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.**

# FOURTH REPORT OF THE RECEIVER DATED APRIL 4th, 2017

## INTRODUCTION

1. On August 20, 2014, following an application by Hanfeng Evergreen Inc. ("**Hanfeng**" or the "**Company**"), the Ontario Superior Court of Justice (the "**Court**") issued an order (the "**Approval Order**") approving a share transfer agreement (the "**Share Transfer Agreement**") dated August 8, 2014 and the transaction contemplated therein (the "**Share Transfer Transaction**").

2. The Approval Order provided for vesting in HLJ Pengcheng (as defined below) all the shares of Hanfeng Slow-Release Fertilizer Co., Ltd. (the **"Chinese Subsidiary**"), the Company's wholly-owned subsidiary in China upon the completion of the Share Transfer Transaction. A copy of the Approval Order is attached hereto as **Appendix "A"**.

3. Pursuant to an order issued by this Court on August 20, 2014 (the "**Appointment Order**"), Ernst & Young Inc. ("**EY**") was appointed as receiver and manager (the **"Receiver**") of the assets, undertakings and properties (the **"Properties**") of the Company, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended. A copy of the Appointment Order is attached hereto as **Appendix "B"**.

4. The Appointment Order authorized the Receiver to, among other things:

   (a) take any necessary steps required to complete the Share Transfer Transaction;

(b) take possession of and exercise control over the Properties and any and all proceeds, receipts and disbursements arising out of, or from, the Properties;

(c) engage counsel and advisors from time to time to assist with the exercise of the Receiver's powers and duties; and

(d) seek Court approval of and conduct a procedure for the solicitation, determination and resolution of claims against the Company.

5. On July 24, 2015 and July 31, 2015, following an application by the Receiver, this Court issued two Orders (collectively, the "**Clarification Orders**"), which, among other things:

(a) confirmed the Receiver's power and authority to exercise the shareholder rights of Hanfeng with respect to the Chinese Subsidiary, including the replacement of Mr. Yu Xinduo ("**Mr. Yu**") with Mr. Hong Rong-Kai ("**Mr. Hong**") as the legal representative and a director of the Chinese Subsidiary;

(b) authorized the Receiver to take any necessary steps to assert its ownership of and effect control over the Chinese Subsidiary;

(c) required Mr. Yu to provide unfettered access for Mr. Hong and his designates to the Chinese Subsidiary's offices and facilities and to the Chinese Subsidiary's books and financial records;

(d) required Mr. Yu to surrender the chops and certain other business and legal documents of the Chinese Subsidiary to Mr. Hong and the Receiver;

(e) required Mr. Yu to provide full and timely cooperation to the Receiver with respect to the above tasks; and

(f) prohibited Mr. Yu, without the Receiver's approval, from executing any agreement with respect to the Chinese Subsidiary or causing it to make any payments.

Copies of the Clarification Orders are attached hereto collectively as **Appendix "C"**.

**PURPOSE**

6. The purpose of this fourth report of the Receiver (the "**Fourth Report**") is to report to the Court in respect of:

   (a) the status of the Share Transfer Transaction;

   (b) the Receiver's efforts to gain control of the Chinese Subsidiary;

   (c) the current status of the Chinese Subsidiary;

   (d) the commencement and status of the claim by the Receiver against, *inter alia*, Mr. Yu;

   (e) the commencement and status of a proceeding brought by New Pengcheng (as defined below) against Hanfeng, the Chinese Subsidiary and EY in China;

   (f) the Receiver's other activities; and

   (g) the current financial position of the Company.

7. The Fourth Report is organized as follows:

   (a) Terms of Reference;

   (b) General Background;

   (c) Update on the Share Transfer Transaction;

   (d) Update on Control over the Chinese Subsidiary;

   (e) Status of the Chinese Subsidiary;

   (f) Litigation Proceedings;

   (g) Summary of the Receiver's Other Activities; and

   (h) Hanfeng's Current Financial Position.

**TERMS OF REFERENCE**

8. In preparing the Fourth Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, prepared from the Company's books and records, discussions with employees of the Company and information from other third-party sources (collectively, the "**Information**"). Except as described in the Fourth Report:

   (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and

   (b) the Receiver has prepared the Fourth 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 Fourth Report available on the Receiver's website at www.ey.com/ca/hanfeng.

9. 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 second report dated July 17, 2015 (the "**Second Report**") and the supplement to the second report dated July 22, 2015 and its third report dated September 25, 2015 (the "**Third Report**"). Copies of each of these reports are posted on the Receiver's website. Copies of the First Report with supplement, the Second Report and supplement (without appendices) and the Third Report (without appendices) are attached hereto as **Appendices "D", "E" and "F"**.

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

**GENERAL BACKGROUND**

*Hanfeng and its Chinese Subsidiary*

11. Hanfeng, through its wholly-owned subsidiaries, was a developer and producer of value-added fertilizers in the China. Hanfeng is incorporated under the laws of Ontario with its registered head office in Toronto.

12. Hanfeng has no independent operations and exists solely as a holding company for certain entities incorporated in China and, at the relevant times, were operating in China. By mid-August, 2014, the Company's principal remaining un-monetized asset was all the issued and outstanding shares of the Chinese Subsidiary (the "**Shares**"). The Chinese Subsidiary is a Wholly Foreign-Owned Enterprise ("**WFOE**") that was established and is registered in China.

13. In accordance with its articles of association, the board of the Chinese Subsidiary is required to have three directors. Until the board reorganization in June 2015 (described in greater detail below), the board consisted of the following members:

    (a) Mr. Yu, founder and former CEO of the Company, who owns and controls approximately 20.4% of the Company's shares;

    (b) Qi Zhida, General Manager of the Chinese Subsidiary; and

    (c) a vacant seat.

14. On or about June 5, 2015, Mr. Guan Liu ("**Mr. Guan**") (a lawyer at Heilongjiang Honghui Law Firm ("**Honghui**"), the Receiver's Chinese counsel) was appointed to the Chinese Subsidiary's board of directors to fill the vacant seat.

15. Despite the Receiver's efforts described below, Mr. Yu remains both a director of the Chinese Subsidiary as well as the legal representative of the Chinese Subsidiary, a position that, under Chinese law, is responsible for the overall activities of the Chinese Subsidiary. The Chinese Subsidiary is managed by Mr. Yu and a team of individuals designated by him (collectively, the "**Local Management Team**"). The Local Management Team, by way of Mr. Yu's (as legal representative) delegation of

authority, controls the Chinese Subsidiary's business license, chop sets (which are company seals required for executing corporate documents and government registrations) and bank accounts.

16. As described in greater detail herein, notwithstanding the Clarification Orders, since the filing of the Third Report, the Receiver and its representatives have been unable to obtain any meaningful information from the Local Management Team with respect to the status of the Chinese Subsidiary, and also have been denied access to the Chinese Subsidiary's premises as well as its books and records. Based on the Receiver's investigations, substantial bank loans were taken out by the Chinese Subsidiary under Mr. Yu's authority. Mr. Yu, even after direct questioning by the Receiver, denied the existence of the loans and concealed from Hanfeng and the Receiver such indebtedness as well as other guarantees of indebtedness the Chinese Subsidiary had provided in respect of other Chinese company's under Yu's control but not related to Hanfeng. The Receiver has not been able to identify any evidence to suggest that the Chinese Subsidiary ever received the cash proceeds or other benefit of any of these loans.

*Share Transfer Transaction*

17. On or about June 16, 2014, Mr. Yu and Ms. Lei Li[1] ("**Ms. Li**") forwarded to Hanfeng a letter of intent to effect the Share Transfer Transaction from an entity that identified itself with a Chinese name that translates into Heilongjian Pengcheng Fertilizer Co. Ltd ("**HLJ Pengcheng**"). Prior to entering into any definitive agreement with HLJ Pengcheng, the Company conducted due diligence, including obtaining an independent report from Deloitte LLP, in respect of HLJ Pengcheng.

18. During the subsequent eight weeks, the Company and HLJ Pengcheng negotiated the terms of a Share Transfer Agreement and related documents. Each of the Chinese language drafts of these documents prepared by HLJ Pengcheng continued to refer to the buyer using the same corporate name of the buyer referred to in paragraph 16.

[1] Ms. Lei Li is the spouse of Mr. Yu and a former director and officer of Hanfeng.

19. However, in preparing the execution versions of the Share Transfer Agreement on August 8, 2014, the name of the buyer was switched from the Chinese language translation of "Heilongjian Pengcheng Fertilizer Co. Ltd." to the Chinese language translation of "Harbin Pengcheng Fertilizer Co. Ltd." ("**New Pengcheng**"). An English language translation of the Share Transfer Agreement is attached hereto as **Appendix "G".**

20. Unlike HLJ Pengcheng, a well-established company active in Heilongjiang Province of China, New Pengcheng appears to be a shell company with no operations that was only registered on August 4, 2014 (4 days before signing of the Share Transfer Agreement) and in respect of which very limited information is available to the public.

21. As discussed in the Second and Third Reports, the Receiver has significant skepticism over the New Pengcheng's purported identity, intent and ability to ever close the Share Transfer Transaction.

22. The Share Transfer Agreement provides that the total purchase price for all of the Shares is RMB 248 million (approximately $49.6 million), of which cash consideration is RMB 198.4 million. Set out in the table below is a summary of the timing and amount of the payments and consideration provided for in the agreement.

| **Description** | **Amount** | **Time** |
|---|---|---|
| 5% of the total purchase price | RMB 12,400,000 | Within 7 business days of the date of the Share Transfer Agreement |
| 15% of the total purchase price | RMB 37,200,000 | Within 10 business days of the Court approval of the Share Transfer Transaction |
| 60% of the total purchase price | RMB 148,800,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Cash Consideration** | **RMB 198,400,000** | |
| 20% of the total purchase price in promissory note to be assigned to Mr. Yu on account of approximately 20.4% of the Company's shares owned or controlled by Mr. Yu | RMB 49,600,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Purchase Price** | **RMB 248,000,000** | |

23. New Pengcheng paid the 5% deposit amount (the "**Deposit**") due in connection with the execution of the Share Transfer Agreement on August 28, 2014, being 9 days after it was due under the terms of the Share Transfer Agreement, but failed to make the 15% interim payment (the "**Interim Payment**") due on September 3, 2014, and failed to make any subsequent payments.

24. As described in the First and Second Report, the failure to make the Interim Payment was initially attributed to issues arising from the requirement for the Chinese regulatory authorities to authorize foreign exchange payments being remitted out of China.

25. In order to advance the Share Transfer Transaction and address the obstacles being raised by New Pengcheng regarding local regulatory requirements, after extensive negotiations, the Receiver subsequently agreed with New Pengcheng that the Interim Payment could be paid by it into escrow with a Chinese bank, and accordingly the parties entered into an escrow agreement (the "**Escrow Agreement**") dated February 13, 2015. Under the terms of the Escrow Agreement, New Pengcheng was required to deposit the Interim Payment within five days into an account (the "**Escrow Account**") at Minsheng Bank (the "**Escrow Bank**") under New Pengcheng's name. Although an account was opened by New Pengcheng at the Escrow Bank, the Interim Payment was not deposited when required under the Escrow Agreement.

26. On March 23, 2015, following numerous demands being made by the Receiver, New Pengcheng committed to a new timeframe for the deposit of the Interim Payment into the Escrow Account. New Pengcheng made deposits in the aggregate amount of RMB 10 million between April 3, 2015 and April 27, 2015 (the "**Escrow Funds**"). The remainder of the Interim Payment in the amount of RMB 27 million was due on April 30, 2015, but was never deposited.

27. The Receiver, with the assistance of its Chinese counsel and advisors, began investigations in China as a result of the numerous and ongoing breaches by New Pengcheng under the Share Transfer Agreement and the Escrow Agreement. As the

investigations progressed, the Receiver uncovered concerning information about the real identity of the New Pengcheng, the Chinese Subsidiary's status and the potential linkage between Mr. Yu and New Pengcheng (as described in detail in the Second and Third Reports and further below).

28. As a result of these findings and its concerns, as well as the lack of trust in New Pengcheng that was created by this course of action, the Receiver, in consultation with its Canadian and Chinese counsel, concluded that it should adhere strictly to the timing of the payment structure in the Share Transfer Agreement and it should not accede to further departures from its terms. Accordingly, the Receiver insisted that applications for regulatory approval be made only after New Pengcheng had rectified its various breaches, including depositing the remainder of the Interim Payment in the Escrow Account in accordance with the Escrow Agreement. In parallel, the Receiver, in accordance with the orders of this Court, also took further steps to attempt to gain control over the Chinese Subsidiary as discussed further herein.

29. As described in the Third Report, the Receiver was informed that starting in the week of July 13, 2015, New Pengcheng had repeatedly contacted the Escrow Bank requesting the Escrow Bank return the Escrow Funds to New Pengcheng.

30. On July 22, 2015, the Receiver received from New Pengcheng an email, which, among other things, alleged that the Receiver was responsible for the delay of the Share Transfer Transaction. On July 28, 2015, New Pengcheng sent another email, which repeated its previous allegations and demanded the return of all payments previously made, being the Deposit and the Escrow Funds.

31. The Receiver rejected New Pengcheng's allegations the Receiver had failed to meet its obligations in any way. The Receiver obtained a legal opinion from Honghui confirming the Receiver's entitlement to the Deposit under the Share Transfer Agreement and in accordance with Chinese law. A copy of the legal opinion together with its translation is attached hereto as **Appendix "H"**.

32. On July 28, 2015, the Escrow Bank sent a notice notifying the parties to the Escrow Agreement, including the Receiver that the Escrow Agreement was to be terminated

effective August 4, 2015. The notice did not, however, provide details as to how the Escrow Funds would be released. Article 8.5 of the Escrow Agreement provides that "on the termination date for the escrow, the Escrow Bank shall deal with the balance of the escrow amount in accordance with the instructions in the written notice jointly issued by the buyer and the seller". (emphasis added)

33. The Receiver informed the Escrow Bank and New Pengcheng that it would not consent to the designation of a successor account under the Escrow Agreement or release of the Escrow Funds back to New Pengcheng. The Receiver also instructed Mr. Yu that he was not to authorize or cause any change to the Escrow Funds without written instructions from the Receiver.

34. Despite the Receiver's clear instructions to Yu and the Escrow Bank, the Receiver's Chinese counsel found Mr. Yu had provided written consent on behalf of Hanfeng (which he was not authorized to do) to the Escrow Bank, resulting in the Escrow Funds being released back to New Pengcheng in August 2015.

*Control of Chinese Subsidiary*

35. As noted in the Second Report, the Chinese Subsidiary is managed by the Local Management Team under Mr. Yu's supervision. Although Mr. Yu advised on several occasions the Chinese Subsidiary had been dormant since around April 2014, the Receiver became increasingly concerned about the status of the assets of the Chinese Subsidiary (the "**Heilongjiang Assets**") due to:

(a) the Chinese Subsidiary incurring significantly more disbursements than what would be expected for a dormant manufacturing facility;

(b) the absence of any meaningful cooperation from Mr. Yu, Ms. Li and the Local Management Team and their continuing refusal to provide detailed supporting information for the disbursements;

(c) financial and operational information received by the Receiver being inadequate and inconsistent with explanations and supporting collaborative information; and

(d) discovery of lawsuits related to undisclosed loans of the Chinese Subsidiary that were concealed from the Company and Receiver and subsequent settlements entered into by the Chinese Subsidiary without the Receiver's knowledge or agreement. Under these settlements, the Chinese Subsidiary is obligated to pay to China Industrial Bank ("**Industrial Bank**") approximately RMB 161 million in principal and interest (approximately $32 million) (the "**Industrial Bank Settlements**") (all as described in greater detail in the Second Report).

36. As discussed in the Second Report, in order to preserve the Heilongjiang Assets, in June 2015, the Receiver undertook to reorganize the board and management of the Chinese Subsidiary by appointing:

(a) Mr. Guan Liu as a director of the Chinese Subsidiary to fill the vacancy in the Chinese Subsidiary's board;

(b) Mr. Hong[2] as the legal representative and a director of the Chinese Subsidiary to replace Mr. Yu; and

(c) an associate of Mr. Hong as a director to replace the third director.

**UPDATE ON THE SHARE TRANSFER TRANSACTION**

37. The Receiver remained intent on completing the Share Transfer Transaction. However, concerns mounted over New Pengcheng's ability and intent to complete the Share Transfer Transaction, as well as the real identity of New Pengcheng and Mr. Yu's role in the entire transaction in light of the following:

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[2] Mr. Hong is a Canadian citizen who received his PhD degree from the University of Toronto. The Receiver understands Mr. Hong has extensive experience in restructuring, general management and operation management from his previous employment with several multinational companies. The Receiver is advised that Mr. Hong founded four companies (one in China, two in Taiwan and one in Toronto) and has provided freelance advisory services to a wide variety of clients. Mr. Hong is familiar with the transactional environment in China.

(a) New Pengcheng's continued failure to meet its obligations under the Share Transfer Agreement and Escrow Agreement;

(b) despite the Receiver's express instructions not to authorize or cause any change to the Escrow Funds, Mr. Yu provided written consent to the Escrow Bank for the release of the Escrow Funds back to New Pengcheng;

(c) misrepresentations by Mr. Yu and Ms. Li about the true identity and corporate history of New Pengcheng (as discussed further herein);

(d) the discovery of substantial undisclosed bank loans of the Chinese Subsidiary, which far exceeds the purchase price for the Share Transfer Transaction (as discussed further herein); and

(e) a lawsuit commenced by New Pengcheng against Hanfeng, the Chinese Subsidiary, Mr. Yu and EY in its personal capacity seeking to terminate the Share Transfer Agreement and the return of the Deposit that it had paid previously in the amount of RMB 12.4 million (as discussed further herein).

