

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 22 September 2014

**Before :**

**THE HON MR JUSTICE ARNOLD**

**Between :**

**GORGEOUS BEAUTY LIMITED**

**Claimant**

**- and -**

**(1) IRENE LIU**

**Defendants**

**(2) WILLIAM LIU**

**(3) THE REGISTRAR OF COMPANIES**

**(4) GOLD WEALTH LLP**

**Andrew Green QC and Jana Sadler-Forster** (instructed by **Baker & McKenzie**) for the  
**Claimants**

**Jamie Goldsmith and Henry Hoskins** (instructed by **Wragge & Co LLP**) for the **First and  
Second Defendants**

The **Third and Fourth Defendants** did not appear and were not represented

Hearing dates: 4-6, 9-13, 16-20, 26 June 2014

**Judgment**

**MR JUSTICE ARNOLD :**

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## Introduction

1. As a matter of substance rather than form, this case is an unfortunate dispute between two branches of a Taiwanese family with regard to the ownership of a plot of land in Taiwan. It is part of a wider dispute which arose out of the running of the family business, Yuan Sheng Aluminium Manufacturing Corporation, also known as Yuan Sheng Corporation (“YSC”).
2. The Claimant, Gorgeous Beauty Ltd, is a Seychelles international business company (an “IBC”). As explained below, it is owned by five other Seychelles companies. It is common ground that the ownership structure was intended beneficially to reflect the ownership of YSC at the time Gorgeous Beauty was incorporated: 57.63% by Lien-Sheng Liu, his wife Ching-I Yang and their children (“the Lien-Sheng Branch”); 24.75% by Lien-Fa Liu, his wife Mei-Chuan Hsu and their children (“the Lien-Fa Branch”); and 17.62% by Ching-I Yang’s siblings, by Yi-Hui Lin (who was married to one of Ching-I Yang’s sisters) and his children and by one shareholder who was not a member of the family (“the Minor Shareholders”). The First and Second Defendants, Irene Liu and William Liu, are two of Lien-Fa Liu’s three children.
3. Until July 2012 Irene Liu was the sole director of Gorgeous Beauty. Gorgeous Beauty was originally the legal owner of 99% of the shares in the Fourth Defendant, Gold Wealth LLP, with William Liu being the legal owner of the remaining 1%. In August 2010 Gold Wealth acquired a valuable plot of industrial land in Longtan, Taiwan (“the Longtan Property”) through a Taiwanese subsidiary, Golden Up Silver Corp Ltd (“Golden Up”), also known as Yuan Shang Investment Co Ltd. The Longtan Property was the sole asset of Golden Up, and hence of Gold Wealth, and hence of Gorgeous Beauty. The contract of purchase was signed by Lien-Sheng Liu. The purchase price was NTD (New Taiwanese Dollars) 274,354,189 (approximately US\$ 8.6 million at the prevailing exchange rate) payable in instalments.
4. The case advanced by Gorgeous Beauty (i.e. by the Lien-Sheng Branch) is in very brief summary as follows: the Longtan Property was the intended site for a new YSC factory; it was purchased on behalf of all of YSC’s shareholders; for tax reasons, it was held through the corporate vehicles of Gorgeous Beauty, Gold Wealth and Golden Up; and the purchase price was paid using YSC funds because it was being purchased on behalf of YSC’s shareholders.
5. The case advanced by Irene and William Liu (i.e. by the Lien-Fa Branch) is in very brief summary as follows: the Longtan Property was purchased for the sole benefit of William; the corporate structure was adopted for the tax benefits it would provide to William; YSC funds were loaned to William to enable him to purchase the property; and this was done with the agreement of Lien-Sheng Liu and/or Ching-I Yang.
6. It is common ground that this case turns essentially on a question of fact and on who is telling the truth with regard to that question: for whose benefit was the Longtan Property acquired? As will appear, this dispute centres on a declaration of trust purportedly signed by Irene Liu on behalf of Gorgeous Beauty on 20 August 2010

declaring that Gorgeous Beauty held its 99% interest in Gold Wealth on behalf of William Liu (“the Declaration of Trust”). The Defendants contend that Irene Liu executed this with the knowledge and consent of Lien-Sheng Liu and/or Ching-I Yang, who had the authority of the shareholders of YSC. Gorgeous Beauty disputes this, and contends that it was executed by Irene Liu as part of a fraud by the Lien-Fa Branch.

7. By this action Gorgeous Beauty seeks a declaration that the Declaration of Trust is invalid and an order that entries in the Register of Companies relating to Gold Wealth be rectified pursuant to section 1096 of the Companies Act 2006. The Third Defendant, the Registrar of Companies, and Gold Wealth have been joined as parties to the litigation in order that they may be bound by the judgment, but have not played any active role in it. Accordingly, I shall refer to Irene and William Liu collectively as “the Defendants”.

#### A note on names

8. As is fairly well known, Chinese names traditionally consist of a family name followed by a given name. In Hong Kong, Taiwan and other places, however, it has become increasingly common over the last two or three decades for Chinese people, particularly those of the younger generation, also to use a Westernised version of their name. This may simply reverse the order of the family name and the given name. It may also involve the use of a Western-style given name together with the family given name. In this litigation the parties have tended, whether for the convenience of their lawyers or otherwise, to refer to the individuals involved by the Westernised versions of their names. I shall adopt the same practice, as I have done above, although I shall attempt to identify everyone by their Chinese name when introducing them below.
9. As is also fairly well known, there are two main systems for transliterating Chinese words into Roman characters. The use of these different systems can give rise to different Roman spellings of names. Some of the individuals involved in this case are referred to by the parties using different spellings. I shall use the spelling which I find more convenient, without intending to suggest which is more correct or to indicate any preference for the party which uses that spelling.
10. Some of the corporate entities involved in this case have both Chinese names and English names. The English names are not translations of the Chinese names. I shall generally refer to them by their English names.

#### The witnesses

##### *Gorgeous Beauty’s witnesses of fact*

11. Liu Lien-Sheng, also known as Lien-Sheng Liu, is the head of his Branch and the elder brother of Lien-Fa Liu and Kuang-Hui Liu. He founded YSC in 1983 and has been the senior figure of YSC’s management from its inception to the present day. He is the largest shareholder in YSC with a 15.48% holding (despite having disposed of some of his original shareholding to his children). He is ultimately responsible for the bringing of this litigation.

12. Yang Ching-I, also known as Ching-I Yang, is the wife of Lien-Sheng Liu and the sister of Shu-Ying Yang and Shu-Fen Yang. She was one of the original founders of YSC. Since YSC's inception, she has been Vice General Manager of Operations at YSC, overseeing the finances, the establishment of offshore companies, and authorising significant transactions and payments. She has a 7.56% shareholding in YSC, which makes her the 5<sup>th</sup> largest shareholder.
13. Liu Li-Hsiang, also known as Michael Liu, is the eldest son of Lien-Sheng Liu and heir to his Branch. He is a 12.5% shareholder in YSC, making him the 2<sup>nd</sup> largest shareholder. He attended university in England. He joined the company in 2003, and in 2008 he was promoted to Vice General Manager of the Dongguan Factory. He was appointed as a director of Golden Up in October 2010 and held this position until his removal (which is disputed by him) in July 2012.
14. Liu Chao-Yu, also known as Chao-Yu Liu, is the younger son of Lien-Sheng Liu and Ching-I Yang. He is a 11.98% shareholder in YSC, which makes him the 3<sup>rd</sup> largest shareholder. He is also the largest shareholder in Gorgeous Beauty (30%) through his ownership of Ever Giant Inc. Chao-Yu Liu has worked as a team leader in YSC's Taiwan Factory since 2009, when he joined the company, but had little direct involvement in the facts relevant to these proceedings.
15. Liu Chia-Yin, also known as Mana Liu, is the daughter of Lien-Sheng Liu and Ching-I Yang and sister of Michael Liu. She is a 10.4% shareholder of YSC, which makes her the 4<sup>th</sup> largest shareholder. She is also a 27.63% shareholder in Gorgeous Beauty through her ownership of Huge Champion Inc. She joined YSC in late June or early July 2012 as Deputy Chief of the Administrative Department. She was appointed as a director of Gorgeous Beauty in place of Irene Liu on 11 July 2012, following the falling out between the two sides of the family. Prior to that, she had studied costume design in London from 2006 to 2011.
16. Yang Shu-Fen, also known as Shu-Fen Yang, is the younger sister of Ching-I Yang. She is a 1.6% shareholder in YSC, which makes her the 14<sup>th</sup> largest shareholder, and the sole shareholder in More & More Inc, which has a 17.62% shareholding in Gorgeous Beauty. She does not work at YSC, and had virtually no personal involvement in the facts relevant to this dispute.
17. Yang Shu-Ying, also known as Shu-Ying Yang, is the youngest sister of Ching-I Yang. Until very recently, she had a shareholding in YSC of 1.6%, which made her the 15<sup>th</sup> largest shareholder. She runs a separate manufacturing business with her husband, and does not hold a position in YSC's management, although she does participate in shareholders' meetings. Her only real involvement in the story is in connection with the June 2012 meetings at which the Lien-Fa Branch were ousted from YSC.
18. Liao Mei-Chuan, also known as Mei-Chuan Liao, has been the Senior Manager of the Finance Department of YSC from its inception to the present day. In this role, she is responsible for the accounts of YSC. She is not part of the Liu family, but she has worked under Ching-I Yang in the Finance Department since YSC's establishment. She has a small (0.79%) shareholding in YSC (which makes her the 19<sup>th</sup> largest shareholder). As explained below, she was involved in the execution of the Declaration of Trust.

19. Xue Yan-Fan, also known as Yan-Fan Xue, has worked as the payment administrator of YSC for the past nine years. She sat in an open plan office with Irene Liu and Mei-Chuan Liao, next to Ching-I Yang's office. Her key responsibilities are documenting payments and receipts of funds, preparing payment slips and documents for signature, and handling documentation required for establishing offshore companies. She was also involved in the execution of the Declaration of Trust.
20. Xu Ming-Zhen, also known as Ming-Zhen Xu, is the principal of a real estate broker called Lien Hong Real Estate Co Ltd ("Lien Hong"). It was through Ming-Zhen Xu that Lien-Sheng Liu and Lien-Fa Liu became aware of the Longtan Property.
21. Wu Lin-Pu, also known as Eric Wu, is the Vice-President of the Sales Department of GenPro Consulting Inc ("GenPro"). He advised Irene Liu with respect to the establishment of Gold Wealth.

*The Defendants' witnesses of fact*

22. Liu Lien-Fa, also known as Lien-Fa Liu, is the head of his Branch, and brother of Lien-Sheng Liu and Kuang-Hui Liu. He was one of the founders of YSC. Before he began working at YSC in 2006, he had a distinguished, thirty-year career in the Taiwanese police force, where he rose to Director-General of Hsinchu City Police Bureau (the third-highest rank in Taiwan) and was awarded two medals by the President of Taiwan for his services. He joined the management of YSC in February 2007. Thereafter, he was the General Manager of YSC until his removal from this position on 28 June 2012, following a disagreement as to how YSC was being run. He is currently a 2% shareholder in YSC, which makes him the 12<sup>th</sup> largest shareholder (although his wife Mei-Chuan Hsu is also shareholder). Lien-Fa Liu is also the sole director and shareholder of Trillion World Wide Ltd ("Trillion").
23. Liu Tzu-Wen, also known as Irene Liu, is the eldest child of Lien-Fa Liu. She has a 4.6% shareholding in YSC, which makes her the joint 9<sup>th</sup> largest shareholder with her younger sister, Liu Pei-Wen (also known as Jessie Liu). She has a 13% shareholding in Gorgeous Beauty through Intelligent Power Inc. She worked as an auditor at PricewaterhouseCooper Taiwan from 2001 to 2007, achieving the position of manager. After obtaining an MBA from the University of Illinois, she joined YSC as Senior Manager in the Finance Department in May 2009. A year later, she was promoted to Vice General Manager of the Finance Department, reporting to Ching-I Yang. She was made a director of YSC sometime afterwards, but was removed from this position on 28 June 2012. She was also the sole director of Gorgeous Beauty from 28 January 2010 until her removal on 11 July 2012.
24. Liu Jen-Wei, also known as William Liu, is the only son of Lien-Fa Liu, the younger brother of Irene Liu and the heir to the Lien-Fa Branch. He has a 5.7% shareholding in YSC, which makes him the 7<sup>th</sup> largest shareholder. He finished his education in England, including studying Business and Human Resource Management at Birmingham City University from August 2002 to April 2004. He joined YSC as a Production Management Assistant in April 2004. He was promoted to Vice General Manager of the Taiwan factory in 2008. He was subsequently appointed as a director of YSC and remained in these roles until the Lien-Fa Branch was expelled on 28 June 2012.

