

REPORT OF THE MARKET MISCONDUCT TRIBUNAL OF HONG KONG

on whether any market misconduct in the nature of false or misleading information
inducing transactions, insider dealing or otherwise has taken place
in relation to the listed securities of

China Forestry Holdings Company Limited

formerly listed on the Main Board of
the Stock Exchange of Hong Kong
(Stock Code: 930)

on and between 3 April 2008 and 13 January 2011

and on other related questions

Part II

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CHAPTER 22

Consequential Orders

Directions

1187. Having published Part 1 of our Report on 2 August 2024, the Chairman gave Directions to the parties on that date that, if they wished to make any written submissions in respect of the exercise of the powers of the Tribunal provided by section 257(1) of the Securities and Futures Ordinance, Cap. 571, (“the Ordinance”) or such other orders that the Tribunal may make, they must file such written submissions with the Tribunal and serve copies on all other parties on or before 30 August 2024. Provision was made in the Directions for the parties to make Submissions in Reply to the submissions of any of the other parties on or before 20 September 2024.

Submissions

1188. The Tribunal received no written submissions from any of the Specified Persons. The Commission filed written submissions, dated 30 August 2024, copied to the Specified Persons. No submissions in Reply were received from any of the Specified Persons on or before 20 September 2024 or thereafter. Indeed, the Tribunal has received no communication from or on behalf of Mr. Li HC or Top Wisdom since receiving a letter from their then solicitors, Chiu & Partners, dated 20 September 2023, advising the Tribunal that they had ceased to act for the 2nd and 3rd Specified Persons. Moreover, the Tribunal has received no communication from Mr. Li KC since his email to the Tribunal, dated 10 November 2022.

Reasonable opportunity to be heard-s. 257(3)

1189. We are satisfied that, as required by section 257(3) of the Ordinance, the Specified Persons were given a reasonable opportunity of being heard on the issue of the consequential orders to be made by the Tribunal following its determination that they were culpable of market misconduct. As noted in this Chapter, the Specified Persons were provided by the Tribunal with copies of the Directions given to the parties, dated 2 August 2024, inviting the parties to make written submissions on the issue of consequential orders according to a stipulated timetable, and the Tribunal’s Direction to the Commission, dated 24 September 2024, inviting the Commission to provide details of the steps taken by the Commission in HCMP 176/2011. Those documents were sent by email to the Specified Persons. In Directions, dated 24

September 2024, the Tribunal noted that no written submissions had been received from any of the Specified Persons. In providing the Tribunal with its written submissions, dated 30 August 2024, and the further information in its letter, dated 7 October 2024, the Commission provided copies of those documents to the Specified Persons in emails sent to the same email address that was used by the Tribunal in its communication with the Specified Persons.

Two actions relevant to an order of disgorgement

1190. In their written submissions, the Commission also informed the Tribunal that there were two actions that were relevant to the making of an order of disgorgement that were extant. First, proceedings commenced by the Commission, in HCMP 176/2011 in relation to the misconduct of which the Tribunal had found Mr. Li HC and Top Wisdom culpable, namely insider dealing, and the proceeds resulting from their insider dealing. Secondly, an action commenced by the Liquidator of China Forestry (“the Liquidator”) in HCA 1089 of 2016, a proprietary claim against Mr. Li HC and Top Wisdom.

HCMP 176/2011

1191. In HCMP 176/2011, an action pursuant to section 213(2)(b) of the Ordinance, the Commission had sought relief, including an order for restoration or compensation of the counterparties to Top Wisdom’s placement and had obtained an injunction freezing the proceeds of that placement in the amount of \$398,219,458.

HCA 1089 of 2016

1192. In HCA 1089 of 2016, by an amended Writ of Summons, the Liquidators advanced a proprietary claim against the 1st Defendant (Top Wisdom) and 2nd Defendant (Mr. Li HC) claiming various heads of relief for Mr. Li HC’s breach of contract and breaches of his fiduciary duties owed to China Forestry, in consequence of which it was averred that he held illicit gains on constructive trust for China Forestry.

Further Directions and additional information provided by the Commission relevant to an order of disgorgement

1193. By Directions, dated 24 September 2024, copied to the Specified Persons, the Tribunal sought further information from the Commission in relation to its submissions in respect of the exercise of the power of disgorgement, directing the Commission to inform it of all the steps taken by the Commission to seek, “*inter-alia*, an order for restoration or compensation of the

counterparties of Top Wisdom’s placing”, to provide the Tribunal with copies of any relevant supporting material and to inform the Tribunal of the current status of any such proceedings.

1194. By a letter, dated 7 October 2024, copied to the Specified Persons, the Commission provided the Tribunal with a narrative description of the steps taken by the Commission against the 2nd and 3rd Specified Persons in HCMP 176/2011 in respect of the proceeds of the placement, together with copies of the relevant supporting material. In addition, the Tribunal was informed that the Commission was not a party to the proceedings that had been commenced by the Liquidators against Mr. Li HC and Top Wisdom in HCA 1089 of 2016.

