IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC(I) 07

Suit No 2 of 2017

Between

Bachmeer Capital Limited

… *Plaintiff*

And

(1) Ong Chih Ching
(2) Leny Suparman
(3) Dmitriy Shport
(4) KOP Properties Pte Ltd
(5) KOP Properties Shanghai Operation and Management Pte Ltd
(6) KOP Winterland Pte. Ltd
(7) KOP Properties (HK) Limited
(8) KOP Management Services (Shanghai) Co., Ltd

… *Defendants*

Between

(1) KOP Properties Pte Ltd
(2) Ong Chih Ching

… *Plaintiffs in Counterclaim*

And

(1) Bachmeer Capital Limited
(2) Wang Xuan
(3) Hu Bingxin
(4) KOP Properties (HK) Limited
(5) KOP Management Services (Shanghai)

Co., Ltd

… Defendants in Counterclaim

JUDGMENT

[Contract] — [Termination]
[Conflict of Laws] — [Choice of law] — [Contract]
[Tort] — [Conspiracy] — [Conspiracy by unlawful means]
[Tort] — [Defamation] — [Publication]

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Bachmeer Capital Limited
v
Ong Chih Ching and others

[2019] SGHC(I) 07

Singapore International Commercial Court — Suit No 2 of 2017
Vivian Ramsey IJ
29–31 January, 1, 2, 5–9, 12, 13 February 2018; 18 April 2018

24 May 2019 Judgment reserved.

Vivian Ramsey IJ:

Introduction

1 These proceedings concern a dispute between the plaintiff and the first defendant ("Ms Ong"), the second defendant ("Ms Suparman"), the fourth defendant ("KOPSG"), the fifth defendant and the sixth defendant (those defendants being referred to together as "the KOP defendants") and the third defendant ("Mr Shport"), in relation to a project known as Project Winterland, in Shanghai, China.

2 By a counterclaim, KOPSG and Ms Ong make a claim for defamation against the plaintiff, the second defendant by counterclaim ("Ms Wang") and the third defendant by counterclaim ("Mdm Hu"), KOP Properties (HK) Ltd ("KOPHK") and KOP Management Services (Shanghai) Co., Ltd ("Bodi").

Background

3 Mdm Hu is a successful businesswoman, having developed and managed shopping malls and other properties in China and then becoming Chief Executive Officer of a leading apparel company in China. Ms Wang is Mdm Hu's daughter and the sole shareholder and controlling director of the plaintiff at the material time. She attended university in the United States and has an MBA from Harvard University. Ms Wang and Mdm Hu came to know Ms Suparman who, for a time, was working for the real estate company, CBRE, in Shanghai. In turn, Ms Suparman introduced Ms Wang and Mdm Hu to Ms Ong.

4 Ms Ong is a successful businesswoman in Singapore. She attended university in England and practised as a lawyer in her own firm Koh, Ong & Partners in Singapore before taking on interests in real estate development and other businesses in Singapore. Ms Ong and Ms Suparman are shareholders in and directors of KOP Limited, Ms Ong being the Executive Chairman and Ms Suparman the Chief Executive Officer of that company. KOP Limited is a Singapore-listed company with business interests in the real estate development, hospitality and entertainment industries. KOP Limited wholly owns KOPSG. KOP Limited, KOPSG and other companies controlled by Ms Ong and Ms Suparman shall be referred to collectively as the KOP Group.

5 In the course of meetings in Shanghai on 13 April 2013 and in Singapore on 2 May 2013, Ms Ong, Ms Suparman, Ms Wang and Mdm Hu developed plans to work together. The arrangements between them, or the companies by which they acted, have been described as a collaboration, a joint venture and a partnership. There is dispute between them as to the precise nature of the arrangement and the rights and liabilities to which it gave rise. I shall refer to it as "the Joint Venture".

6 The structure of the proposed Joint Venture was set out in an attachment to an email from Ms Wang to Ms Ong and Ms Superman of 3 May 2013. In summary it proposed that a company, KOPHK, would be established in Hong Kong in which KOPSG would have a 51% shareholding and the plaintiff would have a 49% shareholding. A further company, Bodi, would be established in China, in which KOPHK would own 100% of the shares.

7 On 3 June 2013, the seventh defendant, KOPHK was incorporated with a paid-up capital of HK$1m and on 12 September 2013, the eighth defendant, Bodi was incorporated in Shanghai as a wholly-owned foreign entity.

The start of Project Winterland

8 In early 2012, Ms Ong met Mr Shport to explore his plans to develop an indoor winter park. Ms Ong suggested that the concept could be developed in the form of an integrated winter resort, with ski slopes, hotels, retail outlets, food and beverage outlets and other entertainment ("the Winterland Concept"). Together, Ms Ong and Mr Shport presented plans to the Singapore Tourism Board to construct such a resort. Although these plans did not eventually materialise, Ms Ong (through KOPSG) and Mr Shport decided to develop the concept jointly and entered into two memoranda of understanding dated 13 August 2012 and 21 December 2012. Under those memoranda of understanding, there were further unsuccessful attempts to find a suitable location for an integrated winter resort in Singapore, Jakarta and Hong Kong.

9 In September 2013, Ms Wang became aware of the Winterland Concept. After discussing the matter with Ms Ong and Ms Suparman, it was agreed that they would explore the possibility of implementing the Winterland Concept in China.

10 In or around October 2013, KOPSG (represented by Ms Ong and Ms Suparman) and Ms Wang agreed to undertake Project Winterland in the Qing Pu district in China as part of the Joint Venture. The parties agreed that Ms Wang and Mdm Hu would be in charge of running the day-to-day affairs of the project and in liaising with the Qing Pu government on land acquisition matters.

11 On 1 October 2013 Ms Wang made contact with Mr Shport who provided further information about the Winterland Concept.

12 At this stage, Ms Wang was invited by Ms Ong to become a shareholder in KOPSG. Ms Wang accepted this invitation on about 18 September 2013 and became a nominee of 1.5m shares for S$12m. On 10 October 2013, Ms Wang was appointed Director of Business Development for KOPSG at a salary of S$8,000 per month.

The early efforts to carry out Project Winterland in Qing Pu

13 When Ms Wang returned to China, she carried out some preliminary research into the feasibility of implementing the Winterland Concept in Shanghai, which she thought would be a suitable location. She then identified the new Hongqiao Commercial zone in West Shanghai as the target area, after having studied the Pudong Disneyland area and the Qian Tan World Expo Site. After considering the four districts in the Hongqiao Commercial zone, she came to the view that the most suitable piece of land was in the Qing Pu district ("the Qing Pu Land").

14 After discussing the matter with Ms Suparman, Ms Wang prepared an investment analysis dated 18 October 2013 as well as a presentation containing an analysis of the location of the Qing Pu Land. The investment analysis and

that presentation were discussed with Ms Ong and Ms Suparman, who visited the site in October or November 2013.

15 This led to the signing of a framework agreement on about 25 November 2013 ("the West Hongqiao Framework Agreement") between KOPSG and Shanghai West Hongqiao Commercial Development Co., Ltd ("West Hongqiao"), the specially invested limited liability company established by the Qing Pu district government in Shanghai for the development and construction of the Shanghai Hongqiao central business district ("CBD"). Ms Ong attended the signing ceremony and signed the West Hongqiao Framework Agreement on behalf of KOPSG.

16 Ms Wang continued to pursue the acquisition of the Qing Pu Land. On 16 December 2013, Colliers International Property Consultants (Shanghai) Co., Ltd ("Colliers") provided a proposal to carry out a feasibility study and was engaged by Bodi to do so.

17 In January 2014, Bodi engaged Kohn Pedersen & Fox Associates PC ("KPF"), architects and planning consultants in the United States to provide "architectural design consultancy services for Project Shanghai Winterland". To deal with local planning regulations and rules, Bodi also engaged East China Architectural Design and Research Institute ("ECADI") in January 2014.

18 On or about 6 January 2014, a two-day kick-off meeting for Project Winterland took place in Shanghai attended by Colliers, KPF and ECADI with Ms Ong, Ms Suparman, Mr Shport, Ms Wang and Mdm Hu in attendance.

19 On 13 February 2014, Mr Shport, through his company Xpanse Pte Ltd ("Xpanse") entered into a project management agreement ("the First Project

Management Agreement") with Bodi to provide intensive services up to completion of the project, which was described as being located in Hongqiao district, Shanghai and as being a "multifunction complex Winterland". Much of the work was to be done by an employee of Xpanse, Mr Arthur Lim.

20 In March or April 2014 for reasons which appear to be disputed, but involved questions of Mr Arthur Lim's suitability and the need for project management services prior to the land acquisition, the First Project Management Agreement with Xpanse was terminated, as Mr Shport put it "for the benefit of the project". On 1 May 2014, Bodi entered into a new project management agreement with another company controlled by Mr Shport, SIV Engineering Pte Ltd, for project consulting services for Project Winterland from that date up to land acquisition ("the Second Project Management Agreement").

21 The Qing Pu Land consisted of three plots, Plots A, B and C. The Pan Long River ran through the site, and a planned road, Hui Ding Road, ran through Plot A. In order to use the Qing Pu Land for Project Winterland, it was necessary to seek the agreement of the government authorities for the re-routing of Pan Long River and removal of Hui Ding Road. But before I continue outlining the events that occurred in relation to the attempt to carry out Project Winterland on the Qing Pu Land, I pause to briefly set out the parties' financial arrangements for Project Winterland, which had assumed importance in the intervening period.

The parties' capital contributions to the Joint Venture

22 In early 2014, there were various issues which had to be dealt with in respect of the interests in the Joint Venture. The share capital of KOPHK was HK$1m and the share capital of Bodi was US$1m. The plaintiff contributed

HK$1,757,464.85 which roughly equated to US$1m. In January 2014 it was agreed that, of this sum, US$510,000 would be treated as KOPSG's contribution of 51% to the share capital of KOPHK.

23 On 12 April 2014 two meetings took place. At one meeting attended by Ms Ong, Ms Suparman, Ms Wang and Mr Shport, it was recorded that the following was agreed:

> 1. [Mr Shport] has a cost of 120,000SGD for Xpanse PM work in China. It will be a personal loan from [Ms Wang] and [Ms Suparman] and [Ms Ong]. [Ms Wang] will pay RMB equal to 60,000SGD to [Mr Shport] in China, and [Ms Ong]/[Ms Suparman] will write a check for additional 60,000SGD to [Mr Shport] in Singapore.
>
> 2. [Ms Ong] will prepare the lending note for [Mr Shport] to sign, in which all parties agree that if project successful, this loan will be deducted from premium attributed to [Mr Shport] directly. If project fail and there has no premium, [Mr Shport] is responsible to payback [Ms Wang], [Ms Suparman] and [Ms Ong].
>
> 3. [Mr Shport]: Salary 750,000RMB annually, [Ms Wang] will work out a plan with HR for best cash result. Starting date May 8th, 2014
>
> 4. Bodi (KOP China) will be the assets management company for Winterland project
>
> 5. For any premium received for the winterland project, we will do the following allocation:
>
> a. 50% remain in KOP China (Bodi)
>
> b. 50% distributed based on contribution, details will negotiate late based on a fair base
>
> i. [Bodi] contribution
>
> ii. [KOPSG] contribution
>
> iii. [Mr Shport] contribution for original idea and early stage concept development.

24 At the other meeting, attended by Ms Ong, Ms Suparman and Ms Wang, the following agreement was recorded:

> We agree the following:
>
> 1. [Ms Wang] monthly salary 28000SGD, Mdm Hu 35000SGD, back dated to 2013 oct, start to pay (deduct what [Ms Wang] already receiving in Singapore) when we have cash
>
> 2. Arrangement of [Ms Ong]:
>
> a. Salary of [Ms Ong] will be paid by [KOPSG], as a base for claim [KOPSG's] contribution to the project later on
>
> b. Apt rental will be paid by Singapore office for reason above. [Ms Wang] will prepare lease agreement for sign. Payment directly deposit in [Ms Wang's] Singapore account
>
> c. [Bodi] will provide a car for [Ms Ong] to use in China, it will be a Blue Cayenne S rent from [Ms Wang] personally.
>
> d. [Bodi] will hire a personal driver and a PA for [Ms Ong] to use in China.

25 In May 2014, Ms Ong, Ms Suparman and Ms Wang invited Mr Shport to become a shareholder of KOPHK. Following discussions, it was agreed that Mr Shport would invest the sum of US$1m in exchange for a 15% beneficial stake in KOPHK. On 16 May 2014, Mr Shport sent an email to Ms Wang, copying Ms Ong and Ms Suparman saying that he would make the US$1m remittance at the beginning of June 2014 and that the investment would "count for 15% in [KOPHK]."

26 Mr Shport made payment of US$1m on 3 June 2014. Of this US$1m, a payment of US$950,000 was made to Ms Wang's personal bank account, and the remaining US$50,000 to KOPHK's corporate account. There are various issues relating to the circumstances and manner in which this payment was made. In the end, Ms Wang transmitted the US$950,000 back to the KOPHK in tranches. I deal with these issues in greater detail at [113]–[129] below.

27 On or around 12 January 2015, a distribution table for the division of any establishment fees arising from Project Winterland was agreed. According to this table, profits remaining after project expenses and shareholder loan repayments have been deducted from the establishment fees received would be split 50-50, with one half funding the future operations of KOPHK and Bodi and the other half to be distributed according to the proportions set out in the table.

Continued attempts to carry out Project Winterland on the Qing Pu Land

28 Returning to the acquisition of the Qing Pu Land, KOPSG had enlisted the assistance of International Enterprise Singapore ("IE Singapore") and on 19 June 2014 the Deputy Director of IE Singapore and the Commercial Consul from the Singapore General Consulate in Shanghai visited the Qing Pu district government.

29 On 12 August 2014, an investment intention agreement was signed between West Hongqiao and KOP Limited ("the Investment Intention Agreement") and in Annex 1 to that agreement there were changes in land specifications in terms of land use, the plot ratio and various other matters. In Annex 2 to the Investment Intention Agreement, dates were provided for West Hongqiao to coordinate with related government departments to "make efforts to realise the following schedule":

> (a) for Plot A (Lots 19-02, 19-05, 21-02 and 21-05] the date for tender was the first ten days of December 2014 with land handover no later than the end of December 2015;

(b) for Plot B (Lot 20-02] the date for tender was the first ten days of December 2014 with land handover no later than the end of June 2015, and;

(c) for Plot C (Lot 22-01] the date for tender was the first ten days of November 2014 with land handover no later than the end of June 2015.

30 On 1 September 2014, KOPHK appointed Alfred Enterprises Co Ltd ("Alfred Enterprises") to act as a management consultant to set up "KOP" offices in Hong Kong and China, and to be responsible for the day-to-day operations management of KOP offices with effect from 1 October 2013. Alfred Enterprises is owned by Ms Wang's husband.

31 On 9 October 2014, KOPHK and the plaintiff entered into a service agreement under which the plaintiff was to provide services in China from 1 July 2013 to 31 December 2014 which included:

> 2.1 To advice and submit all regulatory reporting required by the government and other authorities [in China];
>
> 2.2 To process application and ensure [KOPHK] obtains all licenses and permits required for its intended operations and business developments in [China];
>
> 2.3 To meet and negotiate with relevant authorities, government departments and officials on all fees applicable for the licenses and permits required by [KOPHK] for clause 2.2 above;...

32 On 15 December 2014, Mr Quek Toh Hwai ("Mr Quek"), a project director at Bodi, sent an internal email revising the timeline to reflect the actual land auction dates of the Qing Pu Land. For Plot C (Residential), the land tender was September 2017 with construction commencing in May 2018 and completing in September 2020. For Plots A and B, the land tender was October

2017 with construction commencing in June 2018, and completing in October 2020 for Plot B and completing in December 2021 for Plot A.

33 Various difficulties with regard to changing the planning parameters of the Qing Pu Land were encountered towards the end of 2014 and beginning of 2015. Notably, there were challenges in obtaining the necessary approvals for the re-routing of the Pan Long River and the Hui Ding Road, and the securing of relocation agreements with existing factories on the Qing Pu Land. This is set out in greater detail at [151]–[171] below.

Events in 2015 and the agreement to terminate the Joint Venture

34 On 27 January 2015, there was a meeting between Chairman Yang Xiao Ming ("Chairman Yang") of Shanghai LuJiaZui (Group) Co., Ltd ("SLJZ") and Ms Ong, Ms Suparman and Ms Wang in Shanghai. This meeting is the foundation of the plaintiff's claim that the KOP defendants sought to usurp Project Winterland to the exclusion of the plaintiff.

35 On 4 May 2015, Ms Ong sent an email to Ms Wang in which various matters were stated which the plaintiff contends amounted to an act of bad faith ("the 4 May 2015 email").

36 On 12 and 13 May 2015, Ms Ong, Ms Suparman, Ms Wang and Mr Shport met in Singapore to discuss various matters concerning the Joint Venture. These discussions ended, according to the KOP defendants and Mr Shport, with an agreement to terminate the Joint Venture. The plaintiff denies that there was an agreement to terminate the Joint Venture on this date.

37 Ms Ong and Ms Suparman met Chairman Yang in Singapore on 14 May 2015, and then in Shanghai on 19 May 2015.

38 On 20 May 2015, the parties signed an agreement relating to the termination of the Joint Venture ("the Termination Agreement"). It was signed by Ms Ong on behalf of KOPSG, Ms Wang on behalf of the plaintiff, and Mr Shport.

39 A series of agreements were then entered into between KOPSG and SLJZ. On 6 July 2015, KOPSG entered into a framework agreement with SLJZ and Shanghai Harbour City Development (Group) Co., Ltd ("SHCD"). On 3 August 2015, KOPSG entered into a supplementary framework agreement with SLJZ and SHCD. On 19 November 2015, the KOP defendants and SLJZ signed an agreement ("the Cooperative Agreement") for the development of a Winterland project in Lin Gang, which is a different piece of land in the Pudong area of Shanghai ("the Lin Gang Land"). Whilst the KOP defendants have at times referred to this project as the "WintaStar" project, which is consistent with their case that it is radically different from Project Winterland in Qing Pu, I shall refer to it as the "Project in Lin Gang".

40 On 24 December 2015, Mdm Hu and a number of other people went to the fifth defendant's temporary office and took hard disks, laptops and physical records of Bodi's financial accounts.

41 On 25 December 2015, three letters were written to IE Singapore, SLJZ and SHCD, making various allegations against the KOP defendants. A fourth letter was written to the Singapore Minister for Trade and Industry, Mr Lim Hng Kiang on 5 February 2016. These four letters form the basis of the defamation claims by Ms Ong and KOPSG.

42 Having set out the background of events, I now proceed to outline the claims and counterclaims that are in issue in the present dispute.

The claims and counterclaims in the present suit

The plaintiff's claim

43 The basis of the plaintiff's pleaded case against the first to sixth defendants is that, from January 2015, following a meeting between Ms Ong, Ms Suparman and Ms Wang with Chairman Yang of SLJZ, KOPSG failed to disclose to the plaintiff that it had taken steps including engaging SLJZ and SHCD for the purposes of undertaking the Project in Lin Gang to the exclusion of the plaintiff. It is alleged that these actions were taken by KOPSG under the instructions and/or with the approval and/or knowledge of Ms Ong, Ms Suparman and Mr Shport.

44 Subsequent to the meeting with Chairman Yang in January 2015, the plaintiff says that Ms Ong, Ms Suparman and KOPSG began to send various accusatory emails to Ms Wang from March 2015 to May 2015, accusing Ms Wang of "triple dipping" by receiving salaries and consultancy fees and reimbursements, and also mismanaging the finances and businesses of Bodi. Ms Ong, Ms Suparman and KOPSG also alleged that budgets for the period up to March 2015 were sent to KOPSG's finance and accounts departments despite not having been approved. Notwithstanding the explanations provided, it is said that Ms Ong, Ms Suparman and/or KOPSG continued with their accusatory emails, thereby undermining the relationship of trust and confidence amongst the parties in the Joint Venture.

45 In the 4 May 2015 email, Ms Ong stated that Ms Wang had to pay an amount of S$1.575m into Bodi to move matters forward, as "otherwise [they] really do not see how to proceed with this partnership and therefore [Project Winterland]". Ms Ong also stated in this email that due to the recognition of Ms Wang and Mdm Hu's efforts in Project Winterland, they "will not proceed with

the project on [their] own without [Ms Wang and Mdm Hu], and [they] don't want to seem to take advantage of [Ms Wang and Mdm Hu]". Ms Ong went on to say that as the Qing Pu government had reverted on a supplemental framework agreement which was unacceptable, they "can use this as an excuse to cancel the signing". Ms Wang was required to respond to the demand for payment in the 4 May 2015 email by 5 May 2015. This demand was made before any opportunities were given to Ms Wang to explain or clarify the accounts. Ms Wang thus rejected Ms Ong's ultimatum as expressed in the 4 May 2015 email.

46 On 13 May 2015, discussions ensued between Ms Ong, Ms Suparman and Ms Wang in connection with the proposed termination of the Joint Venture. On 20 May 2015, the Termination Agreement was signed by Ms Ong (on behalf of KOPSG), Ms Wang (on behalf of the plaintiff) and Mr Shport. Throughout this period of time, KOPSG failed to disclose to the plaintiff that it had taken steps prior to the Termination Agreement, in fact since January 2015, to undertake the Project in Lin Gang to the exclusion of the plaintiff.

47 The plaintiff contends that the real motive for the conduct of Ms Ong, Ms Suparman and/or KOPSG above was to undermine the Joint Venture so that they could usurp Project Winterland for their sole benefit to the exclusion of the plaintiff, and that they engineered the termination of the Joint Venture to this end. This was deliberately concealed from the plaintiff.

48 The plaintiff also says that in the 4 May 2015 email, Ms Ong, Ms Suparman and KOPSG represented to Ms Wang that they would not be continuing with Project Winterland in order not to take advantage of Ms Wang and Mdm Hu, and that they would account to the plaintiff (under Clause 8 of the Termination Agreement) and/or make the appropriate reimbursement (as per

Clause 9 of the Termination Agreement) if they continued with Project Winterland.

49 By reason of their deliberate concealment of the matters set out above and/or in reliance of the truth of the representations, and induced thereby, the plaintiff says that it entered into the Termination Agreement (through Ms Wang) for the purposes of dissolving the Joint Venture; and subsequently discovered that these representations were untrue.

50 According to the plaintiff, since the Joint Venture was a partnership, Mr Shport and KOPSG were duly constituted partners of the plaintiff and owed fiduciary duties of, *inter alia*, good faith and honesty to the plaintiff, which duties were breached by virtue of the above conduct. By reason of the close personal relationship that Ms Ong and Ms Suparman had with Ms Wang and/or Mdm Hu and being the persons who initiated and proposed the partnership between KOPSG and the plaintiff, the plaintiff contends that Ms Ong and Ms Suparman similarly owed the same duties to the plaintiff, to the same extent as KOPSG, and had also acted in breach of the duties. Alternatively, Ms Ong and/or Ms Suparman had dishonestly and/or knowingly assisted in the breach of the duties by Mr Shport and/or KOPSG as partners of the plaintiff.

51 Alternatively, relying on the same facts, the plaintiff contends that Ms Ong, Ms Suparman, Mr Shport, KOPSG or any two or more of them together, had wrongfully and with the intent to injure the plaintiff and/or to cause loss to the plaintiff by unlawful means, conspired and combined together to usurp Project Winterland for their sole benefit to the exclusion of the plaintiff in breach of the duties owed by the Mr Shport and KOPSG to the plaintiff.

52 The plaintiff claims damages for the above breaches, and alternatively an account of all profits made by the first to sixth defendants. In view of the above, the plaintiff further takes the position that the Termination Agreement has no legal effect. In the alternative, if the Termination Agreement was binding, the plaintiff claims against Mr Shport and KOPSG an account of profits pursuant to Clauses 8 and 9 of the Termination Agreement.

53 Despite the inclusion of KOPHK and Bodi as the seventh and eighth defendants to this suit, the plaintiff does not claim any substantive relief against them.

The defendants' defence and counterclaim

54 In response to the above contentions, the KOP defendants say that the Joint Venture was terminated on 13 May 2015 due to the failure to acquire the Qing Pu Land on time and the breakdown of the working relationship between KOPSG, Mr Shport, Ms Wang and Mdm Hu. They say that the relationship broke down because of the following matters:

(a) Ms Wang's misappropriation of Mr Shport's capital contribution to the Joint Venture;

(b) Ms Wang's demand for upfront payment of her salary which the KOP defendants felt was unreasonable;

(c) Ms Wang and Mdm Hu's failure to provide most of the "personal loans" they claim to have provided to KOPHK;

(d) Ms Wang and Mdm Hu's use of an informal accounting system known as the "Green Book";

(e) The state of the Bodi accounts and the fact that Ms Wang and Mdm Hu had incurred a high amount of doubtful expenses with no tangible results;

(f) A final round of disputes triggered by Bodi's request for more money;

(g) Dispute over the US$2m consultancy fee to Ms Wang;

(h) Concerns with Ms Wang's "triple dipping" of the Joint Venture funds;

(i) Significant delay in acquiring the Qing Pu Land;

(j) The decision not to proceed with the signing of a further agreement with West Hongqiao in May 2015;

(k) Frequent clashes of personalities and lack of trust among the parties.

The correctness and relevance of the above factual allegations are discussed in greater detail at [111] below.

55 The KOP defendants reject the plaintiff's contention that they were in contact with Chairman Yang or SLJZ in the period from January 2015 to May 2015, or that they engineered the termination of the Joint Venture so that they could carry out Project Winterland on other land without the plaintiff. The KOP defendants also say that even though the Termination Agreement was concluded on 20 May 2015, the parties agreed to terminate the Joint Venture on 13 May 2015.

56 Mr Shport was not a party to the January 2015 meeting with SLJZ and similarly rejects the plaintiff's allegations, and further avers that it was understood and agreed that the parties would be free to explore other opportunities to develop the Winterland Concept outside of Qing Pu.

57 Ms Ong and KOPSG also bring a counterclaim for defamation against Ms Wang, Mdm Hu and others based on four letters which were sent in December 2015 and February 2016. Ms Wang denies involvement in the letters and with Mdm Hu contends that the letters do not establish defamation under Chinese or Singapore law.

Evidence adduced at trial

58 The documentary evidence in this case was very extensive. The correspondence in volume A of the agreed bundle alone consisted of 24 files and over 11,300 documents, and there was further evidence in volumes B to H. As always, the documentary record generally forms a reliable record of what occurred. With time memories fade and the exigencies of litigation often mean that witnesses who are deeply involved in the litigation place a gloss or greater emphasis on certain points than they did at the time.

59 The plaintiff called three factual witnesses. The first witness was Ms Wang, a Chinese national who lives in Shanghai and the 100% owner of the plaintiff. She was also the sole director of the plaintiff but her husband, Kim Tae Hyeon, is now the sole director. She was the person involved through the plaintiff in the Joint Venture. Prior to her involvement in the Joint Venture, Ms Wang had worked for General Electric companies in the United States and subsequently joined Bain & Company, a consulting company, in Shanghai in 2006. She had known Ms Suparman since about 2003.

60 The second witness called by the plaintiff was Ying Li Fei ("Driver Ying"), who gave evidence in Chinese through an interpreter. He was a driver employed first by Bodi and then, after May 2015, by another company Cocoa Colony until mid-June 2016. He gave evidence about trips he had made in his capacity as a driver in Bodi, which the plaintiff relies on to show communication between the KOP defendants and SLJZ.

61 The last factual witness called by the plaintiff was Mdm Hu. She also gave evidence in Chinese, through an interpreter. As I have stated above, she is Ms Wang's mother and a successful businesswoman, having developed and managed shopping malls and other properties in China and then becoming Chief Executive Officer of a leading apparel company in China.

62 The KOP defendants called seven factual witnesses. Their first witness was Mr Geng Rong Hua ("Mr Jason Geng"). He was a project development manager for Project Winterland at Bodi between April 2014 and May 2015, having worked for Mr Shport's project management company, Xpanse, from February 2014 until the First Project Management Agreement was terminated in March 2014. His main evidence related to his involvement in the acquisition of the Qing Pu Land.

63 The second witness called by the KOP defendants was Mr Lee Chee Kiat, ("Mr Lee"). He is Chairman of Raffles Hospital, Shanghai. He gave evidence of his involvement with SLJZ from early 2012 and, following a meeting with Ms Ong and Ms Wang in early 2014, his introduction of SLJZ to the KOP defendants. This led to the meeting on 27 January 2015. He gave evidence of the lack of further communications until April 2015.

64 The next witness was Chairman Yang. As explained in *Bachmeer Capital Limited v Ong Chih Ching and others* [2018] 4 SLR 29, he gave evidence by video conference from Shanghai. He also gave his evidence in Chinese, through an interpreter. He was the Chairman of SLJZ from June 2004 to June 2015. His evidence dealt with the involvement of SLJZ with the KOP defendants from January 2015 onwards.

65 The next witness was Ms Ong. She is a shareholder in and the Executive Chairman and an Executive Director of KOP Limited which wholly owns KOPSG. She originally trained and practised as a lawyer and set up her own practice, Koh, Ong & Partners dealing with corporate and real estate matters. She then left practice and with Ms Suparman set up KOPSG.

66 The KOP defendants then called Ms Suparman, who is a shareholder in and the Group Chief Executive Officer and an Executive Director of KOP Limited, which wholly owns KOPSG. She had worked for CBRE in Shanghai and had met Ms Wang there and this led to their later involvement in the Joint Venture.

67 The next witness was Ms Ong Hsia Ning ("Ms Joey Ong"). She is the older sister of Ms Ong and is the Chief Operating Officer of KOPSG. She became involved in and gave evidence about the financial matters relating to KOPHK and Bodi.

68 The KOP defendants' final witness was Mr Quek. He was a project director engaged by Bodi between July 2014 and June 2015. He trained as a civil engineer, having graduated from the National University of Singapore with a degree in Civil Engineering and then, in 1990, a Master of Science degree in Civil Engineering. He gave evidence of his involvement in Project Winterland

and then a comparison between Project Winterland in Qing Pu and the Project in Lin Gang.

69 The last factual witness for the defendants was Mr Shport, the third defendant. He is a Russian national living in Singapore. He has expertise in projects involving cold temperatures and he developed the Winterland Concept for various projects from 2011. He provided US$1m to KOPHK and gave evidence of his involvement in Project Winterland in Qing Pu, the events leading to the termination of the Joint Venture in May 2015 and his subsequent involvement in the Project in Lin Gang.

70 Apart from the factual witnesses, I also heard evidence from two Chinese lawyers who gave evidence of Chinese law ("the Chinese Law Experts"). The plaintiff called Mr Zhang Baisha ("Mr Zhang"), a partner in Zhong Lun Law Firm specialising in corporate and competition law, and the KOP defendants called Mr Bai Lin ("Mr Bai"), a partner in Beijing DaHui Lawyers. Both Chinese Law Experts were well qualified to assist the court on the Chinese law issues which arose in this case. They helpfully produced a joint statement dated 6 January 2018 in which they were able to narrow their differences on the issues which I have had to consider.

71 Finally, the plaintiff also called Mr Kong Kian Siong ("Mr Kong"), a Chartered Accountant and a partner in Infinity Assurance LLP. He was instructed to investigate the assertions that Ms Wang and Mdm Hu sought reimbursement for various doubtful expenses, and in particular to match the supporting documents for these expenses to entries in the Green Book. These entries related to the accounting records of Bodi in respect of the amount of RMB1.547m (which covered part of the accounting entries for the period from

12 September 2013 to 31 March 2015) and other amounts recorded as entertainment expenses for the year 2014.

List of issues for determination

72 The parties produced an agreed list of issues on 25 October 2017 which set out the issues to be determined. A copy of the list of issues is attached to this judgment at Appendix A. Answers to those issues are summarised at the end of this judgment.

73 I now turn to consider the issues.

My decision

The relationship between the parties and the duties owed

The governing law of the relationship between the parties

74 The plaintiff contends that the governing law is Singapore law whilst the KOP defendants contend that the governing law is Chinese law.

75 The plaintiff refers to the decision in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR (R) 491 ("*Pacific Recreation*") at [36] as stating the applicable test to determine the governing law of a relationship:

> In *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 ("OUI v Turegum Insurance") at [82], it was pointed out that:
>
> > There are three stages in determining the governing law of a contract. The first stage is to examine the contract itself to determine whether it states expressly what the governing law should be. In the absence of an express provision one moves to the second stage which is to see whether the intention of the parties as to the governing

> law can be inferred from the circumstances. If this cannot be done, the third stage is to determine with which system of law the contract has its most close and real connection. That system would be taken, objectively, as the governing or proper law of the contract. See *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* [1996] 2 SLR(R) 589 and *Dicey & Morris on The Conflict of Laws* (11th Ed) at Rule 180.

76 The plaintiff submits that the relationship between the parties must necessarily be governed by Singapore law and contends that this is clear from the intention of the parties, notwithstanding the absence of an express choice of governing law for the relationship. First, it says that in the agreement between KOPHK and the plaintiff in relation to the US$2m, and the salary agreement between KOPHK and Alfred Enterprises for Ms Wang's salary, the parties expressly chose Singapore law as the governing law. Secondly, the plaintiff refers to the evidence of Ms Joey Ong who confirmed that for agreements involving the KOP Group, their preference is to use Singapore law as the governing law, and that the governing law would typically be Singapore law or Hong Kong law but never Chinese law.

77 Thirdly, the plaintiff contends that the parties never intended for Chinese law to apply because in none of the agreements have the parties ever chosen Chinese law to be the governing law. This includes the First and Second Project Management Agreements, the agreement between the KOPHK and the plaintiff in relation to the US$2m, and the salary agreement between KOPHK and Alfred Enterprises for Ms Wang's salary.

78 The plaintiff says that it is not in dispute that KOPHK was the Joint Venture vehicle, which in turn held the entire shareholding in Bodi, and if the parties had intended their relationship to be governed by Chinese law, there would have been no need to invest through KOPHK. It submits that the

incorporation of KOPHK in Hong Kong corroborates the parties' intention to avoid the application of Chinese law.

79 On the other hand, the KOP defendants submit that Chinese law is the governing law. Mr Shport, as necessary, appears to adopt the KOP defendants' submissions on the issue of governing law. They refer to the Court of Appeal decision in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments"*) where in finding that claims for breach of fiduciary duty arose from an employment contract governed by German law, the Court of Appeal held that German law governed the alleged breaches of fiduciary duty (at [81]):

> …We would, however, accept the more *limited* proposition to the effect that where equitable duties (here, in relation to both breach of fiduciary duty and breach of confidence) arise from a factual matrix where the legal foundation is premised on an independent established category such as contract or tort, the appropriate principle in so far as the choice of law is concerned ought to be centred on the established category concerned.

80 In the present case, the KOP defendants submit that their alleged breaches of fiduciary duties arose from the parties' agreement to collaborate so that the governing law of the fiduciary obligations, if any, would be the governing law of the Joint Venture. The KOP defendants submit that the Joint Venture agreement went through several iterations:

> (a) In May 2013, KOPSG (represented by Ms Ong and Ms Suparman) and Ms Wang entered into a Joint Venture to identify and develop real estate projects in China. The broad terms of the Joint Venture, which the parties orally agreed to at a meeting on 3 May 2013, were reflected in Ms Wang's email dated 3 May 2013.

(b) In or around September 2013, KOPSG (represented by Ms Ong and Ms Suparman) and Ms Wang agreed to undertake Project Winterland in Qing Pu as part of the Joint Venture. The parties agreed that Ms Wang and Mdm Hu would be in charge of running the day-to-day affairs of the project and liaising with the Qing Pu government on land acquisition matters.

(c) In June 2014, Mr Shport entered the Joint Venture, but only for the Project Winterland in Qing Pu portion of the Joint Venture.

(d) In late 2014, KOPSG (represented by Ms Ong and Ms Suparman) and Ms Wang agreed to confine their dealings with each other to Project Winterland in Qing Pu only.

81 The KOP defendants submit that it is undisputed that there was no written agreement and consequently no express choice of law reflecting the terms of the Joint Venture and its various iterations. In those circumstances, the KOP defendants also refer to the decision in *Pacific Recreation* at [37] where the Court of Appeal held that, where there is no express choice of law, the court would have to determine whether an intention of the parties to choose a governing law could be inferred. If the court was faced with a multiplicity of factors, each pointing to a different governing law, then the proper approach would be to move on to the third stage of the analysis, which was to determine the law with the closest and most real connection with the contract.

