

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE FSD 9 OF 2014(ASCJ)

BETWEEN

TALENT BUSINESS INVESTMENTS LIMITED

**PLAINTIFF/FIRST
COUNTERCLAIM DEFENDANT**

AND

CHINA YINMORE SUGAR COMPANY LTD.

DEFENDANT/COUNTERCLAIM PLAINTIFF

AND

MR. ZHANG NAN

SECOND COUNTERCLAIM DEFENDANT

IN OPEN COURT

BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

Trial on 2ND to 7TH and 9TH to 11TH MARCH 2015; Judgment, 24th April 2015.

APPEARANCES: Mr. Robert Levy QC instructed by Mr. Nicholas Dunne of Walkers for the Plaintiff and First and Second Counterclaim Defendants

Mr. Mac Imrie and Mr Luke Stockdale of Maples and Calder for the Defendant/Counterclaim Plaintiff

Dividend declared by company- whether shareholders entitled immediately to payment- dispute arising over certain payments made amidst allegations and counter-allegations of fraud.



JUDGMENT

1. This case arises out of a claim by the Plaintiff, Talent Business Investments Limited (“Talent”) for unpaid dividends, claiming as a shareholder of the Defendant China Yinmore Sugar Company Ltd. (“China Yinmore”). Talent’s claim, which is for USD5,663,761, is pressed and supported by the evidence of Mr. Zhang Nan, acting as its majority shareholder

and sole director. Its claim has been met with a defence and counterclaim by China Yinmore, alleging not only that Talent has received its dividend but also that it was overpaid by some USD 2.8 Million, the amount for which the counterclaim is raised. The actual overall disputed sum is therefore USD8,503,460 (viz: USD5,863,761 + USD2,821,574).

2. That description of the dispute, though concise, does not register the underlying currents of this case. It is one that arises out of the betrayal of friendship and trust, resulting in the collapse of the relationships between the central figures of Talent and China Yinmore. The sad outcome is that this court is compelled to conclude that conduct, properly to be described only as fraudulent, has occurred.

The inter-relationships

3. China Yinmore is a Cayman Islands Company incorporated on 30 November 2007 and is the holding company for a group of companies doing business in the People's Republic of China ("PRC"). Its domicile here would render a judgment obtained against it enforceable in this jurisdiction.
4. Talent is a company incorporated in the British Virgin Islands on 13 November 2007. Talent's shareholders are Mr Zhang Nan (as to 76.86%) ("Mr Zhang") and Mr Yu Hou (as to 23.14%) and, as already mentioned, Mr Zhang is the sole director.
5. Talent is a shareholder of China Yinmore (as to 6%); along with four others – Bright Sugar Limited (a state owned company of the PRC, as to 60% - "Bright Sugar"); Great Ally Group Limited (as to 23% - "Great Ally"); Sino Million Investments Limited (as to



6%- “Sino Million”) and Goldman Sachs Strategic Investments (Asia) LLC (as to 5%- “Goldman Sachs”).

6. The seven founding shareholders of China Yinmore were also, as at the significant date of 24 May 2012¹, the seven directors appointed to the Board of Directors of China Yinmore. They are Mr Ge Junjie, Mr Geng Huaijan, Mr Li Jinquan, Mr Li Yuanzhi, Mr Xie Weiguo, Mr Zhang Jian and Mr Zhang, the said shareholder of Talent and the second counterclaim defendant.
7. These seven men are the erstwhile trusted friends whose loyalties are now divided by the allegations and counter-allegations raised in this action.
8. Mr Li Jinquan (“President Li”) and Mr Ge Junjie (“Chairman Ge”), respectively are the President and Chairman of the Board of China Yinmore. President Li is also the sole director and majority shareholder of Great Ally.
9. There are other important figures of the dramatis personae, especially the enigmatic Ms Wen Xia, but before explaining their roles, I should explain a bit more of the background leading to the dispute over dividends.
10. China Yinmore is the sole shareholder of Yinmore Sugar (Hong Kong) Co. Ltd. (“Yinmore Hong Kong”), a company incorporated under the laws of Hong Kong. Yinmore Hong Kong is in turn the sole shareholder of Yunnan Yinmore Sugar (Group) Limited (“Yunnan Yinmore”), a company incorporated under the laws of the PRC. Yinmore Hong Kong and Yunnan Yinmore are the shareholders of five other companies in the Yinmore Group of Companies incorporated in the PRC (together, “the PRC

¹ The date when the disputed dividend was declared, and more fully explained below.

Companies” or “the PRC Subsidiaries”). A diagram of this corporate structure and shareholding is appended to this judgment.

11. The PRC Companies carry on the business of sugar production and related enterprises within the PRC and employ, according to President Li, some 4000 people there. Significantly, this included a staff of more than 100 persons in the Group’s accounts department. The headquarters of the PRC Companies is the Yunnan Yinmore Building, located in Kunming, the PRC.
12. Both China Yinmore and Yinmore Hong Kong, as the holding companies, have the base for their limited operations as such, in Hong Kong.
13. They are the entities through which the PRC Companies carry on their banking activities in Hong Kong and through which dividends, having been declared by Yunnan Yinmore as the top company of the PRC Subsidiaries, are paid up from the PRC Subsidiaries for distribution to the ultimate shareholders of China Yinmore.

The legal basis of the claimed entitlement to dividend

14. At the time of Talent’s demand for payment (as will be discussed below) and leading up to the discovery stages of these proceedings, there were doubts sought to be raised by China Yinmore about the validity of the declaration of dividends but that issue has been abandoned. As mentioned above, the dispute for resolution by this trial is over whether Talent received its dividend and indeed, whether it was overpaid the amount claimed in China Yinmore’s counterclaim.



15. As Mr. Imrie put it in his closing arguments on behalf of China Yinmore, the core issue of fact for this Court to determine is whether Ms Wen Xia was acting in accordance with Mr. Zhang's or President Li's instructions and directions, when she received the sum of USD8,503,460 million into her account on 31st July 2012 and then transferred it on to other parties under the circumstances to be examined below.
16. The law on the entitlement to dividends once they are declared is settled and its applicability to the circumstances of this case would not be disputed once the dispute over the circumstances of the payment is resolved.
17. In *Inland Revenue Commissioners v Laird Group Plc* [2003] UKHL 54, Lord Millett speaking on behalf of the Court, explained that "*by declaring a dividend, the directors [of the company] effectively release funds due to the shareholders from their [i.e the directors'] power to retain them in the business*".
18. It follows that once declared, the company has no power to retain the money; it has been released to those entitled to share in the amount payable by way of dividend. Equally, it follows that when a company declares a dividend, a debt becomes immediately payable to each shareholder in respect of his dividend for which each can immediately sue at law. Common law authorities have long recognised this to be so – see for example *In re Severn and Wye and Severn Bridge Railway Company* [1986] 1 Ch 559 at 564 per Romer J: "*the dividends in question were declared and became payable... and constituted debts to the shareholders for which they could have sued at law*".
19. In *Potel v Inland Revenue Commissioners* [1971] 2 All ER 504, Brightman J held, at 511h: "*if a final dividend is declared by a company without any stipulation as to the date*



for payment, the declaration of the dividend creates an immediate debt"; and so see Brightman J's further observation (ibid); that, if a future date is set for the payment for the dividend, the shareholder has a right to enforce payment once that date arrives. See also *Palmer's Company Law Vol. 2* (Sweet and Maxwell 2015) at paragraph 9.715. As cited there: "*once a dividend has been declared, it is ultra vires to resolve that payment should be postponed*": *Bond v Barrow Hematite Steel Co* [1902] 1Ch 353. By this dictum I understand - in light of the other cited cases- that there is no power to purport to resolve subsequently to the valid declaration of dividend, to postpone payment.

20. Under the Companies Law (2013 Revision), there is no provision stipulating the time for a company to distribute the dividends. Accordingly, I accept that the common law rule applies as discussed above; namely: that the dividend is payable immediately unless a future date for payment is at the same time declared (in which case the debt is enforceable from that future date).
21. The Second Amended and Restated Articles of Association of China Yinmore ("the Articles") dated 21 October 2009, governs the contractual relationship between the company and its shareholders. Article 4 provides, inter alia, that the shareholders of China Yinmore are entitled to such dividends as the Board of China Yinmore ("the Board") may from time to time declare.
22. Article 21.1 of the Articles provides, inter alia, that the Board may declare a dividend to be paid to shareholders, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie; in which case the Board may



fix the value for distribution in specie of any assets. There arises no question of an in specie distribution in this case.

23. Article 59.4 of the Articles provides that subject to Article 42, and unless otherwise provided for in the Articles, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the directors present at the meeting.
24. Article 62.1 provides, inter alia, that the quorum necessary for the transaction of business at a meeting of the Board shall be four directors present at the time when the relevant business is transacted.
25. On 11 May 2012, the directors of Yinmore Hong Kong held a meeting and passed a resolution by unanimous vote that dividends in the amount of RMB620,000,000 (equivalent to USD97,542.556.87²) be declared to Yinmore Hong Kong's sole shareholder, China Yinmore. This followed on an earlier declaration by the board of Yunnan Yinmore, declaring the payment of dividends in matching amount up to Yinmore Hong Kong.
26. On 24 May 2012, the Board held a meeting attended by all seven of China Yinmore's directors and passed a resolution, by unanimous vote, that China Yinmore has received dividends of RMB620,000,000 (equivalent to USD97,542,556.87³) from Yinmore Hong Kong and that, accordingly, dividends of RMB600,000,000 (equivalent to USD94,396,022.78⁴) be declared for distribution to the shareholders (the "24 May Resolution") in proportion to the shareholders' respective interests in China Yinmore.

² At an exchange rate of RMB6.356 per USD1

³ Ibid

⁴ Ibid



27. The 24 May Resolution expressly further declared as follows:

“According to the Memorandum and Articles of Association of the company, the shareholdings of the shareholders and the current exchange rate, the dividends to be distributed to each shareholder are as follows:

Bright Sugar Group Co LTD: USD56,637,613.37

Great Ally Group Limited: USD21,711,085.24

Talent Business Investments Limited: USD5,663,761.37

Sino Million Investments Limited: USD5,663,761.37

Goldman Sachs Strategic Investment (Asia) LLC: USD4,719,801.13”

28. As is expressly there set out; based upon the shareholdings it held (and still holds) in China Yinmore, the dividend to which Talent would be entitled pursuant to the 24 May Resolution (and subject to the allegations to be resolved here) is USD5,663,761.37 (“the Dividend”).

29. The Board meeting on the 24 May 2012 was quorate and so as already mentioned, it is no longer in dispute that the 24 May Resolution was properly, unanimously and validly passed.

30. Talent asserts that, as the Dividend was declared by the Defendant without stipulating a date for payment, the Dividend was (and remains) immediately due and payable.

31. China Yinmore responds in this regard to the effect that the Board had stipulated that dividends would become payable only after being requested by the respective shareholder and that Talent had not requested payment. This is however, like the issue of the validity of the declaration itself, not to be decisive either for present purposes. In any event, the

evidence clearly shows that Talent requested payment on a number of occasions (also to be examined below) and China Yinmore's response ultimately relies on the assertion that payment by way of the alleged overpayment was in fact made on the instructions of Mr Zhang.

32. Some dividends to shareholders were in fact paid and the means by which those payments were effected is of some significance.

33. One shareholder, Bright Sugar, requested and received payment of RMB200.000.000 (USD31,500,763.88) following its verbal requests in May and July 2012 (being RMB200/360 million of its entitlement). Another, Goldman Sachs, received RMB30 million (USD4,719,861.13), its full entitlement. Sino Million has not been paid, notwithstanding requests in writing by its minority shareholder Mr Geng Huaijian, sent on 5 September 2013. That same letter, addressed to Chairman Ge, conveyed a request on behalf of Talent and Great Ally as well, signed on their behalf respectively by Mr Zhang, Mr He Ning and Mr Xie Bing, the latter two in their capacities as minority shareholders of Great Ally and signalling a common cause between them and Mr Zhang on one side of this dispute with President Li, as the majority shareholder of Great Ally, on the other. More will arise below about this letter to Chairman Ge.

The disputed Great Ally payment

34. There is in evidence a copy of a written instruction – the Great Ally Payment Instruction (“GAPI”) - dated 31 July 2012, bearing the Great Ally chop (corporate seal) for the payment of USD8,503,460 in respect of some of the dividends to which Great Ally would

be entitled. It is acknowledged by Mr Zhang, that he was provided this amount of money by Mr Wang Zhiwen,⁵ by way of bank transfers from the Yunnan Yinmore offices in Kunming to the corporate bank in Hong Kong. It is also acknowledged by Mr Wang Zhiwen, that it was recorded in the account records of China Yinmore kept at Yunnan Yinmore, as a dividend payment to Great Ally. This was the amount that was then paid by Mr Zhang to Ms Wen Xia, by deposit into her account at Hong Kong Shanghai Bank (“HSBC”), Hong Kong branch on 31 July 2012. Ms Wen Xia's account statements reveal that that amount was subsequently paid out of her account (less only some USD3,500) by way of 12 transactions to different entities having Hong Kong bank accounts and addresses. Mr Zhang, Mr Or Ching Hei (about whom more below also) and Ms Wen Xia, attended together at HSBC for the carrying out of the payment transaction and it was done in the presence of the three of them⁶.

35. Everything else about the Great Ally payment is in dispute and the knotty question to be resolved having gone through the trial process, is that already identified; viz: whether this payment was made to and received by Ms Wen Xia on behalf of Mr Zhang as an overpayment of Talent’s dividends (as China Yinmore contends) or whether it was made to and received by her on behalf of Great Ally on President Li’s instructions, as Mr Zhang (and through him, Talent) contends.

36. The truth is to be revealed by a careful analysis of all the evidence in the case, treating with the evidence of each witness in turn.

⁵ The Chief Financial Officer of Yunnan Yinmore and a witness in this case for China Yinmore about whom, more below.

⁶ A Mr Wang Xiaobing was also present with them at the bank and this will be of some significance for reasons also to be examined below.

37. I should note that I proceed on the basis that both the claim and the counterclaim fall to be determined on the balance of probabilities but bearing in mind that the counterclaim is underpinned by an allegation of fraud. This is in the sense that Mr Zhang is alleged to have fraudulently, by use of the GAPI, caused China Yinmore to pay USD8,503,460 to Ms Wen Xia on his behalf and in his capacity as Talent’s principal and in the process, obtained and misappropriated USD2,839,698.63 more than Talent is entitled.
38. Given the circumstances as presented, this is as Mr Levy submits, a case in which the court has, at best, circumstantial evidence as to whether it was Mr Zhang or President Li behind the GAPI and the Great Ally payment. And so, given the allegations of fraud, the approach to be taken has to be one of caution.
39. In *JSC BTA Bank v Ablyazov*⁷, Teare J. wisely advised, with reference to circumstantial evidence:

“The allegation is extremely serious and exposes Mr Zharembetov to a personal liability of over USD 1 billion. The evidence must therefore be of a cogency commensurate with the seriousness of the allegation. The bank’s case is based upon inference from circumstantial evidence. In this regard it is helpful to recall what Rix LJ said about circumstantial evidence in his judgment on the occasion of Mr Ablyazov’s appeal against the finding of contempt at [2012] EWCA Civ 1411 at para 52:

“It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than

⁷ [2013] EWHC 510.

individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: R v Hillier (2007) 233 ALR 63 (HCA), cited in Archbold 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in R v Kilbourne [1973] AC 729 at 758, "Circumstantial evidence ... works by cumulatively, in geometrical progression, eliminating other possibilities".

40. It follows that in my consideration of the evidence in this case, I must be astute to recognise the distinction between the mere assertion of witnesses and evidence that finds independent support in the surrounding circumstances. So, for instance, more weight must be given to the inferences that can properly be drawn from proven documented evidence than may be accorded to the mere unsupported assertion of the partisan witnesses who testified. The significance of the contemporaneous records cannot readily be ignored in deference to the contrary assertions of witnesses, especially where those are shown to be forthcoming for the first time only latterly at this trial, from the witness box. Likewise, when assertions of witnesses find no support in documented evidence where documented evidence can reasonably be expected to exist and to be produced; I am entitled to be very cautious about accepting the assertions.

Mr Zhang Nan

41. Having been present at the meetings of Yinmore Hong Kong on 11 May 2012 and on 24 May 2012 of China Yinmore at which the dividends were declared and being satisfied as

to the entitlements not only of Talent but also of the other shareholders of China Yinmore, Mr Zhang's evidence about the disputed Great Ally payment is as follows.