The Commission’s submissions

1195. In its submissions, the Commission invited the Tribunal to impose the following orders on the Specified Persons, pursuant to the provisions of the Ordinance, namely pursuant to:

- section 257 (1)(a), a ‘disqualification order’ against the 1st and 2nd Specified Persons for 60 months;
- section 257 (1)(b), a ‘cold shoulder order’ against the 1st and 2nd Specified Persons for 60 months;
- section 257 (1)(d), a ‘disgorgement order’ directing that the 2nd and 3rd Specified Persons shall jointly and severally pay the sum of \$353,430,000 to the Government;
- section 257 (1)(f)(i), an order that the Specified Persons shall jointly and severally pay the Commission its costs and expenses reasonably incurred by the Commission in relation to or incidental to these proceedings;
- section 257 (1)(f)(ii), an order that the Specified Persons shall jointly and severally pay the Commission \$6,657,532, its costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation of their conduct or affairs carried out before these proceedings were instituted;
- section 257 (1)(f)(iii), an order that the Specified Persons shall jointly and severally pay the Commission \$184,477, its costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation carried out for the purposes of these proceedings.

Further orders

1196. Albeit that it was not referred to in the Commission's Written Submissions, an attached Draft Order referred to two other Orders, namely that:

- (i) pursuant to section 264(1), notice be given to the Registrar of the High Court for this order to be registered in the Court of First Instance; and
- (ii) pursuant to section 264 (2), the Order be filed with the Registrar of Companies

Serious misconduct of the Specified Persons

1197. The Commission submitted that the findings of the Tribunal in its Report, dated 2 August 2024, described, "fraud at an industrial scale, resulting in substantial harm to the investing public". It involved a huge, false inflation of the China Forestry Group's ("China Forestry") financial figures, in particular turnover in the year-ended 31 December 2008, the year-ended 31 December 2009 and the half year ended 30 June 2010. An array of documents was falsified, including: the Group's accounts, Bank statements, Forestry Rights Certificates, Logging Permits and Customer Business Licences, Bank-in-slips and Insurance Contracts.

1198. As chairman and CEO respectively, Mr. Li KC and Mr. Li HC were the most senior staff and major shareholders of China Forestry. Both knew of and were involved in that misconduct. Both stood to gain from the falsely inflated price of the China Forestry shares they held. In causing Top Wisdom to place 119 million China Forestry shares on 12 January 2011, Mr. Li HC, the sole shareholder of Top Wisdom, enabled it to sell its shares at an inflated price and avoid a loss. The benefit to Mr. Li HC and Top Wisdom of the loss thus avoided was \$353,430,000.

1199. The conduct of the Specified Persons evidenced some of the worst misconduct that had come before this Tribunal of false or misleading information in inducing transactions, namely subscribing for or purchasing the listed shares of China Forestry, contrary to section 277, by Mr. Li KC and Mr. Li HC, and of insider dealing, contrary to section 270, by Mr. Li HC and Top Wisdom.

1200. Of the gravity of the misconduct of which Mr. Li KC and Mr. Li HC were culpable, the factors that the Commission invited the Tribunal to have regard to, included that:

- (1) given that China Forestry's business was the harvesting and sale of wood logs in forests that it owned, the Tribunal's finding that the overwhelming majority of the

Forestry Rights Certificates were false, it followed that essentially the entirety of China Forestry's business was fraudulent;

- (2) the false inflation of China Forestry's financial figures was substantial;
- (3) that conduct was premeditated and planned in order to induce unknowing public investors to subscribe for China Forestry shares in the IPO; it was successful and over \$1.6 billion was raised;
- (4) the scale of the fraud and falsification of documents involved a significant number of persons, both inside and outside China Forestry;
- (5) when KPMG began to uncover irregularities, attempts were made to conceal the misconduct and mislead the accountants, in particular Mr. Li KC and Mr. Li HC suggested falsely that the fact that the Bank-in-slips, purportedly evidencing payment by customers to China Forestry, had irregular account numbers was because those customers had accounts with Rural Credit Unions;
- (6) Mr. Li KC and Mr. Li HC were knowing participants in the misconduct; and
- (7) they both benefited from the inflated price of China Forestry's shares: Mr. Li KC benefited from the inflated price of his holding of 51.17% China Forestry shares, resulting from publication of the falsely inflated 2009 Annual Results of China Forestry and by his pre-IPO sale of his shares in anticipation of the Listing;¹⁰⁶⁵ Mr. Li HC benefited from having caused Top Wisdom, of which he was the sole shareholder, to make a placement of 119 million China Forestry shares and thereby avoid a loss of more than \$353 million.

1201. In the result, the Commission invited the Tribunal to make consequential orders which reflected the seriousness of the misconduct and to do so, first to protect the investing public from the risk of future infringements and, secondly to prevent the Specified Persons from profiting from their wrongdoing.

1202. In inviting the Tribunal to impose the orders described earlier, the Commission advanced detailed, reasoned support for its submissions.

'Disqualification' order-s.257(1) (a)

1203. The Commission invited the Tribunal to order that:

¹⁰⁶⁵ Exhibits Bundle 1A, pages 596-597; and pages 406-407. Prospectus- 25 June 2009 sale of shares by Kingfly Capital.

Mr. Li KC and Mr. Li HC for a period of 60 months, shall not, without the leave of the Court of First Instance:

- (a) Be or continue to be a director, liquidator, or receiver or manager of the property or business, of any listed or unlisted corporation in Hong Kong, including China Forestry or any of its subsidiaries and affiliates
- (b) In any way, whether directly or indirectly, be concerned or take part in the management of any listed or unlisted corporation in Hong Kong including China Forestry or any of its subsidiaries and affiliates.