82 The aim of the third stage was not to divine any "intent" of the parties, but to consider, on balance, which law had the most connection with the contract in question and the circumstances surrounding the inception of that contract. Equal weight ought to be placed on all factors, even those which would not,

under the second stage, have been strongly inferential of any intention as to the governing law (at [48]). The "closest and most real connection" test was the same as the objective test of what the reasonable man ought to have intended if he had thought about the matter at the time when he made the contract. Where there is no express choice of law and the intention of the parties to choose a governing law could not be inferred, the court should determine the law with the closest and most real connection with the contract. The factors to be considered include: the choice of jurisdiction for dispute resolution, the form of the documents involved in the transaction, the connection with a preceding transaction and the commercial purpose of the transaction (at [37]).

83 Where the contract is an alleged oral agreement, the KOP defendants submit that the court may proceed straight to the third stage. They refer to the decision of Chao Hick Tin J (as he then was) in *Las Vegas Hilton Corp (trading as Las Vegas Hilton) v Khoo Teng Hock Sunny* [1996] 2 SLR(R) 589 ("*Las Vegas Hilton*"), where it was held at [40]:

> As we are here concerned with an alleged oral contract and bearing in mind the pertinent facts, I do not think it will be meaningful to go into an exercise to determine if any inference could be drawn as to the intention of the parties on the choice of law. What the parties discussed were only in broad terms. I think it will be more productive if I proceed directly to stage three to determine with which law has the transaction the closest and most real connection.

84 In the same case at [45] it was held:

> To determine the question of "closest and most real connection" many factors may be taken into account, the main ones are – the place of contracting, the place of performance, the places of residence or business of the parties respectively; and the nature and subject matter of the contract: see *In re United Railways of the Havana and Regla Warehouses Ltd* at 91 *per* Jenkins LJ.

85 In that case, it was held that the proper law of the contract was the law of Nevada, even if the contract had been concluded in Singapore. In the absence of any choice expressed by the parties, the transaction had the closest and most real connection with Nevada because (a) the loans were given at Las Vegas and in US dollars; (b) the gambling was to be done at the plaintiff's casino in Las Vegas; (c) the plaintiff was not carrying on any business, but only had a representative office, in Singapore; and (d) none of the parties were Singaporean. The only connection with Singapore was that the discussions were held at the liaison office in Singapore.

86 The KOP defendants submit that, similarly in the present case, the parties merely discussed the broad terms of the Joint Venture and it would be more productive for this Court to proceed to the third stage to determine which law has the closest and most real connection to the transaction. They submit that the Joint Venture has the closest and most real connection with China in the light of the following factors:

(a) The initial subject matter of the Joint Venture was to identify, evaluate and develop real estate opportunities in China into commercially viable projects.

(b) The subsequent subject matter of the Joint Venture was the development of Project Winterland in Qing Pu.

(c) There was never any intention to carry on business in Singapore or Hong Kong. KOPHK was merely a holding company without employees.

(d) The nationalities of the parties were a Chinese individual represented by Hong Kong company, a Singapore company, and a Russian individual.

(e) The places of contracting are unclear, being either Singapore or China.

(f) The currencies of the transactions pursuant to the Joint Venture were US dollars, Singapore dollars, Hong Kong dollars and Chinese RMB.

87 As there was no agreed jurisdiction for dispute resolution, the KOP defendants say that factors (a) to (c) would have a close connection with China and factors (d) to (f) are neutral as between Singapore or China. They therefore submit that the jurisdiction with the closest and most real connection is China.

88 In reply, the plaintiff agrees that the legal basis to determine the governing law of the Joint Venture is as set out in *Pacific Recreation*. The plaintiff submits that, here, the second stage establishes the position. In the absence of an express provision, the question is whether the intention of the parties can be inferred from the circumstances. The plaintiff submits that it can be inferred from the circumstances that the intention of the parties was not to apply Chinese law and there is no need to move to the third stage, as the KOP defendants have sought to do. Even if the court were to move to the third stage to consider the closest and most real connection, it would still point towards Singapore or Hong Kong because:

(a) Ms Ong, Ms Suparman, Mr Shport and KOPSG were at all material times based in Singapore.

(b) The various contracts entered into between the parties to the Joint Venture have always provided for Singapore law as the governing law and have never chosen to apply Chinese law.

(c) The dispute resolution clauses in the various contracts between the parties to the Joint Venture provide for Singapore as the venue for resolving disputes.

(d) The communication between the parties to the Joint Venture was always largely conducted in the English language.

89 I first consider the way in which the Joint Venture was formed. There is no documentation setting out the terms of the Joint Venture itself but it arose from the following chronology of events and agreements:

(a) Ms Ong and Ms Suparman held the absolute majority in KOPSG by way of indirect interest because they held 92.55% of KOP Group Pte Ltd which in turn held 100% of KOPSG. KOPSG had been trying to break into the Chinese real property development market through their representative office in China.

(b) In 2012, Mr Shport and Ms Ong and Ms Suparman of KOPSG considered constructing a large indoor winter theme park in Singapore based on the Winterland Concept as conceived by Mr Shport.

(c) In late 2012, Ms Suparman introduced Ms Wang to Ms Ong.

(d) In April 2013, there were a number of communications between Ms Suparman and Ms Wang, copied to Ms Ong, which appear to have arisen from a trip to Shanghai by Ms Suparman when she met Ms Wang.

(e) On 26 April 2013 Ms Wang wrote to Ms Suparman to say, among other things, that she was planning to fly to Singapore for about a week to work with and get to know Ms Ong and Ms Suparman more. She said: "Also we can talk in detail about how we can do a JV, terms and conditions, etc." She then listed some preliminary discussion topics under the heading "About our JV, preliminary discussion topic list." The topics included "Shares for China JV", "Structure of China JV" and "Roles and responsibilities."

(f) Ms Ong and Ms Suparman visited Ms Wang and Mdm Hu in Shanghai in early May 2013 to discuss ideas for collaboration in real estate projects in China. After discussions, Ms Ong, Ms Suparman, Ms Wang and Mdm Hu orally agreed, at the meeting on 2 and/or 3 May 2013, on the structure of the Joint Venture between the parties with the object of identifying and developing real estate projects in China.

(g) The broad terms of the Joint Venture were reflected in Ms Wang's email dated 3 May 2013, which attached a proposed structure showing that the plaintiff (100% owned by Ms Wang) and KOPSG would form a joint venture company, KOPHK, to be set up in Hong Kong. This company would be 51% owned by KOPSG and 49% owned by the plaintiff. There would then be a wholly foreign-owned company owned by KOPHK, Bodi, set up in China.

(h) As explained in the evidence of Ms Ong, one of the purposes of the Joint Venture was to identify real estate development opportunities in China, to incubate the business opportunities and to develop them to a stage whereby they would be commercially viable projects for implementation. The real estate development projects would then be

developed by a development company and third party investors could take a stake in the development company through either the payment of a premium or payment of fees to the parties to the Joint Venture. The development company would pay the Joint Venture for the rights or opportunities to develop the project. Parties to the Joint Venture would then profit through the form of establishment fees. Parties to the Joint Venture could invest in the development company, manage the construction phase of the project and earn project management fees, or earn asset management fees by managing the asset post-completion. Parties to the Joint Venture could also become key investors in the project, if they chose to.

(i) KOPHK was incorporated in Hong Kong on 3 June 2013 and Bodi was incorporated in China on 12 September 2013 (with KOPHK as its sole shareholder).

(j) In or around September 2013, Ms Wang came across the Winterland Concept during the course of her work at KOPSG. She and Ms Ong and Ms Suparman of KOPSG agreed to explore the possibility of implementing the Winterland Concept in China pursuant to the Joint Venture and subsequently identified Shanghai as a suitable location.

(k) In October 2013, Ms Wang identified 3 adjacent plots of land in Qing Pu, Shanghai, which were considered to be suitable. The parties then embarked on Project Winterland in Qing Pu as part of the Joint Venture.

(l) The parties agreed that Ms Wang and Mdm Hu would be in charge of running the day-to-day affairs of the project and liaising with the Qing Pu government on land acquisition matters.

(m) By an agreement dated 12 April 2014, Ms Wang and Mdm Hu were to be paid salaries amounting to a total of S$63,000 per month with effect from October 2013.

(n) In June 2014, Mr Shport paid US$1m to KOPHK as a sum related to the Project Winterland in Qing Pu. I shall deal below with the nature of this payment.

(o) A further agreement dated 1 September 2014 was entered into between KOPHK and Alfred Enterprises for the payment of Ms Wang's salary.

(p) An agreement dated 9 October 2014 for US$2m was signed in Singapore between KOPHK and the plaintiff.

(q) In 2014, the parties' dealings under the Joint Venture narrowed to Project Winterland in Qing Pu only.

(r) The parties agreed on the contribution table for establishment fees for Project Winterland on or around 12 January 2015.

90 On balance I consider that Chinese law applies to the Joint Venture agreement. In applying the tests in *Pacific Recreation*, it is common ground that there was no express provision as to the governing law. I therefore start by considering whether, at the second stage, the intention of the parties as to the governing law can be inferred from the circumstances.

91 The relevant circumstances are the circumstances of the transaction. It was a transaction between a Chinese national acting through the plaintiff, a Hong Kong company and two Singapore nationals acting through KOPSG, a Singapore company. At a later stage, a Russian national resident in Singapore

joined the transaction. The transaction involved setting up a Hong Kong company, with a 100% subsidiary in China to pursue real estate opportunities in China. There were no written terms of the transaction and it arose out of an oral agreement made in China which was then implemented by setting up companies in Hong Kong and China.

92 As Chao J observed in *Las Vegas Hilton* (at [40]), there is difficulty in determining if any inference can be drawn as to the intention of the parties on the choice of law in an oral contract where the parties only discussed and agreed to the transaction in broad terms. The circumstances of the transaction in this case do not lead to any inference that the parties intended a particular governing law to apply. The plaintiff sought to rely on a number of matters including the fact that the parties to the Joint Venture did not choose Chinese law but chose Singapore law in other transactions. I do not consider that those other transactions allow me to find an inference as to the intention of the parties in entering into the Joint Venture agreement. Nor do I consider that the nationality of the KOP defendants and Mr Shport or the language of the parties' communications lead to any particular inference as to the intention of the parties on the governing law.

93 I therefore proceed to stage three to determine which law has the closest and most real connection to the transaction. The contenders are evidently the laws of Singapore, Hong Kong and China. The connection with Singapore relates to the nationality of the KOP defendants, as well as the place of incorporation of KOPSG. The connection to Hong Kong relates to the place of incorporation of the plaintiff and KOPHK. The connection to China relates to the nationality of Ms Wang and Mdm Hu, the place of incorporation of Bodi, and the location of the real estate projects which were to be developed under the Joint Venture. Further, the oral agreement in May 2013 which led to the

formation of the Joint Venture was made in China. As the plaintiff says, there are also a number of neutral factors such as the places where various actions were carried out and the currencies of the transactions.

94 However, applying the test of the law with which the transaction has the closest and most real connection, I have come to the conclusion that, in balancing the various indications, the answer is Chinese law.

The nature of the obligations under the Joint Venture in Chinese law

95 The Chinese Law Experts are agreed that under Chinese law, a partnership relationship arises between partners *inter se* under the Partnership Enterprise Law of the People's Republic of China (Revised in 2006) ("the Partnership Enterprise Law"). They are agreed that KOPHK is not a partnership enterprise under the Partnership Enterprise Law.

96 However, the Chinese Law Experts are not agreed as to the nature of the duties owed by the KOP defendants to the plaintiff under the Joint Venture. Mr Bai, the plaintiff's Chinese Law Expert, contends that the KOP defendants owed a fiduciary duty to the plaintiff as under Chinese law, it is a fundamental principle that the KOP defendants, whether as joint venturers, partners or shareholders are required to conduct themselves honestly, fairly, in good faith, lawfully and not to abuse their power.

97 The KOP defendants' Chinese Law Expert, Mr Zhang, disagreed with this analysis. He says that under Chinese law, fiduciary duties exist when expressly stipulated in statutes and apply only to specified legal relationships. Generally speaking, he says that fiduciary duties are obligations borne by a person to act in the best interests of another, instances of which include: the duties of loyalty and diligence borne by directors, supervisors, senior managers

to the companies in which they serve under Article 147 of the Company Law of the People's Republic of China (Revised in 2013) ("Chinese Company Law") or duties of honesty, trustworthiness, cautiousness, and effective management borne by trustees to beneficiaries under Article 25 of the Trust Law of the People's Republic of China ("Chinese Trust Law").

98 Here, Mr Zhang does not consider that Mr Shport or KOPSG owed fiduciary duties to the plaintiff because they are not directors or supervisors or managers of the plaintiff, nor is there any trust relationship between Mr Shport and/or KOPSG and the plaintiff. Nor does he consider that, in some other way, Mr Shport or the KOP defendants would owe a fiduciary duty to the plaintiff.

99 Mr Bai does not disagree with Mr Zhang on the applicability of the particular provisions of Chinese Company Law or Chinese Trust Law but says that the relationships between the plaintiff, Ms Ong, Ms Suparman, Mr Shport and KOPSG are each probably a contractual relationship which, under Chinese law would be governed by Chinese Company Law, General Principles of the Civil Law of the People's Republic of China ("Chinese Civil Law General Principles"), and the General Rules of the Civil Law of the People's Republic of China ("Chinese Civil Law General Rules"). He says that these laws and rules do not provide any specific provision in relation to "partners", but stipulate the basic principles of law governing civil activities, including fairness, making compensation for equal value, and the principle of good faith. He says that these legal principles are similar to fiduciary duties under the common law.

100 Mr Zhang accepts that it is a fundamental principle under Chinese civil law that any person in conducting civil activities should conduct themselves honestly, fairly and in good faith. This principle is expressed in various Chinese statutes such as Article 4 of the Chinese Civil Law General Principles and

Article 6 of the Contract Law of the People's Republic of China, and is referred to as "the Principle of Honesty and Good Faith" ("the Good Faith Principle"). However, Mr Zhang says that contrary to Mr Bai's opinion, the Good Faith Principle is different from the fiduciary duties that the plaintiff seeks to impose upon Mr Shport and the KOP defendants.

101 In the oral evidence of the Chinese Law Experts, held in a concurrent evidence session following traditional cross-examination by the parties, I asked questions to see whether there was common ground on the way in which fiduciary duties and the Good Faith Principle would apply. Mr Zhang's view was that the two were different, but Mr Bai by reference to the duties pleaded at paragraph 47 of the statement of claim which included "a duty of good faith, honesty, fair dealing and loyalty", considered the two to be the same.

102 In my view, it is evident that, under Chinese law, because the Joint Venture is not a transaction which comes within the Partnership Enterprise Law, the source of any fiduciary duties would have to arise under more general principles.

103 The oral agreement which was the essence of the Joint Venture was that the parties would collaborate to identify, evaluate and develop real estate opportunities in China into commercially viable projects. The agreement was then put into effect between Ms Wang, acting as a director of the plaintiff, and Ms Ong and Ms Suparman, acting as directors of KOPSG. The plaintiff and KOPSG agreed that they would become shareholders (49% and 51% respectively) in KOPHK and that KOPHK would act in China through its 100% owned subsidiary Bodi.

104 I do not consider that fiduciary duties equivalent to those of partners would apply between the plaintiff and KOPSG and it is clear that, at all material times, Ms Wang acted on behalf of the plaintiff, and Ms Ong and Ms Suparman acted on behalf of KOPSG.

105 On the basis of the evidence of the Chinese Law Experts, I consider that the plaintiff and KOPSG in performing the Joint Venture, that is, in collaborating to identify, evaluate and develop real estate opportunities in China into commercially viable projects through KOPHK and Bodi, would have a duty under Chinese law to act honestly and in good faith.

106 I do not consider that, under Chinese law, the plaintiff has established that there would be any duty to act honestly and in good faith owed by Ms Ong and Ms Suparman directly to the plaintiff. In this case, Ms Ong, Ms Suparman and Ms Wang carefully acted through KOPSG and the plaintiff respectively. In those circumstances, when Ms Ong and Ms Suparman acted in their role as directors of KOPSG, the relevant agreement was between KOPSG and the plaintiff, and the plaintiff has not made out any grounds for establishing a duty in Chinese law owed by Ms Ong and Ms Suparman outside that agreement.

107 If I were wrong about the application of Chinese law in this case and if, as the plaintiff maintains, Singapore law applied, then I do not consider that, in the circumstances of this case, the relationship between Ms Wang, acting as a director of the plaintiff and Ms Ong and Ms Suparman acting as directors of KOPSG would give rise to fiduciary duties under a partnership. Essentially, they operated the Joint Venture through the corporate structure of KOPHK and Bodi, as shareholders. The obligations of shareholders to each other do not give rise to the fiduciary duties which apply to partners under a partnership. I consider that, in the circumstances, even if Singapore law applied, the highest obligations

of the plaintiff and KOPSG would be those that I have found would apply in Chinese law: that the plaintiff and KOPSG in performing the Joint Venture, that is, in collaborating to identify, evaluate and develop real estate opportunities in China into commercially viable projects through KOPHK and Bodi, would act honestly and in good faith.

108 The foregoing analysis applies equally to Mr Shport, whose involvement in the Joint Venture began at a later juncture.

109 I shall proceed to consider the conduct of the parties on the basis that this was the duty which the plaintiff, KOPSG and Mr Shport owed to each other.

The conduct of the Joint Venture and the factual allegations

110 Whilst the focus for the breaches arises in 2015 and culminated in the termination of the Joint Venture in May 2015, it is necessary to consider the background to those events. It is therefore convenient to review the various allegations made by each party in a chronological sequence as they form the background to the events in May 2015 which, essentially, are the central issues in this case.

111 There are various matters which arise from the following allegations:

(a) that Ms Wang misappropriated Mr Shport's capital contribution;

(b) that Ms Wang and Mdm Hu did not provide the personal loans to KOPHK;

(c) the nature of the US$2m sum;

(d) the contributions from Ms Wang and Mdm Hu;

(e) the delay in acquiring the Qing Pu Land;

(f) the state of Bodi's accounts;

(g) the use of the Green Book system;

(h) that the KOP defendants continued to be in communication with SLJZ after 27 January 2015;

(i) that KOPSG intended to continue Project Winterland with someone else in Shanghai to the exclusion of the plaintiff;

(j) that Ms Ong's email of 4 May 2015 was an act of bad faith.

112 I now consider these factual allegations in turn and set out my findings relating to these allegations where appropriate.

Whether Ms Wang misappropriated Mr Shport's capital contribution

113 On 12 April 2014 Ms Wang, Ms Ong and Ms Suparman signed an agreement with the title "Company structure and contribution principle – [Ms Wang], [Ms Ong], [Ms Suparman]". The following was agreed:

> 1. [Ms Wang] monthly salary 28000SGD, Mdm Hu 35000SGD, back dated to 2013 oct, start to pay (deduct what [Ms Wang] already receiving in Singapore) when we have cash.
>
> 2. Arrangement of [Ms Ong]:
>
> a. Salary of [Ms Ong] will be paid by [KOPSG], as a base for claim [KOPSG's] contribution to the project later on. ….

114 Also on 12 April 2014 there was a separate agreement with the title "Company structure and contribution principle – [Mr Shport]". There followed

an agreement for a loan of S$120,000 to Mr Shport for work under the First Project Management Agreement, for a salary for Mr Shport starting on 8 May 2014 and stating that:

> 5. For any premium received for the winterland project, we will do the following allocation:
>
> a. 50% remain in KOP China (Bodi)
>
> b. 50% distributed based on contribution, details will negotiate late based on a fair base
>
> i. [Bodi] contribution
>
> ii. [KOPSG] contribution
>
> iii. [Mr Shport] contribution for original idea and early stage concept development.

115 Mr Shport says in his evidence that prior to the termination of the First Project Management Agreement, Ms Wang, Ms Suparman and Ms Ong had asked him if he wanted to become a shareholder in KOPHK. He says that in or around May 2014, following further discussions on how Project Winterland in Qing Pu should proceed, it was agreed that he would invest US$1m in exchange for a 15% "beneficial stake" in KOPHK, together with KOPSG and the plaintiff. He says that it was clear to all parties that his contribution of US$1m was an investment in KOPHK.

116 On 16 May 2014, Mr Shport spoke to Ms Wang. He then sent an email in which he said: "As we spoke today, I'll make USD 1,000,000 (one million) remittance to the designated account by first days of June. This investment will count for 15% in [KOPHK]."

117 Ms Wang replied saying "[y]es, that's right". On 23 May 2014, Ms Wang wrote to Mr Shport, copying Bodi's office administrator Ms Jessica Zhang, and asked him to make sure that the US$1m arrived in the "HK acct" by

1 June. She said that if he needed any further information, he should contact Ms Jessica Zhang.

118 Subsequently, on 26 May 2014, Ms Wang sent a further email only to Mr Shport in which she said "For the 1M USD, here is the plan" and asked him to send US$710,000 to her personal account and US$290,000 to the KOPHK account "which I believe Jessica already sent you the details." Mr Shport replied saying he would make the transfers requested. When Ms Wang was asked in cross-examination whether she had sought the agreement of Ms Ong or Ms Suparman for the payment to be directed to her personal account, she said that she had asked Mr Shport to check with Ms Ong. Mr Shport said she did not make that request and I find it difficult to accept Ms Wang's evidence on this aspect.

119 Ms Wang then immediately sent an email to Ms Jessica Zhang saying that she had just told Mr Shport to send US$290,000 to the KOPHK account on 3 June 2014 and that as for "[t]he rest, [she] had another settlement with him". She added: "Pls arrange the share transfer document ASAP."

120 Mr Shport apparently made transfers of US$950,000 to Ms Wang and US$50,000 to KOPHK. The accounts of KOPHK appear to show the payment of US$50,000 on 3 June 2014 and US$240,000 on 6 June 2014. Ms Wang's evidence of why she received US$950,000 instead of US$710,000 was not clear. In her affidavit of evidence-in-chief ("AEIC") she said she did not know, but then in her oral evidence she said it was Mr Shport's bank which had requested the higher sum to be paid into her account. Mr Shport said that Ms Wang had asked him to transfer the higher sum. Whatever the position, it appears that the difference US$240,000 was transferred by Ms Wang to KOPHK soon afterwards. Although the precise dates are not clear, in the end, it

seems that the total sum of US$950,000 was transferred by Ms Wang to KOPHK.

121 In August 2014, Ms Wang called Ms Ong to request further cash injections into Bodi because it did not have sufficient funds to pay its expenses. Ms Ong says that she was puzzled by this request because she thought that Mr Shport had just contributed US$1m in share capital to KOPHK, which should have been sufficient to cover the expenses. After making enquiries, Ms Ong says she found out that Ms Wang had instructed Mr Shport to transfer his investment to her personal account.

122 Although Ms Ong says she was livid and shocked, her response on 4 September 2014 showed disapproval but no signs of that reaction. She wrote as follows:

> Hi!
>
> I have realised that Dmitry's funds have been paid to your personal account and they have gone to pay your personal salary and expense. We have always maintained that your salary was going to be back paid when we have a project. Similarly, KOP have not received any work done towards the project and will not do so until we have income from a project. This payment to your personal account is highly improper and serious matter. Hence, please transfer all the funds received to the Company immediately and then any matters pertaining to your claims are to be settled after a face to face meeting as it requires approval.

123 In reply, Ms Wang wrote on 4 September 2014 to summarise the functions that she and Mdm Hu performed and their suggested salary. She referred to functions for "KOP China office" and for "Winterland project (Bodi)". She suggested a combined salary of S$33,000 per month for herself and Mdm Hu, starting in October 2013.

124 There was then an email exchange between Ms Wang and Ms Ong on 15 September 2014. In response to Ms Ong's question about Mr Shport's US$1m, Ms Wang said:

> Dmitry give 1M in Jul, yes, but that needs to be paid back to me first, as before his money comes in, all spending is from my personal pocket. We not only take zero salary, but also support office spending, to colliers, KPF, ECADI, etc. Those expenses are all reflected in the monthly financial report, according to the approved budget.

125 In a later email Ms Wang said:

> Total lending to company and untaken salary add up to total of 1.08M USD.
>
> After Dmitriy IM injection, I took back 890k, this including Hu and my salary as agreed and other lendings. But after your confirmation, I can put back partially of the salary. Company still owes me 190k USD. Which I need to take back after your funding injection.

She confirmed in her oral evidence that the figure should have been US$710,000 not US$890,000. As an explanation of the figure of US$1.08m, Ms Wang also provided a calculation (Exhibit P-2) which showed that there was salary due to her and Mdm Hu of US$572,233, and a "Not paid loan due to Mdm Hu" of US$500,000, making a total of US$1,072,233.

126 Ms Ong then sent an email on 16 September 2014 saying:

> The agreement was that your salary is paid after the company has cashflow and since Oct. But so far both sides are still pumping in money and we have no cash or income.
>
> The paid up to date from our side I believe is more than USD1m. which means your matching equivalent should be around the same.

127 Ms Wang replied almost immediately to say: "We agreed I start salary on Oct, 2013, but take the salary when we have cash in acct (This cash means your injection of funding, not for cash flow. We made it very clear at the time.)"

Later that day, Ms Ong responded, saying that the issue related to the definition of "cash" in the 12 April 2014 agreement. Ms Ong said: "I do not believe either you or us are trying to short change the other" and concluded by commenting that she hoped "the above clarifies our Position."

128 There then followed a discussion between Ms Wang, Ms Joey Ong and Ms Suparman concerning salary and it was agreed that Ms Wang would be paid S$25,000 per month from October 2013 to September 2014 and S$22,000 per month from October 2014 onwards. As she was being paid S$8,000 per month in Singapore, the sum payable from 1 October 2013 to 30 September 2014 was S$204,000 or US$160,214. This then led to a management consultancy agreement in a letter dated 1 September 2014 between KOPHK and Alfred Enterprises, for a one-time fee of US$165,850 and a monthly fee of US$11,000 from 1 October 2014. As mentioned above, Alfred Enterprises is owned by Ms Wang's husband.

129 Much was made by the KOP defendants of the circumstances of the part payment of Mr Shport's contribution of US$1m directly to Ms Wang's personal bank account. It clearly should not have happened and the way in which it was done, concealed from Ms Ong and Ms Suparman, does not reflect well on Ms Wang. However, that said, I think that the KOP defendants are incorrect to overplay its effect on the relationship between the parties. Whilst I have no doubt that it was the first sign of concern by Ms Ong and Ms Suparman at the way Ms Wang acted in relation to financial matters, the communications at the time between Ms Ong and Ms Wang and the discussions about salary which followed show that the parties were still on good terms. There is nothing in those communications to show that Ms Ong was "livid and shocked" and, if she had been, I am sure that she would not have held back from saying so in her communications.

Whether Ms Wang and Mdm Hu provided the personal loans to KOPHK

130 Mdm Hu stated in her AEIC that she had extended at least seven loans to Bodi totalling the approximate sum of RMB4.8m. The KOP defendants submit that despite that evidence and the oral evidence of Ms Wang and Mdm Hu at the hearing, Mdm Hu only loaned RMB1.2m (about US$200,000).

131 In support of her position on the loans, Mdm Hu annexed a number of loan certificates to her AEIC. The first loan certificate (dated 23 May 2014) is for a loan of RMB600,000 which was made by Mdm Hu to Gaohong Entertainment (Shanghai) Ltd, who then paid the sum to Bodi. It provided for repayment by Bodi to Mdm Hu when "the increased capital of [Bodi] is in place". It does not appear that this repayment ever occurred. The fifth loan certificate (dated 26 September 2014) is for a further loan of RMB600,000 made in the same way. The last loan certificate is for a loan of RMB166,550 by the plaintiff to Bodi on 18 December 2016. Again, it does not appear that repayment has occurred.

132 However, the arrangement for the other loans was that KOPHK would transfer a sum in US dollars to Mdm Hu's account in Hong Kong. She would then transfer the RMB equivalent amount to Gaohong Entertainment (Shanghai) Ltd who then paid the sum to Bodi. When the RMB amount was repaid to Mdm Hu, she would then repay the sum in US dollars to KOPHK. This mean that there was not in fact a loan, because Mdm Hu received in Hong Kong the US dollar equivalent of the sum she subsequently transfers to Bodi via Gaohong Entertainment (Shanghai) Ltd.

133 On that basis, I consider that the KOP defendants are correct and that Mdm Hu has only made loans of RMB1.2m where sums were outstanding.

Further, on 15 September 2014 when Ms Wang said that lending and unpaid salary amounted to US$1.08m, of which she said that US$500,000 was "Not paid loan due to Mdm Hu", in fact only RMB600,000 or about US$100,000 represented an outstanding loan made by Mdm Hu. I consider that this issue, whilst not directly relevant to the issues I have to decide, reflects a degree of inaccuracy in the way that Ms Wang dealt with financial matters relating to the Joint Venture, KOPHK and Bodi.

The nature of the US$2m sum

134 It is common ground that a sum of US$2m was agreed as a payment to Ms Wang and/or Mdm Hu but there is a dispute as to the purpose for which that sum was paid. This forms part of the background to the dispute over the financial position which occurred in May 2015.

135 By a consultancy agreement dated 30 April 2014, KOPHK consigned the plaintiff as its "long term consultant" for a consignment period of five years until 29 April 2019 and the "total counseling [*sic*] price" was to be US$2m. That agreement was signed by Ms Wang on behalf of the plaintiff and by her husband on behalf of KOPHK.

136 That consultancy agreement was sent to KOPSG and on 31 July 2014 Ms Ong wrote to Ms Wang and Ms Joey Ong to say that she had reviewed the agreement. She said: "The intention was to off set their shareholding with the management fee. The consultancy was for advice to be given for our dealings KOPHK and China with the government." She then asked Ms Joey Ong to prepare another draft agreement.

137 On 1 September 2014, Ms Joey Ong sent Ms Wang the revised draft consultancy agreement between KOPHK and the plaintiff. Ms Ong made

amendments which were sent on 5 September 2014 and the final consultancy agreement was signed on 9 October 2014. This final consultancy agreement provided that the term should be from 1 July 2013 to 31 December 2014 and the fee was US$2m. On its face it stated that it was for the performance of the services stipulated in Article 2, which included advising on regulatory reporting requirements, negotiating with relevant government authorities for licensing fees, introducing potential business partners and investors in China and so on.

138 The plaintiff says that the sum of US$2m was to compensate Mdm Hu for the minority stake which she had agreed to accept at the start of the Joint Venture, and to offset the plaintiff's contribution according to their shareholding in KOPHK. The plaintiff relies on the following evidence. First, it refers to the email on 31 July 2014 in which Ms Ong said that she had reviewed the consultancy agreement and stated that the intention was "to off set their shareholding with the management fee". Secondly, the plaintiff refers to emails on 9 January 2015 when Ms Wang referred to the fact that "my 2M is not in format of loan, but in contract. But indeed this is a loan from me." In her response, also on 9 January 2015, Ms Ong said that "your contribution is based on the contract so your contract should not form part of disbursement but as capital contributions and where it appears to be treated as loan from KOP and [Mr Shport], the unpaid component of your contract will rank the same as if you have contributed your share". Thirdly, the plaintiff refers to Ms Joey Ong's oral evidence that Ms Ong's response on 9 January 2015 showed that the US$2m was to offset the plaintiff's shareholding in KOPHK.

139 The plaintiff submits this shows that Ms Ong's understanding was that the amount of US$2m was a capital contribution and it was to offset the plaintiff's contribution to the plaintiff's shareholding in KOPHK.

140 The KOP defendants' position is that the US$2m was originally intended to be a management success fee to Ms Wang and Mdm Hu for liaising with the Qing Pu government to persuade them to allow Bodi to pursue Project Winterland, clear and sell the Qing Pu Land, and the US$2m was only payable to Ms Wang and Mdm Hu once the land in Qing Pu was acquired. They say that the US$2m was also intended to cover all expenses incurred in cultivating good relations with the Qing Pu government, regardless of the amount that Ms Wang and/or Mdm Hu actually spent.

141 The KOP defendants rely on the fact that, in the original agreement dated 30 April 2014, Ms Wang expressed the US$2m as a consultancy fee to be earned over five years until 29 April 2019, at which time Project Winterland in Qing Pu would have been up and running according to the original timeline. They say that the 9 October 2014 agreement provided that the US$2m was payable to Ms Wang only after the Qing Pu Land was successfully acquired, as Article 5.1 provided that the sum was payable only "after completion of the service". Some evidence turned on who drafted this agreement. The KOP defendants say that Ms Ong was candid in acknowledging that the 9 October 2014 agreement was not carefully drafted, in particular, in terms of the dates and that the expiry date was 31 December 2014 in Article 1.1 was erroneous because the land was unlikely to be acquired by then.

142 The KOP defendants also refer to Ms Wang's email of 9 April 2015, following another round of discussions with Ms Ong, Ms Suparman and Mr Shport, when Ms Wang summarised the parties' true intentions in her email in saying: "The consulting service contract (2M USD) Covers the period until successful land acquisition. No additional required."

143 The KOP defendants say that in or around late 2014, upon Ms Wang's request, Ms Ong agreed in principle to allow this US$2m to be set off from Ms Wang's capital contribution that she was due to make to the Joint Venture. However, Ms Wang had not yet earned the US$2m as the Qing Pu Land was never acquired but she claimed that she had already spent US$2m dealing with the Qing Pu government. They say that by May 2015, Ms Wang did not have US$2m to set off.

144 In relation to the plaintiff's case that Ms Ong had offered Ms Wang and Mdm Hu a sum of US$2m as consideration for agreeing to settle at a 49% stake in KOPHK instead of their desire to take a 60% stake in the Joint Venture, the KOP defendants say that Ms Wang's theory lacks credibility. In Ms Wang's oral evidence, she initially claimed that the agreement she signed on 30 April 2014 was intended to reflect the position that the US$2m was for her, but she later accepted that the agreement did not say that. After conceding the point, Ms Wang then said that she regretted that this and a lot of things were not properly documented.

145 The KOP defendants say that Ms Wang's assertion that the US$2m was already "agreed and given" was wrong, because if it had been "agreed and given" from the outset, there would have been no need for the agreements dated 30 April 2014 and 9 October 2014, and the further discussion on 9 April 2015, as recorded in the notes in Ms Wang's email.

146 It was evident that there had been an early discussion, before April 2014, in which the sum of US$2m had been agreed. The basis on which it was agreed is, in my judgment, best found in the two agreements which were signed in April 2014 and October 2014. The first one seems to have been drafted by Ms Wang or at least on the basis of her view of matters. It was to cover the work which

the plaintiff, through Ms Wang, would carry out in China in providing consultancy services. Nothing was mentioned about the expenses of carrying out the consultancy services. Although some expenses and additional costs are mentioned, the agreement seems to leave it open for negotiation. The agreement envisaged the US$2m covering the consultancy for five years, with payment to be made after the agreement was signed.

147 It is also instructive to consider the discussions in July and September 2014, leading to the October 2014 agreement. On receiving the draft consultancy agreement, Ms Ong said that the intention was to offset Ms Wang and Mdm Hu's shareholding with the management fee. This indicates that prior to April 2014 there had been an agreement that the fee due under the consultancy agreement would not be paid out but would be treated as the plaintiff's contribution of US$2m for the 49% shareholding in KOPHK, where the intention was for there to be a total capital injection of some US$4m, excluding the initial registered share capital. Equally, I consider that Ms Ong is referring to a previous agreement prior to April 2014 when she said that the consultancy was for advice to be given for "our dealings KOPHK and China with the government". This supports the interpretation of the terms of the April 2014 agreement as referring only to advice and not expenses. There was then the further exchange on 9 September 2014 by which Ms Wang stated: "The service scope is for local liaison with govt, set up company etc. But I wanted to make sure, this is not related to what I am entitled to as a shareholder whom contributed to the Winterland project. This is just for the 2M spending outside of book." Ms Ong replied: "Yes, that's correct. Of course!" Although the reference to "spending outside of book" is not entirely clear, this exchange again confirms the scope of the service and that the US$2m did not represent a sum to be paid to the plaintiff as a shareholder contributing to Project Winterland.

148 The agreement of 9 October 2014 was then signed. It covered a shorter term from 1 July 2013 to 31 December 2014. I do not accept that there was an error in these dates or that Ms Ong did not take care with the agreement. The history of the changes from April 2014 to October 2014 would show she did. It envisaged an extension for another year at a negotiated fee, capped at US$500,000. Again it covered work, not expenses which were dealt with separately in Article 5.2. In Article 5.1 the fee of US$2m was payable "in 30 days after completion of the service".

149 I have come to the conclusion that the sum of US$2m was not payment for the plaintiff accepting a 49% shareholding rather than a 60% shareholding, in the sense that that sum would be given to the plaintiff. However, it is clear that it was discussed in the context of the shareholder payments and was expressed as a payment made by KOPHK to the plaintiff for the plaintiff's services but not expenses. It would not, in fact, be paid but would be treated as the plaintiff's contribution to its 49% shareholding in KOPHK.