42. Until 4 November 2013 when he was effectively removed as a director of China Yinmore and its subsidiaries,⁸ he was a joint authorised signatory for the Hong Kong bank accounts of China Yinmore and Yinmore Hong Kong, for the transfer of funds above HKD100,000.00. But, he insists, he was not in charge of nor authorised to deal generally with, the finances of China Yinmore, Yinmore Hong Kong or Yunnan Yinmore. The person who was overall in charge as vice president for finances of Yunnan Yinmore was the aforementioned Mr. Wang Zhiwen (hereinafter "Mr. Wang"). The other joint signatory to the Hong Kong bank accounts of China Yinmore and Yinmore Hong Kong along with Mr. Zhang, was the aforementioned Mr Or Ching Hei ("Mr Or") who was, at all material times, China Yinmore's representative in Hong Kong and, as of 4 November 2013 when Mr Zhang was "removed"; has remained a joint authorised signatory and was appointed the Chief Administrative Officer of China Yinmore and Yinmore Hong Kong.

43. The 24 May Resolution having resolved that the dividends declared would be distributed in proportion to the Shareholders' respective interests in China Yinmore, Mr Zhang testified that, as a matter of internal control of China Yinmore, Yinmore Hong Kong and Yunnan Yinmore, the following process was adopted in respect of the payment of dividends to the shareholders:

- (a) The shareholder wishing to receive its dividend would make a request to China Yinmore, (per Chairman Ge or President Li) either orally or in written form.

⁸ "Effectively" but improperly because the meeting was unconstitutional – to be further discussed below.

- (b) Upon receiving a request, President Li, as President of China Yinmore, would instruct Mr Wang, as the Vice President for Finance for Yunnan Yinmore, to make arrangements for the dividend payment. Once Mr Wang had approved the amount of dividend to be paid and the currency in which it was to be paid, the finance personnel of Yunnan Yinmore (and hence of China Yinmore and Yinmore Hong Kong, both of which had no separate accounting staff of their own) would arrange for the PRC Subsidiaries or Yunnan Yinmore itself, to exchange RMB into the approved currency for payment and wire the monies to Yinmore Hong Kong's bank account in Hong Kong.
- (c) Thereafter, Mr Or as the Hong Kong Representative and Mr Zhang (as a vice president and co-signatory of China Yinmore and Yinmore Hong Kong) would jointly instruct Yinmore Hong Kong's bank to deposit the monies received from Yunnan Yinmore and /or the PRC Subsidiaries, into China Yinmore's bank account in Hong Kong.
- (d) Mr Or and Mr Zhang would then jointly instruct China Yinmore's bank to make payment of the relevant amount to the bank account specified by the shareholder.

44. There is dispute in this trial over the respective roles of Mr Wang, Mr Or and Mr Zhang as described immediately above by Mr Zhang.

45. It was said by President Li and Mr Wang, both testifying on behalf of China Yinmore (and it must be recognised for all practical purposes, on behalf of Great Ally as well although not a party), that Mr Zhang was the person authorised on behalf of China Yinmore, Yinmore Hong Kong and Yunnan Yinmore to direct the payment of dividends,



that he was Mr Wang's superior and could instruct him to transfer sums for payments of dividends from Yunnan Yinmore to Yinmore Hong Kong. It is alleged by Mr. Wang that Mr Zhang, on or around 24 July 2012, during a telephone call (of which remarkably no record was made or kept by Mr Wang), instructed Mr Wang to transfer USD8,503,460 from Yunnan Yinmore to Yinmore Hong Kong. That Mr Zhang then instructed China Yinmore to make payment of this, the disputed Great Ally payment, to Ms Wen Xia for him and on behalf of Talent.

46. This disputed issue as to whether it was Mr. Zhang or Mr Wang who was authorised to pay dividends is obviously important. It goes to whether or not Mr Zhang could have orchestrated the payment in Great Ally's name without the knowledge and request of President Li and without the approval and authorisation of Mr Wang (as distinct from his mere compliance). The answer to this issue also points to the answer to the real issue in dispute, which is whether Ms Wen received the payment on behalf of Great Ally at President Li's behest or whether she did so only at Mr Zhang's behest and so on Talent's behalf.
47. What I can and will state at this juncture, is that I am satisfied that the dividend payment system operated under the authority of Mr Wang as Mr Zhang testified. This is apparent from a number of factors – not least the contemporaneous minutes of a board meeting of 23 October 2009 which record Mr Wang (not Mr Zhang) being appointed as the Vice President of Finance (and later the Chief Financial Officer) of Yunnan Yinmore – as well



as other factors which will become clearer when I come below to examine all the evidence and especially that of Mr Wang⁹.

48. There are, moreover, the minutes of China Yinmore dated 24 February 2011 which show that the Board appointed Mr. Joe Lam (“Mr Lam”) as the Chief Financial Officer (and qualified accountant) of China Yinmore, as of that date.¹⁰
49. Here, as confirmation of how the dividend payment system operated, I note in particular, that there were the other payments, already mentioned and more fully discussed below, which were made in keeping with the system described by Mr Zhang. As one would expect from a sophisticated group structure such as China Yinmore’s, this involved the PRC Subsidiaries through the accounts department at Yunnan Yinmore (which, as already noted, was indisputably controlled by Mr Wang), having to identify and allocate the income for the payment up of dividends to Yinmore Hong Kong then up to China Yinmore, and in amounts and in currencies which had to be arranged at Yunnan Yinmore.
50. As Mr Zhang testified, in that way and in detail as set out following, some dividend payments were made in accordance with the 24 May Resolution:
- (a) On 1 September 2012 and 6 September 2012, Yinmore Hong Kong received USD11,020,123.38, USD3,306,037.59 and USD6,198,070.20 respectively from Yunnan Yinmore and two of the PRC Subsidiaries. On 7 September 2012, Mr Or

⁹ It was also resolved at this meeting of Yunnan Yinmore Sugar Company Ltd. (the top of the manufacturing companies among the PRC Subsidiaries) on 23 October 2009, that Mr. Zhang would be responsible for the Initial Public Offering (IPO) of China Yinmore, would be put in charge of the Hong Kong Offices of China Yinmore and Hong Kong Yinmore and would be “head of securities”. President Li would be “overall in charge” and Mr. Wang would be responsible for finances and also manage the finance department of the companies. As events transpired, the IPO (intended to be launched on the HKSE) did not proceed because Bright Sugar bought a controlling interest in the Group through China Yinmore, as to 60% of the shares.

¹⁰ As of the 4 November 2013, Mr Lam also replaced Mr Zhang as authorised signatory in China Yinmore’s bank accounts and was appointed Corporate Secretary.



and Mr Zhang jointly instructed Yinmore Hong Kong to pay USD20, 524, 287.86 to China Yinmore and on the same day instructed China Yinmore's bank to pay USD4,719,801.13 and USD15,700,000 to bank accounts specified by Goldman Sachs and Bright Sugar respectively.

- (b) As to the process of the disputed Great Ally payment, Mr Zhang testified as follows. On 31 July 2012, Yinmore Hong Kong received USD2,821,574.22 and USD5,681,888.89 respectively from two of the PRC Subsidiaries. These payments to Yinmore Hong Kong could not have been and were not authorised by him but must have been authorised by Mr Wang as vice president of finance for Yunnan Yinmore. This process explains how it came about that the Great Ally payment came to be recorded in the Dividends Payable Ledger kept at Yunnan Yinmore as having been made to Great Ally, and remained so recorded until a reverse entry was made well after this action began. Pursuant to an oral request made to him by President Li as sole director and majority shareholder of Great Ally (about which request more below) and a written request by Great Ally dated 31 July 2012 (that bearing the Great Ally chop and already referenced above - *the "GAPP"*), he was asked to arrange that out of the dividends due from China Yinmore to Great Ally, USD8,503,460 be transferred to a bank account in the name of Ms Wen Xia on 31 July 2012 *"to repay debts owed by our company [ie: Great Ally] to the transferee"*.
- (c) The GAPI also identifies Ms Wen's bank as "HSBC" and gives her account number: "518-296025-833". It was these instructions, in the circumstances which



Mr Zhang explained further in his evidence and which I will examine in detail below, which were carried out by him and Mr Or on 31 July 2012, by way of joint written instructions to China Yinmore's bank in Hong Kong HSBC - the same as Ms Wen's bank and where, in the presence of both of them (and Mr Wang Xiaobing) the transfer was accepted by Ms Wen into her account.

51. The upshot is that Bright Sugar and Goldman Sachs have been paid 55.6% and 100% respectively of their dividends to which they were entitled based on the 24 May Resolution and if Mr Zhang is believed, Great Ally has received 39.16% of its dividend entitlements. On that basis also, Talent has received no amount of its dividends.

Developments leading to this action

52. On 15 October 2013, on behalf of Talent, Mr Zhang sent a letter to China Yinmore demanding payment of its dividend and stating that he had, in his capacity as the director of Talent, made earlier requests for payment on 19 and 23 August 2013 and on 5, 23 and 28 September 2013 but had not received any clear response or payment. This letter of 15 October 2013 must have been seen by President Li as president of China Yinmore. In it, not only does Mr. Zhang state that Talent had not received its dividend, he also asserts that Great Ally had received USD8,503,460. Therefore, it is at least remarkable that there appears to have been no response to this letter.
53. On 22 October 2013, Mr. Zhang sent an email to Chairman Ge. This email was in response to an earlier notice from Chairman Ge (on behalf of China Yinmore), dated 12 October 2013 and requiring Mr Zhang to give an account of the payments of dividends



made by China Yinmore. It will be noted that this letter came after the letter of 5 September 2013 from Mr Zhang and others to Chairman Ge already mentioned above (at para. 33) and to be mentioned further below. While Mr Zhang does not accept that he was accountable as the person who had authorised the payments (regarding President Li and Mr Wang as the persons accountable) he nonetheless responded to Chairman Ge's notice by means of the aforesaid email of 22 October 2013, setting out the amounts of which he was aware payments had been made to the relevant shareholders (as above at sub-paras 50 (a) – (c)) and attaching a schedule of the distributions made. He testified that he did this after having spoken to the accounts department at Yunnan Yinmore, where he was able to confirm the payments from the accounts records. Neither his report nor the accounts records showed any payment having been made to Talent but the disputed payment of USD8,503,460 was recorded as having been made to Great Ally (until it was later reversed in the Dividends Payable Ledger in December 2013).

54. It is a matter of significance in this trial that in the accounts of Yunnan Yinmore, the payment to Great Ally remained recorded as such up until after a further "investigation" directed by Chairman Ge had been carried out by President Li and Mr Lam and, if Mr Wang is to be believed, until after their report was submitted on 27th December 2013.

China Yinmore's case

55. Indeed, China Yinmore's (and by common association with President Li, Great Ally's) account, in this regard, was explained for the first time by way of the defence and counterclaim in this action. It developed in the way I now describe.



56. On 30 October 2013, Talent’s lawyers in Hong Kong, P.C Woo &Co (“PWC”) on Mr Zhang’s instructions, issued a statutory demand for the payment from China Yinmore to Talent of USD5,663,761.37, in respect of Talent’s dividend (“the Statutory Demand”).
57. At an EGM of 4 November 2013,¹¹ Mr Zhang expressed his concerns about the non-payment of Talent’s dividend and objected to changes to the Board of China Yinmore proposed at that meeting. Following the EGM, at a board meeting of the 4 November 2013, the changes to the Board were nonetheless carried and achieved, among other things, the practical removal of Mr Zhang and the appointment of Mr Lam (as explained above), as well as the appointment of Mr Wang as Chief Executive Officer of Yunnan Yinmore and Mr Or as Chief Executive Officer of China Yinmore.
58. Some two weeks later, by letter dated 18 November 2013, China Yinmore’s Hong Kong lawyers, K.C Ho & Fong (“KCHF”) responded to the Statutory Demand. KCHF claimed that the Statutory Demand was misconceived as the 24 May Resolution did not create an immediately payable debt; that Yinmore Hong Kong had not passed a resolution to pay the dividends to China Yinmore; that China Yinmore had passed the resolutions in November 2013 to postpone distributions of the dividends and is investigating the legality of the declaration of the dividends, and that China Yinmore had reservations as to whether Talent is in fact entitled to receive the dividend.
59. On 19 November 2013, PCW, on behalf of Talent, rejected KCHF’s position and stated that the dividend was due and payable by China Yinmore. PCW also stated, among other

¹¹ That which was later recognised as invalidity constituted for lack of prescribed notice.



things, that China Yinmore was not permitted unilaterally to postpone payment of the dividend.

60. On 29 November 2013, KCHF wrote to PCW stating that the time for payment for the dividends had not been fixed, that China Yinmore is investigating the distribution of the dividends, and that Mr Zhang was “involved” in the declaration and distribution of the dividends.
61. Noticeably absent from KCHF’s letters was any allegation that Talent had in fact received its dividend (let alone an overpayment). This is significant especially when taken against the background of the “investigation” which had already been undertaken by President Li and Mr Lam into the disputed Great Ally payment and from which they had immediately concluded and reported to Chairman Ge (circa 27 December 2013), that the payment had in fact been made to Mr Zhang for Talent, on Mr Zhang’s instructions.
62. On 13 December 2013, a further EGM of China Yinmore was convened. Notice of this meeting had been provided to Talent through Mr Zhang and informed of proposed resolutions for amending the Memorandum of Association and Articles and for removal of the existing board of directors (still described as including Mr Zhang notwithstanding the resolutions purportedly passed at the 4th November meetings) and replacing them with Chairman Ge, President Li and Mr Li Yuanzhi.
63. The convening of this meeting implied the acceptance by those involved, that the resolutions passed on 4 November 2013 were, indeed, invalid.
64. Despite Mr Zhang’s objections, citing among other things the need for unanimity imposed by the Investor Agreement between the seven Founding Shareholders, the



proposed resolutions were carried and thereafter, also on the 13 December 2013, the newly constituted board met and resolved once again among other things, to remove Mr Zhang as Vice President and as authorised signatory to China Yinmore's bank accounts and to appoint Mr Wang, Mr Lam and Mr Or as the authorised signatories.

65. In a letter in response to a written request from Talent sent on 12 December 2013, China Yinmore, on 18 December 2013, provided copies of its balance sheet as of 30 September 2013 and income and cash flow statement for 1 January 2013 to 30 September 2013. The balance sheet showed, as the final audit later came to confirm, that there were dividends due and payable by China Yinmore to shareholders in the sum of RMB305,448,890.08. Thus, implicitly, that dividends of RMB294,551,110 had already been paid. Again, noticeably absent from the balance sheet, was any annotation to the effect that Great Ally had not been paid or that Talent had been paid (or overpaid).
66. China Yinmore's covering letter stated only that the audited accounts would be provided once the same had been received from the auditors.
67. With regard to the status of the dividends distribution, China Yinmore's letter also stated rather delphically that "*Mr Zhang Nan, as one of the decision-makers and sole executor of the [24 May Resolution], did not strictly carry out the directors' resolutions that declared dividends, causing several problems for the distribution of dividends for that year*". The letter continued that China Yinmore had requested Mr Zhang to explain the payment of the dividends, but "*as Mr Zhang Nan did not cooperate with the investigations, did not explain in detail the distribution of dividends, and did not provide the corresponding original proofs, a thorough investigation could not be carried out*".

The letter concluded by asking Talent to *“urge Mr Zhang Nan to cooperate with the investigations, explain the distribution of dividends and provide the relevant evidence, so that [China Yinmore] can quickly clarify the problems in the distribution of the dividends and provide [Talent] with the correct status of the 2011 dividends declared.”*

68. This was a remarkable response from China Yinmore for a number of reasons.
69. First, it gives the impression that no investigation had been undertaken or was being undertaken and that there were no views already taken by the Board of the disputed Great Ally payment - all notwithstanding what could be described as the “open and shut” investigation and report from President Li and Mr Lam to be provided only some 7 days later to Chairman Ge, circa the 27th day December 2013.
70. Secondly, as Mr Zhang insisted in his testimony before me without reproof, he was not informed of President Li’s and Mr Lam’s investigation nor informed of any further investigation nor invited to cooperate with any.
71. Thirdly, nor was it correct for this letter from China Yinmore to assert, in light of the report that Mr Zhang had himself earlier – on 22 October 2013 - presented to Chairman Ge, that he had not co-operated. In his report Mr Zhang had reported, by reference to the account records that, among other things, the disputed payment had been made to Great Ally, and this went without demurrer at the time from President Li in particular.
72. In light of things as they then stood, it is hardly surprising that, on 20 January 2014, Talent’s Cayman Islands lawyers served a letter of demand on China Yinmore (this time at its registered offices in this jurisdiction), for payment of the Dividend.



