obligations under legally effective documents:	1. Defendant Hanfeng Slow-release Fertilizer (Jiangsu) Co., Ltd. Shall repay the plaintiff Bank of China Jiangyan Sub-branch with principal amount of RMB 30 million, interest of 396,666.67 yuan and overdue interest (as of December 2014) within 10 days after the effective date of this judgment day to the date of the verdict to determine the date of the 30 million yuan principal rate of 7.84% per annum), and compensation for plaintiff Bank of China Jiangyan Branch lawyer fee 450,000 yuan; 2. the defendant Hanfeng Slow-Release Fertilizer Co., Ltd. jointly and severally liable for the above obligations of the defendant Hanfeng Slow-Release Fertilizer (Jiangsu) Co., Ltd. 3. Defendant Shangzhi Huayu Agriculture Development Co., Ltd., within the limit of RMB 38,976,000, shall bear joint liability for identified in the first paragraph of this judgment. If the defendant fails to fulfill its obligation to pay the above-mentioned money within the period specified in this judgment, it shall, in accordance with Article 253 of the Civil Procedure Law of the People's Republic of China, double the payment of interest on the debt during the delay in performance. The case acceptance fee of RMB 197,922 yuan, preservation fee of 5,000 yuan by the defendant Hanfeng Jiangsu company, Hanfeng company common burden (which plaintiff Jiangyan branch has been pre-paid, the defendant Hanfeng Jiangsu company, Hanfeng Slow-Release shall repay these fees to the plaintiff Bank of China branch in Jiangyan). If they do not accept the judgment,

	they may file an appeal with the court within 15 days from the date of service of the judgment and make a copy according to the number of counterparts. They will appeal to Jiangsu Higher People's Court and at the same time, according to the "Procedures for the Payment of Litigation Costs" Relevant regulations, to the hospital pre-paid appeal cases fee. Jiangsu Provincial Higher People's Court Bank: Agricultural Bank of China Nanjing Shanxi Road Branch, account number: 10-113301040002475.
Debtor Performance:	Partial non-compliance
Completed:	Deducted Hanfeng slow-release fertilizer (Jiangsu) Co., Ltd. bank deposits 331131.2 yuan, after deducting the implementation fee, the balance has been fully paid for the implementation of the executor. The remaining balance is still outstanding.
Outstanding:	
Debtor Activities	Violated reporting requirements with respect to assets. Others- has the capability to pay, but refuses to fulfill obligations under legally effective documents
Published Date	April 21, 2016

This is **Appendix "J"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

MOORE BARRISTERS
PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
Kenneth G. G. Jones, LL.B.
Nicholas P. Reinkeluers, B.A., J.D.

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Toronto, Ontario
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October 18, 2017

VIA EMAIL to dmurdoch@stikeman.com

Dan Murdoch
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Dear Mr. Murdoch:

Re: Yu Xinduo et al ats Ernst & Young
Court File No. CV16-11325-00CL

1. On September 13, 2017, I wrote to you enclosing an unsigned Resignation and Consent which Mr. Yu was prepared to sign. For ease of reference, a copy of said letter and the enclosure it contained are attached hereto.

2. There has been no reply.

3. Mr. Yu has now signed the Resignation and Consent. A copy of this document, as signed by Mr. Yu today, is attached.

4. In addition, I attach a summary of the 11 documents which Ms. Hogg had previously forwarded by letter dated July 7, 2017.

5. With respect to the facts and documents referred to in Ms. Hogg's letter regarding Mr. Yu's status as a director and legal representative, and based upon the information currently known to me, my views are as follows:

(1) It is apparent from the documents that they are neither necessary nor reasonable to effect Mr. Yu's resignation from these positions and that Mr. Yu is not a necessary signatory to them.

(2) Hanfeng China's corporate stamp appears to be required on some of the documents. The Receiver is aware that, because Mr. Yu resides in Canada, he does not control the corporate authority seals and chops of Hanfeng China, which control has been

delegated to the local management team: see Jonathan Pollack's August 13, 2014 affidavit filed in support of the August 14, 2014 Application by Hanfeng Evergreen Inc. to appoint Ernst & Young as its Receiver and Manager (at paragraph 11).

(3) In 2015, the Receiver appointed a new director to the Hanfeng China Board of Directors without the need for Mr. Yu's signature. Presumably, if a Hanfeng China corporate stamp was required for the appointment of a new director, it was successfully obtained from Hanfeng China and so far as I am aware the necessary government filings to implement the appointment were completed by the Receiver without Mr. Yu's direct involvement.

(4) Further, it is not appropriate for Mr. Yu to sign documents which are blank/incomplete, or pertain to events and appoint people about which he has no knowledge.

6. With respect to the demand in Ms. Hogg's letter that Mr. Yu execute three additional documents, these were described as "Authorization Letters." They do not appear to relate to Mr. Yu's status as a legal representative or otherwise. They also appear to necessitate Hanfeng China's corporate stamp. As noted above, Mr. Yu does not have this stamp in his possession as same is with local management (as reflected in various materials filed by the Receiver).

7. If there is some compelling reason or explanation as to why any of the above documents are truly necessary, I am willing to hear same. Perhaps information about the Receiver's November 2015 Court Application—information which I have requested previously, but which has been refused—would have shed light on this. Perhaps the Receiver might reconsider this refusal.

8. Finally, I attach hereto a legal opinion we have received regarding the procedure to replace a legal representative in China, both in Chinese and in English.

9. Regardless of your response and/or position about the above, please advise whether the Receiver is willing to sign/authorize the enclosed Resignation and Consent. If so, please return same, duly executed. If not, please advise of any specific changes which would be satisfactory to the Receiver.

Yours very truly,

MOORE BARRISTERS

David Moore

David C. Moore

Attachments (6) September 13, 2017 letter
Unsigned Resignation and Consent
Signed Resignation and Consent
Summary of 11 documents
Legal Opinion (Chinese and English)

MOORE BARRISTERS
PROFESSIONAL CORPORATION

David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
Kenneth G. G. Jones, LL.B.
Diana M. Soos, B.Sc., M.B.A., LL.B.
Nicholas P. Reinkeluers, B.A., J.D.

Suite 1600
393 University Avenue
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M5G 1E6
Tel: 416-581-1818
Fax: 416-581-1279

September 13, 2017

By Fax (416) 947-0866

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Dan Murdoch

Dear Sir:

Re: Yu Xinduo et al ats Ernst & Young
Court File No. CV16-11325-00CL

1. On May 12, 2017, I wrote to Ms. Hogg asking for delivery of the documentation necessary for Mr. Yu to sign in order to register a replacement legal representative and/or director of the Chinese Subsidiary. Paragraph 4 of that letter reads as follows:

> "Given, among other things, the continuing allegations in the Fourth Report, I am instructed to request that you deliver to me whatever documentation the Receiver claims Mr. Yu needs to sign to register a replacement legal representative and/or director of the Chinese subsidiary. I would ask that said documents be in English and in Mandarin, so that I can forward them directly to Mr. Yu without having to arrange for a translation."

2. On July 7, 2017, I received a response from Ms. Hogg attaching 11 documents which she stated the Receiver was advised "must be executed and registered to effect the change". In my view, those 11 documents go beyond what is reasonable or necessary to effect Mr. Yu's resignation , and raise questions as to the legal implications of signing said materials. In addition, Ms. Hogg's letter also made several assertions and allegations regarding Mr. Yu with which we disagree.

3. I will elaborate under separate cover.

4. In the meantime, please find enclosed herewith a simple and straightforward Resignation and Consent ("**Resignation**") which Xinduo Yu ("**Yu**") is prepared to sign.

5. If this is satisfactory, please confirm in writing whereupon Mr. Yu will forthwith sign the Resignation and we will arrange for its delivery to you.