38. Based on the foregoing, the Receiver no longer has any remaining belief that New Pengcheng has the financial resources or desire to close the Share Transfer Transaction, or that the Share Transfer Transaction can be completed.

39. The Receiver believes that New Pengcheng's numerous and continuous breaches of the Share Transfer Agreement are the sole cause for the failure to close the Share Transfer Transaction. The Receiver also continues to believe that it is entitled to keep the Deposit pursuant to the Share Transfer Agreement.

40. In the Second and Third Reports, the Receiver advised this Court that it was critical to the estate to further both the investigation activities and efforts to preserve the assets of the Chinese Subsidiary. In the Third Report, the Receiver advised this Court that the remaining funds in the estate, including a portion or all of the Deposit, would be used by the Receiver to fund the next steps outlined in the Report. This Court approved the Third Report by an Order dated October 5, 2015, a copy of which is attached hereto as **Appendix "I"**. In accordance with this Order, the Receiver has

continued to use the Company’s remaining funds, including the Deposit, to fund the various activities as further described herein.

**UPDATE ON CONTROL OVER THE CHINESE SUBSIDARY**

41. Mr. Guan's appointment as director was approved on August 18, 2015, by Harbin Administration of Industry and Commerce (“**HAIC**”), upon a review of the translation of the Clarification Orders.

42. In the Third Report, the Receiver reported it was in the process of preparing the submissions to HAIC for the registration of Mr. Hong as legal representative and a director of the Chinese Subsidiary. Despite the Clarification Orders and repeated demands by the Receiver and its representatives, Mr. Yu and the Local Management Team have refused to provide cooperation, including:

    (a) refusing to sign/seal certain documents necessary for a submission to register Mr. Hong as the legal representative and director of the Chinese Subsidiary and refusing to surrender the chops, bank tokens or other business documents;

    (b) failing to provide financial information and records of the Chinese Subsidiary; and

    (c) refusing to accommodate access to the Chinese Subsidiary’s facility; in particular, Mr. Hong and Mr. Guan were denied entry to the Chinese Subsidiary’s facility by security during the weeks of July 27, 2015 and June 6, 2016.

43. With respect to the replacement of Mr. Yu as the Chinese Subsidiary’s legal representative, Honghui and Mr. Hong engaged in numerous discussions with HAIC, and learned that HAIC was not prepared to process the submissions without the documents being signed/sealed by Mr. Yu and the Chinese Subsidiary.

44. In order to address the non-cooperation of Mr. Yu and the Local Management Team, the Receiver, with assistance of Honghui, applied to the Harbin Intermediate People’s

Court in Heilongjiang Province, China (the "**Harbin Court**") in November 2015, seeking, among other things,

(a) recognition of the Appointment Order and Clarification Orders; and

(b) endorsement of the Receiver's authority to exercise certain shareholder rights on behalf of Hanfeng in respect of the Chinese subsidiary, including changing the legal representative of the Chinese Subsidiary.

45. However, the Harbin Court was not prepared to hear the Receiver's application based on its review of the aforementioned Orders issued by this Court.

46. The Receiver, with assistance of Honghui and Mr. Hong, has also had several discussions with the banks of the Chinese Subsidiary, but without the cooperation of Mr. Yu, as legal representative, or the Local Management Team, has only been able to obtained limited information with respect to the Chinese Subsidiary (as further discussed below).

47. Since the filing of the Third Report, the Receiver has not been able to obtain any meaningful information from Mr. Yu and the Local Management with respect to the Chinese Subsidiary. There has also been no significant progress in effecting control over the Chinese Subsidiary and appointing Mr. Hong as the legal representative.

**STATUS OF THE CHINESE SUBSIDIARY**

48. Following the discovery of the Industrial Bank Settlements, the Receiver, with assistance of its Chinese counsel and Mr. Hong, uncovered additional bank loans of the Chinese Subsidiary which had been concealed from Hanfeng and the Receiver. The Receiver's further investigations reveal the Chinese Subsidiary has been carrying a significant amount of undisclosed indebtedness since long before the receivership proceedings.

49. According to information from the Corporate Credit Information Centre of the People's Bank of China (the central bank of China), the indebtedness of the Chinese Subsidiary amounted to over RMB 438 million (approximately $87.6 million) as of

March 31, 2016, which far exceeds the Chinese Subsidiary's available cash, as at June 30, 2015, of RMB 74 million (or the equivalent of $14.4 million) as reported by the Local Management Team. The Chinese Subsidiary has defaulted under certain of these bank loans, resulting in seizure and recovery actions being initiated in China by its lenders such as the Industrial Bank.

**LITIGATION PROCEEDINGS**

50. As a result of the issues discussed above with respect to the Share Transfer Transaction and control over the Chinese Subsidiary, the Receiver has become involved in two legal proceedings, both of which remain ongoing:

(a) the Receiver's action against Mr. Yu and Ms. Li in Canada; and

(b) the proceeding brought in China by New Pengcheng against Hanfeng, the Chinese Subsidiary, Mr. Yu and EY (the "**New Pengcheng Proceeding**").

*Receiver's Action*

51. On March 22, 2016, the Receiver commenced a claim (the "**Receiver's Action**") in the Ontario Superior Court of Justice against Mr. Yu and Ms. Li. Among other things, the Statement of Claim alleges Mr. Yu breached his fiduciary duties to Hanfeng and the Chinese Subsidiary by taking out a series of loans on behalf of the Chinese Subsidiary, which proceeds he converted for his own use or otherwise improperly dissipated from the Chinese Subsidiary, and/or were received by Ms. Li. In addition, the Statement of Claim alleges that Mr. Yu and Ms. Li fraudulently represented the true identity and corporate history of New Pengcheng.

52. In the Receiver's Action, the Receiver claims restitution or damages in the total amount of Canadian currency sufficient to purchase RMB 865,600,000 for breach of fiduciary duty, fraud, conversion, unjust enrichment, knowing assistance and knowing receipt and fraudulent misrepresentation and seeks a declaration that all monies belonging the Chinese Subsidiary and wrongfully obtained by Mr. Yu and/or Ms. Li are subject to a constructive trust in favor of the Receiver. The Receiver also asserts a claim for aggravated, exemplary and punitive damages in the amount of

$500,000 and special damages in an amount to be determined in advance of trial for costs associated with the Court approval and monitoring of the Share Transfer Agreement, delays to the Share Transfer Transaction and the costs to investigate Mr. Yu and Ms. Li's activities and to try and preserve the Chinese Subsidiary's assets.

53. After the Receiver delivered two responses to the defendants' Demand for Particulars, on January 5, 2017, Mr. Yu and Ms. Li delivered a defence to the action. The Statement of Defence broadly denies the allegations of the Receiver and claims certain allegations fail to disclose a cause of action against Mr. Yu and Ms. Li.

54. The next steps in this proceeding are expected to be as follows:

(a) the Receiver intends to file a reply to the Statement of Defence and has been given an indulgence with respect to service and filing. Accordingly, at this time pleadings are not closed;

(b) the defendants have stated they may file a motion to strike certain aspects of the Receiver's claim with respect to Ms. Li, but as of the date of this report, have not yet done so; and

(c) once pleadings have closed, a timetable will be established for discovery.

<u>*New Pengcheng Proceeding*</u>

55. On or about August 3, 2015, New Pengcheng commenced an action against Hanfeng, the Chinese Subsidiary, Mr. Yu and EY in its personal capacity in the Harbin Court, seeking to terminate the Share Transfer Agreement and the return of the Deposit that it had paid previously in the amount of RMB 12.4 million.

56. On February 15, 2017, the Harbin Court released its decision (backdated to December 29, 2016). Among other things, the decision included the following:

(a) the termination of the Share Transfer Agreement;

(b) the requirement for Hangfeng 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.

57. The Receiver does not believe that the Harbin Court reached the appropriate result with respect to the termination of the Share Transfer Agreement and the requirement for Hangfeng to return the deposit.

58. In forming its judgment, the Harbin Court held that the Share Transfer Agreement was entered into lawfully, but was ineffective, and therefore not binding upon the parties on account of the ultimate failure to obtain certain regulatory approval concerning foreign investment entities (the "**FIE Approval**"). The Receiver takes issue with this conclusion as, among other things, its Chinese counsel, Honghui, has advised that the proper interpretation of applicable Chinese law is that a lawfully established contract is legally binding on the parties regardless of whether such FIE Approval was obtained, in particular, the parties should be bound by the contractual obligations in respect of the steps towards applying for the FIE Approval.

59. In addition, the Harbin Court based its decision, in part, on Hanfeng's failure to apply for the FIE Approval. However, the Harbin Court failed to consider that Hanfeng was willing to apply for the FIE Approval, but did not do so as a result of New Pengcheng breaching its obligations pursuant to the terms of the Share Transfer Agreement, including payment of the required deposit, on numerous occasions.

60. The Receiver takes the position that these, and other grounds, constitute reasonable grounds to appeal the decision and intends to appeal same.

61. In order to appeal, Hanfeng is required to file written submissions within 30 days of formally receiving the Harbin Court's decision and make a payment to the court. At the time of this report, the Receiver has instructed Honghui to file the appeal submissions. Honghui has advised the Receiver that it may take three to five months before the appeal is decided.

**SUMMARY OF THE RECEIVER'S OTHER ACTIVITES**

62. In addition to the activities described above, since the filing of the Third Report, Receiver has taken various steps pursuant to the Appointment Order as detailed below:

(a) responded to inquiries from stakeholders;

(b) consulted certain stakeholders as appropriate with respect to the Share Transfer Transaction and Chinese Subsidiary; and

(c) suspended disbursements except for funding Chinese counsel and expenses related to the litigation activities in China in order to preserve liquidity.

**THE COMPANY'S CURRENT FINANCIAL POSITION**

63. As described in the Second Report, the Receiver has received 17 non-equity claims with a total face value of $4,307,663 and 2 late claims for a total amount of $17,863 in the Claims Process.

64. The Receiver currently holds funds in the amount of CA$2,037,485 and US$7,901 in respect of the receivership of Hanfeng.

65. At the time of this Report, outstanding professional fees and disbursements are estimated at $525,000 before HST.

66. As described in more detail above, given the current status of the Share Transfer Transaction and that it is unlikely to proceed further, the Receiver intends to:

(a) proceed with pursuing the litigation as against Mr. Yu and Ms. Li in Canada; and

(b) proceed with the appeal of the Chinese Court decision in China in respect of the New Pengcheng lawsuit.

67. The Receiver, therefore, intends to return to this Court in the near future to seek approval of its activities and for payment of the Receiver's and Canadian counsel's

outstanding professional fees and disbursements in accordance with the Appointment Order.

All of which is respectfully submitted this April 4th, 2017

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

Per:

Murray A. McDonald
President

This is **Appendix "A"**
to the Fourth Report of the Receiver
dated April 4, 2017

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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| THE HONOURABLE MADAM | ) | WEDNESDAY, THE 20TH |
| | ) | |
| JUSTICE MATHESON | ) | DAY OF AUGUST, 2014 |

**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.**

# APPROVAL AND VESTING ORDER

THIS APPLICATION, made by Hanfeng Evergreen Inc. (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by a share transfer agreement (the "**Share Transfer Agreement**") between the Applicant and Heilongjiang Pengcheng Fertilizer Co., Ltd. (the "**Purchaser**") dated August 8, 2014 and appended to the Affidavit of Jonathan Pollack dated August 13, 2014 (the "**Pollack Affidavit**"), and vesting in the Purchaser the Applicant's right, title and interest in and to the shares described in the Share Transfer Agreement (the "**Purchased Shares**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Pollack Affidavit and on hearing the submissions of counsel for the Applicant and for Harris Christopoulos, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service sworn August 14, 2014 and the affidavit of Sheila van Spronsen dated August 20, 2014, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Share Transfer Agreement by the Applicant is hereby authorized and approved *nunc pro tunc*. Ernst & Young Inc., in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of the Applicant, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Shares to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Shares described in the Share Transfer Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order dated August 15, 2014; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall stand in the place and stead of the Purchased Shares, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct by the Purchaser pursuant to any applicable federal or provincial legislation.

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the People's Republic of China to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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Natasha Brown
Registrar

**Schedule "A" – Form of Receiver's Certificate**

Court File No. __________

**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.**

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "**Court**") dated August 15, 2014, Ernst & Young Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Hanfeng Evergreen Inc. (the "**Applicant**").

B. Pursuant to an Order of the Court dated August 15, 2014, the Court approved the agreement of purchase and sale made as of August 8, 2014 (the "**Share Transfer Agreement**") between the Applicant and Heilongjiang Pengcheng Fertilizer Co., Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; (ii) that the conditions to Closing as set out in the Share Transfer Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Share Transfer Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Share Transfer Agreement;

2. The conditions to Closing as set out in the Share Transfer Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at _______ [TIME] on ______ [DATE].

**ERNST & YOUNG INC., in its capacity as Receiver of the undertaking, property and assets of Hanfeng Evergreen Inc., and not in its personal capacity**

Per: ______________________________

Name: Murray A. McDonald

Title: President, Ernst & Young Inc.

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

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.

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**
Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER**

**STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
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Lawyers for the Applicant

This is **Appendix "B"**
to the Fourth Report of the Receiver
dated April 4, 2017

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

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE MADAM | ) | WEDNESDAY, THE 20TH |
| | ) | |
| JUSTICE MATHESON | ) | DAY OF AUGUST, 2014 |

**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.**

# ORDER
## (Appointment Order)

THIS APPLICATION made by the Applicant Hanfeng Evergreen Inc. (the "**Applicant**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ernst & Young Inc. ("**E&Y**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Applicant acquired for, or used in relation to a business carried on by the Applicant, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jonathan Pollack sworn August 13, 2014 and the Exhibits thereto and on hearing the submissions of counsel for Hanfeng and for Harris Christopoulos, no one appearing for anyone else although duly served as appears from the affidavits of service sworn August 14, 2014 and the affidavit of Sheila van Spronsen dated August 20, 2014, filed, and on reading the consent of E&Y to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, E&Y is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Applicant acquired for, or used in relation to a business carried on by the Applicant, including all proceeds thereof (the "**Property**").

**RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the share transfer agreement with Heilongjiang Pengcheng Fertilizer Co., Ltd. dated August 8, 2014;

(b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(d) to manage, operate, and carry on the business of the Applicant, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Applicant;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Applicant or any part or parts thereof;

(g) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;

(h) to settle, extend or compromise any indebtedness owing to the Applicant;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $100,000, provided that the aggregate consideration for all such transactions does not exceed $1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Applicant;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Applicant, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Applicant;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Applicant may have;

(s) to seek Court approval of and conduct a procedure for the solicitation, determination and resolution of claims against the Applicant;

(t) to seek Court approval to distribute any proceeds of any sale of the Property to the stakeholders of the Applicant in accordance with their relative priorities pursuant to further Order of the Court;

(u) to take such steps and execute such documents as may be necessary or desirable to purchase tail director and officer liability insurance coverage; and

(v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Applicant, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Applicant or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Applicant or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Applicant, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided that nothing in this paragraph shall (i) empower the Receiver or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Receiver or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Receiver or leave of this Court.

## CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Applicant shall remain the employees of the Applicant until such time as the Receiver, on the Applicant's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**"), other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act (Canada).*

**PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

*Canadian Environmental Protection Act*, the *Environmental Protection Act* (Ontario), the *Water Resources Act* (Ontario), or the *Occupational Health and Safety Act* (Ontario) and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

**LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* (Canada).

**RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**SERVICE AND NOTICE**

21. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ey.com/ca/hanfeng'.

22. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

23. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Applicant.

25. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the People's Republic of China to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

26. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Natasha Brown
Registrar

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This is **Appendix "C"**
to the Fourth Report of the Receiver
dated April 4, 2017

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

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 24th |
| | ) | |
| JUSTICE CONWAY | ) | DAY OF JULY, 2015 |

**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.**

**ORDER**

**THIS MOTION**, made by Ernst & Young Inc., in its capacity as the receiver (the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**"), for an order clarifying and expanding the Receiver's powers was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Receiver dated July 17, 2015 (the "**Second Report**") and the Supplement to the Second Report of the Receiver dated July 22, 2015 (the "**Supplement**"), and on hearing the submissions of counsel to the Receiver, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Second Report.

3. **THIS COURT ORDERS** that the Receiver is empowered and authorized to exercise any shareholder rights that Hanfeng has, including Hanfeng's rights as sole shareholder of Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**").

4. **THIS COURT ORDERS** Mr. Yu Xinduo to provide full and timely cooperation to the Receiver, including, but not limited to the following:

   (a) providing unfettered access for Mr. Rong-Kai Hong and his company Formosa Supply Services Co., Ltd. and his designates to the Chinese Subsidiary's offices and facilities and books and financial records.

5. **THIS COURT ORDERS** that Mr. Yu Xinduo is forthwith prohibited from executing any document or entering into any agreement with respect to the Chinese Subsidiary without the Receiver's prior written consent thereto.