73. On 27 January 2014, China Yinmore responded by persisting in its refusal to pay the Dividend and, without providing any details, also persisted (and despite President Li's and Mr Lam's report of 27 December 2013) that its "investigations" into the distribution of dividends were proceeding slowly as Mr Zhang had been "uncooperative", and China Yinmore would not authorise payment of any "uncertain amounts".
74. On 10 February 2014, Talent filed its Writ and Statement of Claim commencing this action.
75. It was not until the filing of China Yinmore's Amended Defence and Counterclaim filed on 18 August 2014, that new allegations arose in relation to Mr. Zhang's control of China Yinmore's financial affairs and records. In particular (at para 26.2) - that Mr Wang alleges that Mr Zhang had instructed him to document the payment of USD8,503,460 in China Yinmore's accounting records (kept at Yunnan Yinmore) as a dividend payment to Great Ally. Further (at para 15), that although Mr Wang was responsible for the finances of Yunnan Yinmore and managed the accounts department of Yunnan Yinmore, at all material times prior to 13 December 2013, the accounts of China Yinmore were prepared by the financial personnel of Yunnan Yinmore based on the instructions of Mr Zhang because Yinmore Hong Kong and China Yinmore did not have their own accounting departments and that the financial personnel of Yunnan Yinmore were not responsible for reviewing any of the relevant transactions or the underlying documents. That Mr Wang simply followed Mr Zhang's instructions in relation to the accounts of China Yinmore and Yinmore Hong Kong.



76. And further and most startling (at para 19), that the GAPI and the use of the Great Ally chop on it, were not authorised or prepared by Great Ally on 31 July 2012 (being the date shown on its face) or on any other date. Instead, that the GAPI was created and the Great Ally chop was applied to it by Mr Or (described here for the first time as a “part-time” employee of China Yinmore), not on 31 July 2012, but on 8 August 2012; acting under the instructions of Mr Zhang. That, contrary to what is asserted in the GAPI itself, it is averred that there was no debt payable by Great Ally to Ms Wen Xia and, therefore, Great Ally had no basis to instruct China Yinmore to make a payment to Wen Xia on its behalf to settle such a debt.



Mr Zhang’s evidence (continued)

77. Mr Zhang denies these lately raised allegations. He responded as follows (as taken from paragraph 55 of his first witness statement (and as confirmed on oath from the witness box):

“The suggestion from (China Yinmore) that I was in charge of finance for China Yinmore and Yinmore Hong Kong and responsible for all payments is wrong. In that regard I would observe that:

(a) Pursuant to Article 54.1 of the Articles, the chief financial officer of Yunnan Yinmore shall be nominated by Bright Sugar, and Mr Wang was appointed as vice president of Yunnan Yinmore in charge of finance in the 23 October 2009 Resolutions. Pursuant to Clause 7.1 of the Investor Agreement, Bright Sugar shall be entitled to nominate the CFO of China Yinmore. [I interpose here that Mr

Wang, in his testimony, did confirm that he was appointed on the nomination of Bright Sugar. This is indeed the kind of stipulation to be expected from a party providing a large injection of capital aiming to become the clear majority shareholder.]

- (b) *As China Yinmore and Yinmore Hong Kong are holding companies with no separate business operations or financial personnel, Mr Wang exercises his functions for China Yinmore and Yinmore Hong Kong. I was not in charge of nor authorised to deal with the finances of China Yinmore, Yinmore Hong Kong or Yunnan Yinmore, nor did I give instructions to Mr Wang or any other financial personnel of Yunnan Yinmore, except and only to the extent that I was a joint authorised signatory of China Yinmore and Yinmore Hong Kong's bank account in Hong Kong (prior to 4 November 2013).*
- (c) *All relevant transactions were approved by President Li and Mr Wang, all relevant records were reviewed, checked and booked by financial personnel of Yunnan Yinmore;*
- (d) *I was not responsible or authorised to make dividend payment requests to China Yinmore on behalf of any of Bright Sugar, Goldman Sachs, Great Ally and Sino Million, or to accept dividend payment requests from the Shareholders on behalf of China Yinmore; and*
- (e) *China Yinmore and Yinmore Hong Kong are holding companies with no separate business operations, and they each maintain a minimum cash balance in their bank accounts. Any funds required for dividend payments would have to be*



transferred from Yunnan Yinmore or the PRC Subsidiaries to Yinmore Hong Kong in the approved amount and currency, and subsequently transferred to China Yinmore and paid to the respective Shareholder.

Pursuant to the 24 May Resolution, the Dividend to which Talent is entitled is USD5,663,761.37 and not USD 8,503, 460. Accordingly, even if I had instructed Mr Wang to transfer USD8,503,460 from Yunnan Yinmore to Yinmore Hong Kong to pay Talent (which I did not), the transfer, being clearly and obviously in the wrong amount, would not have been approved.

- (f) *As would have been necessary, Mr Wang gave his approval for two of the PRC Subsidiaries to exchange RMB18,000,000 for USD2,821,574.22 on 24 July 2012, and to exchange RMB36,247,091.40 for USD5,681,888.89 on 25 July 2012. These funds were then transferred to Yinmore Hong Kong's account on 31 July 2012."*

78. Then followed Mr Zhang's narrative as to the crucial arrangements as between himself, President Li and Ms Wen Xia for the purposes of the Great Ally payment:

"A few days before 31 July 2012, [President Li] (who is the sole director and majority shareholder of Great Ally) informed me in person that he had requested [China Yinmore] to pay USD8,503,460 in dividends to Great Ally, and he required me to travel to Hong Kong to arrange for the payment to be made. He explained that as he was unable to go to Hong Kong personally [(from Kunming where the Group is based and where both men had their offices)] to arrange for the payment to be made no



transfers could be made from Great Ally's bank account (on which President Li and Mr Or are joint authorised signatories). He further said that he had agreed with Ms Wen Xia that she would help him receive the funds, that he would be using the monies for the equity restructuring of Yinmore Ltd¹² and that he had instructed Mr Or to prepare the written instruction from Great Ally to state that the monies should be paid to Ms Wen Xia's account. On 31 July 2012, Mr Or and I attended at a HSBC branch office and jointly instructed payment of USD8,503,460 to Ms Wen Xia's account. Ms Wen Xia and Mr Wang Xiaobing were both present at the branch office when the transfer was made. The payment was made for and on behalf of Great Ally and not for and on behalf of [Talent].

59. I am neither a director, shareholder nor authorised signatory of Great Ally and was not and have never been in a position to authorise or give instructions to Mr Or, or for that matter to anyone else, in connection with Great Ally's business. The suggestion that I fabricated the Great Ally Payment Instruction is absurd.



¹² Yinmore Ltd is a PRC registered company involved in real estate, auto dealership, flowers and feed manufacture businesses in Australia, but is not involved in the sugar business nor part of China Yinmore's group of companies. After an equity restructuring completed in March 2013, President Li became the ultimate controlling shareholder of Yinmore Ltd. (See statement of Mr He Ning, para 10).

60. *The allegations that I instructed Ms Wen Xia to receive any amount of money for or on behalf of the Plaintiff [Talent], and to make onward transfers, are equally false.*

61. *I have seen some payment slips disclosed by China Yinmore showing transfers that were purportedly made by Ms Wen Xia on my instructions to various third parties. I gave no such transfer instructions to Ms Wen Xia or anyone else, via text messages [as Wen Xia alleges] or otherwise. I do not know and have no connection whatsoever with any of the third parties that allegedly received sums from Ms Wen Xia between 2 August 2012 and 21 August 2012.*

62. *[China Yinmore's] own internal records in relation to the dividends paid to the Shareholders show that USD8,503,460 was paid in July 2012 to Great Ally by way of dividend payment.[Here he exhibits to his affidavit the "Breakdown of Payable Dividend (period Jan 2012to Dec 2013)" kept for China Yinmore at Yunnan Yinmore accounts department]. An adjustment appears subsequently to have been made in December 2013 to reverse the earlier entry from July 2012, so that [Talent], rather than Great Ally, is recorded in [China Yinmore's] books as having been paid USD8,503,460. That adjustment was made over a year later, to suit China Yinmore's current position. [As mentioned above, the significance of the*



audit report not commenting on, and of Ernst & Young (“E & Y”) not drawing this issue of a disputed payment to the attention of the Board, is to be noted and will be examined further below].

63. [Talent] has not received the Dividend it is legally entitled to and [China Yinmore] has unlawfully withheld payment of that Dividend by falsely claiming that sums paid to Great Ally were in fact received by [Talent], when they were not.”

79. Mr Zhang was cross-examined at some length by Mr Imrie. A main thrust of the cross-examination was aimed at establishing that it was Mr Zhang and not Mr Wang who was the Chief Financial Officer (“CFO”) of China Yinmore and so was authorised to approve and arrange payments of dividends and in the specific amounts due to the Shareholders. While acknowledging that it was he who transacted at the bank in Hong Kong (with Mr Or as co-signatory) for the actual payments, Mr Zhang insisted that it was Mr Wang (implicitly in the case of Great Ally at the behest of President Li) who had determined the exact amounts and the currencies in which they were to be paid and arranged to have the funds transferred to Hong Kong from Kunming.

80. Having accepted as I have that it was Mr Wang as CFO who was responsible for the financial affairs at Yunnan Yinmore where the initial authorisations and arrangements for payments of dividends were effected, I hold that Mr Zhang’s account is correct. His evidence was consistent in this respect when, in explaining not only the Great Ally payment but also the payments to Bright Sugar and Goldman Sachs he said:

“I was satisfied that I was paying the correct amounts... The figure for Goldman Sachs was in the directors’ resolution [ie: the 24 May Resolution] and these amounts were wired by Yunnan Yinmore. Mr Wang would have told me before I went to Hong Kong to do these transactions- he told me about the bank account number for Bright Sugar and Goldman Sachs and wrote the bank account numbers on a piece of paper. I gave that piece of paper to Mr Or in Hong Kong and Mr Or told the Bank people to prepare the transfers...

I received oral confirmation from Mr Wang that sufficient money had been transferred to Yinmore Hong Kong to pay the two dividends... yes, he told me that the money had been transferred to Yinmore Hong Kong to pay the two dividends... he wrote the Bank account numbers for Goldman Sachs and Bright Sugar... he told me the amounts and he wrote it down on the paper.”

81. Mr. Zhang was also compelling in his rhetorical response (referring to one of the Bright Sugar payments made unusually in euros instead of dollars): *“How could I have known down to the cent, exactly how much to instruct Mr. Wang to transfer to Hong Kong for Bright Sugar?”*
82. This became a telling exchange in the trial, as it came out in cross-examination after Mr Imrie had shown Mr Zhang a document (Volume B.4 Tab 136 of the trial bundles) which reads as follows:



“We (our company) are a shareholder of China Yinmore Sugar Company Limited. In 2012, we requested China Yinmore Sugar Company Limited for payment of dividends for the year 2011 and such request was made by way of telephone call with Zhang Nan and not made by way of letter in writing.

We hereby certify the above.

*Bright Sugar Group Co Ltd
30 January 2015”*

83. Mr Zhang’s response when asked by Mr Imrie whether he recognised this document was as follows:

“...this is a forged document. I say it is a forged document because I saw it only for the first time in February (2015). Bright Sugar told no-one to call me because Mr Wang was the one appointed by Bright Sugar to work in China Yinmore. I firmly believe that they (meaning the defence side) conjured it up only for these purposes.”

84. In response to a question from the Court, Mr Imrie confirmed that a signed version of this document does not exist.

85. Indeed, on its face, this document speaks in the past tense and appears to have been created on 30 January 2015. I am driven to conclude that it was created only for the purposes of this trial. It is neither signed nor sealed on behalf of Bright Sugar and no-one speaking on behalf of Bright Sugar, appeared to verify its authenticity.

86. Its obvious purpose is to give this court the impression that it was Mr Zhang (and not Mr Wang) who would have been responsible for authorising the payment of dividends, recognising that this would be an important factor for this court in resolving a central issue in this case, specifically; whether President Li would have been required to obtain Mr Wang’s assistance for the authorisation of payment and procured the issuance of the GAPI for those purposes (as Mr Zhang contends) or whether Mr Zhang had the authority and could have orchestrated the arrangements for transfer of the USD8,503,460 to Hong



Kong, entirely of his own initiative – the impression this Bright Sugar “certificate” seeks generally to convey.

87. I hold that this purported Bright Sugar certificate, is merely a transparently thin attempt at “papering over” the glaring cracks in China Yinmore’s case. It is a case which is severely undermined by the fact, as I have found to be proven, that Mr Wang’s authorisation was required for the payment of dividends in all instances.
88. This is a conclusion which is all the more irresistible in light of the fact that President Li is and was at all material times, the president also of Yunnan Yinmore and exercised his functions not only in respect of Yunnan Yinmore but also China Yinmore and Yinmore Hong Kong - the holding companies with no separate business operations of their own.
89. And I note that that President Li, Mr Wang and Mr Zhang were all based at Yunnan Yinmore Building at Kunming, in offices adjacent to each other. The notion that Mr Zhang could have acted as alleged ostensibly on behalf of Great Ally expecting that President Li would not immediately be informed is, in and of itself, far-fetched.
90. In cross-examination, it was also put to Mr Zhang that he had a longstanding relationship with Ms Wen Xia which had involved her dealing with large sums of money before on his behalf, in particular in 2007 when she is shown to have paid some RMB6 million into his Hong Kong bank account. He explained that that money had actually come from Mr. Wang Xiaobing being his (Mr. Zhang’s) portion of some RMB25 million that Mr. Wang Xiaobing had owed and paid to himself, President Li and other shareholders at the time, and that this was for the sale of some of their shares in Great Ally; an equity position



which they had offered to Mr. Wang Xiaobing as compensation for legal work he had done for them in the restructuring of the Yinmore Group.

91. Mr Zhang said that he had not realised that the payments had come into his bank account via Ms. Wen Xia, until the transactional documents were shown to him here in Court but he was not surprised about this. Ms Wen Xia had been introduced to him by President Li as the life partner of Mr Wang Xiaobing, who had also been introduced to him by President Li, as Great Ally's lawyer.
92. It was this history of close dealings between President Li, Ms Wen Xia and Mr Wang Xiaobing (the latter himself a member of the banking delegation on 31 July 2012) that caused him not to be concerned about paying over the Great Ally dividend payment to Ms Wen Xia. It was very much part of the relevant context, to his mind, that Wang Xiaobing was also present on 31 July 2012, both at the China Yinmore office where he first met up with Mr. Or and Ms. Wen Xia; then, at their foursome for lunch before going to the bank, and later at the bank when the payment was made into Ms. Wen Xia's account.
93. As to the earlier transfers to his account by Ms Wen Xia, Mr Zhang explained that he had once sought her assistance for the transfer of funds for the purchase of his home in the PRC because she was (and still is) in the real estate business. He insisted however, that he had only come to make her acquaintance through President Li who had already been very well acquainted with Ms Wen Xia and with Mr Wang Xiaobing. The latter has been President Li's and Great Ally's lawyer (and was described by Mr Zhang as Ms Wen Xia's "life partner") for a very long time. Mr Zhang insisted that all of these

circumstances explain why he thought nothing wrong of paying the Great Ally payment to Ms Wen Xia on President Li's instructions.

94. I will come below to examine in more detail the history of these personal relationships.
95. I note here another significant response of Mr. Zhang's when asked by Mr. Imrie whether he had sought a receipt of Ms. Wen Xia for the Great Ally payment. He responded that he saw no need to get a receipt to prove the payment was for Great Ally because he had already seen the GAPI presented by Mr. Or upon his arrival at China Yinmore's office in Hong Kong.
96. He responded that he had also instructed Mr. Or to send a copy of the GAPI and of the bank receipt to Yunnan Yinmore for the account records and that, to his knowledge, this was done.
97. He rejected Mr Imrie's suggestion (based on Mr. Or's witness statement) that he had instructed Mr. Or retrospectively on 8 August 2012, to create the GAPI (bearing date 31 July 2012) and send it to him at Kunming, along with the bank receipt for the transfer to Ms. Wen Xia's account.
98. I feel compelled to note here the unattractiveness of the defence case, based as it is on inviting this Court to accept Mr. Or's evidence on this issue involving as it does, an admission of forgery of the GAPI.
99. Finally, Mr Zhang described as "absurd" Mr. Imrie's assertion of his clients' case per Ms. Wen Xia; that Mr. Zhang had told her that he was to receive a dividend from "the Company" and needed her assistance to receive the dividend into her bank account and



that he gave her instructions for the onward transfers of the funds by way of text messages.

100. At my request, Mr. Zhang was asked by Mr. Levy a few questions about the relationship between President Li, Ms Wen Xia and Mr Wang Xiaobing. By that exchange, Mr Zhang responded that:

1. He was introduced to Wang Xiaobing and Wen Xia by President Li.
2. That President Li, Wang Xiaobing and Wen Xia are very good friends.
3. That Wang Xiaobing worked for President Li on “many different matters” as a lawyer, including on behalf of Great Ally.
4. That there was a great difference between the friendship of President Li and Wang Xiaobing and Wen Xia (as a couple) and his own acquaintance with the couple, which was much less.
5. That when Wang Xiaobing and Wen Xia came to Kunming, they would be hosted by President Li; but
6. If Mr Zhang had dinner with Wang Xiaobing and Wen Xia, President Li would always be included.

101. Mr Zhang was not cross-examined on any of these statements. He was, however, cross-examined about a particular occasion, following the payment of 31 July 2012. It was put to him that he had dined with Ms Wen Xia and presented to her a hand-written note on which he had noted exchange rates for USD to RMB, and complained to her that he had not realised the exchange rates or the amount of RMB for the USD8.5 million that he had expected.