Yours very truly,

MOORE BARRISTERS

David Moore

David C. Moore
DCM/ rn

Enclosure

IN THE MATTER OF THE STATUS OF XINDUO YU
AS A DIRECTOR AND LEGAL REPRESENTATIVE OF
HANFENG SLOW-RELEASE FERTILIZER CO., LTD. ("**HANFENG**")

RESIGNATION AND CONSENT

The undersigned, Xinduo Yu, hereby:

(a) resigns from the Board of Directors of Hanfeng,
(b) resigns from his position as legal representative of Hanfeng,
(c) consents to such resolutions, Court Order or administrative directions, as may be necessary to effect to the above resignations, and,
(d) agrees to execute such further documentation, if any, which may be required in law, to give effect to the above resignations.

The above resignations and consents are subject to the following:

(1) the execution and delivery of the Resignation does not constitute any admission or agreement that Mr. Yu has improperly failed to sign any documents or otherwise failed to cooperate in the past;

(2) the execution and delivery of the Registration is without prejudice to Mr. Yu's position as set out in the Statement of Defence filed in Action No. CV-16-11325-00CL;

(3) the execution and delivery of the Resignation is without prejudice to any and all claims that Yu has asserted or could assert against Hanfeng or Hanfeng Evergreen Inc., or Ernst & Young Inc.;

(4) the execution and delivery of the Resignation does not affect any indemnity, if any, which Yu is entitled to receive from Hanfeng or Hanfeng Evergreen Inc.;

(5) without limiting or affecting the scope or application of paragraph 1(2) herein, if Yu is subject to any legitimate claims on the basis that the delivery of the Resignation violates the provisions of the Purchase Agreement to which Hanfeng Evergreen Inc. is a party, referred to in the reports of Ernst & Young to the Ontario Superior Court ("**Claims**"), Hanfeng and Hanfeng Evergreen Inc. agree to indemnify Yu for any loss, expenses, or damages to Yu resulting from any such Claims.

____________________ Witness

____________________ Xinduo Yu

The undersigned hereby acknowledge receipt and accept this Resignation and Consent.

____________________ Hanfeng Evergreen Inc.

____________________ Hanfeng Slow-Release Fertilizer Co., Ltd.

IN THE MATTER OF THE STATUS OF XINDUO YU
AS A DIRECTOR AND LEGAL REPRESENTATIVE OF
HANFENG SLOW-RELEASE FERTILIZER CO., LTD. ("HANFENG")

RESIGNATION AND CONSENT

The undersigned, Xinduo Yu, hereby:

(a) resigns from the Board of Directors of Hanfeng,
(b) resigns from his position as legal representative of Hanfeng,
(c) consents to such resolutions, Court Order or administrative directions, as may be necessary to effect to the above resignations, and,
(d) agrees to execute such further documentation, if any, which may be required in law, to give effect to the above resignations.

The above resignations and consents are subject to the following:

(1) the execution and delivery of the Resignation does not constitute any admission or agreement that Mr. Yu has improperly failed to sign any documents or otherwise failed to cooperate in the past;

(2) the execution and delivery of the Registration is without prejudice to Mr. Yu's position as set out in the Statement of Defence filed in Action No. CV-16-11325-00CL;

(3) the execution and delivery of the Resignation is without prejudice to any and all claims that Yu has asserted or could assert against Hanfeng or Hanfeng Evergreen Inc., or Ernst & Young Inc.;

(4) the execution and delivery of the Resignation does not affect any indemnity, if any, which Yu is entitled to receive from Hanfeng or Hanfeng Evergreen Inc.;

(5) without limiting or affecting the scope or application of paragraph 1(2) herein, if Yu is subject to any legitimate claims on the basis that the delivery of the Resignation violates the provisions of the Purchase Agreement to which Hanfeng Evergreen Inc. is a party, referred to in the reports of Ernst & Young to the Ontario Superior Court ("Claims"), Hanfeng and Hanfeng Evergreen Inc. agree to indemnify Yu for any loss, expenses, or damages to Yu resulting from any such Claims.

Witness	Xinduo Yu

The undersigned hereby acknowledge receipt and accept this Resignation and Consent.

Hanfeng Evergreen Inc.	Hanfeng Slow-Release Fertilizer Co., Ltd.

MEMORANDUM

RE: Summary of the Documents attached to Stikeman Letter dated July 7, 2017 (“**Hogg Letter**”)

DATE: October 18, 2017

A. Eight Documents said to be necessary re Change in Legal Representative or Director

With reference to numbering system of the “Index” attached to the Hogg Letter, the documents enclosed with said Letter consist of the following and are subject to the additional observations noted below:

1. The document referred to in the Index and in the Hogg Letter as “Notice of Removal of Board of Directors” but which is entitled “Dismissal Letter of Original Board Member”, appears to be an incomplete and/or draft declaration regarding a decision of Hanfeng China to remove Mr. Yu from the position of chairman in the near future. The signatory of the document is “Name of Investor”. This “Investor” is not identified on the document but it is clearly not Mr. Yu. If by “Investor” the document means “shareholder”, the sole shareholder of Hanfeng China is Hanfeng Evergreen Inc. for which Mr. Yu has no signing authority. A sheet of paper referring to an unidentified “ID document” is attached. There is no information regarding this “ID document”.

2. The document referred to in the Index and the Hogg Letter as “Board Resolution to Appoint New Chairman and Directors”, and which is entitled “Board Resolution”, appears to be an incomplete and/or draft resolution for a meeting which has either not been held or one for which Mr. Yu did not receive notice and did not attend. The “resolution” first indicates it is agreed that Hong Rongkai will be appointed as Chairman (legal representative) and then that Mr. Yu will be removed from his position as chairman (legal representative). Mr. Yu has no knowledge of Mr. Hong or a Board meeting in which the Board voted to appoint him as chairman.

3. The document referred to in the Index and the Hogg Letter as “Appointment Letter for the Chairman and Directors” and is entitled “Appointment Letter of Director”. The document appears to be an incomplete or draft “declaration” regarding a decision by the “Investor” to appoint Mr. Hong as a member of the Board of Directors of Hanfeng China. The signatory to the document is “Name of Investor” which is not identified on the document but is clearly not Mr. Yu. If by “Investor” the document means “shareholder”, the sole shareholder of Hanfeng China is Hanfeng Evergreen Inc. for which Mr. Yu

has no signing authority. Mr. Yu has no knowledge of Mr. Hong or the Investor's intention to appoint him as chairman. A sheet of paper referring to an unidentified "ID document" is attached. There no information regarding this document.

4. The document referred to in the Index and the Hogg Letter as "Names and Signatures of New Directors" and entitled "List of new board members and their specimen signatures" is an incomplete and/or draft document with respect to the new board member(s). The document is blank and contains no information about the new board member(s). It is unrelated to Mr. Yu. It does not require his signature.

5. The document entitled "Legal Representative Information Form" is a blank table, in English only, which appears to require information pertaining to the proposed new legal representative and does not require any signature or stamp. It is unrelated to Mr. Yu and does not require a signature from him.

6. The document referred to in the Index and the Hogg Letter as "Information of Director, Secretary and Manager" and entitled "Information about Directors, Supervisors and Managers" is a blank table, in English only, which appears to require information pertaining to the new directors, supervisors and managers and does not require any signature or stamp. It is unrelated to Mr. Yu and does not require his signature.

7. The document referred to in the Index and the Hogg Letter as "Authorization of Representative Form" and entitled "Power of Attorney for Appointed Representative or Jointly Entrusted Agent" is a blank form. The document is only in English. The "Applicant" and the "Appointed Representative or Entrusted Agent" are not identified and there is no indication of the purpose of the document. It would be wholly inappropriate for Mr. Yu to sign a blank Power of Attorney form.