Maximum period of disqualification

1204. The Commission acknowledged that that period of disqualification was the maximum provided by s.257(1) (a) of the Ordinance. The gravity of the misconduct of Mr. Li KC and Mr. Li HC justified the imposition of the maximum disqualification. There were no mitigating factors. Neither Mr. Li KC nor Mr. Li HC admitted wrongdoing or expressed remorse. On the contrary, in his records of interview conducted by the Commission and in his witness statement, Mr. Li KC denied any culpability. In his record of interview conducted by the China Securities Regulatory Commission, his witness statement and his oral evidence in the Tribunal proceedings conducted by Mr. Kenneth Kwok as chairman in January 2020, Mr. Li HC denied any culpability.

1205. It was submitted that it was readily apparent, from the findings made by the Tribunal in its Report, that Mr. Li KC and Mr. Li HC were possessed of a dangerous combination of sophistication and utter disregard for the law.

‘Cold shoulder’ order-s.257(1)(b)

1206. The Commission invited the Tribunal to order that Mr. Li KC and Mr. Li HC for a period of 60 months shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in anyway acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or in an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme.

1207. The Commission submitted that the purpose of a ‘cold shoulder’ order was to protect the integrity of the market. Mr. Li KC and Mr. Li HC had demonstrated that they could not be trusted to operate in the markets in accordance with the requirements of the Ordinance. They

were a threat to the integrity of Hong Kong's financial markets. It was submitted that the duration of the 'cold shoulder' order ought to be at least as long as the disqualification order.

'Disgorgement order' s.257(1)(d)

1208. The Commission invited the Tribunal to order that Mr. Li HC and Top Wisdom shall jointly and severally pay to the Government the sum of \$353,430,000, being the loss avoided by them as a result of their insider dealing, contrary to section 270. It was submitted that the purpose of the power of disgorgement was to prevent a wrongdoer from profiting from his wrongdoing. It was readily apparent that Mr. Li HC and Top Wisdom should not be allowed to retain the benefit from their insider dealing.

Developments in and the current status of the two actions

HCMP 176/2011

1209. Of the developments in and the current status of the two actions, the Commission said that, in HCMP 176/2011, in an action pursuant to section 213(2)(b) of the Ordinance, the Commission had sought relief, including an order for restoration or compensation of the counterparties to Top Wisdom's placement and had obtained an injunction, dated 2 February 2011, freezing the proceeds of that placement in the amount of \$398,219,458.

1210. By an order by consent, dated 4 January 2018, the proceedings between the Commission and Mr. Li HC and Top Wisdom had been stayed, "until 28 days after the issuance of the written report by the Market Misconduct Tribunal", pursuant to section 262 of the Ordinance, in the then intended proceedings relating to the listed securities of China Forestry.

1211. By an order, dated 30 July 2019, the Court ordered that China Forestry be joined in the Commission's proceedings against Mr. Li HC and Top Wisdom as an Intervenor. The Tribunal's Report having been published on 2 August 2024, the Commission's proceedings resumed on 30 August 2024.

Withdrawal of monies from the injuncted funds

1212. From time to time, by orders by consent, the Court had increased the spending limit for legal representation afforded to Mr. Li HC and Top Wisdom for monies to be withdrawn from the injuncted funds, so that the spending limit now stood at \$69 million.

1213. Given the competing claims of the Commission and that of the Liquidator to the injunctioned funds, the Commission said in its letter to the Tribunal, dated 7 October 2024, that it was, “... still considering the way forward in the SFC Proceedings and therefore have yet to take any substantive step after the SFC proceedings have resumed.”

HCA 1089 of 2016

1214. As noted earlier, by an amended writ of summons issued on 25 April 2016 in HCA 1089 of 2016, the Liquidators advanced a proprietary claim against the 1st Defendant (Top Wisdom) and 2nd Defendant (Mr. Li HC). The claim is of very wide ambit:

“...damages, equitable compensation, accounts or inquiries, including accounts of profit and tracing orders, restitution, declaratory relief, an indemnity, interest including compound interest, further or other relief and/or costs for breach of contract, breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory or other duties), deceit, misrepresentation, conspiracy, breach of trust and/or duty of care and skill, negligence by and/or unjust enrichment of the defendant, including as knowing recipient or knowing assistor or de facto or shadow director, or agent in connection with or arising out of but not limited to:

1. The sale by the First Defendant of an aggregate of 119,000,000 shares of US\$0.001 each in the share capital of the Plaintiff, China Forestry Holdings Co Ltd (“China Forestry”), at a price of \$3.35 per share on or around 12 January 2011; and
2. Misapplications and/or misappropriations of the funds of China Forestry by its directors and/or employees, including without limitation such misapplications and/or misappropriations by the Second Defendant during the period from approximately 21 December 2007 to 14 February 2011.

1215. By a judgment, dated 26 March 2020, the Court refused an application, brought by Mr. Li HC and Top Wisdom against the Liquidator of China Forestry, for a stay of the proceedings.

1216. In its reply to the Tribunal, dated 7 October 2024, the Commission informed the Tribunal that the trial of the action was to take place on 8 October 2024. The Tribunal understands that judgment was reserved on 8 October 2024. No judgment has been delivered as yet.

1217. The Commission acknowledged that the effect of an order of disgorgement by the Tribunal might impact on the actions brought for recovery by other claimants. Nevertheless, it was submitted that the Tribunal ought to make an order of disgorgement, the purpose of which was to ensure that wrongdoers did not profit from their wrongs. It would be speculative of the Tribunal to engage in assessing the strength and extent of the competing claims for recovery.