*Missing witnesses*

25. Despite the number of witnesses who gave evidence, a number did not. The most significant are the following. Yi-Hui Lin, who was the husband of Mei-Jung Yang (another sister of Ching-I Yang), worked in the Finance Department of YSC. He appears to have had particular responsibility for dealing with YSC's offshore affiliates at least before Irene Liu joined YSC. He was diagnosed with pancreatic cancer in 2012. By the time witness statements were exchanged, he was severely ill, and he passed away in April 2014. As explained above, Kuang-Hui Liu is brother to both Lien-Sheng Liu and Lien-Fa Liu. I surmise that he did not wish to take sides in this dispute. The Defendants did not call Mei-Chuan Hsu, Jessie Liu, Ts'un-hsu Chou or Chien-Hwa Wang (as to whom, see below). No reason was given for this. Counsel for Gorgeous Beauty did not suggest that any adverse inference should be drawn from it, however.

*The expert witnesses*

26. Gorgeous Beauty's expert witness as to Seychelles law is Francis Chang-Sam SC. He read law at the London School of Economics and was called to the Bar by Gray's Inn. From 1978 to 1983 he was Registrar of Companies, Land and Trade Marks, from 1983 to 1992 he worked in the legislative drafting section of the Department of Legal Affairs and from 1992 to 1998 he served as Attorney General of the Seychelles. Since 1999 he has been in private practice as a sole practitioner.
27. The Defendants' expert witness as to Seychelles law is Kieran Shah SC. He was called to the Bar of England and Wales by Middle Temple in 1976 and was called to the Seychelles Bar in 1978. He has been continuously in practice since then.
28. At the beginning of the trial the experts had exchanged reports and had prepared a memorandum of points of agreement and disagreement. At my suggestion, the parties agreed to dispense with cross-examination of the experts and instead to serve reports in reply directed to the issues on which the experts were disagreed.

General comments on the factual evidence

29. In this case both sides accuse the other of dishonesty. Accordingly, as counsel for the Defendants submitted, it is necessary to adopt the approach to finding the facts articulated by Robert Goff LJ in a well-known passage in *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at 57:

“Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the independent facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives,

and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth.”

30. In this case, I have been particularly cautious in relying upon the demeanour of the witnesses, for three reasons. First, all of them except Irene, Mana, Michael and William Liu gave evidence through an interpreter. It was clear that, despite the skill of the interpreter, this led to difficulties in understanding. For example, as the interpreter explained, Mandarin does not have tenses and thus there was sometimes difficulty between distinguishing between what a witness knew at a particular time and what the witness knew now. Irene, Mana, Michael and William Liu all gave evidence in English, but their English was not perfect and they all resorted to assistance from the interpreter at times. Again, it was clear that there were difficulties in comprehension. Secondly, a number of witnesses gave evidence by videolink from Taiwan. Thirdly, there are significant cultural differences between this country and Taiwan.
31. For the same reasons, I accept the submission made by counsel for Gorgeous Beauty that it is necessary when analysing the evidence of the witnesses to be cautious about relying on the phraseology of particular answers as being indicative of an untruthful witness, and rather to consider the general thrust of that witness’ evidence. I also bear in mind the point made by counsel for the Defendants that the fact that a witness had lied about one matter does not necessarily mean that he or she has lied about another.
32. In attempting to determine where the truth lies, I have faced five further difficulties. The first is that, as will appear, I consider that both sides’ cases have implausible features.
33. The second is that the documentary evidence is incomplete and unsatisfactory. It is not possible for me to attribute blame for this state of affairs. The Defendants accused Gorgeous Beauty of deliberately withholding disclosure, but I am not satisfied that this charge has been made out. Gorgeous Beauty certainly gave late disclosure of certain documents, including some just before and some during the trial, but since it did disclose documents which can be regarded as damaging to its case, it does not appear that it suppressed such documents. Moreover, the late disclosure can be at least partly explained by the fact that certain issues were only clearly raised at trial. No doubt for the same reason, the Defendants also gave late disclosure during the trial. Above all, by the end of the trial, it was common ground that, because YSC was a family business and because it was run in a way which might appear unusual to English eyes, some things were not simply documented in the way that an English court would expect.
34. The third difficulty is that, although the key factual issue lies within a narrow compass, both sides raised a considerable number of other issues as supporting their respective cases or as casting doubt on the opposing party’s case or as undermining the credibility of one or more of the opposing party’s witnesses. As I have already indicated, some of these issues were only clearly raised at trial. As a result, both the witness and documentary evidence on such issues is not as complete as it might have been. Indeed, at least one issue has been raised which it was more or less common ground between counsel in closing submissions that the court was not in a position to resolve.



35. The fourth difficulty is that, with one solitary exception, each side accused all the other side's witnesses of lying. The exception is Eric Wu of GenPro, whom counsel for the Defendants accepted was an honest witness, albeit one he characterised as defensive and the accuracy of whose recollection he challenged.
36. The fifth difficulty is that most of the witnesses have a personal interest in the outcome. The most independent witness was Eric Wu. The next most independent was Ming-Zhen Xu, but as discussed below he accepted that he was a friend of Lien-Sheng Liu and Ching-I Yang. The next most independent was Shu-Ying Yang, given that she is no longer a shareholder in YSC, but she was a shareholder at all the relevant dates, including when she signed her witness statement.
37. As a result, the one conclusion about which I am certain is that I cannot be certain what the truth is. Rather, I can only decide where I consider that the balance of probabilities lies having regard to the evidence before the court.

### The facts

38. As I have indicated, in addition to the key issue, a considerable number of other issues have been raised by the parties. I have found it convenient to deal with these as discretely as possible and in approximately chronological order. I have not overlooked the fact that many of the issues are inter-linked, however, and in reaching my conclusions I have considered the matter as a whole.

### YSC

39. YSC is an aluminium manufacturing company. It was founded in 1983 by Lien-Sheng Liu, who had worked for a number of years in an aluminium factory, ending up as Deputy Plant Manager. Lien-Sheng Liu was the Chairman of the company, and has continued to be so. His wife, Ching-I Yang, and his younger brother, Kuang-Hui Liu, joined Lien-Sheng Liu as the original managers of YSC. Lien-Sheng Liu was responsible for overseeing production, Ching-I Yang finances and Kuang-Hui Liu sales.
40. According to Gorgeous Beauty's evidence, the six founding shareholders were Lien-Sheng Liu, Ching-I Yang, Kuang-Hui Liu, Lien-Fa Liu (although his shares were originally held by his wife Mei-Chuan Hsu), Chiang-Han Yang (Ching-I Yang's father) and Yi-Hui Lin. It is symptomatic of this case that the Defendants' evidence is that there were only five original shareholders (not including Ching-I Yang). There are also differences as to the original percentages of shares held by the founders. It is common ground, however, that subsequently the shareholdings became more diversified over time, primarily through shares being given by Lien-Sheng Liu, Lien-Fa Liu and Yi-Hui Lin to their respective children, but also in other ways.
41. Since there is no historical register of YSC's shareholders, it is impossible to be sure who owned what shares when. Furthermore, slightly different figures are quoted in the evidence even for the percentages owned by the three factions identified in paragraph 2 above. Moreover, those percentages do not tally with a list of shareholders in evidence from which the individual percentages given in paragraphs 11-24 above have been calculated, although that may to some extent be explicable by the fact that that list appears to date from after June 2012. I have not even found it

possible to determine precisely when the Lien-Sheng Branch acquired majority control over YSC, but it appears that this was when Kuang-Hui Liu left YSC (see paragraph 49 below).

42. The business proved successful and YSC expanded into China over time, setting up factories in Dongguan (2000), Suzhou (2003), Changshu (2005) and Dongguan (2009). There was also a plan to set up a factory in Yingjiang, China in 2009, but this fell through (see paragraphs 82-83 below).
43. For tax reasons and because YSC wanted to invest in China as well as in Taiwan, over time YSC adopted a fairly complicated corporate structure. This involved setting up a number of offshore affiliated companies, each of which was held on behalf of YSC's shareholders by a nominal "legal representative" who was usually a YSC shareholder or sometimes a trusted employee. Some of those affiliated companies in turn established Chinese subsidiaries, again held by nominal representatives on behalf of YSC's shareholders. Those subsidiaries were used (for example) to hold the Chinese factories. Similarly, a number of YSC's shareholders had bank accounts in their names which they held as nominees for YSC.
44. The result is that the lines between what belonged to YSC, what belonged to YSC's shareholders collectively and what belonged to those individuals personally seem to have been somewhat blurred and are now not straightforward to disentangle. While the difference between what belonged to YSC and what belonged to its shareholders collectively does not matter much for present purposes, the difference between what belonged to YSC's shareholders collectively and what belonged to the individuals personally is at the centre of the dispute.

#### *YSC's offshore affiliates*

45. The first offshore affiliate was Balmore International Ltd ("Balmore"), which was incorporated in Samoa in November 1998. Its original legal representative was Lien-Sheng Liu, and this is now Ching-I Yang. The second was Great View Investment Ltd ("Great View"), which was incorporated in Samoa in September 1999. Its original legal representative was Yi-Hui Lin, and this is now Mana Liu. There is no dispute that these companies were owned in the manner described in paragraph 43 above. Nor is there any dispute that a number of other such companies were set up subsequently.
46. A company called Xin Gao Co. Ltd was incorporated in Samoa in April 2004. Its original legal representative was Kuo-Kai Yang, and this is now Mei-Chuan Liao. It is common ground that it is owned by YSC employees, and to that extent it stands in a different position to companies like Balmore and Great View. On the other hand, Lien-Sheng Liu gave unchallenged evidence that Xin Gao and Balmore jointly own the company which owns the Changsu factory. Thus Xin Gao is integrated within the YSC structure.

#### *The authority of Lien-Sheng Liu and Ching-I Yang*

47. Counsel for the Defendants submitted that the evidence established that, during the period relevant to this dispute, not only were Lien-Sheng Liu and Ching-I Yang the principal decision makers in YSC, but also they had the authority to enter into transactions on behalf of YSC and its shareholders without the need for formal prior

approval by the other shareholders. I did not understand counsel for Gorgeous Beauty to take issue with this submission, but in any event I accept it.

*Lien-Fa Liu joins the management of YSC*

48. Lien-Fa Liu gave unchallenged evidence that, in September 2006, Kuang-Hui Liu contacted him because Kuang-Hui Liu had become concerned that Lien-Sheng Liu and Ching-I Yang had complete control over YSC's finances and he was not happy with how they were running that side of the business. Kuang-Hui Liu was also concerned that Ching-I Yang and her own relatives were trying to take over YSC for themselves. Kuang-Hui Liu asked Lien-Fa Liu to join the management of YSC. Lien-Fa Liu went to see Lien-Sheng Liu, who complained to him about Kuang-Hui Liu. Since it was clear that his brothers had ceased to trust each other, Lien-Fa Liu agreed to join the management of YSC to establish new rules and regulations based on his administrative experience. He retired from the police on 31 December 2006 and joined YSC as Vice Chairman of the Board on 1 February 2007. Lien-Fa Liu proceeded to propose new organisational structures and regulations, but he did not succeed in resolving the dispute between his two brothers.