8. The document referred to in the Index and the Hogg Letter as "Registration Form of Directors for Foreign Investment Companies" and entitled "Application Form for Registration (Filing) of Foreign – funded Enterprises" is a blank form, in English only. The document cautions the reader to "carefully read the Instructions for Filling in the application form and fill in the form as required". No Instructions have been provided. The purpose of the document is not known. The document on its face appears to be an application to register a foreign – funded enterprise. Hanfeng China is currently a registered foreign – funded enterprise. It would be inappropriate for Mr. Yu to sign a blank form.

B. Three Additional Documents

Documents 9, 10 and 11 are unrelated to the replacement of Mr Yu as a director or as the legal representative. These documents are described and are subject to the additional observations noted below:

9. The document, referred to in the Index and the Hogg Letter as "Draft Authorization to Access Information of other Government Agencies", is entitled "Power of Attorney", and on its face, appoints Gao Shiqiang with Power of Attorney for Hanfeng China "for use by the legal person or the entrusted agents of the litigants of other organizations" for the purpose of "consulting and copying all relevant information about our company". Mr. Yu does not know Mr. Gao and has no knowledge of the litigation or other organizations for which this Power of Attorney is to be granted or the reason Hanfeng China would provide the Power of Attorney to Mr. Gao. It would be wholly inappropriate for Mr. Yu, and could expose him to legal liability, to appoint Mr. Gao as Power of Attorney on behalf of Hanfeng China in these circumstances.

10. The document, referred to in the Index and the Hogg Letter as "Draft Authorization to Access Court Information", is entitled "Power of Attorney" and on its face, appoints Jiao Kaijun as Power of Attorney for Hanfeng China "for use by the legal person or the entrusted agents of the litigants of other organizations" for the purpose of "consulting and copying all relevant case materials". Mr. Yu does not know Mr. Jiao Gao and has no knowledge of the litigation or other organizations for which this Power of Attorney is to be granted or the reason Hanfeng China would provide the Power of Attorney. It would be wholly inappropriate for Mr. Yu, and could expose him to legal liability, to appoint Mr. Jiao as Power of Attorney on behalf of Hanfeng China in these circumstances.

11. The document, referred to in the Index and the Hogg Letter as "Draft Authorization to Access Banking Information," is entitled "Power of Attorney" and on its face is a second appointment of Gao Shiqiang as Power of Attorney for Hanfeng China and "for use by the legal person or the entrusted agents of the litigants of other organizations" for the purpose of "consulting and copying all relevant information about our company". Mr. Yu does not know Mr. Gao and has no knowledge of the litigation or other organizations for which this Power of Attorney is to be granted or the reason Hanfeng China would provide the Power of Attorney. It would be wholly inappropriate for Mr. Yu, and could expose him to legal liability, to appoint Mr. Gao as Power of Attorney on behalf of Hanfeng China in these circumstances.

关于外资企业更换法人的法律意见函

敬启者：

关于外资企业更换法定代表人事宜，针对中华人民共和国相关法律法规，出具如下法律意见：

关于外资企业变更法定代表人事项，应由企业投资者（股东）做出决议，并依照中国相关法律规定予以变更。《中华人民共和国公司登记管理条例》第三十条规定，公司变更法定代表人的，应当自变更决议或者决定作出之日起30日内申请变更登记。《企业法人法定代表人登记管理规定》第七条规定，企业法人申请办理企业法定代表人变更登记，应当向原企业登记机关提交下列文件：（一）对企业原法定代表人的免职文件；（二）新任企业法定代表人的任职文件；（三）由原法定代表人或者拟任法定代表人签署的变更登记申请书。

综上所述，根据国家法律法规，外资企业在办理变更登记需提交的文件材料中，原法定代表人不是必须在变更登记申请书上签字。外资企业投资者（股东）有权依据公司章程规定变更法定代表人，变更法定代表人过程中，不需原法定代表人同意或签署意见。

辽宁拓华律师事务所

律师：乔如桐

2017年10月16日

地址：大连市沙河口区民政街419号24层6号
电话：0411-84518659

律 师 事 务 所

执 业 许 可 证

（副本）

统一社会信用代码：31210000MD0052131M

辽宁拓华　　　　律师事务所，

符合《律师法》及《律师事务所管理办法》规定的条件，准予设立并执业。

发证机关：辽宁省司法厅

发证日期：2016 年 8 月 31 日

律师事务所登记事项（一）

名　称	辽宁拓华律师事务所
住　所	辽宁省大连市沙河口区民政街419号24层6号
负 责 人	王宏伟
组织形式	普通合伙
设立资产	30万元
主管机关	大连市司法局
批准文号	辽司[2016]55号
批准日期	2016-04-07

拓华律师事务所
210200000007100

律师事务所登记事项（二）

合伙人	王宏伟 王金金 乔如柏

Legal Opinion on Change of Legal Representatives in Foreign-invested Enterprises

To whom it may concern:

Concerning the change of legal representatives in foreign-invested enterprises, based on the applicable laws and regulations in the People's Republic of China, the Legal Opinion is hereby rendered as below:

For the purpose of changing legal representatives in foreign-invested enterprises, the resolution of investors (shareholders) of the enterprise is required and the procedure for change shall be accomplished in compliance with the applicable laws and regulations of PRC. As per the Regulations of the People's Republic of China on the Administration of Company Registration Article 30, the enterprise shall apply for registration of change within 30 days as of the resolution or decision on change for the purpose of changing legal representative. As per the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons Article 7, the legal person of the enterprise shall submit the following documents to the original registration department when applying for changing legal representative: 1) document for removing the former legal representative of the enterprise; 2) document for appointing new legal representative of the enterprise; 3) application for the registration of change signed by the former legal representative or proposed new legal representative.

In all, as per the laws and regulations of China, the former legal representative is not necessarily required to sign the application for registration of change among the materials to be submitted for the foreign-invested enterprise to accomplish the process for the registration of change. The investors (shareholders) of the foreign-invested enterprise are entitled to change the legal representative as per the relevant terms in the Articles of Association of the enterprise, and during the process, the consent or signature of the former legal representative is not required.

Liaoning Tuohua Law Firm

Counsel: 乔瑞松

Oct. 16, 2017

Address: Suite 6, Level 24, No. 419 Minzheng Street, Shahekou District, Dalian City
Tel: 0411-84518659

This is **Appendix "K"** to the
Supplement to the
Fifth Report of the Receiver
dated November 13, 2017

关于汉枫缓释肥料有限公司变更法定代表人需要的相关文件及程序的说明

安永有限公司：

黑龙江宏珲律师事务所是中华人民共和国司法部和黑龙江省司法厅依法批准、合法设立的在中华人民共和国境内具有从事法律服务资格的律师执业机构。现本所应贵公司要求，就汉枫缓释肥料有限公司（以下简称“汉枫公司”）变更法定代表人需要的相关文件及程序，出具此函。

一、主要法律法规依据：

1、《中华人民共和国外资企业法》等相关中国法律法规；

2、黑龙江省工商行政管理局关于外资公司进行公司法人变更等相关公司事项变更的具体要求(详见附件 1)。

二、法律分析

（一）《中华人民共和国外资企业法》第十条规定：外资企业分立、合并或者其他重要事项变更，应当报审查批准机关批准，并向工商行政管理机关办理变更登记手续。

变更企业法定代表人属于第十条所规定的重要事项变更的范畴，因此外资企业必须向报审查批准机关批准，并向工商行政管理机关办理变更登记手续。

宏珲
Add：中国•黑龙江省哈尔滨市南岗区康顺街 3 号
TEL：0451—87001376 FAX：0451—87001326
Email：guanliulvshi@163.com