102. This note had emerged in the case for the first time well after the pleadings had been closed, as exhibited to Ms. Wen Xia's second witness statement.
103. When shown to Mr. Zhang, he readily acknowledged that the note was written by him. He explained however, that the note, along with many others of his documents, must have been "stolen" from his office at Yunnan Yinmore Building in Kunming, after he had been ousted from the directorship of the companies and evicted from those premises.
104. Mr. Zhang explained that he had made the note just prior to his trip to Hong Kong, on the occasion of President Li's visit to his office to discuss the Great Ally banking transaction, and when it was that President Li had indicated how many RMB he expected to receive for the USD8.503 million deposit and that the RMB would be used by him for financing the Yinmore Ltd. restructuring. On the note he had written the amount indicated by President Li – RMB 54,247,000. He had also done his own calculations from USD to RMB arriving at an exchange rate which he also noted on the paper and upon returning to Kunming from Hong Kong, he had left the note in his office. He did not meet Ms. Wen subsequently for dinner and did not provide the note to her. She must therefore have obtained it from someone on President Li's side, it having been "stolen" from his office. He had earlier reported the theft of his records from his office to the police at Kunming.

Mr He Ning

105. Mr. He testified in support of Talent's case. He is the 21.06% shareholder of Great Ally, along with President Li (68.42%) and Mr Xie Bing (10.52%). Mr He also was, until its equity restructuring in or about March 2013, a minority shareholder of Yinmore Ltd. He



and others of the seven Founding Shareholders, had been urged by President Li to relinquish their dividend entitlements from China Yinmore for 2011, allowing it instead to be used for the restructuring of Yinmore Ltd. This they had refused to do, calling instead for their dividends (as shown for instance in the joint letter of 5 September 2013 to Chairman Ge referred above at paragraph 31 and further below) but had still not received any dividend distributions in keeping with the 24 May Resolution.

106. Mr He testified in support of Mr Zhang's evidence in one important respect in particular.

107. This had to do with President Li's response to his (and Mr Xie Bing's) request for the payment of their share of the dividends which they had been informed Great Ally had received and for the payment of the outstanding amount of USD13.2 million which was still due to Great Ally on the basis of the 24 May Resolution. (As shown above on that basis, Great Ally was due, as the 23% shareholder of China Yinmore, a total of USD21.7 million).

108. Mr He (on oath and in confirmation of his witness statement) testified that he was told by Mr Zhang that Great Ally had received approximately USD 8.5 million in dividends at the end of July 2012. That this had been paid directly into Ms Wen Xia's account in Hong Kong in accordance with Great Ally's instructions and that those funds had been used in the equity restructuring of Yinmore Ltd. Mr Zhang had also told him that on 19 August 2013, on behalf of Talent, he had requested that President Li arrange for China Yinmore to make payment of the dividends declared by China Yinmore to Talent but that this request had been refused by President Li.



109. This account from Mr Zhang rang true said Mr He, in particular because, in or around October 2012, President Li had told him that he had arranged for funds to be transferred from Hong Kong to the PRC so that he could use those funds for the equity restructuring of Yinmore Ltd.
110. Mr He testified that it was against that background that, on 5 September 2013, Mr Geng Huaijian (as minority shareholder of Sino Million), Mr Zhang, Mr Xie (as 10.52% shareholder of Great Ally), and himself (as 21.06% shareholder of Great Ally), wrote to Chairman Ge (in his capacity as chairman of China Yinmore), requesting payment of the dividends in full.
111. In telling part this letter reads as follows:

“Chairman Ge,

Greetings!

As the founding shareholders of both China Yinmore Sugar Company Limited and its wholly owned subsidiary, Yunnan Yinmore Sugar (Group) Limited, we would like to discuss two matters with the board of directors of China Yinmore Sugar Company Limited through you. We would be grateful if [we] could have your attention on this matter.

1. In relation to the 2011 dividends distribution.

The boards of directors of Yunnan Yinmore Sugar (Group) Limited and China Yinmore Sugar Company Limited had resolved to declare dividends for 2011 to the shareholders, and thereafter in May and July 2012, Bright Sugar Group Company Limited received 55.6% of its entitled dividends, Goldman Sachs Strategic Investments (Asia) LLC received 100% of its entitled dividends, and Great Ally Group Limited received 39.16% of its entitled dividends. However, Talent Business Investments Limited and Sino Million Investments Ltd have not received any of their dividends.

As three of the founding shareholders of China Yinmore Sugar Company Limited, we urge you and the board of directors to carry out the resolutions of the board and distribute all outstanding amounts of the 2011 dividends to Great Ally Group Limited, Talent Business Investments Limited and Sino Million Investments Limited, the founding shareholders of China Yinmore Sugar Company Limited, as soon as possible” [emphases added].

112. This letter goes on to explain the writers’ concern over why the majority shareholders of China Yinmore should seek to compel them to subscribe to yet another joint venture project called the Yinmore Dafeng Project¹³. They expressed their concerns that should the outstanding dividends be “used for investment purposes” as proposed by President Li:

“As the founding shareholders, and in view of the company’s needs, Great Ally’s USD13.2 million dividends have not been distributed, and Talent Business and Sino Million’s USD5.66 million dividends each have also not been distributed. If the distributable dividends are transferred to Yinmore Hong Kong and used for investment purposes instead of being distributed to the shareholders, then, in view of the fact that the majority shareholder and the other shareholders have received all or part of their entitled dividends, this will certainly be unfairly prejudicial to the founding shareholders and greatly undermine our interests.” [emphases added].

113. Mr He testified, without rebuttal, that this letter never received a response from Chairman Ge (or from anyone else on behalf of China Yinmore).

¹³ An initiative led by Bright Sugar as majority shareholder of China Yinmore and, it seems, supported by President Li, separate and apart from the Yinmore Ltd refinancing that he also promoted in his own interest as its majority shareholder.

114. Mr He also testified that subsequently, Mr Xie and himself made repeated oral requests for President Li to distribute their portions of the received dividends to Great Ally's shareholders. President Li did not respond to any of those requests. Nor did he respond to a detailed letter subsequently sent by them on 24 December 2013, in which they repeated their assertion that Great Ally had been paid some USD8.5 million of the USD21.71 million due to it and repeated their request that he press for China Yinmore to pay the outstanding dividends, as soon as possible. Thus, there was no assertion to his fellow shareholders by President Li, that Great Ally had not received USD 8.5 million in dividends or that Mr Zhang had in anyway misrepresented the true position.
115. This I interject, must be noted as a remarkable state of affairs to have developed among the founding shareholders of a successful business enterprise, where the circumstances of the Great Ally payment were already fully known to President Li and where it was only later to be asserted by him that one of them - Mr Zhang - had simply misappropriated USD8.5 million of their dividend entitlements.
116. Under cross-examination by Mr Imrie, Mr He accepted that he did not specifically complain to President Li about the payment made to Ms Wen Xia or about monies being used by him to fund Yinmore Ltd, but he was adamant - when the contrary was suggested- that he had made the oral requests to President Li for payment, as set out in his witness statement and confirmed in his live testimony.
117. I note here that in all events, there is no denying the letters of 5 September 2013 and 24 December 2013 to which Mr He was a signatory, and the lack of response to either.



118. I also note that Mr He was cross-examined by Mr Imrie about the circumstances – the timing in particular – of the putative refinancing of Yinmore Ltd. And, in his closing arguments, Mr Imrie did emphasise President Li’s evidence that the refinancing of Yinmore Ltd did not occur until 2013, some 8 months after the Great Ally payment on 31 July 2012. This was aimed at supporting an inference that Mr Zhang’s account of president Li’s instructions and reasons for the Great Ally payment could not be true.
119. I will simply note in this regard here in passing, a factor to be further discussed below; which is that no disclosure has been provided by China Yinmore as one might expect, to support its case; in this context, specifically to show when or how President Li was able to refinance Yinmore Ltd.
120. I now turn to the evidence as given on the defence case. It began with President Li Jinquan himself.

President Li Jinquan

121. In his witness statement, by way of explaining the history and background to Great Ally, China Yinmore and the Yinmore Group, President Li confirms his own pre-eminence among the seven Founding Shareholders and how it was that even after Bright Sugar’s entry, he came to be confirmed as President of China Yinmore and so, of the Yinmore Group as a whole.
122. As regards Mr Zhang, he states that since the incorporation of China Yinmore in 2007 until 13 December 2013 (when he was ousted) Mr Zhang’s position was “[second] *only to me in the Company*”. At all relevant times and until his removal, he states that “*Mr*



Zhang was in charge of financial and audit matters including but not limited to the payment of funds and the signing of audit contracts and financial book-keeping relating to Yinmore Hong Kong and the Company". And that although the accounting work of China Yinmore and Yinmore Hong Kong was actually carried out by Yunnan Yinmore financial personnel, the status and position of Mr Zhang in the Company gave him authority to give instructions to Mr Wang Zhiwen directly.

123. Further, (at paragraph 40 of his witness statement) "*.... other than Mr Zhang himself, there were no other personnel from the Company approving or checking the amount of dividends to be transferred and paid. Further..., Mr Wang Zhiwen was only the vice president in charge of Yunnan Yinmore's finance, he was only acting on Mr Zhang's instructions in relation to the distribution of dividends and was only authorised to approve money transfers from Yunnan Yinmore and its subsidiaries..... Mr Zhang organised all of (China Yinmore's) dividend payments including those made pursuant to the 24 May Resolution, until his removal on 13 December 2013*".
124. My reasons for having already rejected this contention will be further explained throughout this judgment.
125. In his denial of any involvement in the authorisation or instruction of the Great Ally payment, President Li gives the impression (at paragraph 43 of his witness statement) that he first became aware of an alleged payment of dividends to Great Ally when he read the letter of 5 September 2013 from Mr Zhang, Mr He, Ms Xie and Mr Geng Huaijan (the "5 September letter") a letter that he describes as "*evidence of collaboration*" between its authors:



“... when I read the 5 September letter, it became apparent to me that there were serious disagreements surrounding the payment of dividends by the Company. I suggested to [Chairman Ge] that payment of the dividends for 2011 cease and that an investigation be undertaken. [Chairman Ge] agreed with my suggestion and the Company cancelled payment of all dividends and commenced the preliminary investigation.... On 11 October 2013 the Company sent Mr Zhang a notice requiring him to prepare a written report on the distribution of dividends... he was the best person to know about the dividend payment situation.

On 22 October 2013, Mr Zhang submitted a dividend payment report to the Chairman [with a table attached]. The table was prepared by the financial personnel of Yunnan Yinmore based on the financial records at the time. The USD8,503,460 transferred to Ms Wen was recorded as a payment to Great Ally based on Mr Zhang’s instructions.... This was different from my understanding of the situation. As the major shareholder of and main person responsible for Great Ally, I know that Great Ally has not received any dividends from the Company for the year 2011.

As a result of the preliminary investigation, on 13 December 2013, the board of directors of the Company directed that the payment of any further dividends for 2011 cease and instructed Joe Lam, the company secretary, and me to further investigate the serious issues involved in the dividend payments.... and the following steps were taken:

(a) *Joe Lam checked the Company's financial records and the Company's bank statements.... We noted that a payment of USD8,503,460 was made on 31 July 2012 and the recipient was Ms Wen Xia... but it was recorded that the payment was made to Great Ally in the Company's financial records.*

(b) *Joe Lam made enquires of the financial personnel of Yunnan Yinmore and Mr Wang Zhiwen. Based on the information gathered from the enquires, we concluded that on or about 24 July 2012 Mr Zhang had instructed Mr Wang Zhiwen that Great Ally requested a USD8,503,460 dividend to be paid. On 27 July and 30 July 2012, upon receiving Mr Zhang's instructions, Mr Wang Zhiwen arranged for appropriation of funds and transferred USD8,503,460 from Dehong Yinmore and Bannan Yinmore [2 PRC Subsidiaries]*

In August 2012, Yunnan Yinmore's financial personnel received a foreign currency withdrawal form... from the Hong Kong offices of the Company, which stated that USD8,503,460 was paid to Ms Wen Xia. The financial personnel referred this issue to Mr Wang Zhiwen and Mr Wang Zhiwen then referred to Mr Zhang. Mr Zhang told him that Ms Wen Xia was receiving the dividends on behalf of Great Ally and so Great Ally should be recorded as the payee in the Dividends Payable Ledger. Therefore, Mr Wang Zhiwen instructed the financial personnel of Yunnan Yinmore to record Great Ally as the payee in the Dividends Payable Ledger for the USD8,503,460.

On or about 20 December 2013, Joe Lam and I contacted Ms Wen Xia, the recipient of the USD8,503,460 transfer from the account of the Company, by



telephone. Ms Wen Xia confirmed that she had received the transfer on behalf of Mr Zhang and had understood that the dividend was to Mr Zhang for the Company. Ms Wen Xia also confirmed that she had already transferred out the funds based on Mr. Zhang's instructions.....

Mr Joe Lam and I concluded our findings in the abovementioned investigation and submitted a report to the board and the Chairman of the Company”.

President Li goes on in his statement to assert that due to the disruption caused to the Company's normal operations as a result of Mr Zhang procuring the transfer of a substantial sum of money to Ms Wen Xia, as well as a series of requests made by the four people, Mr He, Mr Xie, Mr Geng Huaijan and Mr Zhang himself, they were all dismissed or removed from their respective positions held within the China Yinmore Group.

Thus, the effective removal of those whose interests are now arrayed on the opposing side in this case.

126. President Li was cross-examined by Mr. Levy on the issue of whether it was Mr. Zhang or Mr. Wang Zhiwen who was in charge of finances. Rather more equivocally than the adamant assertions in his witness statement, he responded: *“My recollection is that the gentleman who was always in charge of finance within the China Yinmore Group was Mr. Zhang. This is as Mr. Wang states in his witness statement”.*

127. And, when questioned further by reference to the minutes of the meeting of the board of Yunnan Yinmore dated 5 January 2012 (Vol. B 2.Tab 29), why it was that item 2 thereof read *“Wang Zhiwen to raise the profit distribution proposed for the year 2011”*, President Li responded rather surprisingly in light of his earlier evidence, that Wang Zhiwen was



“in charge of financial matters, reporting, as his superiors, only to the combined Board of Presidents of the various group companies. However, on a day to day basis, he was the one who made the decisions on financial matters.”

128. Further, that, although confirming that Mr. Wang Zhiwen was appointed as Bright Sugar’s selected candidate, he did not know whether he reported back to Bright Sugar.

129. President Li was then questioned about the E & Y audit report for financial year 2011-2012. Although accepting that he had signed off on it (accepting it as the final audit) on 25 December 2013, he acknowledged that it made no reference to the alleged misappropriation of the Great Ally payment of USD 8.5 Million. And this although he accepted (later in cross-examination), that when he signed it, he knew that he was representing that the audit report did give a “true and fair view” of the state of the finances of China Yinmore.

130. Moreover, although at first saying that it had been *“my understanding...that (Mr. Wang Zhiwen) had notified (E & Y)”* of the misappropriation; President Li then asserted, *“I can affirmatively tell you that someone had notified E & Y on this matter but through what format or what channel, I’m not clear”*.

131. Eventually, after what appeared to be obvious hesitation over whether he had been told this by Wang Zhiwen or Joe Lam, President Li responded as follows to a question from Mr. Levy:

“Q: My question is very simple, sir, please listen to it and answer it.



Who told you that Ernst & Young had been informed of the misappropriation of 8 and a half million odd dollars? It's a very simple question and I expect a name.

A: Well, both Mr. Wang Zhiwen and Mr. Joe Lam had told me that."

132. And then these even more surprising answers in the next exchanges:

"Q: And can you just look at the (audit) engagement letter, paragraph 20, please?

A: Yes, please.

Q: Do you see that the management was responsible to inform Ernst & Young about unreasonable conduct on financial matters?

A: Yes, I see it.

Q: Did management inform Ernst & Young, so far as you are aware, of an accusation of fraud against Mr. Zhang?

A: Well, I want to know whether it is the Company accusing Mr. Zhang or Mr. Zhang levelling a charge against the Company.

Q: Your case is very simple, sir, and don't try to be too clever. You knew by the middle of September 2013 on your own case, that Mr. Zhang had misappropriated 8 and a half million dollars and the company soon after concluded that he was a fraudster. And the simple question is did you tell Ernst & Young (as the engagement letter (paragraph 20) required)?

A: Yes, the management of the company should have done that.

....



Q: Now listen to this question and answer it only, please. You just said "management should have".

A: Correct.

Q: I'm asking whether, to your knowledge, an individual actually did so?

A: Yes, they should have.

Q: But you can't say it actually did happen because somebody told you it had happened?

A: No, because I need not have participated in that. So everyone should have carried out their respective responsibilities.... So whatever is within their realm of responsibilities that's what they should have done.

Q: Yet, I can suggest to you that China Yinmore has not disclosed one single document to show that such a disclosure was made to Ernst & Young.