*Kuang-Hui Liu leaves YSC*

49. Lien-Fa Liu also gave unchallenged evidence that in April 2007 Kuang-Hui Liu said that he wanted to leave YSC and take over one of its factories to run by himself. Lien-Sheng Liu and Ching-I Yang refused to agree to this. Instead, it was agreed that Kuang-Hui Liu would sell his shares back to YSC at a 30% discount. Lien-Sheng Liu's evidence was slightly different, in particular as the precise reason for Kuang-Hui Liu's departure and as to whether there was a discount. It does not matter who is right about this. It is common ground that Kuang-Hui Liu's departure was announced at a YSC board meeting on 16 April 2007. It appears that his shares were then distributed to the remaining shareholders in proportion to their existing holdings. Kuang-Hui Liu then set up a new company which it appears was at least to some extent in competition with YSC, taking some of YSC's customers and around 50% of its management with him. Mei-Chuan Liao gave evidence that Kuang-Hui Liu invited her to join him, but she declined. Kuang-Hui Liu's departure had a damaging effect on YSC, but the business was stabilised about a year later.
50. In June 2007 Lien-Fa Liu replaced Kuang-Hui Liu as General Manager of YSC, William Liu was promoted to Vice General Manager of the Taiwan factory and Michael Liu was promoted to Vice General Manager of the Dongguan factory.

*Hui-Min Yang takes over the Suzhou factory*

51. Lien-Fa Liu gave unchallenged evidence that, within a year, Hui-Min Yang (Ching-I Yang's brother, who was a large shareholder at the time) was also expressing unhappiness with the way Lien-Sheng Liu and Ching-I Yang were running YSC. He repeatedly asked to exchange his shareholding for ownership of one of YSC's factories, but Lien-Sheng Liu and Ching-I Yang refused. In the end, however, it was agreed that Hui-Min Yang would exchange his shareholding for the Suzhou factory. This agreement was announced and approved at the YSC shareholders' AGM on 27 August 2008. Subsequently, Hui-Min Yang brought a criminal complaint for embezzlement against Lien-Sheng Liu and Ching-I Yang with regard to the

distribution of Chiang-Han Yang's shares after his death in 2009, but the prosecutor decided there was insufficient evidence to prosecute.

*Trillion*

52. On 2 January 2009 Trillion was incorporated in the British Virgin Islands with Lien-Fa Liu as sole director and shareholder. Gorgeous Beauty contends that Trillion was another offshore affiliate of YSC held by a nominee, whereas the Defendants contend that it was Lien-Fa Liu's own company. Although this is not directly relevant to the principal dispute, it is of some significance. This is for two reasons. First, as explained below, Trillion became involved in the financing of the acquisition of the Longtan Property. As will appear, the way in which the acquisition was financed is an important aspect of the dispute. Secondly, it goes to Lien-Fa Liu's credit and (to a lesser extent) Irene Liu's credit.
53. Although Lien-Sheng Liu stated in his witness statement that Trillion was one of the offshore companies owned by YSC's shareholders, he did not go into any detail about this. In particular, he did not give any explanation as to why Trillion was set up. In cross-examination, Lien-Sheng Liu reiterated a number of times that Trillion was a YSC group company, and said that all the expenses were paid by YSC and that its accounting was provided by YSC. He was not asked why it was set up. Ching-I Yang did not mention Trillion at all in her witness statement (although it is fair to note that she said in her statement that she understood that many of the relevant events had been described by Lien-Sheng Liu and others in their statements), nor was she asked about it in cross-examination. Mei-Chuan Liao said in her statement that Trillion was one of YSC's offshore affiliates and that Lien-Fa Liu was the nominal shareholder and director, but again she did not go into details. In cross-examination, Mei-Chuan Liao was only asked about a couple of alleged transactions involving Trillion, in which context she reiterated that it was a YSC affiliate.
54. Lien-Fa Liu's evidence in his first witness statement was that, at the end of 2009, through his own efforts, he was able to "find some customers independently of the middle men normally used by YSC", which enabled YSC to "sell the same product with a much higher prices". Since he "put in quite a lot of efforts to develop these customers for YSC", he thought he deserved a return. He therefore told Lien-Sheng Liu that "since I managed to find these customers for YSC under my own effort", he should take the profit. Lien-Sheng Liu agreed to him doing this by using Trillion as a middleman. The account he gave in cross-examination was somewhat different. This was that he did not find any new customers for YSC, but rather he was able to sell YSC's products to some of its customers just through Trillion rather than through two layers of middlemen. In this way, both YSC and Trillion profited from this arrangement. Irene Liu said in re-examination that Trillion was used by her father to sell YSC products to customers, but she did not elaborate on this. Leaving aside the change in Lien-Fa Liu's account, there do not appear to be any documents which support either version of the story. Nor was either version put to Lien-Sheng Liu.
55. As Lien-Fa Liu accepted in cross-examination, the documents relating to the setting up of Trillion show that the paperwork was handled by Yi-Hui Lin and Yan-Fan Xue, who were the named contact persons, and that the contact address and email address were YSC's address and email address. His explanation for this was that Yi-Hui Lin

was the person who had dealt with setting up all the previous offshore companies, and who therefore had the experience. I find this a plausible explanation.

56. As Lien-Fa Liu also accepted, however, the documents also show that the fees for setting up Trillion were paid by Great View (which, as noted above, it is common ground was a YSC affiliate). His explanation for this was that this was a convenience provided by the company because payment was in a foreign currency and he did not have a foreign currency account. I find this implausible, since I do not see why Lien-Fa Liu could not simply have paid with a credit card. Lien-Fa Liu also claimed that Trillion had subsequently reimbursed Great View, but there does not appear to be any documentary support for this claim.
57. In their second witness statements both Lien-Fa Liu and Irene Liu said that Trillion's corporate seal was in Irene Liu's custody until 28 June 2012, but that from time to time it was temporarily given to Yan-Fan Xue for her to use to prepare paperwork relating to financial transactions between YSC and Trillion. This was not put to Yan-Fan Xue, however.
58. On 20 July 2009 Trillion applied to open a bank account with ChinaTrust Commercial Bank in Hong Hong. The correspondence address given for Trillion was YSC's premises. Lien-Fa Liu's explanation for this was that YSC handled Trillion's accounting records. The signatories to the account were Lien-Fa Liu and Ching-I Yang. Lien-Fa Liu's explanation for this was that the application form was filled in by Yan-Fan Xue and he signed it without noticing that Ching-I Yang's name had been included. It was not put to Yan-Fan Xue that she had wrongly included Ching-I Yang's name, however. Nor do I find plausible that she should have done so by mistake. Furthermore, both the document and Lien-Fa Liu's explanation for it are inconsistent with Lien-Fa Liu's evidence in his first witness statement that the signatories to the account were changed from himself to himself and either Lien-Sheng Liu or Ching-I Yang during 2011. (I note that Lien-Sheng Liu said in his witness statement that Ching-I Yang had discovered this account during an audit in November 2011, but he was not asked about this in cross-examination and it appears from the next sentence that he may have meant that she had discovered that it contained a substantial amount of money, a reading that receives some support from what Lien-Sheng Liu said about this subject in cross-examination.)
59. On 21 March 2011 Yan-Fan Xue prepared a "request form" seeking approval for the incorporation of two more offshore companies. This states:
  - “1. The existing offshore companies, Great View, Balmore and Xin Gao are all investors. Of the three companies available for offshore trading purposes, namely Chang Lian, Hong Chan and Trillion Worldwide, Chang Lian will be de-registered upon receipt of full payment from CNC in Malaysia while Hong Chang is used by Chiu Pang.
  2. In view of the insufficient number of companies available for trading purposes, it is proposed that two more offshore companies be incorporated ...”

60. The request form was approved by Lien-Sheng Liu, Ching-I Yang, Mei-Chuan Liao, Lien-Fa Liu and Irene Liu. Furthermore, it is common ground that Irene Liu had received and corrected an earlier draft of the request form sent to her by Yan-Fan Xue. When it was put to Irene Liu that the request form clearly treated Trillion as being a YSC affiliate, her response was that she had noticed this when she received the revised form, but had not asked for it to be corrected again because it was clear to everyone that Trillion was not a YSC affiliate. She also said the reference to Xin Gao, which was owned by YSC's employees, showed the document was not merely referring to YSC affiliates. Lien-Fa Liu's evidence was he had not read the document carefully because he saw that it had been approved by Irene Liu. He also referred to the fact that it mentioned Xin Gao. Leaving aside the fact that none of this was put to Yan-Fan-Xue, I do not find this evidence credible. If Trillion was Lien-Fa Liu's personal company, there would have been no reason for any reference to be made to it in this document. By comparison, the reference to Xin Gao is perfectly intelligible. (I would add that counsel for the Defendants did not suggest that there was any significance in the fact that the document does not refer to any of the companies in the Gorgeous Beauty structure.)
61. Trillion's bank account is included in monthly records of the state of YSC and affiliate bank accounts prepared by Mei-Chuan Liao for the months of March to August 2010, March 2012 and May 2012 (it does not appear that the records for any other months have been disclosed). Irene Liu's explanation for this in her first witness statement was that the accounting records were kept at YSC to save costs. In cross-examination, she initially claimed not to know whether Mei-Chuan Liao had produced such documents, before going on to repeat the explanation in her witness statement. There is no challenge to the authenticity of these documents, however, nor was Mei-Chuan Liao's evidence in her witness statement that she produced such documents on a regular basis challenged. It does not seem plausible that Irene Liu would not have known about them given her position in the Finance Department. Nor was it put to Mei-Chuan Liao that Trillion's bank account was only included as a cost-saving measure.
62. A further point about these monthly records is that Irene Liu claimed in her first witness statement that an entry in the May 2012 one "clearly states that Trillion's account belongs to my father". In fact, it is clear that the entry in question relates to an account in Lien-Fa Liu's name (which, as discussed below, Gorgeous Beauty contends was held by him as a nominee for YSC). There is a reference to Trillion, but what it records is a payment being made into Lien-Fa Liu's account by Trillion. Trillion's account is referred to elsewhere in the same document.
63. Lien-Sheng Liu gave evidence in his witness statement that on 23 May 2012 "the Finance Department" asked Trillion to transfer US\$ 1 million from its ChinaTrust account to Balmore for the payment of shareholders' dividends, but that Irene Liu refused. In support of this, he referred to a voucher and bank transfer slip of that date. Although he was cross-examined about this, it was not put to him that this account was false. Mei-Chuan Liao was also cross-examined about this incident. She said that she had prepared the voucher, based on a shareholders' resolution, which she had passed to Yan-Fan Xue, but Irene Liu had refused to execute it. It was put to Mei-Chuan Liao that Ching-I Yang had instructed her to draw up the voucher (an allegation which had not been put to Ching-I Yang), which she denied. It was also put

to Mei-Chuan Liao that Irene Liu had refused because she said Trillion belonged to her father, but Mei-Chuan Liao did not respond to the suggestion that that was the reason given by Irene Liu. Irene Liu gave evidence in her first witness statement that she had never seen the voucher or the bank statement prior to disclosure in this litigation. She was not cross-examined about the matter, however. In any event, it is of little significance who is right about this given that it is common ground that relations between the Lien-Sheng Branch and the Lien-Fa Branch were becoming very strained by this date.