负责汉枫公司的主要报审查批准机关是哈尔滨市投资促进局；工商行政管理机关是哈尔滨市市场监督管理局（由之前的哈尔滨市行政工商管理局和其它相关部门合并而成）。哈尔滨市市场监督管理局接受黑龙江省工商行政管理局的管理和指导。

综上，根据上述法律规定，汉枫公司在进行公司法定代表人变更时需报哈尔滨市投资促进局批准，并向哈尔滨市市场监督管理局办理变更登记手续。

（二）根据黑龙江省工商行政管理局关于外资公司进行公司法人变更等相关公司事项变更的具体要求，汉枫公司作为外国法人独资公司，在进行公司法定代表人变更等相关公司事项变更时，需向哈尔滨市市场监督管理局提交所需申请材料：

1. 《外资公司登记（备案）申请书》；

2. 《指定代表或者共同委托代理人授权委托书》；和

3. 公司决议、法定代表人签署的章程修正案或修改后的章程等必要申请材料。

上述材料中均需要汉枫公司签章及法定代表人于薪铎签字或加盖名章予以确认。（具体材料文本详见附件2及附件3）

如汉枫公司及法定代表人于薪铎不配合，拒不在申请材料上签章确认，法定代表人变更事项可能无法完成。

宏珲
Add：中国•黑龙江省哈尔滨市南岗区康顺街3号
TEL：0451—87001376 FAX：0451—87001326
Email：guanliulvshi@163.com

法定代表人的变更与汉枫公司 2015 年 6 月变更关刘作为董事时所遵循的程序是基本一致的。在关刘变更董事时，汉枫公司和作为法定代表人的于薪铎均已经在相关文件上签章。

谨致

商祺！

黑龙江宏珲律师事务所

关刘律师、焦开军律师 关刘 焦开军

2017 年 11 月 8 日

附：黑龙江工商行政管理局网站：www.hljaic.gov.cn

附件 1、外商投资企业变更登记提交材料规范

附件 2、外资公司登记（备案）申请书，包含以下附件：

- 外资公司登记（备案）申请书
- 法定代表人信息
- 董事、监事、经理信息
- 投资者（股东/发起人）出资情况
- 财务负责人信息
- 联络员信息
- 外商投资企业法律文件送达授权委托书

附件 3、指定代表或者共同委托代理人授权委托书

宏珲
Add：中国·黑龙江省哈尔滨市南岗区康顺街 3 号
TEL：0451—87001376 FAX：0451—87001326
Email：guanliulvshi@163.com

附件 1

外商投资企业变更登记提交材料规范

1.《外资公司登记（备案）申请书》/《非公司外资企业登记（备案）申请书》。

2.《指定代表或者共同委托代理人授权委托书》。

3.依法作出的决议或决定。指根据《中华人民共和国中外合资经营企业法》、《中华人民共和国中外合作经营企业法》、《中华人民共和国外资企业法》规定以及企业章程作出的决议或决定，决议或决定的内容与所申请的事项应当一致。对于外商投资的公司，还应当符合《中华人民共和国公司法》的有关规定。

4.法定代表人签署的章程修正案或修改后的章程（非公司的外商投资企业应提交合同、章程的修改协议）。

5.变更事项相关证明文件。

◆ 变更名称的，应提交登记机关颁发的《外商投资企业名称（企业集团）变更核准通知书》。

◆ 变更住所的，提交变更后住所的合法使用证明。外商投资企业迁移（跨原企业登记机关管辖的），应当向原登记机关申请办理迁移手续，跨审批机关管辖的还需向原登记机关提交迁入地审批机关的批复；申请迁移的企业凭原登记机关出具的迁移证明（跨审批机关管辖的，还需迁入地审批机关的批复、批准证书）向迁入地的登记机关申请变更登记，领取营业执照。跨审批机关管辖的地址变更，需持迁入地审批机关的批复、批复证书到企业登记机关办理变更登记。

◆ 变更法定代表人的，根据公司章程的规定提交原任法定代表人的免职证明和新任法定代表人的任职证明及身份证明复印件。法定代表人的产生应符合章程中有关选举、委派、指定、任命或聘用等产生方式的规定，且上述人员的任职文件中应包括股东会、董事会或投资者对其任职资格的审查意见。拟任法定代表人须符合《企业法人法定代表人登记管理规定》的条件。金融、证券、保险类公司法定代表人变更需提交行业监管部门的批准文件。

◆ 减少注册资本的，应提交审批机关的批准文件(批复和批准证书副本 1)，并提交刊登减资公告的报纸报样及债务清偿报告或债务担保证明。

◆ 增加注册资本的，应提交审批机关的批准文件（批复和批准证书副本 1）。股份有限公司以公开发行新股方式或者上市公司以非公开发行新股方式增加注册资本的，还应当提交国务院证券监督管理机构的核准文件。

◆ 变更经营期限的，应提交审批机关的批准文件（批复和批准证书副本 1）。

◆ 变更经营范围的，应提交审批机关的批准文件（批复和批准证书副本 1）。企业申请登记的经营范围中有法律、行政法规和国务院决定规定必须在登记前报经批准的项目，应提交相应的前置审批文件或证件。经营范围中属于法律、行政

法规和国务院决定规定须经批准的项目被吊销、撤销许可证或者其他批准文件，或者许可证、其他批准文件有效期限届满的，应当自吊销、撤销许可证、其他批准文件或者许可证、其他批准文件有效期届满之日起30日申请变更登记或依法办理注销登记。

◆ 变更股东的，应提交审批机关的批准文件(批复和批准证书副本1)、股权转让协议、依法经其他投资方同意转让的声明、股权受让方的主体资格证明以及外商投资企业法律文件送达授权委托书。如经人民法院依法裁定划转股权的，应当提交人民法院的裁定书。

其中，中方投资者应提交由本单位加盖公章的营业执照/事业单位法人登记证书/社会团体法人登记证/民办非企业单位证书复印件作为主体资格证明；外国投资者的主体资格证明或身份证明应经其本国主管机关公证后送我国驻该国使（领）馆认证。如其本国与我国没有外交关系，则应当经与我国有外交关系的第三国驻该国使（领）馆认证，再由我国驻该第三国使（领）馆认证。某些国家的海外属地出具的文书，应先在该属地办妥公证，再经该国外交机构认证，最后由我国驻该国使（领）馆认证。香港、澳门和台湾地区投资者的主体资格证明或身份证明应当按照专项规定或协议依法提供当地公证机构的公证文件。

◆ 变更投资者名称或姓名的，应提交法定登记机关出具的准予投资者名称变更的证明文件。外方投资者的名称变更证明文件应经其本国主管机关公证送我国驻该国使（领）馆认证。如其本国与我国没有外交关系，则应当经与我国有外交关系的第三国驻该国使（领）馆认证，再由我国驻该第三国使（领）馆认证。某些国家的海外属地出具的文书，应先在该属地办妥公证，再经该国外交机构认证，最后由我国驻该国使（领）馆认证。香港、澳门和台湾地区投资者的名称变更应当按照专项规定或协议依法提供当地公证机构的公证文件。

◆ 变更公司类型的，应提交审批机关的批准文件（批复和批准证书副本1）。

◆ 以上各项涉及其他登记事项变更的，应当同时申请变更登记，按相应的提交材料规范提交相应的材料。

6. 其他有关文件。

7. 营业执照复印件。

注：

1. 依照《公司法》、《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》等法规设立的外商投资公司或者非公司外商投资企业申请变更登记适用本规范。