150 In my view this was the subject of an agreement before April 2014 and was reflected in the terms of the written agreement of 9 October 2014, except that there was an agreement that the sum would not in fact be paid but would be treated as the plaintiff's capital contribution for its shareholding in KOPHK. This is why the term in the 30 April 2014 agreement was expressed as a period of five years and why the sum was to be payable after completion of the service in the 9 October 2014 agreement. In May 2015 it therefore did not represent a sum which either party had to pay to the other party. However, its significance is that it represented a payment which was to be treated as a contribution to the capital of KOPHK.

Delay in acquiring the Qing Pu Land

151 As stated above, the proposed site for Project Winterland in Qing Pu consisted of six lots of land in the Shanghai Hongqiao CBD. The site was divided into three plots, Plot A, Plot B and Plot C, for the purpose of the proposed Project Winterland.

152 On 30 October 2013, Ms Wang held a meeting with Deputy District Mayor Wang Xunguo of Qing Pu district, Party Committee Secretary Gu Lianyun and Deputy General Manager Xie Ming of West Hongqiao and others at which she reported on the planning for Project Winterland and its needs for land.

153 At that meeting, according to the report produced by Ms Wang, the project received a positive response. In the email which Ms Wang sent to Ms Ong and Ms Suparman after the meeting she said:

> 1) The land likely will work. A few small things need to address in planning, but should be able to get it done
>
> …
>
> 4) Time, from now, 5 month govt say can get the land ready for us. (Planning change and demolition completed.)

154 On 25 November 2013 the West Hongqiao Framework Agreement was entered into between West Hongqiao and KOPSG under which West Hongqiao agreed to provide necessary assistance to KOPSG for its investment in Project Winterland in Qing Pu. West Hongqiao is a state-owned enterprise, which acted as the Qing Pu government's agent in coordinating the various government departments to negotiate and resettle the existing occupants.

155 On 29 November 2013 Ms Wang produced a presentation setting out the steps needed for Project Winterland prior to August 2014. In terms of the land

acquisition she set out a programme which started with the signing of the West Hongqiao Framework Agreement on 22 November 2013 and proceeded with the following steps:

(a) Submission of modification in planning parameters by 15 February 2014.

(b) Approval of those modifications by 15 May 2014.

(c) Submission of a bid for tender of the Qing Pu Land by 30 May 2014.

(d) Auction of the Qing Pu Land by 15 June 2014.

(e) Start of construction/ground-breaking by August 2014.

156 The modification in the planning parameters for the Qing Pu Land involved changing the height limit from 80m to 100m, changing the plot ratio from 2 and 1.6 to an average of 2.5 and the removal of the Hui Ding Road and re-routing of the Pan Long River, both of which passed through the Qing Pu Land. The removal of the Hui Ding Road and the re-routing of the Pan Long River were expressed by Ms Wang as "deal breakers" in her presentation, failing which Project Winterland in Qing Pu would be unlikely to proceed.

157 In addition to the changes in the planning parameters, the Qing Pu Land was occupied by companies which had factories on the site. Before that land could be put up for tender, it first needed to be cleared and existing occupants resettled.

158 There were delays in the process of resettlement of the existing occupants and by July 2014, when Mr Quek joined the project as Bodi's Project

Director, the Qing Pu government had stated that the land tender would be carried out by September 2014.

159 On 12 August 2014, KOPHK signed the Investment Intention Agreement which was more detailed than the West Hongqiao Framework Agreement and set out the parties' duties and obligations in more detail. It provided, among other things that:

> [West Hongqiao] shall be responsible for coordinating with competent governmental departments to promote the land planning guideline change for the Lots 19-02, 19-05, 21-02, 21-05 and 20-02, and make efforts to complete it before September 30, 2014.
>
> …
>
> [West Hongqiao] shall be responsible for coordinating with competent governmental departments to package six Lots "19-02, 19-05, 21-02, 21-05, 20-02 and 22-01" and transfer them in the form of "compound transfer by land tender with designated construction conditions".

160 Attached to the Investment Intention Agreement was a "Relocation and Transfer Announcement Schedule". The Investment Intention Agreement provided that, if the lots were not announced by the agreed deadline in the Relocation and Transfer Announcement Schedule, "the time of announcement and land handover will be extended and determined by [West Hongqiao] and [KOPHK] through consultation."

161 That Relocation and Transfer Announcement Schedule provided that West Hongqiao "shall coordinate with related governmental departments including relocation and make efforts to realize the following schedule". The Relocation and Transfer Announcement Schedule showed various dates for each plot but overall for all plots that:

(a) "Sign the relocation compensation agreement and cancel the registration of land ownership certificate" would happen before the end of October 2014;

(b) "Release the transfer announcement" would happen in the first ten days of December 2014; and

(c) "Hand over the land" for Plots B and C would happen no later than end of June 2015 and for Plot A would happen no later than end of December 2015. These dates of June 2015 and December 2015 were much later than the initial target to commence construction in August 2014.

162 In or around September 2014, the Qing Pu government revised the target date for the tender of Plot C to the first quarter of 2015 but this target date could not be confirmed, because no relocation agreement had been reached with Shanghai Jahwa United Co., Ltd ("Jahwa"), which had a factory located on Plot C at this time. As recorded at a meeting on 29 September 2014, if the land was tendered in the first quarter of 2015, the likely presale date will be the third quarter of 2017 and Mr Quek was asked to explore alternative construction methods to shorten the time required up to presale.

163 On 18 December 2014, the Qing Pu government officials announced that they would complete the signing of resettlement and compensation agreements with two occupants, Jahwa and STATS Chippac Shanghai Co Ltd ("StatsChippac"), by December 2014, and "would strive to complete the clearance of both land plots by 3Q 2017, failing which, no later than end 2017."

164 In addition, on 23 December 2014, a meeting was held with the government officials at which the following timings on planning guideline change, land title cancellation and land tender were stated:

> 1. After Xujing Town completed the signing of resettlement compensation agreement, the Qingpu Planning and Land Bureau would commence planning change, estimated to take about 6 months.
>
> 2. Upon signing of the resettlement compensation agreements, Qingpu Planning and Land Bureau to commence the cancelation of land titles of [Jahwa], StatsChippac and the other eight companies, and to complete this work in 2 months. Xujing Town should cooperate with the land cancelation and land clearance work as agreed in the meeting dated 18th December, 2014.
>
> 3. Upon completion of 1 and 2 above, Qingpu Land Reserve Centre should commence preliminary preparation works related Plot A and B land tender.
>
> 4. Upon legal acquisition of the land, KOP would ensure that the project construction progresses as plan.

165 These dates represented a further delay in the process of land acquisition. Meanwhile, the Qing Pu District Planning and Land Bureau ("Qing Pu Planning Bureau"), faced difficulties in changing the planning parameters in relation to the public road, Hui Ding Road. This road cut across Plot A which was the intended location for the ski slope and a hotel adjacent to the ski slope. Although discussions had been taking place since April 2014, the Shanghai City Planning and Land Bureau ("Shanghai Planning Bureau") was firmly against removing the road.

166 However, the approval to the other major change, the re-routing of the Pan Long River, was obtained from the relevant authority on 12 August 2014, as confirmed in an email to Ms Wang on 30 September 2014.

167 On 12 March 2015, Ms Ong, Mdm Hu and Ms Wang attended a meeting with the Shanghai Planning Bureau. Previously, in July 2014, five proposals for dealing with Hui Ding Road had been put forward: building an underground tunnel, elevating the building, expanding the roads, building a ring-road and shifting the road to the east. At that meeting those proposals were discussed.

168 There was then a further meeting with the Shanghai Planning Bureau on 14 April 2015 at which the Deputy Chief of the Shanghai Planning Bureau confirmed that Hui Ding Road could not be removed or re-routed. The preferred solution was to elevate the building. However, for this solution to work, the issue of the property title of the building area above the road needed to be addressed, and this was under the jurisdiction of another department, the Shanghai Municipal Road Department.

169 At the end of April 2015, the Qing Pu Planning Bureau submitted its revised application for planning change to the Shanghai Planning Bureau in accordance with the discussion on 14 April 2015.

170 On 4 May 2015, the Shanghai Planning Bureau responded setting out a timetable for various actions leading to the approval for the revised land specifications between 15 August 2015 and 31 August 2015, as confirmed by Mr Quek in his email on 7 May 2015. This left the remaining concern about the title over the land above the road, although Ms Wang says that this was also eventually resolved.

171 Whilst the planning aspect for the Qing Pu Land appeared to be coming to a conclusion in August 2015, there was still uncertainty in the way in which matters would proceed. There were also continuing concerns in May 2015 relating to the timing of the future steps necessary for acquisition of the Qing

Pu Land. There had to be cancellation of the titles in the land, resettlement of the existing occupiers, clearance of the land and then tenders. In May 2015, although some progress had been made, there was still great uncertainty about when these steps would occur.

The cancellation of the signing ceremony with West Hongqiao

172 One matter which arose at this time concerned the signing of a further agreement between KOPSG and West Hongqiao. There had already been two agreements signed between them, the West Hongqiao Framework Agreement in November 2013 and the Investment Intention Agreement in August 2014. In about late April 2015, IE Singapore informed the KOP defendants that Shanghai's then Mayor, Mayor Yang Xiong, would be travelling to Singapore to attend a trade event entitled "Global Conversations" on 13 May 2015. Ms Ong was of the view that it would be opportune to have a further agreement with West Hongqiao signed before the Shanghai Mayor and his Singapore counterpart, usually a minister.

173 Ms Ong then instructed Mr Quek, who in turn instructed Mr Jason Geng, to liaise with West Hongqiao to prepare a further investment agreement. On about 4 May 2015, West Hongqiao sent a draft of the further agreement which Mr Quek forwarded to Ms Ong, copied to Ms Wang. Mr Quek reported that the new draft agreement from West Hongqiao contained no specific information of the land and land acquisition method. He said that West Hongqiao's rationale was that the content of the agreement would likely be made known to the press and so it would be best if sensitive information like the agreed land acquisition method and some other land-related terms were not contained in the agreement, so as to not invite unnecessary attention and questions. He said that West

Hongqiao stressed that they would continue to implement and honour the land acquisition and land price related terms in the previous agreements.

174 Ms Ong considered that, in the new draft agreement, West Hongqiao had sought to remove specific information on the timelines for land acquisition. This made the new agreement vaguer than the previous two agreements, and might prejudice these earlier agreements.

175 On 5 May 2015, Ms Ong and the others agreed not to proceed with the signing of the further agreement with West Hongqiao. Ms Wang was then involved in communicating the decision to the chairman of West Hongqiao.

176 Whilst the cancellation of the signing of the further agreement with West Hongqiao was raised in evidence, I do not consider that it had any impact on the events which followed. It reflected a continuing degree of uncertainty with the acquisition of the Qing Pu Land but otherwise did not form part of the events which led to the termination of the Joint Venture.

The use of the Green Book system

177 The Green Book was a separate set of accounts to record off-balance sheet expenses at Bodi, as distinct from records found in the general ledger. It was used to increase the take-home pay of the employees and reduce the personal income taxes they would have to pay to the Chinese government. In addition, it was used to pay certain other expenses. The use of the Green Book is, in large part, the cause of certain difficulties with the Bodi accounts.

178 The way in which the Green Book worked was this. In relation to employee salaries, Bodi would declare only a portion of an employee's salary in the general ledger and pay taxes and social benefits to the Chinese

government based only on that portion. The remainder of the employees' salaries would be paid, it seems in cash, through the Green Book. To fund the remainder and obtain a flow of money to use in the Green Book accounts, false expenses would be recorded in the general ledger. These would be the subject of false *fa piao*, or government-issued invoices. The money received in respect of those false expenses was then used as income to make the payments in the Green Book. Ms Wang said that the false expenses in the general ledger were supported by *fa piao* which were purchased by Ms Jessica Zhang.

179 An example of the false entries in the general ledger related to the rental of a property to Bodi at RMB75,000 per month. Bodi entered into a sham rental agreement dated 6 May 2014 with the owner of the property, Ms Wang's young daughter, so that there would be RMB75,000 of income in the Green Book every month to fund Green Book expenses.

180 There are two main issues raised in relation to the Green Book. The first relates to the involvement of Ms Wang and Mdm Hu in setting up and operating the Green Book, and the second relates to the involvement of the KOP defendants in setting up, auditing and terminating the use of the Green Book.

181 The plaintiff contends that the KOP defendants initiated the use of the Green Book or, at the very least, were complicit in its use. It says that the way in which the KOP Group paid the salaries of one of its employees from their China representative office, Ms Jasmine Ye Dan ("Ms Jasmine"), is consistent with the objective of the Green Book, being to reduce the income tax payable by the employee so as to enable them to take home a larger portion of their salary. The plaintiff refers to documents which would indicate that Ms Jasmine was paid more than was declared in China.

182 The KOP defendants say that these documents do not in any way show that they employed the Green Book practice. Rather, they say that Ms Jasmine's salary was correctly apportioned between the Shanghai and Singapore offices because her job scope was to market KOPSG's Singapore properties in both the Singapore and China markets. The KOP defendants say that they did not maintain a separate set of accounts to deceive any government or make false entries into a general ledger or false entries in separate accounts. They contend that all entries, vouchers and payments in Ms Jasmine's apportioned salary were proper and true.

183 Having considered the evidence, I do not consider that it establishes that a Green Book system was used by the KOP Group when they had a China representative office. The documents are more consistent with the explanation put forward by the KOP defendants, which is that Ms Jasmine's salary reflected her work in China and in Singapore.

184 I consider that Ms Wang and Mdm Hu initiated the use of the Green Book system. Given the experience of Ms Wang and Mdm Hu in operating in China, it is much more likely that the Green Book system was initiated by them as part of their operation of Bodi. However, it is clear that in October 2013 Ms Ong was told about the use of the Green Book and from the information she was given, including being told that she should not discuss it openly with anyone or in writing, it would have been obvious that it was a dubious practice.

185 It was then in about August 2014 that Ms Ong asked Ms Joey Ong to find out how the Green Book was being used and recorded by Ms Wang and Mdm Hu. This led to the visit by Ms Joey Ong to Bodi's offices in Shanghai between 17 and 20 August 2014. She obviously spent some time going through the figures. Ms Joey Ong says that she was told by Ms Wang and Mdm Hu that

she was not to discuss the Green Book openly with others or make copies of the Green Book records or to put anything in writing. However, Ms Joey Ong explains that she in fact took photographs of the Green Book records from October 2013 to June 2014.

186 Upon her return, she then sent an email to Ms Wang and Mdm Hu on 29 August 2014, copied to Ms Ong and Ms Suparman, in which she said:

> Ref the review of Green Book during my recent visit, below is a summary of my understanding and findings:
>
> 1. The commencement of recording [of the Green Book] starts Oct 2013 and [Ms Ong] has cleared up to Dec 2013.
>
> 2. I have checked relevant records from Jan 2014 till July 2014.
>
> 3. Most expenses listed in the Green Book comes with receipt except entertainment and gifts.
>
> 4. I have confirmed with Mdm Hu that the cash balance with her now is RMB708,153.70.
>
> As we have agreed, with immediate effect, pls pay all expenses from this pool of RMB708,153.70 which should last for a good 8 to 10 months.
>
> Nearer 8th months from now, i.e. around Feb/Mar 2015, let's review Green Book again…

187 There is a dispute as to whether Ms Ong had cleared the Green Book up to December 2013. Ms Joey Ong says that this was what she was told by Ms Wang and Mdm Hu but Ms Ong denies that she cleared the Green Book up to December 2013. It seems unlikely that this comment in the email above would be wrong and I consider that some discussion about the Green Book must have taken place in December 2013 which Ms Wang and Mdm Hu thought cleared the Green Book up to December 2013. It is also clear that Ms Ong and Ms Joey Ong discussed the review carried out in Shanghai and it is likely that she read the email copied to her. She raised no concerns about the statement that she had

"cleared up to Dec 2013" as she would have been expected to do if that was incorrect.

188 It is evident from the email of 29 August 2014 from Ms Joey Ong that she carried out an audit and did not raise any particular concerns about the process which had been followed. Sometime later, in October 2014, Ms Ong clearly became concerned about the use of the Green Book practice and, although this was another disputed issue, I find that she did tell Ms Wang and Mdm Hu to cease the Green Book practice in October 2014. This is consistent with Ms Wang's email to Mr Daniel Sun of Cocoa Colony on 13 November 2014 where she said that Ms Ong, Ms Suparman and she had agreed on the use of the Green Book before he was on board, "[b]ut since Oct, we stopped this practices per request of [Ms Ong]".

189 That email was copied to Ms Ong and resulted in a light-hearted exchange about the fact that the reference to the Green Book had been put in writing which Ms Ong thought "maybe not a good idea".

190 Then, on about 21 January 2015, there was another discussion between Ms Ong, Mr Ron Loi and Ms Joey Ong about the continued use of the Green Book. It is not altogether clear to what extent the practice was being continued at that date. Ms Ong apparently said that she was uncomfortable about its continued use and instructed Ms Joey Ong to put these instructions in writing. Ms Joey Ong then sent an email to Ms Wang to suspend the use of the Green Book: "All expenses out/receipt into Greenbook will be suspended with immediate effect. Pls let me have the closing figures as at 21/1/15. Pls continue to keep all existing records relevant to Greenbook".

191 Ms Wang replied to the email to confirm that it "[c]an be done but cannot be as of 1/15". However, contrary to what Ms Joey Ong had instructed, Ms Wang and Mdm Hu destroyed the records in the Green Book. The KOP defendants submit that an adverse inference should be drawn against Ms Wang and Mdm Hu for their deliberate destruction of the Green Book records and their apparent attempt to frustrate the clarity of the five months of Green Book records disclosed by them.

192 The KOP defendants also refer to the fact that, during the cross-examination of Ms Wang and Mdm Hu, it emerged that Mdm Hu had retained the Green Book pages with Ms Joey Ong's handwritten notes in English on them. Mdm Hu said that she was afraid to throw away those pages because she did not understand English and thought that it could be some kind of signature. The KOP defendants say that Mdm Hu's explanation of why she did not ask Ms Wang what the English words meant made no sense, and they submit that the real reason why Mdm Hu selectively retained the Green Book pages with Ms Joey Ong's handwriting was because Ms Wang and Mdm Hu wanted to show that Ms Joey Ong had reviewed and acknowledged the records, and to show that the KOP defendants were equally complicit in the Green Book practice. They also submit that Ms Wang and Mdm Hu did not wish the court to have the full set of Green Book records but only produced five months of records in these proceedings and claimed that the rest had been destroyed.

193 So far as these proceedings are concerned, the issue of the use of the Green Book forms one of the background matters and is relied on as showing that Ms Wang and Mdm Hu mismanaged Bodi's finances. From the evidence it is clear that from about October 2013 until at least October 2014, Ms Wang and Mdm Hu continued to use the Green Book, and that the KOP defendants knew about its use and raised no concerns. The Green Book review by Ms Joey Ong

in August 2014 was intended to and did for the most part verify the expenses with receipts. It was envisaged that there would be a further review of the Green Book in about April 2015 and that the sums in the Green Book would cover expenses until about that time.

194 In October 2014, Ms Ong told Ms Wang and Mdm Hu to cease the Green Book practice, but it would appear that the practice did not cause major concerns, as the light-hearted exchange on 13 November 2014 between Ms Ong and Ms Wang confirms. It was only in January 2015 that matters seemed to have caused considerable concern to Ms Ong, leading to the directive on 21 January 2015. That appears to have caused the practice to cease.

195 Whilst the Green Book practice may have ceased, it formed an important background matter to the events in May 2015. The adoption of the Green Book practice meant that for many of the expenses there was no clear record of what the sums had, in fact, been used for. The false entries in the general ledger for landscaping, uniform and other matters to cover sums transferred to the Green Book, together with there being no clear record of why sums of money had been spent meant that there were "doubtful expenses" which formed the basis of much of the correspondence in late April and May 2015.

Communications between the KOP defendants and SLJZ after 27 January 2015

The plaintiff's case

196 The plaintiff submits that the KOP defendants, together with Mr Shport, usurped Project Winterland so as to implement it on other land and, in so doing, failed to make full disclosure to the plaintiff (or concealed from the plaintiff) of

the communications which they had with SLJZ after the initial meeting on 27 January 2015.

197 The plaintiff refers to the following events involving the KOP defendants and SLJZ which, in addition to the 27 January 2015 meeting, the plaintiff says are undisputed:

(a) First, the plaintiff refers to a meeting between Ms Ong and Ms Suparman with Mr Lee in Shanghai on 13 March 2015.

(b) Secondly, Ms Ong and Ms Suparman met Chairman Yang on 14 May 2015 in Singapore in the morning and over lunch. The meeting was arranged in advance by Mr Lee on 26 April 2015. Ms Ong and Ms Suparman were in discussion with Chairman Yang on the possible relocation of Project Winterland to Lin Gang/Qian Tan. At the conclusion of the meeting on 14 May 2015, the understanding was that arrangements would be made for Ms Ong and Ms Suparman to meet with Chairman Yang again the following week when they were in Shanghai.

(c) Thirdly, arrangements were made on 15 May 2015 for Ms Ong and Ms Suparman to meet with Chairman Yang in Shanghai on 19 May 2015. Ms Ong and Ms Suparman then met with Chairman Yang in Shanghai on 19 May 2015 together with Mr Quek. At this meeting, the parties had more advanced discussions on the relocation of Project Winterland to Lin Gang.

(d) Fourthly, on the next day, 20 May 2015, Mr Quek received an email from SLJZ with an enclosure of a computer-aided design ("CAD") drawing of the Lin Gang site.

(e) Fifthly, on 20 May 2015, a comment on KOP Limited was made on a share investor forum, stating that "location has been settled…heard its fairly close to shanghai disneyland".

(f) Sixthly, on 20 May 2015, Mr Quek, in his WeChat message to Ms Ong, stated that he had "just discussed with [Mr Shport] on presentation financial" for the Project in Lin Gang.

(g) On 20 May 2015, Mr Quek, in his WeChat message to Ms Ong stated:

> Hi Chih Ching the assistant of Wu Xiaoke asking us to prepare the following information for them by this Friday for him to report to city
>
> 1. Winterland promotional video DVD
>
> 2. Detailed plans for Beidao Cultural Performance Center
>
> 3. Minimum size of Winterland for their finding the right plot
>
> They want item 3 by tomorrow. The rest by Friday. When asked if Wu will need the visitors n financial figures for this meeting with city, her answer was optional, good to have if we can provide else in no hurry. We have the model done and once you OK we can send to them tomorrow. We always have 1. For item 2 we need to discuss.

(h) On 20 May 2015, Mr Quek received a further email from SLJZ with a link to download some documents. According to Mr Quek, the email correspondence with SLJZ came about after the 19 May 2015 meeting.

198 Further, the plaintiff submits that the evidence of Driver Ying, who was the personal driver of Ms Ong and Ms Suparman, is that he had been driving Ms Ong and Ms Suparman to Qian Tan Command Centre to meet with SLJZ

since 27 January 2015. After the initial meeting, Ms Ong in her email response (dated 28 January 2015) to Mr Lee confirmed that she would visit Chairman Yang the next time she visited Shanghai in response to Chairman Yang's invitation. The plaintiff says that this corroborates Driver Ying's evidence that after the initial meeting, he continued to drive Ms Ong and Ms Suparman to Qian Tan Command Centre.

199 The plaintiff says that it is undisputed that Ms Ong and Ms Suparman were in Shanghai at least during the period of 10–14 March 2015, 6–10 April 2015, and 18–22 May 2015.

200 The plaintiff says that there are no car logs corroborating these trips to Qian Tan Command Centre because the car logs recovered by Mdm Hu appear to be incomplete, and the dates of the recovered car logs mysteriously ended on 30 January 2015. Even if all car logs had been discovered, the plaintiff says that there would probably be no car logs recording the trips of Ms Ong and Ms Suparman going to Qian Tan Command Centre due to confidentiality reasons, as mentioned by Driver Ying in his AEIC. The plaintiff contends that this is supported by Ms Suparman's evidence where she confirms that the drivers need to keep their whereabouts and security confidential.

201 The plaintiff submits that Driver Ying is an independent witness who has no vested interest in the outcome of the lawsuit. Thus, he had no reason to lie about there being a practice where the big bosses did not have to fill in car logs, since all car logs after January 2015 were taken out of Bodi's office by someone.

202 The plaintiff also places reliance on Ms Suparman's email dated 25 May 2015 which was copied to Mr Quek and Ms Joey Ong:

> As you know, the partnership between [Ms Wang]/[Mdm Hu] and [KOPSG] has ended. Pls do not give nor provide ANY information from your side to anyone other than Quek and the relevant people in charge whom you've been working with from [KOPSG]. If in doubt, please check with me or Quek.
>
> Quek, as spoken pls speak to other staff on this, including Driver Ying.

When cross-examined as to what confidential or sensitive information about Bodi that Driver Ying could possibly have, Ms Suparman replied: "Everything to do with our – where we go, our security. Everything." The plaintiff contends that there was no reason for Ms Suparman to have sent the email instructions to Mr Quek and to specifically single out Driver Ying for Mr Quek to speak to, unless Driver Ying had knowledge of the trips to meet with SLJZ after 27 January 2015 and Ms Suparman wanted to pre-empt his disclosure of this sensitive information.

203 The plaintiff also submits that Mr Quek's evidence that he ignored the email completely is not correct but, as he said, "driver Ying doesn't touch anything on anything that is our projects and things. He's just a driver, he drives here and there, that's all" which, the plaintiff says, raises the question of why Ms Suparman had to specifically point Driver Ying out to be spoken to if he did not have information gained from his driving duties which was damaging to the KOP defendants.

204 The plaintiff also refers to Ms Ong's WeChat message to Mr Lee on 22 May 2015 in which she told Mr Lee not to tell Ms Wang regarding their discussion of implementing Project Winterland elsewhere, as "they only want to do [Qing Pu]". If indeed, there was nothing to hide from Ms Wang, the plaintiff says that there would have been no need for such a cryptic message to Mr Lee. The plaintiff says that these clandestine communications would not

have been necessary if, as per the KOP defendants, they had made full disclosure to the plaintiff of their intent to continue Project Winterland with SLJZ.

205 The plaintiff submits that there is incontrovertible evidence that KOPSG intended to continue Project Winterland (to the exclusion of the plaintiff) with someone else in Shanghai. The plaintiff says that Ms Ong confirmed that China was a difficult market for KOPSG and it was not conversant with the Chinese market. She also confirmed that development projects in China would be undertaken by KOPSG with a Chinese partner. The plaintiff says that KOPSG was waiting for the "right partner" to bring them into the Chinese market, and that Ms Wang and Mdm Hu were such partners and provided KOPSG an "opportunity of a break" into the Chinese market. Project Winterland was one such project and, having regard to the magnitude of the project (which at S$2.8b was 20 times its market capitalisation), KOPSG could not proceed on its own.

206 The plaintiff submits that the termination of the Joint Venture or the termination of Project Winterland in Qing Pu, would have been highly material for consideration by the board of KOPSG as well as KOP Limited, and was a material event to be announced to the public, but this did not happen. The plaintiff says that the fact that there was no board meeting or public announcement demonstrates KOPSG's intent to continue with Project Winterland, which it did with another partner, to the exclusion of the plaintiff.

207 The plaintiff refers to Chairman Yang's evidence that an informal, unwritten and bilateral agreement had been reached with KOPSG before the 20 May 2015 Termination Agreement was signed. He said that he had a meeting with KOPSG on 14 May 2015 at which he proposed to KOPSG the possibility of relocating Project Winterland to Qian Tan or to Lin Gang. After this meeting

on 14 May 2015, he said he was convinced that Project Winterland was a good project, particularly due to its social impact. He thus recommended it to the Lin Gang government after he returned to Shanghai "all before June" 2015. The plaintiff says he would have returned to Shanghai before 19 May 2015 as he met with Ms Ong, Ms Suparman and Mr Quek on 19 May 2015.

208 By then, the plaintiff submits that there was a bilateral unwritten and informal decision between the parties to collaborate. The plaintiff refers to Chairman Yang's evidence that "the investment decision" was made before he relinquished his position as Chairman of SLJZ in June 2015. That there was an unwritten and informal decision by this time, the plaintiff says, was not affected by Chairman Yang's evidence in re-examination that the two *written* agreements were signed with KOPSG in July 2015 and August 2015.

209 On this basis, the plaintiff submits that the 19 May 2015 meeting, if not earlier, was a confirmatory meeting between KOPSG and SLJZ regarding their collaboration. It says that this would explain why Ms Ong, Ms Suparman and Mr Shport travelled to Shanghai and formally entered into the 20 May 2015 Termination Agreement with the plaintiff to terminate the Joint Venture and by then had already made arrangements on 15 May 2015 to meet with Chairman Yang on 19 May 2015.

210 The plaintiff refers further to the fact that Mr Quek received various emails from SLJZ on 20 May 2015 requesting information on land size and enclosing CAD drawings of the Lin Gang district, which Mr Quek accepted arose out of the 19 May 2015 meeting. He also sent a WeChat message on 20 May 2015 at 5.18pm to Ms Ong stating that he was working with Mr Shport on the financial presentation on the Lin Gang project. On 20 May 2015 at 8.01pm, Mr Quek informed Ms Ong that "We have the model done and once you OK

we can send to them tomorrow". The plaintiff notes that "We" could refer to Mr Jason Geng or to Mr Shport.

211 Considering the magnitude of the project and the fact that SLJZ was a state-owned company, the plaintiff contends that it is inconceivable that SLJZ would have agreed to "propel the project forward" and "invest some bit of funds into it" themselves, solely on the basis of one introductory meeting on 27 January 2015 and one further meeting on 14 May 2015, especially if, as Ms Ong claimed, they did not go into much detail about Project Winterland at the 14 May 2015 meeting.

212 The plaintiff also says that it is surprising that Chairman Yang would decide so quickly on such a significant investment decision just a few weeks before his retirement. In fact, the plaintiff says that Chairman Yang confirmed that there were "several interactions" before the decision was reached to propel the project forward. He said that his recommendation to the Lin Gang government and the decision to collaborate was made before his retirement, which was in June 2015.

213 The plaintiff says that Mr Quek had already received directions to prepare a model and drawings for Lin Gang as of a result of the meeting on 19 May 2015, as evidenced by the WeChat message. Further, on or around 22 May 2015, a PowerPoint presentation on Project Winterland was prepared by KOPSG's Anton Kilayko for the Lin Gang project.

214 Therefore, the plaintiff submits that the decision for Chairman Yang to recommend Project Winterland to the Lin Gang government must be before his request for a new model, financials and for the PowerPoint presentation, which was 19 May 2015. On this basis it says that Chairman Yang's claim that they

did not meet with Ms Ong and Ms Suparman before 14 May 2015 cannot be correct, since it conflicts with his own statement of having "several interactions" with KOPSG, which must refer to more than the two known meetings, especially if, as Ms Ong claimed, these meetings were high level and very brief. The plaintiff submits that the "several interactions" must thus be a reference to meetings prior to 14 May 2015 which are corroborated by Driver Ying's evidence.

215 In KOPSG's further and better particulars dated 19 April 2017, it took the position that the discussion of "the Lin Gang Project with [SHCD] and/or [SLJZ] on an informal and exploratory basis first took place" on "25 May 2015" and the plaintiff says that this is incorrect as KOPSG and SLJZ were in discussions much earlier than 25 May 2015.

216 Accordingly, the plaintiff submits that KOPSG had already reached an informal, unwritten and bilateral decision to collaborate with SLJZ, to the exclusion of the plaintiff before the termination of the Joint Venture, and there were several interactions prior to that. The plaintiff contends that the KOP defendants' continued communication with SLJZ after 27 January 2015 was further corroborated by the following events in March 2015:

(a) First, the KOP Group confirmed to IE Singapore in Ms Joey Ong's email dated 23 September 2015 that they had been looking for an alternative piece of land to undertake Project Winterland in March 2015, which would coincide with discussions that they were having with SLJZ during the material time.

(b) Secondly, the plaintiff says that there was communication between KOPSG and Mr Lee, as shown by Ms Jenny Liu's email to Mr

Lee dated 12 March 2015 and the appointment fixed for Mr Lee to meet Ms Ong and Ms Suparman on 13 March 2015. The evidence of Mr Lee and Ms Ong that there was no meeting between them cannot be believed, because Ms Suparman confirmed that the meeting happened on 13 March 2015.

(c) At around the same time, Ms Joey Ong, by her email dated 28 March 2015 to Ms Wang, asked for a copy of the report on the ski resorts in China (which was part of an early-stage feasibility analysis for Project Winterland in China done by Bodi). When pressed as to the reason for her request, Ms Joey Ong claimed that she could not remember but suggested that this request may have been made for the purposes of reporting to the board of KOPSG or KOP Limited. The plaintiff says that it is strange that Ms Ong would require such a report since she confirmed that "Ms Wang would be primarily the person in charge of dealing with the project with the assistance of the staff employed by Bodi and KOPSG." The plaintiff submits that there was no reason to provide an early-stage feasibility study report to the board when the analysis has already been done and Ms Ong had already signed agreements with Qing Pu government to implement Project Winterland in Qing Pu. The only inference, it submits, is that the report was needed for the purpose of showing it to third parties or other interested investors concerning the viability of Project Winterland in China.

The KOP defendants' case

217 In response, the KOP defendants say that the heart of the plaintiff's case is that the KOP defendants "engineered" the termination of the Joint Venture so that they could collaborate with SLJZ to develop the Project in Lin Gang

without the plaintiff's involvement. The KOP defendants contend that this assertion is baseless and that the KOP defendants' collaboration with SLJZ began at an exploratory stage in late May 2015, and they became joint venture collaborators with contractual obligations only in November 2015.

218 In relation to the first meeting with Chairman Yang in January 2015, the KOP defendants say that it is common ground that in January 2015, Mr Lee introduced Ms Wang, Ms Suparman and Ms Ong to Chairman Yang, who was then the Chairman of SLJZ. On or about 27 January 2015, Ms Wang, Ms Suparman and Ms Ong met Chairman Yang at the SLJZ offices in Shanghai and Mr Lee also attended this meeting. This was an introductory meeting where Ms Ong introduced Chairman Yang to Project Winterland in Qing Pu and KOPSG's Hamilton Scotts and Ritz-Carlton Residences projects in Singapore.

219 At that meeting the KOP defendants say that Ms Ong, Ms Suparman and Ms Wang did not discuss any plan for collaboration even though Chairman Yang was very curious about the Hamilton Scotts with its sky garages. The KOP defendants say that Chairman Yang gave a consistent account when he was cross-examined and he said that the meeting was a courtesy call, lasting no longer than 30 minutes.

220 The KOP defendants say that on 16 April 2015, Mr Lee informed Ms Ong by email that Chairman Yang would be visiting Singapore in May 2015 for, among others, the "Global Conversations" event on 13 May 2015. Mr Lee also stated that Chairman Yang wanted to visit KOPSG's projects in Singapore. Ms Ong replied that KOPSG would be delighted to host Chairman Yang on a visit to the Hamilton Scotts and Ritz-Carlton Residences projects, as well as to lunch or dinner.

221 Mr Lee subsequently proposed that the visits take place on 14 May 2015, the day after the "Global Conversations" event. The KOP defendants say that Ms Wang was well aware of the planned meeting with Chairman Yang on 14 May 2015 because she was copied in the relevant email correspondence in the lead-up to Chairman Yang's visit. However, she did not attend the meeting on 14 May 2015 as she was busy hosting the other delegates from Qing Pu.

222 The KOP defendants then say that, on the morning of 14 May 2015, Chairman Yang and his entourage visited the Hamilton Scotts development before proceeding to the Ritz-Carlton Residences, where Ms Suparman and Ms Ong met them. Chairman Yang asked why KOPSG did not sign the agreement with West Hongqiao at the "Global Conversations" ceremony the day before, as it was scheduled to do. Ms Ong and Ms Suparman explained that there were problems with acquiring the land in Qing Pu for Project Winterland but did not go into much detail. Chairman Yang then mentioned that SLJZ had access to land opportunities in the Pudong New Area, including in Lin Gang and Qian Tan.

223 Ms Ong, Ms Suparman, Mr Lee, Chairman Yang and the rest of the party then went to Gordon Grill Restaurant at Goodwood Park Hotel and discussed more about the Qian Tan and Lin Gang areas generally and made small talk. The meeting that day ended with Chairman Yang inviting Ms Suparman and Ms Ong to Shanghai for a visit. Ms Ong informed Chairman Yang that they were making a trip to Shanghai the following week.

224 The KOP defendants say that, given that the parties had an unequivocal agreement to terminate the Joint Venture and to close down KOPHK and Bodi on 13 May 2015, it was open to them to explore a new relationship and there could be nothing wrong in doing that.