Orders for the Costs of the Commission-s. 257 (1)(f)

1218. The Commission invited the Tribunal to make the following orders of costs against the Specified Persons jointly and severally in favour of the Commission:

- pursuant to s. 257 (1)(f)(i)-the costs and expenses reasonably incurred by the Commission in relation or incidental to these proceedings, to be taxed if not agreed with a certificate for four counsel;
- pursuant to s. 257 (1)(f)(ii)- \$6,657,532, being the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation of their conduct or affairs carried out before these proceedings were instituted;
- pursuant to s. 257 (1)(f)(iii)-\$184,477, being the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation carried out for the purposes of these proceedings.

Costs and expenses

1219. In support of the application for costs under section 257 (1)(f)(ii) and(iii) the Commission provided Annex 1, ‘**Statement of Investigation Costs and Expenses**’,¹⁰⁶⁶ setting out ‘General Information’, including the personnel of the Commission involved, their hourly rates in different years and the hours worked, together with the calculation of :

- B. ‘Costs and Expenses in relation or incidental to the investigation carried out before the MMT proceedings were instituted’ and for the purposes of the MMT proceedings’ to a total of \$3,441,209;
- C. ‘Costs and Expenses in relation or incidental to the investigation carried out for the purposes of the MMT proceedings’ to a total of \$3,216,323; and
- D. ‘Disbursements in respect of the Commission’s external experts’, to a total of \$3,216,323 for the preparation of expert reports from Mr. Roderick Sutton, Ms

¹⁰⁶⁶ Appendix 5, the Commission's ‘Statement of Investigation Costs and Expenses’.

Winnie Pao and Fangda Partners, all prior to the commencement of proceedings on 3 May 2018.

Certificate for four counsel

1220. In support of an application for the grant of a certificate for four counsel, two of whom were junior counsel and two of whom were leading Counsel, the Commission submitted that arrangement permitted the Commission to have available to it one leading Counsel and one junior counsel on all the days when the Tribunal sat. That submission clearly had regard to the fact that the hearing dates were not sequential and of necessity, were sometimes fixed on days when it was known that not all counsel would be available.

A CONSIDERATION OF THE SUBMISSIONS

The reality of China Forestry's business

1221. We accept the categorisation made by the Commission that essentially the entirety of China Forestry's business was fraudulent. It was presented to the public and investors as a business which harvested logs in forests to which it had a range of rights, as evidenced by the Forestry Rights Certificates, which logs were then sold to customers. None of the FRCs, the validity of which Fangda Partners had been able to check, were genuine. All aspects of the business were redolent with false documents and fraudulent statements, including not only false FRCs but also logging permits; customers and sales documents; Bank statements and Bank balances; financial statements, describing turnover, profit and capital assets; and Insurance contracts. The financial statements of China Forestry for successive periods were false and substantially misleading for: year-ended 31 December 2008; half year-ended 30 June 2009; year-ended 31 December 2009; and half year-ended 30 June 2010.

The role and knowledge of Mr. Li Han Chun

1222. Clearly, the making of false documents and the propagation of false statements involved many persons within China Forestry and others outside the company. We found that Mr. Li HC, as an active CEO of China Forestry, lay at the apex of a hierarchy in which his immediate subordinates were Mdm. Wu Fang, the CFO, and Mr. Zhang Hong Yu, the CRO. The three

persons were well known to each other, with the other two deferring to Mr. Li HC.¹⁰⁶⁷ He closely monitored their performances.¹⁰⁶⁸

1223. In early January 2011, Mdm. Wu presented KPMG with false bank statements for the period 1 January 2010 to 31 December 2010 in the account of Kunming Ultra Big at the Xinyun Sub-Branch of the Huaxia Bank and false management accounts, which stated that there was a balance of RMB 1.2 billion in the account.¹⁰⁶⁹ On 21 and 22 April 2010, Mdm. Wu was present at the Xinyun Sub-Branch of the Huaxia Bank when members of the staff of the Bank presented Mr. Derek Lam, of KPMG, with false bank statements for the account of Kunming Ultra Big for the period 1 April 2008 to 31 December 2009.¹⁰⁷⁰ Mdm. Wu Was also involved in correspondence with PICC in which audit confirmations were sought in relation to fictitious insurance contracts.¹⁰⁷¹

1224. Mr. Zhang Hong Yu was also involved in correspondence with PICC in which audit confirmation was sought in relation to fictitious insurance contracts.¹⁰⁷² He admitted to Ms. Naomi Lau that some logging permits were fake. Similarly, he told her that the business licences of supposed customers of China Forestry were also fake.¹⁰⁷³

1225. For his part, on 10 April 2010, Mr. Li HC was present at the Xinyun Sub-Branch of the Huaxia Bank when Mr. Jackie Lee was given false bank statements of Kunming Ultra Big by the President of the bank¹⁰⁷⁴. We found Mr. Li HC's explanations to KPMG, at the meeting of 14 January 2011, that the irregularities as to account numbers in the Bank-in-slips of purported customer payments to China Forestry, namely that the customers had accounts with rural credit unions, to be deliberately obfuscatory and false.¹⁰⁷⁵ He repeated that explanation at the board meeting of China Forestry, following receipt of KPMG's letter, dated 25 January 2011.¹⁰⁷⁶

1226. In the result, we found that, "...throughout his employment by China Forestry and its earlier iterations, Mr. Li Han Chun knew of the wholesale use of false documents and false statements made by his subordinates in the company."¹⁰⁷⁷ More particularly, in a consideration

¹⁰⁶⁷ Report, paragraphs 979-982.

¹⁰⁶⁸ Report, paragraph 996.

¹⁰⁶⁹ Report, paragraphs 986-989.