2. 名称、住所、投资者名称等登记事项变更后，需换领新的《外商投资企业

批准证书》，并将副本 1 交登记机关存档，已提交的除外。

3.同时申请多项变更（备案）时，相同材料只需提交一份。

4.变更核准后，需提交营业执照正、副本原件，由登记机关换发新的营业执照。

附件 2

外资公司登记（备案）申请书

注：请仔细阅读本申请书《填写说明》，按要求填写。

<table>
<tr><td colspan="8">□基本信息</td></tr>
<tr><td>名　　称</td><td colspan="7"></td></tr>
<tr><td>名称预先核准文号/注册号/统一社会信用代码</td><td colspan="4"></td><td>国别（地区）</td><td colspan="2"></td></tr>
<tr><td>住　　所</td><td colspan="7">_______省（市/自治区）_______市（地区/盟/自治州）_______县（自治县/旗/自治旗/市/区）________乡（民族乡/镇/街道）_________村（路/社区）________________号</td></tr>
<tr><td>生产经营地</td><td colspan="7">_______省（市/自治区）_______市（地区/盟/自治州）_______县（自治县/旗/自治旗/市/区）________乡（民族乡/镇/街道）_________村（路/社区）________________号</td></tr>
<tr><td>联系电话</td><td colspan="4"></td><td>邮政编码</td><td colspan="2"></td></tr>
<tr><td colspan="8">□设立</td></tr>
<tr><td rowspan="2">法定代表人</td><td>姓名</td><td colspan="3"></td><td>国别（地区）</td><td colspan="2"></td></tr>
<tr><td>职务</td><td colspan="6">□董事长　□执行董事　□经理</td></tr>
<tr><td>投资总额（万元）</td><td></td><td>币种</td><td></td><td>折美元（万元）</td><td></td><td>注册资本（万元）</td><td></td></tr>
<tr><td>公司类型</td><td colspan="3"></td><td>设立方式（股份公司填写）</td><td colspan="3">□发起设立　□募集设立</td></tr>
<tr><td>经营范围</td><td colspan="7"></td></tr>
<tr><td>经营期限</td><td colspan="3">□ ________年　□ 长期</td><td colspan="3">申请执照副本数量</td><td>________个</td></tr>
</table>

☐变更

变更项目	原登记内容	申请变更登记内容

☐备案

分公司 ☐增设☐注销	名称		注册号/统一社会信用代码	
	登记机关		登记日期	
清算组	成员			
	负责人		联系电话	
其他	☐董事　☐监事　☐经理　☐章程　☐章程修正案　☐财务负责人　☐联络员 ☐外国投资者法律文件送达接受人			

☐申请人声明

本公司依照《公司法》、《公司登记管理条例》相关规定 申请登记、备案，提交材料真实有效。通过联络员登录企业信用信息公示系统向登记机关报送、向社会公示的企业信息为本企业提供、发布的信息，信息真实、有效。

法定代表人签字：　　　　　　　　　　公司盖章

（清算组负责人签字）：

年　　月　　日

附表 1

法定代表人信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

附表 2

董事、监事、经理信息

姓名___________________国别（地区）________________身份证件类型_____________

身份证件号码_______________ 职务_______________产生方式_________________

（身份证件复印件粘贴处）

姓名___________________国别（地区）________________身份证件类型_____________

身份证件号码_______________ 职务_______________产生方式_________________

（身份证件复印件粘贴处）

姓名___________________国别（地区）________________身份证件类型_____________

身份证件号码_______________ 职务_______________产生方式_________________

（身份证件复印件粘贴处）

附表 3

投资者（股东/发起人）出资情况

投资者名称 或姓名	国别 （地区）	证件 类型	证件号码	出资时间	出资方式	认缴出资额 （万元）	出资比例

附表 4

财务负责人信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

附表 5

联络员信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

注：联络员主要负责本企业与企业登记机关的联系沟通，以本人个人信息登录企业信用信息公示系统依法向社会公示本企业有关信息等。联络员应了解企业登记相关法规和企业信息公示有关规定，熟悉操作企业信用信息公示系统。

附表 6

外商投资企业法律文件送达
授权委托书

授权人：________________________________

被授权人：______________________________

授权范围：授予 ____________________（被授权人名称或姓名）代表 ______________（授权人名称或姓名）在中国境内接受企业登记机关法律文件送达，直至解除授权为止。

被授权人地址		邮政编码	
被授权人联系人		电子邮件	
被授权人联系人 联系电话	固定：		
	移动:		

授权人签字或盖章　　　　　　　　　　被授权人签字或盖章

年　　月　　日

注：《外商投资企业法律文件送达授权委托书》由外国投资者（授权人）与境内法律文件送达接受人（被授权人）签署。被授权人可以是外国投资者设立的分支机构、拟设立的公司（被授权人为拟设立的公司的，公司设立后委托生效）或者其他境内有关单位或个人。被授权人、被授权人地址等事项发生变更的，应当签署新的《外商投资企业法律文件送达授权委托书》及时向企业登记机关备案。

外资公司登记（备案）申请书填写说明

注：以下“说明”供填写申请书参照使用，不需向登记机关提供。

1.本申请书适用于外资有限责任公司、股份有限公司向登记机关申请设立、变更登记及有关事项备案。

2.向登记机关提交的申请书只填写与本次申请有关的栏目。

3.申请公司设立登记，填写“基本信息”栏、“设立”栏有关内容和附表1“法定代表人信息”、附表2“董事、监事、经理信息”、附表3“投资者（股东/发起人）出资情况”、附表4“财务负责人信息”、附表5“联络员信息”及附表6“外商投资企业法律文件送达授权委托书”。“申请人声明”由公司拟任法定代表人签署。

4.公司申请变更登记，填写“基本信息”栏及“变更”栏有关内容。“申请人声明”由公司原法定代表人或者拟任法定代表人签署并加盖公司公章。申请变更同时需要备案的，同时填写“备案”栏有关内容。申请公司名称变更，在名称中增加“集团或（集团）”字样的，应当填写集团名称、集团简称（无集团简称的可不填）；申请公司法定代表人变更的，应填写、提交拟任法定代表人信息（附表1“法定代表人信息”）；申请股东及投资情况变更的，应填写、提交股东基本信息及投资情况（附表3“投资人（股东/发起人）出资情况”）。变更项目可加行续写或附页续写。

5.公司增设分公司应向原登记机关备案，注销分公司可向原登记机关备案，填写“基本信息”栏及“备案”栏有关内容，“申请人声明”由法定代表人签署并加盖公司公章。“分公司□增设□注销”项可加行续写或附页续写。

6.公司申请章程修订或其他事项备案，填写“基本信息”栏及“备案”栏有关内容。申请董事、监事、经理人员备案的，应填写附表2“董事、监事、经理信息”；申请工商联络员备案的，应填写附表5“联络员信息”；申请法律文书送达授权人备案的，应填写附表6“外商投资企业法律文件送达授权委托书”。其中，“申请人声明”由公司法定代表人签署并加盖公司公章；申请清算组备案的，“申请人声明”由公司清算组负责人签署。

7.办理公司设立登记填写名称预先核准通知书文号，不填写公司注册号或统一社会信用代码。办理变更登记、备案填写公司注册号或统一社会信用代码，不填写名称预先核准通知书文号。