6. **THIS COURT ORDERS** that Mr. Yu Xinduo is forthwith prohibited from causing the Chinese Subsidiary to make any payments (including with respect to the Settlements, as defined in the Supplement) or any transfers out of any bank accounts in the name of the Chinese Subsidiary, including but not limited to, the bank account no. 23001866251050505638 with the China Construction Bank without the Receiver's prior written consent thereto.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the People's Republic of China to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 24 2015

Giuseppe Dip...
Registrar

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.

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

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**
Proceedings commenced at Toronto

**ORDER**


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

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 31st |
| | ) | |
| JUSTICE Hainey | ) | DAY OF JULY, 2015 |

**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.**

**ORDER**

**THIS MOTION**, made by Ernst & Young Inc., in its capacity as the receiver (the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**"), for an order clarifying and expanding the Receiver's powers was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Receiver dated July 17, 2015 (the "**Second Report**") and the Supplement to the Second Report of the Receiver dated July 22, 2015 (the "**Supplement**"), and on hearing the submissions of counsel to the Receiver and Yu Xinduo, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Second Report.

3. **THIS COURT ORDERS** that the Receiver is empowered and authorized to exercise any shareholder rights that Hanfeng has, including Hanfeng's rights as sole shareholder of Hanfeng Slow-Release Fertilizer Co., Ltd. (the "**Chinese Subsidiary**"), including but not limited to, to change the legal representative and directors of the Chinese Subsidiary.

4. **THIS COURT ORDERS** that the Receiver is authorized to take any necessary steps to assert its ownership of and effect control over the Chinese Subsidiary and the Heilongjiang Assets, including but not limited to, the bank account no. 23001866251050505638 opened with the China Construction Bank in the name of the Chinese Subsidiary.

5. **THIS COURT ORDERS** that the Receiver is authorized and directed to engage Mr. Rong-kai Hong ( "**Mr. Hong**") and his company, Formosa Supply Services Co., Ltd, ("**FSS**"), to provide interim management services in connection with the Chinese Subsidiary, including appointment of Mr. Hong as the legal representative (the "**New Legal Representative**") and a director of the Chinese Subsidiary.

6. **THIS COURT ORDERS** Mr. Yu Xinduo to provide full and timely cooperation to the Receiver, including, but not limited to the following:

    (a) attending at Harbin Administration of Industry and Commerce ("**HAIC**") in order to facilitate the change of legal representative of the Chinese Subsidiary;

(b) taking any steps within Mr. Yu's control and permitted by law to effect the surrender of all chops, including the company chop and finance chops relating to the Chinese Subsidiary and any of its subsidiaries to the New Legal Representative;

(c) taking any steps within Mr. Yu's control and permitted by law to effect the surrender of all online banking tokens of the Chinese Subsidiary to the New Legal Representative; and

(d) taking any steps within Mr. Yu's control and permitted by law to effect the surrender to the New Legal Representative all corporate licenses, certificates and registrations of the Chinese Subsidiary and any of its subsidiaries, including the original business license, replicate business license, organizational code certificate, tax certificate and safe registration.

7. **THIS COURT ORDERS** that the First Report, the Second Report and the Supplement and the conduct and activities of the Receiver as described in each of the reports are hereby approved.

**THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the People's Republic of China to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 3 1 2015

A. Anissimova
Registrar

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.

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

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**
Proceedings commenced at Toronto

**ORDER**

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Lawyers for the Applicant

This is **Appendix “D”**
to the Fourth Report of the Receiver
dated April 4, 2017

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.**

**FIRST REPORT OF THE RECEIVER**
**DATED SEPTEMBER 12, 2014**

## INTRODUCTION

1. On August 20, 2014, pursuant to an order issued by the Ontario Superior Court of Justice, Ernst & Young Inc. was appointed as receiver and manager (the "Receiver") of the assets, undertakings and properties of the Hanfeng Evergreen Inc. ("Hanfeng" or the "Company"), pursuant to section 101 of the Courts of Justice Act (Ontario).

## PURPOSE

2. The purpose of this first report of the Receiver (the "First Report") is to provide this Court with information in respect of the following:

   - status of the sale of the Company`s wholly owned subsidiary, Hanfeng Slow-Release Fertilizer Co., Ltd.; and

   - the Receiver's request for an order establishing a process to resolve any claims against Hanfeng and establishing a claims bar date by which such claims must be filed.

## TERMS OF REFERENCE

3. In preparing this First Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, prepared by the Company's books and records, discussions with employees of the Company and information from other third-party sources (collectively, the "Information"). Except as described in this First Report:

   (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and

   (b) The Receiver has prepared this First 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 this First Report available on the Receiver's website at www.ey.com/ca/hanfeng.

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

## GENERAL BACKGROUND

5. The Company, through its wholly-owned subsidiaries, was a developer and producer of value-added fertilizers in the People's Republic of China ("China"). The Company is incorporated under the laws of Ontario with its registered head office in Toronto.

6. The Company has no independent operations and exists solely as a holding company for certain operating entities located in China. By mid-August 2014, the Company's principal remaining un-monetized asset was all the issued and outstanding shares of

Hanfeng Slow-Release Fertilizer Co., Ltd., a company legally registered and established in China (the "Chinese Subsidiary").

7. On August 20, 2014, following an application by the Company, this Court:

- issued an order appointing Ernst & Young Inc. as the receiver and manager of the Company (the "Receivership Order"); and
- approved a share transfer agreement between the Company and Heilongjiang Harbin Pengcheng Fertilizer Co., Ltd. (the "Purchaser") dated August 8, 2014 (the "Share Transfer Agreement") in respect of the shares of the Chinese Subsidiary (the "Shares") and the transaction contemplated therein (the "Share Transfer Transaction") and provided 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 (the "Vesting Order").

8. The Receiver has made various materials relating to the receivership available on its website at www.ey.com/ca/hanfeng.

## SHARE TRANSFER TRANSACTION UPDATE

9. The Receivership Order provides, among other things, for the Receiver to close the Share Transfer Transaction and collect the purchase price payable thereunder.

10. The Receiver is proceeding to complete any necessary steps required for the closing of the Share Transfer Transaction, including coordinating with the Company's Chinese counsel as needed.

11. Pursuant to the terms of the Share Transfer Agreement, RMB 12,400,000 (approximately $2.2 million) has already been received from the Purchaser.

12. A further RMB 37,200,000 (approximately $6.6 million) was due ten business days after the date of approval of the Share Transfer Transaction by this Court. The

Receiver understands that the payment was delayed on account of regulatory clearance from China's State Administration of Foreign Exchange ("SAFE"). The Receiver further understands that SAFE clearance has now been obtained and expects receipt of the payment in the week ending September 19, 2014.

## HANFENG CLAIMS PROCESS

*General*

13. The Receiver seeks an order for the establishment and resolution of any claims against the Company (the "Claims Procedure Order").

14. The purpose of the proposed Claims Procedure Order is to:

- establish a process to ensure that all parties with a claim or an alleged claim be called upon to advance their claim expeditiously;
- to permit such claims to be processed and adjudicated efficiently; and
- to analyze and consider the effect of any such alleged claims prior to any distribution of the remaining assets to Hanfeng's shareholders.

15. The Claims Procedure Order establishes a Claims Bar Date (as defined below) and sets out the procedures for the calling of proofs of claims and a process to lead to the final determination of the Claims (as defined in the Claims Procedure Order).

*Claims Bar Date*

16. The Receiver proposes that any Person (as defined in the Claims Procedure Order) asserting a Claim be required to file a proof of claim with the Receiver prior to 5:00 pm (prevailing Eastern time) on November 10, 2014 (the "Claims Bar Date").

17. Any Person that fails to file a Proof of Claim (as defined in the Claims Procedure Order) with the Receiver on or before the Claims Bar Date shall:

- be forever barred from making or enforcing any Claim against the Company; and
- not be entitled to any further notice in these proceedings, and shall not be entitled to participate as a Claimant (as defined the Claims Procedure Order) in these proceedings.

18. The Receiver submits that the Claims Bar Date is reasonable. It provides parties with a claim or an alleged claim with 45 calendar days from the date of the proposed Claims Procedure Order to evaluate their Claims against Hanfeng and submit the necessary Proofs of Claim.

*Notice of Claims Procedure*

19. The Receiver will publish a Notice of Claims Procedure and Claims Bar Date (as defined in the Claims Procedure Order) in the Globe and Mail (National Edition), the National Post (National Edition) and a local newspaper in Heilongjiang province in China no later than September 30, 2014. A copy of the Notice of Claims Procedure and Claims Bar Date is attached as Schedule A to the Claims Procedure Order.

20. The Receiver will post an electronic copy of the Notice of Claims Procedure and Claims Bar Date on its website www.ey.com/ca/hanfeng as soon as practicable but by no later than September 30, 2014.

21. The Receiver will send a copy of the Claims Package (as defined in the Claims Procedure Order), which includes among other things, a Proof of Claim to each Known Creditor (as defined in the Claims Procedure Order) by regular mail, courier, facsimile, or electronic mail as soon as practicable but by no later than September 30, 2014. A copy of the Proof of Claim is attached as Schedule B to the Claims Procedure Order.

22. In addition, provided that such request is received by the Receiver prior to the Claims Bar Date, the Receiver will send a copy of the Claims Package to any Claimant as soon as reasonably possible after receipt of such a request for a package.

23. In the Receiver's view, the identification of Known Creditors, the mailing of the Claims Package, the publication of the Notice of Claims Procedure and Claims Bar Date described above will provide sufficient and timely notification to allow parties with a claim or an alleged claim to submit their Proofs of Claim prior to the Claims Bar Date.

*Adjudication of Claims*

24. The Receiver will review each Proof of Claim filed and at any time may:
    a) request additional information from a Claimant;
    b) attempt to consensually resolve the amount of the Proof of Claim with the Claimant;
    c) accept (in whole or in part) the amount and/or status of the Claim;
    d) by notice in writing, no later than 20 calendar days after receipt of the Proof of Claim, revise or disallow (in whole or in part) the amount and/or status of any Claim by delivering to the Claimant a notice of revision or disallowance (the "Notice of Revision or Disallowance"). A copy of the Notice of Revision or Disallowance is attached as Schedule C to the Claims Procedure Order; and/or
    e) refer the Claim to a Claims Officer (as defined in the Claims Procedure Order) or to this Court for resolution;

25. Any Claimant who intends to dispute the amount of its Claim as set out in the Notice of Revision or Disallowance must file a Dispute Notice with the Receiver no later than 20 calendar days after the date of the Notice of Revision or Disallowance. A copy of the Dispute Notice is attached as Schedule D to the Claims Procedure Order.

26. The Receiver submits that the period of time to file a Dispute Notice is reasonable as most Claimants will have performed an evaluation of their Claim prior to submitting a Proof of Claim and therefore should be in a position to respond within the time period established.

27. The Receiver believes the appointment of Claims Officers (as defined in the Claims Procedure Order) to the extent necessary will greatly assist with the administration of the provisions of the Claims Procedure Order and provide an efficient and timely means of determining those claims that are disputed and which the Receiver is unable to resolve.

28. Upon receipt of a Dispute Notice, the Receiver may

    a) attempt to consensually resolve the amount of the Claim with the Claimant;
    b) refer the dispute to a Claims Officer for determination; and / or
    c) bring the dispute before this Court for determination

29. If the Receiver refers the dispute to a Claims Officer for determination, the Claims Officer will determine the manner, if any, in which evidence may be brought before the Claims Officer by the parties as well as any other procedural or substantive manners.

30. The Claims Officer shall schedule and conduct a hearing to determine the validity, amount and/or classification of the Claim and as soon as practicable thereafter notify the Receiver and Claimant of his or her determination.

31. The Claimant and the Receiver each have the ability to appeal a determination of the Claims Officer by way of motion to this Court filed within 15 calendar days of delivery of such determination. If an appeal is not filed within such 15-day period, then the Claims Officer's determination shall, subject to a further order of this

Court, be deemed to be final and binding and shall be a Proven Claim (as defined in the Claim Procedure Order).

*Conclusion*

32. The Receiver believes that the Claim Procedure Order establishes a robust overall procedural framework that provides for an efficient mechanism for claims to be processed and adjudicated.

All of which is respectfully submitted this 12th day of September 2014.

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

Per:

Murray A. McDonald
President

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 FIRST REPORT OF THE RECEIVER DATED SEPTEMBER 22, 2014

## PURPOSE

1. This supplement to the First Report of the Receiver (the "Supplemental First Report") is provided in reference to the Receiver's First Report dated September 12, 2014 (the "First Report"). The purpose of the Supplemental First Report is to provide this Court with information in respect of the status of the sale of Hanfeng Evergreen Inc.'s (or the "Company") wholly owned subsidiary, Hanfeng Slow-Release Fertilizer Co., Ltd (the "Chinese Subsidiary").

## TERMS OF REFERENCE

2. In preparing this Supplemental First Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, prepared by the Company's books and records, discussions with employees of the Company and information from other third-party sources (collectively, the "Information"). Except as described in this Supplemental First Report:

    (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants

Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and

(b) The Receiver has prepared this Supplemental First 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 this First Report available on the Receiver's website at www.ey.com/ca/hanfeng.

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

**GENERAL BACKGROUND**

4. On August 20, 2014, following an application by the Company, this Court approved a share transfer agreement between the Company and Heilongjiang Harbin Pengcheng Fertilizer Co., Ltd. (the "Purchaser") dated August 8, 2014 (the "Share Transfer Agreement") in respect of the shares of the Chinese Subsidiary (the "Shares") and the transaction contemplated therein (the "Share Transfer Transaction") and provided 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 (the "Vesting Order").

**SHARE TRANSFER TRANSACTION UPDATE**

5. On September 12, 2014, the Receiver provided the following update in the First Report in respect of the payments contemplated in the Share Transfer Transaction:

- Pursuant to the terms of the Share Transfer Agreement, RMB 12,400,000 (approximately $2.2 million) has already been received from the Purchaser; and

- A further RMB 37,200,000 (approximately $6.6 million) due ten business days after the date of approval of the Share Transfer Transaction by this Court was delayed on account of regulatory clearance from China`s State

Administration of Foreign Exchange (“SAFE”). The Receiver understood that as of September 12, 2014, SAFE clearance had been obtained and that the payment would be processed and released. The Receiver expected receipt of the payment in the week ending September 19, 2014.

6. Subsequently, on September 15, 2014 the Purchaser advised the Receiver, that notwithstanding that SAFE clearance had been obtained, the bank handling this remittance (the “Bank”) informed the purchaser that after the Bank’s review of the supporting documentation, the Bank would not initiate the RMB 37,200,000 payment unless it received a notarized copy of the Vesting Order which had been appropriately authenticated by Official Documents Services, Ontario and the Consulate of the People’s Republic of China (the “Authenticated Court Order”). Therefore, the Receiver proceeded to undertake the requisite steps and has dispatched a copy of the Authenticated Court Order to the Purchaser. The Receiver understands that payment will be initiated forthwith after receipt of the Authenticated Court Order by the Purchaser and the Bank.

7. The Receiver understands that the Authenticated Court Order has arrived in Harbin, China (where the Purchaser is located) and that delivery to the Purchaser is pending. The Receiver also understands that the Purchaser will deliver the Authenticated Court Order to the Bank forthwith upon receipt.

All of which is respectfully submitted this 22nd day of September 2014.

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

Per:

Murray A. McDonald
President

This is **Appendix "E"**
to the Fourth Report of the Receiver
dated April 4, 2017

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.**

# SECOND REPORT OF THE RECEIVER DATED JULY 17, 2015

## INTRODUCTION

1. On August 20, 2014, following an application by Hanfeng Evergreen Inc. ("**Hanfeng**" or the "**Company**"), the Ontario Superior Court of Justice (the "**Court**") issued an order (the "**Approval Order**") approving a share transfer agreement (the "**Share Transfer Agreement**") dated August 8, 2014 and the transaction contemplated therein (the "**Share Transfer Transaction**").

2. The Approval Order provides for vesting in HLJ Pengcheng (as defined below) all the shares of Hanfeng Slow-Release Fertilizer Co., Ltd., the Company's fully owned subsidiary in China (the "**Chinese Subsidiary**") upon the completion of the Share Transfer Transaction. A copy of the Approval Order is attached hereto as **Appendix "A"**.

3. Pursuant to an order issued by this Court on August 20, 2014 (the "**Appointment Order**"), Ernst & Young Inc. was appointed as receiver and manager (the "**Receiver**") of the assets, undertakings and properties (the "**Properties**") of the Company, pursuant to section 101 of the Courts of Justice Act (Ontario). A copy of the Appointment Order is attached hereto as **Appendix "B"**.

4. The Appointment Order authorized the Receiver, among other things, to:

   a. take any necessary steps required to complete the Share Transfer Transaction;
   b. take possession of and exercise control of the Properties and any and all proceeds, receipts, and disbursements arising out of, or from, the Properties;
   c. engage counsel and advisors from time to time to assist with the excise of the Receiver's powers and duties; and
   d. seek Court approval of and conduct a procedure for the solicitation, determination and resolution of claims against the Company.

5. On September 23, 2014, this Court issued an Order (the "**Claims Procedure Order**") approving a claims process (the "**Claims Process**"). A copy of the Claims Procedure Order is attached hereto as **Appendix "C"**.