¹⁰⁷⁰ Report, paragraph 987.

¹⁰⁷¹ Report, paragraph 990.

¹⁰⁷² Report, paragraph 995.

¹⁰⁷³ Report, paragraphs 992-994

¹⁰⁷⁴ Report, paragraph 998.

¹⁰⁷⁵ Report, paragraph 999.

¹⁰⁷⁶ Report, paragraph 1000.

¹⁰⁷⁷ Report, paragraph 1012.

of his culpability in respect of the issue of the disclosure of false or misleading information by China Forestry inducing transactions, contrary to section 277 of the Ordinance, we found that he knew that the information, the disclosure of which he authorised, was false or misleading as to material facts, including that in respect of:

- FY 2008 and 1H FY 2009 to 30 June 2009¹⁰⁷⁸ ;
- the 2009 Annual Report¹⁰⁷⁹; and
- the 2010 Interim Results/Interim Report for FY 2010, as at 30 June 2010¹⁰⁸⁰ .

The role and knowledge of Mr. Li Kwok Cheong

1227. We accepted the evidence of Mr. Li Zhi Tong, a vice-chairman of the China Council for the Promotion of Environment and Forestry, who had been recruited by Mr. Li KC to act as a consultant on forestry matters from April 2005 to April 2008, and we found that Mr. Li KC was “actively involved in developing China Forestry’s business and progressing its IPO application”. Together they visited forestry bureaux and inspected forest land to be purchased. The forests and the forestry bureaux that they visited were those described in many of the FRCs found not to be genuine.¹⁰⁸¹

1228. Of the irregularities as to account numbers in the Bank-in-slips of purported customer payments to China Forestry, at the meeting with KPMG on 23 January 2011, Mr. Li KC falsely asserted that the customers had accounts with rural credit unions.¹⁰⁸² Also, he said that there were possible irregularities and inflated financial information in the forestry industry. We were satisfied that was an acknowledgement of the irregularities and inflated financial information by China Forestry.¹⁰⁸³ In that context, we rejected Mr. Li KC’s statements to the contrary and found that he knew the results of the investigations in April 2010 into Mr. Li Haijun’s conduct, his brother, in particular that he had been found to have forged documents, including ICBC Bank statements purporting to be in respect of Kunming Ultra Big’s account at Ya’an Sub-Branch.¹⁰⁸⁴

1229. In a consideration of Mr. Li KC’s culpability in respect of the issue of the disclosure of false or misleading information by China Forestry inducing transactions, contrary to section

¹⁰⁷⁸ Report, paragraph 1157

¹⁰⁷⁹ Report, paragraph 1161.

¹⁰⁸⁰ Report, paragraph 1164.

¹⁰⁸¹ Report, paragraphs 1112-1113.

¹⁰⁸² Report, paragraph 1102

¹⁰⁸³ Report, paragraph 1109.

¹⁰⁸⁴ Report, paragraph 1093

277 of the Ordinance, we found that he knew that the information, the disclosure of which he authorised was false or misleading as to material facts, including that in respect of:

- FY 2008 and 1H FY 2009 to 30 June 2009 in the Prospectus¹⁰⁸⁵ ;
- the 2009 Annual Report¹⁰⁸⁶; and
- the 2010 Interim Results/Interim Report for FY 2010, as at 30 June 2010¹⁰⁸⁷ .

Benefit to Mr. Li KC and Mr. Li HC of the IPO

1230. Of Mr. Li KC's determined resolve to obtain an IPO for China Forestry, we noted that no fewer than three separate applications had been made for the company to be listed, namely on 3 September 2008, 11 November 2008 and 4 September 2009. Mr. Li KC had advanced RMB 8 million to China Forestry for its listing expenses. We observed that, "A pot of gold awaited him at the end of the rainbow."¹⁰⁸⁸ The IPO was hugely successful, albeit based on multiple false statements, in particular in its financial statements. In the result, through Kingfly Capital, Mr. Li KC held 1,534,950,000 China Forestry shares, 51.17% of the issued Capital and, through Top Wisdom, Mr. Li HC held 194,175,000 China Forestry shares, 6.47% of the issued capital.¹⁰⁸⁹

The sale of China Forestry shares prior to the IPO

1231. The Prospectus noted the pre-IPO investment of Carlyle Group and Partners Group Funds was, in part, the result of sale of old China Forestry shares by Mr. Li KC and Top Wisdom. Pursuant to agreements dated 30 December 2007 and 18 March 2008, Carlyle Funds acquired 500,000 shares from Kingfly Capital for the equivalent of US\$5 million, which consideration was paid to Kingfly Capital on 3 January 2008. The consideration was stated to have been calculated, "...by taking into account our prospects and Carlyle Funds' future contributions and with reference to a forward-looking price to earnings multiple of financial year 2008 prepared in accordance with PRC GAAP..."¹⁰⁹⁰

1232. By another share purchase agreement, dated 25 June 2009, with Partners Group Funds and the Carlyle Funds, Partners Group Funds acquired 144,928 shares from Kingfly Capital and 86,956 shares from Top Wisdom respectively, whereas Carlyle Funds acquired 72,464

¹⁰⁸⁵ Report, paragraph 1172

¹⁰⁸⁶ Report, paragraph 1177.

¹⁰⁸⁷ Report, paragraph 1183.

¹⁰⁸⁸ Report, paragraph 1168.

¹⁰⁸⁹ Exhibits Bundle 2B, page 1551.