64. It is common ground that, in a document dated 4 June 2012, Lien-Sheng Liu directed Irene Liu and Mei-Chuan Liao to transfer any deposits over US\$300,000 to the “investment company affiliated to this company – BALMORE ... from the following companies: TRILLION ..., HONG CHAN ..., GREAT VIEW ...”. It is common ground that Irene Liu refused. Her evidence was that she had an argument with Lien-Sheng Liu and said that YSC had no right to Trillion’s money because it was Lien-Fa Liu’s company. That point was not put to Lien-Sheng Liu. Nor was it put to Mei-Chuan Liao, although Mei-Chuan Liao agreed that there had been a meeting between Lien-Sheng Liu, Irene Liu and herself at which Irene Liu had refused to agree to the transfer. Again, it is of little significance who is right about this.
65. On 24 May 2013 Great View brought civil proceedings in Taiwan against Trillion and Lien-Fa Liu for a debt of US\$ 1,900,157.50. The debt is disputed, and the case is ongoing. No claim is being advanced by Great View in those proceedings that Trillion belongs to YSC (or its shareholders). Nor has YSC taken any steps to take control of Trillion in the BVI, where it is incorporated. Lien-Sheng Liu’s explanation for this was that the ownership of Trillion was not so important as the dispute about whether Trillion owed money to YSC. Counsel for the Defendants suggested this belied Lien-Sheng Liu’s claim that Trillion was a YSC affiliate. I do not accept this. There is no evidence that it would be legally possible for YSC to challenge the ownership of Trillion in proceedings in Taiwan. As for proceedings in the BVI, I find it plausible that the Lien-Sheng Branch do not regard that as a priority given the existence of these proceedings and the multiple proceedings in Taiwan (as to which, see below).
66. Taking all of the evidence into consideration, and in particular the documentary evidence, the conclusion I reach on the balance of probabilities is that Trillion was a YSC affiliate company, as Gorgeous Beauty contends, and not Lien-Fa Liu’s own company, as the Defendants contend.

#### *Alleged YSC loans to the Lien-Sheng Branch*

67. Irene Liu gave evidence that, soon after she joined YSC’s Financial Department in May 2009, she discovered a number of instances of YSC money being borrowed by the Lien-Sheng Branch. Although this topic occupied a significant part of the trial, its only direct relevance to the principal dispute is that it is part of the motivation suggested by the Defendants for the Lien-Sheng Branch agreeing to YSC lending money to William Liu for the acquisition of the Longtan Property in 2010.
68. The first instance is an alleged interest free loan of NTD 3 million by YSC to Mei-Chuan Liao to finance the purchase of her house. Irene Liu’s evidence in her first witness statement was that she had discovered this when Mei-Chuan Liao told her that she had repaid the last instalment of the loan in August 2009, and that Lien-Fa Liu

had told her that prior to that he had not known of the existence of this loan. Her account of the discovery in cross-examination was slightly different: she said that Mei-Chuan Liao had come to her crying because Ching-I Yang had only just demanded repayment of the whole loan. Nevertheless, her account is supported by the fact that YSC's financial system records a payment of NTD 3 million to Mei-Chuan Liao as "share pledge loans" on 22 November 1997. In cross-examination, Mei-Chuan Liao said that this was in fact a payment for the sale of some shares in YSC. In her witness statement, however, Mei-Chuan Liao's evidence was that she was given 1,185 shares in YSC in 1991. Immediately before giving evidence, she amended this to say that at that time she had been given "some" shares, which had since been added to, and she now had 1,185 shares. She did not mention any sale of her shares. It appears to be correct that Mei-Chuan Liao now owns 1,185 shares, but as I have said there is no historical register of YSC shares which would show whether or not she previously sold any shares. Mei-Chuan Liao was unable to explain why the YSC financial system referred to "share pledge loans", even though she accepted that she may have been the one who made the entry.

69. Counsel for Gorgeous Beauty submitted that the lack of documentary records meant that the court was unable to reach a conclusion on this issue. I accept that caution is required, but I do not agree that it is not possible to form a conclusion. I prefer Irene Liu's evidence to that of Mei-Chuan Liao, both because the most probable explanation of the only record that does exist is that it refers to Mei-Chuan Liao using her shares as collateral for a loan from YSC and because of the unsatisfactory nature of Mei-Chuan Liao's evidence on this point. In itself, however, I regard this as a relatively small matter. It may well support the Defendants' suggestion that Mei-Chuan Liao was close to Ching-I Yang, but it goes little further than that.
70. The second instance is an alleged loan of around NTD 5 million from YSC to Michael Liu to help him buy a house in about May 2009. Irene Liu's evidence in her first witness statement was that she discovered this on a business trip to Dongguan in June 2009, when she saw a record of a transfer from the Vice General Manager's nominal account to Michael of this sum. Lien-Fa Liu again told her that he had no knowledge of this loan. Lien-Fa Liu confronted Lien-Sheng Liu and Ching-I Yang about this at a meeting at which Mei-Chuan Liao was present. They claimed that the transfer was a payment for goods, but Mei-Chuan Liao admitted that it was to help buy a house. In cross-examination Irene Liu maintained this account, but added that a few days later Mei-Chuan Liao had told her that Lien-Sheng Liu and Ching-I Yang had said they would pay back the money.
71. Lien-Sheng Liu and Ching-I Yang denied this account, and gave evidence that they had funded the purchase of Michael's house. Mei-Chuan Liao was not cross-examined about the matter.
72. Irene Liu was unable to point to any documents to support her account, although she claimed disclosure of the relevant financial records for Dongguan for March to May 2009 (which Gorgeous Beauty claimed could not be disclosed since copies had not been retained) would demonstrate the point. Counsel for the Defendants accepted that in these circumstances, and given the documents which had been disclosed by Gorgeous Beauty, the Defendants were in some difficulty in proving the loan.



73. As counsel for Gorgeous Beauty submitted, the documentary evidence that is available supports the evidence of Lien-Sheng Liu and Ching-I Yang rather than that of Irene Liu. The facts established by the documents appear to be as follows. On 23 March 2009 Michael Liu agreed to buy a house (or perhaps an apartment – it matters not) in Dongguan for 1.7 million yuan. On 10 April 2009 Michael Liu agreed with the vendor that the price would be paid as follows: 700,000 yuan on 21 April 2009 and US\$ 146,330 (calculated on the basis that 1 million yuan at an exchange rate of 6.835 was equal to US\$ 146,305) by an unspecified date. On 21 April 2009 Lien-Shen Liu and Ching-I Yang withdrew 770,000 yuan in cash from an account in Lien-Shen Liu's name. 700,000 yuan was used to make the first payment due to the vendor. It is plausible that 70,000 yuan was used to expenses, as Ching-I Yang suggested. On 18 May 2009 Ching-I Yang transferred US\$ 146,300 to the vendor. Accordingly, I conclude on the balance of probabilities that there was no loan from YSC to Michael Liu as alleged by Irene Liu.
74. The third instance concerns the purchase of the Taoyuan Property. I shall deal with this below.

*The value of YSC in 2009*

75. At the end of November 2009 Mei-Chuan Liao prepared a valuation of YSC which was approved by Irene Liu, Ching-I Yang, Lien-Fa Liu and Lien-Shen Liu. This showed the total net value of YSC as being NTD 1,263,786,364 (about US\$ 39.7 million) and the net value per share as NTD 8,425. I shall return to the significance of this below.

*Alleged fictitious shareholder loans to YSC*

76. A significant issue arose during the course of trial with regard to sums of money recorded in YSC's documents as being owed by YSC to its shareholders. This arose out of a dispute concerning a payment of NTD 6,467,945 from YSC to Lien-Sheng Liu in connection with the Taoyuan Property, which the Defendants contend was a loan from YSC to Lien-Sheng Liu, but which Gorgeous Beauty contends was a partial repayment of loans from Lien-Sheng Liu to YSC. (I shall deal with that dispute below.)
77. So far as the more general issue is concerned, Lien-Sheng Liu, Ching-I Yang and Mei-Chuan Liao all gave evidence in their witness statements that the shareholders had made loans to YSC. Furthermore, Ching-I Yang said that this had been the usual way in which YSC had raised working capital prior to 2008, but it had become less common since that time. By contrast, Irene Liu said nothing about this subject in her lengthy (218 paragraph) first witness statement, nor in her second witness statement (which simply corrected the first).
78. In connection with the dispute relating to the Taoyuan Property, Gorgeous Beauty relied on YSC's financial statements. YSC's financial statements for the years ending 31 December 2008 and 31 December 2009 (which were approved by YSC's auditors on 23 May 2010) show a total of NTD 256,151,390 as being owed to 11 shareholders (including Lien-Fa Liu) as at 31 December 2009 and a total of NTD 215,570,605 as being owed to those shareholders as at 31 December 2010. Similarly, YSC's financial statements for the years ending 31 December 2009 and 31 December 2010 (which

were approved by YSC's auditors on 18 May 2011 and endorsed by all the shareholders at the AGM on 18 January 2012) show a total of NTD 215,570,605 as being owed to the shareholders as at 31 December 2009 and a total of NTD 194,191,364 as being owed to the shareholders as at 31 December 2010. Similarly, an extract from YSC's financial statements for the years ending 31 December 2010 and 31 December 2011 shows NTD 194,191,364 as being owed to the shareholders as at 31 December 2010 and NTD 202,951,618 as at 31 December 2011. An extract from YSC's financial statements for the years ending 31 December 2011 and 31 December 2012 shows a total of NTD 182,987,949 as being owed to the same 11 shareholders as at 31 December 2011 and a total of NTD 181,433,087 as being owed to 12 shareholders as at 31 December 2012. (It can be seen that there is a discrepancy between the latter two documents with regard to 2011. The same discrepancy appears in balance sheets prepared for the YSC AGMs on 28 June 2012 and 3 August 2013. Mei-Chuan Liao was cross-examined about this discrepancy, which she had some difficulty in giving a coherent explanation of, but it is not necessary to go into this.) For the purposes of Gorgeous Beauty's case in relation to the Taoyuan Property, the totals did not matter, but some of the movements in the figures were relied on.

79. Prior to trial, the Defendants had served notices to prove in respect of the lists of shareholder loans. It emerged during the course of the trial that the Defendants were contending that all the sums listed were fictitious shareholder loans which were recorded in YSC's accounts in order to reduce YSC's tax bill. Although Ching-I Yang was challenged as to the reliability of the financial statements as a record of shareholder loans during cross-examination on day 4, the allegation that all the shareholder loans recorded in the documents were simply fictitious first emerged when counsel for the Defendants was cross-examining Shu-Ying Yang on day 5 about a text message she had sent Irene on 19 June 2012 referring to "fake shareholder loans". In her witness statement Shu-Ying Yang had mentioned this text and said that it was common practice in Taiwan "for shareholders to file their controversial business expense receipts at the company, and the funds are then recorded as a loan to the company from them". In her oral evidence, Shu-Ying Yang agreed that YSC had a practice of recording false shareholder loans. Subsequently the allegation was put to Mei-Chuan Liao (who denied it, although she gave a more complicated explanation about the sources of the loans than had been previously been advanced) on day 6, and the Defendants served a third witness statement from Irene Liu supporting the allegation on day 7.
80. As mentioned above, counsel more or less agreed during closing submissions that, owing to the manner in which this issue arose, the absence of wider disclosure and the absence of any expert evidence, it was not possible for the court to resolve the issue. Furthermore, counsel for Gorgeous Beauty accepted that in those circumstances the court could not safely rely on the financial statements with regard to shareholder loans.