**PURPOSE**

6. The purpose of this second report of the Receiver (the "**Second Report**") is to report to this Court with respect to the following:

   (a) the status of the Share Transfer Transaction;
   (b) new information in respect of the purchaser in the Share Transfer Transaction;
   (c) a summary of the Receiver's other activities;
   (d) a summary of receipts and disbursements; and
   (e) the Receiver's motion for Orders:
      i. clarifying and expanding the Receiver's power and authority to exercise the shareholder rights that the Company has, including but not limited to, change the legal representative and directors of the Chinese Subsidiary;
      ii. authorizing and empowering the Receiver to renegotiate and, if necessary, terminate the Share Transfer Agreement as the Receiver in its discretion deems appropriate in the circumstances;

iii. authorizing the Receiver to take any necessary actions and steps to safeguard the assets, complete its ongoing investigation and to consider alternatives to realize on the assets of the Chinese Subsidiary (the "**Heilongjiang Assets**"), in whole or in part, for the benefit of the Company's creditors and shareholders, if the Receiver in its discretion sees no reasonable prospect in closing the Share Transfer Transaction;

iv. authorizing the Receiver to take any necessary actions and steps to effect control over the Chinese Subsidiary;

v. authorizing the Receiver to engage Mr. Hong Rong-Kai and his company, Formosa Supply Services Co., Ltd (FSS), to provide interim management services in connection with the Chinese Subsidiary, including appointment of Mr. Hong as the legal representative (the "**New Legal Representative**") and a director of the Chinese Subsidiary and Mr. Hong's associate as a director of the Chinese subsidiary;

vi. requiring Mr. Yu Xinduo, the current legal representative of the Chinese Subsidiary, to provide full and timely cooperation to the Receiver in carrying out the actions described above including but not limited to the following:

    (a) obtaining the Receiver's written approval prior to executing any document or entering into any agreement in his capacity as the legal representative of the Chinese Subsidiary;

    (b) attending at Harbin Administration of Industry and Commerce ("**HAIC**") in order to facilitate the change of legal representative of the Chinese Subsidiary;

    (c) surrendering all chop sets, including the company chop and finance chops (which are described in greater detail below) relating to the Chinese Subsidiary and any of its subsidiaries as described below to the New Legal Representative;

(d) surrendering all online banking tokens of the Chinese Subsidiary to the New Legal Representative;

(e) surrendering to the New Legal Representative all corporate licenses, certificates and registrations of the Chinese Subsidiary and any of its subsidiaries, including the original business license, replicate business license, organizational code certificate, tax certificate and safe registration; and

(f) providing unfettered access for the New Legal Representative to the Chinese Subsidiary's offices and facilities; and

vii. approving the First Report (as defined below) and the Second Report and the conduct and activities of the Receiver as described in each of the reports.

7. This Second Report is organized as follows:

(a) Terms of Reference;
(b) General Background;
(c) Share Transfer Transaction Update;
(d) New Information Concerning the purchaser;
(e) Current Status of the Chinese Subsidiary;
(f) Control Over the Chinese Subsidiary;
(g) Summary of the Receiver's Other Activities;
(h) Summary of Receipts and Disbursements; and
(i) Recommendations.

**TERMS OF REFERENCE**

8. In preparing this Second Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, prepared by the books and records of the Company and the Chinese Subsidiary, discussions with employees of the Company and the Chinese

Subsidiary and information from other third-party sources (collectively, the "**Information**"). Except as described in this Second Report:

(a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the *Generally Accepted Assurance Standards* pursuant to the *Canadian Institute of Chartered Accountants Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and

(b) The Receiver has prepared this Second Report in its capacity as a court-appointed officer solely for the use of this Court and the stakeholders in these proceedings.

9. The Receiver has previously filed with this Court its first report dated September 12, 2014 and supplement to the first report dated September 22, 2014 (together referred to as the "**First Report**"), a copy of which is attached hereto as **Appendix "D"**. The Receiver will make a copy of the Second Report available on the Receiver's website at www.ey.com/ca/hanfeng. A copy of the First Report has also been posted on the Receiver's website.

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

## GENERAL BACKGROUND

*Hanfeng and its Chinese Subsidiary*

11. Hanfeng, through its wholly-owned subsidiaries, was a developer and producer of value-added fertilizers in the People's Republic of China ("China"). The Company is incorporated under the laws of Ontario with its registered head office in Toronto.

12. The Company has no independent operations and exists solely as a holding company for certain operating entities located in China. By mid-August 2014, the

Company's principal remaining un-monetized asset was all the issued and outstanding shares of the Chinese Subsidiary (the "Shares"). The Chinese Subsidiary is a Wholly Foreign-Owned Enterprise ("WFOE") that was established and is registered in China.

13. In accordance with its articles of association, the board of the Chinese Subsidiary is required to have three directors. The board composition currently consists of the following:

- Mr. Yu Xinduo, founder and former CEO of the Company, who owns and controls approximately 20.4% of the Company's Shares;
- Qi Zhida, General Manager of the Chinese Subsidiarity; and
- a vacancy due to the third director having passed away.

14. Mr. Yu is also currently the legal representative of the Chinese Subsidiary, a position that is responsible for the overall activities of the Chinese Subsidiary. The Chinese Subsidiary is managed by Mr. Yu and a team of individuals designated by him (collectively, the "Local Management Team"). The Local Management Team controls the Chinese Subsidiary's business license, chop sets (which are company seals required for executing documents and government registrations) and bank accounts.

15. Pursuant to a guarantee agreement by Mr. Yu in favour of the purchaser dated August 8, 2014 (the "Yu Guarantee"), Mr. Yu has agreed to: a) remain with the Chinese Subsidiary for a transition period of 12 months; ii) act as the legal representative of the Chinese Subsidiary; and iii) take all commercially reasonable efforts during the transition period to safeguard the interests of the Chinese Subsidiary and to protect it from certain risks. Copies of the Share Transfer Agreement and the Yu Guarantee are attached hereto as **Appendix "E".**

16. The Receiver also engaged Mr. Yu to, among other things, facilitate communication with the purchaser primarily due to his involvement in dealing with the purchaser prior to the Receivership proceedings.

*Share Transfer Transaction*

17. The Share Transfer Agreement provides that the total purchase price for all of the Shares is RMB 248 million (approximately $49.6 million), of which cash consideration is RMB 198.4 million. Set out in the table below is a summary of the timing and amount of the payments and consideration provided for in the agreement.

| Description | Amount (RMB) | Time |
|---|---|---|
| 5% of the total purchase price (the "**5% Deposit**") | 12,400,000 | Within 7 business days of the date of the Share Transfer Agreement |
| 15% of the total purchase price (the "**15% Interim Payment**") | 37,200,000 | Within 10 business days of the Court approval of the Share Transfer Transaction |
| 60% of the total purchase price (the "**Final Payment**") | 148,800,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Cash Consideration** | **198,400,000** | |
| 20% of the total purchase price in promissory note ("**the Promissory Note**") to be assigned to Mr. Yu Xinduo on account of approximately 20.4% of the Company's shares owned or controlled by Mr. Yu | 49,600,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Purchase Price** | **248,000,000** | |

*China's Regulatory Approvals*

18. The regulatory framework in China governing a share transfer transaction in connection with a WFOE is complex. Further, the Receiver understands there is uncertainty in how laws and regulations in China may be applied in a particular instance, which leads to a lack of certainty in the documentation requirements and review criteria of the local authorities.

19. It is the Receiver's understanding the Share Transfer Transaction is subject to multiple regulatory approvals in China, which include the two following milestones:

(a) approval by Harbin Economic Cooperation Promotion Bureau ("**HECPB**") (the "**HECPB Approval**"); and

(b) updating of the business license of the Chinese Subsidiary by HAIC upon registration of the purchaser as the shareholder of the Chinese Subsidiary (the "**Business License Registration**"). Under Chinese law, the registration of a new business license marks the completion of transfer of ownership and in this case also represents the closing of the Share Transfer Transaction (the "**Closing**").

20. The Receiver further understands HECPB Approval is a prerequisite of the review by China's other regulatory bodies, which are generally expected to follow the decision of HECPB. While it is difficult to estimate the time required to clear all necessary regulatory approvals; after the HECPB Approval is issued, it is possible to complete the other regulatory approvals in a relatively short order (as quick as approximately 2 to 3 weeks), assuming all required documentation is in order.

21. Further, remittance of the purchase price proceeds from China to Canada is subject to regulatory clearance by China's State Administration of Foreign Exchange ("**SAFE**").

## SHARE TRANSFER TRANSACTION UPDATE

*Delayed and Failed Wire Transfers*

22. As discussed in the First Report, the Receiver received the 5% Deposit in the amount of RMB 12.4 million (approximately $2.2 million) on August 28, 2014, which was 9 days after the due date pursuant to the Share Transfer Agreement.

23. As further discussed in the First Report, the Receiver was advised by the purchaser that the remittance of the 15% Interim Payment was delayed as the bank handling the remittance (i.e., the Bank of East Asia or "**BEA**") made a request to review an

authenticated copy of the Approval Order, which was couriered by the Receiver in the week of September 15, 2014.

24. In the interim, the Receiver continued to follow up with the purchaser and Mr. Yu on the status of wire transfer, and confirmed with the purchaser and BEA certain information regarding the Canadian depository bank account. However, on November 6, 2014, the purchaser advised that its remittance request for the 15% Interim Payment had been rejected by BEA, as it had been determined that a different category of SAFE clearance should apply to this type of wire transfer (i.e., a capital account foreign exchange transaction). The necessary SAFE clearance (the "**Foreign Exchange Registration**") requires the purchaser to present, *inter alia*, the following:

- The HECPB Approval; and
- Tax clearance in respect of the Share Transfer Transaction from the local tax authorities (the "**Tax Clearance**").

25. In October, 2014, the Receiver engaged the Beijing office of MayerBrown JSM ("**MayerBrown**") as counsel in China to assist the Receiver to better understand China's regulatory environment and evaluate options. The Receiver, with the assistance of MayerBrown, took steps to review and discuss the payment issues with the purchaser, Mr. Yu and BEA.

26. Subsequent to its failure to remit the 15% Interim Payment, the purchaser requested the Receiver to provide certain additional authenticated documentation (the "**Additional Documentation**") in order to proceed with the HECPB Approval process (prior to making any interim payment).

27. The purchaser's suggested course of action would result in the Receiver releasing documents to the purchaser, which documents the purchaser may then use to

complete the ownership transfer without having paid 95% of the Cash Purchase Price.

28. In light of the required wire transfer approvals and payment remittance issues encountered to date, as well as the potential short time frame between the HECPB Approval and Closing, the Receiver was concerned with the heightened collection risk associated with the approach suggested by the purchaser, whereby the 15% Interim Payment may not be remitted by the purchaser and received by the Receiver until after Closing. After consultation with MayerBrown and Stikeman Elliott LLP ("**Stikeman**"), the Receiver's Canadian counsel (collectively, "**Counsel**"), the Receiver's view was that it is imperative for the 15% Interim Payment to be made prior to proceeding with the HECPB Approval process. Accordingly, the Receiver has not yet provided the purchaser with the Additional Documentation.

*Escrow Account in China*

29. The Receiver, with assistance of the Counsel, engaged in extensive discussions with the purchaser and Mr. Yu with a view to finding a practical and acceptable solution within the framework contemplated in the Share Transfer Agreement, while complying with China's regulatory requirements.

30. Starting in or around the week of November 24, 2014, the focus of the discussions with the purchaser and Mr. Yu began to move toward using an escrow account in China to receive the remaining purchase price and to proceed with the Share Transfer Transaction.

31. In December 2014, the purchaser advised it was prepared to use the Harbin branch of China Minsheng Bank ("**Minsheng Bank**") as the escrow agent. The Receiver, with assistance of MayerBrown and Stikeman, then engaged in extensive negotiations with the purchaser and Mingsheng Bank in order to reach escrow arrangements acceptable to all the parties.

32. On February 11, 2015, the Receiver authorized Mr.Yu, on behalf of the Receiver, to enter into an escrow agreement (the "**Escrow Agreement**") with the purchaser and Minsheng Bank on the following terms:

(a) the purchaser shall deposit the 15% Interim Payment into an escrow account under the purchaser's name with the Minsheng Bank (the "**Escrow Account**") within 5 business days of the date of the Escrow Agreement;

(b) the 15% Interim Payment to be released to Canada within 1 business day after completing the Tax Clearance;

(c) within 10 business days after the Business License Registration, the Final Payment is to be deposited into the Escrow Account and then released to Canada; and

(d) prior to the deposit of the Final Payment, the Chinese Subsidiary's representative shall have custody of original documents including the HECPB Approval and the business license of the Chinese Subsidiary.

33. The Receiver understands the Escrow Account was opened with the Minsheng Bank on or about February 13, 2015, and the deposit of the 15% Interim Payment became due on or about February 16, 2015 pursuant to the Escrow Agreement.

*Further Impasse and the Purchaser's Failure to Meet Its Commitments*

34. The purchaser has failed to fund the escrow account in accordance with the Escrow Agreement. The Receiver was initially informed by the purchaser that the delay in funding the escrow was caused by its office closure during the Chinese New Year holiday season between February 14 and March 6, 2015. However, on a conference call on March 11, 2015, the purchaser advised it was unable to make the 15% Interim Payment on time due to its tight liquidity related to the seasonality of its business and requested an extension to fund the Escrow Account.

35. After numerous discussions, on March 23, 2015 the purchaser committed to a new timeframe to fund the 15% Interim Payment in 3 installments by April 30, 2015, (the "**March Commitment**"), which commitment the purchaser again failed to meet. The table below summarizes payments received by the Receiver and in the Escrow Account to date.

| Description | RMB | Due Date Per Share Transfer Agreement | Due Date Per Esrow Agreement | March Commitment | Received Date | Note |
|---|---|---|---|---|---|---|
| Initial Deposit (5%) | 12,400,000 | 19-Aug-14 | N/A | N/A | 28-Aug-14 | Received by Receiver |
| Partial payments on the 15% Interim Payment | 5,000,000 | 03-Sep-15 | 16-Feb-15 | 03-Apr-15 | 03-Apr-15 | Depoisited into the Escrow Account at Minsheng Bank |
| | 2,000,000 | 03-Sep-15 | 16-Feb-15 | 17-Apr-15 | 17-Apr-15 | |
| | 3,000,000 | 03-Sep-15 | 16-Feb-15 | 17-Apr-15 | 21-Apr-15 | |
| | 27,200,000 | 03-Sep-15 | 16-Feb-15 | 30-Apr-15 | Outstanding | |
| Balance of Cash Purchase Price | 148,800,000 | 10 business days days after Closing | | | Outstanding | |
| Total Cash Purchase Price | 198,400,000 | | | | | |

36. At the time of preparing this Second Report, the purchaser has yet to fund the majority of the 15% Interim Payment (i.e., 27.2 million RMB or the "**Remaining 15% Interim Payment**") pursuant to its March Commitment. Despite numerous clarifications made and additional documents provided by the Receiver, the purchaser has indicated it has concerns regarding reviewing/handling certain documents required for the HECPB Approval.

37. Further, as a condition to funding the Remaining Interim Payment, the purchaser requested to review certain documents, including an executed board resolution of the Chinese Subsidiary approving the Share Transfer Transaction (the "**Sub Board Resolution**"). The Sub Board Resolution requires unanimous approval and original signatures of all three directors of the board. Due to the vacancy in the board of the Chinese Subsidiary, the Receiver is in the process of filling the vacancy in order for the Board of the Chinese Subsidiary to be able to execute any required board resolutions.

*Receiver's Continued Efforts to Close the Share Transfer Transaction*

38. In the past several months, the Receiver, with assistance of its Counsel, has made continued efforts to move forward the Share Transfer Transaction, including:

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

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

    (c) the Receiver 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); and

    (d) sending a letter dated May 22 on to the purchaser (the "**May 22 Letter**" demanding the purchaser to fulfill its obligations pursuant to the Share Transfer Agreement and the Escrow Agreement. A copy of the May 22 Letter is attached hereto as **Appendix "F"**.

39. In view of the purchaser's repeated and continuing failure to fulfill its obligations and commitments and the Receiver's findings in regards to the purchaser's identity (as described below), the Receiver sees substantially increased collection risk in closing the Share Transfer Transaction. Accordingly, the Receiver, with assistance of the Counsel and other advisors, has taken various steps to assess the current situation, ascertain the purchaser's intent and ability to make the required payments, and evaluate possible realization alternatives.

**NEW INFORMATION CONCERNING THE PURCHASER**

40. The purchaser referred to in the Approval Order is Heilongjiang Pengcheng Fertilizer Co., Ltd. ("**HLJ Pengcheng**"). However, the Receiver has noted the purchaser in the Share Transfer Agreement is referenced by a similar but different

company name. While continuing its efforts to close the Share Transfer Transaction, the Receiver, with assistance of MayerBrown and other advisors, has taken steps to investigate and obtain information in respect of the purchaser in the Share Transfer Agreement.

41. While the investigations are still ongoing at the time of preparing this Second report, the Receiver has learned the following:

    (a) the Chinese Subsidiary received a letter of intent dated June 16, 2014 from an entity that identified itself as HLJ Pengcheng. Prior to entering into the Share Transfer Agreement, the Company conducted due diligence, including obtaining an independent report from Deloitte LLP, in respect of HLJ Pengcheng.