225 On 19 May 2015, Ms Suparman and Ms Ong arrived in Shanghai and were due to meet with Ms Wang on 20 May 2015. On 19 May 2015, Ms Ong and Ms Suparman met Chairman Yang and his team at the SLJZ offices. Mr Quek also attended this meeting. The meeting lasted for about an hour and the KOP defendants showed Chairman Yang artists' impressions of the Project Winterland in Qing Pu. The SLJZ team introduced various possible sites in the Lin Gang area. However, as Chairman Yang said in his evidence, SLJZ was mainly involved in office and residential developments. He said he made these suggestions to help salvage Project Winterland in Qing Pu because Qing Pu was not suitable for Project Winterland. His view was that the Qing Pu Land was not suitable because the site was located in an industrial area and the land was encumbered.

226 The KOP defendants say that the collaboration with SLJZ was only made legally binding in November 2015. On 6 July 2015, KOPSG entered into a framework agreement with SLJZ and SHCD which stated that it had "no compulsory legal binding effect on the parties". They say that the proposed site identified in the framework agreement was very preliminary and eventually a different site was chosen.

227 On 3 August 2015, KOPSG entered into a supplementary framework agreement with SLJZ and SHCD. This supplementary framework agreement also stated that it had no compulsory legally binding effect.

228 The KOP defendants say that their collaboration with SLJZ officially began on 19 November 2015 with the signing of a legally-binding Cooperative Agreement for the Project in Lin Gang.

229 The KOP defendants submit that there is no credible evidence of any meetings between the KOP defendants and SLJZ between 27 January 2015 and 14 May 2015. They say that, despite the volume of documentation disclosed in these proceedings, the plaintiff has failed to show any documentary evidence of any communication between the KOP defendants and SLJZ between the first meeting on 27 January 2015 and the second meeting in Singapore on 14 May 2015, to establish its case that the KOP defendants had already been in discussions with SLJZ and/or SHCD prior to the termination of the Joint Venture on 13 May 2015.

230 The KOP defendants say that the meetings with SLJZ on 14 and 19 May 2015 were purely exploratory in nature and, by then, the KOP defendants' Joint Venture with the plaintiff had been terminated.

231 The KOP defendants refer to Driver Ying's evidence in his AEIC that, on a number of occasions between March and May 2015, he drove Ms Ong and Ms Suparman to SLJZ's offices for meetings. He said he took them there a number of times in early 2015 and in the few months (March, April, May) right after the Chinese New Year holidays. He said that whenever Ms Ong and Ms Suparman came to Shanghai, he would always drive them to Qian Tan Command Centre together with Mr Quek and Mr Jason Geng. He said that he once asked Mr Jason Geng why they had been going frequently to Qian Tan Command Centre to see Chairman Yang, and Mr Jason Geng had told him that they were there to discuss with Chairman Yang about collaborating for Project Winterland.

232 The KOP defendants point out firstly that even though Driver Ying's evidence was that he had a Chinese version of his AEIC when he affirmed it in Shanghai on 11 January 2018, it is apparent from the Chinese translations of

that AEIC that Driver Ying merely relied on the interpreter's oral interpretation of the AEIC when he affirmed it on 11 January 2018, and that formal Chinese translations were only provided later, after 16 January 2018.

233 The KOP defendants also refer to Driver Ying's evidence about filling in car logs when he stated in his AEIC that Ms Ong, Ms Suparman, Ms Wang and Mdm Hu were not required to fill up the car log when they used the cars. When Driver Ying was asked about this, he said at first that this was a company regulation because their trips were confidential, but then said: "I won't say that it's to keep it confidential but it is a company regulation". However, the KOP defendants refer to the fact that one of the car logs exhibited to his AEIC was for a trip that Mdm Hu had taken on 10 October 2014, and full details of the route taken were stated in the log, to which Driver Ying expressed surprise and said he would make mistakes at times.

234 The KOP defendants contend that his explanation was not correct and was made in order to justify why there were no car logs for the alleged trips to SLJZ's offices in February, March and April 2015. They submit that there is no reason why trips taken by Ms Wang, Mdm Hu, Ms Ong and Ms Suparman should have to be kept confidential when their meetings were for business and the purpose of the car logs was to record the trips for petrol and mileage claims.

235 They say that Driver Ying's recollection of events in early 2015 was hazy at best, in contrast to the strong assertions in his AEIC. He said he could not recall whether he drove there in the latter part of February 2015, the Chinese New Year being mid-February 2015, and his evidence being that he drove them there after the Chinese New Year of 2015. He said: "It left a deep impression because this happened after the first Chinese New Year that I was with Bodi and

they would request that I drive them to Qian Tan Command Centre after Chinese New Year each time they came to Shanghai."

236 The KOP defendants rely on the fact that apart from Ms Ong and Ms Suparman, Mr Quek and Mr Jason Geng also categorically refuted Driver Ying's testimony that he drove them to the Qian Tan Command Centre from February to May 2015.

237 The KOP defendants also refer to the fact that there were 100 car logs exhibited in Driver Ying's AEIC and around 355 car logs exhibited in Mdm Hu's AEIC and yet the car logs exhibited in both AEICs end in January 2015 and do not cover the critical months of February, March and April 2015. Mdm Hu explains the absence of car logs in her AEIC and says that on 15 June 2015, during the move out of Bodi's office, she had discovered them at the rubbish dump area next to the carpark. The KOP defendants submit that this explanation is not correct and it is too much of a coincidence that none of the car logs had records beyond January 2015.

238 The KOP defendants say that the plaintiff has the burden to prove that there were meetings between Ms Ong and/or Ms Suparman and SLJZ in the months of February to April 2015. They submit that, on a balance of probabilities, Driver Ying's evidence and the surrounding circumstances were unreliable and that the positive denials by Ms Ong, Ms Suparman, Mr Jason Geng and Mr Quek should be preferred.

My findings on the issue

239 I have come to the conclusion that there were no communications between the KOP defendants and Chairman Yang or SLJZ between 27 January 2015 and 14 May 2015, that the first time the Lin Gang Land was mentioned

was on 14 May 2015, and that the first time a serious possibility of Project Winterland being constructed on the Lin Gang Land was raised was on 19 May 2015.

240 I found the evidence of Driver Ying unconvincing. Making every allowance for the fact that he was appearing in a foreign court and giving his evidence through an interpreter, his recollection of the timing and circumstances of the drives to the SLJZ office was unsatisfactory. There was no documentary evidence to support his evidence that he drove to the SLJZ office. His explanation of the internal regulations not requiring car logs for drives for Ms Ong, Ms Suparman and the other people was not clear and was inconsistent with at least one car log showing a record of similar drives. The absence of car logs after January 2015 may be explained by the termination of the Joint Venture and the way documents were then dealt with but, standing alone, I am unable to accept Driver Ying's evidence of visits to SLJZ in the period between January and May 2015. It might be possible that his reference to "after the Chinese New Year" was a reference to the meetings from 19 May 2015 onwards but having observed the way in which he gave his evidence, it appeared more likely that he was giving evidence to support the plaintiff's case rather than evidence of his recollection.

241 I do not accept Driver Ying's evidence, particularly in the face of the evidence of Ms Ong, Ms Suparman, Mr Jason Geng and Mr Quek, who allegedly took part in the visits, denying that they did in fact visit the SLJZ offices:

(a) Ms Ong said that, after the meeting with Chairman Yang in January 2015, she did not communicate with Chairman Yang, SLJZ or

Mr Lee (whether orally or in writing) until April 2015 when arrangements were made for Chairman Yang's visit to Singapore.

(b) Ms Suparman said that she first met Chairman Yang in January 2015 and that the next time she met him was in Singapore in May 2015.

(c) Mr Jason Geng said that he did not make any trip to the Qian Tan Command Centre from February to May 2015. He said that he met representatives of SLJZ for the first time on 26 May 2015 at the offices of SLJZ at Jinxiu Road, Shanghai, and not at the Qian Tan Command Centre.

(d) Mr Quek said that on about 18 May 2015, Ms Ong called him to ask if he could attend a meeting in Shanghai with SLJZ the following day. He said that at the meeting on 19 May 2015, he met Chairman Yang, Wu Xiao Ke and Grace of SLJZ for the first time. He said he did not make any trip to the Qian Tan Command Centre from February to April 2015.

242 The plaintiff relies on Ms Suparman's email of 25 May 2015 asking Mr Quek to speak to Driver Ying in the context of not providing information and says that this information would be about the drives made to SLJZ. This reads too much into that email which was merely to ensure that Driver Ying was included in the general email about not providing information. The plaintiff also places some reliance on certain references to dates in March 2015 (see above at [216]). There were three matters relied on: arrangements for a meeting on 13 March 2015 between Ms Ong and Mr Lee, a request for a report on ski resorts in China made by Ms Joey Ong on 28 March 2015 and a reference by Ms Joey Ong in September 2015 to the fact they had been looking for an alternative piece of land in March 2015.

243 It is not clear whether a meeting actually took place between Ms Ong, Ms Suparman and Mr Lee on 12 and/or 13 March 2015. I doubt that it did because it would be expected to have given rise to some emails. However, there is no evidence, even if such a meeting took place, that there was any meeting with SLJZ at that time. In relation to the emails written by Ms Joey Ong requesting the report and referring to March 2015, her emails were not copied to Ms Ong or Ms Suparman and she was not able to recall why she asked for the report or why she mentioned March 2015. There is certainly no evidence to show that these documents had any connection with there being a meeting with SLJZ at the time and I do not consider that the references relied on by the plaintiff raise any inference to that effect.

244 I therefore conclude that after 27 January 2015, communications between the KOP defendants and SLJZ only started on 14 May 2015 and were continued on 19 May 2015. I shall deal with the relevance of these dates, after I have considered the dispute between the parties as to whether the Joint Venture was terminated on 13 or 20 May 2015.

Mr Shport's knowledge of the possibility of the Project in Lin Gang

245 There is a related issue which is convenient to deal with now. The plaintiff contends that Mr Shport knew of the possibility of the Project in Lin Gang, prior to 20 May 2015. He says that the first time he became aware of the possibility was on 25 May 2015.

246 Mr Shport states that he only came to know about the opportunity to develop the Project in Lin Gang "on or around 25 May 2015 through Ms Ong". In his AEIC he states that: "On 25 May 2015, Quek emailed [Ms Ong], [Ms Suparman] and I about [SLJZ]…This was the first time I became aware of the

opportunity of developing the Winterland Concept in Lin Gang… When I received this email, I did not give it much thought. I was disappointed at the outcome of [Project Winterland in Qing Pu] and was not sure if this was going to be another empty promise."

247 The plaintiff relies on a number of documents to contend that Mr Shport did not first came to know of the Project in Lin Gang only on 25 May 2015:

248 First, it refers to Mr Quek's WeChat message with Ms Ong on 20 May 2015 where Mr Quek stated that he had "just discussed with Dmitriy on presentation financials". Mr Quek confirmed that the presentation financials related to the Project in Lin Gang. The plaintiff says that Mr Shport had to accept, when faced with Mr Quek's evidence, that it was likely to be referring to Lin Gang. Mr Shport says that he did not accept that he knew that these were likely to be referring to Lin Gang. He explained in cross-examination that Mr Quek would very often contact him to ask specific financial and/or technical questions and he would not ask Mr Quek as to why he required this information.

249 Secondly the plaintiff refers to Mr Quek's email of 26 May 2015, in which he stated "Dmitriy, this is the plot where the combined harvestor was working on." The plaintiff says that Mr Shport was in Shanghai from 19 May 2015 until 21 May 2015 or 22 May 2015 and submits that, in all likelihood, Mr Shport visited the site by the time he left Shanghai. Mr Shport refers to his evidence that he would have extensive conversations with Mr Quek on Skype and Mr Quek would also send him photos, and it was therefore likely that he was aware of this specific plot of land through Skype conversations with Mr Quek or photos sent by Mr Quek.

250 Thirdly, the plaintiff says that Ms Ong has always held the view that she could not "bring myself to do this project without [Mr Shport]". Even after the Termination Agreement, the plaintiff says that Mr Shport continued to retain his 15% stake in Project Winterland which was by then in Lin Gang. The plaintiff refers to the email of 4 May 2015 which was sent on Mr Shport's behalf and stated:

> We have discussed with Dmitriy and over the past long weekend we decided after long consideration that the only way to go forward is to restore the trust…

251 The plaintiff says that it was clear to Mr Shport that by April or May 2015, the relationship between the parties was souring, culminating in the signing of the Termination Agreement. The plaintiff submits that, contrary to Mr Shport's evidence, whether before 13 May 2015 or between 13 May 2015 and 20 May 2015, he must have asked Ms Ong or Ms Suparman about what life after the termination of the Joint Venture would be like.

252 Given Mr Shport's stated position that the US$1m was a substantial sum to him and he had the most to lose amongst the three parties, the plaintiff submits that it is inconceivable that Mr Shport was not part of or did not have any knowledge of the communications between the KOP defendants and Chairman Yang prior to 20 May 2015 or that he did not, at any time prior to 20 May 2015, ask Ms Ong or Ms Suparman about life after Project Winterland in Qing Pu.

253 Mr Shport says that the matters put forward by the plaintiff are speculation. He states that he had tried to salvage the situation so as to avoid the termination of Project Winterland in Qing Pu as late as 13 May 2015, and this would not make sense if he already had knowledge of the Project in Lin Gang.

254 Fourthly, the plaintiff submits that the fact that Mr Shport did not express surprise when he received Mr Quek's email dated 25 May 2015 suggests his prior involvement and state of knowledge and, contrary to his evidence, shows that he did not first become aware of the opportunity of developing the Winterland Concept in Lin Gang only upon receipt of Mr Quek's email. The plaintiff also says that Mr Shport's evidence that Project Winterland in Qing Pu ended "[i]mmediately after we start exploring Lin Gang land, possibility of Lin Gang land" is an admission that the KOP defendants and Mr Shport had "ditched" Ms Wang and Mdm Hu, once the possibility of the Lin Gang land came up.

255 Mr Shport says he did not give much thought to Mr Quek's email because he had been disappointed at the outcome of the Project Winterland in Qing Pu and was not sure if this was going to be another empty promise.

256 Fifthly, the plaintiff contends that Mr Shport changed his position between his email dated 14 May 2015 and his email dated 16 May 2015 and this indicates his involvement in and knowledge of KOPSG's communications with SLJZ prior to 20 May 2015. On 14 May 2015, Mr Shport confirmed that "the project was found feasible" but in his email on 16 May 2015 he stated that "[i]t's still unclear how can we get land that is not vacant and we have the minutes of the meetings with [Qing Pu] that indicate that land can be transferred only vacant."

257 The plaintiff submits that it is clear that Mr Shport changed his position between 14 May 2015 and 16 May 2015 and notes that his email of 16 May 2015 was sent after Ms Ong and Ms Suparman had met with Chairman Yang on 14 May 2015 in the morning and over lunch. The plaintiff also notes that Mr Shport accepted that he met Ms Ong or Ms Suparman on 14 May 2015, the day

when Ms Ong and Ms Suparman met Chairman Yang. The plaintiff says that this is consistent with Chairman Yang's AEIC that during the lunch on 14 May 2015, there were one or two other persons with Ms Ong and Ms Suparman who he could not recall. The plaintiff also points to inconsistencies as to whether Mr Shport's position in his email of 16 May 2015 was obtained from minutes of meetings with the Qing Pu government, when no such minutes existed, or from an unnamed "friend".

258 The plaintiff submits that Mr Shport's change of mind which occurred after the meeting with Chairman Yang on 14 May 2015 shows that the KOP defendants and Mr Shport were in discussion with Chairman Yang and it contends that, in fact, Mr Shport took the position in his email of 16 May 2015 after having been told of the same directly by Chairman Yang at the 14 May 2015 meeting, or by Ms Ong or Ms Suparman after that meeting.

259 Mr Shport says that the plaintiff is incorrect because in the email dated 14 May 2015, he was replying to Ms Wang's email dated 13 May 2015 and was describing what had transpired during the meeting on 13 May 2015. In contrast, he says that in the email dated 16 May 2015, he was writing in response to a new email in which Ms Wang had sought to provide an explanation for, among others, the car usage and the discussions that had transpired between the parties. He says that his concern that it was still "unclear how we can get land that is not vacant" was not to say that the Project Winterland in Qing Pu was no longer feasible.

260 In respect of the plaintiff's contention that Ms Shport had given evidence that he had met Ms Ong and Ms Suparman on 14 May 2015 and that there was an inference that he had, on that same day, also had lunch with Chairman Yang,

he says the inference cannot be drawn as he was simply not invited to all the events that Ms Ong and Ms Suparman made.

261 Essentially, I have the clear evidence given by Mr Shport against which the plaintiff seeks to draw inferences from other documents to suggest that Mr Shport's evidence is inaccurate. Whilst some of the inferences which the plaintiff relies on seem stronger than others, I am not persuaded that they are strong enough to detract from the clear evidence given by Mr Shport. I find that Mr Shport's evidence was credible and convincing.

262 On that basis, I find that Mr Shport was not aware of the Project in Lin Gang prior to 20 May 2015 and, in fact, he first knew about the Project in Lin Gang on 25 May 2015.

Ms Ong's email of 4 May 2015

263 The plaintiff sets great store by the 4 May 2015 email sent by Ms Ong to Ms Wang, and alleges that it was an act of bad faith and part of the actions by which the KOP defendants engineered the termination of the Joint Venture so as to pursue the Project in Lin Gang.

264 Given the importance of the 4 May 2015 email, it is necessary to set out the main exchanges between Ms Wang and Ms Ong in some detail because they form the background and the lead up to the 4 May 2015 email.

265 After the instructions given by Ms Ong on 21 January 2015 to cease the Green Book practice, there does not seem to have been any concern raised about financial matters until the end of March and beginning of April 2015. On 30 March 2015 there were exchanges relating to the amount in Bodi's account being insufficient to pay the payroll costs and office rental, and there was a

request for further funds from KOPSG. This led to a request from Ms Joey Ong to Ms Wang for her to "prepare and account for your spending when they visit shanghai next week", referring to a visit by Ms Ong and Ms Suparman.

266 On 9 April 2015, Ms Ong, Ms Suparman, Mr Shport and Ms Wang held a meeting in Shanghai. After the meeting, Ms Wang sent an email summarising matters discussed at the meeting. These included dealing with the immediate financial position and setting a new minimal budget. She concluded the list of matters discussed by saying "[w]e all will need to conclude the budget and inject funds before May 1st, 2015 to support [Bodi] till successful land acquisition".

267 Ms Wang sent another email early on 10 April 2015 with an update on the project status and then followed it up with a further email to Ms Suparman and Ms Ong with the heading "my feelings" in which she said:

> I am so glad we had today's talk. I am especially touched when [Ms Ong] told me that: "I am trying to avoid communication since I want to maintain the relationship." I am doing the same but I did not say it out. It really touched my heart!
>
> For the past 2 months, I was really struggling and stressed. I hope to have a communication but worry it will make things worse. Just like the road issue with planning bureau. So I tried to hide and not speak up. This result in more mis-understanding and hard feelings. I apologize!
>
> I feel there are many things we start to feel bad in fact is nothing **if we understand each other's position through proper communication** …
>
> I also realized there are **"trust" issue between us**. No doubt, people like [Ms Ong] yourself and [Ms Suparman] is rare to see in today's world… But no matter what, we were new to each other, even with [Ms Suparman], we did not see each other for over 10 years almost. It takes time and hardship to build the trust and can be destroyed by a very small piece of mis-presented information. For Xiao Shi's salary, for the usage of my personal car, for not reimburse of CC's coffee, for whoever told you I am always not in office… However, I can touch my heart and say I believe my conduct is fair and probably more favourable to company. But from your perspective, may not be.

> From fragile pieces of information you would not be able to tell. Today, I understand why, again, it is **lack of clear communication**... It could be I did something and you think it is not proper. Then talk directly to me and listen what I have got in mind. And feel free to say no need. Otherwise, **when small things accumulate, it will indeed hurt our relationship. And I will do the same**.
>
> Also, I think we **need to have proper documentation of our agreement in the future**. It seems there are many mis-understanding from what we have agreed.... Or even just we don't have time to really sit down and get it done. Then we start to argue what you meant and what I meant, which never has any approve. And we again feel bad. Therefore, to avoid this, I suggest we dedicate enough time for ourselves and have agreement properly documented, so we can always refer back. You know my English, my English cannot compare with yours at all. But most case, I was the one doing meeting minutes, etc. I hope to have your help to polish my writing in documentation so we can be more clear and no mis-understanding in the future.
>
> ...
>
> I understand [Ms Ong] say: it is so tired to have to always thinking what to say to Xuan and not hurt her sensitive heart... This part I already overcome. Feel free to through things at me. **But, lets keep communication. It is more important than anything else**.
>
> I hope I made myself clear and hope to have your understanding.
>
> [emphasis in original]

268 Ms Ong responded to Ms Wang by an email dated 14 April 2015 and said:

> In business and in running a Company, it is difficult enough to have to deal with matters with outside parties and the business itself, yet we constantly have to talk about your feelings. You are very sensitive and you want appreciation. When a job is accomplished, appreciation is granted, but not every step of the way. Otherwise, we appreciate today for you saying the right thing today and tomorrow we have to take back the appreciation because the same is no longer good for the situation, for example. Isn't it tiring? Can you imagine if we also expect the same?

Since we all agree that we should be direct and professional. Here it goes.

The point is this, you have submitted the budgets, they were not approved. Even if they were approved, you have met the expenses but not the income (revenue). In the real life scenario, when a CEO has all expenses and no income as projected, they will look for other sources, and CEO is supposed to set the direction and run the business including delivery of the results. So in your case, where you run so deep in red, naturally either the CEO gets fired or resigns ...

KOP Singapore has invested about S$3.75+M and Dmitry S$1M plus your initial $500k in total about $5M. You also claimed to have invested 2M. The Company only started Sept 2013. And you managed to spend almost all the money within 1.5 years. Even if fees were at $2m and entertainment is 2M, you still managed to burn 3M in a mere 15 months. (Not to mention another 2M in Cocoa Colony.)

Most of the monies traced back to invoices etc, so the account beautifully accounted for. We have more drivers than we need because of QingPu. And you "loan" the cars free of charge to the Company but guess who are using them? All the entertainment expenses are paid by the Company yet in the end you want a good share of the establishment fee for doing exactly what the entertainment was for, plus salary. So if its not triple dipping, I don't know what else to call it. However, we still agreed to pay you a salary, the share of the fees that you wanted, plus for the entertainment. May I ask then who I should claim credit from for my generosity?

...

Being good at one's work means they deliver what they promised. So how are you good at your work when all the representation you have made to us about the land and land acquisition timing and perimeters have not been fulfilled? In the end, things are still done as things should be, the timing and building compromises are as they should be under the law. All the over promises doesn't matter? And you will say, "China is like that" ...

Yet, we have not made any accusations until now. You think about it yourself and then you tell me, if the tables were turned. Only you know the truth. What is the right thing? I am not going to say anymore and leave to your conscience, I am just going to do what I need to do if you were an employee and not a friend.

269 Ms Wang responded to this email on 18 April 2015 dealing with the matters set out in Ms Ong's email, including the allegation that she was triple dipping.

270 On 20 April 2015, Ms Jessica Zhang wrote to Ms Joey Ong and requested KOPSG to provide additional funds for Bodi to pay its outstanding January to April 2015 office rental. She said that the property manager had said that if they did not pay this week, he would "distribute penalty to us". Ms Ong was copied into this email. She immediately sent an email to Ms Wang in which she said: "Now you know why we don't need you? In the end we still have to resolve the matters from our end! You will still push to us". Ms Ong later thought better of this email and sent one to say: "Please ignore my email below".

271 Ms Ong responded to Ms Jessica Zhang to say that she had had a discussion with Ms Wang two weeks previously and there were monies in the Hong Kong account so Ms Wang would pay in China and they would pay Ms Wang from the Hong Kong account. Ms Jessica Zhang then responded by sending a statement of the funds in the KOPHK Hong Kong account to say that they did not have sufficient US dollars in the account to pay the rent.

272 This appears to have caused great concern for Ms Ong. She responded with an email which was copied to Ms Wang to say: "We came up with 3.5M and [Ms Wang] only 500k even including her 2m she is still short. Can you [please] ask her to top up the difference?" Ms Wang replied to say: "The detailed paid up by each shareholders, I have submit to [Ms Joey Ong] per her request in March 2015. I also provided to Ron Loi in end of 2014. In short, I believe it is [KOPSG] need to top up." Ms Ong then sent an email in which she stated: "I am still waiting for you to account for the 2m. Until then our position is clear. We will not be putting in more funds. I made this clear since last

November/December. That said even with the 2m you are still short of your share. The numbers were provided by Jessica."

273 Ms Wang then replied: "For clarification of 2M, this should be shareholder's talk. We should all sit down and have this resolved. Last time in Shanghai we did not have time to finish the talk. We should arrange a different time to talk it through and agree on next steps. For Jessica's account, I asked her to send in her number for clarification."

274 Mr Shport then responded to these emails to say that he agreed that they should arrange a shareholder meeting and make decisions. The email chain ended with Ms Jessica Zhang sending a summary of share amounts which showed that the plaintiff had contributed HKD19,312,014.36 (including the US$2m sum), KOPSG had contributed HKD15,521,953.49 and Mr Shport had contributed HKD7,754,450.00 (being US$1m).

275 Later on 21 April 2015, Ms Ong then asked Ms Joey Ong to look into Bodi's accounts to find out how the money had been spent so quickly. Ms Joey Ong instructed Mr Joe Tan, KOPSG's Group Finance Manager, to prepare the profit and loss statement for Bodi since its incorporation. He did so and highlighted various rows of expenses without a detailed breakdown, such as staff training fees. This led to a conference call with Ms Jessica Zhang during which Mr Joe Tan and Ms Joey Ong asked Ms Jessica Zhang to provide a breakdown of the expenses. She told them that most of the expenses they were asking about were staff claims made on Ms Wang and/or Mdm Hu's behalf and that, although the claims were made by Bodi's staff, the reimbursements for these expenses were paid to Ms Wang and Mdm Hu. Ms Joey Ong says that this "was highly suspicious and worrying" as the funds could not be traced.

276 At the end of the call, they requested Ms Jessica Zhang to prepare a detailed breakdown of the expenses for their review with the relevant supporting documents. Information was provided by Ms Jessica Zhang and there followed further exchanges between Ms Jessica Zhang, Mr Joe Tan and Ms Joey Ong.

277 These email exchanges culminated in an email from Ms Joey Ong to Ms Jessica Zhang on 24 April 2015 in which she set out a list of "doubtful expenses". She summarised the position as follows:

> From the above, the expenses in question for KOP HK is HKD212,965.18 and KOP Shanghai is RMB3.5M. Looking at P&L for the period, the burn rate is a total SGD7M (i.e. HKD23.2M + RMB12.86M).
>
> It is hard for us to justify to our board to further fund the companies until such time we hear from you your justification for incurring such expenses.
>
> Thus, we urge you to provide these info to us asap.
>
> In the meantime, pls look to Wang Xuan to fund the expenses first since she manages the day to day operations of the companies and is also the approval party for these expenses which until justified should not have been paid.

278 There were then further email exchanges up to 27 April 2015 between Ms Joey Ong, Ms Wang and Ms Ong in which they disagreed about which party should pay further contributions to Bodi, with Ms Wang saying that it was for KOPSG to put in more funds and Ms Ong saying that the doubtful expenses had to be justified before any further contributions would be made.

279 On 4 May 2015, Ms Joey Ong emailed Ms Ong with the results of her review of the accounts and informed that based on that review, she had identified "doubtful expenses" which amounted to around S$1.05m in total. This sum consisted of:

(a) S$920,464.87 in entertainment, travel, meeting and other miscellaneous expenses. These were expenses that, according to Ms Jessica Zhang, potentially involved staff claims which could have been false expenses to generate income for the Green Book. Ms Joey Ong considered that these expenses were doubtful and/or questionable and should be investigated further; and

(b) S$130,933.45 in doubtful motor vehicle-related expenses.

280 Ms Ong then sent the 4 May 2015 email to Ms Wang, copied to Mr Shport and Ms Suparman, in which she said under the heading "our collective thoughts on settlement":

> I refer to the various correspondence, conversations as well as your recent meetings with [Mr Shport] to resolve the 2 M issue as well as the monies spent purportedly on entertainment which amounted to S$920K and cost for 4 vehicles at S$130k also meant for entertainment…
>
> I will not go into dwelling into the details but get straight into the point.
>
> When we started the business, both sides have good faith that things would be done properly and there were a lot of trust. However, at this point, it has become a big issue. And this is mainly due to the said exorbitant amount that has been spent. You keep saying its been approved but it has not, at least not the amounts which to be spent. The fact is that if these amount were reasonable, we would have accepted them. Imagine the company is only 15 months old, and entertainment alone is 1.05m and more! This is grossly overspending and is therefore unacceptable even by China standards! (We have many friends and associates who do business in China and they don't spend like that!) Because of this gross overspending we have lost trust in your and [Mdm Hu's] management and thus in this partnership. Leny and I have been very disturbed about this for a while and team members sent to verify your numbers and evidence have voiced their concerns to us and were all also not willing to sign off.
>
> Dmitry has also similarly voiced his concerns. We have discussed with Dmitry and over the past long weekend we decided after long consideration that the only way to go forward

> is to restore the trust, like last time, but it is easier said than done, so we thought of a more practical way. We can't accept the S$2M "fee" and S$1.05m. We will not be able to accept nor explain our way through our board on this type of gross expenditure on entertainment, and on top of it give you a lion share for the Fees. We will need you to put back half the amount of S$3.05m and we move forward from here. Because even if you show us "evidence" there is no way of verifying if the same was really spent for the company. With this settlement, none of us need to talk about fault.
>
> Otherwise we really do not see how to proceed with this partnership and therefore this Winterland project. We recognise that part of the reason for Winterland was because of you and [Mdm Hu's] effort so we will not proceed with the project on our own without you, and we don't want to seem to take advantage of you, so we'd rather not do this project. You know that we've made many announcements on this project and therefore the impact on KOPL plus the explanation we have to do is going to be difficult for us, but we'd rather end it here than to go on and suffer in the long run, it's bad for us and bad for you too.
>
> Qingpu has reverted on the draft agreement which is not acceptable to us. So we can use this as an excuse to cancel the signing.
>
> Please let me know by tomorrow if you can, given the short time span we have so that we can engage Qingpu and IE Singapore in the right way according to which your decision is taken. If you can't make the decision by then, then I suggest we just not go ahead with the signing so that you don't feel pressured.

281 Ms Wang replied to this email on 5 May 2015. She first dealt with various matters which had been raised about the finances. She then continued:

> I am afraid I cannot agree with you on your suggestion. Even if it means we have to call off the project. I understand your pain, I am also a shareholder of KOP Limited. I probably face more as I am in china, in Shanghai and all those govt officials are friends of my mum. But I cannot agree to a blame I have never done. I cannot accept a mis-presented facts again my integrity. What I have done are agreed by you or your team. Unless you prove otherwise.
>
> I still wish to have a talk face to face to give the facts and evidences, regardless we do this project or not. And if we don't, the most immediate thing is to call off the planning bureau approval. If u decide not to sign agreement and I will follow the act.

> Again, let's all talk based on facts and value our own words and promises. Otherwise, it is really no point to continue. And even if we continue, the project will fail by a team with no trust.

282 Ms Ong says that she was upset that Ms Wang wanted KOPSG to provide more funds as she thought it highly suspicious that US$3.5m had been spent so quickly and she instructed Ms Joey Ong to look into the accounts. In her evidence Ms Ong said that the amount of "S$3.05m" which she stated in the 4 May 2015 email was an error in computation. She had intended to refer to the US$2m in management fees and S$1.05m in doubtful expenses.

283 The 4 May 2015 email forms the basis of an important allegation by the plaintiff that KOPSG, through Ms Ong, was acting in bad faith in terms of the contents of that email. Before I consider that issue it is necessary to review the evidence relating to the figure of S$1.05m which, in addition to the sum of US$2m, formed the basis of the demand in the 4 May 2015 email.

Whether the sum of S$1.05m was for unjustified expenses

284 On 4 May 2015, Ms Joey Ong had identified S$1.05m of "doubtful expenses" which she reported to Ms Ong. That sum was made up of the following amounts, as summarised in her AEIC:

Item	**Nature of expense**	**Amount in RMB**	**Amount in S$**
1.	Uniform fees	52,520.00	11,814.99
2.	Staff training	270,650.00	60,885.90
3.	Landscape fee	96,152.00	21,630.52

4.	Entertainment	1,821,097.49	409,677.29
5.	Overseas travelling	1,147,040.13	258,040.16
6.	Local travelling	282,972.67	63,658.03
7.	Meeting expenses	421,218.13	94,757.97
8.	Motoring expenses	582,025.35	130,933.45
Total		4,673,675.77	1,051,398.31

285 The KOP defendants submit that the biggest concern was about the nature of the expenses. They submit that, during the hearing, it emerged that expenses in the general ledger recorded as landscaping fees, staff training fees and meeting fees were false expenses which never made their way into the Green Book and were unexplained. They refer to Ms Wang's evidence that the categories of landscaping, staff training and meeting were false expenses supported by *fa piao* in the general ledger but did not appear correspondingly as income in the Green Book. This was to enable such monies to be removed from Bodi to pay such things as additional expert fees.

286 I shall now consider the various heads of expense.

LANDSCAPING FEES

287 There was no actual work done or fees incurred because Bodi's offices did not require any landscaping. Ms Wang said that Bodi obtained false *fa piao* for landscaping work that was never done and used the sums obtained from Bodi's account to pay experts, designers and ECADI because they were incapable of providing an official invoice or *fa piao* in China.

288 The KOP defendants say that there is no reason why ECADI, a top architectural firm established more than 60 years ago in China, would be incapable of issuing *fa piao* to Bodi if everything was above board. They submit that Ms Wang was not able to provide any credible evidence that ECADI actually received the additional payment. They refer to her reliance on a plain scrap of paper which she claimed was acknowledgment of payment of RMB50,000 in cash to ECADI, which was said to be signed by Nie Bo, a representative of ECADI. The paper contained only the phrase "RMB 50,000 is received in cash today", the date "May 27, 2014" and a signature.

289 The KOP defendants submit that this explanation was not true and that Ms Wang was seeking to conceal her or Mdm Hu's wrongdoing and, in any event, the further amount of RMB96,152 has not been established to be additional payment to ECADI and the experts.

290 I consider that there were justifiable concerns about the practice of using false *fa piao* to take money out of Bodi and use that to pay expenses. Whilst there is some evidence in the form of a piece of paper that some part of the money might have been paid to ECADI, it is not clear that this was paid to ECADI or what work was carried out, and I consider that there were justifiable concerns that this money could not be accounted for by Ms Wang or Mdm Hu.

MEETING EXPENSES AND STAFF TRAINING FEES

291 Ms Wang said that RMB248,762 in staff training fees and RMB206,000 in meeting fees were actually paid towards, *inter alia*, experts, designers and second-hand furniture for Mdm Hu's office. The KOP defendants say that these amounts were never recorded in the Green Book. Ms Wang admitted that these amounts were not recorded in the Green Book, but said that they were part of

the "approved budget" of RMB2m for entertainment expenses, and as such were recorded in the general ledger.

292 The KOP defendants submit that Ms Wang's explanation does not make sense, as the experts and designers could simply have issued invoices for the payments due and the furniture expenses could have been recorded in the general ledger as such. It is not clear how these expenses relate to entertainment expenses or why they had to be recorded as such.

293 Again, I consider that there were justifiable concerns about these expenses given the use of the Green Book and the difficulty which Ms Wang had in explaining what the sums had been spent on.

UNIFORM FEES

294 Bodi staff did not wear uniforms but there were entries in the general ledger for "uniform fees". Ms Wang said that these were false entries in the general ledger supported by false *fa piao*, with the sums being channelled to the Green Book as income and used to repay a loan from Cocoa Colony which Bodi had to repay in cash.

295 The KOP defendants say that Ms Wang's explanation of why such an inter-company loan could not simply be recorded as such in the general ledger was not credible. The sums, Ms Wang says, related to the spring festival and gift voucher cards from Cocoa Colony but the KOP defendants submit that the only explanation is that Ms Wang and Mdm Hu had been siphoning money from the Joint Venture.

296 Again, I consider that there were justifiable concerns about these expenses given the use of the Green Book and the difficulty of explaining what the sums had been spent on.

TRAVELLING

297 I turn now to the travel expenses incurred through a travel agent, Tooeasy. In response to Ms Joey Ong's requests for more information on travel expenses, on 29 April 2015, Ms Wang sent her a detailed spreadsheet of all travel-related expenses. She marked "Joey" beside line items in the spreadsheet, which were all for personal travel expenses of Ms Wang and members of her family spanning June 2013 to January 2015. In her AEIC, Ms Wang states that "approximately RMB 800,000 was incurred through Tooeasy and which were used as income for the Green Book".