*Proposal to acquire the Yanjiang Property*

81. It is common ground that, by late 2009, YSC's business had recovered from the earlier schisms, and that YSC planned to invest further in China by taking advantage of a Chinese government policy of selling government land to overseas investors at attractive prices. On 5 December 2009 an Investment Agreement was entered into between the Management Committee of Jiangsu Economic Development Zone (a

Chinese government body) and Chang Sheng Industry Co Ltd (also known as Always Green Corp) concerning the establishment of an aluminium factory on a site in Yanjiang, China (“the Yanjiang Property”). The agreement was signed by Lien-Sheng Liu on behalf of Always Green. I shall explain Always Green’s role below.

82. Counsel for the Defendants sought to make capital out of the fact that a number of Gorgeous Beauty’s witnesses suggested in their witness statements that YSC was contemplating an investment in China or Taiwan at this time, but accepted in cross-examination that only investment in China was contemplated at this time. I am unimpressed with this point. I think that when making their statements the witnesses had understandably failed to distinguish clearly between what was contemplated at the end of December 2009 and what happened a little over six months later. Indeed, in the case of Lien-Sheng Liu, although paragraph 4.1 of his witness statement referred to investing in China or Taiwan at this time, in paragraph 4.4 he was clear that the Gorgeous Beauty structure was designed for the investment in Yanjiang, but later used for the investment in the Longtan Property.
83. Counsel for Gorgeous Beauty submitted that it was significant (a) that YSC was contemplating investing in a new factory at the end of 2009, (b) that (as discussed below) it was contemplated that the property would be owned through an offshore structure and (c) that Lien-Sheng Liu signed the agreement. I agree with this.

#### *Establishment of Gorgeous Beauty*

84. It is common ground that Lien-Sheng Liu asked Irene Liu to investigate a possible corporate structure for the Yanjiang investment and that Irene Liu consulted GenPro over the matter. There was some disagreement between Irene Liu and Eric Wu in evidence as to the extent to which GenPro gave tax advice about this. Irene Liu said that, although she had some limited knowledge from her time at PwC and she had attended a course at GenPro on the use of offshore structures, she still required and obtained tax advice from GenPro. Eric Wu denied providing tax advice, saying that he was just a salesman, but I think this may have been due to a difference between counsel’s and the witness’ understanding of what was meant by “tax advice”. It seems reasonably clear that GenPro was in the business of selling services in relation to the setting up of offshore companies in favourable tax jurisdictions and that Eric Wu did give Irene some general advice about what would be a suitable offshore structure, but I doubt that he gave any proper advice about the tax consequences of using that structure.
85. On 15 December 2009 Irene Liu set out the proposed structure in a memo. This consisted of a three-tier structure: four offshore affiliated companies each owned by a nominee individual (tier 1), an offshore holding company (tier 2), and a further offshore company (tier 3) which was to hold the Yanjiang Property. This proposal was approved by Lien-Sheng Liu, Lien-Fa Liu, and Ching-I Yang, with Lien-Sheng Liu adding a hand-written note “Proceed as soon as possible, lest the Chinese government changes its policy”.
86. What is more important than the details of precisely what advice GenPro did or did not give is that it is common ground that the objective of setting up this offshore structure was to avoid, or at least reduce, tax payable in Taiwan. It is convenient to note at this point that neither side adduced any evidence as to Taiwanese tax law. Nor

did either side attempt to explain how the structure that was adopted would have avoided or reduced tax. I presume, however, that the thinking was that any profits realised from the investment (whether by use or sale of the land) would not be taxable in YSC's hands since YSC would not own the land. Rather, tax would only be payable by the shareholders on whatever they received as money was passed up through the structure.

87. GenPro proceeded to set up seven companies in accordance with the layered structure set out in the 15 December 2009 proposal: (1) a single Mauritian subsidiary (Always Green); (2) wholly owned by a middle-layer Seychelles IBC (Gorgeous Beauty); (3) in turn owned by five (rather than four) parent Seychelles IBCs which were owned by members of the family. The five parent companies and their shareholders were as follows: Lead Champion Inc - Jessie Liu; Intelligent Power Inc - Irene Liu; Huge Champion Inc - Mana Liu; Ever Giant Inc - Chao-Yu Liu; and More & More Inc - Shu-Fen Yang.
88. It is common ground that the individual shareholders of the five parent companies were intended to be nominal shareholders on behalf of their respective Branches. Therefore, the Lien-Sheng Branch together with the Minor Shareholders controlled a majority holding in Gorgeous Beauty of 75.25% through Huge Champion, Ever Giant and More & More, whilst the Lien-Fa Branch had a minority stake of 24.75% through Lead Champion and Intelligent Power.
89. Nevertheless, on about 29 December 2009 Irene Liu signed "beneficial owner's declarations" on behalf of herself in relation to Intelligent Power as well as on behalf of Intelligent Power in relation to Gorgeous Beauty and on behalf of Gorgeous Beauty in relation to Always Green. As she accepted in cross-examination, these documents do not correctly reflect what was intended.
90. There is a dispute as to how quickly this structure was set up. The Defendants contend that it took some weeks, where the Gorgeous Beauty contends that it was done more quickly. It is not easy to resolve this dispute from the available documents, but the position appears to be as follows. Although the investment agreement dated 5 December 2009 was signed in the name of Chang Seng, it does not appear that that company had been incorporated by that date. Nor does it appear that the English name had been chosen by then. The earliest GenPro document relating to the setting up of the structure is an invoice relating to six of the companies (all except More & More) which is undated, but appears to date from shortly before 24 December 2009. There are then a number of letters of authorisation and confirmation dated 28 December 2009 and beneficial owners' declarations faxed on 29 December 2009. Gorgeous Beauty was incorporated on 7 January 2010. Intelligent Power and Huge Champion were incorporated on 6 January 2010. Lead Champion, Ever Giant and More & More were incorporated on 13 January 2010. It is not clear when Always Green was incorporated. Irene Liu was appointed the sole director of Gorgeous Beauty on 28 January 2010.
91. It is common ground that GenPro's fees were paid by YSC and that Gorgeous Beauty's books, minutes and accounts were kept at YSC.

*Shareholders' AGM in February 2010*

92. As it turned out, Lien-Sheng Liu was right to warn on 15 December 2009 meeting that a change in Chinese government policy might prevent the transaction if YSC did not proceed quickly. By late January or early February 2010, the Chinese government had increased the asking price for the state-owned land, and it became less attractive to invest in central China. As a result of this change, it was announced at the YSC shareholders' AGM on 9 February 2010 that "the investment proposal has been suspended". It is common ground that the Gorgeous Beauty offshore corporate structure then lay dormant for the next six months.

*Acquisition of the Taoyuan Property and alleged YSC loans to Lien-Sheng Liu, Michael Liu and Mana Liu*

93. In about March 2010 Ming-Zhen Xu introduced Lien-Sheng Liu to the opportunity to purchase two pieces of farmland in Taoyuan, Taiwan (together, "the Taoyuan Property"). Lien-Shen Liu executed the contracts to purchase the Taoyuan Property using his personal "chop" (seal) on 27 March 2010. The total purchase price was NTD 99,752,939 (NTD 66,952,529 for one parcel and NTD 32,800,410 for the other) payable in instalments. As indicated above, there is a dispute between the parties with regard to the acquisition of the Taoyuan Property, and in particular the way in which this was paid for.
94. Lien-Sheng Liu's evidence in his witness statement was that he had asked Ming-Zhen Xu to find him some farmland to purchase as a property for his retirement. Most of the funds for the purchase came from Lien-Sheng Liu's personal bank account. This is supported by the fact that Gorgeous Beauty has disclosed a series of cheques drawn on this account dated from 31 March 2010 to 13 July 2010 totalling NTD 66,952,529 and NTD 32,800,410. Lien-Sheng Liu said that NTD 6,467,945 had come from money which had been repaid to him by YSC in partial repayment of loans he had previously made to YSC. This repayment was approved by Lien-Fa Liu, who put his chop on the bank withdrawal slip. Ching-I Yang and Mei-Chuan Liao confirmed in their witness statements that Lien-Sheng Liu had been repaid part of a loan. None of the three witnesses made any mention of payments of NTD 700,000 to Michael Liu or 275,000 to Mana Liu, but it may be that this is explained by the fact that these payments had not been pleaded by the Defendants. In cross-examination, all three witnesses maintained that the NTD 6,467,945 payment was a repayment of a loan. Both Mana Liu and Michael Liu were unable to shed light on the payments to them, saying that such things were handled by Ching-I Yang.
95. According to Lien-Fa Liu's and Irene Liu's evidence in their first witness statements, Lien-Sheng Liu offered to invest 50:50 in the Taoyuan Property with Lien-Fa Liu. Somewhat oddly, on their account, Lien-Sheng Liu told Lien-Fa Liu that the purchase price was around NTD 120,000,000. Lien-Fa Liu decided not to invest in the land, however. Subsequently, following an approach from Ching-I Yang to Irene Liu, Lien-Fa Liu agreed to YSC lending NTD 6,467,945 to Lien-Sheng Liu, NTD 700,000 to Michael Liu and 250,000 to Mana Liu for the purchase of the Taoyuan Property. Both Lien-Fa Liu and Irene Liu gave evidence that Lien-Fa Liu required Irene Liu to ensure that a record was kept of these loans. The loans were not repaid until 28 June 2012. In cross-examination, both witnesses maintained this account.

96. I have already described how Gorgeous Beauty tried to rely on YSC's financial statements as supporting its case with regard to these three payments, and in particular the NTD 6,467,945 payment, how this gave rise to an allegation by the Defendants that all the shareholder loans were fictitious and why I am unable to reach any conclusion with regard to that allegation. In addition to the financial statements and some other documents which had previously been disclosed, Gorgeous Beauty disclosed some additional documents during the course of the trial concerning these three payments. Counsel for Gorgeous Beauty submitted that the evidence showed that, at least in the case of the NTD 6,467,945 payment to Lien-Sheng Liu, this was indeed a repayment of a loan. Counsel for the Defendants submitted that the documents were inconsistent with each other and with the evidence of Gorgeous Beauty's witnesses.
97. The one point that seems clear from the documents is that on 2 July 2010 YSC made payments of NTD 6,467,945 to Lien-Sheng Liu, NTD 700,000 to Michael Liu and NTD 250,000 to Mana Liu. As indicated above, it is common ground that the sum of NTD 6,467,945 was put towards the purchase of the Taoyuan Property. It is not clear whether the sums of NTD 700,000 and NTD 250,000 were also used for this purpose, but it is at least possible.
98. These payments do not appear to have been recorded by YSC as loans to the three shareholders. On the contrary, as counsel for the Defendants accepted, these payments are consistent with reductions in the loans to these shareholders recorded in YSC's financial statements for 2010. He submitted, however, that other documents disclosed by Gorgeous Beauty during the course of trial which appear to show loans being made by Lien-Sheng Liu, Mana Liu and Michael Liu to YSC or its affiliates in June 2010 were inconsistent with those records and hence undermined the proposition that the payments were repayments of shareholder loans.
99. I agree that there are apparent inconsistencies between the documents; but, owing to the late production of the documents and difficulties occasioned by the trial overrunning, these were not explored with the relevant witnesses. I strongly suspect that, if they had been, the result would have been to throw up more questions than answers, at least without yet further disclosure. I also consider that it is difficult to separate the issue with regard to these three payments from the wider issue with regard to the allegedly fictitious shareholder loans. Accordingly, I do not feel able to reach a conclusion as to who is right about this aspect of this dispute.