    (b) the entity that executed the Share Transfer Agreement is a different company called **Harbin** Pengcheng Fertilizer Co. Ltd. (emphasis added) ("**New Pengcheng**");

    (c) the Receiver, since its appointment, has been dealing with representatives of New Pengcheng and Mr. Yu;

    (d) unlike HLJ Pengcheng, which is a well-established company, New Pengcheng appears to be a shell company with no operations that was only registered on August 4, 2014 (4 days before the signing of the Share Transfer Agreement) and has very limited publicly available information;

    (e) the Receiver has been unable to establish any connection between New Pengcheng and HLJ Pengcheng. The Receiver has conducted independent investigation including contacting senior management of HLJ Pengcheng who informed the Receiver that HLJ Pengcheng has not entered into a transaction to acquire the Chinese Subsidiary.

42. These findings and New Pencheng's ongoing failure to meet its obligations, in particular with respect of the required payments owing by New Pengcheng under the Share Transfer Transaction, have caused considerable delay and expense, leading the Receiver to question the genuineness of New Pengcheng and its intention.

43. Further, the Receiver has taken steps to investigate potential connections between Mr. Yu and the purchaser, since it was Mr. Yu who reported to the board of the Company of the purchaser's interest as described in paragraph 61 of the affidavit of Jonathan Pollack, former Lead Director of the Company, sworn August 13, 2014 (the "**Pollack Affidavit**") filed in connection with the Company's motion for the Approval Order and the Appointment Order. A copy of the Pollack Affidavit is attached hereto as **Appendix "G"**. In accordance with the Receiver's understanding, Mr. Yu played a central role in entering into the Share Transfer Agreement with the purchaser.

44. On July 10, 2015, the Receiver had an in person meeting with Mr. Yu (the "**July 10th meeting**") to, among other things (as discussed further herein), clarify his knowledge on and relationship with the purchaser. Mr. Yu maintains his position that New Pengcheng is an affiliate of HLJ Pengcheng. When asked to explain why the Receiver has not been able to establish any connections between the two entities, Mr. Yu commented that to his knowledge only certain HLJ Pengcheng executives are aware of the transaction and, for reasons undisclosed, may not want to acknowledge their involvement in the Share Transfer Transaction. Further, Mr. Yu stated he has no personal connection with New Pengcheng and that he is not aware of any relationship between New Pengcheng, including its representatives, and the Chinese Subsidiary.

45. The Receiver requests the Court to authorize the Receiver to take the steps necessary to complete its ongoing investigation and to consider alternatives to realize on the Heilongjiang Assets. The priority of the Receiver's investigation is to

determine the parties controlling the purchaser, and ascertain the purchaser's true ability and intent to close the Share Transfer Transaction by seeking direct and indirect information.

46. Based on information from the on-going investigation, the Receiver may consider taking cause of action against the purchaser and/or any other parties who are liable for damages and losses incurred by the Company in connection with the Share Transfer Transaction if it fails to close in accordance with its terms.

**CURRENT STATUS OF THE CHINESE SUBSIDIARY**

47. As described in the Background section, the Chinese Subsidiary is managed by the Local Management Team under Mr. Yu's supervision and employs approximately 180 employees.

48. Mr. Yu has, on several occasions, advised the Receiver that the Chinese Subsidiary's operations have been dormant since around April 2014. However, over a nine month period from September 2014 to May 2015, the Chinese Subsidiary's cash burn has been more than what would be expected for a non-producing manufacturing facility. Notwithstanding numerous follow-ups, the Receiver has found the financial and operational information provided by the Local Management Team and Mr. Yu to be inadequate and inconsistent with representations made by the Local Management Team and Mr. Yu of the status of the Chinese Subsidiary.

49. To date, the Receiver has received very limited cooperation from the Local Management Team, making it difficult and, in practical terms, impossible to gain full or adequate access to financial or operational information of the Chinese Subsidiary to assess the status of the Chinese Subsidiary's activities in a timely manner.

50. In June 2015 as part of its on-going investigation, the Receiver learned that three lawsuits have recently been registered by another Chinese bank with Harbin Intermediate People's Court (the "**Harbin Court**") in May and June 2015 naming the Chinese Subsidiary, Mr.Yu and Heilongjiang Great Northern Wilderness Hanfeng Agricultural Development Co Ltd (the Receiver understands this third defendant to be an affiliate of Beidahuang Agricultural Company Limited, the largest former customer of the Chinese Subsidiary) ("**Beidahuang**"), as the defendants. One lawsuit appears to be related to a contract dispute, and other two related to loan agreement disputes. At the July 10th Meeting, Mr. Yu denied any knowledge of these lawsuits and dismissed them as "Beidahuang's issues" without providing further details. Mr. Yu has also confirmed again that the Chinese Subsidiary is not subject to any guarantee claims or collateral claims. At the time of preparing this Second Report, the Receiver is still following up with the Local Management Team and the Harbin Court in order to gather more information regarding the nature and status of the lawsuits.

51. The Receiver is of the view that Mr. Yu has not been fulfilling his duties of facilitating the completion of the Share Transfer Transaction with the purchaser or his duties as the legal representative of the Chinese Subsidiary, including the safeguarding of its cash and other assets.

52. Paragraph 3(r) of the Appointment Order authorizes the Receiver to exercise any shareholder, partnership, joint venture or other rights which the Company may have. On May 22, 2015, the Receiver informed Mr. Yu in writing that a process has been initiated to remove him as the legal representative and a director of the Chinese Subsidiary.

## CONTROL OVER THE CHINESE SUBSIDIARY

53. The Receiver considers it imperative to effect control over the Chinese Subsidiary through reorganizing its board and changing its legal representative for the following reasons:

    (a) the ongoing delays and increased risk in closing the Share Transfer Transaction;

    (b) the Receiver's ongoing investigation regarding New Pengcheng as the purchaser and any potential association between the purchaser and Mr. Yu; and

    (c) concerns about the potential deterioration of the Heilongjiang assets and lack adequate collaborating support regarding the status of the Chinese Subsidiary from Mr. Yu and the Local Management Team.

54. After consultation with certain stakeholders, the Receiver has engaged Mr. Hong Rong-Kai in July 2015 to assist with the evaluation of the current situation. Mr. Hong is a Canadian Citizen who received his PhD degree from the University of Toronto. The Receiver understands that Mr. Hong has extensive experience in restructuring, general management and operation management from his previous employment with several multinational companies. The Receiver is advised that Mr. Hong founded four companies (one in China, two in Taiwan and one in Toronto) and has provided freelance advisory services to a wide variety of clients. Mr. Hong is familiar with the transactional environment in China. A copy of Mr. Hong's curriculum vitae is attached hereto as **Appendix "H".** With the Court's approval, the Receiver is prepared to engage Mr. Hong and his company to provide interim management services in connection with the Chinese Subsidiary based on daily rates of US$1,700 and US$1,000 for Mr. Hong and for an associate,

respectively, payable on a monthly basis. A copy of the draft engagement letter is attached hereto as **Appendix "I"**.

55. Mr. Hong's engagement includes the appointments of

- Mr. Hong as the legal representative and a director of the Chinese Subsidiary to replace Mr. Yu; and
- an associate of Mr. Hong as a director to replace Mr. Qi.

56. The initial priority of Mr. Hong's engagement is to take control of the Chinese Subsidiary and, at the same time, evaluate alternatives to realize on the Heilongjiang Assets and assist the Receiver in its investigation.

57. In June 2015, the Receiver also undertook to appoint Mr. Guan Liu, a lawyer based in Harbin, China as a director of the Chinese Subsidiary to replace the deceased director. In the process of registering Mr. Guan's status, it has become clear that local authorities are being very stringent in registering any change of directors in respect of the Chinese Subsidiary due to disputes incurred during Hanfeng's previous proxy battle in 2013/2014 described in the Pollock Affidavit.

58. In the week of June 29, 2015, HAIC (the agency responsible for director registrations) indicated that it is not satisfied with the sufficiency of the Appointment Order with respect to the Receiver's power and authority to appoint or remove the Chinese Subsidiary's legal representative. The Receiver understands that HAIC has asked for a Court Order that clearly sets out such authorities and powers of the Receiver.

59. At the July 10th Meeting, the Receiver requested again Mr. Yu's full cooperation in registering Mr. Hong as the new legal representative and director and transferring to the new legal representative all chop sets, seals and licenses of the Chinese Subsidiary. Mr. Yu has indicated he willingness to cooperate but only on the

condition that the all funds paid by the purchaser, including the non-refundable 5% Initial Deposit and the funds currently in the Escrow, be returned to the purchaser. Mr. Yu indicated the condition was necessary due to personal liability under the Yu Guarantee and potential collection efforts against himself in China.

60. In view of the urgency of completing the board reorganization and change in legal representative in order to preserve the Heilongjiang Assets, the Receiver requests this Court to make an Order reaffirming the authority and power of the Receiver to take any necessary steps to effect the board reorganization, including the appointment of Mr. Hong and Mr. Guan and the authority and power of the Receiver to change the legal representative.

61. Further, the Receiver respectfully requests the Court to require Mr. Yu to provide his full cooperation in the board reorganization and change of legal representative processes, including but not limited to, executing the necessary documents and surrendering the chop sets, seals and licenses of the Chinese Subsidiary. In accordance with the Receiver's understanding, the local authorities' review process could be substantially prolonged if Mr. Yu refuses to execute certain documents required for registering the new legal representative and directors.

**SUMMARY OF RECIEVER'S OTHER ACTIVITIES**

62. In addition to the activities described above and in the First Report, the Receiver has taken various steps pursuant to the Appointment Order as detailed below:

    (a) took possession of the Company's Canadian bank accounts;

    (b) took possession of the Company's available books and records;

    (c) vacated the Company's office located at 2 St. Clair Avenue. West, Suite 610, Toronto;

(d) prepared and filed tax returns (including certain statutory information forms) for the Company and Hanfeng Slow-Release Fertilizer (Canada) Co. Ltd., an affiliate of the Company in relation to i) the fiscal year ended June 30, 2014; and ii) the stub period from July 1, 2014 to August 19, 2014;

(e) responded to inquiries from stakeholders;

(f) consulted certain stakeholders as appropriate with respect to the Share Transfer Transaction;

(g) took various steps in initiating and administering the Claims Process pursuant to the Claims Procedure Order, including:

- placing newspaper ads in the *Globe and Mail* (national edition), *National Post* (national edition), and a local newspaper in China in respect of the Claims Process;
- mailing a claims package to all known creditors and to people who requested it; and
- administering the Claims Process as described further herein.

63. The Receiver received 77 claims for a total claim amount of $16.2 million prior to the Claims Bar Date (i.e., 5:00 p.m. Eastern Time on November 10, 2014) (the "**Claims**") and two claims for a total claim amount of $17 thousand after the Claims Bar Date (the "**Late Claims**"). The 77 Claims comprised of: i) 60 Claims related to shareholder rights with a total face value of $11.9 million (the "**Equity Claims**") and ii) 17 non-equity Claims with a total claim value of $4.3 million (the "**Non-Equity Claims**").

64. The Receiver has sent letters to the claimants of the Equity Claims to confirm the receipt of those Equity Claims. The Receiver, in consultation with Stikeman, is continuing to take steps to review, accept, resolve or disallow the Non-Equity

Claims as appropriate. The Receiver will report to this Court in a separate report with respect to the Claims Process.

## SUMMARY OF RECEIPTS AND DISBURSEMENTS

65. Attached hereto as **Appendix "J"** is the Receiver's statement of receipts and disbursements for the period August 20, 2014 to June 30, 2015, which reflects the ending balances of approximately $2.3 million and USD 52 thousand as of June 30, 2015.

## RECOMMENDATIONS

66. Based on the foregoing, the Receiver respectfully recommends this Court make an Order granting the following relief:

    i. clarifying and expanding the Receiver's power and authority to exercise the shareholder rights that the Company has, including but not limited to, to change the legal representative and directors of the Chinese Subsidiary;

    ii. authorizing and empowering the Receiver to renegotiate and, if necessary, terminate the Share Transfer Agreement as the Receiver in its discretion deems appropriate in the circumstances;

    iii. authorizing the Receiver to take any necessary actions and steps to safeguard the assets, complete its ongoing investigation and to consider alternatives to realize on the assets of the Chinese Subsidiary, in whole or in part, for the benefit of the Company's creditors and shareholders, if the Receiver in its discretion sees no reasonable prospect in closing the Share Transfer Transaction;

    iv. authorizing the Receiver to take any necessary actions and steps to effect control over the Chinese Subsidiary;

    v. approving the Receiver to engage Mr. Rong-Kai Hong and his company, Formosa Supply Services Co., Ltd (FSS), to provide interim management services in connection with the Chinese Subsidiary, including appointment of Mr. Hong as the New Legal Representative and a director of the Chinese Subsidiary and Mr. Hong's associate as a director of the Chinese subsidiary;

vi. requiring Mr.Yu Xinduo, the current legal representative, to provide full and timely cooperation to the Receiver in carrying out the actions described above including but not limited to the following:

   (a) obtaining the Receiver's written approval prior to executing any documents or entering into any agreement in his capacity as the legal representative of the Chinese Subsidiary;

   (b) attending at HAIC in order to facilitate the change of legal representative of the Chinese Subsidiary;

   (c) surrendering all chop sets, including the company chop and finance chops, relating to the Chinese Subsidiary and any of its subsidiaries to the New Legal Representative;

   (d) surrendering all online banking tokens of the Chinese Subsidiary to the New Legal Representative;

   (e) surrendering to the New Legal Representative all corporate licenses, certificates and registrations of the Chinese Subsidiary and any of its subsidiaries, including the original business license, replicate business license, organizational code certificate, tax certificate and safe registration; and

   (f) providing unfettered access for the New Legal Representative to the Chinese Subsidiary's offices and facilities; and

- approving the First Report and Second Report and the conduct and activities of the Receiver as described in each of the reports.

All of which is respectfully submitted this 17th day of July 2015.

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

Per:

Murray A. McDonald
President

This is **Appendix "F"**
to the Fourth Report of the Receiver
dated April 4, 2017

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.**

**THIRD REPORT OF THE RECEIVER**
**DATED SEPTEMBER 24, 2015**

## INTRODUCTION

1. On August 20, 2014, following an application by Hanfeng Evergreen Inc. ("**Hanfeng**" or the "**Company**"), the Ontario Superior Court of Justice (the "**Court**") issued an order (the "**Approval Order**") approving a share transfer agreement (the "**Share Transfer Agreement**") dated August 8, 2014 and the transaction contemplated therein (the "**Share Transfer Transaction**").

2. The Approval Order provides for vesting in Heilongjiang Pengcheng Fertilizer Co., Ltd. (the "**Purchaser**") all the shares of Hanfeng Slow-Release Fertilizer Co., Ltd., the Company's wholly owned subsidiary in China (the "**Chinese Subsidiary**") upon the completion of the Share Transfer Transaction. A copy of the Approval Order is attached hereto as **Appendix** "**A**".

3. Pursuant to an order issued by this Court on August 20, 2014 (the "**Appointment Order**"), Ernst & Young Inc. was appointed as receiver and manager (the "**Receiver**") of the assets, undertakings and properties of the Company, pursuant to section 101 of the Courts of Justice Act (Ontario). A copy of the Appointment Order is attached hereto as **Appendix** "**B**".

4. On July 24, 2015 and July 31, 2015, following an application by the Receiver, this Court issued two Orders (collectively, the "**Clarification Orders**"), which, among other things:

- Confirmed the Receiver's power and authority to exercise the shareholder rights of Hanfeng with respect to the Chinese Subsidiary, including to replace Mr. Yu Xinduo ("**Mr. Yu**") with Mr. Hong Rong-kai ("**Mr. Hong**") as the legal representative and a director of the Chinese Subsidiary;
- Authorized the Receiver to take any necessary steps to assert its ownership of and effect control over the Chinese Subsidiary;
- Required Mr. Yu to provide unfettered access for Mr. Hong and his designates to the Chinese Subsidiary's offices and facilities and to the Chinese Subsidiary's books and financial records;
- Required Mr. Yu to surrender the chops and certain other business and legal documents of the Chinese Subsidiary to Mr. Hong and the Receiver;
- Required Mr. Yu to provide full and timely cooperation to the Receiver with respect to the above tasks; and
- Prohibited Mr. Yu, without the Receiver's approval, from executing any agreement with respect to the Chinese Subsidiary or causing it to make any payments.

Copies of the Clarification Orders are attached hereto as **Appendix "C".**

## PURPOSE

5. The purpose of this third report of the Receiver (the "**Third Report**") is to report to this Court with respect to the following:

(a) the status of the Share Transfer Transaction;
(b) actions taken by the Receiver;
(c) a summary of receipts and disbursements; and

(d) the Receiver's motion for an Order approving this Third Report and the conduct and activities of the Receiver as described in the Third Report and the Second Report.

6. This Third Report is organized as follows:

(a) Terms of Reference;
(b) General Background;
(c) Share Transfer Transaction Update;
(d) Actions Taken by the Receiver and Ongoing Investigations;
(e) Summary of Receipts and Disbursements;
(f) Next steps; and
(g) Recommendation.

## TERMS OF REFERENCE

7. In preparing this Third Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, prepared by the books and records of the Company and the Chinese Subsidiary, discussions with employees of the Company and the Chinese Subsidiary and information from other third-party sources (collectively, the "**Information**"). Except as described in this Third Report:

(a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information; and

(b) The Receiver has prepared this Third Report in its capacity as a court-appointed officer solely for the use of this Court and the stakeholders in these proceedings.