298 However, in her instructions to Mr Kong she said that only RMB591,272 of the travel expenses were paid as income and in his report, Mr Kong stated that he was only able to match around RMB510,000 of the travel expenses to the Green Book. In her oral evidence, Ms Wang said that she was not sure that this was accurate.

299 The KOP defendants submit that although these personal travel expenses in the spreadsheet span until January 2015, there was in fact no income to the Green Book from October 2014 onwards, and so they contend that Ms Wang and Mdm Hu kept these sums for themselves.

300 Again, the way in which Ms Wang dealt with the travel expenses and the RMB800,000 which she said had been invoiced to Tooeasy but was diverted to the Green Book, evidently raised proper and justifiable concerns about the way in which money had been spent.

MOTORING EXPENSES

301 This aspect of expenses seemed to have been resolved at an earlier stage but Ms Joey Ong raised some concerns about it in a report in June 2015. There were some justifiable concerns but these only came to light in June 2015.

SUMMARY OF POSITION ON EXPENSES

302 It is clear that the accounting practices of Bodi justified the KOP defendants' concerns with the state of Bodi's finances. The widespread use of false invoices and the Green Book method of accounting meant that monies were spent in ways which could not be properly verified or satisfactorily explained by Ms Wang or Mdm Hu at the time or subsequently.

303 By November 2015 when Ms Joey Ong completed her work on the Bodi accounts, there were some RMB1.547m in doubtful expenses. Whilst Mr Kong was able to match many of the invoices to the stated expenditure, that did not establish what the money had been spent on. As Ms Wang says in her AEIC, she, Mdm Hu and Bodi's staff cannot now recall the identities of the third parties who had been entertained by, or who had been given gifts or to whom payments were made. She says that this was not required of them and refers to some expenses incurred by the KOP defendants in similar circumstances. Whilst some of the KOP defendants' expenses might not be explained, that, however, does not affect the fact that in May 2015 the KOP defendants did have justifiable concerns as to the state of Bodi's finances and I consider that this came to a head when further injections of funds became necessary in April and May 2015.

Whether Ms Ong acted in bad faith in relation to the 4 May 2015 email

304 I now return to consider the contentions about the 4 May 2015 email.

305 The KOP defendants submit that the doubtful expenses incurred by Ms Wang and Mdm Hu were a major reason which led to the events in May 2015. The plaintiff submits that the KOP defendants unjustifiably used the issues relating to the accounts as an excuse to terminate the Joint Venture and the amount purportedly unaccounted for was not the cause of the termination.

306 At the time in May 2015 when it became apparent that further funding was needed to cover the expenses of Bodi, it is clear that the way in which the existing funds had been used was not properly accounted for. This was the result of the use of false *fa piao* to take money from the general ledger of Bodi, which was then used to fund expenses in the Green Book and to pay for entertainment and other expenses incurred by Ms Wang and Mdm Hu. This meant that, when challenged on the expenses in May 2015, Ms Wang was not able to provide a full explanation of what the money taken out of the general ledger had been used for.

307 The plaintiff relies on two matters in seeking to show that Ms Ong and the KOP defendants did not in fact have concerns about Bodi's finances but were using those concerns to engineer a termination of the Joint Venture. First, the plaintiff refers to the audit process carried out by Ms Joey Ong after May 2015. It says that as evidenced by Ms Joey Ong's email of 30 July 2015, the amount allegedly unaccounted for came to only RMB2.7m (or S$500,000) and then by 7 November 2015 had further reduced from RMB2.7m to RMB1.547m.

308 Ms Joey Ong explains that after the Joint Venture was terminated, she continued to review Bodi's doubtful expenses. She refers to an email exchange with Ms Wang in early June 2015 and says that she did not receive a satisfactory response. As a result of this Ms Ong instructed her to go to Bodi's office in Shanghai to inspect the accounts. She therefore visited the office from 14 to 20

June 2015 to review and obtain clarification from Ms Wang and Mdm Hu on the doubtful accounts, with Mr Shport attending some of the meetings. After returning from Shanghai, Ms Joey Ong prepared a business report and a summary of the matters she had found out during her trip. Based on her calculations as at June 2015, the doubtful expenses amounted to RMB2,701,101.37 in total, which comprised travel and entertainment related expenses of RMB2,400,666.67 (S$540,058.19) and vehicle expenses of RMB300,434.70 (S$67,586.32).

309 She says that between June and October 2015, she continued to liaise with Ms Wang, Mdm Hu and Ms Jessica Zhang about the doubtful expenses and in an email on 7 November 2015, she revised the amount of doubtful expenses downwards to RMB1,847,746.22 in total, which comprised travel and entertainment expenses of RMB1,547,311.52 (S$348,085.92) and vehicle expenses of RMB300,434.70 (S$67,586.32).

310 She explains that, during her audit, if Ms Wang or Mdm Hu could provide some explanation for how the money was spent, she would remove the item from the list of doubtful expenses even though she was not given the opportunity to inspect the receipts, invoices and expense claims to verify if Ms Wang or Mdm Hu's explanations were supported by documents.

311 Ms Joey Ong says that she has not been able to reach any final resolution because of two things. First she refers to an email from Ms Jessica Zhang on 18 November 2015 in which she took Bodi's financial accounts to Mdm Hu's house for review but Ms Jessica Zhang says that Mdm Hu took possession of the documents and refused to return them. Secondly, she refers to an incident on or about 24 December 2015, when Mdm Hu and a number of other people went

into the fifth defendant's temporary office and took hard disks, laptops and physical records of Bodi's financial accounts.

312 Whilst the doubtful expenses have been reduced by the process explained by Ms Joey Ong, I do not consider that this affects the fact that in May 2015 the KOP defendants had justifiable concerns about the way in which Bodi's money had been spent, and that the accounting information was absent to satisfy them that the money had been properly spent. The fact that over time further explanations were provided and Ms Joey Ong applied a lower standard of verification does not reduce the justifiable concerns raised in May 2015. Nor do I consider that the lower standard of verification can be used, as the plaintiff seeks to do, to criticise the approach taken in May 2015 when the matters first arose.

313 Secondly, the plaintiff relies on the evidence of Mr Kong who was instructed to match supporting documents to the accounting documents of Bodi in respect of the figure of RMB1.547m, which was the figure of doubtful expenses after Ms Joey Ong's report in November 2015. His evidence was that he was able to match invoices and receipts for 99% of the amount of RMB1.547m.

314 However, as the KOP defendants submit, the biggest concern was about the nature of the expenses, *ie,* whether they were justified and actually incurred, and Mr Kong's evidence does not deal with the issue of whether Bodi's funds had been used for matters unrelated to the business. Whilst Mr Kong was able to carry out a matching exercise, as he accepted, that did not allow him to confirm what the sums had been spent on.

315 I therefore consider that the KOP defendants were justified in their concerns about the way in which Ms Wang and/or Mdm Hu had dealt with the accounts of Bodi and this was a major concern for the KOP defendants when Ms Ong wrote the 4 May 2015 email.

316 The plaintiff also submits that Ms Ong did not have any basis to demand payment from Ms Wang in relation to the amount of S$3.05m and that the demand in the 4 May 2015 email was made in bad faith and motivated by a collateral motive.

317 As I have said above, the sum of US$2m represented a sum which was a payment made by KOPHK to the plaintiff for the plaintiff's services but not expenses. It would not, in fact, be paid but would be treated as the plaintiff's contribution to its 49% shareholding in KOPHK. Whilst, as I have said above, it was not a sum which either party had to pay to the other in May 2015, it represented a sum which was a benefit to the plaintiff. In those circumstances, although Ms Ong confused the figures of US$2m and S$1.05m and treated them as amounting to S$3.05m in total, I consider that, in circumstances where Bodi was requesting KOPSG to put in further sums to finance it and where there were large amounts of "doubtful expenses", Ms Ong cannot be criticised for asking Ms Wang to provide an amount to finance Bodi's expenses.

318 I therefore do not consider that the 4 May 2015 email can be characterised as either an act of bad faith or as being motivated by collateral motive, especially given my findings as to the issue of communications between SLJZ and the KOP defendants at the material time.

The May 2015 meetings and the termination of the Joint Venture

319 I now consider the way in which matters developed after the 4 May 2015 email up to the signing of the Termination Agreement on 20 May 2015.

The meeting on 12 May 2015

320 On 12 May 2015, Ms Wang, Ms Suparman, Mr Shport and Ms Ong met at KOPSG's offices in Singapore to discuss Ms Wang's doubtful expenses. During the meeting, Ms Ong says she pointed out that Ms Wang's use of Bodi's monies was a big concern and, in particular, Bodi's entertainment expenses, which amounted to around S$920,464.87 were "highly doubtful" given that Bodi had only been in operation for 15 months.

321 Ms Ong says she asked Ms Wang whether all this expenditure was necessary and that Ms Wang denied that the expenses she incurred were doubtful and sought to explain how the monies had been used. Ms Ong says that she and Ms Suparman did not find her explanations satisfactory and, in the light of the deadlock, she suggested again that Ms Wang should restore half of S$3.05m to Bodi's account, as she had earlier suggested in her email of 4 May 2015. Ms Ong says that, this time, she made it clear to Ms Wang that if she did not agree to consider her proposal or to compromise, she did not see how the Joint Venture could continue.

322 Ms Ong says that she and Ms Suparman had completely lost trust in Ms Wang's ability to manage KOPHK and Bodi and the only way that they could save the working relationship was for Ms Wang to restore half of S$3.05m to Bodi's account so that they could start all over with proper corporate governance that all parties must adhere to. The meeting on 12 May 2015 ended, Ms Ong says, with Ms Wang saying that she needed more time to consider and

discuss her settlement proposal with Mdm Hu. They all agreed to meet again the following day after Ms Wang had time to consider the proposal. Ms Wang says after Ms Ong and Ms Suparman left the meeting and when she was alone with Mr Shport, Mr Shport suggested that if she felt Project Winterland in Qing Pu remained feasible, she should try to take some steps to salvage the situation.

323 Ms Wang says that she went back and discussed the position with Mdm Hu who did not want to give up on Project Winterland in Qing Pu as it was so close to fruition. Given Mdm Hu's reluctance, Ms Wang says she therefore did her own calculations and prepared a compromise proposal. She says she interpreted Ms Ong's position as that Ms Ong wanted to have the option to continue Project Winterland in Qing Pu, if she would agree to Ms Ong's terms and fund Bodi. She says that Mdm Hu repeatedly urged her to try to set aside her pride and to seek a compromise and this was why she decided to offer to provide funding to Bodi until the successful tender of the Qing Pu Land.

The meeting on 13 May 2015

324 The following day, 13 May 2015, Ms Wang, Ms Suparman, Mr Shport and Ms Ong met at KOPSG's offices to continue their discussions. Ms Wang says that she started off the meeting by emphasising the feasibility of Project Winterland in Qing Pu and everyone agreed with her. Ms Wang then put in her offer to provide funds for Bodi to meet its expenses until the Qing Pu Land was acquired. Ms Wang informed the others that she was not agreeable to the settlement proposal to restore half of S$3.05m to Bodi's account. There were then a few proposals and counter-proposals on the amount to be paid and, finally, Ms Wang offered to pay around S$600,000 to Bodi's account to resolve the matter.

325 Ms Ong says that she and Ms Suparman then went to a separate room to discuss this proposal but were not agreeable to this proposal because the sums of US$2m and S$1.05m remained unaccounted for, and they could not simply let this pass. Ms Wang says that Mr Shport also went to the separate room and when they returned, Ms Ong rejected her offer and told her to forget about her proposal, and to simply agree to pay half of S$3.05m and admit her alleged misconduct.

326 Ms Ong says that, in the light of Ms Wang's refusal to do so, she, Ms Wang, Ms Suparman and Mr Shport reached a mutual agreement to terminate the Joint Venture, and Ms Wang accepted that terminating the Joint Venture was the best course of action for all parties due to the deep distrust that had developed between them.

327 Ms Wang says she could not accept Ms Ong and Ms Suparman's unreasonable demand. She says she rejected their proposal, not because of the sums involved, but as a matter of principle. She says that their refusal to accept her proposal signalled the end of discussions. Ms Wang says that a suggestion to terminate the Joint Venture and how it was to be done was discussed, but no conclusion was reached, and the possibility of what would happen if some of them continued to pursue Project Winterland was raised but not discussed. In her oral evidence, Ms Wang eventually agreed that there was a "broad understanding" that the parties will terminate the Joint Venture, and that there was "in principle a termination decision", but that the terms of that termination had not been finalised as at 13 May 2015.

328 Ms Ong says that after this, at the same meeting, they discussed and agreed how they should move forward to terminate the Joint Venture and Ms Wang took minutes of the meeting which she circulated by an email later that

day. Ms Ong says that the agreement to terminate was a mutual agreement between her, Ms Wang, Mr Shport and Ms Suparman and was not unilaterally imposed by Ms Wang or any other party. Ms Ong refers to her email to Ms Wang on 14 May 2015, where she stated that the decision to terminate the Joint Venture was "both parties' decision".

329 Ms Suparman in her AEIC confirms the evidence given by Ms Ong and states that the parties clearly agreed to terminate the Joint Venture at the meeting on 13 May 2015.

330 Mr Shport's evidence in his AEIC is much to the same effect and he says that, given the impasse, he, Ms Wang, Ms Suparman and Ms Ong mutually decided to terminate Project Winterland in Qing Pu on 13 May 2015 and the discussions then focussed on what were the next steps to be taken.

Email correspondence after the 13 May 2015 meeting

331 After the meeting on 13 May 2015, Ms Wang circulated a document "Agreement on May 13, 2015.docx" attached to an email under the heading "Agreement on next steps". She said in the email: "[Please] review and feedback me on staff and office rental [tomorrow] latest. Otherwise we likely need to pay 1 more month salary."

332 The attached document was in the following terms:

> Agreement
>
> On May 12th 5pm and 13th 3pm of 2015, all shareholders of KOP China (Bodi) and KOPP HK had meetings regarding current company and project situation. Attendees are [Ms Ong], [Ms Suparman], [Ms Wang], [Mr Shport]. Summarized below:
>
> 1) [Ms Ong] believe that till today, there is no progress of the project at all. Govt like to over-promise. She has question on govt's current promise on land tendering time of end of 2015,

which required to treat the land as "clean" land with factory buildings still on top. She also worried about the financial cost we need to carry from the tendering to the time the land is delivered.

2) [Ms Wang] believe China company has made many accomplishment. The factory relocation agreement was successfully signed with significant higher than market compensation paid by govt. Most planning parameters was modified based on our needs, including but not limited to re-route the river, increase height limit from 80 to 100 meter, balance green zone outside of the land, increase plot ration from 2 to 2.4, change land usage from office to commercial, etc. [Ms Wang] understand [Ms Ong's] concern and agree it is a potential risk. However [Ms Wang] believe given the current evidence: relocation agreement signed, property title handed in by [Jahwa] for cancelation, and Shin Chiptech also agreed to hand in title (per district mayor Xia), it is likely to tender the land as clean land. The potential risk compare to land price raise and other political/policy changes, we should still acquire the land as soon as possible.

3) [Ms Ong] also questioned the china office spending and approval authority. Below is her view

> a. Account is unclearly, difficult to check and audit. It was badly managed. Approval process does not involve all shareholders, and was done locally.
>
> b. Since there is ambiguity of some spending, Ms Ong suggested to have compromise and only agree to half of the spending that is unclear.
>
> c. If we did not realize the top line of the company, we should also cut the budget.

4) [Ms Wang's] view:

> a. 2M USD contract was prepared and arranged by [Ms Ong]. This contract has a specific service time defined (ending Dec 31st, 2014) and additional budget suggested. No requirement in this contract state that expenses related to this service contract should be revealed and clarified.
>
> b. Company spending including car and entertainment were in 2014 and 2015 budget. Although we never heard a confirmation on "this budget is approved", however 1) when we requested "approved" budget, Lily, the CFO of KOPP provided us her consolidated budget which is based our submitted budget; 2) monthly finance reports with every cash accounts was submitted to KOPP for

review, if any questions, it should be raised earlier. 3) China has standard account system regulated by Chinese law. And we have been very cooperative and open all accounts and book for check. And answered all questions being asked recently.

c. When [Mr Shport] come in on April 2014 as new shareholder, his evaluation is based on lM USD for 15% share. That is total project budget (not yearly budget) agreed by all shareholders. And, account all investment and shareholder advance/contract, by proportion, KOPP is the one short of funding. (currently all investment/ Advance/loan: KOPP 2.066M, Bachmeer (xuan) 2.554M, Dmitriy lM. We are short of 1.0SM USD, in which 0.82M should be from KOPP.)

d. All approval of spending if within budget, it is China CEO's authority to approve. We have established finance approval process which compliance to China accounting rules and regulation. For anything outside of planned budget such as design fee, we seek all shareholders' agreement for approval.

e. China company has passed the internal audition for period ending March 31, 2014, and passed govt official auditing for year 2013, 2014 and 2015.

f. As a real estate development company, it is by nature big in and big out. There is no ready product to sell thus unrealistic to expect topline. The original topline was expected from proceed of plot Band C. And plot C was ready to tender by end of 2014, and [Ms Ong] decided not to take it as it is not "clean land", which was known from beginning.

5) As shareholders, we agree the next steps as following:

a. Will terminate all staff as of May 14th, 2015. China company (Bodi) will need to keep Jessica Zhang for 2-3 months to close down the company.

b. For any staff KOPP would like to keep, for example, Jenny Liu, from May 15th, 2015, all salary and benefit of Jenny Liu will be paid by KOPP directly. KOPP may set up a new company and take over the staff. Bodi therefore will not be responsible for any penalty payment for the termination of the staff's contract.

c. Will terminate the office lease of unit 906 as of May 15th, 2015.

> d. Will sell company assets, a black business van and a few computers ASAP.
>
> e. Current cash balance of the company is roughly 270k RMB and 60K HKD. If the fund is not sufficient to cover the company closing, all shareholder need to top up based on their proportion.
>
> f. Mdm Hu will have to inform her related parties on decision of the project. [Ms Ong] will prepare a timeline by next week for us to follow the communication.
>
> g. In any case, any shareholders continuously utilize existing materials of Winterland project Shanghai, including but not limited to presentation, video, designs, etc. the shareholder should pay the other shareholders the associated design expenses.
>
> h. In any case, any shareholder utilize the current targeted plot in Qingpu, Shanghai and yield proceeds, including but not limited to agent fees, establishment fee, etc, all the other shareholders are entitle to share the proceeds based on ending shareholder contribution proportion. Namely KOPP 2.066M, Bachmeer (xuan) 2.554M, Dmitriy 1M in %.
>
> i. Will terminate China KOP (Bodi) and KOPP HK followed by govt required procedures.
>
> j. KOPP will terminate the employment contract with Xuan. Last day of work will be May 15th• KOPP HK will terminate the service contract with Alfred as soon as Bodi and KOPP HK is terminated. Xuan will be managing company closing matters locally. We will follow the employment/ service contracts for terms and condition for termination.
>
> We as shareholders, acknowledge to above statements and all agree on next steps.

333 That same evening, Ms Ong sent an email to Ms Joey Ong, copied to Ms Wang, Ms Suparman and Mr Shport, in which she said:

> We had a discussion with [Ms Wang] today and the decision is to terminate the partnership. She will send us a to do list and we will revert as to who we keep and we let go.
>
> So we will wait for her list.
>
> Meanwhile we are supposed to register a KOP China. So please proceed to do that. According to [Ms Wang] it will take 15 days.

334 Later that evening, Ms Ong responded to Ms Wang's email of 13 May 2015 to say:

> Will discuss with Dmitry as well and revert.
>
> Meanwhile your KOPP contract as agreed previously was up to month of April so we already doing the termination on Singapore side. So there is no longer that 8000 payment.
>
> Joey told me you are still taking salary from BoDi in China as at April accounts.

335 On 14 May 2015, Mr Shport responded to Ms Wang's email of 13 May 2015 to say:

> I am not sure whether the Agreement in attachment is proposal or shareholders meeting summary. Provided that it is second in my view that is not exactly how I would recollect it.
>
> If to come to the main points and omit argument:
>
> On 12th There was discussions over expenditure and doubtful spending which resulted in compromise was offered to [Ms Wang].
>
> On 13th the meeting started over feasibility of the project in Shanghai and few options of future procedure was offered and result was that the project was found feasible. After that [Ms Wang] came with a counter proposal on the day before compromise. In due course other shareholders came back with yet another proposal (compromise) which was declined by [Ms Wang]. Which came to suggestion to terminate partnership. Subject of procedure was touched but not confirmed. No discussion was on what will happen if some of shareholders continue to pursue the project, however the possibility of that was mentioned.

336 Ms Wang responded to Mr Shport on 14 May 2015 to say:

> I like your statement, Dmitriy, can add that in.
>
> And we did talked about what will happen if you remember. I asked if possible we sell ABC to potential buyer. And [Ms Ong] said she does not want to be in the circus. Then I suggested if in any case we can sell, we still share the proceeds if any. She also mentioned she will do her project with you separately as far as not in this land in Qingpu, I should not have an issue. I think it will be really hard to define IP rights of the project if we go sell the

> concept in a different plot. So I suggested only the share of the production expenses of design, video, etc. and no future claims of ownership of the project. But if it is in this specific plot, share of proceeds should remain.
>
> Also, I want to go a bit more detail in next step but [Ms Ong] want me to put down in writing. So I have this proposal. Feel free to comment.

337 Further email exchanges took place between Ms Wang and Ms Ong on 14 May 2015. They included:

(a) Ms Wang saying: "As you said no need to argue any more. Let's wrap up. More important than packing, we need to all agree and sign off on next steps. Understand about the account thing, no worry. Just think we need to finalize everything before taking any action."

(b) Ms Ong then replied: "Just to clarify currently all the staff and office are for Winterland so when you said outside of Winterland it is not necessarily correct but it doesn't deprive you of your fees in the establishment had the project go on. So I just want this to be clear for Dmitry".

(c) Ms Wang responded: "Thank you for the clarification on salary and fees. Its good to have your confirmation that I am still entitle to the fees if the project goes on."

(d) Ms Ong replied: "I don't want to be misquoted. I meant had we gone on with the Winterland project in [Qing Pu]. Not that if it's somewhere else. So if say Winterland went on in [Qing Pu] you will be entitled to the Execution part establishment fee and not excluded nor double dip just because U got salary for this part".

338 On 15 May 2015, Ms Ong sent an email to Ms Jessica Zhang and another person in Bodi's office in Shanghai, copied to Ms Wang, in which she said that no money was to be paid out of the company accounts and that all instructions or approvals given by Ms Wang and Mdm Hu were to be verified and approved by her, Ms Suparman and Mr Shport.

339 On 16 May 2015 Ms Wang wrote a long email to Ms Ong. In that email she set out a number of points on financial matters but then said:

> I also suspect, why you are doing this to me now. Based on the evaluation we gave to Dmitriy, we have not finish our project budget. In fact, I feel I have done a good job in cash control, the leftover budget is good enough to support us till Oct 2016, even using your planned land tendering schedule of July 2016. I suspected that you want to kick me out of the partnership after you have establish certain connection and status in Shanghai to max your benefit. Since the missing funding are mainly from your side per current agreement, if you kick me out and fund yourself, you max future benefit, if I compromise and fund, you save money but maintain same share of profit. So no matter which option I choose, you are the winner. This is a very ill assumption which I don't want to believe. But just like you cannot trust me, I also cannot stop to suspect.
>
> …
>
> I willing to take a compromise that showed my intention to maintain the partnership and believe in this project. But when you bring up the counter-offer, you won't let me explain my thoughts, you say "this is the last time I am asking you..." It is like "take it or leave it!" That is very harsh for me to accept. If I do, I am not me. That's like through my ego on the floor and step on it. Again makes me feel you in fact don't want me to accept the offer but the only purpose is to drive me out. Do you calculated how much that means? There is only 80k USD difference between my offer and your counter-offer. It is your attitude make me decide not to accept.
>
> Anyway, those are not important now. I am writing only to hope that maybe by understanding my thinking, you can be less emotional and less stressful. I think it is meaningless to judge who is right and who is wrong. But it is important to have an open mind for other's opinion. Now we have an agreement and let's

> focus on execution. That saves energy for all of us and maybe a while later we can still sit down and have dinner together.

340 On 19 May there were further exchanges. Ms Wang referred to a meeting the following day "to discuss and finalize next steps together. Including decisions on staff. Pls do NOT go to HR or Finance directly to tell them what to do. We need to decide together." Ms Joey Ong said that Ms Ong had agreed some actions on terminating the employment of Bodi employees. This led to further exchanges and arguments about the way in which decisions were being taken by Ms Ong.

The 20 May 2015 meeting

341 There was then the meeting in Shanghai on 20 May attended by Ms Wang, Ms Suparman, Mr Shport and Ms Ong. Ms Ong characterised it as a meeting to discuss further details about the steps to effect the termination of the Joint Venture. There are various differences in the parties' account of who did what in terms of the drafting of the provisions which were ultimately included in the Termination Agreement signed by the parties.

342 Ms Ong says that during the meeting, Ms Wang was typing frantically on her laptop as they were discussing and that at the end of the meeting, she produced a document entitled "Termination Agreement", which she asked Mr Shport, Ms Suparman and Ms Ong to sign and they did so. Ms Ong says that the clauses in the "Termination Agreement" were largely similar to the "Agreement" that Ms Wang had circulated after the meeting on 13 May 2015 but with further details added based on discussions at the meeting and developments after the last meeting on 13 May 2015. In particular, she says that they all reaffirmed the agreement reached on 13 May 2015 regarding the use of

the materials from Project Winterland in Qing Pu and use of the Qing Pu Land after the termination of the Joint Venture.

343 Ms Ong says that at the meeting, she informed Ms Wang that there was a possibility that KOPSG would be collaborating with Chairman Yang of SLJZ on the implementation of Project Winterland in Shanghai. Ms Ong says she also informed Ms Wang that KOPSG was considering other potential sites in Qing Pu as well as other districts in Shanghai such as Lin Gang and Qian Tan in the Pudong District. Ms Ong says that, in response, Ms Wang wished her, Ms Suparman and Mr Shport well in their future endeavours to implement the Winterland Concept elsewhere in Shanghai and/or China and Ms Wang noted that as a shareholder of the KOP Group, she would also stand to benefit from the success of the project in Lin Gang.

344 Ms Ong says that Ms Wang was pregnant at that time, and that Ms Wang said to her that it might have been God's will that the Joint Venture ended so that she could concentrate on delivering her baby. Ms Ong says that it was a very pleasant conclusion that day.

345 Ms Wang says that on 20 May 2015 she, Ms Ong, Ms Suparman and Mr Shport met in Shanghai to continue with the discussions that had not been completed on 13 May 2015. Ms Wang says that, because the discussion with regard to what they would do with Project Winterland was still ongoing from the last meeting, she specifically asked Ms Ong if they had any plans and Ms Ong said: "as you know, we always had plans to do it in Indonesia, but there is nothing concrete yet". Ms Wang says that she asked Ms Ong about China and she said "as you know, it is not that easy". Ms Wang says that she suggested that, in this case, they could put in a new clause that if anyone were to carry out

Project Winterland in China, they should talk to the other shareholders in good faith. There were no further details discussed as none were available.

346 Ms Wang says that Ms Ong then drafted Clause 8 of the Termination Agreement. Ms Wang says that when she was looking at the laptop she changed the "the project' to ″the Project" in Clause 8 to make it clear that if Project Winterland was carried on in China or if anyone was to utilise the Qing Pu Land, the parties would account to each other. Ms Wang refers to the differences between the clauses in the document she had prepared on 13 May 2015 and those in the Termination Agreement which was signed.

347 Ms Wang also says that the KOP defendants stated that they would take over certain staff from Bodi and set up a new company in Shanghai to carry out their other projects, namely Hua Hai Lu, and Montigo resort in Suzhou. Ms Wang says that they then signed the Termination Agreement and, after that, she shared the news that she was pregnant. She says that even though she would have persevered through in normal circumstances, she thought that it would be better for them to let go of the Joint Venture in case it affected her health.

348 Ms Wang then refers to "casual chatter" after the Termination Agreement had been signed, in which Ms Ong said that it was a waste to let go of such a well-developed project, and added perhaps that "we could give it another shot in China". Ms Wang says she asked her what was on her mind. Ms Ong answered that since "we" had previously spoken to a few Chinese developers earlier to gauge their interest in the project, such as Fosun and SLJZ, maybe she should go to speak to them again. Ms Wang says she said "yes, why not", considering that Ms Ong had already agreed to take care of her interest as set out in Clause 8.

349 After this conversation Ms Wang says that, as they parted ways, she wished Ms Ong all the best "as any parting friends would to another". She says the meeting ended around noon, with Ms Ong, Ms Suparman and Mr Shport rushing off.

350 Mr Shport's evidence about the meeting on 20 May 2015 was that they had decided to meet to discuss some of the finer details of the repercussions of the termination of the Project Winterland in Qing Pu following the parties' agreement on 13 May 2015 to terminate their cooperation on that project. He says that at the start of the meeting Ms Wang showed him, Ms Ong and Ms Suparman, on her laptop screen, a draft agreement which she had already prepared based on the document she had circulated after the meeting on 13 May 2015. He says that they then discussed the draft agreement clause by clause and sentence by sentence, and that Ms Wang either read out the draft or they were able to see the amendments that she was making to the draft agreement on her laptop. He says that, at the end of the meeting Ms Wang printed out the Termination Agreement which the parties then signed. The meeting was, he says, relatively short as they had discussed and recorded the main terms of the termination at the meetings on 12 and 13 May 2015. He says that most of the discussion and the amendments concerned the details of the separation rather than the main terms of the termination, such as the termination or transfer of the staff, the sale of the company assets and the termination of the office lease.

351 The terms of the Termination Agreement which was signed on 20 May 2015 were as follows:

> Agreement
>
> We Shareholders of KOPP HK and Bodi hold a meeting on May 20th, 2015 in Shanghai, and agreed the following:

1. We agree to terminate Bodi effective immediately. Xuan will be responsible to handle the company termination procedure.

2. Ms Ong and Xuan will study the implications on tax and other issues on KOPP HK. If agreed later on, Xuan will transfer shares of KOPP HK to KOPP Singapore at $1.

3. KOPP Singapore will set up a new company in China by themselves.

4. For staff:

> a. There are 5 staffs will be transferred to the new company set up by KOPP Singapore. They are: Quek, Jenny, Jason, Jessica, Ying. Bodi will be responsible for salary payment of them until May 31st, 2015. Starting June 15t, 2015, **all** expenses of the above 5 staffs will be paid by the new company.
>
> b. We will terminate contract with Han Yong as of May 15th, and will negotiate with him to pay him 2 month salary notice in lien. Xuan will negotiate with him.

5. We will terminate the office lease of unit 906 as of May 22nd, 2015. Wang Xuan will negotiate with landlord to give up all security deposit, which is sufficient to cover current unpaid rental expenses.

6. Cocoa Colony will take over the following assets:

> i. The black Benz business van, price at 240k RMB for the car and 98275 for the plate. For plate price prefer to the April price quotation on Business plate (http://sh.auto.sina.com.cn/bdxw/2014-04-22/353-27382.html) Any tax and fees associated with it will be paid half and half by Bodi and Cocoa Colony.
>
> ii. Full set furniture in Ms Ong's old office, original purchase price is 56525 RMB, depreciation up to date is 8950, net value is **47575 RMB.** Xuan will negotiate with Cocoa Colony on re-sell value.

7. The rest assets, such as a few computers, cub seats, and furniture in Wang Xuan and mdm Hu's old office will be removed from current office and put in storage. Wang Xuan will try to sell them.

8. If any of the shareholders proceed in the Project or any project on this specific Qing Pu Land, then, the shareholder

> agrees that it shall account to the other shareholders the contribution made by the parties to the project. All shareholders shall negotiate in good faith.
>
> 9. If any shareholder choose to utilize the current materials already developed, including but not limited to logo design, building concept design, video, etc, this shareholder who utilizes it will need to reimburse the fees paid to third party for developing this specific materials.
>
> 10. Dmitriy has a personal loan to Wang Xuan (300k RMB), Leny and [Ms Ong] each (150K RMB). The loan is directly related to the Winterland expenses as project management expenses. The shareholders agreed that above expenses shall be claimed by Xpanse Pte Ltd (project manager company) should Winterland project continue in Qing Pu and we receive some proceed/ establishment fee. If the project did not happen in Qing Pu, Dmitriy will send the 300k RMB invoice to the new company KOPP Singapore has set up; and Wang Xuan in this case agree to write off the 300k RMB personal loan from Dmitriy.
>
> We as shareholders, acknowledge to above statements and all agree on next steps.

352 The Termination Agreement was signed by KOPSG, the plaintiff and Mr Shport.

353 I now turn to consider, first, whether the Joint Venture was terminated on 13 May 2015 or on 20 May 2015, as that may have an impact on liability.

The date of termination of the Joint Venture

The plaintiff's case

354 The plaintiff submits that the Joint Venture was only terminated on 20 May 2015, assuming that the court finds that the 20 May 2015 Termination Agreement should not be set aside.

355 The plaintiff refers to the email which Ms Wang circulated after the meeting on 13 May 2015. The plaintiff submits that in that email, Ms Wang put

forward both what had been discussed at the meeting earlier in the day between the parties as well as proposals for consideration. It says that no one responded to the email stating that the contents of the email reflected the agreement reached between the parties at the meeting earlier in the day.

356 The plaintiff refers to Ms Ong's email of 13 May 2015 in response in which she stated that she "[w]ill discuss with Dmitriy as well and revert." The plaintiff also refers to Mr Shport's email of 14 May 2015 in which he sought clarification as to the nature of Ms Wang's email. The plaintiff submits that, if in fact, there was an agreement reached, there would have been no need for Mr Shport to seek clarification, let alone state that he did not know the nature of Ms Wang's email dated 13 May 2015. The plaintiff also says that Ms Wang clarified by her email of 14 May 2015 that her email was her "proposal" and said to Mr Shport that "I like your statement, Dmitriy, can add that in".

357 The plaintiff refers to the KOP defendants' further and better particulars that Mdm Hu's agreement to the termination of the Joint Venture was recorded in "The Termination Agreement dated 20 May 2015", and that no reference was made to the contents of Ms Wang's email of 13 May 2015. The plaintiff says that this is consistent with the correspondence that was sent out by KOPSG in end 2015 or early 2016. It refers to KOPSG's letter dated 4 January 2016 to IE Singapore which stated that the Joint Venture with Ms Wang and Mdm Hu was terminated and that "A Termination Agreement dated 20th May 2015 were entered into between the shareholders", referring to the Termination Agreement. The plaintiff also refers to KOPSG's letter dated 6 January 2016 to the Shanghai Municipal Commission of Commerce which stated that: "[a]fter negotiation with its shareholders, it was finally determined to terminate the business of [Bodi], and a termination agreement was signed between shareholders on May 20, 2015."

358 The plaintiff says that these letters were sent in response to Bodi's letters alleging wrongdoing on the part of KOPSG and submits that KOPSG must have taken great pains to ensure that the contents of the letters were true and correct. It says that, if indeed, the position was that an agreement had already been entered into on 13 May 2015, reference would have been made to the contents of Ms Wang's email dated 13 May 2015. The plaintiff says that the reference to entering into and/or the signing of the 20 May 2015 Termination Agreement is consistent with KOPSG's understanding that it is the signing of the 20 May 2015 Termination Agreement which governs the parties' rights and obligations as regards the termination of the Joint Venture. If an agreement had already been entered into between the parties on 13 May 2015, a term would have been included in the 20 May 2015 Termination Agreement to the effect that parties had already agreed on the terms of termination on 13 May 2015 but this was not done.

359 The plaintiff submits that the contents of the 13 May 2015 email and the Termination Agreement contained different terms. Paragraph 5(c) of Ms Wang's email dated 13 May 2015 stated that the office lease would be terminated as of "May 15th 2015", whereas Clause 5 of the Termination Agreement stated that the office lease would be terminated as of "May 22nd, 2015" and the plaintiff says that it was terminated on or around 30 May 2015. In the email of 13 May 2015, the current balance for the company was stated to be "roughly 270k RMB and 60k HKD" and that "[i]f the fund is not sufficient to cover the company closing, all shareholder need to top up based on their proportion"; whereas there was no reference to any balance sum in the company stated in the Termination Agreement or any requirement for shareholders to top up. The plaintiff says that there was no reference in the email of 13 May 2015 to the loan of S$120,000 granted to Mr Shport by Ms Ong, Ms Suparman and

Ms Wang whilst under Clause 10 of the Termination Agreement, the loan to Mr Shport was expressly provided for. Mr Shport's evidence is that he had intended, after the 13 May 2015 meeting, to raise the issue of his loan with Ms Ong and Ms Suparman at the next meeting, which was scheduled for 20 May 2015. In addition, the plaintiff refers to Ms Ong's statement that the parties never agreed to paragraph 5(h) of the email dated 13 May 2015.