#### *Purchase of the Longtan Property*

100. Gorgeous Beauty's evidence is that, after YSC decided not to proceed with the investment in Yanjiang, it was decided that YSC would instead purchase industrial land for a new factory in Taiwan. In about April or May 2010 Lien-Sheng Liu engaged Ming-Zhen Xu to find a suitable plot of land for this purpose. On or around 20 July 2010 Ming-Zhen Xu visited Lien-Sheng Liu to discuss the Longtan Property. The Longtan Property was the site of a long-disused brick factory and was owned by about 20 landowners. About a day later, Lien-Sheng Liu visited the property with Ming-Zhen Xu. Shortly afterwards, Lien-Sheng Liu invited Lien-Fa Liu and William Liu to visit the land with himself, Ming-Zhen Xu and a colleague of Mr Xu's. Lien-Sheng Liu then personally negotiated the purchase price with two of the sellers at a meeting at YSC's offices at the end of July 2010. Lien-Sheng Liu executed the

purchase contract with his personal chop at a meeting in the conference room of a local bank on 6 August 2010. Irene Liu and Mei-Chuan Liao were present, but not William Liu. The purchase price was NTD 21,500 per ping (a ping is about three square metres), making a total of NTD 274,354,189 (approximately US\$ 8.6 million). Lien-Sheng Liu purchased the Longtan Property on behalf of YSC's shareholders.

101. The Defendants' evidence is that YSC had no intention to build a new factory in Taiwan and the Longtan Property was unsuitable for that purpose. Instead, Ming-Zhen Xu brought the Longtan Property to the attention of Lien-Sheng Liu, who in turn brought it to the attention of Lien-Fa Liu, because Lien-Sheng Liu knew that Lien-Fa Liu was interested in investing in industrial land. After visiting the property with Lien-Sheng Liu and Ming-Zhen Xu, Lien-Fa Liu decided that it would make a good investment for his son William, and took William to see it. Lien-Fa Liu asked Lien-Sheng Liu to ask Ming-Zhen Xu to negotiate the purchase price for him. Once the purchase price was agreed, it was agreed that the contract would be executed on 4 August 2010. In the event, the sellers raised some issues and the date was postponed to 6 August 2010. Lien-Fa Liu was on a business trip from 5 to 15 August 2010, and so was unable to be present on 6 August 2010. Accordingly, he asked Lien-Sheng Liu to execute the contract instead of himself.
102. I shall defer expressing a conclusion as to which of these versions is correct until later in this judgment, when I have considered a number of other aspects of the dispute. At this stage, I note the following points.
103. The first point is that it is common ground that Ming-Zhen Xu brought the Longtan Property to the attention of Lien-Sheng Liu. Why did he do that? This is bound up with the questions of (i) whether YSC actually had an intention to build a new factory, (ii) whether the Longtan Property was suitable for that purpose and (iii) what YSC actually did subsequently, which I shall consider separately. Disregarding those questions for the moment, however, it is not apparent from the Defendants' evidence why Ming-Zhen Xu would have brought the property to the attention of Lien-Sheng Liu. Irene Liu suggested that this was because Lien-Sheng Liu had told Ming-Zhen Xu that Lien-Fa Liu was interested in investing in industrial land, but that suggestion was neither put to Lien-Sheng Liu nor advanced by Lien-Fa Liu. Counsel for the Defendants submitted it was likely that Ming-Zhen Xu had brought the property to Lien-Sheng Liu's attention "as a wealthy client and friend, with whom he had recently concluded another deal, in the hope of making further commission". But that begs the question of why Ming-Zhen Xu would have thought that Lien-Sheng Liu would want (and be able) to buy an expensive plot of industrial land.
104. Ming-Zhen Xu's own evidence on this question was clear, namely that he was instructed by Lien-Sheng Liu to find a plot of land for purchase by YSC for a new factory and it was as a result of that instruction that he introduced Lien-Sheng Liu to the Longtan Property. As noted above, Ming-Zhen Xu was an independent witness, although he accepted that he and his wife had become good friends with Lien-Sheng Liu and Ching-I Yang following the acquisition of the Taoyuan Property (and so his wife has been on holiday with Lien-Sheng Liu and Ching-I Yang). Counsel for the Defendants submitted that at least some of Ming-Zhen Xu's evidence was untruthful and that, to the extent that he was not untruthful, his recollection was poor, had been influenced by subsequent discussions with Lien-Sheng Liu and Ching-I Yang and was inconsistent. Although I accept that Ming-Zhen Xu gave an untrue answer on a

different matter (as to which, see below), I am not persuaded that Ming-Zhen Xu was untruthful with regard to the Longtan Property. I do accept that his recollection was not perfect, that he may have been influenced by subsequent discussions and that there were some inconsistencies in his evidence. But on the question of how he came to introduce the Longtan Property to Lien-Sheng Liu, his evidence was not only clear, but cogent, and I accept it.

105. The second point concerns the suitability of the Longtan Property for use for building a new factory for YSC. It is common ground that the site is next to an elementary school. The Defendants contend that this means it would be unsuitable for use for YSC's operations, which are noisy. The evidence signally failed to establish this, however. As Ming-Zhen Xu stated when the point was put to him, the land was industrial land which had previously been used for making bricks. There is no evidence as to how noisy YSC's operations are (which would surely depend on how the building was constructed) or that this would prevent the land being used for that purpose.
106. The third point concerns visits to the Longtan Property allegedly made by YSC's shareholders. In their witness statements, Lien-Sheng Liu, Ching-I Yang, Mana Liu and Shu-Ying Yang all said that most of the YSC shareholders visited the Longtan Property before the contract was signed and approved its purchase. In cross-examination, however, their evidence was (with the exception of Ching-I Yang) somewhat different. Lien-Sheng Liu said that he had invited all the shareholders to visit, but some had not been able to. He was not specific as to which shareholders, if any, visited the property before the contract was signed. Mana Liu said that she visited the property after the contract was signed. Both Shu-Ying Yang and Shu-Fen Yang said that they were unable to visit the property before the contract was signed, as was their mother, because their father was ill, but they had visited it later. I agree with counsel for the Defendants that this change casts some doubt on Gorgeous Beauty's case with regard to the acquisition of the Longtan Property. I also agree with him that Mana Liu's evidence on this point was particularly unsatisfactory. But I agree with counsel for Gorgeous Beauty that this is not a strong point in the Defendants' favour. If it is true that shareholders such as Shu-Ying Yang and Shu-Fen Yang visited the Longtan Property - and it was not suggested that they did not - it is more significant that they went at all than whether they went before or after the contract was signed. There is no reason why they would have been invited to visit, and would have done so, if the property was an investment for William.
107. The fourth point concerns the suggestion made by Lien-Sheng Liu in his evidence that the shareholders had orally approved the purchase of the Longtan Property. It is common ground that there is no written record of this, but given the informality of YSC's procedures this is not particularly significant. More importantly, counsel for the Defendants submitted that the oral evidence of Gorgeous Beauty's other witnesses had not supported this suggestion. I accept that submission. I also accept that, again, this casts some doubt on Gorgeous Beauty's case. I do not regard this as particularly significant, however, given that I have accepted that Lien-Sheng Liu and Ching-I Yang had authority to enter into transactions on behalf of YSC's shareholders.
108. The fifth point concerns the question whether there was some urgency to the transaction, and if so why. The Defendants suggest that there was some urgency. Counsel for the Defendants pointed out that Ming-Zhen Xu stated that the property



was “for sale urgently because it had been disused for many years”, which makes little sense. Lien-Fa Liu gave a more cogent explanation, which was that there was a risk that some of the sellers might change their mind. It seems to be common ground, however, that Lien-Sheng Liu managed to persuade the sellers to reduce their asking price (from NTD 27,000 per ping, according to Lien-Fa Liu). Even if there was some urgency, I consider that this is a neutral factor.

109. The sixth point concerns the alleged change in the date of the execution of the contract from 4 to 6 August 2010. Gorgeous Beauty’s witnesses, including Ming-Zhen Xu, denied that there was any such change. There is no documentary evidence of any such change (or of a change in the identity of the purchaser from Lien-Fa Liu to Lien-Sheng Liu). Although the Defendants’ witnesses maintained that the date had been changed due to issues raised by the sellers, none of them was able to explain what the supposed issues were or why this had necessitated a change in the date. This does not prove that their account is untrue, but it casts some doubt on it.
110. The seventh point is that Lien-Sheng Liu executed the contract with his personal chop and not his YSC corporate chop. Counsel for the Defendants submitted that this was evidence that the Longtan Property was not acquired for the benefit of YSC. I do not accept this. It is common ground that YSC was not intended to own the property, rather the property was to be owned through an offshore structure. That being so, there would have been no reason for Lien-Sheng Liu to use his YSC chop.
111. The eighth point concerns the fact that William Liu did not attend the execution of the contract. The Defendants’ witnesses explained that it was more appropriate for Lien-Fa Liu to attend than William Liu because some of the sellers were senior citizens. I have no difficulty in accepting that this would have made it advisable for Lien-Fa Liu to attend. I find it less plausible that this explains why, on the Defendants’ account of the matter, William Liu did not attend as well.

#### *Purchase of the adjacent farmland*

112. There were also three plots of farmland adjacent to the Longtan Property available for sale by the same sellers. These plots were sized 30 ping, 1437 ping and 1029 ping. It is common ground that Lien-Sheng Liu executed contracts to purchase the 30 ping and 1437 ping plots using his personal chop at the same time as the Longtan Property, and that Lien-Sheng Liu executed a contract to purchase the 1029 ping plot in March 2011. Again, there is a dispute as to whom he purchased this land on behalf of. Gorgeous Beauty contends that he purchased it on behalf of YSC’s shareholders, with a view to trying to convert it into industrial land in due course. The Defendants contend that he purchased the 30 ping and 1437 ping plots on behalf of Lien-Fa Liu and the 1029 ping plot on behalf of himself, Lien-Fa Liu and Yi-Hui Lin.
113. Lien-Sheng Liu dealt with this subject extremely briefly in his witness statement, without going into any details. Ching-I Yang did not mention it at all.
114. A striking feature of Lien-Fa Liu’s evidence was that he gave two quite different accounts in relation to the farmland. In his first witness statement, he said that the sellers wanted to sell “another piece of farmland” together with the Longtan Property; that he had wanted to buy the farmland for himself; that Lien-Sheng Liu had wanted to invest in the farmland jointly with Lien-Fa Liu; that Lien-Fa Liu had not wanted to

invest in the farmland jointly with Lien-Sheng Liu; and that, in the end, because of Lien-Sheng Liu's close relationship with Ming-Zhen Xu, Lien-Fa Liu had been cut out of the opportunity to buy the farmland.