A: All I can say is China Yinmore positively had made such a notice to Ernst & Young.

Q: In writing?

A: Well actually, I've already responded to whether it is in writing or through other means of communication, that's not my responsibility to know and I have no obligation to pay attention to all these details."

133. Later, when questioned further about his signing off on the E & Y audit as representing a "true and fair view" of the financial position of China Yinmore, another telling exchange took place:



"A: Why did I sign this document? Because I was still not clear on what this \$8.5 million was about and how to determine its nature. I was still not clear. Because I have this responsibility to the company and I should also be responsible to Mr. Zhang.

Q: That's a lie because we know that on the 27th December 2013 [2 days after signing off on the audit report] you and Joe Lam signed off on a report which conclusively determined, so far as you two were concerned, that Zhang Nan had misappropriated \$8 and a half million. It's a lie, isn't it, what you just said?

A: No, it's not a lie. Why is that the case? Very simple, because the lawsuit had begun, so whatever we reported to the board of directors, it's our internal thing. It had not been disclosed – so it's only our view point because the lawsuit has already begun, so to report to the board of directors, I should await the result of the lawsuit.

Q: You had already concluded on the 27th December that Zhang Nan had misappropriated \$8 and a half million?

A: That's my opinion. Just like here in court, I have a viewpoint, he has his viewpoint, so we have to wait for the Court's decision to determine the nature of this.

[And after further question about accounting practice]:

...I was not aware when signing off on the accounts that they could record the fact that the final correct position on an item in the accounts was not yet clarified or that audit reports habitually state that fact. ...All I know was that the person responsible to be in charge of this aspect of the operation...told me that I could sign on that document and I did. ...Since I do not know English, they showed me this document and said that there's no problem and that's why I signed it."

134. And later in his testimony in relation to the payment of dividends, President Li, when shown the actual entries in the audited financial statements, confirmed that the disputed Great Ally payment of USD8,503,460 was indeed included in the amount of RMB 290,523,000 million reported as dividend paid. This follows the process of deduction of the dividends in the amount of RMB309,477,000 not yet paid from the dividends of RMB600,000,000 declared. (At pg. 46 and 56 of the Audit Report at A.3. tab 33).
135. Likewise, he confirmed that the accounts did not record that a debt of USD2.8 million was owed to China Yinmore by Talent or Mr. Zhang.
136. It was also pointed out to him that, contrary to his assertion in his witness statement that Mr. Zhang was in charge of the financial affairs of China Yinmore; the board resolution dated 24 February 2011 (B2. Tab 27) shows that Mr. Joe Lam was appointed as Chief Financial Officer and qualified accountant of China Yinmore as of that date. His response was that Mr. Lam had been appointed to those positions only for the purposes of the then proposed IPO of China Yinmore on the HKSE, that Hong Kong law did not



recognise the public accountant certification of mainland China and so Mr. Lam, who was an Australian trained and Hong Kong certified public accountant, was appointed only for the formal purposes of the IPO. Mr. Zhang, he insisted, was throughout responsible for the financial affairs of China Yinmore, including the payment of dividends.

137. In his witness statement President Li also raised an allegation that at a meeting between himself and Mr. Zhang on 19 August 2013, Mr. Zhang had asked him to give him RMB 24 million as a form of compensation because the IPO of China Yinmore had not happened. That Mr. Zhang had said that he planned to relocate to Hong Kong and needed this money to be able to do so. Mr. Zhang, he said, threatened to sue Chairman Ge (as head of China Yinmore) over the matter. Implicitly, this was presented by President Li as an explanation of Mr. Zhang's motive for misappropriating USD 8.5 million; that is: he felt it was due to him because the IPO had not proceeded.

138. When pressed about this in cross-examination as to why – it seems typically of the defence - no record had been made of such an important conversation and why it was being disclosed so late in the day, President Li gave the surprising answer that he had contemporaneously reported Mr. Zhang's demands to the "Conference General Meeting" and a record was made of his report which was printed out for everyone in attendance. When asked why that document had not been disclosed in this trial, President Li responded that he did not think it would be needed, offering from the witness box to call his office and have the document sent to court.



139. President Li was pressed in relation to this alleged extortionary attempt by Mr. Zhang. He was shown the letter dated 15 October 2013 written by Mr. Zhang to the Board of China Yinmore in which Mr. Zhang once more had pressed for the payment of Talent's dividend. In that letter (B.3 Tab 23) Mr. Zhang asserted that on 24 May 2012 the Board of China Yinmore passed a resolution to distribute USD 94,396,022.78 as dividends to all shareholders of which USD5,663,761.97 was to be distributed to Talent.

That China Yinmore had paid dividends to Goldman Sachs, Bright Sugar and Great Ally but had not paid any dividends to Talent. His letter continued in reference among other things, to a face to face meeting on 19 August 2013 with President Li in these terms on behalf of Talent:

“On 19 August 2013, our director Zhang Nan relied on the resolutions of the board of directors and made a request to the President, Li Jinquan, for full payment of (Talent's) dividends; on 23 August and 5 September, he made requests to Chairman Ge in person and by written form for full payment of the dividends.... Unfortunately, despite the numerous requests mentioned above, no clear response was given, and [Talent] did not receive any payment.”

140. President Li confirmed that he had seen this letter at or around the time it was written or received on 15 October 2013. When asked why then he had not responded to this letter to set straight the lies in it from Mr. Zhang about the payment of the Great Ally dividend and the allegedly extortionary nature of the conversation of 19th August 2013, he

answered that as it was Chairman Ge to whom the letter was addressed and Chairman Ge had not asked him to respond to it, he did not know that he should have responded to it.

141. This is, to say the least, another surprising answer: this letter, although addressed to Chairman Ge, had been brought to the attention of the Board of China Yinmore of which President Li was and is president. He is, moreover, as the majority shareholder of Great Ally, an alleged recipient, according to Mr. Zhang's letter, of dividend distributions which, he claims to have known, had not been received by Great Ally.

142. Similar observations must be made about President Li's further testimony in cross-examination to the effect that he had not responded to Mr. Zhang's written aforementioned report to Chairman Ge dated 25 October 2013 (B3. 84) on the payment of dividends, notwithstanding that at paragraph 2, Mr Zhang had reported that Great Ally had received USD8,503,460.00.

143. The transcript of this aspect of this evidence reads as follows:

“A: *(First, in response to the letter of 5 September 2013)*

...I [had] already said Great Ally had not received the money, so I had to be responsible both to the company and to Mr. Zhang, so I had to be cautious, I had to be prudent.

...

[and in response to Mr Zhang's report of 25 October 2013]:

“So this was October 25th. The company was still in a state of paralysis from August to September through October to December [(over the alleged Great Ally payment)]. So, on the day of the 13 December, the



company had a meeting and it was only then that it returned to normal operation.”

144. President Li was here, rather obliquely, referring to the reconvened meeting at which the resolutions purportedly passed at the abortive 4 November 2013 meeting, were finally resolved.
145. Implicitly, he must be understood as saying that rather than respond in person and directly to Mr. Zhang’s pointed allegations, he thought it proper to allow the corporate process to deal with the matter and so operate to restore the company from its “state of paralysis”. He was personally not comfortable about alleging that the Great Ally payment had been “misappropriated” or stolen, although he had been aware since no later than mid-September 2013, that Mr. Zhang was alleging that the payment had been made for the benefit of Great Ally on his instructions.
146. When asked how he and Mr. Lam had undertaken their enquiries leading to their report of 27 December 2013, President Li first responded that he had “looked up” Ms. Wen Xia and having spoken to her, it was confirmed that she had received the payment of USD8.5 million from Mr. Zhang. I note in passing, that this response gave the impression that there was no prior established acquaintance between Ms Wen Xia and himself, that her identity had to be confirmed by inquiry.
147. When pressed about this by the Court, President Li said he recalled that he had been led to Ms. Wen Xia by the accounting records because Mr. Zhang had instructed Mr. Or to send a copy of the bank payment voucher (showing the payment to Ms. Wen) to a Ms. Zeng Yan, an officer at Yunnan Yinmore, for the accounting records. When asked by Mr



Levy, he acknowledged that the fact that the payment had been made to Ms. Wen Xia, could readily have been discovered by anyone within China Yinmore, as there was “*a nice little slip showing that Wen Xia had been paid the money*” sitting within the accounting records.

148. Notwithstanding this fact, President Li said that he felt that both himself and Mr. Lam had been justified in their criticism of Mr. Zhang, in their complaint to the Board that he had not co-operated fully with their investigations and this was because Mr Zhang had not specifically mentioned the payment to Ms. Wen in his report of 25 October 2013 to Chairman Ge.

149. Then followed this exchange:

“Q: Did you take a note of the telephone conversation with Ms. Wen?”

A: I do not make records.... Why would I be making records, making a phone call would require me to make a record?”

Q: Because...you would make a record because you are conducting an investigation into the misappropriation of \$8 and an half million and any person making a report... involved in that investigation, would keep records. That’s correct, isn’t it?”

A: Thank you for your reminder. After this lawsuit, I will know, Yes, all future phone calls, I should be making records.

Q: Now, in the course of this investigation report that you conducted with Mr. Lam, did you email each other, ...or did you pass him any notes, memos or letters...”



A: No.”

150. President Li was then shown the report submitted by himself and Mr. Lam on 27 December 2013 (B4 Tab 107). He was asked: *“Is it normal for a victim to investigate the crimes against him?”* To which he responded: *“Well the Chairman arranged to have me investigate and that’s why I investigated.... I was embarrassed by this. ...I expressed to the Chairman that I felt awkward; embarrassed.”*

151. It also emerged in his cross-examination, that President Li was asserting that it was Mr. Lam who had first contacted Ms. Wen Xia on 20 December 2013 but she had been reluctant to discuss what had happened with him because of her *“concerns over exchange controls”*. That, President Li said, was the reason why it had been necessary for him to call Ms. Wen personally. He was concerned to secure her involvement as a witness. And that, far from having had to “look her up”, he was able to call her himself because he had her private telephone number; that when he did so, she confirmed to him her concerns over exchange controls and also mentioned to him in this telephone conversation with her - circa 22 December 2013 - that her account at HSBC had been closed because the bank apprehended *“suspicious activity”*.

152. President Li was then asked to explain what Ms. Wen’s concerns over exchange control could have been in light of the fact that Mr. Wang Zhiwen would have cleared that issue at Yunnan Yinmore when he converted RMB to obtain the transfer of the USD8.5 million to Hong Kong. President Li’s ultimate response to this was *“That I do not know”*.

153. President Li was also asked questions about the nature of his relationship with Mr. Wang Xiaobing and Ms. Wen Xia.



154. Although at first denying that Mr. Wang Xiaobing was either Great Ally's or his personal lawyer or a personal friend of his; when confronted with bank records showing payment by him of USD1.7 million on 23 August 2013 to Mr Wang Xiaobing, he admitted to a prior relationship and to having made "*a loan from Great Ally*" to Mr. Wang Xiaobing in that amount.
155. His response was equivocal. At first, he said that the loan was to finance Mr Wang Xiaobing's law practice but later he said he did not know what the money was to be used for.
156. The loan, he acknowledged, was entirely unsecured and provided nonetheless because "*I trusted him*".
157. One half the amount of the loan - USD 850,000 – had in fact, been paid to Mr. Or. As to why this happened, President Li said he could only explain that he understood this was because Mr. Wang Xiaobing had enlisted Mr. Or to obtain RMB for him.
158. Documented evidence of a further receipted payment to Mr. Wang Xiaobing in the amount of 1.29 million Hong Kong dollars for "legal fees" in January 2013, compelled President Li to admit that Mr. Wang Xiaobing was indeed Great Ally's lawyer. Moreover, that Great Ally was funding the entire cost of the China Yinmore side of this litigation, including the costs of bringing the large contingent of its witnesses from the PRC to the Cayman Islands.
159. President Li also admitted under cross-examination, that Mr. Wang Xiaobing knew that he was president of China Yinmore and controlling shareholder of Great Ally but, he insisted, Ms. Wen Xia did not know of his connections to Great Ally.



160. This insistence was maintained by President Li although he also confirmed - albeit only after being required by the Court to disclose what he termed "*privacy matters*" - that Ms. Wen Xia and Wang Xiaobing are life partners and were in fact sharing a hotel room while here for this trial.
161. It is against this background that this Court is required to assess President Li's denial of any prior knowledge that Ms. Wen was to be paid the USD8.5 million or that her account had been closed as the result of "suspicious activity", arising from her subsequent dealings with the onward transfers from her account.

Ms Wen Xia

162. Ms. Wen Xia describes herself as a business woman who currently operates a number of companies in the real estate industry in Shenzhen, Guangdong Province, in the PRC.
163. The embodiment of the modern day Chinese woman, her confidence and assertiveness in the witness box and her demonstrable command of the confidences of successful business men, enliven Mao Zedong's vision expressed in his famous proclamation that "*in China, women hold up half the sky*".
164. Although not herself an investor or employed in any capacity in China Yinmore, her admission in her first witness statement that "*some of the directors and officers of (China Yinmore) are known to me*" must now, in light of all the evidence in this case, be seen as a guarded understatement.
165. It certainly begs the important question in this trial, just how well acquainted is she with the influential men on either side of this dispute.



166. As regards Mr. Zhang, she states in her first witness statement that *“I first met Mr. Zhang Nan through friends of mine in PRC, seven or eight years ago. I cannot recall where we met.”*

167. This, of course, is to be juxtaposed with Mr. Zhang’s assertion, that he was first introduced to Ms. Wen (and her life partner Wang Xiaobing) by President Li.

168. She continued in her witness statement:

“Mr. Zhang became a good friend of mine after we met. I know that Mr. Zhang was the vice president and a shareholder of (China Yinmore). However, I did not know whether he held his interest in the Company directly or indirectly. I know that his position in China Yinmore was second only to Mr. Li Jinquan (President Li) and that Mr. Zhang was in charge of listing matters for (China Yinmore) in Hong Kong. I have assisted Mr. Zhang in the transfer of funds by receiving money into my bank account in Hong Kong on his behalf and transferring the money onward according to his instructions. Mr. Zhang never told me why he needed me to receive money on his behalf. I did not obtain any benefit from providing such assistance to Mr. Zhang; I merely considered it to be a favour for a friend.”

169. As to her relationship with President Li, her first witness statement is quite terse:

“I also met Mr. Li through friends of mine and Mr. Li gradually became a good friend of mine. I know that he is the president and shareholder of (China Yinmore). Mr. Li has never borrowed money from me.”



And as regards the disputed Great Ally payment, this is what her statement says:

“At the end of July 2012, Mr. Zhang told me that he was to receive a dividend from (China Yinmore) and that he needed my assistance. Mr. Zhang asked me to receive the dividend payment into my bank account with (HSBC) and to transfer the funds onwards.

Mr. Zhang did not tell me why he needed me to receive the money instead of receiving it into his own bank account directly.

Given my good relationship with Mr. Zhang and our history of doing business together, I agreed with Mr. Zhang to receive the dividend on his behalf and to transfer it onwards in accordance with his instructions.”

170. She then described her attendance at the bank on 31 July 2012 with Mr. Zhang and Mr.

Or and the transfer of the disputed Great Ally payment and continued:

“After the transfer to my HSBC Account on 31 July 2012, Mr. Zhang contacted me several times by text messages with instructions for the onward transfer of the funds. Given the passage of time, I no longer have a record of the text messages that Mr. Zhang sent to me. Pursuant to the instructions of Mr. Zhang, I made the transfers (onwards) as set out in my statement below.”


171. The onward transfers are listed in her statement and separately confirmed by her account records to have been made as she describes. The transferees bear distinctive corporate names: “Wealthy Hero (HK) Ltd”; “Baotong Trading Limited”; “Full Long Limited”;



“Chuang Li Elec Ltd”; Hua Xing TDG Co. Ltd.”; “Ronxin Technology LTD”; “JD Sports F Ltd” and “Dragon Strong Investments Ltd.”.

172. Each transferee is recorded in the bank records as having an established account with a bank in Hong Kong to which the respective transfers were made.

173. It is thus a remarkable feature of this case, that a sophisticated, well-connected and savvy business woman like Ms. Wen Xia could have paid out hundreds of thousands of dollars to each of those clearly and distinctly identified corporate account holders and not know anything about any of them. As she states:



“I do not know any of the account holders referred to above [as in her statement] to whom I made the onward transfers and I do not know whether or not they are connected to Mr. Zhang in any way. Mr. Zhang never told me anything about the account holders or why he wanted me to transfer funds to those accounts.... The total funds transferred amounted to US\$8,500,000.”

174. Against this background it is very telling that Mr. Zhang has provided disclosure of his bank accounts and no connection between him and any of the identified transferee entities has been revealed. This is to be contrasted to the lack of disclosure by President Li or Great Ally of their account records and the inability of this Court to compel disclosure because neither is a party to this action.