360 The plaintiff also refers to the KOP defendants' pleadings where it was stated that the parties met on 20 May 2015 to resolve "the outstanding matters in relation to the termination of the Collaboration".

361 The plaintiff submits that, given the state of the parties' relationship at the time, they were all aware that they would have to meet again and reduce any agreement for the termination of the Joint Venture into writing. Further, the plaintiff says that the fact that the parties collectively drafted the terms of the Termination Agreement on 20 May 2015 supports the position that there was no agreement reached on 13 May 2015. The plaintiff submits that, contrary to Mr Shport's evidence, it was important for parties to sign a document to confirm their understanding as regards the termination of the parties' relationship and Ms Wang was asked to put forward her proposals in writing after the meeting on 13 May 2015.

362 The plaintiff also submits that, contrary to Mr Shport's evidence, Clause 8 of the Termination Agreement is not exactly the same as paragraph 5(h) of the email of 13 May 2015.

363 The plaintiff refers to the Singapore Court of Appeal decision in *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*"), which sets out guidance of what was required for there to

be a compromise, and submits that in the present case, the 13 May 2015 email did not contain an identifiable agreement that was complete and certain and that neither Ms Ong nor Mr Shport had, at that material time, confirmed that the 13 May 2015 email was the agreement between the parties. The plaintiff says that Ms Wang had confirmed in the 13 May 2015 email that it was only her "proposal" on which Mr Shport and Ms Ong should "feel free to comment" and agreed to add a comment made by Mr Shport in response. The plaintiff submits that since the 13 May 2015 email did not contain an identifiable agreement that was complete and certain, the parties did not intend the email of 13 May 2015 to have legal effect.

364 Accordingly, the plaintiff submits that the Joint Venture was only terminated on 20 May 2015, if the Termination Agreement is found to be valid and effective.

The KOP defendants' case

365 The KOP defendants say that on 13 May 2015, when Ms Wang, Ms Suparman, Mr Shport and Ms Ong met at KOPSG's offices to continue the discussion, the parties could not reach a consensus on how much Ms Wang and Mdm Hu should restore to Bodi's account. In the light of this, the KOP defendants say that Ms Wang, Ms Suparman, Mr Shport and Ms Ong reached a mutual agreement to terminate the Joint Venture on that date. The parties reached an unequivocal agreement to terminate the Joint Venture but accepted that there were follow-up steps needed to finalise the termination. However, the decision to terminate was clear and unequivocal and all parties acted on the termination immediately.

366 In her oral evidence, Ms Wang initially denied that the parties had reached a decision on 13 May 2015 to terminate the Joint Venture. However, the KOP defendants point out that she then accepted that the parties had reached "an in-principle termination decision" at the 13 May 2015 meeting, but the precise terms of termination were not finalised.

367 The KOP defendants say this is consistent with Ms Ong, Ms Suparman and Mr Shport's accounts and Ms Wang's email of 13 May 2015, where she set out an agreement and stated "[a]s shareholders, we agree that the next steps as following:…" then dealt with necessary steps to terminate Bodi's staff, terminate Bodi's lease of office space, sell Bodi's company assets, deal with Bodi's cash balance, inform parties of the decision not to proceed with Project Winterland in Qing Pu and wind up KOPHK and Bodi in accordance with the respective government procedures. Many of those actions were to take place on 14 or 15 May 2015.

368 The KOP defendants also say that their position is confirmed by Ms Ong's statement in an email to Ms Joey Ong on 13 May 2015, that "[w]e had a discussion with [Ms Wang] today and the decision is to terminate the partnership" and also Ms Wang's email of 16 May 2015 in which she stated to Ms Ong, Ms Suparman and Mr Shport that, "[n]ow we have an agreement and let's focus on execution."

369 The KOP defendants refer to Ms Wang's oral evidence that the document she had circulated on 13 May 2015 was a "proposal" she had prepared and not minutes of the meetings on 12 and 13 May 2015, saying that she had called it a draft agreement. She accepted, however, that Sections 1, 2 and 3 of the document, where she recorded specific matters which she and Ms Ong had raised, were minutes of what had been said at the meeting. Ms Wang also

accepted that the items in paragraphs 5(b), (g) and (h) relating to the setting up of a new company by the KOP defendants, use of materials from Project Winterland in Qing Pu and use of the Qing Pu Land, were also specifically discussed at the meeting on 13 May 2015.

370 Further, the KOP defendants say that the parties acted on this agreement by giving effect to it in the following manners:

(a) On 13 May 2015, Ms Ong instructed Ms Joey Ong to enquire about the procedure and time required to incorporate a new company in Shanghai which Ms Joey Ong did on the same evening. This new subsidiary of KOPSG in Shanghai was intended to take over some of Bodi's employees, as agreed on 13 May 2015 and consistent with item 5(b) of Ms Wang's minutes.

(b) On 14 May 2015, Ms Ong made enquiries about the disposal of Bodi's assets and, subsequently, KOPSG purchased computers and furniture from Bodi at an agreed price, consistent with item 5(d) of Ms Wang's minutes.

(c) On 15 May 2015, Ms Wang made various proposals by email on how Bodi's employees should be dealt with, such as whether their employment was to be terminated or whether they were to be transferred to Cocoa Colony, consistent with items 5(a) and (b) of Ms Wang's minutes.

(d) On 18 May 2015, KOPSG terminated Ms Wang's employment as Director of Business Development, consistent with item 5(j) of Ms Wang's minutes.

(e) On 19 May 2015, Ms Wang, Mr Shport, Ms Suparman and Ms Ong arranged to meet the Qing Pu government officials, including Chinese Communist Party Secretary Ms Zhao Hui Qin, and District Mayor Xia Ke Jia to inform them that they were not proceeding with Project Winterland in Qing Pu on the current plot of land, consistent with item 5(f) of Ms Wang's minutes.

371 In the light of the above, the KOP defendants submit that the parties had agreed to terminate the Joint Venture on 13 May 2015. They also had a broad agreement on the follow-up action to be taken and the parties took steps to give effect to that agreement. This was also consistent with Mr Shport's evidence that the parties had reached an agreement on 13 May 2015 and that the signing of the Termination Agreement on 20 May 2015 was more a formality.

My decision on the date of termination

372 I accept the submissions of the KOP defendants on this aspect. It is unquestionable on the basis of all the evidence, including that of Ms Wang, that there was an agreement to terminate the Joint Venture on 13 May 2015. Whilst the precise way in which all the consequential matters were to be dealt with was not agreed on 13 May 2015, that does not affect the clear and unequivocal agreement to terminate the Joint Venture.

373 Ms Wang referred to it as an agreement "in principle". What she meant by that was that all the details of the consequences of the agreement to terminate had not been worked out. As she said in her email of 16 May 2015: "Now we have an agreement and let's focus on execution."

374 If there had been no agreement, there would have been no need for the parties to take the follow-up actions of terminating the employment of Bodi's

employees or the lease of Bodi's premises, all of which were actioned. Both the agreements reached on 13 May 2015 about such matters and the fact that they were carried out confirms the existence of the agreement to terminate on 13 May 2015.

375 Whilst the Termination Agreement was signed on 20 May 2015, that does not affect the fact that there was a complete, unequivocal and binding agreement to terminate the Joint Venture on 13 May 2015. That document set out the terms of the consequences necessary as a result of the agreement to terminate. The fact that 20 May 2015, the date of the Termination Agreement, was referred to by the parties as being the relevant date of the termination does not affect the fact that the agreement to terminate the Joint Venture was made on 13 May 2015. It is to be expected that reference would be made to a signed agreement rather than an oral agreement, and had it not been for the events after 13 May 2015, there would not have been an issue as to when the agreement was made.

Liability of the KOP defendants and Mr Shport under the Joint Venture

376 The plaintiff contends that the KOP defendants and Mr Shport were in breach of their duties under the Joint Venture in the following respects.

377 First the plaintiff contends that the KOP defendants and Mr Shport usurped Project Winterland for their sole benefit to the exclusion of the plaintiff, deliberately failed to disclose to (and in fact concealed from) the plaintiff their real motive to usurp Project Winterland, and engineered the termination of the Joint Venture, having taken steps to discuss with or engage SLJZ and/or SHCD for the purpose of undertaking the Project in Lin Gang.

378 Essentially this allegation depends on two main matters which are interconnected. First, it depends on Ms Ong, Ms Suparman and KOPSG sending accusatory emails to Ms Wang from March 2015 to May 2015 which undermined the relationship of trust and confidence among the parties with the real motive being to undermine the Joint Venture.

379 Secondly, it depends on the KOP defendants failing to disclose to and concealing from the plaintiff the fact that they had taken steps including engaging SLJZ and SHCD prior to the termination of the Joint Venture, for the purpose of undertaking Project Winterland to the exclusion of the plaintiff.

380 In relation to the first matter, I have set out in some detail the correspondence which passed between Ms Wang, Ms Ong and Ms Suparman in the period of April and May 2015. It shows a deteriorating relationship between the parties.

381 The plaintiff refers to the correspondence and submits that a number of matters led to a strong inference that the emails sent by Ms Ong were part of a course of conduct by which the KOP defendants and Mr Shport sought to engineer the termination of the Joint Venture so as to usurp Project Winterland and carry it out to the exclusion of the plaintiff. The plaintiff says, amongst other things, that:

> (a) KOPSG always needed a local partner and there was no report to the board or public announcement by KOPSG which would have been needed had they not intended to pursue Project Winterland. There is therefore an inference that KOPSG intended to continue Project Winterland to the exclusion of the plaintiff, with someone else in Shanghai.

(b) The KOP defendants continued to have communications with SLJZ after January 2015.

(c) Ms Ong's email of 4 May 2015 had no foundation and therefore the inference should be drawn that it was written to engineer a dispute and the termination.

(d) The question of the delay in acquiring the Qing Pu Land was not raised as a reason for the dispute between the parties at the time.

(e) Many of the matters relied on by the KOP defendants in relation to Ms Wang and/or Mdm Hu are matters which were inconsequential by May 2015.

(f) The "doubtful expenses" did not justify the demands made by Ms Ong to Ms Wang in terms of making a contribution to the running costs of Bodi.

382 The KOP defendants submit that the disagreements leading to the agreement to terminate the Joint Venture were genuine and not part of any conspiratorial scheme engineered by them. They say that this is further supported by the fact that the parties continued to have disputes and disagreements even after 13 May 2015. On 14 May 2015, there was a disagreement between Ms Ong and Ms Wang about the allocation of rooms to Cocoa Colony and then on 16 and 17 May 2015, there was a heated exchange between Ms Wang on the one hand, and Mr Shport and Ms Ong on the other hand. They also refer to the fact that Ms Joey Ong continued to audit Bodi's accounts after the Joint Venture was terminated, and would not have done so if the termination of the Joint Venture had been engineered and carefully planned, as Ms Wang claims.

383 The KOP defendants also say that they did not usurp Project Winterland in Qing Pu, as the Project in Lin Gang that subsequently materialised is completely different in terms of design, location, target audience and other matters. The KOP defendants submit that the plaintiff has failed to show that there was any conspiracy by the KOP defendants to usurp Project Winterland in Qing Pu. In fact, they say that it was at all times open to Ms Wang and Mdm Hu to proceed with Project Winterland in Qing Pu on the same plot of land. The KOP defendants say that when Ms Wang was asked questions on this, she could not offer any real explanation but said she did not think of that option. She said she felt quite heartbroken for the relationship and needed some time to "chill out".

384 I have already found that there were no communications between SLJZ and the KOP defendants between the meeting on 27 January 2015 and the communications with Mr Lee in April 2015, to arrange the meeting on 14 May 2015. That takes away one of the main contentions by the plaintiff as to any motive that the KOP defendants would have to terminate the Joint Venture on 13 May 2015.

385 As I have said, the relationship between Ms Wang on the one hand and Ms Ong and Ms Suparman on the other hand was deteriorating from April 2015 onwards, and the main reason appears to have been the level of expenses which Bodi had been incurring and the need for further capital for Bodi to continue to operate. I consider that the catalyst for the disputes at the end of April and beginning of May 2015 was the request that KOPSG should put in more money to fund Bodi. That led to concerns by the KOP defendants that the sums that Bodi had been spending had not been justified and that there was no proper accounting in place for large amounts of money which had been taken out of

Bodi via entries in the general ledger to fund cash transactions which included expenditure through the Green Book.

386 I have no doubt that both parties felt that the other party was at fault or being unreasonable. In such circumstances, whether expressly mentioned at the time or not, the various past incidents in the relationship between Ms Ong, Ms Suparman and Ms Wang would have influenced and evidently did influence the way in which they each reacted. Equally, the continued unavailability of the Qing Pu Land leading to the lack of progress of Project Winterland in Qing Pu, whether mentioned or not, would have formed part of the background to the events in May 2015.

387 The cause of the termination in the end was a failure for Ms Ong and Ms Suparman to agree with Ms Wang on the contribution which Ms Wang would make to fund Bodi. Ms Wang would not agree to contribute the amount which Ms Ong and Ms Suparman requested and Ms Wang would not offer the figure that they were requesting. I do not consider that there is anything in that dispute which can possibly amount to one party seeking to engineer a termination for a collateral purpose or motive. If anything, as shown by her email of 13 May 2015, Ms Wang took the initiative in terminating the Joint Venture. At the very least, she was certainly not a reluctant party to the agreement to terminate the Joint Venture on 13 May 2015.

388 I do not find that there was any breach of the obligation of good faith in relation to the Joint Venture in the actions taken by any of the parties in the period up to the termination on 13 May 2015, or that there are any grounds for setting aside the agreement which they made on 13 May 2015.

389 Given my finding that the Joint Venture was terminated on 13 May 2015, I do not consider that the meeting between Ms Ong, Ms Suparman and Chairman Yang on 14 May 2015 can give rise to any breach of the duty of good faith under the Joint Venture. From 13 May 2015 onwards, all parties were released from their obligations for future performance of the Joint Venture. Whilst the terms of paragraphs 5(g) and 5(h) of the email of 13 May 2015 which ultimately became Clauses 8 and 9 of the Termination Agreement would regulate future performance after that termination, I do not consider that either party was precluded from investigating what they might do following the termination of the Joint Venture. I was referred, after closing submissions, to the decision in *Tongbao (Singapore) Shipping Pte Ltd and another v Woon Swee Huat and others* [2018] SGHC 165 and to other decisions relating to continuing fiduciary duties in Singapore law after the date of termination of a partnership. I do not consider that, on my analysis of the duties which arose under Chinese law in this case, there was any such continuing duty after the termination of the Joint Venture.

390 Nor do I consider that the meeting with Chairman Yang on 19 May 2015 gives rise to any breach of the obligation of good faith under the Joint Venture. This was a follow-up on the meeting in Singapore on 14 May 2015 at which the possibility of developing the Project in Lin Gang was raised. However, following the termination of the Joint Venture on 13 May 2015, as above, neither party was precluded from investigating what they might do following the termination of the Joint Venture.

391 In any event, as set out below in the communications between the parties between 13 and 20 May 2015, they raised the possibility of Project Winterland being carried out on the Qing Pu Land, the Qing Pu Land being used for other projects and Project Winterland being carried out elsewhere in China.

392 In relation to Project Winterland being carried out elsewhere in China, Ms Wang drafted paragraph 5(g) of the email of 13 May 2015 about using materials from Project Winterland in Shanghai and explained to Mr Shport on 14 May that "I think it will be really hard to define IP rights of the project if we go sell the concept in a different plot. So I suggested only the share of the production expenses of design, video, etc. and no future claims of ownership of the project." She also said that Ms Ong "also mentioned she will do her project with you separately as far as not in this land in Qingpu, I should not have an issue… But if it is in this specific plot, share of proceeds should remain." Contemporaneously, therefore, Ms Wang was acknowledging that she would not have an issue with Project Winterland being carried out on other land.

393 On 14 May 2015, in response to Ms Wang saying she would be entitled to fees "if the project goes on", Ms Ong responded: "I don't want to be misquoted. I meant had we gone on with the Winterland project in [Qing Pu]. Not that if it's somewhere else. So if say Winterland went on in [Qing Pu] you will be entitled to the Execution part establishment fee…"

394 Ms Wang therefore clearly considered that Project Winterland might be built on a different plot other than Qing Pu, and agreed to the consequences.

395 I also accept Ms Ong's evidence that on 20 May 2015 she informed Ms Wang that there was a possibility that KOPSG would be collaborating with Chairman Yang of SLJZ on the implementation of Project Winterland in Shanghai and they were considering other potential sites. She says that Ms Wang wished her, Ms Suparman and Mr Shport well in their future endeavours to implement the Winterland Concept elsewhere in Shanghai and/or China. I prefer that evidence to that of Ms Wang about the conversation, which otherwise is generally consistent with Ms Ong's account.

396 In relation to the use of the Qing Pu Land, Ms Wang also drafted paragraph 5(h) concerning using "the current targeted plot in Qingpu, Shanghai and yield proceeds" and how the proceeds would be distributed. As she then explained to Mr Shport in her email of 14 May 2015, on 13 May 2015: "I asked if possible we sell ABC to potential buyer. And [Ms Ong] said she does not want to be in the circus. Then I suggested if in any case we can sell, we still share the proceeds if any. … But if it is in this specific plot, share of proceeds should remain." Ms Wang was therefore clear on what the position would be if the Qing Pu Land led to proceeds.

397 In relation to carrying out Project Winterland on the Qing Pu Land, Ms Wang was also clear about the position from the exchange on 14 May 2015 quoted above, when Ms Wang said she would be entitled to fees "if the project goes on" and Ms Ong responded "I don't want to be misquoted. I meant had we gone on with the Winterland project in [Qing Pu]. … So if say Winterland went on in [Qing Pu] you will be entitled to the Execution part establishment fee…".

398 In the circumstances, I do not consider that the plaintiff has established any liability of the KOP defendants for breach of the obligation of good faith under the Joint Venture. It follows that there was no concealment or misrepresentation which could impeach the agreement made on 13 May 2015 or the Termination Agreement signed on 20 May 2015.

399 As will be apparent, much of what is said above relates to the KOP defendants. It therefore applies to KOPSG and to Ms Ong and Ms Suparman, if they owed a duty to the plaintiff, contrary to my finding that they owed no such duty. The same would also apply to Mr Shport. If, as I have found, the KOP defendants did not communicate with SLJZ from 27 January 2015 until May 2015 and did not engineer the termination to usurp Project Winterland to

exclude the plaintiff, it is difficult to see how Mr Shport could be said to have done those things. However, there are some separate matters which are raised in respect of Mr Shport and, for completeness, I deal with those now.

Separate matters raised in relation to Mr Shport's involvement

400 As I have discussed above at [245]–[262], I have reviewed the plaintiff's contentions and do not consider that there is evidence of Mr Shport's knowledge of the Project in Lin Gang prior to 20 May 2015. As I have found, Mr Shport knew about the possibility of the Project in Lin Gang first on 25 May 2015.

401 Mr Shport says that he did not, and could not have, engineered the termination of Project Winterland in Qing Pu, given that he was unaware of and did not have any other plans to implement the Winterland Concept elsewhere outside of the Qing Pu Land. He further submits that the termination of Project Winterland in Qing Pu meant that he, effectively, had lost all of his US$1m investment within eleven months and so he had been reluctant to give up, as confirmed by Ms Wang and Ms Ong.

402 Mr Shport thus submits that he was, in fact, attempting to salvage the situation so as to avoid the termination of the Joint Venture. He refers to Ms Wang's evidence that he was telling her to see whether she could try and salvage the situation during the meetings on 12 and 13 May 2015 because this was a dispute between Ms Wang, Ms Suparman and Ms Ong and he was not part of or the cause of the dispute.

403 I consider that, in the absence of his knowledge of the possibility of Project Winterland being carried out in Lin Gang, there can be no possible grounds for Mr Shport having engineered the termination. In any event the evidence shows that he was a bystander in such events, and if anything tried to

preserve the Joint Venture, which was very much in his interest. On that basis I would have found, in any event, that he did not engineer the termination.

Conclusions on the plaintiff's primary claim against the KOP defendants and Mr Shport

404 It follows that, on the basis that the Joint Venture relationship between the parties was governed by Chinese law and gave rise to a duty to act honestly and in good faith, the KOP defendants and Mr Shport are not liable to the plaintiff because they have not breached such a duty. The same would also apply to any duty under Singapore law, whether that would be the equivalent duty (as I have held) or even a fiduciary duty under the Joint Venture agreement or outside that agreement. On the facts, as I have found them, the plaintiff has not established its primary claim under Chinese law, or, if it were applicable, under Singapore law.

The plaintiff's alternative claims in dishonest assistance and conspiracy by unlawful means

405 The plaintiff submits that even if the court does not accept that Ms Ong and Ms Suparman owed fiduciary duties to the plaintiff in their personal capacities, Ms Ong and Ms Suparman can be found liable for dishonestly assisting KOPSG and Mr Shport in the breach of their fiduciary duties to the plaintiff, if the plaintiff proves its case against KOPSG and Mr Shport.

406 Having concluded that the plaintiff has not established its case against KOPSG and Mr Shport, there is no basis for the plaintiff's claim that Ms Ong and Ms Suparman dishonestly assisted KOPSG and Mr Shport in breach of their fiduciary duties to the plaintiff.

407 Alternatively, the plaintiff submits that on the facts which it submits should be established, the KOP defendants and Mr Shport would also be liable for conspiracy by unlawful means. A claim in conspiracy by unlawful means is founded upon a combination of two or more persons and an agreement between and amongst them to do certain acts, such acts being done in furtherance of the agreement and causing damage to the plaintiff (*Nagase Singapore v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [23]).

408 On the facts of this case, the plaintiff contends that the KOP defendants and Mr Shport had jointly sought to terminate the Joint Venture with the intent of usurping Project Winterland for their sole benefit and to the exclusion of the plaintiff. In furtherance of that, the plaintiff says that they "cooked up" various assertions to lay the groundwork to justify the termination of the Joint Venture by alleging various wrongdoings against Ms Wang. This led to the termination which caused damage to the plaintiff.

409 Again, having found that the KOP defendants and Mr Shport did not engineer the termination of the Joint Venture with the intent of usurping Project Winterland for their sole benefit and to the exclusion of the plaintiff, there is no basis for these alternative claims.

410 Accordingly, the plaintiff's claims for dishonest assistance and for conspiracy by unlawful means are both dismissed.

Claims under Clauses 8 and 9 of the Termination Agreement

411 In the event that the Termination Agreement is not set aside, the plaintiff claims against KOPSG and Mr Shport on the basis of Clause 8 and Clause 9 of that agreement. I now consider whether these alternative claims are sustainable,

given that I have found that there are no grounds for setting aside the Termination Agreement.

Interpretation of the Termination Agreement

412 As the plaintiff submits, in coming to a conclusion as to the true interpretation of a contract, the court needs to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of contract: *Mannai Investment Co Ltd v Eagle Star Life Assurances Co Ltd* [1997] AC 749 at 775 and *Napier Park European Credit Opportunities Fund Ltd v Harbourmaster Pro-Rata Clo 2 BV* [2014] EWCA Civ 984 at [32].

413 The KOP defendants pleaded that at the meeting between the parties on 20 May 2015, the parties had reaffirmed without variation the agreement that they had reached on 13 May 2015 regarding the subsequent use of the materials from Project Winterland in Qing Pu and/or use of the Qing Pu Land after the termination of the Joint Venture. The plaintiff disagrees. Having reviewed the evidence, I consider the plaintiff to be correct.

414 I accept that, as Ms Ong says, the clauses in the Termination Agreement were largely similar to the agreement that Ms Wang had circulated after the meeting on 13 May 2015 but with further details added based on discussions at the meeting and developments after the last meeting on 13 May 2015.

415 Ms Ong, however, then states that the parties "reaffirmed without variation the agreement we had reached on 13 May 2015 regarding the use of the Qing Pu Winterland Project materials and/or use of the Qing Pu Land after

the termination of the Collaboration on the following terms…" She then quotes Clauses 8 and 9.

416 However, it is clear that Clauses 8 and 9 are not in identical terms to those in the agreement that Ms Wang circulated on 13 May 2015. If the parties had wanted to adopt, without variation, the wording of paragraphs 5(h) and 5(g) of the agreement in Ms Wang's email, they could have done so. However, the fact is that they did not do so and, for that reason, it is the terms of Clauses 8 and 9 and not the draft clauses circulated on 13 May 2015 which have to be construed. In my judgment, it is therefore not appropriate to construe Clauses 8 and 9 of the Termination Agreement by reference to the terms of paragraph 5(h) and 5(g) of Ms Wang's draft agreement.

417 This is not a case where terms were agreed on 13 May 2015 and the intention at the meeting on 20 May 2015 was merely to incorporate the terms which were agreed. At the meeting on 20 May 2015, the parties carried out an exercise where they redrafted the terms of what had originally been set out in paragraphs 5(h) and 5(g) of Ms Wang's draft agreement. Equally, although there is some evidence from Ms Wang as to what she meant by making certain changes which were incorporated into Clause 8, that subjective evidence cannot affect the objective meaning of Clause 8.

418 It is therefore the terms of Clauses 8 and 9 of the Termination Agreement which have to be construed. In construing those clauses, as set out above, it is necessary to ascertain the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of contract.

419 I consider that the relevant background knowledge would include the fact that the Joint Venture had been terminated on 13 May 2015. The correspondence and other evidence shows that the parties had produced designs and other documents and materials for Project Winterland in Qing Pu and these had to be dealt with. In addition, the planning and land acquisition processes had proceeded so that the Qing Pu Land might become available to buy and use in the future. Also, as evident from Ms Wang's email of 14 May 2015, there was a possibility of a project similar to Project Winterland being carried out elsewhere.

420 With those observations in mind, I now turn to consider the terms of Clauses 8 and 9 of the Termination Agreement.

Clause 8 of the Termination Agreement

421 Clause 8 of the Termination Agreement provides:

> If any of the shareholders proceed in the Project or any project on this specific QP Land, then the shareholder agrees that it shall account to the other shareholders the contribution made by the parties to the project. All shareholders shall negotiate in good faith.

422 I consider that the reference to "the Project" was a reference to Project Winterland and the use of the capital "P" emphasises that it is Project Winterland on the Qing Pu Land. In any event, the phrase "the Project or any project on this specific QP Land", in my judgment, has to be construed as a whole and the reference to "the Project or any project" is most naturally to be construed in terms of both "the Project" and "any project" being connected to and described by "on this specific QP Land". If it had been intended to mean "Project Winterland on any land or any project on this specific QP Land" then

it would need to have said that to make it clear that a distinction, in terms of the land, was to be made.

423 The plaintiff says that the reference to "any project on this specific QP Land" would be sufficient to cover Project Winterland on the Qing Pu Land and that it would have been unnecessary to add the reference to "the Project" if it had meant "the Winterland Project on this specific QP land". However, if "the Project" had not been mentioned then the question would have been raised as to whether only Clause 9 applied to Project Winterland and whether any project in Clause 8 included "the Project". Surplus words are often used to make the position clear and arguments based on surplus words have to be read in that context.

424 I therefore do not consider that if any of the shareholders proceeded with Project Winterland or a similar project, on land other than the Qing Pu Land, this would come within the description of the "Project or any project on this specific QP Land" and engage the provisions of Clause 8 of the Termination Agreement.

425 Even if it had been permissible to construe Clause 8 by reference to paragraph 5(h) of the agreement circulated by Ms Wang on 13 May 2015, I would have come to the same conclusion. Paragraph 5(h) provides: "In any case, any shareholder utilize the current targeted plot in Qingpu Shanghai and yield proceeds including but not limited to agent fees, establishment fee, etc, all the other shareholders are entitle to share the proceeds based on ending shareholder contribution proportion, Namely KOPP 2.066M, Bachmeer (Xuan) 2.554M, Dmitriy 1M in %".

426 The issue, taking paragraph 5(h) into consideration would have been whether the phrase in Clause 8 "the Project or any project on this specific QP Land" means the same or not as "utilize the current targeted plot in Qingpu Shanghai" in paragraph 5(h). The plaintiff would point to the difference and say that the fact that they are different means that there was a difference in meaning, whilst the KOP defendants and Mr Shport would say that the meaning was intended to be the same. The issue, again, would essentially be what Clause 8 meant. That is the point that I have dealt with.

427 Some reliance was placed on emails which had passed between the parties. These included Ms Ong's statement in the 4 May 2015 email that she would not be proceeding with Project Winterland without Ms Wang and Mdm Hu, Ms Wang's email of 14 May 2015 to Mr Shport that "[Ms Ong] also mentioned she will do her project with you separately as far as not in this land in Qingpu, I should not have an issue", and Ms Ong's email of 14 May 2015 to Ms Wang when she said: "I meant had we gone on with the Winterland project in QP. Not that if it's somewhere else. So if say Winterland went on in QP you will be entitled to the Execution part establishment fee". Whilst the later emails would support the meaning I have found, the parties might have decided to change their minds when they finalised the terms of the Termination Agreement. Again this illustrates the problem of using extrinsic evidence of matters dealt with in negotiations as an aid to construing the terms of the Termination Agreement.

428 It follows that, on the terms of Clause 8 of the Termination Agreement, the plaintiff does not have a claim under that clause in respect of the Project subsequently carried out on the Lin Gang Land.

Clause 9 of the Termination Agreement

429 Clause 9 of the Termination Agreement provides:

> If any shareholder choose to utilize the current materials already developed, including but not limited to logo design, building concept design, video, etc. this shareholder who utilizes it will need to reimburse the fees paid to third party for developing this specific materials.

430 The plaintiff submits that all the intellectual property rights over the design of Project Winterland belonged to the Joint Venture, and therefore, the defendants should be made to account for the same if they use the current materials already developed. The plaintiff also submits that it does not matter who paid for them since KOPSG was only making payment on behalf of Bodi and all the funds received from IE Singapore should be repaid to Bodi.

431 The plaintiff refers to the evidence and submits that:

(a) the presentation materials on the Project in Lin Gang in May 2015 were taken from Project Winterland in Qing Pu;

(b) the KOP defendants were using the numbers for Project Winterland in Qing Pu for the purposes of the Project in Lin Gang as set out in Mr Quek's email on November 2015;

(c) the letter to ask SLJZ for concept fees dated 4 December 2015 showed elements that were entirely from the Project Winterland in Qing Pu;

(d) Ms Ong was recorded as having instructed the employees of KOPSG to use the same concept as Project Winterland in Qing Pu; and

(e) the KOP defendants had used materials produced for Project Winterland in Qing Pu as guiding documents for the Project in Lin Gang.

432 The KOP defendants and Ms Shport submit that any claim under Clause 9 of the Termination Agreement should fail. They submit that the claim now made is not found in paragraph 57 of the statement of claim and, in any event, it must fail on the facts.

433 The KOP defendants submit that the Qing Pu and Lin Gang projects are different due to the different land parcels, locations and demographics of the target audiences, and so no materials prepared for the Project Winterland in Qing Pu could meaningfully be reused for the Project in Lin Gang. They also submit that, if the five slides that SLJZ relied on in their presentation to the Lin Gang government amount to "use" of the materials from Project Winterland in Qing Pu, such use was *de minimis* in the context of the multi-million dollar project. They also say that different consultants were engaged for the Project in Lin Gang, and there is no evidence that the consultants engaged for the Project in Lin Gang leveraged on the consultants' work done for Project Winterland in Qing Pu.

434 In relation to the claims sought to be made now, the KOP defendants submit that the plaintiff has no *locus standi* to claim for alleged misuse of the materials from Project Winterland in Qing Pu and they rely on three arguments: (a) that the plaintiff is not an assignee of the copyright or an exclusive license holder; (b) that the plaintiff, as a shareholder of KOPHK, has no right at law to sue for losses (if any) suffered by KOPHK or Bodi as it is reflective loss; and (c) the parties agreed to the text of Clause 9 on the basis that Bodi would be

wound up shortly afterwards. In its oral closing the plaintiff dealt with these arguments.

435 I consider that the reference to an account in paragraph 57 of the statement of claim has to be read in the context of the pleaded cause of action. In paragraph 57 the plaintiff pleads that, if the Termination Agreement is upheld, KOPSG and Mr Shport are "required to account to the Plaintiff for the profits made by them and the use of the Partnership's Proprietary Information pursuant to Clauses 8 and 9 of the [Termination Agreement] by reason of their undertaking of Project Winterland on the [Lin Gang] land with SLJZ and SHCD."

436 However, the plaintiff confirms that the claims are made under Clause 9 of the Termination Agreement (or for breach of Clause 9 for failing to comply with it). That Clause applies if "any shareholder choose to utilize the current materials already developed, including but not limited to logo design, building concept design, video, etc." In that case the shareholder "will need to reimburse the fees paid to third party for developing this specific materials."

437 As set out above, in its written closing submissions, the plaintiff sought to make a claim on the basis that all the intellectual property rights over the design of Project Winterland belonged to the Joint Venture, and therefore, the defendants should be made to account for the same if they use the current materials already developed. The plaintiff also submitted that it does not matter who paid for them since KOPSG was only making payment on behalf of Bodi and all the funds received from IE Singapore should be repaid to Bodi.

438 I therefore consider that, as the KOP defendants submit, the way in which the plaintiff puts its claim is not a claim which can be made under Clause 9.

439 I have reviewed the evidence of Mr Shport and Mr Quek and it is evident that there has not been any substantial use of the "the current materials already developed, including but not limited to logo design, building concept design, video, etc." As set out in the evidence, the Project in Lin Gang was a radical overhaul resulting in completely new designs. In particular:

(a) The Lin Gang Land was located on a relatively new and undeveloped area of Shanghai which the Lin Gang government was then looking to develop, as compared to the Qing Pu Land. Additional consultants therefore had to be engaged to conduct much more in-depth feasibility studies.

(b) Project Winterland in Qing Pu had dedicated a large area of the integrated winter resort to various amusement park rides, whereas the Project in Lin Gang did not include these amusement park rides.

(c) The ski slope for Project Winterland in Qing Pu was multi-angled whereas the ski slope for the Project in Lin Gang is spiralled. The reason for this is, *inter alia*, the Qing Pu Land was longer in length and could accommodate a straight-lined ski slope, whereas the Lin Gang Land could not.

(d) The alpine village for Project Winterland in Qing Pu was flat and on one level, whereas the alpine village for the Project in Lin Gang had multiple levels.

(e) The Qing Pu Land was larger in size than the Lin Gang Land and was located in a developed area of Shanghai with a sizeable population, and so Project Winterland in Qing Pu had allocated more space to retail and theatres than the Project in Lin Gang.

(f) The difference in the planning parameters of the Qing Pu Land and the Lin Gang Land had meant that, *inter alia*, the ski slopes had to be redesigned to suit the specific parameters of the Lin Gang Land, including the lower height limit of the Lin Gang Land.

(g) Project Winterland in Qing Pu included a large indoor dry themed park that is located underneath the ski slope whereas the Project in Lin Gang had no dry themed park but two water themed parks instead, with designs that are completely different due to the different operational requirements.

440 On that basis, I do not consider that this is a case where any substantial use was or could have been made of the materials developed for Project Winterland in Qing Pu.

441 However, even assuming in the plaintiff's favour, that the matters they have identified gave rise to a claim for the use of materials, Clause 9 requires the relevant shareholder to "reimburse the fees paid to third party for developing this specific materials." This shows that the intention was that there should be substantial use to justify reimbursing the fees paid to a third party for developing the materials. However, even on that premise, the plaintiff has not articulated any claim for reimbursement of fees paid to a third party.

442 On that basis, I do not consider that the plaintiff has made out a case that there has been sufficient use to justify a claim under Clause 9 of the Termination

Agreement, nor has it properly pleaded any claim for the relevant defendants to reimburse the fees paid to a third party for developing the materials.

443 It follows that the claims made by the plaintiff under Clauses 8 and 9 of the Termination Agreement fail and must be dismissed.

The counterclaim in defamation

444 Ms Ong and KOPSG have counterclaimed against, *inter alia*, Bodi, Ms Wang and Mdm Hu for defamation based on four letters which they contend were defamatory. Three letters, dated 25 December 2015, were issued on Bodi's letterhead and one letter, dated 5 February 2016, was issued by Bodi's lawyers, Deheng Shanghai Law Office. It is contended that Mdm Hu was the person who directed the issuance of these letters such that Mdm Hu and Bodi should be jointly and severally liable.