8.公司类型应当填写“有限责任公司”或“股份有限公司”。

9.“经营范围”栏应根据公司章程、参照《国民经济行业分类》国家标准及有关规定填写。

10.申请人提交的申请书应当使用A4型纸。依本表打印生成的，使用黑色钢笔或签字笔签署；手工填写的，使用黑色钢笔或签字笔工整填写、签署。

附件 3

指定代表或者共同委托代理人授权委托书

申 请 人 ：

指定代表或者委托代理人 ：

委托事项及权限 ：

1、办理 ______________________________（企业名称）的

☐名称预先核准 ☐设立 ☐变更 ☐注销 ☐备案 ☐撤销变更登记

☐股权出质（☐设立 ☐变更 ☐注销 ☐撤销）☐其他__________手续。

2、同意☐不同意☐核对登记材料中的复印件并签署核对意见；

3、同意☐不同意☐修改企业自备文件的错误；

4、同意☐不同意☐修改有关表格的填写错误；

5、同意☐不同意☐领取营业执照和有关文书。

指定或者委托的有效期限：自 年 月 日至 年 月 日

指定代表或委托代理人或者经办人信息	签　　字：
	固定电话：
	移动电话：
（指定代表或委托代理人、具体经办人身份证明复印件粘贴处）	

（申请人签字或盖章）

年 月 日

填写说明

注：以下“说明”供填写申请书参照使用，不需向登记机关提供。

1.本委托书适用于办理企业名称预先核准，公司及其分公司、非公司企业法人及其分支机构、营业单位、非公司企业等办理登记（备案）、股权出质等业务。

2.名称预先核准，新申请名称申请人为全体投资人或隶属企业，已设立企业变更名称申请人为本企业，由企业法定代表人签署。

3.设立登记，有限责任公司申请人为全体股东，国有独资公司申请人为国务院或地方人民政府国有资产监督管理机构，股份有限公司申请人为董事会，非公司企业法人申请人为主管部门（出资人），分公司申请人为公司，营业单位、非法人分支机构申请人为隶属单位（企业）。自然人申请人由本人签字，非自然人申请人加盖公章。

4.公司、非公司企业法人变更、注销、备案，申请人为本企业，加盖本企业公章（其中公司清算组备案的，同时由清算组负责人签字；公司破产程序终结后办理注销登记的，同时由破产管理人签字）；分公司变更、注销、备案，申请人为公司，加盖公司公章；营业单位、非法人分支机构申请人为隶属单位（企业），加盖隶属单位（企业）公章。

5.股权出质设立、变更、注销登记申请人为出质人和质权人，股权出质撤销登记申请人为出质人或者质权人。

6.委托事项及权限：第 1 项应当选择相应的项目并在□中打√， 或者注明其它具体内容；第 2、3、4、5 项选择“同意”或“不同意”并在□中打√。

7.指定代表或者委托代理人可以是自然人，也可以是其他组织；指定代表或者委托代理人是其他组织的，应当另行提交其他组织证照复印件及其指派具体经办人的文件、具体经办人的身份证件。

8.申请人提交的申请书应当使用 A4 型纸。依本表打印生成的，使用黑色钢笔或签字笔签署；手工填写的，使用黑色钢笔或签字笔工整填写、签署。

Translation

Clarification re Documents and Process to Replace Legal Representative of Hanfeng Slow-Release Co., Ltd

Ernst & Young Inc.:

Heilongjiang Honghui Law Firm "Honghui" is a law firm qualified to provide legal services within the People's Republic of China ("**PRC**"). Honghui was established legally and approved by PRC Ministry of Justice and Heilongjiang Provincial Department of Justice. We have written this letter at your request setting out the necessary documents to change the legal representative of Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**").

I. Relevant Law

1. Our analysis is based on our review of:

   (a) the *Law on Foreign-funded Enterprises of PRC* (the "***LFEP***") and other relevant Chinese Laws & Regulations; and

   (b) the specific requirements imposed by Heilongjiang Provincial Administration of Industry and Commerce ("**HAIC**") for the change of a company's legal representative (attached hereto as Appendix 1).

II. Analysis

1. Article 10 of the *LFEP* states that: in the event of a separation, merger or other major change, an enterprise with foreign capital shall report to and seek approval from the authorities in charge of examination and approval, and register the change with the industry and commerce administration authorities.

   The change of a legal representative is deemed to be a "major change" within the meaning of article 10, and accordingly, to effect such a change a wholly foreign-owned company must report to the examining and approving authorities for approval and register the change with the industry and commerce administration authorities.

   The primary examining and approving authorities with respect to the Chinese Subsidiary is the City of Harbin Investment Promotion Bureau ("**Harbin IPB**").

   The relevant industry and commerce authority with respect to the Chinese Subsidiary is the City of Harbin Market Supervision and Administration Bureau ("**Harbin MSAB**", which was created from the merge of the former Harbin Administration of Industry and Commerce and other agencies). Harbin MSAB follow, among other things, the supervision and guidance of HAIC.

   In accordance with this provision, the Chinese Subsidiary must report to and seek approval from the Harbin IPB and Harbin MASB.

2. Pursuant to the requirements imposed by HAIC for the change of a foreign-owned company's legal representative, the following application materials ("**Application Materials**") must be submitted to Harbin MASB:

   a) an Application Package for the Registration of an Enterprise with Foreign Capital (detailed in Appendix 2);

   b) a Power of Attorney for Designated Representatives or Mutually Entrusted Agents (attached hereto as Appendix 3);

   c) company resolutions and amendment of articles of association or revised articles of association signed by legal representatives; and

All of the Application Materials must bear the seal of the Chinese Subsidiary and/or the signature (or personal seal) of the legal representative, Yu Xinduo (set out in Appendix 1, Appendix 2 and Appendix 3). If Hanfeng Slow-Release and Yu Xinduo fail to cooperate and refuse to sign and affix the applicable seals on such documents, the registration may not be completed.

Add: No.3 Kangshun Street, Nangang District, Harbin, Heilongjiang Province, China
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The process for legal representative replacement is basically consistent with the process followed by the Chinese Subsidiary to register Guan Liu as a director of the Chinese Subsidiary in June 2015. At that time, the Chinese Subsidiary and Yu Xinduo stamped and/or signed relevant documents to effect the registration of Guan Liu as a director.

Yours sincerely,

[Signature]
Heilongjiang Honghui Law Firm
Lawyers Guan Liu and Jiao Kaijun
November 8, 2017

Reference: HAIC website: www.hljaic.gov.cn

Appendix 1. Specifications for a foreign-invested enterprise to submit materials for change registration

Appendix 2. Registration Application for Enterprise with Foreign Capital

- 原董事会成员职务撤销书 Notice of Removal of Board Directors
- 董事会决议 Board Resolution to Appoint New Chairman and Directors
- 董事委派书 Appointment Letter for the Chairman and Directors
- 新董事会成员名单及签字样本 Names and signatures of New Directors
- 法定代表人信息表（含身份证复印件）Legal Representative Information Form (attach a copy of the Legal Rep's photo ID)
- 董事、监事、经理信息表（含身份证复印件）Information of Director, Secretory and Manager (attach photocopies of photo ID)
- 指定代表或共同代理人授权委托书 Authorization of Representative
  外资公司登记（备案）申请书 Registration Form of Directors for Foreign Investment Companies

Appendix 3. Power of Attorney for Designated Representatives or Mutually Entrusted Agents

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Appendix 1

外商投资企业变更登记提交材料规范

1.《外资公司登记（备案）申请书》/《非公司外资企业登记（备案）申请书》。

2.《指定代表或者共同委托代理人授权委托书》。

3.依法作出的决议或决定。指根据《中华人民共和国中外合资经营企业法》、《中华人民共和国中外合作经营企业法》、《中华人民共和国外资企业法》规定以及企业章程作出的决议或决定，决议或决定的内容与所申请的事项应当一致。对于外商投资的公司，还应当符合《中华人民共和国公司法》的有关规定。

4.法定代表人签署的章程修正案或修改后的章程（非公司的外商投资企业应提交合同、章程的修改协议）。

5.变更事项相关证明文件。

◆ 变更名称的，应提交登记机关颁发的《外商投资企业名称（企业集团）变更核准通知书》。

◆ 变更住所的，提交变更后住所的合法使用证明。外商投资企业迁移（跨原企业登记机关管辖的），应当向原登记机关申请办理迁移手续，跨审批机关管辖的还需向原登记机关提交迁入地审批机关的批复；申请迁移的企业凭原登记机关出具的迁移证明（跨审批机关管辖的，还需迁入地审批机关的批复、批准证书）向迁入地的登记机关申请变更登记，领取营业执照。跨审批机关管辖的地址变更，需持迁入地审批机关的批复、批复证书到企业登记机关办理变更登记。