115. In his second witness statement, Lien-Fa Liu said that this account was inaccurate. He attributed the mistake to a misunderstanding on the part of the lawyers who drafted his first statement and said that he had failed to notice the error when he approved the statement. In his second statement, he said that he had agreed to buy the 30 ping land from one of the sellers for NTD 5,000,000 (i.e. NTD 166,666 per ping) and to buy the 1437 ping land for NTD 9,772,807 (i.e. NTD 6,800 per ping) in order to secure the Longtan Property (at NTD 21,500 per ping). As with the Longtan Property, the contracts for these plots of farmland were executed by Lien-Sheng Liu because Lien-Fa Liu was out of the country on 6 August 2010. Nevertheless, Lien-Fa Liu had paid for the 30 ping land and NTD 7,850,000 towards the 1437 ping land between August 2010 and March 2011. The 30 ping land was registered in Lien-Fa Liu's name. As for the 1437 ping land, this was originally registered in Lien-Fa Liu's name; but it turned out that not all of the sellers had agreed to sell this land. Lien-Fa Liu then tried to acquire the land under Article 34(1) of the Taiwan Land Act (which appears to be a kind of compulsory purchase provision applicable where land is owned by multiple owners more than half of whom agree to sell, but the remainder do not). This was unsuccessful. In April or May 2012 Lien-Fa Liu was told by Ming-Zhen Xu's son that the 1439 ping land could not be registered in his name. Lien-Fa Liu tried to withhold the last instalment of the purchase price in order to get the matter resolved. Following a meeting between Lien-Fa Liu and Ming-Zhen Xu with the agent and the lawyer involved on 10 May 2012, Ming-Zhen Xu told him that the agent and/or the lawyer involved had mishandled the registration and this could not be fixed. Lien-Sheng Liu then approached him offering to buy part of the 1437 ping land. In an effort to keep him happy, Lien-Fa Liu agreed to sell 57.63% to Lien-Sheng Liu, and 17.62% to Yi-Hui Lin and to transfer the remaining 24.75% share to William Liu, pursuant to a sale contract dated 15 May 2012. Lien-Sheng Liu and Yi-Hui Lin paid Lien-Fa Liu for their shares of this land. In March 2011, a third plot of 1029 ping had become available to Lien-Sheng Liu. Lien-Sheng Liu asked Lien-Fa Liu if he wanted to invest with Lien-Sheng Liu and Yi-Hui Lin. Lien-Fa Liu agreed to this. Lien-Sheng Liu had executed the contract, and Lien-Fa Liu's share was 24.75%.
116. On the face of it, Lien-Fa Liu's explanation for the change in his story is not very plausible; but it cannot be dismissed, both because he made the change before he was challenged in cross-examination and because his second account is supported by documentary evidence.
117. Gorgeous Beauty does not dispute that the NTD 5 million purchase price for the 30 ping land and NTD 7.85 million towards the purchase price of the 1437 ping land was paid from an account in Lien-Fa Liu's name. Lien-Sheng Liu's evidence, however, was that the money was YSC's money. Specifically, he said that money from accounts in the name of Yi-Hui Lin and Mei-Chuan Liao was used to buy some funds and then money from the sale of those funds was used to buy the farmland. He said the reason why Lien-Fa Liu's account was used for the purchase was that companies were not allowed to buy farmland in Taiwan.
118. As Lien-Fa Liu accepted in cross-examination, there is documentary evidence that a sum of NTD 8,008,100 withdrawn from Yi-Hui Lin's account and a sum of NTD

6,606,580 withdrawn from Mei-Chuan Liao's account on 7 April 2009 were both invested in the China Mobility Fund, with Lien-Fa Liu being named as the remitter. That investment was sold for NTD 17,441,000 on 11 August 2009. The sum was then paid into Lien-Fa Liu's account. Lien-Fa Liu's account in cross-examination was that the NTD 14.6 million invested in the China Mobility Fund was a loan from YSC, that Lien-Sheng Liu had recommended that he invest in the Fund and that he had repaid the loan from Trillion's ChinaTrust account in Hong Kong. There are a number of problems with this account: it was not mentioned in Lien-Fa Liu's second witness statement; it was not put to Lien-Sheng Liu; there does not appear to be any documentary support for the repayment from Trillion; and I have concluded that Trillion was not Lien-Fa Liu's company.

119. There is a dispute between Gorgeous Beauty and the Defendants as to whether the account in Lien-Fa Liu's name into which the NTD 17.4 million was paid and from which the total of NTD 17.4 million was paid was a nominal account held by Lien-Fa Liu on behalf of YSC or a personal account. Lien-Sheng Liu's evidence on this point was ambiguous. Gorgeous Beauty disclosed the original passbook for the account and relied on this as showing that it was a nominal account, but Lien-Fa Liu's evidence was that he had lost this passbook when the Lien-Fa Branch were expelled from YSC on 28 June 2012. It was also his evidence that he was still using the account; but, even if true, that does not prove that it was not a nominal account at the time. Gorgeous Beauty also relied on the fact that the account was included in Mei-Chuan Liao's monthly lists of accounts (see paragraphs 61-62 above). In my view this is the best evidence as to the status of the account; but, given the evidence as to the source of the funds used to pay for the 30 ping and the 1437 ping land, it does not particularly matter if the account was Lien-Fa Liu's personal account.
120. Turning to the registration of the 30 ping and the 1437 ping land, the documents appear to support Lien-Fa Liu's account in his second witness statement. Furthermore, Lien-Sheng Liu's account in cross-examination was largely consistent with that of Lien-Fa Liu. According to Lien-Sheng Liu, Irene Liu was responsible for registering the 30 ping land in Lien-Fa Liu's name and for attempting to get the 1437 ping land registered in Lien-Fa Liu's name. He did not suggest that Irene Liu had done this without his knowledge, nor did he give an explanation as to why the land was registered in Lien-Fa Liu's name. On the other hand, he did say that, when the difficulty arose over registering the 1473 ping land, YSC had managed to "buy the land back". He also said that YSC were bringing proceedings in respect of the 30 ping land and had managed to freeze that asset.
121. In his witness statement Ming-Zhen Xu mentioned that Lien-Sheng Liu had purchased the 1437 ping land as well as the Longtan Property on behalf of YSC. He did not mention the 30 ping land, nor did he go into the questions of payment or registration of either plot. In cross-examination he agreed that the high price of the 30 ping land was agreed as part of the deal to secure the Longtan Property. He said that YSC had paid for both plots. He said that he did not know about the 30 ping being registered in Lien-Fa Liu's name. In relation to the 1437 ping land, he said that Irene Liu had tried to register this in Lien-Fa Liu's name (or Lien-Fa Liu and William Liu's names); that Lien-Sheng Liu had only discovered this later; that, when Lien-Sheng Liu discovered it, he called a mediation meeting with the scrivener and the lawyer

involved which led to the agreement dated 15 May 2012; and that the upshot was that the land was registered in accordance with the YSC shareholding structure.

122. Counsel for the Defendants submitted that Ming-Zhen Xu had given untruthful evidence about the registration of the 1437 land. The main foundation for this submission was that, according to Lien-Fa Liu's account in his second witness statement, he was summoned to the meeting between Lien-Fa Liu, Ming-Zhen Xu, the agent and the lawyer on 10 May 2012 by a letter from Ming-Zhen Xu's son Si-Qi Xu which is in evidence. When Ming-Zhen Xu was asked about this letter, he denied that it was authentic. Not only had no notice to prove been served by Gorgeous Beauty, however, but also the copy of the letter in evidence bears a fax header (albeit dated 18 May 2012) which includes Lien Hong's fax number. I accept that Ming-Zhen Xu's evidence about the authenticity of the document was untrue, and I have therefore approached his evidence on this subject with caution. I am not persuaded that this is a point of great significance, however, since much of his evidence in relation to the farmland was consistent with that of Lien-Fa Liu.
123. As with many other aspects of this case, I do not find either side's evidence satisfactory. So far as the 30 ping land is concerned, it seems to me that the fact that a high price was paid for this in order to secure the Longtan Property is a neutral point. The evidence on payment favours Gorgeous Beauty, while the evidence on registration favours the Defendants. If it stood on its own, I would find it difficult to come to a conclusion.
124. The position seems clearer in relation to the 1437 ping land, however. Again, the evidence on payment favours Gorgeous Beauty. So far as registration is concerned, there is quite a lot of common ground between the respective accounts. Neither account really explains how the agreement dated 15 May 2012 resolved the registration problem, but that is a neutral point. More importantly, I agree with counsel for Gorgeous Beauty that it is telling that the agreement provides for this land to be owned by Lien-Sheng Liu, William Liu and Yi-Hui Lin in the same proportions as the Lien-Sheng Branch's, Lien Fa Branch's and Minor Shareholders' holdings in YSC. Not only does this support Gorgeous Beauty's case that the land was intended to be owned by YSC's shareholders, but also Lien-Fa Liu had no alternative explanation for these percentages. I also note that the price quoted in the 15 May 2012 contract is the same as the price quoted in the 6 August 2010 contract. Against this, counsel for the Defendants relied on the fact that there was a sale at all and on Lien-Fa Liu's evidence that Lien-Sheng Liu and Yi-Hui Lin had personally paid amounts due under the contract as supporting the Defendants' case. I find these points less persuasive. So far as the existence of the contract is concerned, it seems to be common ground that this was needed to solve, and did solve, the registration problem. As to the source of the payments, counsel for Gorgeous Beauty accepted that some of the money had come from an account of Lien-Sheng Liu's which is listed in Mei-Chuan Liao's monthly records. I also note that Lien-Fa Liu gave evidence that Lien-Sheng Liu and Yi-Hui Lin had not paid in full. This aspect of the matter was not properly explored with any of the witnesses in cross-examination.
125. As for the 1029 ping land, this was not explored with any of the witnesses in cross-examination. On Lien-Fa Liu's own evidence in his second witness statement, however, the contract was executed by Lien-Sheng Liu and Lien-Fa Liu's share is 24.75% i.e. the same share as his Branch's share in YSC. Counsel for Gorgeous

Beauty informed me on instructions during closing submissions that Gorgeous Beauty agreed that this land was owned by the three groups of shareholders in the same percentages as their respective shareholdings in YSC.

126. My overall conclusion with regard to the three plots of farmland is that the balance of the evidence points towards this land having been acquired for YSC's shareholders.

*Use of Gorgeous Beauty to own the Longtan Property*

127. An important feature of this case is that it is common ground that it was decided that the Longtan Property should be owned through Gorgeous Beauty and its five Seychelles owners. It is also common ground it was decided that Gorgeous Beauty should hold the property through Gold Wealth and Golden Up, rather than through Always Green. It is also common ground that the objective of using this offshore structure was to avoid or reduce tax payable in Taiwan.
128. It is convenient before the examining the details of how the structure was put in place to note two points. The first is that it is not clear from either side's evidence why it was decided not to use Always Green for this purpose. Even if it is assumed that it was regarded as necessary or appropriate that the immediate owner of the Longtan Property should be a Taiwanese company, that does not explain why Golden Up came to be owned by Gold Wealth instead. For reasons that will appear, I think that this is a question which it was more important for the Defendants to answer than for Gorgeous Beauty to answer.
129. The second point is that neither side's written evidence explained how the use of this structure was intended to avoid or reduce tax. On Gorgeous Beauty's case, the structure was intended to operate in essentially the same way as the structure proposed in the 15 December 2009 memo (see paragraph 85 above). While, as I have said, it was not explained by either side how that structure would save YSC tax, it is common ground that it was intended to do so. Thus it is reasonable to suppose that the structure which was in fact adopted was suitable for that purpose. On the Defendants' case, however, the structure was intended to save William Liu tax. There was no attempt in any of the Defendants' witness statements to explain how this was supposed to work. When I raised this question while Eric Wu was giving evidence on day 8, counsel for the Defendants had to take instructions from Irene Liu on the point.
130. Lien-Sheng Liu and Ching-I Yang were somewhat vague in their witness statements as to how it came about that Gorgeous Beauty was used to own the Longtan Property, and even more vague as to precisely how it came about that Gold Wealth and Golden Up were inserted into the structure. In essence, however, their evidence was that it was decided to use the same investment structure which had been set up for the Yanjiang Property, but that Irene had suggesting setting up Gold Wealth and Golden Up and they agreed to her proposals.
131. Irene Liu's evidence was that she had she had discussed the acquisition of the Longtan Property with Eric Wu before she asked Ching-I Yang if she could "borrow" the Gorgeous Beauty structure. It therefore makes sense to consider these matters in that order.