¹⁰⁹⁰ Exhibits Bundle 1A, page 143.

shares from Kingfly Capital and 43,478 shares from Top Wisdom respectively. On 30 June 2008, the consideration of US\$2,500,008 was paid to Kingfly Capital and US\$1,499,991 to Top Wisdom respectively. The consideration was stated to have been calculated, by, taking into account various factors, including “...with reference to a forward-looking price to earnings multiple for financial year 2009 in accordance with PRC GAAP...”.¹⁰⁹¹

1233. Insofar as the consideration paid in each of the share purchases was based, in part, on a forward-looking price to earnings multiple for the respective financial years, FY 2008 and FY 2009 respectively, it was based in some part on the inflated financial statements of those respective years. It is not known how the multiple was calculated. However, clearly the sale of the shares by Kingfly Capital and Top Wisdom was primarily motivated as having Carlyle and Partners Group Funds ‘buy-in’ as pre-IPO investors, not the actual consideration received.

The ambit of the fraudulent misconduct

1234. Clearly, the fraudulent misconduct that resulted in the many false and misleading statements made in the Prospectus and led to the successful listing of China Forestry was well planned and orchestrated. It passed the forensic examination of the Reporting Accountants, KPMG, the scrutiny of the Joint Sponsors, Standard Chartered Securities (Hong Kong) Limited and UBS Investment Bank. Similarly, the ongoing fraudulent misconduct which resulted in the 2009 Annual Report, which included the audited financial statements for the year end 31 December 2009, the 2010 Interim Report/Interim Results, which included the review of the Interim Financial Report for the period up to 30 June 2010, both passed the forensic examination of KPMG.

The consequences

1235. The initial and immediate consequence of the materially false statements in the Prospectus was that thousands of persons subscribed successfully for the allotment of shares in the IPO. Over \$1.6 billion was raised. No doubt, those investors would not have subscribed if they had known the truth. Similarly, subsequently no doubt there were many thousands of investors who bought and held China Forestry shares in reliance on the false statements contained in the 2009 Annual Report. The truth was that China Forestry was a ‘pack of cards’ which collapsed. Trading having been suspended in its shares on 26 January 2011, it never resumed.

¹⁰⁹¹Exhibits Bundle 1A, page 144.

Orders against the Specified Persons

1236. We are satisfied that, as persons identified as having engaged in market misconduct, as determined earlier, that it is appropriate to make the orders against the stipulated Specified Persons set out below.

'Disqualification order'-s. 257(1)(a)

1237. We have no hesitation at all in determining that it is appropriate to order that for a period of 60 months Mr. Li KC and Mr. Li HC shall be disqualified from being a director or holding the positions stipulated in section s. 257(1)(a) or conducting themselves as described in that subsection. The primary purpose of the disqualification is for the protection of the public. But, it is also for the purpose of general deterrence, namely to deter others from misconducting themselves. Given the nature and length of their misconduct and the absence of any mitigating feature whatsoever, we are satisfied that it is appropriate to impose the maximum length of disqualification.

'Cold shoulder order'- s. 257(1)(b)

1238. Similarly, we are satisfied that it is appropriate to order that for 60 months Mr. Li KC and Mr. Li HC shall not in Hong Kong deal in securities or the other stipulated products described in section 257(1)(b) or conduct themselves as described therein. The purpose of the prohibition is for the protection of the public. Having regard to the nature and extent of the misconduct in the absence of any mitigating factor whatsoever, we are satisfied that it is appropriate to impose the maximum length of prohibition.

'Disgorgement order'- s. 257(1)(d)

1239. In this case, the Commission is to be highly commended for having sought and secured the grant of an injunction on 2 February 2011 in respect of the monies held in Top Wisdom's account with UBS, the provenance of which was the net proceeds of the sale of 119 million China Forestry shares by Top Wisdom on 12 January 2011. The Commission acted with considerable expedition in securing the injunction given that trading in the shares of China forestry was suspended on only 26 January 2011. It follows that there are funds, secured by an injunction, against which an order of disgorgement can be and readily enforced.

1240. Nevertheless, the circumstances of this case illustrate the limitations and restrictions of the Tribunal's power of disgorgement. The Tribunal's power is limited to an order in favour of the Government only, in respect of the amount of loss avoided in the impugned transactions.

HCMP 176/2011

1241. However, in this case the identity of the counterparties to the placement of which Top Wisdom sold 119 million China Forestry shares is known. Those counterparties may properly be regarded as the 'victims' of the misconduct of Top Wisdom and Mr. Li HC. In its letter to the Tribunal, dated 7 October 2024, the Commission said that it had identified 21 institutional investors as the counterparties. Moreover, although the Commission had begun proceedings in 2011 to secure an order for restoration to or compensation of the counterparties, the Commission has not continued with those proceedings. As noted earlier, the Commission informed the Tribunal that it is considering the way forward in those proceedings and has not taken any substantive step after the proceedings resumed on 30 August 2024.

HCA 1089 of 2016

1242. Uniquely, in this case there is a competing claim to the injunctioned funds. The Liquidator commenced proceedings in 2016 on behalf of China Forestry, making a proprietary claim arising from the malfeasance of Li HC, as a director of China Forestry. In those circumstances, China Forestry may properly be regarded as the alleged 'second victim' of the misconduct of Top Wisdom and Mr. Li HC. Although the trial took place on 8 October 2024, no judgment has been delivered and it is not known when it might be delivered.

1243. It follows that it is not known to the Tribunal whether or not the proceedings brought by the Commission are to be resumed or whether the Liquidator will succeed.