8. The Receiver has previously filed with this Court its first report dated September 12, 2014 and supplement to the first report dated September 22, 2014 (together referred to as the "**First Report**"), its second report dated July 17, 2015 and supplement to the second report dated July 22, 2015 (together referred to as the "**Second Report**"). The Receiver has made copies of the First Report and Second Report available on the Receiver's website at www.ey.com/ca/hanfeng. A copy of this Third Report has also been posted on the Receiver's website. Copies of the First Report and the Second Report (without appendices) are attached hereto as Appendices "**D**" & "**E**".

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

## GENERAL BACKGROUND

*<u>Hanfeng and Chinese Subsidiary</u>*

10. Hanfeng has no independent operations and exists solely as a holding company for certain fertilizer producing entities located in China. Hanfeng is incorporated under the laws of Ontario with its registered head office in Toronto. By mid-August 2014, the Company's principal remaining un-monetized asset was all the issued and outstanding shares of the Chinese Subsidiary.

11. The Chinese Subsidiary is a Wholly Foreign-Owned Enterprise ("**WFOE**") that was established and is registered in China. Mr. Yu was and, despite the Receiver's efforts described in greater detail below, still is the current legal representative of the Chinese Subsidiary, a position that, under Chinese Laws, makes him responsible for the overall activities of the Chinese Subsidiary. The Chinese Subsidiary is managed

by Mr. Yu and a team of individuals designated by him (the "**Local Management Team**").

*Share Transfer Transaction*

12. The Share Transfer Agreement provides that the Purchaser will pay a total purchase price of RMB 248 million (approximately $49.6 million) for all the shares of the Chinese Subsidiary. The purchase price consists of cash consideration of RMB 198.4 million (approximately $39.7 million) and a promissory note to be assigned to Mr. Yu on account of Hanfeng's shares owned or controlled by him. Set out in the table below is a summary of the timing and amount of the payments and consideration provided for in the Share Transfer Agreement.

| Description | Amount (RMB) | Time |
|---|---|---|
| 5% of the total purchase price (the "**5% Deposit**") | 12,400,000 | Within 7 business days of the date of the Share Transfer Agreement |
| 15% of the total purchase price (the "**15% Interim Payment**") | 37,200,000 | Within 10 business days of the Court approval of the Share Transfer Transaction |
| 60% of the total purchase price (the "**Final Payment**") | 148,800,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Cash Consideration** | **198,400,000** | |
| 20% of the total purchase price in promissory note ("**the Promissory Note**") to be assigned to Mr. Yu Xinduo on account of approximately 20.4% of the Company's shares owned or controlled by Mr. Yu | 49,600,000 | Within 10 days upon closing of the Share Transfer Transaction |
| **Total Purchase Price** | **248,000,000** | |

## SHARE TRANSFER TRANSACTION UPDATE

13. As discussed in the First Report, the Receiver received the 5% Deposit in the amount of RMB 12,400,000 (approximately $2.2 million) on August 28, 2014, which was 9 days after the due date pursuant to the Share Transfer Agreement.

14. As discussed in the Second Report, the Purchaser failed to make the 15% Interim Payment that was due September 3, 2014 pursuant to the Share Transfer Agreement.

15. After extensive negotiations with the Purchaser, in February 2015, the Receiver authorized Mr. Yu to execute an escrow agreement (the "**Escrow Agreement**") with the Purchaser and China Minsheng bank (the "**Escrow Bank**"). The Escrow Agreement provides that the Purchaser shall deposit the 15% Interim Payment (approximately $7.4 million) within 5 days after an escrow account (the "**Escrow Account**") is opened, and that the remaining cash purchase price shall be deposited within 10 days of the closing of the Share Transfer Transaction. All funds held in the Escrow Account shall be released to the Receiver once Chinese foreign exchange clearance is completed.

16. However, the Purchaser breached the Escrow Agreement by failing to make any payment in February 2015. On March 23, 2015, the Purchaser committed, in writing, to fund the 15% Interim Payment in 3 installments by April 30, 2015 (the "**March Commitment**"), which commitment the Purchaser again failed to meet.

17. The Receiver has not been able to close or advance the Share Transfer Transaction due to the Purchaser's continuing failure to make the required payments pursuant to the Share Transfer Agreement and the Escrow Agreement.

18. To date, the only purchase price payment received by the Receiver is the 5% Deposit of RMB 12.4 million (approximately $2.2 million). The Purchaser has still not funded the 15% Interim Payment (approximately $7.4 million), of which only RMB 10 million (approximately $2 million) (the "**Escrow Funds**") has been deposited into the Escrow Account. Set out in the table below is a summary of the funds either received by the Receiver or held in the Escrow Account as well as the remaining outstanding purchase price payments.

| Description | RMB | Due Date Per Share Transfer Agreement | Due Date Per Esrow Agreement | March Commitment | Received Date | Note |
|---|---|---|---|---|---|---|
| Initial Deposit (5% of Purchase Price) | 12,400,000 | 19-Aug-14 | N/A | N/A | 28-Aug-14 | Received by Receiver |
| 2nd Interim Payment (15% of Purchase Price) | 5,000,000 | 03-Sep-15 | 16-Feb-15 | 03-Apr-15 | 03-Apr-15 | Depoisited into the Escrow Account in China |
| | 2,000,000 | 03-Sep-15 | 16-Feb-15 | 17-Apr-15 | 17-Apr-15 | |
| | 3,000,000 | 03-Sep-15 | 16-Feb-15 | 17-Apr-15 | 21-Apr-15 | |
| | 27,200,000 | 03-Sep-15 | 16-Feb-15 | 30-Apr-15 | Outstanding | |
| Balance of Cash Purchase Price | 148,800,000 | 10 business days days after Closing | | | Outstanding | |
| Total Cash Purchase Price | 198,400,000 | | | | | |

19. As discussed in the Second Report, the Receiver has uncovered certain information from its ongoing investigations which resulted in significant skepticism over the Purchaser’s purported identity, intent and ability to close the Share Transfer Transaction.

20. Following the date of the Second Report, the Receiver learned from its Chinese counsel, MayorBrown JSM (“**MayorBrown**”), that starting in the week of July 13, 2015, the Purchaser has repeatedly contacted the Escrow Bank requesting the Escrow Bank to return the Escrow Funds to the Purchaser.

21. On July 22, 2015, the Receiver received from the Purchaser an email, which, among other things, alleged that the Receiver was responsible for the delay of the Share Transfer Transaction. On July 28, 2015, the Purchaser sent another email, which repeated its previous allegations and demanded the return of all payments previously made being the 5% Deposit and the Escrow Funds.

22. On July 28, 2015, the Escrow Bank sent a notice notifying the parties to the Escrow Agreement, including the Receiver, that the Escrow Agreement was to be terminated effective August 4, 2015. The notice did not, however, provide details as to how the Escrow Funds will be released. Article 8.5 of the Escrow Agreement provides that “on the termination date for the escrow, the Escrow Bank shall deal with the balance of the escrow amount in accordance with the instructions in the written notice jointly issued by the buyer and the seller”.

23. The Receiver, with assistance of MayorBrown, has provided the following correspondence to the Escrow Bank opposing any release of the Escrow Funds to the Purchaser:

(a) On July 15, 2015, the Receiver provided written notice to the Escrow Bank requesting it to abide by the terms and conditions of the Escrow Agreement and not to release the Escrow Funds to the Purchaser;

(b) On August 5, 2015, following the receipt of the termination notice from the Escrow Bank, the Receiver sent another letter to the Escrow Bank:

i. seeking clarification as to how the Escrow Funds will be released;

ii. advising that Mr. Yu can no longer execute any documents with respect to the Escrow Account without the Receiver's written authorization; and

iii. requesting to replace Mr. Yu with Mr. Guan Liu at Heilongjiang Honghui Law Firm ("**Mr. Guan**"), the Receiver's Chinese counsel in Harbin) as a signatory for any joint release instructions.

24. MayorBrown has continued to follow up with the Escrow Bank and provide it with information related to these receivership proceedings.

25. Given the Purchaser's repeated and continuing breaches under the Share Transfer Agreement and the Escrow Agreement for failure to fund the Escrow Account by the required dates, the Receiver will not consent to the designation of a successor account under the Escrow Agreement or release of the Escrow Funds back to the Purchaser.

26. The Receiver, with assistance of MayorBrown, has also notified the Purchaser that the Receiver will not return the Escrow Funds to the Purchaser.

27. On July 24, 2015, the Receiver wrote to the Purchaser to correct certain incorrect facts and false accusations contained in the Purchaser's email of July 22, 2015. In this letter, the Receiver reiterated its intent to complete the Share Transfer

Transaction. A copy of the Receiver's letter of July 24, 2015 and its Chinese translation is attached hereto as **Appendix "F"**.

28. The Receiver is of the view that it is entitled to keep the 5% Deposit due to the Purchaser's numerous and continuing breach and has obtained a legal opinion from Heilongjiang Honghui Law Firm ("**Honghui Law Firm**") confirming the Receiver's entitlement to the 5% Deposit under the Share Transfer Agreement and Chinese law. A copy of the legal opinion together with its translation is attached hereto as **Appendix "G"**.

29. On August 26, 2015, the Receiver sent a letter to the Purchaser strongly rejecting any argument the Receiver failed in any way to satisfy its obligations. The Receiver also stated that it holds the Purchaser responsible for all financial losses caused to Hanfeng and the Receiver by the Purchaser's breach. The Receiver also gave notice to the Purchaser that the Receiver is entitled to keep the 5% Deposit and also that the Escrow Funds must remain in escrow until the share transfer is completed in accordance with the terms of the Share Transfer Agreement. The Receiver has not received any further correspondence or response from the Purchaser. A copy of the Reciever's letter of August 26, 2015 is attached hereto as **Appendix "H"**.

## ACTIONS TAKEN BY THE RECEIVER AND ONGOING INVESTIATIONS

*Efforts to Take Control of the Chinese Subsidiary*

30. As discussed in the Second Report, although Mr. Yu advised on several occasions that the Chinese Subsidiary has been dormant since around April 2014, the Receiver has become increasingly concerned about the status of the assets of the Chinese Subsidiary (the "**Heilongjiang Assets**") due to:

    (a) the Chinese Subsidiary incurring significantly more disbursements than what would be expected for a dormant manufacturing facility;

(b) very limited cooperation from Mr. Yu and the Local Management Team in providing supporting detailed information for the disbursements;

(c) financial and operational information received by the Receiver being inadequate and inconsistent with explanations and supporting or collaborative information; and

(d) discovery of lawsuits related to loans of the Chinese Subsidiary that were concealed from the Company and Receiver and subsequent settlements entered into by the Chinese Subsidiary without the Receiver's knowledge or agreement. Under these settlements the Chinese Subsidiary is required to pay to China Industrial Bank ("**Industrial Bank**") approximately RMB 161 million in principal and interest (approximately $32 million) (the "**Industrial Bank Settlements**"). This amount that far exceeds the Chinese Subsidiary's currently available cash of RMB 74 million (approximately $14.4 million) as at June 30, 2015 (all as described in greater detail in the Second Report).

31. As discussed in the Second Report, in order to preserve the Heilongjiang Assets, the Receiver undertook to reorganize the board of the Chinese Subsidiary by appointing:

(a) Mr. Guan as a director of the Chinese Subsidiary to fill in a vacancy in the Chinese Subsidiary's board due to a director having passed away.

(b) Mr. Hong as the legal representative and a director of the Chinese Subsidiary to replace Mr. Yu; and

(c) an associate of Mr. Hong as a director to replace the third director.

32. When registering Mr. Guan's directorship, local authorities requested clarifications in relation to the Receiver's power and authority to appoint the directors of the Chinese Subsidiary. On August 18, 2015, Harbin Administration of Industry and Commerce ("**HAIC**"), upon a review of the translation of the Clarification Orders, has approved and completed Mr. Guan's director registration.

33. Pursuant to the Clarification Orders, Mr. Hong and Mr. Guan are in the process of preparing the submission for the registration of Mr. Hong as the legal representative and a director of the Chinese Subsidiary. Both the Receiver and Mr. Hong have repeatedly provided written demand for Mr. Yu and the Local Management to sign/seal certain documents necessary for the submission and to surrender the corporate chops. Notwithstanding the requirements under the Clarification Orders and numerous attempts both by written correspondence and phone calls, Mr. Hong and the Receiver have been unable to obtain the necessary cooperation of Mr.Yu and the Local Management Team to complete the legal representative change. Further, Mr. Yu and the Local Management Team have not surrendered the chops, bank tokens or other business documents to Mr. Hong as required by the Clarification Orders.

*Unsuccessful Access to the Chinese Subsidiary and Financial Records*

34. The Receiver, with the assistance of Mr. Hong, Mr. Guan, MayorBrown and Stikeman Elliott LLP (the Receiver's Canadian Counsel) (collectively, the "**Receiver's Advisors**"), continue to conduct ongoing investigations into the financial affairs of the Chinese Subsidiary. The Receiver and Mr. Hong have made repeated written and verbal requests of Mr. Yu and the Local Management Team to provide certain financial information of the Chinese Subsidiary as well as to accommodate access to its facility as provided for in the Clarification Orders. However, as of the date of this Third Report, Mr. Yu and the Local Management Team have not accommodated any of these requests and Mr. Hong and Mr. Guan were denied entry to the Chinese Subsidiary's facility by the Chinese Subsidiary's security personnel.

35. The Chinese Subsidiary holds cash primarily in an account with the Harbin Zhufang Branch of China Construction Bank ("**Construction Bank**") based on bank statements provided by the Local Management Team. In April 2015, the Receiver obtained a bank confirmation directly from Construction Bank indicating the Chinese

Subsidiary had no indebtedness or other liabilities to Construction Bank as of February 28, 2015 (the "**Bank Confirmation**").

36. As part of the ongoing investigations, Mr. Hong and Mr. Guan met with representatives of Construction Bank and Industrial Bank and have obtained limited information and cooperation with respect to the Chinese Subsidiary as summarized below.

*Construction Bank*

37. Representatives of Construction Bank orally indicated to Mr. Hong that it is a creditor of the Chinese Subsidiary, contradicting information shown in the Bank Confirmation and in the internal financial statements of the Chinese Subsidiary provided to Hanfeng and the Receiver by Mr. Yu and the Local Management Team.

38. Notwithstanding multiple requests made by Mr. Hong and Receiver to clarify this matter, Construction Bank has yet to provide a response either confirming or denying any indebtedness of the Chinese Subsidiary to Construction Bank.

*Industrial Bank*

39. With respect to the Industrial Bank Settlements, none of the loans in question are reflected in the internal financial statements of the Chinese Subsidiary, and Mr. Yu and the Local Management Team continue to deny the undisclosed loans even after the Receiver obtained certain settlement documents from the court in Harbin. At the meetings with Mr. Hong and Mr. Guan, representatives of Industrial Bank have orally confirmed the loans and the settlements it entered into with the Chinese Subsidiary as previously described in the Receiver's Second Report. The Receiver understands that Industrial Bank indicated it would consider taking enforcement actions after August 31, 2015 if no payments are made. Industrial Bank, at one recent meeting, advised that Mr. Yu negotiated with Industrial Bank to extend the settlement payment to

October 31, 2015; however, the Receiver has been unable to obtain written confirmation from the bank or Mr. Yu.

**RECEIPTS AND DISBURSEMENTS**

40. Attached hereto as **Appendix "I"** is the Receiver's statement of receipts and disbursements for the period August 20, 2014 to September 20, 2015, which reflects the ending balances of approximately CDN$2,313,948 and USD$34,301 as of September 20, 2015. Further, unpaid professional fees owed to the Receiver and the Receiver's Advisors amounted to approximately $260,000 as at September 20, 2015. The Receiver has been using the Company's funds, including the 5% Deposit, to fund the administration of the estate and various activities by the Receiver and its Advisors in relation to the Share Transfer Transaction and ongoing investigations, as described in the Third Report and previous reports. The Receiver will continue to utilize the Company funds, including the 5% Deposit, to administer the receivership including undertaking the actions as outlined below.

**NEXT STEPS**

41. The Receiver intends to continue its investigation of Mr. Yu and the Purchaser to gather further information and evidence in order to evaluate courses of action against those responsible for damages to the Company and evaluate options to enforce its rights in China and in Canada.

42. The Receiver, in consultation with the Receiver's Advisors, also intends to continue its investigation into the financial status of the Chinese Subsidiary to identify and evaluate alternatives in preserving and realizing on the Heilongjiang Assets for the benefit of Hanfeng.

43. In order to continue the investigation as described in this Third Report and in the prior reports, the Receiver will continue to incur costs which will require the

utilization of a portion, and possibly a significant portion, of the Company's remaining funds, including the 5% Deposit.

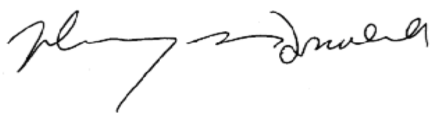
**RECOMMENDATIONS**

44. Based on the foregoing, the Receiver respectfully requests this Court make an Order approving this Third Report and the conduct and activities of the Receiver as described in the Third Report and the Second Report.

All of which is respectfully submitted this 24tth day of September 2015.