445 This is now the KOP defendants' sole counterclaim as they have withdrawn their counterclaims for misrepresentation and failure by Ms Wang and/or Mdm Hu to provide adequate capital contribution to the Joint Venture.

446 Ms Wang testified that she was in the United States at the material time and was not involved in the issuance of the letters.

447 Whereas it has been pointed out that an action in "defamation" under Chinese law is more properly referred to as an action for the "infringement of reputation rights", the analysis that follows shall refer to the action as being in "defamation" for the sake of simplicity.

Ms Ong and KOPSG's case

448 Ms Ong and KOPSG contend that, on 25 December 2015, Ms Wang and/or Mdm Hu maliciously caused Bodi to issue defamatory letters to IE Singapore, SLJZ, and SHCD. The letters to SLJZ and SHCD were copied to the District Mayor of the People's Government of Shanghai Pudong New Area, the Mayor of the People's Government of the Shanghai Municipal and the Director of the Shanghai Municipal Commission of Commerce.

449 They also say that, on 5 February 2016, Ms Wang and/or Mdm Hu instructed Deheng Shanghai Law Office to issue a further letter to the Singapore Minister for Trade and Industry, Mr Lim Hng Kiang.

450 They submit that the letters contained, *inter alia*, the following defamatory assertions:

(a) that the KOP defendants committed "out and out robbery of [Bodi's] intellectual property rights" and were "being contemptuous of the laws of China (and) deceiving the government";

(b) that Ms Ong "deceived" Bodi, the Qing Pu district government and the "various relevant quarters" by holding private talks with SLJZ behind Bodi's back to move the Project Winterland in Qing Pu to Lin Gang;

(c) that in May 2015, the KOP defendants "unilaterally announced the discontinuation of [Project Winterland in Qing Pu]"; and

(d) that Ms Ong's actions in "break[ing] the law" and "misappropriating" Bodi's intellectual property rights in "broad

daylight" were "sufficient to show the moral degeneracy of [Ms Ong's] personal nature".

451 It is contended that, as a result of the letters being sent, Ms Ong suffered serious injury to her professional reputation, embarrassment, distress and hurt to her feelings. Further, it is contended that KOPSG and Ms Ong also had to spend time, effort and money to explain matters to the various recipients of the letters. In addition, KOPSG and Ms Ong contend that they lost various business opportunities as a result of the letters.

452 Ms Ong and KOPSG say that Mdm Hu initially sought to deflect responsibility by claiming that it was her lawyers who drafted the letters but when questioned further, she admitted that she was the person who instructed the lawyers on the facts of the matter.

453 They contend that Mdm Hu had malicious intent when she instructed her lawyers because she gave them incorrect and/or incomplete instructions. She also authorised the issuance of the letters even though she knew that they contained inaccurate and false information.

454 In particular, they refer to the fact that Mdm Hu accepted that she was the person who brought the materials and presentation to the lawyers, which gave rise to the lawyers stating in the letters that the KOP defendants, SLJZ and SHCD had "infringed" Bodi's "trade secrets and copyright" by using, *inter alia*, Bodi's designs, videos and drawings. Mdm Hu said she told her lawyer about the information at the press conferences and the news that was released on the Internet, and showed her lawyer the design drawings. She said that her lawyer said that this was akin to using Bodi's information, and that was why the lawyer suggested that she should draft this letter in the name of Bodi.

455 Yet, Ms Ong and KOPSG say that Mdm Hu knew that the parties had signed a Termination Agreement in May 2015, which expressly provided that they could use the materials prepared for Project Winterland in Qing Pu.

456 When Mdm Hu was asked whether Ms Wang had explained the terms of the Termination Agreement to her, she said that she was very reluctant to terminate the Joint Venture but Ms Wang came back to her and said: "mum, just sign it". Mdm Hu was evidently aware that the Termination Agreement mentioned that the party developing would have to compensate the other parties, that the party who utilised information in relation to Winterland would have to compensate the other parties and whoever used the Qing Pu Land that was meant for the project would have to compensate the other parties. She was also aware that Mr Shport did not have to return the loan made to him.

457 They say that Mdm Hu was also being malicious in instructing the lawyers that in May 2015, the KOP defendants "unilaterally announced the discontinuation of the [Project Winterland in Qing Pu]" when she knew that the parties, including Ms Wang, had mutually agreed to terminate the Joint Venture. Further, they say that Mdm Hu chose not to approach Ms Ong and the KOP defendants directly about their alleged wrongdoing but, instead, Mdm Hu opted to write to third parties to allege impropriety to "get back" at Ms Ong and the KOP defendants.

458 Ms Ong and KOPSG therefore submit that Mdm Hu knew that her instructions to the lawyers were incomplete and inaccurate, that the matters in the four letters were defamatory and untrue, and submit that her dominant purpose in sending the four letters was to injure Ms Ong and the KOP defendants. If Mdm Hu's intention had been genuinely to seek recourse for the alleged infringement of Bodi's intellectual property rights, they contend that she

would have approached Ms Ong and the KOP defendants directly instead of writing to those third parties.

459 These defamation claims raise the question of whether Mdm Hu's actions gave rise to causes of action for defamation under Chinese law or under Singapore law.

460 In relation to Chinese law, in the joint statement of the Chinese Law Experts they agreed that there were four elements of defamation under Chinese law:

(a) Illegal actions: the defendant committed illegal actions by publicly defaming the plaintiff;

(b) Damage: the plaintiff's reputation as conceived by others must have been damaged;

(c) Causation: there is causation between the defendant's illegal defamatory actions and the consequence of the plaintiff's reputation being damaged;

(d) Intention: the defendant must have intentionally sought to damage the plaintiff's reputation when it committed the actions.

461 Based on Mr Zhang's evidence, Ms Ong and KOPSG submit that the four elements have been established in this case. They say that the information in the letters is untrue and therefore constitutes an "illegal practice"; that the letters were sent intentionally even though Mdm Hu knew that the accusations contained in the letters were untrue; and that there was damage caused because the letters lowered the estimation of Ms Ong and KOPSG in the eyes of the

recipients of the letters. They refer to the fact that SLJZ and SHCD sent a letter to KOPSG demanding an explanation for the matters stated in the letters. Ms Ong and KOPSG also say that they lost business opportunities as a result of the defamatory letters.

462 They also say that Ms Wang and/or Mdm Hu are personally responsible for the issuance of the letters. They refer to Mr Bai's evidence and say that, although initially he took the position that Bodi should bear the consequences of its actions and that Ms Wang and Mdm Hu were unlikely to be held responsible for the company's breaches on the "sole basis" that they had to control the company, he agreed that an individual could be found liable for a company's illegal act if the individual was using the company as a vehicle.

463 In the present case, Ms Ong and KOPSG say that, by her own admission, Mdm Hu was unhappy with the KOP defendants because they proceeded with the Project in Lin Gang without involving the plaintiff, and they submit that she sought to express her frustration by directing the letters to be issued to various parties instead of speaking to the KOP defendants directly. They therefore submit that Mdm Hu is personally liable.

464 In relation to the two matters raised by Mr Bai, that the letters must have been sent to an unspecified group in order for it to constitute defamation and that the letters were not defamatory because they were legitimate complaints to relevant authorities, Ms Ong and KOPSG rely on Mr Zhang's evidence to argue to contrary. In relation to the first point, he said that the Chinese courts have not drawn a clear distinction between specified and unspecified groups of people, which was a matter of degree to be ascertained on the facts of each case. In the present case, although the letters were addressed to specific parties, the letters

were in all likelihood circulated to unspecified groups of people, causing KOPSG to lose business opportunities as Ms Ong stated.

465 In relation to the second point, Ms Ong and KOPSG say that it appears to be common ground that any exemption or privilege of this nature can be defeated by ill-will or an intention to sabotage another person's reputation. They refer to Mr Bai's evidence in support of this.

466 Ms Ong and KOPSG therefore submit that Mdm Hu is liable for defamation under Chinese law.

467 In relation to Singapore law, Ms Ong and KOPSG say that there are three requirements to establish liability for defamation: the defendants must have published the material to a third party; the material must refer to the plaintiffs; and the material must be defamatory of the plaintiffs. They refer to *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng* [2016] 4 SLR 977 at [34], citing Gary Chan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 12.010; *Gatley on Libel and Slander* (Sweet & Maxwell, 12th Ed, 2013) at para 6.1.

468 They say that, in the present case, it is undisputed that the four letters were published. As regards the requirement that the material must be defamatory, they refer to *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 ("*Chan Cheng Wah Bernard*"), where the Court of Appeal stated at [18] that the natural and ordinary meaning of a word is that which is conveyed to an ordinary reasonable person and so the test is an objective one. In the present case, they say that the four letters are defamatory in their natural and ordinary meanings, relying on the following statements in the letters:

(a) "Singapore KOP Group (KOP) disregarded the law, (and) wilfully infringed our Company's intellectual property rights, such as trade secrets, copyright, et cetera, bringing discredit to the image of Singapore" – these were allegations that KOPSG had violated the law, had deliberately stolen Bodi's trade secrets and infringed Bodi's copyright and had tarnished the international reputation of Singapore.

(b) "This is an out and out robbery of [Bodi's] intellectual property rights, and what is more, it is being contemptuous of the laws of China (and) deceiving the government" – these were allegations that KOPSG had stolen Bodi's intellectual property rights, had broken the laws of China and had deceived the Chinese government.

(c) "… [Ms Ong], to cover up her aim of cooperating with [SLJZ] … had on the one hand delayed putting in the shareholder's investment … on the other hand, behind [Bodi's] back, held talks privately with [SLJZ]… Not only is she deceiving [Bodi], she is also deceiving the Qing Pu District government and the various relevant quarters" – these were allegations that Ms Ong deceived Bodi, the Qing Pu government and the "various relevant quarters", that Ms Ong took various steps to conceal her aim of collaborating with SLJZ and that Ms Ong was deceitful.

(d) "… [Ms Ong], has a lawyer's background, yet she knowingly breaks the law, openly in broad daylight misappropriated [Bodi's] intellectual property rights, which is sufficient to show the moral degeneracy of [Ms Ong's] personal nature, and the dishonesty of the KOP Group" – these were allegations that Ms Ong knowingly broke the law, deliberately and flagrantly misappropriated Bodi's intellectual

property rights and that Ms Ong was a person of poor moral conduct and that KOPSG was dishonest.

(e) "During the development of the [Project Winterland in Qing Pu], [KOPSG] delayed the payment of its contribution for many times, which caused troubles in the operation of the project" – these were allegations that KOPSG deliberately delayed payment of its contribution to the Joint Venture, which resulted in problems for the Project Winterland in Qing Pu.

(f) "In the meantime, [KOPSG] took all means to obstruct the further progress of [Project Winterland in Qing Pu], causing Bodi to suspend the implementation of the project at the end of May 2015 in the end" – these were allegations that KOPSG deliberately obstructed the progress of the Project Winterland in Qing Pu.

(g) "After reaching a preliminary agreement with the other party, [KOPSG] intentionally obstructed the signing ceremony of the [Project Winterland in Qing Pu] and [its] further development. [KOPSG's] action has violated the basic business ethics and reveals its dishonesty, which causes very bad and negative impact on the reputation of Singaporean companies" – these were allegations that KOPSG intentionally obstructed the signing ceremony of Project Winterland in Qing Pu, was dishonest and tarnished the international reputation of Singapore.

(h) "In May 2015, KOP Group unilaterally announced the discontinuation of the said project, directly causing the [Project Winterland in Qing Pu] developed by [Bodi] to stop and not move

forward" – these were allegations that KOPSG breached its obligations causing the progress of Project Winterland in Qing Pu to come to a stop.

469 Ms Ong and KOPSG submit that Mdm Hu is personally responsible for the defamatory letters as she was the person who instructed Bodi's lawyers and authorised the issuance of the letters. They say that she is not entitled to rely on the defence of qualified privilege because of malice on her part. They refer to the Court of Appeal decision in *Chan Cheng Wah Bernard* at [90] where it was held that malice might be proven in two ways: the defendant's knowledge of falsity, recklessness, or lack of belief in the defamatory statement; and, where the defendant had a genuine or honest belief in the truth of the defamatory statement, but his dominant motive was to injure the defendant or some other improper motive.

470 In relation to the second form of malice, the Court of Appeal stated that the motive with which a person published defamatory matter could only be inferred from what he did or said or knew. If it is proved that he did not believe that what he published was true, this is generally conclusive evidence of express malice. In the present case, Ms Ong and KOPSG say that Mdm Hu knew the false nature of the content and, in particular, she knew that the parties had mutually agreed to terminate the Joint Venture and that it was not a unilateral decision by KOPSG.

Ms Wang and Mdm Hu's case

471 Ms Wang notes that she was not involved in the preparation and/or drafting of the four letters, nor did she approve the sending of those four letters. On this basis, it is submitted that the counterclaim in defamation against Ms Wang must be dismissed.

472 Ms Wang and Mdm Hu submit that the place of commission of the tort of defamation is the place in which the defamatory statement is published and refer to *Low Tuck Wong v Sukamto Sia* [2013] 1 SLR 1016 ("*Sukamto Sia"*) at [15]. They say that no evidence has been led as to the place where the four letters were published and so there is no evidence to suggest that the letters to IE Singapore and the Singapore Minister of Trade and Industry were published in Singapore or in China.

473 They also say that no evidence has been led by any of the recipients of the four letters as to whether the contents of those letters had led to the lowering of the social standing of KOPSG and/or Ms Ong.

474 For those reasons, they submit that the claim in defamation must fail. However, in any event, on the assumption that the four letters were published in China, they say that Ms Ong and KOPSG have to fulfil the double actionability rule in order to succeed in their claims against Mdm Hu and/or Ms Wang. They refer to *Rickshaw Investments* at [53] and submit that the alleged defamatory act must be actionable both in Singapore and China.

475 They refer to the four elements that, under Chinese law, have to be established. They say that even if the elements are fulfilled, no liability will be ascribed if the infringing act was not committed by the defendant, that is, if the letters were written by another party; or if the infringing statement was written to a regulatory/government authority; or if they were sent to specified, not unspecified, third parties.

476 Ms Wang and Mdm Hu rely on Mr Bai's analysis of relevant court decisions in China. In the China Supreme Court judgment in the case of *Zhou Yafang and Bank of China Shanghai Branch over Reputation Rights,* Gazette of

the People's Republic of China, Issue No 9 of 2012, the Supreme Court held that "[t]hese records had not been circulated among unspecified groups of people, nor had they led to a reduced social opinion of Zhou".

477 In the authority relied on by Mr Zhang, the court also used the test of whether the negative appraisal of the alleged victim led to lowering of social appraisal by "the unwitting and unspecified majority". Mr Bai further pointed out that the Chinese version of the judgment actually referred to the test of "*bu te ding duo shu ren*" which meant "unspecified people or unspecified group of people".

478 On this basis they submit that, contrary to Mr Zhang's opinion, there is a specified/unspecified distinction under Chinese law and that, on the facts, the four letters were not sent to the public but rather to specified parties. Accordingly, they submit that the four letters cannot constitute defamation under Chinese law.

479 They also say that there was no subjective intention to defame Ms Ong and they rely on Mr Bai's opinion that there is no defamation when there is a "mere intention to send out the letter and in the same time there's no intention to defame" and as such, there is "no joint liability for defamation on the part of the individuals".

480 Further, they submit that, if the individual truly believes what the letter said is the truth, and they have no intention to defame others, the act of approving the sending of the letter does not reflect the joint intention to defame. In the present case, they say that Mdm Hu was only following the opinion of the lawyers that had been engaged by Bodi. She understood that the letters would not constitute defamation under Chinese law as Bodi's lawyers took the

view that since the parties involved were government-related organisations, Bodi should issue letters to put them on notice that Bodi's intellectual property rights were being infringed and also complain to the relevant authorities about Bodi's rights being infringed so that the authorities could do something about it.

481 Ms Wang and Mdm Hu also submit that KOPSG and Ms Ong do not have any evidence to prove that Mdm Hu intended to injure the reputation of Ms Ong and/or KOPSG, or that the four letters had been sent with malicious intent. Whereas Ms Jessica Zhang had given a statement stating that Mdm Hu would make sure "[Ms Ong] pays" if Mdm Hu did not get her way, they say that Ms Jessica Zhang's statement was pure hearsay and, at that time, she was an employee of KOPSG. They also say that none of the other KOP defendants' witnesses had personally attested to having heard this statement being made by Mdm Hu.

482 They also submit that the four letters were written to regulatory authorities and the Chinese Law Experts agree that complaints to authorities would generally not constitute defamation under Chinese law, even if the facts asserted were wrong. Mr Bai and Mr Zhang differ on what a "regulatory authority" was for the purposes of making a complaint. Ms Wang and Mdm Hu say that in the present case, the two Chinese government or governmental bodies involved are the district government of Shanghai Pudong district and also the Shanghai Municipal Commission of Commerce and that a combination of the two government authorities should constitute the relevant authorities for the complaint to be filed.

483 Hence, Ms Wang and Mdm Hu submit that the four letters amounted to complaints which were filed properly, even if the first two letters were

addressed to SHCD and SLJZ and copied to the regulatory body. Under Chinese law, there is no technical requirement as to the form in which to file a complaint. The form of a letter would still constitute a regulatory complaint under the judicial interpretation, for defamation purposes.

484 They say that Mr Zhang accepts that it would be legitimate to regard the district government of Shanghai Pudong district and also the Shanghai Municipal Commission of Commerce as a regulator. He commented that "in Chinese culture, the people like to seek help from the government no matter where." They submit that, in other words, Mr Zhang agrees that the complaints were rightly and justifiably made to the two government bodies.

485 As to the issue of whether an attempt to undermine a business relationship constitutes defamation, both Chinese Law Experts agree that it would. Ms Wang and Mdm Hu refer to Mr Bai's analysis that, as the second and third letters were copied to the two Shanghai government authorities and the first letter was sent to the Singaporean authority, the purpose was not purely to undermine the other side's business relationships but to seek the government's help from both the Singapore and China side.

486 Accordingly, Ms Wang and Mdm Hu submit that under Chinese law, the four letters would not be defamatory and hence, KOPSG and Ms Ong would not be able to satisfy the double actionability rule.

487 They also submit that Mdm Hu would be entitled to rely on the defence of justification and refer to the decision in *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd* [2015] 2 SLR 751, where it was held at [85] that it is an absolute defence that the defamatory imputation is true or substantially

true and under Chinese law, a letter is not defamatory if the contents of the letters are true.

488 They submit that the evidence established that the four letters were written and sent by lawyers acting for Bodi and were prepared at the suggestion of the lawyers who suggested the parties to whom the four letters should be sent, including the Singapore Minister of Trade and Industry. They say that Mdm Hu had informed Bodi's lawyers about the relevant facts, and Mdm Hu believed in truth of the facts stated and she acted upon legal advice.

489 The particular facts relied on are:

(a) that KOPSG had used information from Bodi and KOPHK at the press conferences in August and November, and on this basis Bodi's lawyers came to the view that KOPSG had infringed on the rights of Bodi;

(b) KOPSG had taken away all the materials belonging to Bodi without informing Ms Wang and/or Mdm Hu, as confirmed by Mr Quek and by Ms Jessica Zhang who told Mdm Hu that all of Bodi's documents had been moved to SLJZ's office;

(c) KOPSG did not pay for the computers that they had taken for the Project in Lin Gang;

(d) KOPSG had failed to put in the funds that they had promised to. It has been established that KOPSG had promised to inject up to US$2m into the Joint Venture via a meeting minutes dated 31 July 2014 and it was KOPSG that was short of funding;

(e) Mdm Hu did not know why KOPSG wanted to terminate the Joint Venture and Bodi's lawyers came to the conclusion that KOPSG had unilaterally terminated the Joint Venture;

(f) it was Mdm Hu's honest belief that KOPSG should come to them to discuss the use of Bodi's materials.

490 For the above reasons, Ms Wang and Mdm Hu submit that they are entitled to the defence of justification under Singapore law and Chinese law and thus the counterclaim in defamation should be dismissed.

My decision on the defamation counterclaim

Which law is applicable

491 I deal, first, with the question of which law I should apply to the tort of defamation. Under Singapore law, as submitted by Ms Wang and Mdm Hu, the place of commission of the tort of defamation is the place in which the defamatory statement is published: *Sukamto Sia* at [15], citing *Dicey, Morris and Collins on The Conflict of Laws* (Sweet & Maxwell, 14th Ed, 2006) at para 35-141.

492 In this case the first three letters dated 25 December 2015 were written by Bodi in China to IE Singapore in Singapore, SLJZ in China and SHCD in China. The letters to SLJZ and SHCD were also shown as being copied to other parties in China. The final letter of 5 February 2016 was written by Bodi's lawyers in China to the Minister for Trade and Industry, Mr Lim Hng Kiang, in Singapore. However, as Ms Wang and Mdm Hu submit, no evidence is relied on by Ms Ong or KOPSG in this case to show that the letters were actually published and, in particular, no evidence to show whether the letters to IE

Singapore and the Minister of Trade and Industry were actually published in Singapore or in China. In the absence of such evidence, there are difficulties in establishing a cause of action in defamation but, as Ms Wang and Mdm Hu do, I shall proceed to consider the allegations on the assumption that the letters were published in China.

493 Ms Wang and Mdm Hu also refer to the Court of Appeal decision in *Rickshaw Investments* at [53] and submit that, on the assumption that the four letters were published in China, KOPSG and Ms Ong have to fulfil the double actionability rule in order to succeed in their claims against Mdm Hu and/or Ms Wang, and so the alleged defamatory act must be actionable both in Singapore and China.

494 In *Rickshaw Investments* at [53] it was stated that:

> On a *general* level, however, the principles which obtain with regard to the issue of the choice of law in tort in the Singapore context are clear. These are embodied in the "double actionability rule". Put simply, this rule states that in order for a tort to be actionable in Singapore, the alleged wrong must be actionable not only under the law of the forum (the *lex fori*) but also under the law of the place where the wrong was in fact committed (the *lex loci delicti*). In other words, both these limbs must be satisfied. [emphasis in original]

495 The Court of Appeal in *Rickshaw Investments* further considered the development of that rule in the English decisions of *Phillips v Eyre* (1870) LR 6 QB 1 and *Boys v Chaplin* [1971] AC 356, and observed that adding the requirement in relation to actionability in the *lex loci delicti* was "even more needful today". However, the Court of Appeal then went on to consider the more recent Privy Council decision in *Red Sea Insurance Co Ltd v Bouygues SA* [1995] 1 AC 190 ("*Red Sea Insurance*"). *Red Sea Insurance* has been held to be the law in Singapore: see *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377 at

[36]. *Red Sea Insurance* established that the "double actionability rule" applies, but subject to the exception that, under certain circumstances, the tort might nevertheless be actionable in Singapore even though one of the limbs is not satisfied.

496 In *Rickshaw Investments* at [57] the Court of Appeal considered both the danger of having an exception to the double actionability rule and the necessity of having exceptions to avoid injustice and unfairness. It observed at [57]:

> …For example, if the parties and other connecting factors have nothing to do with the place where the tort was actually committed (*ie*, that that place merely happened to be fortuitous), then it would appear both just and fair to hold that the fact that the second limb of the "double actionability rule" (that the wrong also be actionable under the *lex loci delicti*) is not satisfied should not prejudice the plaintiffs claim. Indeed, what is sauce for the goose is sauce for the gander. Hence, by the same token, if the same scenario obtains, but in relation to the *lex fori* instead, then it would also appear both just and fair to hold that the fact that the first limb of the "double actionability rule" (that the wrong also be actionable under the *lex fori*) is not satisfied should (equally) not prejudice the plaintiffs claim. Indeed, where the parties and other connecting factors have nothing to do with either the place where the action is brought (here, Singapore) and the place where the wrong was committed, a third possible law might govern the action concerned (as alluded to at the end of the preceding paragraph). The overriding consideration is that a just result be achieved.

497 Whilst the double actionability rule is therefore the starting point, I must bear in mind the existence of exceptions which must be applied based on the facts in any particular case, to avoid unfairness and injustice. I therefore now consider the applicable test under Chinese law.

Defamation under Chinese law

498 The Chinese Law Experts helpfully agreed on the elements of defamation under Chinese law in their joint statement, although they disagreed

on the interpretation of those elements and the application of those elements to the facts in this case.

499 Mr Bai and Mr Zhang agreed at section 7 of their joint statement that the elements of defamation under Chinese law include:

(a) Illegal actions: the defendant committed illegal actions by publicly defaming the plaintiff;

(b) Damage: the plaintiff's reputation as conceived by others must have been damaged;

(c) Causation: there is causation between the defendant's illegal defamatory actions and the consequence of the plaintiff's reputation being damaged;

(d) Intention: the defendant must have intentionally sought to damage the plaintiff's reputation as stated above when it committed the actions.

500 In relation to the first element, illegal actions, Mr Bai considers that the illegal actions normally demonstrate the following two features:

(a) the infringing statement lacks factual basis; and

(b) the infringing statement is published to unspecified third parties.

501 On the other hand, Mr Zhang considers that publicity does not require the spreading of the defamatory information to the general public, but it can be enough just for the information to be spread to certain persons. He says that the method of defamation could be through untrue statements or insulting words.

502 In relation to the second element, damage to reputation, Mr Bai says that the Chinese court would normally look into the issue of whether the plaintiff's reputation as conceived by the public has been lessened as a result of the defendant's defamatory acts from an objective perspective. This is essentially consistent with the first element requiring that the defamatory acts be committed in a public manner.

503 Mr Zhang says that whereas damage to reputation is required, it need not be the lessening of opinion of the general public.

504 In relation to the particular allegations in this case in respect of the three letters, the Chinese Law Experts agree that Bodi as a duly incorporated legal person should be responsible for its own actions but that, if there is convincing evidence that Ms Wang and/or Mdm Hu's actions satisfy the above legal requirements under Chinese law, they may be found liable for defamation.

505 Mr Bai's view is that a Chinese court would not be likely to find Ms Wang and/or Mdm Hu liable for Bodi's misconduct merely based, as pleaded, on the fact that Bodi was under their control. Mr Zhang considers that Ms Wang and/or Mdm Hu had *de facto* control over Bodi at the material time and would have assisted and/or abetted Bodi in issuing the letters and that, in such circumstances they could be liable for defaming Ms Ong and KOPSG.

506 In relation to the available defences, the Chinese Law Experts agree that if the letters constitute accusations or complaints to the relevant authorities of illegal acts or wrongdoing, such letters generally would not constitute defamation under Chinese law. Mr Bai is of the opinion that the three letters all constitute accusations or complaints to the relevant authorities and are therefore exempt from the scope of defamation. Mr Zhang on the other hand opines that

the exemption does not apply, because the letters were not sent to legitimate authorities for such reports or complaints to be recorded. For example, SLJZ and SHCD cannot be deemed as legitimate authorities as they are merely trading partners of the defendants and have no authority to investigate the truth of the complaints. Mr Zhang further says that, even if a recipient is considered to be a legitimate authority, the exemption does not apply if the sender lodges a complaint with that recipient as a means to sabotage the reputation of others.

507 Taking account of these expert opinions on Chinese law, I now consider whether the letters written by Bodi could amount to actionable defamation under Chinese law. As stated above, it is common ground that, on the evidence, which I accept and is confirmed by Mr Jason Geng's report of the incident on 24 December 2015, Ms Wang was in the United States at the material time and was not involved in the issuance of the letters. I consider that the potentially relevant parties to the defamation counterclaim are therefore Bodi and Mdm Hu.

508 First, I have to consider whether the letters contain statements which lack a factual basis and then I have to consider whether there was publication to an unspecified group.

509 The first letter of 25 December 2015 was addressed to IE Singapore. It had the title "Report regarding Lingang City 'Ice & Snow World' Infringing Trade Secrets". It alleged that KOPSG had used a large quantity of Bodi's design drawings, data, videos and related design material and had infringed Bodi's trade secrets and copyright. Under the terms of the Termination Agreement, I have found that KOPSG did not make any substantial use of design information but, in any event, would have been entitled to do so under Clause 9 of the Termination Agreement. I therefore do not consider that the allegations were correct.

510 I consider that under Chinese law there has to be a public element in the publication and whilst the Chinese courts may not have drawn a clearly defined distinction between specified and unspecified groups of people, there is a distinction between a statement made to unspecified people and one which is to particular specified people. As Mr Zhang said, it is a matter of degree which must be ascertained on the facts of each case. In this case the statement was made to the Chief Executive Officer of IE Singapore with a request that he should ask KOPSG and Ms Ong to stop the infringement and deal with the issue appropriately. It was therefore a statement to a specified individual to ask that individual to intervene. I consider that this does not satisfy the requirement of necessary publication to an unspecified group.

511 The second letter was addressed to SLJZ and had the title "Letter of Notification regarding Lingang City 'Ice & Snow World' Infringing Trade Secrets". It referred to the link to a press release after the Cooperative Agreement entered into on 19 November 2015. Again, the allegation was that SLJZ, KOPSG and SHCD had used a large quantity of Bodi's design drawings, data, videos and related design material and had infringed Bodi's trade secrets and copyright. The letter said that Ms Ong had used Bodi's video for the presentation and then went on to accuse Ms Ong of robbery, being contemptuous of Chinese law, deceiving the government, covering up her aim of cooperating with SLJZ, failing to invest in Bodi, causing Bodi to be unable to pay staff and rent on time and deceiving Bodi by talking to SLJZ. It said that the KOP Group had unilaterally terminated Project Winterland and that Ms Ong had knowingly broken the law and shown moral degeneracy.

512 As I have found above, the main allegations in this letter – using Bodi's designs, the contact with the SLJZ and the termination of Project Winterland in

Qing Pu – were incorrect. There was also no justification in terms of the personal accusations of impropriety against Ms Ong.

513 Again, though, the communication was to a specified recipient, SLJZ. In addition, the letter was sent to the People's Government Shanghai Pudong New Area, District Mayor Zhang Yuxin, to the People's Government of Shanghai Municipal, Mayor Yang Xiong and to Shanghai Municipal Commission of Commerce Director Shang Yuying. Again those were three specified people. For the same reasons as set out above in respect of the first letter, I do not consider that the letter amounts to publication of the untrue statements to unspecified persons and therefore the letter does not amount to defamation in Chinese law.

514 The third letter was written to SHCD and was in identical terms to that addressed to SLJZ and was copied to the same three people. For the same reasons as the second letter, I therefore find that this letter, whilst containing untrue statements, was not sent to unspecified persons so as to amount to the required publication for defamation under Chinese law.

515 The fourth letter with the title "Letter of Explanation" was not originally pleaded but was added by way of an amendment during the trial, to which there was no objection. That letter was written by Bodi's lawyers, Deheng Shanghai Law Office, on 5 February 2016 to Mr Lim Hng Kiang of the Ministry of Trade and Industry in Singapore. It was not copied to anyone else. It alleged that KOPSG delayed payment of its contribution to Project Winterland, refused to sign the agreement with West Hongqiao in May 2015 and obstructed the progress of the project, causing Bodi to suspend the implementation of the project at the end of May 2015.

516 The letter continued by saying that:

> In November 2015, Bodi, however, found that the design drawings, videos and other documents of the "Winterland" project were used at the press conference and during the development of the "Winterland Project in Lingang Area", which was developed jointly by [SHCD], [SLJZ] and [KOPSG]. Hence, it was very reasonable for Bodi to doubt that [KOPSG] submitted the relevant documents to [SHCD] and [SLJZ] for the development of the "Winterland Project in Lingang Area" after the "Winterland" project. For this reason, Bodi started reporting this condition to you, Shanghai Municipal Commission of Commerce, Mayor Yang Xiong of Shanghai Municipality, and other departments, and investigating the relevant matters.
>
> During the investigation, Bodi further believed that [KOPSG], without Bodi's knowledge or consent, transferred Bodi 's design drawings, videos and other copyrights to [SHCD] and [SLJZ]. Now, [SHCD] and [SLJZ] are using Bodi's copyrights.
>
> During the process, Bodi heard [KOPSG] told you and the relevant departments of Shanghai Municipal Government that Bodi had been liquidated and dissolved, or made any similar statement to you.
>
> Bodi believes that you have no idea of [KOPSG's] dishonest or illegal action. For this reason, Bodi entrusts me to report the following condition to you:
>
> **First**, Bodi has never deregistered, or conducted any deregistration according to the provisions of Chinese laws. Bodi is still a Chinese company that exists validly.
>
> **Second**, Bodi is operating normally, and gradually improving its internal corporate management system, and strengthening the management of internal intellectual property rights and internal documents.
>
> **Third**, after Bodi's recent investigation, it is very reasonable for Bodi to suspect that [KOPSG] had already negotiated with any other party for the development of similar ice & snow entertainment project while it was assisting Bodi to develop the "Winterland" project. After reaching a preliminary agreement with the other party, [KOPSG] intentionally obstructed the signing ceremony of the "Winterland" project, and the further development of the "Winterland" project. [KOPSG]'s action has violated the basic business ethics and reveals its dishonesty, which causes very bad and negative impact on the reputation of Singaporean companies.

> **Fourth**, Bodi also suspect that [KOPSG] is lying to the Singaporean Government. [KOPSG] might not report the actual condition about Bodi's role in the development of the "Winterland" project to the Singaporean Government and the MTI, but generally mentioned that [KOPSG] was developing an ice & snow entertainment project in Shanghai in its report to the Singaporean Government. [KOPSG] must not have reported to the Singaporean Government that Bodi's design drawings and videos were used by a third party illegally, and such illegal use was attributed to [KOPSG].
>
> Bodi hopes that you can check [KOPSG's] actions of defrauding Bodi and infringing upon Bodi's intellectual property rights, and urge [KOPSG] to rectify its wrongdoings, and give a sincere apology to Bodi for its wrongdoings. Bodi looks forward that the Singaporean Government can create the most trustworthy business environment in the world, and will punish any dishonest Singaporean company with severity.
>
> [emphasis in original]

517 That part of the letter again made allegations that KOPSG had used Bodi's designs and passed them to SLJZ and SHCD, and that KOPSG had been negotiating with a third party during the period when it was carrying out Project Winterland in Qing Pu, both of which I have found to be untrue. It also alleges that KOPSG was dishonest in that context which, again, I consider to be untrue.

518 However, it again was a letter written to one specified person and was not published to an unspecified group of persons. On that basis I do not consider that it amounted to defamation under Chinese law.

519 If I had not found that the letters had been sent to specified persons, I would have had to consider whether the letters amounted to "accusations or complaints to the relevant authorities of illegal acts or wrongdoing" in which case the Chinese Law Experts agree that such letters generally would not constitute defamation in Chinese law. I address this point for completeness.

520 The letter of 5 February 2016, in my judgment, would have come within that category of documents, both in the way in which it was phrased and in making a request for the Singapore Ministry of Trade and Industry to take action. I consider that the same applied to the letter sent on 25 December 2015 to IE Singapore which had the title "Report" regarding the infringement of "Trade Secrets". In addition, whilst the letters sent to SLJZ and to SHCD cannot be said to have been sent to those parties as being "the relevant authorities", the fact that they were copied to the Mayor at the People's Government Shanghai Pudong New Area and the People's Government of Shanghai Municipal as well as to the Director of Shanghai Municipal Commission of Commerce would mean that they were being sent to the "relevant authorities" which, as Mr Zhang accepted, is widely interpreted as being a broad category of authorities.

521 Mr Zhang was of the view that if the letters were sent to the authorities with the intention to "sabotage Ms Ong's and KOPSG's reputation" then it would still be considered to be an actionable defamation in Chinese law. I shall consider whether Ms Wang or Mdm Hu had that intention, without deciding whether Mr Zhang is correct.

522 In assessing the intention with which the letters were sent, in addition to the words used in those letters, it is relevant to consider the background to those letters having been sent. Because of the late amendment to add the letter sent on 5 February 2016 to the counterclaim, the position immediately before it was sent was not dealt with in the evidence.

523 Mdm Hu explains in her AEIC the way in which the other three letters came to be written. She says that, having realised that KOPSG had usurped Project Winterland for their own benefit with SLJZ, she discussed with lawyers and sought their opinion on what could be done. Her evidence is that Bodi's

lawyers took the view that since the parties involved were government-related organisations, Bodi should issue letters to put them on notice that Bodi's intellectual property rights were being infringed and also complain to the relevant authorities about Bodi's rights being infringed so that the authorities can do something about it.

524 She says that the lawyers proposed draft letters to IE Singapore, SLJZ and SHCD, copying the relevant government officials in Shanghai who were involved in and familiar with Project Winterland. As the contents of the letters were technical, she says she left it to the lawyers to draft and finalise them.

525 Mdm Hu does not link the three letters to anything that had happened at the time. However, there was an incident on 24 December 2015, the day prior to the three letters being sent, which was dealt with by Mr Jason Geng and Mdm Hu in their AEICs. It is thus apposite to consider the implications of this incident at this juncture.