1244. In those circumstances, we accept the submissions of the Commission that the Tribunal should order the disgorgement of the proceeds of the loss avoided by Top Wisdom and Mr. Li HC, namely \$353,430,000. We do so. Not to do so would leave open the possibility that, if the claim on behalf of the counterparties is not resumed or, if it is resumed, it fails and the claim by the Liquidator also fails, the proceeds of the loss was avoided would remain with the wrongdoers, namely Top Wisdom and Mr. Li HC. That would be wholly contrary to the purpose of the legislation, which is to deprive the wrongdoers of the fruits of their misconduct.

Interest-s.259

1245. Although the Commission did not address the issue of the Tribunal exercising its powers under section 259 of the Ordinance, mindful of the statements made by this Tribunal in its Report into dealings in the shares of *Sunny Global Holdings Limited*¹⁰⁹², namely that the object of the disgorgement provision was to ensure that the malefactor was deprived of all the ill-gotten gains obtained by his market misconduct, we are satisfied that it is appropriate to make an order pursuant to that section that the payment to the Government of \$353,400,000, pursuant to section 257 (1)(d) shall carry compound interest, calculated from 12 January 2011 with yearly rests.

Costs of the Commission-s.257(1)(f)

s.257 (1)(f)(ii)-the costs and expenses of the Commission in relation to the investigation of the person's conduct carried out before proceedings were instituted

1246. We are satisfied that it is appropriate to order that the Specified Persons shall jointly and severally pay the Commission its costs and expenses reasonably incurred by the Commission in relation or incidental to the Commission's investigation of their conduct or affairs carried out before the institution of these proceedings, 3 May 2018, namely \$6,657,532.

s.257 (1)(f)(i)-the costs and expenses of the Commission in relation to the proceedings

1247. Clearly, it is appropriate to order that the Specified Persons shall jointly and severally pay the Commission its costs and expenses reasonably incurred in relation to or incidental to the proceedings, to be taxed if not agreed.

Certificate for four counsel

1248. It is to be noted that throughout the earlier hearing, presided over by Mr. Kenneth Kwok, SC, as Chairman, the 2nd and 3rd Specified Persons were represented by three counsel, namely Mr. Ambrose Ho SC and two junior counsel, Mr. Isaac Chan and Mr. Francis Chung. The same counsel represented the 2nd and 3rd Specified Persons at the rehearing, until they ceased to appear in the proceedings. Similarly, Mr. Jat Sew-tong SC and Mr. Derek Chan SC appeared in the earlier proceedings with two juniors, Mr. Julian Lam and Mr. Joshua Chan, as they did in these proceedings. Some measure of the factual complexity of the case is illustrated by the details of the volume of evidence described in Appendix 4 of our earlier Report, in particular

¹⁰⁹² *The Report of the Market Misconduct Tribunal into dealings in the shares of Sunny Global Holdings Limited on and between June and August 2003, Part II*, at paragraph 375.

the volume of the expert evidence put before the Tribunal. Whilst we are aware that it is unusual to make such an order¹⁰⁹³, nevertheless we are satisfied that, in the circumstances of this case it is appropriate to order a certificate for four Counsel.

s.257 (1)(f)(ii)-the costs and expenses of the Commission in relation to the investigation of the person's conduct carried out for the purposes of these proceedings.

1249. We are satisfied that it is appropriate to order that the Specified Persons shall jointly and severally pay the Commission its costs and expenses reasonably incurred in relation to the Commission's investigation of their conduct or affairs carried out for the purposes of the proceedings, namely \$184,477.

Registration of the Tribunal's Order with the Court of First Instance-s. 264(1)

1250. Pursuant to section 264 (1) of the Ordinance, notice is to be given to the Registrar of the High Court for this Order to be registered with the Court of First Instance.

Filing of the Tribunal's Order with the Registrar of Companies-s. 264(2)

1251. Pursuant to section 264(2) of the Ordinance, this order is to be filed with the Registrar of Companies as soon as reasonably practicable.

Other orders

1252. Although the Commission did not address the issue of the exercise of the Tribunal's powers in respect of section 257(1)(c) and section 257(1)(e), we are satisfied that it is appropriate to make orders under those provisions.

'Cease and desist order'-s. 257(1)(c)

1253. Having regard to the egregious, serious misconduct over a long period of time of Mr. Li KC and Mr. Li HC, we are satisfied that it is appropriate to make a cease-and-desist order, pursuant to section 257(1)(c) namely, that they shall not again perpetrate any conduct which constitutes market misconduct.

'Government costs and expenses'- s. 257(1)(e)

1254. We are satisfied that it is appropriate that each of the Specified Persons be ordered to pay jointly and severally the costs and expenses of the Government reasonably incurred in

¹⁰⁹³ See *Mariner International Hotels Ltd v Atlas Ltd (No. 2)* (2007) 10 HKCFAR 246.

relation or incidental to these proceedings. A document setting out the basis of the calculation is attached at Appendix 6 to a total of \$6,140,819 .¹⁰⁹⁴

Postscript

1255. At Appendix 4 of Part I of our Report we summarised the ambit and volume of the material received by the Tribunal. The Witness Evidence Bundles included no fewer than 52 records of interview, and their translations where appropriate, of 35 witnesses, together with only two witness statements. Those bundles comprised 6,995 pages.