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

Per:



Murray A. McDonald
President

This is **Appendix "G"**
to the Fourth Report of the Receiver
dated April 4, 2017

**Share Transfer Agreement**

**股权转让协议书**

**Seller ('Party A'): Hanfeng Evergreen Inc.**

**出让方（甲方）：加拿大汉枫常绿有限公司**

By its authorized signatory, Xinduo Yu Position: CEO

授权签字人：于薪铎 职务：首席执行官

Address: Toronto, Ontario, Canada

地址:加拿大安多略省多伦多市

**Buyer ('Party B'): Heilongjiang Harbin Pengcheng Fertilizer Co., Ltd.**

**受让方（乙方）：黑龙江哈尔滨鹏程肥业有限公司**

By its authorized signatory,Yanjia Ren Position: Vice GM

授权签字人：任延嘉 职务：副总经理

Address: Harbin, Heilongjiang,China

地址:中国黑龙江省哈尔滨市

Whereas:

鉴于：

1. **Hanfeng Slow-Release Fertilizer Co., Ltd.** is a company legally registered and established in China , validly existing as a limited liability company in accordance with the laws of China (hereinafter referred to as the 'Target Company'):
   Registration number: 230223100012253
   Legal address: Shangzhi Economic Development Zone, Heilongjiang
   Business scope: Compound and blend fertilizer manufacture
   **黑龙江汉枫缓释肥料有限公司**是一家在中国合法注册成立并有效存续的有限责任公司（以下简称"目标公司"）：
   注册号为：230223100012253
   法定地址为：黑龙江省尚志市经济开发区

经营范围为：复混肥料制造

2. **Hanfeng Evergreen Inc.** (hereinafter referred to as 'Party A') is a corporation organized and existing under the laws of Ontario, Canada and a validly existing corporation. On the date of signing this agreement, Party A is the legal shareholder of the Target Company, whose capital contribution is **37250000** USD, accounting for 100% of the total registered capital of the Target Company. Target Company is a wholly-owned subsidiary of Party A.

   **汉枫常绿有限公司**（以下称“甲方”）系在加拿大合法注册并有效存续的股份有限公司，系目标公司合法股东，出资额为 37250000 美元，占目标公司注册资本总额的 100 %，目标公司是甲方的全资子公司。

3. **Heilongjiang Harbin Pengcheng Fertilizer Co., Ltd.** (hereinafter referred to as 'Party B') is a legally registered company in China and a validly existing limited liability company.

   **黑龙江哈尔滨鹏程肥业有限公司**（以下称“乙方”）系在中国合法注册并有效存续的有限责任公司。

Both Party A and Party B, through friendly negotiation, on the basis of equality, willingness, and mutual benefit, agree that Party A shall transfer its ownership of 100% of the shares in the Target Company to Party B or its designated subsidiary. Both parties have reached the following agreement:

现甲乙双方经友好协商，在平等、自愿、互利互惠的基础上，一致同意甲方将其所拥有的目标公司 100 %的股权转让给乙方或其指定子公司，双方为此达成如下一致意见：

Clause 1 Definition

定义

The following interpretation for the definition and meaning of words and terms in this agreement shall prevail:

本协议中词语及名称的定义及含义以下列解释为准：

1.1 Right of shares

股权

Party A, as a result of paying for the registered capital of the Target Company, enjoys all the rights conferred to the shareholder of the Target Company under Chinese laws and the Target Company's Articles of Association.

甲方作为目标公司的股东享有目标公司股东资格以及按照中国法律和目标公司章程所赋予的所有的股东权利。

1.2 Date of signing of agreement

协议签署日

This refers to the date when both parties duly execute this agreement, on which date this agreement is effective and binding on the parties.

指协议双方签署本协议的日期，协议从签署之日起生效，并对协议双方有约束力。

1.3 Registered capital

注册资本

This refers to the total amount of capital contributions made and paid for by the shareholder to the Target Company which is registered with governmental authorities.

为在公司登记机关登记的公司全体股东认缴的出资额。

1.4 Agreement Object

协议标的

This refers to the 100% of the equity shares owned by Party A in the Target Company.

指甲方所持有的目标公司 100%股权。

1.5 Chinese law and regulations

**中国法律、法规**

Existing laws, regulations, and legally binding rules, measures, and other forms of normative documents promulgated by the government of the People's Republic of China and its various departments before this agreement comes into effect (including the date of signing this agreement), including but not limited to Company Law of the People's Republic of China, Contract Law of the People's Republic of China, and Foreign Investment Enterprise Law of the People's Republic of China.

于本协议生效日前（含协议生效日）颁布并现行有效的法律、法规和由中华人民共和国政府及其各部门颁布的具有法律约束力的规章、办法以及其他形式的规范性文件，包括但不限于《中华人民共和国公司法》、《中华人民共和国合同法》、《中华人民共和国外资企业法》等。

1.6 Completion of transaction

**交易完成**

The transaction will be deemed completed when the shares of the Target Company originally registered under the name of Party A in Harbin Administration for Industry and Commerce are legally transferred to Party B or its designated subsidiary.

甲方在哈尔滨市工商行政管理局登记的协议标的变更到乙方或其指定子公司名下时，视为交易完成。

1.7 Transition Period

**过渡期**

It refers to the period from the effective date of this agreement to the date of completion of the transaction completed in this agreement.

本协议生效之日至本次交易完成之日期间。

1.8 **债权债务**

**Credit and debt**

本协议中所提到的目标公司的债务，不包括目标公司应付甲方的债务。

The debt hereto refers to the credit of the Target Company, and the Target Company's debt payable to Party A is excluded.

**Clause 2 Representations and warranties**

**第2条 陈述及保证**

**2.1 Representations and warranties by Party A**

**甲方声明和保证**

**2.1.1** Party A is the sole legal owner of the Agreement Object, having the full right to dispose of the Agreement Object.

甲方为协议标的的唯一合法拥有者，对协议标的有完全处置权。

**2.1.2** Before signing this agreement, Party A has not signed any legal document in any form relating to the sale of the Agreement Object with any other third party, nor has Party A taken any legal means to dispose of the Agreement Object in any form. Such disposal includes but not limited to transfer, pledge, entrusted management, and transfer of all or part of the rights attached to the Agreement Object.

本协议签署日前之任何时候，甲方未与任何第三方签定任何形式的法律文件、亦未采取任何其他法律允许的方式对协议标的进行任何形式的处置，该处置包括但不限于转让、质押、委托管理、让渡附属于协议标的的全部或部分权利。

**2.1.3** After signing this agreement, Party A agrees not to sign any form of legal document with any third party or take any other steps to dispose of all or part of the Agreement Object. Such disposal includes but not limited to transfer, pledge, entrusted management, and transfer of all or part of the rights attached to the Agreement Object.

本协议签署日后，甲方同意不会与任何第三方签订任何形式的法律文件，亦不会采取任何法律允许的方式对本协议标的的全部或部分进行任何方式的处置，该处置包括但不限于转让、质押、委托管理、让渡附属于协议标的的部分权利。

**2.1.4** Party A guarantees that it will be the sole shareholder of the Target Company until the completion of the share transfer. No other person enjoys right of first refusal to the Agreement Object. After this agreement comes into effect, Party A will use its commercially reasonable efforts to assist Party B to deal with all the procedures involved in the transfer of the Agreement Object, including but not limited to amending the Articles of Association of the Target Company, restructuring the Board of Directors, and filing documents related to equity change with relevant authorities.

甲方保证系目标公司唯一股东，直至交易完成。没有其他任何人对协议标的享有优先购买权。本协议生效后，甲方将尽商业合理努力协助乙方办理协议标的转让的一切手续，包括但不限于修改目标公司的公司章程、改组董事会、向有关机关报送有关股权变更的文件。

**2.1.5** Party A guarantees that, before the formal transfer of shares of the Target Company between Party A and Party B, the Target Company has acquired the important government permits, approvals, and authorizations for its normal production operation, which are all currently in force. Party A shall ensure that none of such government permits, approvals or authorizations is invalid prior to the completion of the transaction.

甲方保证，在甲方与乙方正式交接目标公司股权前，目标公司所拥有的对其开展正常生产经营至关重要的政府许可，批准，授权的当前有效性，并应确保这些政府许可、批准或授权在交易完成前是有效的。

**2.1.6** Party A guarantees, on the date of signing this agreement, all the information of the Target Company provided to Party B, including but not limited to financial position, production and management, company's registration and assets position shall be true and legal in all material respects.

甲方保证于本协议签订日，向乙方提供的目标公司的全部材料，包括但不限于财务情况、生产经营情况、公司工商登记情况、资产情况等均为真实、合法的。

2.1.7 Party A agrees that, after full payment of all transfer price by Party B in accordance with Clauses 3.3.1, 3.3.3 and 3.3.4, upon the liquidation of Party A, Party A shall unconditionally and irrevocably assign the promissory note issued by Party B to Mr. Xinduo Yu through endorsement upon receipt by Party A of the consideration as agreed to between Mr. Xinduo Yu and Party A.

The promissory note so assigned shall serve as guarantee of performance and fund for Mr. Xinduo Yu during his transition period. Where there is a difference between the promissory note amount and the amount payable to Mr. Xinduo Yu, it shall be negotiated to make up the balance by Party A and Mr. Xinduo Yu themselves in Canada. To protect Party B from potential risks, should Party A fail to perform the said agreement to assign the promissory note, the provisions of this Agreement and the Guarantee Agreement executed by Party B and Mr. Xinduo Yu shall apply.

甲方同意在乙方按照 3.3.1、3.3.3 和 3.3.4 条款付清全部转让价款（包括 20%承诺付款函）后，在甲方清算时当甲方收到于薪铎和甲方约定的对价后无条件且不可撤销地将乙方交付的承诺付款函全部以背书方式转让给于薪铎，作为于薪铎过渡时期的履职及资金保证。如果承诺付款函金额与应付给于薪铎的金额存在差额，差额部分由甲方和于薪铎在加拿大自行协商平衡。如果甲方未能履行上述约定将承诺付款函转让给于薪铎，乙方为保证自身利益免受潜在风险，将自行按照本协议及乙方与于薪铎签署的保证协议执行。

## 2.2 Representations and warranties by Party B

### 乙方声明和保证

**2.2.1** With regard to the registering the share transfer, Party B warrants that it is legally capable of acquiring the Agreement Object, and the normal legal procedures of shares transfer will not be affected by its own individual constraints.

关于股权登记，乙方保证其符合法律规定的受让协议标的的条件，不会因为乙方自身条件的限制而影响股权转让法律程序的正常进行。

**2.2.2** Party B has sufficient cash available to acquire the Agreement Object. Party B guarantees to pay the transfer price in accordance with the provisions stipulated in this agreement.

乙方有足够的可用现金能收购协议标的，乙方保证能够按照本协议的约定支付转让价款。

**2.2.3** No filing with, notice to or authorization of, any governmental entity is required by Party B as a condition to the lawful completion of the transaction.

合法完成该交易，乙方无需政府机构的备案或通知，或政府机构的批准。

**2.2.4** Party B acknowledges that to ensure its own benefits it has conducted an independent investigation on the business, operations, assets, liabilities and financial condition of the Target Company, and in making the determination to proceed with the transactions contemplated by this agreement, has relied solely on the results of its own independent investigation and the representations and warranties in section 2.1.

乙方确认其在决定推进本协议所述交易的过程中，为确保自身利益，已经对目标公司的业务、经营、资产、负债和财务状况进行了独立调查，完全依赖自己的独立调查以及 2.1 部分的声明和保证。

2.2.5 Following completion of the transaction, Party B guarantees it will not pay to Mr. Xinduo Yu any payroll, dividend, premium or any other compensation in any form other than reimbursing him for reasonable travel, meals and accommodation expenses to the extent that Party B requests that Mr. Xinduo Yu travel on behalf of Party B or the Target Company.

交易完成后，乙方保证其不会支付于薪铎任何薪资、红利、奖金或其他任何形式的薪酬，对于乙方要求于薪铎代表乙方或目标公司合理出差、饮食和住宿等费用的报销除外。

2.2.6 Party B acknowledges knowing the current assets position, all current and past conditions, all debts and creditor's rights as well as various risks and other obligations of the Target Company as of May 31, 2014, including but not limited to:

乙方承认其了解目标公司截至 2014 年 5 月 31 日的流动资产状况、所有当前和过去的情况、负债和所有者权益，以及各种风险和其他责任，包括但不限于：

2.2.6.1 Sustainable operation related risk caused by the aging equipment of the Target Company;

目标公司设备老化带来的运营持续性风险；

2.2.6.2 Bad debt related risk caused by the current debts and creditor's rights of the Target Company;

目标公司现有债权债务的坏账风险；

2.2.6.3 Legal dispute related risk caused by employee severance of the Target Company;

目标公司员工遣散引起的法律纠纷风险；

2.2.6.4 Potential risks of employee group incidents and laid-off employee disturbance due to the purchase by Party A;

因甲方收购而导致的员工群体事件以及被解雇员工寻衅滋事等潜在风险；

2.2.6.5 Tax source supervision risk;

税源监控风险；

2.2.6.6 The risk that the government compulsively require to restore the environment due to the change of business activities resulting from the share transfer.

因股权转让后经营业务发生变化，政府部门强制要求修复环境的风险；

2.2.6.7 Legal dispute related risk caused by the potential secondary harm resulted from the agrochemical trials, previous production and sales of the Target Company since its operation;;

目标公司运营以来农化实验产生的潜在次生灾害引起的法律纠纷风险，和前期生产、销售等环节产生或引起的潜在法律纠纷风险；

2.2.6.8 Potential assets guarantee, legal disputes, public judgment and all other risks concerning the management and operation of the Target Company during the period when Party A was running without supervision, subject to the proxy contest;

甲方股东代理权战争导致目标公司无领导管理期间，目标公司管理和运营产生的潜在资产担保、法律纠纷、公众舆论及其他一切风险；

2.2.6.9 Other risks for the entity sale.

双方买卖实体的其他风险。

Clause 3 Transfer of shares

股权的转让

3.1 Agreement Object

协议标的

Subject to the terms of this agreement and conditional on obtaining shareholder approval by its shareholders or court approval for the transfer of the Agreement Object, Party A agrees to sell its 100% ownership of the shares in the Target Company and any of its rights to the website and domain name www.hanfengevergreen.com to Party B or its designated subsidiary.

根据该协议条款以及甲方股东的批准或对协议标的转让的法庭批准，甲方同意将其所持有的目标公司100%的股权以及其对汉枫常绿网站和域名的权利出售给乙方或其指定子公司。

**3.2 Transfer price**

**转让价款**

Based on the financial statements and current conditions of Target Company as of May 31, 2014 ("Benchmark Date"), the total transfer price of the Agreement Object shall be Two Hundred and Forty Eight million RMB (248,000,000 RMB), 80% of which, i.e 198,400,000 RMB or equivalent USD (which shall be converted as per the benchmark exchange rate posted by the People's Bank of China at the date of payment) shall be payable in cash by wire transfer to the designated account of Party A, and the balance of 20% , i.e 49,600,000 RMB shall be payable in a promissory note issued by Party B to Party A.

基于目标公司 2014 年 5 月 31 日（以下称“基准日”）的财务报表及目标公司状况，本协议标的转让总价款为 2.48 亿元人民币（大写：人民币贰亿肆仟捌佰万元整），其中总价款的 80%，即 1.984 亿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）应将现金通过汇款方式汇至甲方指定账户，其余的总价款的 20%，即 4960 万人民币应通过乙方开具的承诺付款函支付给甲方。

**3.3 Method and time of payment**

**付款方式及时间**

3.3.1 Within seven business days of the date of signing this agreement, Party B shall pay Party A 5% of the total purchase price, i.e. 12,400,000 RMB or equivalent USD (which shall be converted as per the benchmark exchange rate posted by the People's Bank of China at the date of payment).

本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 12,400,000 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 The payments described in sections 3.3.1 shall be held by Party A as a performance guarantee bond. If the Party B fails to complete the transaction as required in accordance with the terms of this agreement, in addition to any other remedies that Party A may have under applicable law, Party A shall be entitled to retain the performance guarantee bond.

本协议 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施外，甲方有权保留履约保证金。

3.3.3 Within ten business days of the date of approval for this transaction by the shareholders of Party A or by the court, Party B shall pay Party A an additional 15% of the total purchase price, i.e.

37,200,000 RMB or equivalent USD (which shall be converted as per the benchmark exchange rate posted by the People's Bank of China at the date of payment).

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37,200,000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）。

3.3.4 Within 10 business days upon closing of the transaction, Party B shall pay Party A the remaining 80% of the total purchase price, i.e. 198,400,000 RMB or equivalent USD (which shall be converted as per the benchmark exchange rate posted by the People's Bank of China at the date of payment), of which, 60% of the total purchase price, i.e. 148,800,000 RMB shall be payable in cash by wire transfer to the designated account of Party A, and 20% of the total purchase price, i.e. 49,600,000 RMB shall be delivered to Party A in the form of promissory note attached to this agreement.

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（按付款之日中国人民银行公布的基准汇率折算），其中60%,即人民币1.488亿元用现金支付至甲方指定账户，20%，即人民币4960万元用本协议所附承诺付款函支付。

3.3.5 After receiving the Transfer Price from Party B in full (including the 20% promissory note), upon the liquidation of Party A, Party A shall unconditionally and irrevocably assign the promissory note to Mr. Xinduo Yu through endorsement upon receipt by Party A of the consideration as agreed to between Mr. Xinduo Yu and Party A as per Representations and warranties 2.1.7. Where there is a difference between the promissory note amount and the amount payable to Mr. Xinduo Yu, it shall be negotiated to make up the balance by Party A and Mr. Xinduo Yu themselves in Canada. Party A agrees that when the note is due and payable, Party B shall pay the 20% transfer price under the note (49,600,000 RMB) in RMB to the holder of the note without any interest, and if the promissory note is assigned to Mr. Xinduo Yu, after deducting any deductible amounts (if any) pursuant to a guarantee agreement to be entered into between Party B and Mr. Xinduo Yu, and pursuant to the terms of the guarantee agreement Mr. Xinduo Yu shall bear any risks to be borne by Party A under 2.2.6 of this agreement.