175. Ms. Wen Xia’s statement continues:

“... As a result of the number of transfers from the HSBC Account and the amounts being transferred, HSBC, according to its internal compliance

guidelines, considered that the use of the HSBC Account displayed signs of suspicious activity and decided to cancel my HSBC Account and required me to close it within a certain time frame. The HSBC Account was closed in November 2012.”

And about the GAPI:

“The legal representatives of (China Yinmore) have shown me a copy of an instruction from Great Ally to the Company dated 31 July 2012, which requests (China Yinmore) to remit US\$8,500,000 in relation to Great Ally’s 2011 share of dividend to my HSBC Account in order to settle a debt payment to me. I confirm that before being provided with that document which purports to be an instruction from Great Ally by the legal representatives of the Company, I confirm that I have never had any business dealings with Great Ally. I confirm that Great Ally has no debt owed to me and likewise I do not owe Great Ally any money. I confirm that Mr. Li has never owed me any money. I confirm that the US\$8,503,460 was received by me on behalf of Mr. Zhang and transferred onward by me on Mr. Zhang’s instructions to his designated beneficiaries.”

176. In her second witness statement, dated 12 February 2015 (thus only three weeks before the start of this trial); Ms. Wen Xia produces the aforementioned handwritten note of Mr. Zhang, said to have been shown and given to her in early December 2012 *“in response to my complaint to him that (my) HSBC Account had to be closed, in order to demonstrate that he had also suffered a loss in the amount of USD557,000 due to the different exchange rates involved in the transfers.”*

177. This, she said, happened when she met Mr. Zhang in early December 2012 “...for dinner at a Chinese restaurant in Shenzhen, PRC.... Three or four mutual friends of ours were also present at that dinner.”
178. These “mutual friends” remained nameless until Ms Wen Xia was being cross-examined and none of them has appeared to testify at this trial. The names Wu Di and Wei Chin Li were mentioned for the first time in cross-examination. Ms. Wen said that also present at that alleged dinner party, was Mr. Wang Xiaobing, himself in attendance but not as a witness at this trial.
179. In cross-examination, Ms. Wen Xia adamantly denied being in an intimate relationship with Mr. Wang Xiaobing. She persisted in this denial notwithstanding that she was told that Mr. Zhang had described herself and Mr. Wang Xiaobing as “life partners” and that President Li had acknowledged - albeit reluctantly after being required by the Court to answer - that they shared the same hotel room while here in Cayman.
180. Despite her otherwise modern orientation Ms. Wen depicted coyness about her relationship with Mr. Wang Xiaobing.
181. This is an attitude not to be overlooked when assessing the overall veracity of her evidence. At the very least, one is compelled to wonder why would she wish to deny that relationship in the context of this case, given that Mr. Wang Xiaobing’s long-standing relationship with President Li could suggest a closer relationship between herself and President Li than she has been prepared to admit.
182. Her responses to questions about her relationship with Mr Or were also less than forthcoming:



“Q: Do you know Or Ching Hei?”

A: Which Mr. Or Ching Hei are you talking about?

Q: He’s a witness here. He’s part of your group, so I’m sure you’ve met him before.

A: If you’re talking about the Mr. Or that Mr. Zhang Nan introduced me to while in Hong Kong, yes I know which one, but I don’t know him well.

Q: But he’s a person...he is a gentleman that has travelled from Hong Kong to give evidence here; we are talking about the same person?

A: Yes, this is that Mr. Or. I have met him and I know about him, but we are not familiar with each other.

Q: You are not friends?

A: Well we are acquaintances.

Q: Okay. Do you know anything about Mr. Or’s relationship with Wang Xiaobing?

A: Not very clear.”

183. From this line of questioning Ms. Wen eventually came to admit that Mr. Wang Xiaobing and Mr. Or are friends and, as regards herself:

“Whenever I met up with Mr. Zhang Nan in Hong Kong, Mr. Or was there and, so, we met each other several times.”

184. She, however, denied any knowledge of the transaction in August 2013 when Mr. Wang Xiaobing “borrowed” USD1.7 million from Great Ally and arranged for USD850,000 of that money to be paid to Mr. Or.



185. Ms. Wen Xia proved to be no more compelling in her answers to the question: *“why did you agree to receive the USD8.5 million into your account?”*
186. At first, she said it was not unusual for her to agree to assist friends by receiving money into her account but when pressed on this, she sought to suggest it was not unusual only when the friend happened to be Mr. Zhang himself. And when pressed further, she sought to explain that she had done such a transaction for him once before – the occasion in 2007, acknowledged by Mr Zhang, when Mr. Wang Xiaobing had used her account to pay money into Mr. Zhang’s account.
187. But here too her evidence lacked persuasion when she suggested that it was Mr. Zhang who had contacted her in 2007 and asked her to receive the money into her account and then pay it on into his account. She insisted in this regard that *“I did not pay attention to the fact of... who it was that Mr. Zhang instructed to transfer the money into my account”* – thus denying that she knew that the money had been paid into her account for onward payment to Mr Zhang, by none other than her partner, Mr. Wang Xiaobing.
188. As regards the bank transaction on 31 July 2012, Ms. Wen insisted that she was given no explanation by Mr. Zhang as to why he wished to have the money transferred to her account. That she had assumed that it was because *“he was only infrequently in Hong Kong”*. That he had called her up to request that she receive the money which he was receiving as a *“payment from the Company”*, only a couple of days before and had said nothing else to her about the matter.



189. In cross examination, she acknowledged that it must therefore follow that it was only upon arrival at the bank that it was revealed that the very large sum of USD8.5 million was involved.

190. When asked whether she was not then alarmed or surprised at the amount of money to be paid into her account she responded:

“It’s not that I’ve not seen that amount of money before. In People’s Republic of China, over two decades, I’ve seen big amounts of money and small amounts of money.... It’s only because its Mr. Zhang Nan”.

191. Ms. Wen continued by asserting for the first time in cross-examination – no mention of this being in her witness statement – that she had in the past loaned very large sums of money through her businesses in the PRC to Mr. Zhang and in that context, had on many occasions been paid large sums of money into her accounts by him.

192. When asked why she had not made any previous mention of those transactions or produced a single document to prove them, she said that she did not think it was necessary for her to mention it.

193. Despite it having been established that she went to the bank on 31 July 2012 in the company of Mr. Or, Mr. Wang Xiaobing and Mr. Zhang; she only hesitantly admitted that after the transaction, she had also left the bank in the company of Mr. Wang Xiaobing and denied that she ever told him how much money Mr. Zhang had asked her to receive into her account or about the subsequent closure of her account at the bank for suspicious activity.



194. Ms. Wen was cross-examined about the note she alleged was given to her by Mr. Zhang over dinner. This note she accepted did not bear Mr. Zhang's signature and was not a "receipt" as she had described it earlier in her testimony, but merely a note showing calculations of exchange rates in amounts from USD to RMB, albeit related to the payment of USD 8.5 million. According to her, Mr. Zhang had already prepared the note before he arrived at the restaurant and while there, had "*produced it from his bag and gave it to me*", when she complained to him about the matter of her account having been closed by the bank for suspicious activity.

195. She persisted in this account, when it was put to her by Mr. Levy that the note was not given to her by Mr. Zhang as she alleged, but had been taken by someone from his office at Kunming and given to her by someone on the China Yinmore side.

196. Finally, in answer to the Court, Ms. Wen acknowledged that she had not been asked by Mr. Zhang to transact the disputed payment in any currency other than USD and so she had no responsibility for how much he might have received in RMB from those others to whom she allegedly made the onward transfers in USD on his instructions.

197. This, of course, sits oddly with her account, that Mr. Zhang produced the note at dinner to explain to her that he too had suffered a kind of detriment by having received less in RMB than he had expected from the recipients of the onward transfers which, according to her, she had made at his behest.

198. It is also to be noted that according to her (in her second witness statement), Ms. Wen Xia was not able to locate this handwritten note at the time when she made her first witness statement and for that reason, did not see fit to mention it in her first witness



statement. When pressed about it in cross-examination, she said it was “in or about December 2014” when she moved house and whilst cleaning out her personal documents, that she located the note, realised its potential significance for this trial and provided it to Mr. Joe Lam.



Mr. Or Ching Hei

199. Mr. Or emerged as a centrally important witness in the case.

200. In his witness statement he provided the following narrative.

201. He lives in Hong Kong and describes himself as the administrative officer of China Yinmore, a position he has held since December 2013. Before that he was “*an ordinary part-time employee of the Company responsible for administrative matters relating to the Company*” a position he had held since 2007. “*In that role my duties included document management, administrative arrangements, as well as liaising with and providing the corporate secretarial support services for the Company.*”

202. He continued “*I approved all expenses up to HK\$50,000 for Yinmore Hong and the Company. I also provided a counter signature to the signature of Mr. Zhang on bank documentation relating to the Company and Yinmore Hong Kong for bank transfers of over HK\$50,000.*”

203. He explains that in or about mid-November 2009, Mr. Zhang had asked him to obtain two sets of chops for some of the shareholders of China Yinmore; namely: Great Ally, Sino Million and Talent. That he was told to deliver one set of chops to Mr. Zhang and to keep the other at the Hong Kong offices.

204. He describes Mr. Zhang as his direct supervisor within China Yinmore and as having been in charge of matters relating to China Yinmore and Yinmore Hong Kong in Hong Kong, including financial matters. That all expenses over HK\$50,000 were approved by Mr Zhang and countersigned by him for all banking purposes and that, prior to December 2013, Mr. Zhang was responsible for arranging China Yinmore's payment of dividends. He confirmed however, that the money for the dividends had to be first transferred from Yunnan Yinmore or one of the PRC Subsidiaries, to the account of Yinmore Hong Kong. According to Mr Or, once the dividends were paid to Yinmore Hong Kong, Mr. Zhang was responsible for the procedure of transferring the money from Yinmore Hong Kong to China Yinmore and then to the shareholder concerned.
205. As regards the disputed Great Ally payment, he said that on 31 July 2012, Mr. Zhang flew to Hong Kong and was driven to the offices of China Yinmore. That there it was that Mr. Zhang had told him that the "*Yunnan Companies*" had requested dividends and asked him to attend at HSBC branch in Hong Kong for "*the money transfer procedure*".
206. By the "*Yunnan Companies*" he understood Mr Zhang to mean Talent, Great Ally and Sino Million.
207. This narrative gives the impression that Mr Or was unaware beforehand of Ms. Wen Xia's involvement, an impression he confirms later in his statement.
208. He continued that, at or about midday on 31 July 20 12, he attended at the bank, together with Ms. Wen Xia, Mr. Zhang and Mr. Wang Xiaobing. Ms. Wen Xia and Mr. Wang Xiaobing were both already known to him but neither had any role in China Yinmore. He stated:



“Ms. Wen Xia and Mr. Wang Xiaobing were both good friends of Mr. Zhang. I did not know the reason for Ms. Wen Xia and Mr. Wang Xiaobing’s attendance at the bank that day.

At the bank, Mr. Zhang instructed the bank staff to first transfer USD8,503,460 from the account of Yinmore Hong Kong to the account of (China Yinmore) and then from (China Yinmore’s) account to Ms. Wen Xia. I countersigned the bank documentation required to effect the two transfers mentioned above. I did not know that the sum of the dividend was to be transferred to Ms. Wen Xia until the transfer at the bank counter.”

His statement continues:

“The Great Ally Payment Instruction

On 8 August 2012, Mr. Zhang called me on the telephone and asked me to prepare a payment instruction on behalf of Great Ally.

Over the telephone, Mr. Zhang told me all of the details to include on the Great Ally Payment Instruction. Mr. Zhang specifically asked me to date the Great Ally Payment Instruction as 31 July 2012 and asked me to affix the chop of Great Ally and email it to Zeng Yan together with the bank transfer slip dated 31 July for the amount of US\$8,503,460. I created the Great Ally Payment Instruction document on my desktop computer in the offices of (China Yinmore) in Hong Kong based on Mr. Zhang’s oral instructions. After the document was affixed with the chop of Great Ally, I



emailed it to Zeng Yan together with the bank transfer slip for the amount of US\$8,503,460. Ms. Zeng Yan is an employee of Yunnan Yinmore. She works in the IPO department and was a member of Mr. Zhang's staff. So far as I am aware from my dealings with Ms. Zeng Yan and Mr. Zhang, Ms. Zeng Yan has a close relationship with Mr. Zhang. A copy of my email and attachments as sent to Ms Zeng Yan at the email address Ynzengyan@126.com appears (as exhibit to my witness statement).

I did not see the Great Ally Payment Instruction again after that until Mr. Zhang provided it in these proceedings. I had never previously been asked by Mr. Zhang to prepare similar payment instructions.

During the telephone conversation on 8 August, Mr. Zhang also advised me that he would arrange for Mr. Li Jinquan [President Li] to sign the Great Ally Payment Instruction. I never saw or received a copy of the Great Ally Payment Instruction signed by Mr. Li Jinquan.

Mr. Zhang was my direct supervisor in (China Yinmore), I trusted him and there was no issue with any of the previous dividends payments. Therefore, I did not question Mr. Zhang's instructions and did not see any reason to check with Mr Li Jinquan, and I simply followed his instructions in relation to the Great Ally Payment Instruction.

....

Joe Lam checked with me after Mr. Zhang provided the Great Ally Payment Instruction during (these) proceedings. On 4 June 2014, Joe



Lam and I conducted a search of my desktop computer at the Hong Kong offices of China Yinmore and found the Great Ally Payment Instruction I had created. The computer showed that the Great Ally Payment Instruction was prepared at 14:32 on 8 August 2012 and last saved at 14:39 on the same date. This is consistent with any recollection of speaking with Mr. Zhang on the telephone on 8 August 2012 in relation to the creation of the Great Ally Payment Instruction and the timing of my email to Ms. Zang Yan at 15:09 on 8 August 2012. A copy of the screenshot from my computer (together with the English translation) showing these details appears (as exhibits hereto).”

209. Before setting out the important aspects of his evidence under cross-examination I must note an obvious gap in Mr Or’s evidence about his admitted falsification of the GAPI. This is that, on his account, the document scanned and sent to Ms. Zeng Yan at 15:09 cannot be one and the same exactly the document shown by his computer screen shot to have been first created at 14:32.57 on 8 August 2012 and modified at 14:39:10. This is for the obvious reason that the document scanned and sent to Ms. Zeng Yan would first have had to have been printed off by him, affixed with the Great Ally chop, then scanned into the computer by him before being sent as an attachment to his email to Ms. Zeng Yan.

210. No computer screen shot in relation to that document, that is: the one actually scanned and sent to Ms. Zeng Yan has been provided by Mr. Or. Its absence does nothing to allay



the obvious concern that there was no independent technical evidence to confirm the authenticity and significance of the screen shot provided by Mr Or.

211. It is also of importance that, although Mr Or also testified that he expected the document to be afterwards signed by President Li because of what he had been told by Mr. Zhang, nowhere on the GAPI is there provided a place for an attestation by signature.
212. This is a telling omission, especially as an issue arose during his cross-examination whether the application of the chop by itself, would have ordinarily sufficed to attest the execution of the document by Great Ally. Mr. Or claimed not to have understood the application of the chop as being significant in that sense, although he admitted under cross-examination and in answers to the Court, to being a successful and substantial businessman in his own right and the owner and administrator of his own companies.
213. When asked in cross-examination what was the nature of his relationship with Mr. Wang Xiaobing, Mr Or said he knew him only as "*an ordinary friend.*" Although he knows him for many years, no one had mentioned to him that Wang Xiaobing was China Yinmore's lawyer. He did not know why he was in Cayman and in Court here for the last seven days. He himself is here merely as a witness and had not seen him over the course of the last seven days nor asked him what he is doing here.
214. Nor is he aware, he said, that Wang Xiaobing and President Li are good friends. He knows that they are acquaintances. He admitted that he was aware that in August 2013 Wang Xiaobing had borrowed USD1.7 million from Great Ally for the purpose, according to him, of buying a house in mainland China, at Shenzhen.



215. And the fact that the loan arrangement had required that USD850,000 be paid to Wang Xiaobing and USD850,000 to himself, did not mean that he and Wang Xiaobing were good friends:

“He is just an ordinary friend whom I have known for many years. USD850,000 was paid to me because I had RMB in mainland China. I needed to exchange the RMB into Hong Kong currency to make payments for my factories – my own business – and then he had American dollars in Hong Kong and that is why he needed RMB in China to make payment for the house in RMB in China.”

216. Mr. Or asserted an understanding that Mr. Zhang had *“signing authority for all of Great Ally, Talent, and Sino Million”* – referred to by him together as *“the BVI companies”*.

217. However, when asked how it was that over the period of the several years from 2007 until December 2013 (when he himself was appointed Chief Administrative Officer for China Yinmore and Yinmore Hong Kong and Mr. Zhang was removed from the Boards) there was not one document, email, memo, note or letter recording Mr. Zhang giving instructions to him or him receiving instructions from Mr. Zhang; his response was, surprisingly: *“All instructions he gave me were given orally”*, and that they were never confirmed in writing, *“...all the things he told me to do, he did not give any written instructions.”*

218. This is said to have included Mr Zhang’s alleged instructions for the creation of the back-dated GAPI, no record of which he had made or kept. In this regard the following exchanges took place in cross-examination:



“Well, whatever he (Mr. Zhang) instructed me to do, I carried it out.”