◆ 变更法定代表人的，根据公司章程的规定提交原任法定代表人的免职证明和新任法定代表人的任职证明及身份证明复印件。法定代表人的产生应符合章程中有关选举、委派、指定、任命或聘用等产生方式的规定，且上述人员的任职文件中应包括股东会、董事会或投资者对其任职资格的审查意见。拟任法定代表人须符合《企业法人法定代表人登记管理规定》的条件。金融、证券、保险类公司法定代表人变更需提交行业监管部门的批准文件。

◆ 减少注册资本的，应提交审批机关的批准文件(批复和批准证书副本 1)，并提交刊登减资公告的报纸报样及债务清偿报告或债务担保证明。

◆ 增加注册资本的，应提交审批机关的批准文件（批复和批准证书副本 1）。股份有限公司以公开发行新股方式或者上市公司以非公开发行新股方式增加注册资本的，还应当提交国务院证券监督管理机构的核准文件。

◆ 变更经营期限的，应提交审批机关的批准文件（批复和批准证书副本 1）。

◆ 变更经营范围的，应提交审批机关的批准文件（批复和批准证书副本 1）。企业申请登记的经营范围中有法律、行政法规和国务院决定规定必须在登记前报经批准的项目，应提交相应的前置审批文件或证件。经营范围中属于法律、行政

法规和国务院决定规定须经批准的项目被吊销、撤销许可证或者其他批准文件，或者许可证、其他批准文件有效期限届满的，应当自吊销、撤销许可证、其他批准文件或者许可证、其他批准文件有效期届满之日起30日申请变更登记或依法办理注销登记。

◆ 变更股东的，应提交审批机关的批准文件(批复和批准证书副本1)、股权转让协议、依法经其他投资方同意转让的声明、股权受让方的主体资格证明以及外商投资企业法律文件送达授权委托书。如经人民法院依法裁定划转股权的，应当提交人民法院的裁定书。

其中，中方投资者应提交由本单位加盖公章的营业执照/事业单位法人登记证书/社会团体法人登记证/民办非企业单位证书复印件作为主体资格证明；外国投资者的主体资格证明或身份证明应经其本国主管机关公证后送我国驻该国使（领）馆认证。如其本国与我国没有外交关系，则应当经与我国有外交关系的第三国驻该国使（领）馆认证，再由我国驻该第三国使（领）馆认证。某些国家的海外属地出具的文书，应先在该属地办妥公证，再经该国外交机构认证，最后由我国驻该国使（领）馆认证。香港、澳门和台湾地区投资者的主体资格证明或身份证明应当按照专项规定或协议依法提供当地公证机构的公证文件。

◆ 变更投资者名称或姓名的，应提交法定登记机关出具的准予投资者名称变更的证明文件。外方投资者的名称变更证明文件应经其本国主管机关公证送我国驻该国使（领）馆认证。如其本国与我国没有外交关系，则应当经与我国有外交关系的第三国驻该国使（领）馆认证，再由我国驻该第三国使（领）馆认证。某些国家的海外属地出具的文书，应先在该属地办妥公证，再经该国外交机构认证，最后由我国驻该国使（领）馆认证。香港、澳门和台湾地区投资者的名称变更应当按照专项规定或协议依法提供当地公证机构的公证文件。

◆ 变更公司类型的，应提交审批机关的批准文件（批复和批准证书副本1）。

◆ 以上各项涉及其他登记事项变更的，应当同时申请变更登记，按相应的提交材料规范提交相应的材料。

6. 其他有关文件。

7. 营业执照复印件。

注：

1. 依照《公司法》、《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》等法规设立的外商投资公司或者非公司外商投资企业申请变更登记适用本规范。

2. 名称、住所、投资者名称等登记事项变更后，需换领新的《外商投资企业

批准证书》，并将副本 1 交登记机关存档，已提交的除外。

3. 同时申请多项变更（备案）时，相同材料只需提交一份。

4. 变更核准后，需提交营业执照正、副本原件，由登记机关换发新的营业执照。

Appendix 2

外资公司登记（备案）申请书

注：请仔细阅读本申请书《填写说明》，按要求填写。

<table>
<tr><td colspan="8">☐基本信息</td></tr>
<tr><td>名　　称</td><td colspan="7"></td></tr>
<tr><td>名称预先核准文号/注册号/统一社会信用代码</td><td colspan="4"></td><td>国别（地区）</td><td colspan="2"></td></tr>
<tr><td>住　　所</td><td colspan="7">_______省（市/自治区）_______市（地区/盟/自治州）_______县（自治县/旗/自治旗/市/区）________乡（民族乡/镇/街道）_________村（路/社区）________________号</td></tr>
<tr><td>生产经营地</td><td colspan="7">_______省（市/自治区）_______市（地区/盟/自治州）_______县（自治县/旗/自治旗/市/区）________乡（民族乡/镇/街道）_________村（路/社区）________________号</td></tr>
<tr><td>联系电话</td><td colspan="4"></td><td>邮政编码</td><td colspan="2"></td></tr>
<tr><td colspan="8">☐设立</td></tr>
<tr><td rowspan="2">法定代表人</td><td>姓名</td><td colspan="3"></td><td>国别（地区）</td><td colspan="2"></td></tr>
<tr><td>职务</td><td colspan="6">☐董事长　☐执行董事　☐经理</td></tr>
<tr><td>投资总额（万元）</td><td></td><td>币种</td><td></td><td>折美元（万元）</td><td></td><td>注册资本（万元）</td><td></td></tr>
<tr><td>公司类型</td><td colspan="3"></td><td>设立方式（股份公司填写）</td><td colspan="3">☐发起设立　☐募集设立</td></tr>
<tr><td>经营范围</td><td colspan="7"></td></tr>
<tr><td>经营期限</td><td colspan="3">☐ ________年　☐ 长期</td><td colspan="3">申请执照副本数量</td><td>________个</td></tr>
</table>

<table>
<tr><td colspan="5">☐变更</td></tr>
<tr><td>变更项目</td><td colspan="2">原登记内容</td><td colspan="2">申请变更登记内容</td></tr>
<tr><td></td><td colspan="2"></td><td colspan="2"></td></tr>
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<tr><td></td><td colspan="2"></td><td colspan="2"></td></tr>
<tr><td colspan="5">☐备案</td></tr>
<tr><td rowspan="2">分公司
☐增设☐注销</td><td>名称</td><td></td><td>注册号/统一
社会信用代码</td><td></td></tr>
<tr><td>登记机关</td><td></td><td>登记日期</td><td></td></tr>
<tr><td rowspan="2">清算组</td><td>成员</td><td colspan="3"></td></tr>
<tr><td>负责人</td><td></td><td>联系电话</td><td></td></tr>
<tr><td>其他</td><td colspan="4">☐董事 ☐监事 ☐经理 ☐章程 ☐章程修正案 ☐财务负责人 ☐联络员
☐外国投资者法律文件送达接受人</td></tr>
<tr><td colspan="5">☐申请人声明</td></tr>
<tr><td colspan="5">本公司依照《公司法》、《公司登记管理条例》相关规定 申请登记、备案，提交材料真实有效。通过联络员登录企业信用信息公示系统向登记机关报送、向社会公示的企业信息为本企业提供、发布的信息，信息真实、有效。

法定代表人签字： 公司盖章

（清算组负责人签字）：

年 月 日</td></tr>
</table>

附表 1

法定代表人信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

附表 2

董事、监事、经理信息

姓名__________国别（地区）__________身份证件类型__________ 身份证件号码__________ 职务__________产生方式__________ （身份证件复印件粘贴处）
姓名__________国别（地区）__________身份证件类型__________ 身份证件号码__________ 职务__________产生方式__________ （身份证件复印件粘贴处）
姓名__________国别（地区）__________身份证件类型__________ 身份证件号码__________ 职务__________产生方式__________ （身份证件复印件粘贴处）