THE INCIDENT ON 24 DECEMBER 2015

526 According to Mr Jason Geng, on or about 24 December 2015, Mdm Hu and approximately 11 other persons charged into the KOP defendants' temporary offices located in SLJZ's office building, saying that they wanted to obtain information on Bodi's assets. He says that they ransacked the office and took his computer with drawings, planning parameters and information on the Project in Lin Gang and several documents on his table relating to that project. He says that the security officers arrived shortly after and there was a scuffle between them and Mdm Hu and her associates. He refers to two police reports made by his colleagues regarding the raid, and to his own report to Mr Quek. The police reports refer to some 12 people from Bodi coming to take away

computers, hard disks and paper files, as well as to the damage caused to properties such as filing cabinet and door handles.

527 Mr Jason Geng's report to Mr Quek is fuller. He said that he saw Mdm Hu "leading a gang" who claimed to be lawyers and that she was talking to Ms Jessica Zhang about the files of Bodi. He recounts the police arriving and as they believed that it was an economic dispute over company assets, it had to be handled according to the ruling of the court, and hence the computers as the assets in dispute should not be taken away unless it was agreed by the users. He says that, to prevent the situation from getting worse, Ms Jessica Zhang agreed that Mdm Hu could take away the computers and files. There was then some further discussion about making a list of the computers and files and whether they could be taken away, and in the afternoon the police came again. There was then a proposal that the computers and files were to be placed in a locked room in SLJZ's office building. However, it seems that the computers and files had already been taken away and after further discussions at the police station, records of what had been taken were made. Mdm Hu then left and the computers were also taken away, apparently by Mdm Hu.

528 In her oral evidence, Mdm Hu agreed that the police were called during the incident on 24 December 2015, but asserted that Ms Jessica Zhang informed the police that the items sought to be removed by Mdm Hu belonged to Bodi, and had been secretly removed without permission from Bodi and taken to SLJZ's offices. Mdm Hu said that Ms Jessica Zhang agreed to them removing these things and during this process, their legal representative or lawyer produced the proof of purchase to the police to show that Bodi had paid for these things. The police then said that Mdm Hu and her associates could remove the things, which they then proceeded to do.

529 In her AEIC, Mdm Hu provided some background to the incident on 24 December 2015. Mdm Hu says that in mid-November 2015, she asked Ms Jessica Zhang to come to her house to go through all the relevant supporting documents to verify the expenses, in response to the continued allegations by Ms Ong and Ms Suparman of their doubtful expenses. Mdm Hu says that it was then that she found out that Bodi's documents were in SLJZ's offices in Pudong. Mdm Hu says she then called Bodi's legal representative and because of concern at the sudden move of Bodi's documents without informing them, she consulted Bodi's lawyers in China. The lawyers were provided with receipts and asset lists (exhibited by Mdm Hu) and they agreed to accompany her and some movers to SLJZ's office to retrieve all the assets which belonged to Bodi on 24 December 2015.

530 Mdm Hu says that SLJZ called the police when they entered the premises. When the police arrived Ms Jessica Zhang admitted that the documents and computers belonged to Bodi and were transferred to SLJZ's office without notifying Bodi. Ms Jessica Zhang then agreed to let them take away all the assets which belonged to Bodi, and promised that she would organise and bring all the relevant files (including financial reports, original contracts, non-disclosure agreements and HR files) to her the next day.

531 Mdm Hu says that the police allowed them to take away Bodi's assets, including the five computers. She says that the computers were later deposited in a Notary Public's office for safekeeping and disclosed through the repository documents in these proceedings. Mdm Hu says that, after the police had left, she wrote by hand the list of the documents which they would be taking away and this took several hours. Whilst doing this, Ms Jessica Zhang told her that KOPSG had said that they refused to allow them to take anything away and SLJZ then locked the gates and refused to let Mdm Hu leave. Mdm Hu says

that, after hours of standoff, she called the police again and was allowed to go to the police station but had to leave behind all the things belonging to Bodi.

532 Mdm Hu says that except for the documents left by Ms Jessica Zhang at Mdm Hu's house in November 2015, the computers which the movers had retrieved from SLJZ's office and copies of some documents she had, all of Bodi's assets and documents (including financial documents) remained in the hands of the KOP defendants. She refers to WeChat messages from Ms Jessica Zhang and a document disclosed by KOPSG as a "List of documents sent from Bodi to [KOPSG] on 28 December 2015".

533 Mdm Hu also refers to a statement produced by one of the two people from Bodi's lawyers who were present during the incident on 24 December 2015. He confirms the information provided about the incident and adds that "in the afternoon, [Ms Jessica Zhang] said that [KOPSG] had telephoned her and disagreed with the handing over of Bodi's assets to Bodi. At that time, 5 desktop computers of Bodi were removed by the movers from the moving company. But 1 laptop (its possessor Guo Zhuohuai was not present since he was on a business trip) and the documents were still left in the Pudong Office Building."

534 The KOP defendants contend that the computers were sold to the fifth defendant and paid for in cash on 11 December 2015. They refer to an email of 9 November 2015 in which Ms Jessica Zhang confirmed that Bodi would sell its computers, among other things, to the fifth defendant at RMB5,176.57 and requested remittance to Bodi's bank account. The KOP defendants refer to a payment voucher issued by the fifth defendant for the sum of RMB10,849.92 to Bodi for the items to be purchased, including the computers. They refer to the same documentation and say that it shows that on 11 December 2015, the fifth defendant made payment of the sum of RMB10,849.92 to Bodi in cash and Bodi

issued an official receipt to acknowledge receipt of the payment, which makes express reference to payment for computers.

535 At the hearing, Ms Wang said that Bodi never received payment for the computers and that the document relied on by the KOP defendants did not have Bodi's chop on it but was signed by an employee of KOPSG. On balance, I am not satisfied that the computers were in fact sold by Bodi to the fifth defendant. There is no evidence to show that Ms Jessica Zhang resisted the removal of the computers on the basis that the fifth defendant had paid Bodi for them. Equally, the police reports by the KOPSG employees refer to the computers being purchased in 2014 and do not refer to a transaction in 2015.

536 Having reviewed the evidence of the incident on 24 December 2015 when Mdm Hu obtained, it seems, five computers and some documents, I do not consider that the description of the incident as a "raid" is accurate. Rather, Mdm Hu, with lawyers and men to carry out the removal, came to the SLJZ offices to remove computers and documents which they asserted belonged to Bodi. There was obviously some involvement by the police but there was essentially a dispute as to the entitlement of Bodi to take the computers and certain documents. I do not consider that it can be characterised as part of a series of coordinated attacks launched by Mdm Hu and Ms Wang against the KOP defendants. Nor do I consider that the incident on 24 December 2015 assists in deciding whether the three letters sent on 25 December 2015 were sent to the authorities with the intention to "sabotage Ms Ong's and KOPSG's reputation". Thus, the incident does not assist to overcome the defence of complaints to authorities and make the letters actionable in defamation in Chinese law.

537 I consider that in December 2015 and February 2016 Mdm Hu was mistaken but genuinely believed that KOPSG had sought to replace her and Ms Wang by contacting SLJZ, that KOPSG and/or SLJZ and SHCD were unlawfully using Bodi's designs and other materials, and did not understand the significance of the termination of the Joint Venture and the terms of the Termination Agreement. It was in that context that the letters of 25 December 2015 and 5 February 2016 were written and not with the intention of sabotaging Ms Ong and KOPSG's reputation.

Conclusion on the defamation counterclaim

538 For the reasons set out above, I am therefore of the view that the letters were not actionable in defamation under Chinese law, as they were (a) sent to specified persons, and (b) complaints sent to legitimate authorities rather than with the intention to sabotage the reputation of Ms Ong and KOPSG.

539 On the basis of the double actionability rule, and in the absence of any evidence to show where the letters were actually published, that suffices to make those letters not actionable in defamation.

540 I have therefore come to the conclusion that the claims by Ms Ong and KOPSG against Ms Wang, Mdm Hu and Bodi have not been made out and the counterclaim must be dismissed.

Conclusion on the claims and counterclaims

541 Before I turn to consider my decision on costs, it is convenient to summarise my conclusions on the claims and counterclaim, with reference to the agreed list of issues at Appendix A.

Conclusion on the plaintiff's claims

542 For the reasons set out above:

(a) With regard to the relationship between the parties:

(i) The governing law of the relationship between the plaintiff, Mr Shport and KOPSG in relation to their shareholdings in KOPHK which owns Bodi was Chinese law.

(ii) The legal nature of the relationship between the plaintiff and Mr Shport and KOPSG, was an agreement to perform the Joint Venture in collaborating to identify, evaluate and develop real estate opportunities in China into commercially viable projects through KOPHK and Bodi, with an obligation that they would act honestly and in good faith.

(iii) The plaintiff has not established the factual allegations pleaded at paragraphs 23 to 48 of the statement of claim and KOPSG and Mr Shport were not in breach of their duties as set out at paragraph 48 of the statement of claim.

(iv) Ms Ong and Ms Suparman did not owe the plaintiff the same duties as set out at paragraph 47 of the statement of claim and were not in breach as set out in paragraph 50 of the statement of claim.

(v) The parties reached an agreement to terminate the Joint Venture on 13 May 2015. The salient term of the parties' agreement was that the Joint Venture was terminated. The parties then subsequently entered into the Termination Agreement on 20

May 2015 setting out the agreed terms consequent on the agreement to terminate the Joint Venture.

(vi) Ms Ong, Ms Suparman and KOPSG began discussions with SLJZ on 14 May 2015, and began discussions with SLJZ and SHCD to engage in a joint venture to implement the Project in Lin Gang on or after 20 May 2015. Mr Shport became involved in discussions on 25 May 2015. Such discussions and/or engagement did not amount to a breach of any duties and/or dishonest assistance and/or unlawful conspiracy as pleaded at paragraphs 48, 50, 51 and 55 of the statement of claim.

(b) The effect of the Termination Agreement:

(i) The Termination Agreement had legal effect.

(ii) None of Ms Ong, Ms Suparman, Mr Shport and/or KOPSG (individually and/or collectively) made any misrepresentations and/or non-disclosures, and/or caused any of the other defendants to make misrepresentations and/or non-disclosures to the plaintiff to induce the plaintiff to enter into the Termination Agreement.

(iii) The plaintiff therefore did not rely on and/or was not induced by any misrepresentations and/or non-disclosures to enter into the Termination Agreement.

(iv) Clause 8 of the Termination Agreement only applied if any of the shareholders proceeded with Project Winterland or any project on the specific Qing Pu Land and not if any of the shareholders proceeded with Project Winterland or a similar project on other land.

(v) Clause 9 of the Termination Agreement applied if any shareholder chose to make substantial use of the materials already developed for Project Winterland in Qing Pu, including but not limited to logo design, building concept design, video, etc. In such circumstances the relevant shareholder who utilised that material would need to reimburse the fees paid to any third party for developing these specific materials.

(vi) Neither Mr Shport nor KOPSG are liable to account to the plaintiff for any profits made by them in carrying out the Project in Lin Gang or to reimburse any fees for the use of any materials pursuant to Clauses 8 and 9 of the Termination Agreement by reason of their undertaking of that project.

Conclusion on the counterclaim

543 The defendants in counterclaim, including Bodi, Ms Wang and Mdm Hu, are not liable in defamation.

Costs

544 In the light of my findings on the claims and counterclaim, I now turn to consider the appropriate order for costs.

545 The main claims in these proceedings were the claims made by the plaintiff against Ms Ong, Ms Suparman, Mr Shport and KOPSG in which it sought damages for breach of fiduciary duties, the setting aside of the Termination Agreement and an account of profits. There were alternative claims for dishonest assistance and under Clauses 8 and 9 of the Termination Agreement. All of those claims have failed.

546 There were a number of counterclaims brought by the KOP defendants, most of which were abandoned. The one counterclaim which remained was a counterclaim against Ms Wang and Mdm Hu for defamation which has failed.

Liability for costs

547 In determining which party is liable for costs, O 110 r 46(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) provides as follows:

> The unsuccessful party in any application or proceedings in the Court must pay the reasonable costs of the application or proceedings to the successful party, unless the Court orders otherwise.

548 O 110 r 46(3) also provides that:

> For the purposes of paragraphs (1) and (2), the court may, in particular —
>
> > (*a*) apportion costs between the parties if the court determines that apportionment is reasonable, taking into account the circumstances of the case;
> >
> > (*b*) take into account such circumstances as the court considers relevant, including the conduct of the case;
> >
> > …
> >
> > (*d*) order interest on costs; or
> >
> > (*e*) make any ancillary order, including an order as to the time and manner of payment.

549 In these proceedings I have cost submissions from the plaintiff, from the KOP defendants and from Mr Shport. They have provided me with costs schedules including submissions on costs and also with reply submissions.

550 On the basis of the outcome of the claims, I consider that the appropriate cost orders would be:

(a) That the plaintiff should pay the KOP defendants their costs of dealing with the claims;

(b) That the plaintiff should pay Mr Shport his costs of the claims;

(c) That Ms Ong and KOPSG should pay Ms Wang and Mdm Hu their costs of dealing with the defamation counterclaim and also the counterclaims which were abandoned.

551 On that basis I now proceed to assess the costs which should be paid in respect of those costs orders.

Assessment of costs

552 In relation to costs, the SICC Practice Directions contains the following additional guidance at para 152:

> (2) In assessing costs, the Court:
>
> > (a) shall have regard to Order 110, Rule 46(1) of the Rules of Court, which provides that the reasonable costs of any application or proceeding in the SICC be borne by the unsuccessful party to that application or proceeding unless the Court orders otherwise; and
> >
> > (b) may, in particular, as set out in Order 110, Rule 46(1):
> >
> > > (i) apportion costs between the parties if the Court determines that the apportionment is reasonable, taking into account the circumstances of the case;
> > >
> > > (ii) take into account such circumstances as the Court considers relevant, including the conduct of the case;
> > >
> > > (iii) order costs to be paid by counsel personally, or by a person who is not a party to the application or proceeding;
> > >
> > > (iv) order interest on costs; or

> (v) make any ancillary order, including the time and manner of payment.
>
> (3) In relation to sub-paragraph (2)(b)(ii) above, the circumstances which the Court may take into consideration in ordering reasonable costs of any application or proceeding under Order 110, Rule 46(1) of the Rules of Court include:
>
> (a) the conduct of all parties, including in particular –
>
> (i) conduct before, as well as during the application or proceeding;
>
> (ii) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; and
>
> (iii) the manner in which a party has pursued or contested a particular allegation or issue;
>
> (b) the amount or value of any claim involved;
>
> (c) the complexity or difficulty of the subject matter involved;
>
> (d) the skill, expertise and specialised knowledge involved;
>
> (e) the novelty of any questions raised;
>
> (f) the time and effort expended on the application or proceeding.

553 In assessing costs in a case such as this where the case has been transferred from the High Court, the court has to take into account the following matters as set out in *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2018] 4 SLR 38 at [23] to [25]:

> 23 The costs regime under O 110 r 46 of the ROC is applicable to all proceedings in the SICC. Having said that, in cases which are transferred from the High Court to the SICC under O 110 r 12, the costs regime under O 59 would have applied whilst the case was proceeding in the High Court. Thus, in dealing with pre-transfer costs, the SICC is likely to take into account Appendix G in deciding what are reasonable costs under O 110 r 46.

> 24 Of course, it remains open for the High Court or the SICC to make express orders that Appendix G continues to be relevant post-transfer….
>
> 25 However, even absent an agreement by the parties or an order to that effect, although the SICC approach to costs will apply post-transfer, the SICC can, in exercising its discretion on costs, take into account all the circumstances of the case. In this regard, there is nothing to preclude the SICC from taking account of Appendix G even in assessing reasonable costs under O 110 r 46 in a case that was filed in the High Court and transferred to the SICC, unless the parties have agreed to disregard Appendix G altogether. This is in the light of the wording of O 110 r 46 and para 152 of the SICC Practice Directions, which make reference to "reasonable" costs, and the fact that costs are always in the discretion of the court. Of course, the weight to be given to Appendix G in assessing costs is highly dependent on the circumstances of each case.

554 With those considerations in mind, I now turn to assess the costs in this particular case. As a starting point, it is helpful to review the costs which each party claims in these proceedings. The following is a summary of the costs and disbursements claimed by the parties in their costs schedules:

	Costs for work done	**Disbursements**
Plaintiff	$1,200,000	$672,005.93
KOP defendants	$1,055,000	$219,721.97
Mr Shport	$256,786	$3,160.95

555 In dealing with the costs which the plaintiff must pay the KOP defendants in relation to the claims, and the costs which the relevant KOP defendants must pay Ms Wang and Mdm Hu in relation to the counterclaims, the parties have made no separate apportionment as between claims and

counterclaims. I therefore have to consider the way in which I might carry out an apportionment. In doing so, I first review the points made by the parties.

556 The KOP defendants submit that the following matters should be taken into account in dealing with their costs:

(a) There was an exceptionally large amount of documents disclosed and perused. In total, 27,108 documents were disclosed, of which 8,598 documents were disclosed by the plaintiff and 16,814 documents were disclosed by the KOPHK and Bodi. Despite excluding a large number of documents that were initially disclosed, the agreed bundle for trial comprised approximately 70 volumes.

(b) The case involved various complex issues of Singapore and Chinese law, including issues in the areas of equity, company law, conflict of laws, defamation and fiduciary duties under Chinese law.

(c) The case involved various complex issues of fact, with a 12-day trial on issues of liability alone, involving some 14 witnesses and 23 AEICs in total, with the court sitting long hours.

(d) A high degree of specialised skill, knowledge and responsibility was required of the solicitors. The KOP defendants' legal team comprised four lawyers, including one Senior Counsel. The plaintiff's legal team was larger and comprised four lawyers and one trainee solicitor. The trial entailed difficult areas of cross-examination in order to ascertain facts that were not readily apparent from the contemporaneous documents. Had O 59 of the Rules of Court applied, there would have been an application for a certificate for three counsel.

(e) The plaintiff's conduct of the matter warranted a higher costs order as:

(i) The plaintiff raised many issues that were, at best, of marginal relevance to its claim, with Ms Wang's first AEIC being 3,242 pages with unnecessary detail.

(ii) Discovery took place after the case was transferred to the SICC and under O 110 r 14(1), parties were required to provide the documents on which they rely. On 30 June 2017, the plaintiff filed its list of documents containing 8,130 documents, many of which were completely irrelevant. The court subsequently directed the plaintiff to confine its initial list of documents to documents it intended to rely on, and the plaintiff then filed a revised list of documents containing 1,043 documents.

(f) The plaintiff's accounting expert Mr Kong's testimony was of no relevance. Mr Kong was put forward as a witness of fact, but was not involved in matters at the material time. Until he gave evidence in court, it remained unclear whether he was giving evidence as a factual or expert witness. Even though the KOP defendants made it clear on several occasions before the trial that Mr Kong's evidence would be of little relevance to addressing the heart of their concern at the material time (*ie*, finding out the nature of the expenses and whether the expenses were justified), the plaintiff nonetheless proceeded to call him as a witness. This necessitated the filing of a reply affidavit by the KOP defendants, and a further affidavit by Mr Kong. At trial, Mr Kong admitted that his evidence was of little relevance to addressing the KOP defendants' concern at the material time.

557 The plaintiff responds to the points raised by the KOP defendants and submits that:

(a) In relation to the allegation that it raised issues that were of marginal relevance to its claim or produced irrelevant documents and evidence, the plaintiff submits that these were issues that were raised by the KOP defendants themselves:

(i) They alleged that Ms Wang and Mdm Hu had misrepresented their credentials and connections to the relevant authorities.

(ii) They asserted that they were the ones who were instrumental in presenting Project Winterland to the Qing Pu government, and it was only through their efforts that they obtained the Qing Pu government's support.

(iii) They alleged that Ms Wang and Mdm Hu did not contribute significantly to the work relating to Project Winterland in Qing Pu; that it was Mr Shport and KOPSG who had worked closely with consultants on Project Winterland in Qing Pu to move the project forward; that Ms Wang and Mdm Hu failed to meaningfully engage the Qing Pu government and/or related parties on the timely handover of the Qing Pu Land; that instead it was IE Singapore, IE Shanghai, and KOPSG which had engaged the Qing Pu government and/or the occupants of the Qing Pu Land in discussions on the acquisition of the Qing Pu Land; and that Ms Wang and Mdm Hu's role in the Qing Pu government's decision to award Project Winterland in Qing Pu to KOPSG was insignificant.

(iv) The KOP defendants also brought various counterclaims against Ms Wang and Mdm Hu for (a) alleged misrepresentations with regards to their business connections; (b) the additional contribution to the Joint Venture in the sum of US$1m; (c) defamation; and (d) breach of duties owed to Bodi and/or the Joint Venture by way of a derivative action. The derivative action was withdrawn in the fourth amendment to their defence & counterclaim (at the eve of trial), and all the counterclaims but defamation were withdrawn at the close of trial (when most of the work had already been done).

(v) The result of all the above allegations made by the KOP defendants was that substantial documents and evidence in the form of AEICs had to be set out to disprove them (and to show the contributions made by Ms Wang and Mdm Hu to Project Winterland in Qing Pu). That the KOP defendants chose to abandon these issues raised by them in their pleadings (and thereafter did not address them in their AEICs and at trial), does not imply that these were not live issues that had to be dealt with.

(vi) The other set of documents disclosed by the plaintiff related to accounting/finance-related documents. The KOP defendants themselves had specifically demanded production of these prior to trial. At the outset, the KOP defendants asserted that these documents were "relevant and material" to proving their case on Ms Wang and Mdm Hu's alleged "unsubstantiated expenses". The KOP defendants also spent a significant time at

trial cross-examining the witnesses on the details of these accounting documents.

(b) In relation to the KOP defendants' contention that the plaintiff had disclosed irrelevant documents, the plaintiff submits that:

(i) While the plaintiff had disclosed about 8,130 documents initially in its list of documents, these documents were reduced by the plaintiff, after removing some duplicates and unreadable documents and focusing only on key documents on Project Winterland in Qing Pu. The total number of documents produced by the plaintiff in its initial list was thus reduced to 1,043 documents. This number is reasonable, given that the KOP defendants themselves disclosed more than 630 documents.

(ii) The KOP defendants had asked the plaintiff to reduce the number of documents disclosed early in the proceedings and the plaintiff had done so. Hence, there would have been no need for the defendants to spend time and costs to review the 8,130 documents when they had taken the position that duplicates and unreadable documents had to be reduced.

(c) In relation to the KOP defendants' contention that Mr Kong's evidence was irrelevant, the plaintiff submits that:

(i) the KOP defendants themselves had relied on Mr Kong's evidence in their closing submissions. Thus, even on their case, Mr Kong's evidence is not completely irrelevant. Further, they submit that with an accountant to arrange the documents, and to rationalise the accounts to show the movement of funds from the general ledger to the Green Book, it had provided significant

assistance to the court with regards to how the accounts had been dealt with. This was something that Ms Joey Ong should have done but had refused to do.

(ii) Mr Kong's evidence provided context to how the accounts could have been resolved at the material time had KOPSG acted reasonably/properly to verify documents and match them to the general ledger.

(d) The plaintiff submits that the total costs should be further discounted by approximately 30% to 40% to take into account the KOP defendants' abandonment of the above points, so as to reflect appropriate costs thrown away by the KOP defendants' conduct.

558 I consider that the issues raised in this case leading up to the Termination Agreement on 20 May 2015 meant that much of the history of the relationship between the parties had to be reviewed. There was therefore a great deal of documentation. I agree that some of the evidence proved to be of marginal relevance but that was not a major issue. Mr Kong's evidence provided some assistance but that was necessary because of the state of the accounting documentation.

559 Taking account of those matters, having dealt with interlocutory matters and presided over the trial and having reviewed the documents and witness statements, I consider that the appropriate way of dealing overall with costs is to award the KOP defendants 75% of their reasonable costs. This reduction of 25% allows both for the costs of the counterclaim which the KOP defendants would have to bear and for the costs of the counterclaim which the plaintiff ought to recover. I consider that the discount of 30% to 40% proposed by the plaintiff is too high. Under paragraph 152(2)(b)(i) of the SICC Practice

Directions, an apportionment of 75% is, in my judgment, reasonable, taking into account the circumstances of this case.

Assessment of recoverable costs

560 In reviewing the amount of costs to decide whether they are reasonable, I take account of the fact that the case was transferred to the SICC on 22 March 2017. I now set out my findings as to the costs which the KOP defendants are entitled to recover. I do so by way of the following table:

Item	**Description**	**Claimed**	**Accepted**	**Assessed**
A&B	Pleadings (pre-transfer)	$150,000	$120,000 for items A to C	$100,000
C	Pleadings(post-transfer)	$25,000	Included above	$25,000
D	Discovery	$140,000	$140,000	$140,000
E&F	AEICs	$160,000	$160,000	$160,000
G	Setting Down	$130,000	$100,000	$110,000
H	Trial	$280,000	$280,000	$280,000
I	Closings Submissions	$80,000	$80,000	$80,000
J	Reply and Oral Submissions	$90,000	$60,000	$80,000
	Total	$$1,055,000.00	$$820,000.00	$$975,000.00

561 The sum recoverable for the costs for work done is therefore 75% of $975,000, or $731,250.

562 The plaintiff does not comment on the KOP defendants' disbursements. I therefore allow 75% of their claimed disbursements of $219,721.97, or $164,791.48.

563 The following table summarises the balance of costs and disbursements in relation to the various interlocutory applications:

Application	**Costs order**	**Costs allowed**	**Filing/service fees allowed**	**Remarks**
HC/SUM 3407/2016	Costs in the cause	0	$514.80	
HC/SUM 3816/2016	Costs in the cause	0	0	
HC/SUM 3827/2016	$3,500 all-in by plaintiff	$3,500.00	0	
HC/SUM 4019/2016	$2,000 all-in by KOP defendants	-$2,000.00	0	
HC/SUM 4779/2016	Costs in the cause	0	0	
HC/SUM 4845/2016 HC/RA 340/2016 and HC/RA 342/2016	$5,000 all-in by plaintiff	$5,000.00	0	
HC/SUM 699/2107	$2,000 all-in by plaintiff	$2,000.00	0	
SIC/SUM 14/2017	$2,000 all-in by KOP Defendants	-$2,000.00	0	
SIC/SUM 35/2017	$3,500 all-in by KOP Defendants	-$3,500.00	0	Decision on reserved costs
SIC/SUM	$2,500 all-in	-$2,500.00	0	Decision

36/2017	by KOP Defendants			on reserved costs
SIC/SUM 40/2017	$1,500 all-in by plaintiff	$1,500.00	0	Decision on reserved costs
SIC/SUM 43/2017	$6,000 all-in by plaintiff	$6,000.00	0	Decision on reserved costs
SIC/SUM 2/2018	No order as to costs	0	0	Decision on reserved costs
SIC/ORC 5/2018	Costs in the cause	0	$361.60	Decision on reserved costs
HC/SOD 42/2016	Discontinued: No order as to costs	0	0	
HC/SOD 54/2016	Discontinued: No order as to costs	0	0	
SIC/SUM 3/2018	Discontinued: No order as to costs	0	0	
	Total	$8,000.00	$876.40	

564 Accordingly, the KOP defendants are entitled to be paid a balance of $8,000.00 in costs and $876.40 in disbursements in respect of interlocutory applications and appeals. I therefore award the KOP defendants in total $904,917.88 ($731,250 plus $164,791.48 and $8,000.00 plus $876.40) to be

paid by the plaintiff in respect of their costs and disbursements. □□□□□□□□□□□□□

565 In relation to Mr Shport's costs, the position is more straightforward. The plaintiff has not succeeded in its claim against Mr Shport and, as a result, I find that the plaintiff must pay Mr Shport's costs.

566 Mr Shport has raised a number of points in relation to costs. He says that he is content to have his costs (inclusive of disbursements) fixed at a global sum of $210,000, which would effectively match the security for costs furnished by the plaintiff. In assessing costs, Mr Shport submits that I should take into account the following circumstances and conduct of the case:

(a) First, he submits that, in the course of the proceedings, significant work was undertaken on his defence, extensive requests for 90 further and better particulars, lists of documents, his AEIC, his opening statement and bundle of authorities; and his closing submissions and bundle of authorities.

(b) Secondly, he says that the fact that $210,000 represents the amount that the plaintiff had agreed to provide as security for costs up to the end of the trial, is a clear indication that $210,000 represents a reasonable amount of costs. In any event, $210,000 is a more than reasonable sum for this suit which involved a 12-day trial with a total of 14 witnesses.

(c) Thirdly, Mr Shport submits that the plaintiff's conduct during the proceeding was oppressive, especially during the discovery process when the plaintiff produced many documents that were irrelevant and/or that it did not intend to rely on.

(d) Fourthly, Mr Shport says that on 8 February 2018, during the trial, he made an offer to settle which was not accepted by the plaintiff and, in any event, the plaintiff acted unreasonably in pursuing its claims against him.

567 In response, the plaintiff says that the case against Mr Shport was very simple and straightforward and, on the evidence, it was not unreasonable in pursuing its claims against him. In any event, the plaintiff submits that Mr Shport's participation in the trial and in the suit was limited. Most of the interlocutory fights and the disputes were between the KOP defendants and the plaintiff. Further, the plaintiff says that Mr Shport's counsel spent a large amount of time on pleadings filed between the KOP defendants and the plaintiff which had, at best, tangential relevance to Mr Shport's defence. The plaintiff therefore submits that there was an unnecessary overlap of work done in reviewing the pleadings between the KOP defendants and the plaintiff.

568 Whilst I do not consider that the plaintiff acted unreasonably in pursuing its case against Mr Shport, Mr Shport had to consider and understand the case which the plaintiff made against the other defendants, and the other defendants' defence to that case, because it clearly impacted on the case made against him. I therefore do not consider that there is any basis to reduce the costs expended by Mr Shport in doing this.

569 On that basis, I now consider whether the costs claimed by Mr Shport are reasonable and set out in the table below my conclusions:

Item	Description	Claimed	Accepted	Assessed	Disbursements
1.	Pleadings to 14 June 2016 (pre-transfer)	$20,000.00	$15,000.00	$17,000.00	$431.27
2.	Pleadings to 30 September 2016 (pre-transfer)	$4,725.00	$3,000.00	$4,000.00	$88.87
3.	Pleadings to 30 November 2016 (pre-transfer)	$19,535.00	$8,000.00	$16,000.00	$460.63
4.	Pleadings to 31 December 2016 (pre-transfer)	$10,290.00	$8,000.00	$9,000.00	$230.25
5.	Discovery to 21 January 2017 (pre-transfer)	$2,665.00	$2,665.00	$2,665.00	$170.70
6.	Work to 22 March 2017 (pre-transfer)	$8,310.00	$2,000.00	$6,000.00	$282.90
7.	Work to 30 April 2017 (post transfer)	$21,785.00	$10,000.00	$17,000.00	$340.75
8.	Work to 31 August 2017	$26,255.00	$26,255.00	$26,255.00	$291.70
9.	Work to 29 November 2017	$12,718.00	$12,718.00	$12,718.00	$1608.40
10.	Work to 16 January 2018	$24,073.00	$24,073.00	$24,073.00	0
11.	Preparing for trial to 28 January 2018	$38,450.00	$25,000.00	$35,000.00	0

12.	Trial	$93,505.00	$60,000.00	$85,000.00	$520.10
13.	Closing submissions	$40,000.00	$30,000.00	$35,000.00	$400.00
	Total	$$322,311.00.00	$$226,711.00.00	$$289,711.00.00	$$4,825.57

570 In relation to interlocutory matters, there were two matters:

Application	**Costs order**	**Costs allowed**	**Filing/service fees allowed**	**Remarks**
SIC/SUM 700/2017	$1,000.00 by Mr Shport	-$1,000.00	-$250.70	Decision on reserved costs
HC/SUM 3/2018	Costs in the cause	0	0	Decision on reserved costs

571 On that basis, as Mr Shport has stated that he would be content to have his costs fixed at $210,000, inclusive of disbursements, I order that the plaintiff should pay Mr Shport $210,000.

Conclusion on costs

572 For the reasons set out above:

(a) the plaintiff shall pay the KOP defendants $904,917.88□ (all-in) in respect of their costs of these proceedings; □□□□□□□□and□□□□

(b) the plaintiff shall pay Mr Shport $210,000.00 (all-in) in respect of his costs of the proceedings.

Vivian Ramsey
International Judge

Foo Maw Shen, Chu Hua Yi, Ng Sook Zhen and Michelle Lee Ying-Ying (Dentons Rodyk & Davidson LLP) for the plaintiff and the second and third defendants in counterclaim;
Yim Wing Kuen Jimmy SC, Chia Voon Jiet, Lee Yicheng Andrew and Dierdre Grace Morgan (Drew & Napier LLC) for the first, second and fourth to sixth defendants;
Vergis S Abraham and Lim Mingguan (Providence Law Asia LLC) for the third defendant;
the seventh and eighth defendants unrepresented.

APPENDIX A: LIST OF ISSUES

A. PLAINTIFF'S CLAIMS

(i) The relationship between the parties

1.1 What is the governing law of the relationship between the plaintiff, the 3rd defendant ("Mr Shport") and the 4th defendant ("4D") in relation to their shareholdings in the 7th defendant ("7D") which owns the 8th defendant ("8D")?

1.2 Having regard to the governing law of the relationship between the plaintiff, Mr Shport and 4D, what is the legal nature of the relationship between the plaintiff and Mr Shport and 4D, i.e., was it a partnership such that the Mr Shport and 4D owed fiduciary duties as pleaded at paragraph [47] of the Statement of Claim ("SOC"), or were the parties merely fellow shareholders in the 7D?

1.3 Are the plaintiff's factual allegations pleaded at paragraphs [23] – [48] of the SOC true? If so, were there breaches of the Duties as set out at paragraph [47] of the SOC?

1.4 Did 1D and 2D owe the plaintiff the same Duties as set out at paragraph [47] of the SOC? If so, were there breaches of such Duties by reason of the plaintiff's allegations?

1.5 When did the parties reach an agreement to terminate the Collaboration, i.e., was it by 13 May 2015 or was it by the Agreement dated 20 May 2015 ("20 May Agreement")? If it was the former, what were the salient terms of the parties' agreement to terminate the Collaboration? How is the agreement to terminate the Collaboration on 13 May 2015 related to the 20 May Agreement?

1.6 When did 1D, 2D, Mr Shport and/or 4D (individually or collectively) begin discussions with and/or engage Shanghai Lu Jia Zui Group ("SLJZ") and Shanghai Harbour City Development (Group) Co. Ltd ("SHCD") a joint venture to implement the Winterland at Lingang ("Lingang Project") and did such discussions and/or engagement amount to a breach of the Duties and/or dishonest assistance and/or unlawful conspiracy as pleaded at paragraphs [48], [50], [51] and [55] of the SOC?

(ii) The 20 May Agreement and its effect (or lack thereof)

2.1 Whether the 20 May Agreement has no legal effect as alleged by the plaintiff at paragraph [54] of the SOC?

a. Did 1D, 2D, Mr Shport and/or 4D (individually and/or collectively) make any misrepresentations and/or non-disclosures, and or cause any of the other defendants to make misrepresentations and/or non-disclosures to the plaintiff to induce the plaintiff to enter into the 20 May Agreement?

b. Did the plaintiff rely on and/or was the plaintiff induced by such misrepresentations and/or non-disclosures to enter into the 20 May Agreement?

2.2 If the 20 May Agreement has legal effect:

a. What is the parties' intent in relation to Clause 8 of the 20 May Agreement which provides that "[i]f any of the shareholders proceed in the Project or any project on this specific Qing Pu Land, then, the shareholder agrees that it shall account to the other shareholders the contribution made by the parties to the project"?

b. What is the parties' intent in relation to Clause 9 of the 20 May Agreement which provides that "[i]f any shareholder choose to utilize the current materials already developed, including but not limited to logo design, building concept design, video, etc, this shareholder who utilizes it will need to reimburse the fees paid to third party for developing this specific materials"?

c. Are Mr Shport and 4D liable to account to the plaintiff for the profits made by them and for the alleged use of the proprietary information or documents pursuant to Clauses 8 and 9 of the 20 May Agreement by reason of their undertaking of the Lingang Project as alleged at paragraph [57] of the SOC?

B. THE DEFENDANTS' DEFENCE AND/OR COUNTERCLAIMS

(iv) Defamation

3.1 Are Wang and/or Hu liable in defamation?

a. Were the letters to IE Singapore, LJZ and Harbour City dated 25 December 2015 defamatory of the 1D and/or 4D?

b. Does the defence of fair comment and/or justification apply to exonerate Wang and/or Hu?

c. Were the letters published maliciously such that it defeats the defence of fair comment?