“Q: ...well you are asking the Court to believe that that happened without you creating a single note of any conversation relating to the creation of the document?”

A: I did not write anything down.

....

Q: But did you not think backdating documents smells of dishonesty?

A: I did not have the authority to question what was being done.

Q: The question, Sir, was do you think that backdating documents smells of dishonesty?

A: But I did it according to his wish.

The Court: Just a moment. Is he saying yes, but I did it because of his wish?

The Witness: Correct.

Q: And you didn't think it wise to make a specific note of the conversation?

A: Right from the beginning I had not taken down any written form, whatever he told me to do to construct that document and then send it to him."

219. Mr Or was then reminded that in his witness statement he had not at all suggested that he thought that backdating the document was dishonest.

220. Against that background he was asked:

“Q: ... it appears that you could have checked with President Li, but you didn't because Zhang was your boss?”



A: *...I could not assess the way he (Zhang) did things or give judgment on the way he did things. He just asked me to construct a document and to me, it's a regular ordinary document, and if found anything wrong with it, then he would instruct me to construct another one.*

Q: *I see. Now then, what happened to the chopped version of the Great Ally Payment Instruction?*

A: *After I put the chop on it and according to his instructions, I emailed it to Ms. Zeng Yan.*

Q: *...so the original, the physical piece of paper...that remained in your office didn't it, or in the Yinmore Office in Hong Kong?*

A: *After I sent out the attachment in the email, since it was still in the form of a draft, so the original, I did not file it along with other documents because it was still – it had no signature.*

Q: *So what did you do with the original piece of paper with the chop on it?*

A: *After I put it inside, in the file or after I put it alongside with other documents of the company, I couldn't find it anymore.*

Q: *So you've lost it?*

A: *It could have been thrown away along with other unimportant documents of the Company."*



221. The witness then went on to insist upon his understanding that the chopped document was “*unimportant*” because it was only a draft and would not be legally effective until it had been signed by President Li as the authorised signatory for Great Ally.

Mr Wang Zhiwen

222. This witness described himself as Vice President of China Yinmore since 13 December 2013 and Vice President of Yunnan Yinmore since October 2009, responsible for the finances of Yunnan Yinmore and the management of the Finance Department. He stated that “*there are over 100 finance personnel in the Financial Department and they work under me.*”

223. Nonetheless, the focus of Mr. Wang Zhiwen’s testimony in his statement, was to establish that although he was in charge of the financial affairs of Yunnan Yinmore (and the PRC Subsidiaries under it) he had no control over and was not responsible for the financial affairs of China Yinmore or Yinmore Hong Kong other than the maintenance of their book-keeping functions at Kunming. Mr. Zhang, he asserts, was, until his removal on 13 December 2013, the person “*entirely responsible for the financial affairs of China Yinmore and Yinmore Hong Kong, including for the payment of dividends to the shareholders of China Yinmore.*”

224. According to his statement (para 6 et seq.):

“The only role I played with respect to the finances and banks and records of Yinmore Hong Kong or (China Yinmore) in the period prior to 13 December 2013, was carrying out Mr. Zhang’s instructions arranging



funds from Yunnan Yinmore and transferring funds from Yunnan Yinmore to Yinmore Hong Kong. At the same time, I carried out Mr. Zhang's instructions and arranged for the financial personnel of Yunnan Yinmore to do the financial accounting on behalf of Yinmore Hong Kong and (China Yinmore)....

Mr. Zhang was the vice president of the Company in charge of the finances of Yunnan Hong Kong and China Yinmore. Until his removal on 13 December 2013, he was in charge of financial and audit matters, including the signing of audit contracts and appropriation of funds, relating to (those companies)....

For certain significant matters, Mr. Zhang would instruct me directly and I would then request the financial personnel at Yunnan Yinmore to deal with the matter in accordance with Mr. Zhang's instructions....I was only authorised (until 13 December 2013) to approve money transfers for Yunnan Yinmore and its subsidiaries and I followed instructions issued by Mr. Zhang in relation to the maintenance of the financial records of Yunnan Yinmore, to do that on behalf of the China Yinmore and Yinmore Hong Kong.

Further, Mr. Li Jinqun never provided any instructions to me regarding the transfer of money for the payment of dividends by (China Yinmore). The only instructions I received in relation to the transfer of funds to be used for the payment of dividends by the Company were those of Mr.



Zhang up until his removal on 13 December 2013. Other than Mr. Zhang himself, there were no other personnel from China Yinmore approving or checking the amount of dividends to be transferred and paid on behalf of (China Yinmore's) dividend payments until his removal on 13 December 2013..."

225. While admitting (at para. 12) that whenever, prior to 13 December 2013, China Yinmore needed to make dividend payments, funds had to be transferred from Yunnan Yinmore or one of the PRC subsidiaries to the account of Yinmore Hong Kong in the amounts and currency required and from there to be further transferred to China Yinmore for distribution to the respective shareholder; Mr. Wang Zhiwen goes on to assert that *"Mr. Zhang orally instructed me and never gave me any written instructions"* in relation to such transfers of funds to Yinmore Hong Kong:

"Upon receiving the oral instructions from Mr. Zhang, I made arrangements to appropriate funds and to organize the purchase of the requisite foreign currency by contacting the requisite bank(s) in the PRC. Once the currency was purchased, I transferred the funds from Yunnan Yinmore or one of its subsidiaries or affiliates to the Yinmore Hong Kong account. Once the funds were paid to Yinmore Hong Kong, my work was done and Mr. Zhang was responsible for transferring money...to the shareholders."

226. He goes on in his statement to explain the entries that had been in the Dividends Payable Ledger showing the payment of USD 8,503,460 on 31 July 2012 to Great Ally. That, on



or around the 24 July 2012, Mr. Zhang “...informed me orally that Great Ally requested for dividend payments in the sum of UD8,503,460. I transferred USD8,503 460 from a subsidiary of Yunnan Yinmore to Yinmore Hong Kong according to Mr Zhang’s instructions....

In August 2012, the Hong Kong offices of China Yinmore sent the Finance Department of Yunnan Yinmore some financial documents, one of which is a foreign currency counter withdrawal form documenting a transfer of USD 8,503.460 to Ms. Wen Xia.

The financial personnel of Yunnan Yinmore asked me to advise how to record the money transfer. I then checked this with Mr. Zhang. Mr. Zhang told me orally that Ms. Wen Xia had received the dividend on behalf of Great Ally and the money transfer should be recorded under Great Ally. On that basis, I instructed the financial personnel of Yunnan Yinmore to record the transfer as a dividend payment to Great Ally in the Dividends Payable Ledger....

In December 2013, pursuant to the investigation conducted by China Yinmore, I arranged for the Dividends Payable Ledger to be adjusted...so that USD8,503,460 was adjusted from Great Ally’s account to the account of Talent.”

227. Thus, Talent is now shown in the Dividends Payable Ledger as being in debt to China Yinmore for USD2,839,698.53, explained Mr. Wang Zhiwen.



228. He was cross-examined by Mr. Levy, acknowledging that whilst he failed to mention it in his witness statement, the documents disclosed by China Yinmore show Mr. Zhang as being responsible from around 2009 at the board level only for the IPO then being promoted. He also acknowledged by reference to the board minutes of 24 February 2011, that Mr. Joe Lam was appointed Chief Financial Officer of China Yinmore as of that date.

229. Despite this state of the records of China Yinmore, Mr. Wang Zhiwen sought to persist in his account that Mr. Zhang was responsible for the finances of China Yinmore and that he was obliged as the Chief Financial Officer of Yunnan Yinmore to carry out his instructions, suggesting in keeping with President Li's evidence, that Mr. Joe Lam's appointment was a formality only to satisfy the requirements of the HKSE for a formally trained accountant be in charge of the IPO.

230. Then came the following important exchange between Mr. Levy and this witness:

“Q: Do you accept that you haven't disclosed one piece of paper that records or refers to the instructions of Zhang Nan to you?”

A: Yes

Q: Now, do you accept that you have not disclosed a single piece of paper which evidences you passing on those alleged instructions to the finance personnel at Yunnan Yinmore?”

A: Yes, it's all oral notices.”

231. This absence of written records of instructions to Mr. Wang Zhiwen (or from him to his finance department), according to him, characterized not only the way he carried out



instructions for the payment of dividends but also all other instructions relating to the expenses of China Yinmore and Yinmore Hong Kong:

“Q: Well, what about other expenses, these would be large sums of money, wouldn't they?”

....

A: Well, each year (there would be) several million (RMBs), and then in instalments, each time several tens of thousands.

Q: And not a single document disclosed showing instructions received from Zhang, that's correct, isn't it, not one?

A: That's correct.

Q: And not one document showing that you reported to Zhang saying, sir, I have followed your instructions?

A: No.”

232. And further:

‘Q: ...I appreciate that you say that Zhang never gave you any written instructions?’

A: That's correct.

Q: But you never made any notes of those alleged instructions, did you?

A: That's correct, I did not.”

233. It followed, the witness was compelled to acknowledge, that where he had stated in his witness statement that what followed in it *“was based upon information I have obtained from my review of the financial records,”* was not correct.



234. For instance, where he stated that the payment of dividends to Bright Sugar was done based upon Mr. Zhang's "notification" that Bright Sugar had requested its dividend, there were no records to substantiate that fact. "Mr. Zhang", claimed the witness, had "...contacted me by phone and there is no written record".
235. He was then asked about the audit process for 2012, with a view to establishing why the alleged misappropriation of USD 8.5 million had apparently not been reported to or noted by E & Y. The following exchange took place:

“Q: The fact of the matter is that you haven't disclosed one single document passing between you and Ernst & Young in relation to the audit generally and, very specifically, you haven't disclosed one single document passing between you and Ernst & Young in relation to the 8 and a half million, have you?”

A: Yes, there is.

Q: Where are they?

A: At the end of July (2013), I and Mr. Joe Lam went to Shenzhen and we were in contact with Ms. Xie Feng and Li Yun of Ernst & Young, we had a consultation with them to talk about the distribution of dividends. Then, in the beginning of 2014, after I received the investigation report, I handed it over to the financial personnel and asked them to forward that to Ernst & Young.



Q: We have not seen any document from your financial personnel...forwarding anything to Ernst & Young, why has that not been disclosed if it is true?

...

A: Well we gave the investigation report to Ernst & Young.

Q: But you just said you asked someone to forward it to them. Again, was that all oral, the people just ran around to Ernst & Young's office with the copy of the document saying "Look at this" with no covering letter or email?

A: Well we orally notified them first and then, ultimately, we handed them the report....In November (2013) I personally went to Shenzhen and talked to them directly.

Q: Well you don't mention that anywhere in your witness statement. Are you telling His Lordship that in November 2013, you went to Shenzhen and explained to someone from Ernst & Young that this dividend had been misappropriated, is that your evidence?

A: Yes

Q: Why didn't you think you should write that in your witness statement? Its not there

A: Then it's an oversight."

236. The questioning then went on to establish that Mr. Wang had seen the E & Y audit report dated 25 December 2013 when it was issued, and that it made no reference to any



misappropriation of dividends and made no reference to E & Y having been advised that such an issue had arisen.

237. Indeed, Mr. Wang admitted that it is correct that the conversation he and Mr. Lam are said to have had with E & Y did not generate a letter from E & Y or even an email, memo or note from them.

238. I note here, with further analysis to come towards the final conclusions below, that the “investigation report” to which Mr. Wang Zhiwen makes reference must be that of President Li and Mr. Joe Lam, (none other is mentioned); yet that report was not completed until 27 December 2013 and Mr Wang admitted in cross-examination that he had not seen it until “*early 2014*”. Thus, there was no basis upon which Mr Wang could have reported to E & Y that there had been “misappropriation”, when, according to him, he and Mr Lam visited them in November 2013. It is also worth noting that the distance from Kunming to Shenzhen would have required a planned trip by air, one which would be expected to have involved some preparation, including documentation for discussion with E&Y.

Mr. Joe Lam

239. Mr Lam’s witness statement describes him as the Company Secretary and Financial Controller of China Yinmore. He states that he held the position of Financial Controller of China Yinmore during 2007 and 2008 and that at that stage, he was mainly responsible for matters relating to the proposed IPO of China Yinmore in Hong Kong. He states that as the IPO had been put on hold, he left China Yinmore in late 2008 and returned in



March 2011 and “acted as Company Secretary of the Company. I was appointed as Financial Controller of China Yinmore and Company Secretary on 13 December 2013”.

240. According to the witness, he had no role in the payment of the 2011 dividends and “my first involvement in relation to the payment of the 2011 dividends came in September 2013 when Chairman Ge Junjie, the chairman of the board of directors of China Yinmore, directed that the payment of the dividends for 2011 cease and that an investigation be undertaken for the issues related to the dividend payments and authorised (President Li) and me to conduct an investigation.”

241. “We concluded in our investigation”, he states, “that the money received by Ms. Wen Xia should be regarded as the dividend received by Talent, not only was the dividend received, but it was also received in excess of the actual amount.”

His statement concludes as follows:

“I note from the witness statement of Ms Wen Xia that Ms Wen Xia made transfers from her account to twelve other third parties after receiving the payment of USD8,503,460 from China Yinmore.

The account numbers and the names of the account holders as set out in the bank documentation of Ms Wen Xia’s exhibits to her witness statement..... are not known to me.

None of these account numbers or the names of these account holders could be found in our system. I asked Mr Li Jinquan, and Mr. Jinquan told me that he is not familiar with the account members and does not know any of the account holders. I asked Mr Wang Zhiwen, and Mr Wang Zhiwen told me that he is not



familiar with the account numbers either and does not know any of the account holders. Yunnan Yinmore has never dealt with any of the account holders or any accounts with the account numbers.”

242. I make the observation here that this appears to have been the very limited extent of the investigation undertaken by Mr Joe Lam and President Li to discover the person(s) behind the twelve distinctively named legal entities who received the onward transfers of funds from Mr Wen Xia’s account. This is surprising if only for the fact that Mr Zhang has revealed all his bank account information from which it might be expected to discover any link between him and those entities. In the absence of any evidence to the contrary, it must be assumed that no such connection has been discovered. And again, this is all to be contrasted with the lack of disclosure provided by President Li and Great Ally.

243. Mr Lam was cross-examined by Mr Levy when two matters of particular note were established.

244. First, according to Mr Lam, although he had flown to Shenzhen with Mr Wang Zhiwen to make the report to E&Y about the misappropriation of the dividends, in contrast to Mr Wang’s account, this trip followed after the investigation report to the Board from himself and President Li. However, by both of their accounts, the report to E & Y was made only orally and Mr Lam confirmed that there was no documented record made of it.

245. Second, that the investigation he undertook with President Li had generated very little by way of documentation and any such had been discarded by him along with whatever notes he himself had made during the course of the investigation. Thus, there is in



existence not a single document of any interview undertaken by him with any one, during the course of the investigation. Accordingly, there is not a single record to support the conclusions reached in the report presented by President Li and himself.

246. For his part, said Mr Lam, he did not think it was strange or odd that the alleged victim of the misappropriated dividends, President Li, had himself taken part in the conduct of the investigation.



Analysis

247. The starting point for the analysis of the evidence in this case must be with the GAPI, it being the only written record of the provenance of the Great Ally payment. It is admitted by China Yinmore (through Mr Wang Zhiwen in particular) that the disputed payment did not and could not have taken place from Yunnan Yinmore up to Yinmore Hong Kong without his, Mr Wang's authorisation. He claims to have acted in that regard at the unquestioned bidding of Mr Zhang. He claims to have acted in that regard on Mr. Zhang's bidding by oral communication of which no written record was made or kept and that this was consistent with the manner in which all such biddings from Mr Zhang were issued, received and acted upon by him at Yunnan Yinmore. On this basis alone, it may be thought strange that the GAPI exists at all and that he purports not to have known of its existence until more than a year after the Great Ally payment. His evidence begs at least two questions. First, if there was no need for other than oral instructions from Mr Zhang, why would Mr Zhang have insisted upon the creation of the GAPI to document the transaction (and his own involvement in it) although he need not have done so? And

why moreover, would the GAPI if such a uniquely important and unusual document intended to become a part of the accounting records, not have come to the immediate attention of Mr Wang and President Li?

248. Even more strange, it may be thought if instructions from Mr Zhang were never written, the absence of any written record upon which subsequent accounting within Yunnan Yinmore for the financial transactions of China Yinmore pre-December 2013 was done. One would expect that the importance of making a record of Mr Zhang's oral instructions would have been appreciated precisely for the reason that the instructions were only ever given orally.