甲方在收到乙方全部转让价款（包括20%承诺付款函）后，在甲方清算后，应按照声明和保证条款2.1.7在甲方清算时当甲方收到于薪铎和甲方约定的对价后将承诺付款函无条件且

不可撤销地全部转让给于薪铎。如果承诺付款函金额与应付给于薪铎的金额存在差额，差额部分由甲方和于薪铎在加拿大自行协商平衡。甲方同意当承诺付款函到期应付时，乙方应将承诺付款函项下20%的转让价款（4960万元）在根据乙方与于薪铎签署的保证协议扣除应扣除（如果有）款项后直接以人民币方式无息支付至持票人。且在承诺付款函转让给于薪铎后，根据保证协议的条款，本协议履行中任何甲方应承担的2.2.6项下风险均应由于薪铎承担。

3.4 Equity transfer application and procedures

股权转让报批及办理手续

3.4.1 Within 45- 60 days of signing this agreement, Party A shall be responsible for convening Party A's shareholders' meeting to seek the approval of its shareholders for this transaction or Party A shall seek court approval in Canada for this transaction. Party B acknowledges that Party A intends to seek court approval for the completion of this transaction within two weeks after the execution of this Agreement.

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。

3.4.2 In the event that the resolution of shareholders of Party A to approve this transaction fails to obtain the requisite approval at the shareholders meeting called to approve such resolution or the court fails to approve the completion of this transaction, then this agreement becomes invalid immediately and Party A shall return the 5% Performance Guarantee Bond paid by Party B in equal amount within 3 business days.

如果在股东大会上，甲方股东未获得足够的支持率批准本次交易，或者法庭未批准本次交易，则本协议立即自动失效，甲方需在3个工作日内等额返还乙方已支付的5%的履约保证金。

3.4.3 Within 30 days following the date that Party A's shareholders approve the completion of this transaction or the court approves the completion of this transaction, Party A shall use its commercially reasonable efforts to assist Party B to complete the reorganization of the Board of Directors of the Target Company, and complete all legal documents for the purpose of share transfer.

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 In accordance with Clause 3.4.3 of this agreement, within 3 days of completion of all legal documents for the share transfer, Party A shall file the application to the approval authority, and assist Party B to comply with Chinese law and regulations in registering the share transfer with the relevant authorities in a timely manner.

在按照本协议第 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。

3.4.5 Both parties agree that the transaction shall be closed within 30 to 45 days upon shareholder approval of Party A or court approval obtained by Party A.

双方约定在获得甲方股东会批准或法庭批准后的30-45个工作日内完成交易。

3.4.6 All the tax payable and fees payable involved in the course of share transfer and acquisition, and expenses incurred in equity alteration registration shall be borne by Party B.

股权交易过程中涉及的各种应交税、款、工商变更登记过程中产生的费用由乙方承担。

## Clause 4 Parties rights and obligations after completion of transaction

## 交易完成后各方权利义务的承担

### 4.1 Before completion of transaction

### 交易完成前

Until Party B pays 100% of total purchase price to Party A, Party A will enjoy all the rights and bear all the responsibilities of the Target Company.

在乙方支付给甲方全部应付价款之前，目标公司的所有权利义务由甲方承担。

### 4.2 After completion of transaction

### 交易完成后

**4.2.1** After Party B pays 100% of the total purchase price to Party B, Party B will enjoy all the rights and bear all the responsibilities of the Target Company (including but not limited to all profit it shall enjoy in compliance with the laws, debts and creditor's rights, legal dispute, and other risks and obligations).

乙方支付完全部价款之后，目标公司的所有权利义务，包括并不限于公司依据法律应该享有的全部所有权益、全部债权债务、法律纠纷由乙方承担。

**Clause 5 Transition Period**

**过渡期**

乙方向甲方支付 5%的履约保证金后，乙方有权利派驻人员到目标公司作为驻厂代表。为避免基准日后，目标公司因非正常经营活动产生费用或亏损，从而对转让价款的定价基础产生影响，甲方同意，自基准日至本协议生效之日期间，目标公司发生的一切重大事项（如有）应经乙方驻厂代表补充确认；在过渡期期间，目标公司发生的一切重大事项（如有）应通知驻厂代表并征得其同意。重大事项包括但不限于:在普通业务来往范围外，处置公司资产（出售、担保、抵押、租赁、转移等）或发生交易；遭受任何损失，或发生任何与客户或雇员的关系变化；重大款项支出；修改任何已有的合同或协议；对目标公司产生重大影响的事件；免除任何对他人的债权等。

Party B shall have the right to send a staff to the Target Company as its representative upon paying the Performance Guarantee Bond (5% of the total transfer price) to Party A. To avoid any expense or loss caused by abnormal operation activities of Target Company after benchmark date, which would affect the pricing basis of the transfer price, Party A agrees that during the period from benchmark date to the effective date of this agreement, any material events (if any) of the Target Company shall be acknowledged and confirmed by the representative of Party B, and that during the Transition Period, any material events (if any) shall be notified to the representative of Party B for his permission. The material events include but not limited to: disposal of the company assets (sales, guarantee, pledge, rent and transfer) or transaction, other than the normal business the transaction; any loss, or any change to relationships with clients and employees; large amount of expenses; any changes to existing contracts or agreements; any events having significant impact on the Target Company; releasing creditor's right.

## Clause 6 Privacy Policies

## 保密条款

### 6.1 Confidential Information

### 保密资料

For all information held by both parties about this share transfer, including but not limited to the operation conditions, financial position, trade secrets, and technical know-how of Party A, Party B, and the Target Company, both parties have the obligation to keep such information confidential. Unless required by law or judicial bodies, none of the parties can make public or make use of the information.

本次股权转让中，甲方与乙方对所了解的全部资料，包括但不限于甲方、乙方、目标公司的经营情况、财务情况、商业秘密、技术秘密等全部情况，甲方与乙方均有义务保密，除非法律有明确规定或司法机关强制要求，任何一方不得对外公开或使用。

### 6.2 Publicity or promotion

### 对外公开或宣传

When both parties promote or make this share transfer known to the public, both parties must follow the same method as negotiated, and ensure that the business reputation of both parties are protected. Without permission from the other party, neither party can publish or publicize any opinions or writings related to this share transfer unless required by applicable law.

甲方与乙方在对外公开或宣传本次股权转让事宜时，采用经协商的统一口径，保证各方的商誉不受侵害。除非法律另有规定，未经另一方同意，任何一方不得擅自对外发表有关本次股权转让的言论、文字。

## Clause 7 Breach of Agreement

## 违约责任

**7.1** Any party who breaches the representations, warranties or other obligations under this agreement should bear the responsibilities for breach of agreement and must compensate the other party for any financial losses caused to the other party. This responsibility to pay damages should include all financial losses caused by the breach. Provided, however, following the date of completion of the transaction, when Party B has paid the total transfer price in full and Party A has assigned the promissory note to Mr. Xinduo Yu, the remedy of Party B in respect of any breach of any representation, warranty, or other obligation of Party A under this agreement shall be as set out in the guarantee agreement to be entered into between Party B and Mr. Xinduo Yu.

任何一方因违反于本协议项下作出的声明、保证及其他义务的，应承担违约责任，造成对方经济损失的，还应承担赔偿责任。此赔偿责任应包括对方因此遭受的全部经济损失。但是，如果在交易完成日之后、乙方已付清全部转让价款、且甲方已将承诺付款函转让给于薪铎后，对于任何违反本协议下声明、保证或甲方其他义务的，乙方的补偿应按照乙方与于薪铎签署的保证协议中列明的条款范围执行。

**7.2** In the event that either party unilaterally rescinds the agreement, the innocent party has the right to request the party in breach to pay liquidated damages, which is 5% of the entire transfer price.

任何一方单方解除本协议，非违约方有权要求违约方支付违约金，违约金为转让价款总额的 5 %。

**7.3** If Party B fails to pay the negotiated share transfer price on time, Party B must pay 0.0006% of the entire payable but unpaid amount to Party A as liquidated damages for each day that such payment is delayed. When the delay in payment reaches 30 days, Party A has the right to rescind the agreement and refuse to return any payments previously made as liquidated damages， and to take any legal measures and steps to have the shares of the Target Company returned to Party A..

因乙方不按时支付本协议约定的股权转让款，每延迟付款一天乙方应向甲方支付应付未付款额每日 0. 0006%的违约金，延迟履行达到 30 日时，甲方有权解除本协议并不再退还乙方之前已支付的所有款项，并有权采取任何法律措施将目标公司的股份归还至甲方。

**Clause 8 Dispute Resolution**

**争议的解决**

Any disputes arising from this Agreement should be solved by mediation and negotiation in good faith. In case mediation fails, either party has the right to litigate in the place of agreement performance, which is the local people’s court where the Target Company is located. Both parties agree to conform to the laws of the People’s Republic of China.

各方若发生争议，应友好协商解决。协商不成，任何乙方均有权向目标公司所在地人民法院诉讼解决。双方同意适用中华人民共和国法律解决。

Clause 9 Others

其他

9.1 Amendment to the Agreement

协议修订

Any amendments to the Agreement must be in writing and signed by both parties. Any amendments or newly added content to the Agreement will become part of the agreement.

本协议的任何修改必须以书面形式由双方签署。修改的部分及增加的内容，构成本协议的组成部分。

9.2 Severability

可分割性

If there are clauses in this Agreement that are invalidated by courts with rights of jurisdiction or an validly appointed arbitrator, but such invalidated clauses do not affect the potency of other clauses, the unaffected clauses shall remain valid.

如果本协议的部分条款被有管辖权的法院、仲裁机构认定无效，不影响其他条款效力的，其他条款继续有效。

9.3 Entire Agreement

协议的完整性

This agreement contains all statements and agreements of both parties, and replaces all oral or written statements, warranties, understandings and agreements regarding the terms under this Agreement made before the signing of this agreement. Both parties agree and confirm that any statements and warranties not contained in this Agreement will not form the basis of this Agreement, and thus cannot be relied upon by any parties and may not be used to explain the clauses and conditions in this Agreement.

本协议构成双方之间的全部陈述和协议，并取代双方于协议签字日前就本协议项下的内容所作的任何口头或者书面的陈述、保证、谅解及协议。双方同意并确认，本协议中未订明的任何陈述或承诺不构成本协议的基础；因此，不能作为确定双方权利和义务以及解释协议条款和条件的依据。

Party A:

甲方：

Authorized Representative (Signature):

授权代表（签字）：

(date)

2014 年 8 月 8 日

Party B:

乙方：

Authorized Representative (Signature):

授权代表（签字）：

(date)

2014 年 8 月 8 日

This is **Appendix “H”**
to the Fourth Report of the Receiver
dated April 4, 2017

**English Translation**

**Legal Opinion**

To: Ernst & Young Inc.

Heilongjiang Honghui Law Firm ("**Honghui**") is a law firm legally established in People's Republic of China ("**China**"), which has been approved to provide legal services by the Ministry of Justice of China and the Department of Justice of Heilongjiang Province, China. As requested by Ernst & Young Inc., we provide this legal opinion (the "**Legal Opinion**") with respect to:

- the share transfer agreement entered into by and between Hanfeng Evergreen Inc. and Harbin Pengcheng Fertilizer Co., Ltd. to transfer 100% of the shares of Hanfeng; Slow-Release Fertilizer Co., Ltd owned by Hanfeng Evergreen Inc.; and
- the retention and disposal of the performance guarantee deposit in the amount of approximately $2.2 million paid by Harbin Pengcheng Fertilizer Co., Ltd.

**A. Defined Terms and Definitions**

For the ease of reference, unless noted otherwise or described differently in this Legal Opinion, the terms below have the meaning ascribed to them as follows：

- **The Vendor**： Hanfeng Evergreen Inc.
- **The Purchaser**： Harbin Pengcheng Fertilizer Co., Ltd.
- **The Subsidiary**： Hanfeng Slow-Release Fertilizer Co., Ltd.
- **The Subsidiary Shares:** 100% of the issued and outstanding shares of the Subsidiary owned by the Vendor.
- **The Share Transfer Agreement**： the share transfer agreement entered into by and between the Vendor and the Purchaser to transfer Hanfeng Evergreen's ownership of the Subsidiary Shares to the Purchaser.



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- **The Receiver**: Ernst & Young Inc. in its capacity as receiver and manager of Hanfeng Evergreen Inc.

**B. We have prepared this Legal Opinion based on the following:**

- our review of the Share Transfer Agreement between the Vendor and the Purchaser;
- the representation by Mr. Liang (Allen) Yao of the Receiver that at the date of this Legal Opinion the Purchaser has failed to make an interim payment of 15% of the purchase price in the amount of RMB 37.2 million (or equivalent US dollars) (the "**15% Interim Payment**"), which was due September 3, 2014 pursuant to the Share Transfer Agreement.

**C. This Legal Opinion is based on the following laws and regulations of China:**

1. the *Contract Law of People's Republic of China* (the "***Contract Law***")
2. the *Companies Law of People's Republic of China* (the "***Companies Law***")
3. the *Foreign-Funded Companies Law of People's Republic of China* (the "***Foreign-Funded Companies Law***")

**D、Legal Opinion**

1. With respect to the governing laws, clause 8 of the Share Transfer Agreement provides that both the Vendor and the Purchaser agreed to conform to the laws of China.

2. There is no violation of Chinese laws and regulations for the Vendor to sell its ownership of the Subsidiary Shares to the Purchaser.

As the sole shareholder of the Subsidiary, the Vendor is a corporation registered and validly existing under the laws of Ontario, Canada. The Purchaser is a company registered in China, validly existing as a limited liability company in accordance with the laws of China. The sale of the Subsidiary Shares by the Vendor to the Purchaser does not violate with Chinese laws including the *Companies Law* and the *Foreign Funded Companies Law*.

3. The Purchaser has failed to pay the purchase price, constituting a breach of the Share Transfer Agreement. The Vendor therefore has the right to keep the funds previously paid by



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the Purchaser and enforce its rights to the losses caused by the Purchaser's breach in accordance with the Share Transfer Agreement and Chinese laws.

The Purchaser failed to meet its obligations to fund the 15% Interim Payment within 10 business days following the approval of the share transfer transaction pursuant to clause 3.3.3 of the Share Transfer Agreement. Clause 3.3.3 of the Share Transfer Agreement provides that the Purchaser shall pay to the Vendor the 15% Interim Payment within 10 business days of the approval of the Share Transfer Agreement by the Vendor's shareholders or the court. We are advised by Allen Yao that the Ontario Superior Court of Justice approved this transaction on August 20, 2014. Accordingly, the Purchaser has the obligation to pay the 15% Interim payment to the Vendor by September 3, 2015. The Purchaser's failure to make payments pursuant to the Share Transfer Agreement represents a breach of contract under Chinese laws, and the Purchaser is therefore liable for the contract breach.

S. 3.3.2 of the Share Transfer Agreement provides that the 5% of purchase price paid by the Purchaser is a performance guarantee bond, and that the Vendor is entitled to retain the performance guarantee bond if the Purchaser fails to complete the transaction as required in accordance with the terms of the agreement.

S.7.3 of the Share Transfer Agreement provides that，when the Purchaser fails to pay the purchase price on time, the Purchaser must pay 0.0006% of the entire payable but unpaid amount to the Vendor as liquidated damages for each day that such payment is delayed. Also, when the delay in payment reaches 30 days, the Vendor has the right to rescind the Share Transfer Agreement and refuse to return any payments previously made as liquidated damages.

Article 107 of the Contract Law provides that if a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract including: continuing to perform the contract, taking remedial measures, or compensating for the damage caused.

**E. Based on the foregoing, we are of the view that the Vendor is entitled to retain the 5% performance guarantee bond paid by Purchaser.**



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With kind regards,

Heilongjiang Honghui Law Firm

September 23, 2015



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This is **Appendix "I"**
to the Fourth Report of the Receiver
dated April 4, 2017

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

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE | ) | MONDAY, THE 5TH |
| | ) | |
| JUSTICE HAINEY | ) | DAY OF OCTOBER, 2015 |

**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.**

**ORDER**

**THIS MOTION**, made by Ernst & Young Inc., in its capacity as the receiver (the "**Receiver**") of Hanfeng Evergreen Inc. ("**Hanfeng**"), for an order approving:

(a) The Third Report of the Receiver dated September 24, 2015 (the "**Third Report**"); and

(b) The Receiver's conduct and activities as described in:

  (i) the Second Report of the Receiver dated July 17, 2015 and the supplement thereto dated July 22, 2015 (together, the "**Second Report**"); and

  (ii) the Third Report,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report and Third Report, and on hearing the submissions of counsel to the Receiver, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Third Report is approved.

3. **THIS COURT ORDERS** that the Receiver's conduct and activities as described in the Second Report and the Third Report are approved.

Hainey J

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.

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

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**
Proceedings commenced at Toronto

**ORDER**
**(RE: APPROVAL OF REPORTS AND ACTIVITIES)**

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Lawyers for the Receiver