1256. The Commission's investigation having begun by a Notice to Investigate, dated 1 February 2011, interviews were conducted under the compulsory powers of section 183 of the Ordinance. The interview of the first witness was conducted on 8 February 2011 and the interview of the last witness was concluded over five years later on 12 July 2016. Obviously, at the outset of many investigations, an interviewer has no choice but to embark on a journey into the relatively unknown. Gradually, the relevant issues and evidence become clearer. Eventually the identification of the relevant evidence becomes focused. Many earlier lines of enquiry become irrelevant. That is clearly what occurred in the course of this investigation.

1257. Distilling the relevant from the irrelevant in a record of interview is easily achieved through a witness making a witness statement, which incorporates only the relevant evidence obtained in records of interview. Also, the contents of a witness statement can be arranged in sequence, properly punctuated and separated into appropriate paragraphs, in contrast to the transcript of a live interview. However, not a single witness statement was adduced before the Tribunal from any of the 35 witnesses the subject of such records of interview. To mitigate the consequences of producing evidence in that form, the Commission did produce summaries of the records of interview. However, at best that provided no more than a rough guide to the transcripts of the records of interview. In the result, quite unnecessarily, the Tribunal was often required to trawl through dozens of pages of irrelevant transcript of an interviewee to discern passages actually relevant to the inquiry.

1258. At the outset of the proceedings, we raised our concerns that witness statements of each of the witnesses had not been prepared and served on the Tribunal.¹⁰⁹⁵ Mr. Jat suggested that there were difficulties in using the compulsory powers of the Commission to require that an

¹⁰⁹⁴ Appendix 6.

¹⁰⁹⁵ Transcript; 1 February 2023, pages 7-11.

interviewee make a witness statement. Be that as it may, it is to be noted that the Commission has power to require an interviewee to verify an explanation by statutory declaration. Also, of course not all witnesses require to be compelled to assist. Indeed, of the two witnesses, alluded to earlier who gave a witness statement produced to the Tribunal, whilst one was an employee of the Commission the other was an employee of the Stock Exchange of Hong Kong.


CHAPTER 23

ORDERS

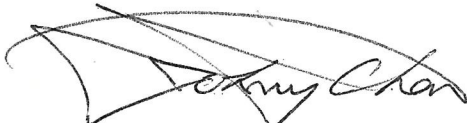
1259. For the reasons set out in Chapter 22, the Tribunal makes the following orders.

- (1) Pursuant to section 257(1)(a) of the Ordinance, for a period of 60 months, the 1st and 2nd Specified Persons shall not, without the leave of the Court of First Instance:
 - (a) Be or continue to be a director, liquidator, or receiver or manager of the property or business, of any listed or unlisted corporation in Hong Kong including China Forestry Holdings Company Limited or any of its subsidiaries and affiliates; or
 - (b) In any way, whether directly or indirectly, be concerned or take part in the management of any listed or unlisted corporation in Hong Kong including China Forestry Holdings Company Limited or any of its subsidiaries and affiliates.
- (2) Pursuant to section 257(1)(b) of the Ordinance, for a period of 60 months the 1st and 2nd Specified Persons shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leverage foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme.
- (3) Pursuant to section 257(1)(c) of the Ordinance, the 1st and 2nd Specified Persons shall not again perpetrate any conduct which constitutes market misconduct, namely:
 - (a) insider dealing, contrary to section 270 of the Ordinance;
 - (b) false trading, contrary to section 274 of the Ordinance;
 - (c) price rigging, contrary to section 275 of the Ordinance;
 - (d) disclosure of information about prohibited transactions, contrary to section 276 of the Ordinance;
 - (e) disclosure of false or misleading information inducing transactions, contrary to section 277 of the Ordinance; and
 - (f) stock market manipulation, contrary to section 278 of the Ordinance.

- (4) Pursuant to section 257(1)(d) of the Ordinance, the 2nd and 3rd Specified Persons shall jointly and severally pay to the Government the sum of \$353,430,000, being the loss avoided by them as a result of their insider dealing under section 270 of the Ordinance.
- (5) Pursuant to section 259 of the Ordinance, the 2nd and 3rd Specified Persons shall jointly and severally pay compound interest on the aforesaid sum of \$353,430,000, calculated from 12 January 2011 with yearly rests.
- (6) Pursuant to section 257(1)(e) of the Ordinance, the Specified Persons shall jointly and severally pay the Government the sum of \$6,140,819, being costs and expenses of the Government reasonably incurred in relation or incidental to these proceedings.
- (7) Pursuant to section 257(1)(f)(i) of the Ordinance, the Specified Persons shall jointly and severally pay to the Commission its costs and expenses reasonably incurred by the Commission in relation or incidental to these proceedings, to be taxed if not agreed, with certificate for four Counsel.
- (8) Pursuant to section 257(1)(f)(ii) of the Ordinance, the Specified Persons shall jointly and severally pay to the Commission its costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation of their conduct or affairs carried out before these proceedings were instituted, in the sum of \$6,657,532.
- (9) Pursuant to section 257(1)(f)(iii) of the Ordinance, the Specified Persons shall jointly and severally pay to the Commission its costs and expenses reasonably incurred by the Commission's in relation or incidental to the investigation carried out for the purposes of these proceedings, in the sum of \$184,477.
- (10) Pursuant to section 264(1) of the Ordinance, notice be given to the Registrar of the High Court for this Order to be registered in the Court of First Instance.
- (11) Pursuant to section 264(2) of the Ordinance, this Order be filed with the Registrar of Companies as soon as reasonably practicable.



Mr Michael Lunn, GBS
(Chairman)



Mr Chan Kok-chung, Johnny
(Member)



Dr Wong Wai-yee, Pauline
(Member)

Dated the 25th day of November 2024