249. In this sense, China Yinmore's case amounts to an extraordinary proposition. It is a proposition that defies common sense and one that no court could accept. I mention but some of the more obvious concerns:

- (i) China Yinmore and its subsidiaries are a large, successful enterprise with extensive operations in different places in the PRC, employing more than 4,000 people. The proper accounting for its operations require a staff working under Mr Wang Zhiwen at Yunnan Yinmore of more than 100 people, showing beyond debate that the enterprise and its accounting operations could not and did not function without written records for the payment of significant sums of money.

The minutes of Yunnan Yinmore of 23 October 2009 state the importance of the functions plainly: "*Wang Zhiwen and Shen Daoyi will be responsible for finance for the Company and will also manage the finance department, Wang*



Zhiwen will have the primary responsibility while Shen Daoyi will assist him”

A modern accounting system would depend on written or documented proof of transactions precisely of the kind that the GAPI provides.

- (ii) Wang Zhiwen’s evidence invites this Court to accept that somehow Mr Zhang, in relation to the payment of dividends, was allowed an exceptional overriding authority exercisable by word of mouth, even in relation to the authorisation of payments of very large sums of money by way of dividends for shareholder entities, in respect of which he had no legal interest and exercised no legal control. Such was the alleged case in relation to Great Ally whose principal was, at all material times, President Li. Knowledge of the fact that President Li’s authorisation on behalf of Great Ally for the payment of its dividend was not disputed by Mr Wang.

- (iii) Mr Zhang, President Li and Mr Wang all had offices adjacent to each other at the Yunnan Yinmore building in Kunming. It therefore defies belief that Mr Zhang would have instructed Mr Wang to authorise payment of dividends in the large amount of USD8,503,460, without concern that Mr Wang would have sought confirmation of Great Ally’s request from President Li himself. It was a recorded and documented fact in the minutes of China Yinmore (a fact cited by President Li himself in cross-examination), that dividend would only be paid at the request of the



shareholders. Mr Zhang could therefore not have been regarded properly by Mr Wang, as authorised to make that request.

- (iv) In the absence of a single record to show that it was Mr Zhang who gave instructions for the payment of dividends, and in the light of the GAPI in particular, it is an altogether too convenient story to assert that all Mr Zhang's instructions were only ever given orally and never recorded when received by Mr Wang. In this regard, China Yinmore's case is one that depends implausibly on the absence of records – inviting this Court to accept the mere assertion of witnesses and on the basis that there are no records against which their assertions can be tested. China Yinmore's case moreover goes contrary to such contemporaneous records as exist – the minutes of board meetings in particular - and which show, contrary to its case, that Mr Zhang was not in a position to instruct Mr Wang in financial matters.



250. I also agree with Mr Levy that another contemporaneous document providing a strong pointer to the truth in this case, is the audited consolidated financial statements of China Yinmore for 2011-2012.

251. The essential point is that nowhere do these statements show that there was any issue or any query about the payment of the USD8,503,460 as the payment of some of Great Ally's dividend.

252. The inescapable fact is that the audited financial statements signed by the President and Chairman of China Yinmore, are only consistent with that sum of USD8,503,460 having been paid as a dividend for the benefit of Great Ally. There is no credible evidence to the contrary. President Li (and by implication it seems Chairman Ge) may not be allowed to repudiate their acceptance of the audit report as being “a true and fair” representation of the state of the financial affairs of China Yinmore.
253. President Li tried artfully to distance himself from the consequences of signing the audit report. He asserted that when signing, he believed that Mr Zhang had misappropriated the money but said that at the time of signing the accounts: “*that was only our view point*” (i.e.: himself and Joe Lam as the investigators) and that they had to await the outcome of this case.
254. I agree with Mr Levy that that assertion is manifestly untrue: only two days after the acceptance of the audit report, that is: on 27 December 2013; President Li and Mr Lam were to sign off on their report in which they summarily and unhesitatingly concluded that Mr Zhang had misappropriated the money. Their report moreover, was presented to the Board without qualification at a time when there was as yet no law suit instituted and with the far-reaching consequences, not only for Mr Zhang but also for those other Founding Shareholders who found themselves on the less influential side of the divide and who were removed from their directorships as a result. The spirit of fairness and forbearance sought to be projected by President Li from the witness box, had no basis in the reality precipitated by his own peremptory “investigations.”



255. Moreover, it is common knowledge and would have been understood by President Li, that accounts, and particularly accounts settled by reputable auditors such as E & Y, routinely refer to items which are disputed.
256. Such items would be noted in the accounts and, when significant, as the disputed Great Ally Payment would doubtless have been regarded, would be treated as qualifying the results of the audit. It is therefore inconceivable, had it been brought to the attention of the Auditors, that even if treated merely as an “overpayment” to Talent of USD2.8 million (taking the most euphemistic view), the dispute would not have been recorded somewhere in the accounts. It cannot credibly be suggested that the sum (whether regarded as USD8.5 million or US\$2.8 million) was immaterial. As Mr Levy pointed out, USD8.5 million was about 4.5% of the total value of China Yinmore in 2012. I reject President Li’s explanations for his failure to ensure that the disputed Great Ally payment was recorded in the audit report before he signified his acceptance of it. His doing so was only consistent with his failure, time and again as shown in the evidence as discussed above, to refute Mr Zhang’s assertions in correspondence that the Great Ally payment was made at his behest and direction.
257. I reject the evidence of both Mr Wang Zhiwen and Mr Joe Lam that they told E & Y about the disputed Great Ally payment. Not only were they obviously equivocal and prevaricating in their evidence on this issue, I find that it is simply incredible that a report of this matter would have been made only orally and with no record created anywhere to show that it was made.



More on the GAPI.

258. The GAPI is the only contemporaneous document that could be regarded as providing independent evidence of the Great Ally payment yet China Yinmore's case depends on my accepting that it is a forgery. And in order so to conclude, by accepting the mere assertion of its witness Mr Or. I unhesitatingly reject Mr Or's evidence in this regard. In particular, I reject Mr Or's evidence by which he would invite me to accept that he deliberately and fraudulently created and back dated the GAPI on 8 August 2012, to make it appear to have been in existence on 31 July 2012. That is an extraordinary thing for anyone, let alone a man in his position as a fiduciary and businessman to admit, unless he has complete confidence that there could be no repercussions beyond this case.
259. I accept Mr Zhang's evidence that the GAPI was presented to him by Mr Or upon his arrival at the China Yinmore office in Hong Kong, on 31 July 2012.
260. As one would expect and as I accept Mr Zhang's evidence in this regard; Mr Or would have procured the GAPI and applied the Great Ally chop to it, on the instruction of the only person who could have properly authorised him to do so – the majority shareholder and sole director, President Li.
261. Mr Or is a sophisticated businessman in his own right. The implications of falsifying the GAPI to explain the large payment of USD8,503,460 to Ms Wen Xia, ostensibly as dividends for Great Ally upon the instruction not of President Li but of Mr Zhang whom he knew could himself have had no claim to those dividends, could not have escaped him.



262. He was not a credible witness and this Court takes no comfort from knowing that within a year or so of the USD8,503,460 payment into Ms Wen Xia's account and during the currency of this dispute, Mr Or is shown to have received USD850,000 from Great Ally. While this is explained as being one-half of a USD1.7 million unsecured loan to Mr Wang Xiaobing from President Li, the explanation provided by Mr Or for receipt of that large sum seems facile, contrived and all too convenient: I note that no independent evidence was adduced to suggest that there was any difficulty in transacting RMB for USD on the open market. And such evidence as emerged on this issue pointed to it arising only on the mainland PRC side of transactions, when dividends were to be paid up from Yunnan Yinmore.
263. Furthermore, far from being, as one might expect, the object of President Li's ire for having assisted in a fraud upon Great Ally - in Mr Or's case by his "forgery" of the GAPI and in Ms Wen Xia's case by her assistance to Mr Zhang - we see that the circle of friends - President Li, Mr Wang Xiaobing, Ms Wen Xia and Mr Or - tightened and seemed to have become even more secure than it ever was before this dispute arose.
264. Nor was it lost upon me that President Li protested, in cross-examination, the fact that Great Ally's bank in Hong Kong had disclosed the records of the payment of the USD1.7 million - the implication being that he certainly would not have wished to have it disclosed to this Court. I note again, that while neither he nor Great Ally are immediate parties to these proceedings, there has been no voluntary disclosure of any of their records from which this Court could be satisfied that they have no connection to the 12 transferees of the money from Ms Wen Xia's account.



265. I also consider the events of the admittedly invalid EGM and board meetings of 4 November 2013 to be significant. By that time - as President Li acknowledged from the witness box- he knew that USD8.5 million had been misappropriated from China Yinmore. At the EGM, Mr Zhang delivered a speech complaining of the non-payment of the Talent dividend. Yet, there was no suggestion by President Li that Mr Zhang was censured in anyway because he had stolen the money; nor is there any such thing recorded in the minutes of that meeting. Indeed, President Li's evidence was that the misappropriation was not discussed. President Li was also asked whether there was any discussion of the subject at the board meeting immediately following, a question to which he gave no direct answer, referring instead to the invalidity of the meeting as some sort of reason for not answering the question.

266. In sum, President Li did not impress me as a witness of truth.

267. Ms Wen Xia was herself no less unsatisfactory a witness. Her untruthful denial of her relationship with Mr Wang Xiaobing struck me as being more than simply an expression of coyness. I am satisfied it was a feigned response, deployed because she understood the implications of it being revealed to this Court that she is the life partner of the man who is not only President Li's professional adviser, but also a close friend and business relation – someone to whom he would provide large sums of money without security for repayment. Her intimate involvement with Mr Wang Xiaobing and her secure place within the confidences of President Li and Mr Or, distinguish her as an extremely unlikely person to be chosen by Mr Zhang for the perpetration of an alleged fraud upon China Yinmore or Great Ally. It is clear from the evidence that she was far more



connected in the world of business to President Li - especially through her relationship with Mr Wang Xiaobing - than to Mr Zhang.

268. Yet it is also clear that Ms Wen Xia had won the confidence of Mr Zhang, sufficient for him not to question whether paying USD8,503,460 into her account would involve any risk of it not being made available for the purposes intended.

And so one is invited to look even more closely at these interrelationships.

269. Her equivocation about her relationship with President Li damaged her credibility further. In cross-examination she suggested that she had only ever met President Li three or four times but in her witness statement she had described him as a “*good friend*”. I already noted above President Li’s attempt to minimise his acquaintance with Ms Wen Xia. I find that their attempts at minimising their relationship invites the reasonable inference that they were seeking to hide the fact that they were acting in concert.

270. I accept Mr Levy’s submission that it would be an extraordinarily incompetent fraud on the part of Mr Zhang to have chosen Ms Wen Xia of all people for the theft of Great Ally’s money, knowing, as he must have known, of the relationship between Ms Wen Xia, Mr Wang Xiaobing and President Li.

271. Ms Wen Xia’s further improbable account that she lost all the text messages sent to her by Mr. Zhang for the onward transfer to the 12 transfers, is of a piece with the rest of China Yinmore’s case, entirely dependent as it is on the absence of records where records are to be expected.

272. Not only is this far too convenient an excuse on Ms Wen Xia’s part to be accepted, it is also an insult to common sense. Had Mr Zhang sent her those very important text



messages, his claim on behalf of Talent would have been fool-hardy in the extreme. In bringing this action well in advance of knowing what Ms Wen Xia's account in this regard would be, Mr Zhang would not have known that these text messages were not to be available to scuttle his claim and to prove the fraud against him.

273. I reject her evidence in relation to the existence of these text messages, as I reject the rest of her evidence on all matters of importance in this case.

Conclusion

274. I find that the GAPI was created as Mr Zhang testified - by Mr Or - and that Mr Or must have done so acting upon the instructions of President Li.

275. I find that Mr Wang was not a witness of truth when he testified that he transferred USD8,503,460 to Yinmore Hong Kong for the payment of the Great Ally dividend payment acting at the behest of Mr Zhang. I find that he would have done so at the behest of the only person authorised to request that payment of dividends - President Li.

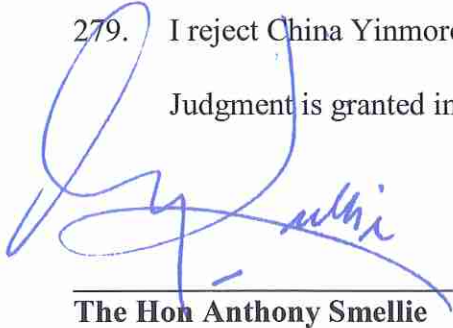
276. I find that Mr Zhang is a witness of truth and that he acted, in making the payment into Ms Wen Xia's account, at the request of and on the direction of President Li.

277. I find that Ms Wen Xia accepted the payment of USD8,503,460 on behalf of and at the request of President Li, being aware that the money represented a dividend payment from China Yinmore to Great Ally.



278. Accordingly, I find that Talent has not received any of its dividends for the year 2011 and that China Yinmore is indebted to Talent for the payment of the Dividend in the amount of USD5,663,761.37, as claimed.

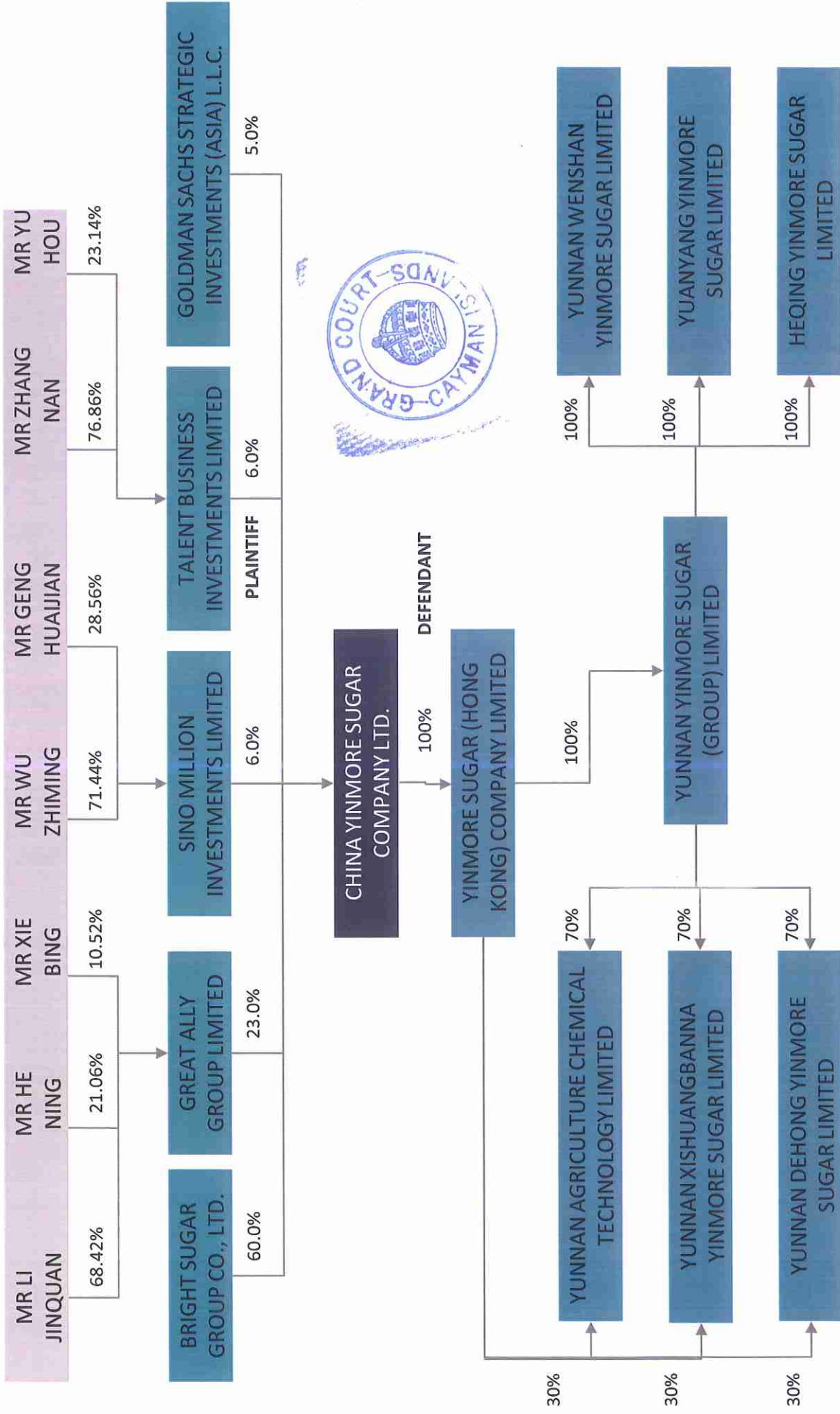
279. I reject China Yinmore's Defence and Counterclaim and accept Talent's reply to it.
Judgment is granted in favour of Talent, accordingly.



The Hon Anthony Smellie
Chief Justice
24 April 2015



Shareholding Structure (Talent Business v China Yinmore et al FSD 9 of 2014 (ASCJ))



THE GROUP DOES NOT INCLUDE YINMORE LIMITED