附表 3

投资者（股东/发起人）出资情况

投资者名称 或姓名	国别 （地区）	证件 类型	证件号码	出资时间	出资方式	认缴出资额 （万元）	出资比例

附表 4

财务负责人信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

附表 5

联络员信息

姓　　名		固定电话	
移动电话		电子邮箱	
身份证件类型		身份证件号码	
（身份证件复印件粘贴处）			

注：联络员主要负责本企业与企业登记机关的联系沟通，以本人个人信息登录企业信用信息公示系统依法向社会公示本企业有关信息等。联络员应了解企业登记相关法规和企业信息公示有关规定，熟悉操作企业信用信息公示系统。

附表 6

外商投资企业法律文件送达
授权委托书

授权人：______________________________

被授权人：____________________________

授权范围：授予 ______________________（被授权人名称或姓名）代表 ________________（授权人名称或姓名）在中国境内接受企业登记机关法律文件送达，直至解除授权为止。

被授权人地址		邮政编码	
被授权人联系人		电子邮件	
被授权人联系人 联系电话	固定：		
	移动:		

授权人签字或盖章　　　　　　　　　被授权人签字或盖章

年　　月　　日

注：《外商投资企业法律文件送达授权委托书》由外国投资者（授权人）与境内法律文件送达接受人（被授权人）签署。被授权人可以是外国投资者设立的分支机构、拟设立的公司（被授权人为拟设立的公司的，公司设立后委托生效）或者其他境内有关单位或个人。被授权人、被授权人地址等事项发生变更的，应当签署新的《外商投资企业法律文件送达授权委托书》及时向企业登记机关备案。

外资公司登记（备案）申请书填写说明

注：以下“说明”供填写申请书参照使用，不需向登记机关提供。

1.本申请书适用于外资有限责任公司、股份有限公司向登记机关申请设立、变更登记及有关事项备案。

2.向登记机关提交的申请书只填写与本次申请有关的栏目。

3.申请公司设立登记，填写“基本信息”栏、“设立”栏有关内容和附表1“法定代表人信息”、附表2“董事、监事、经理信息”、附表3“投资者（股东/发起人）出资情况”、附表4“财务负责人信息”、附表5“联络员信息”及附表6“外商投资企业法律文件送达授权委托书”。“申请人声明”由公司拟任法定代表人签署。

4.公司申请变更登记，填写“基本信息”栏及“变更”栏有关内容。“申请人声明”由公司原法定代表人或者拟任法定代表人签署并加盖公司公章。申请变更同时需要备案的，同时填写“备案”栏有关内容。申请公司名称变更，在名称中增加“集团或（集团）”字样的，应当填写集团名称、集团简称（无集团简称的可不填）；申请公司法定代表人变更的，应填写、提交拟任法定代表人信息（附表1“法定代表人信息”）；申请股东及投资情况变更的，应填写、提交股东基本信息及投资情况（附表3“投资人（股东/发起人）出资情况”）。变更项目可加行续写或附页续写。

5.公司增设分公司应向原登记机关备案，注销分公司可向原登记机关备案，填写“基本信息”栏及“备案”栏有关内容，“申请人声明”由法定代表人签署并加盖公司公章。“分公司□增设□注销”项可加行续写或附页续写。

6.公司申请章程修订或其他事项备案，填写“基本信息”栏及“备案”栏有关内容。申请董事、监事、经理人员备案的，应填写附表2“董事、监事、经理信息”；申请工商联络员备案的，应填写附表5“联络员信息”；申请法律文书送达授权人备案的，应填写附表6“外商投资企业法律文件送达授权委托书”。其中，“申请人声明”由公司法定代表人签署并加盖公司公章；申请清算组备案的，“申请人声明”由公司清算组负责人签署。

7.办理公司设立登记填写名称预先核准通知书文号，不填写公司注册号或统一社会信用代码。办理变更登记、备案填写公司注册号或统一社会信用代码，不填写名称预先核准通知书文号。

8.公司类型应当填写“有限责任公司”或“股份有限公司”。

9.“经营范围”栏应根据公司章程、参照《国民经济行业分类》国家标准及有关规定填写。

10.申请人提交的申请书应当使用A4型纸。依本表打印生成的，使用黑色钢笔或签字笔签署；手工填写的，使用黑色钢笔或签字笔工整填写、签署。

Appendix 3

指定代表或者共同委托代理人授权委托书

申 请 人 ：

指定代表或者委托代理人 ：

委托事项及权限 ：

1、办理 ______________________________（企业名称）的

☐名称预先核准 ☐设立 ☐变更 ☐注销 ☐备案 ☐撤销变更登记

☐股权出质（☐设立 ☐变更 ☐注销 ☐撤销）☐其他__________手续。

2、同意☐不同意☐核对登记材料中的复印件并签署核对意见；

3、同意☐不同意☐修改企业自备文件的错误；

4、同意☐不同意☐修改有关表格的填写错误；

5、同意☐不同意☐领取营业执照和有关文书。

指定或者委托的有效期限：自 年 月 日至 年 月 日

<table>
<tr><td rowspan="3">指定代表或委托代理人或者经办人信息</td><td>签　　字：</td></tr>
<tr><td>固定电话：</td></tr>
<tr><td>移动电话：</td></tr>
<tr><td colspan="2">（指定代表或委托代理人、具体经办人身份证明复印件粘贴处）</td></tr>
</table>

（申请人签字或盖章）

年 月 日

填写说明

注：以下“说明”供填写申请书参照使用，不需向登记机关提供。

1.本委托书适用于办理企业名称预先核准，公司及其分公司、非公司企业法人及其分支机构、营业单位、非公司企业等办理登记（备案）、股权出质等业务。

2.名称预先核准，新申请名称申请人为全体投资人或隶属企业，已设立企业变更名称申请人为本企业，由企业法定代表人签署。

3.设立登记，有限责任公司申请人为全体股东，国有独资公司申请人为国务院或地方人民政府国有资产监督管理机构，股份有限公司申请人为董事会，非公司企业法人申请人为主管部门（出资人），分公司申请人为公司，营业单位、非法人分支机构申请人为隶属单位（企业）。自然人申请人由本人签字，非自然人申请人加盖公章。

4.公司、非公司企业法人变更、注销、备案，申请人为本企业，加盖本企业公章（其中公司清算组备案的，同时由清算组负责人签字；公司破产程序终结后办理注销登记的，同时由破产管理人签字）；分公司变更、注销、备案，申请人为公司，加盖公司公章；营业单位、非法人分支机构申请人为隶属单位（企业），加盖隶属单位（企业）公章。

5.股权出质设立、变更、注销登记申请人为出质人和质权人，股权出质撤销登记申请人为出质人或者质权人。

6.委托事项及权限：第 1 项应当选择相应的项目并在□中打√， 或者注明其它具体内容；第 2、3、4、5 项选择“同意”或“不同意”并在□中打√。

7.指定代表或者委托代理人可以是自然人，也可以是其他组织；指定代表或者委托代理人是其他组织的，应当另行提交其他组织证照复印件及其指派具体经办人的文件、具体经办人的身份证件。

8.申请人提交的申请书应当使用 A4 型纸。依本表打印生成的，使用黑色钢笔或签字笔签署；手工填写的，使用黑色钢笔或签字笔工整填写、签署。

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c. C.43 (as amended)

Court File No. CV-14-10667-00CL

AND IN THE MATTER OF HANFENG EVERGREEN INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

SUPPLEMENT TO THE
FIFTH REPORT OF THE RECEIVER

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