*Irene Liu's alleged discussions with Eric Wu about the acquisition of the Longtan Property*

132. Irene Liu's evidence in her first witness statement was that, shortly after Lien-Fa Liu and William Liu had decided to acquire the Longtan Property for William in late July 2010, they discussed the acquisition with her, and she advised that it would be more tax-efficient for William to purchase the land in the name of a Taiwanese company. She also knew from previous experience of working with GenPro on behalf of YSC that it would be most tax-efficient for a foreign company to transfer the funds into Taiwan. She therefore called Eric Wu for advice on the most tax-efficient structure for William to purchase the Longtan Property. Eric Wu said that it was better to avoid the jurisdictions that YSC had previously used for its investments as they were no longer considered to be as tax-efficient. (She did not say that Mauritius was such a jurisdiction, however, let alone explain why.) Shortly afterwards, Eric Wu called her back and suggested a number of jurisdictions, of which the UK was one. She chose the UK. Eric Wu told her that two shareholders would be needed (because he was suggesting the setting up of an LLP, but she did not appreciate that at the time). Eric Wu advised that William Liu should not be the legal as opposed to the beneficial owner of the UK entity, since if he were the legal owner he would have to pay "full tax on the transaction". He also advised that it would be better for the second member of the UK entity to be set up in another jurisdiction. She told him that it was necessary to proceed quickly. Eric Wu expressed concern that it would not possible to set up two offshore companies in time for the transaction to go ahead. She asked if it would be possible to use existing foreign companies which had been set up by GenPro, but Eric Wu said that an ownership transfer would still be required. She asked for his advice as to the best way forward. He advised her to use Gorgeous Beauty, because he remembered that she was the sole director of Gorgeous Beauty, and so it would be easier for her to sign documents on behalf of Gorgeous Beauty, and because Gorgeous Beauty was set up in the Seychelles, which was a tax-friendly environment. In cross-examination Irene Liu maintained this account.
133. Eric Wu's evidence in his witness statement with regard to the establishment of Gold Wealth was rather brief. (Gorgeous Beauty waived privilege in respect of earlier communications between Gorgeous Beauty's solicitors and Mr Wu, but the earlier communications only add a little more detail.) He said that Irene Liu had asked him what the Taiwanese tax rate for a Taiwanese subsidiary was and for a copy of a tax treaty which Taiwan had signed. He denied providing tax advice relating to the purchase of a property in Taiwan. Subsequently Irene Liu had asked him to incorporate a UK LLP. He informed her that a UK LLP required two members, and Irene Liu told him the members would be Gorgeous Beauty and William Liu. He was aware that Irene Liu intended to set up a Taiwanese subsidiary, but knew nothing about that company, not even its name. In cross-examination Eric Wu maintained this account, except that he clarified that what Irene Liu had asked for was a list of countries with which Taiwan had signed tax treaties. In particular, he maintained that he had followed Irene Liu's instructions with regard to the setting up of Gold Wealth.
134. Counsel for Gorgeous Beauty submitted that Eric Wu's account was to be preferred, while counsel for the Defendants submitted that Irene Liu's account was to be preferred. In assessing the rival accounts, the starting point is that, as mentioned above, Eric Wu was an independent witness and a witness whom counsel for the Defendants accepted was honest. Counsel for the Defendants submitted, however, that

Eric Wu was defensive and that his recollection was poor. I think there is some force in both points. So far as the first point is concerned, I think Eric Wu may have been concerned lest GenPro be blamed for the current dispute. As to the second, it was clear (and unsurprising) that Eric Wu's recollection was less than perfect. I do not consider, however, that either of these points detracts significantly from the reliability of Eric Wu's evidence.

135. Turning to Irene Liu's evidence, counsel for Gorgeous Beauty submitted that it was incredible for a number of reasons which I will consider. The first is that, on her account, she asked Eric Wu for tax advice in relation to an investment by William Liu in Taiwanese property without telling Eric Wu (i) what the purchase price was, (ii) what the source of the funds for the purchase was and (iii) whether the property was to be income generating or purchased purely for capital gain. I agree that this seems implausible, particularly the last point.
136. The second reason is that, on her account, Eric Wu advised her that William Liu should not be the legal, as opposed to the beneficial, owner of the UK entity in order to avoid paying full tax on the transaction. As noted above, there was no explanation in any of Irene Liu's witness statements as to why it was supposed to be advantageous from a tax perspective for William Liu to own Gold Wealth beneficially rather than legally. The case put to Eric Wu in cross-examination was that, if William Liu owned the Longtan Property personally, he would be liable for 45% tax when he sold it, whereas if the majority of the profits were passed up through an offshore company, the profits would be taxable offshore. Eric Wu's evidence was that he could not see that William Liu would derive a tax advantage from investing in this way, although he also said that he did not know about property tax rates and that, if a foreign company invested in Taiwan the tax rate was 20%, but if the foreign company was a UK company the tax rate was 10%. Irene Liu's explanation in cross-examination was somewhat different, namely that she was told by Eric Wu that, if William controlled the UK company then, on the sale of the property, William would be liable for tax in Taiwan for his share of the profits within a single tax year, whereas if he did not control the UK company, he would only be liable for tax in Taiwan when he drew profits down from the UK company, which he could do over a number of years. In my view, the way in which this explanation emerged casts doubt on the credibility of this explanation. So too does the nature of the final explanation, since it presupposes that Eric Wu was in a position to, and did, provide relatively sophisticated tax advice.
137. The third reason is that, on her account, it was Eric Wu who suggested the use of Gorgeous Beauty, having remembered that she was the sole director. Eric Wu denied suggesting the use of Gorgeous Beauty, and I agree that it is implausible that Eric Wu should have remembered Irene Liu's directorship from six months beforehand and been prompted by that recollection to suggest the use of Gorgeous Beauty.
138. The fourth reason is that, on her account, a key reason for using Gorgeous Beauty as one of the members of Gold Wealth was there was insufficient time to set up another offshore company. Eric Wu denied this, saying that an off-the-shelf offshore company could be set up in three days. Although both sides rely on the time it took to set up Gorgeous Beauty and its owners, it seems to me that this provides more support to Gorgeous Beauty than to the Defendants. Above all, as counsel for Gorgeous Beauty pointed out, Golden Up was not incorporated until 26 October 2010, some 2½ months after the contract to purchase the Longtan Property was executed. This shows that

there was no need for the corporate structure to be in place before the contract was executed. Furthermore, there is no evidence that Irene Liu expressed any concern over the delay during this period or tried to speed up the incorporation of Golden Up.

139. The fifth reason is that, if there was a need for an offshore company to be the second member in Gold Wealth and particularly if there was a need for speed, the obvious course was to use Intelligent Power, which Irene Liu owned. When this was put to her in cross-examination, Irene Liu said that there would have been no tax benefit if Intelligent Power was used. She did not explain why not, however. I do not find this plausible.
140. For these reasons, I prefer Eric Wu's evidence on this topic to that of Irene Liu.

*Irene Liu's alleged discussions with Ching-I Yang about using Gorgeous Beauty*

141. Irene Liu's evidence (both in her first witness statement and in cross-examination) was that, following her conversations with Eric Wu, she sought and obtained Ching-I Yang's permission to "borrow" the Gorgeous Beauty structure for the purpose of acquiring the Longtan Property for William Liu. She said that the Longtan Property was being purchased by William, of which Ching-I Yang said she was already aware. She then explained that the proposal was for the land to be held through a Taiwanese company owned through a UK entity. She relayed GenPro's advice that it was necessary for there to be a second member of the UK entity, which should be a foreign company and that, because time was short, she wanted to use the Gorgeous Beauty structure although William was to be the ultimate beneficial owner. After some discussion, Ching-I Yang agreed to this request. It was agreed that Yan-Fen Xue would bring any paperwork to Ching-I Yang. Irene Liu then called Eric Wu back, confirmed that Gorgeous Beauty would be the second member of the UK entity and asked him to send any documentation to Yan-Fan Xue.
142. Ching-I Yang denied this account. Again, I shall defer expressing a conclusion as to who is right about this. It is convenient, however, to address at this stage three points which were relied on by counsel for the Defendants as demonstrating that her evidence about the establishment of Gold Wealth was untrue.
143. The first concerned a suggested discrepancy between paragraph 3.9 of her witness statement and her oral evidence. In my view a more likely explanation is that the witness became confused in her oral evidence on this point. Both in her witness statement and in her oral evidence, she said that she was told by Irene Liu around the time the Longtan Property was being acquired that the plan was to use a structure involving a UK entity and a new Taiwanese subsidiary and that she agreed to this.
144. The second point was that the evidence showed that Ching-I Yang had approved the documentation for the establishment of Gold Wealth. Ching-I Yang accepted that she had approved payments for the setting up of Gold Wealth, but it does not necessarily follow that she approved the documents. I shall consider the documentation below.
145. The third point was that Ching-I Yang had falsely claimed she had only learned about William Liu's 1% stake in Gold Wealth after work hours on 30 December 2010 (although the witness said 2011, it is clear that she meant 2010), that she was told that this was necessary to obtain a bank loan the next day in order to pay back YSC's bank



loan and that William Liu was chosen because he was in the office that evening. I agree that this account is implausible and difficult to reconcile with the documentary evidence. In saying this, I should make it clear that I have made full allowance for the fact that the English translation of paragraph 3.10 of Ching-I Yang's witness statement turned out to be significantly inaccurate.

*The establishment of Gold Wealth*

146. The documentary evidence with regard to the establishment of Gold Wealth is as follows. On 10 August 2010 Yu-Rong Zeng of GenPro sent Irene Liu at YSC an invoice stating:

“Your application for registration of the United Kingdom (LLP) offshore company with the name of GOLD WEALTH L.L.P. (agreed capital of £8,000,000) has been approved upon completion of review. This name will be reserved for you for three days. You are advised to transfer the service fee of US\$ 4,000 (establishment fee of US \$ 1,5000 and foreign legalization fee of US\$ 2,500) (by August 13, 2010) to the following bank account:

...

Upon receipt of your payment, we will immediately proceed with the above corporate registration for and on behalf of you. Thank you!”

147. This fee was paid by Great View, as is shown by a ChinaTrust telegraphic transfer application form in the name of Great View dated 11 August 2010. A YSC journal entry voucher in respect of this payment dated 11 August 2010 was authorised by Ching-I Yang.

148. On 12 August 2010 GenPro faxed to YSC's finance department a letter dated 11 August 2010 in which YSC authorised GenPro to register Gold Wealth LLP on behalf of YSC and confirmed the accuracy of the information set out. Since it was page 2 of the fax, it appears that there was a cover sheet, but the cover sheet is not in evidence. The letter specified that Gorgeous Beauty was to hold 99 shares and Irene Liu one share and that the ultimate beneficial owner was Irene Liu. The letter was signed by Irene Liu. The copy in evidence has Irene's name circled in three places and has been crossed out. It also bears an annotation in Yan-Fan Xue's handwriting which reads “To Mr Wu [fax number]”. There is also in evidence a similar letter dated 16 August 2010, again signed by Irene Liu. The 16 August letter differs from the 12 August letter in naming William Liu, rather than Irene Liu, as the holder of one share and as being ultimate beneficial owner.

149. Irene Liu's evidence was that Yan-Fan Xue brought her the 12 August version to sign and that, after she had signed it, she noticed the mistake and therefore instructed Yan-Fan Xue to ask GenPro to correct it. Yan-Fan Xue had later brought her the 16 August version to sign. She attributed the mistake to the fact that she had been the one dealing with GenPro. Contrary to the submission of counsel for Gorgeous Beauty, I find this plausible. Yan-Fan Xue accepted that she had been told to fax the 12 August version

and had then filed it, but said that she did not look at the contents. She did not remember the 16 August version.

150. On 19 August 2010 Roy Kung of GenPro sent a fax to Philippa Muwanga of ILS Fiduciaries (UK) Ltd (“ILS”) stating that GenPro had been authorised “by our client” to set up Gold Wealth. This fax again specified that Gorgeous Beauty was to have a 99% interest and William Liu was to have a 1% interest and was to be the beneficial owner. There is also in evidence what appears to be a standard-form ILS “incorporation instruction sheet” which was signed by Julia Chyn of GenPro and dated 20 August 2010. This contains the same information.
151. On 20 August 2010 ILS arranged for Gold Wealth to be incorporated by two BVI companies, Oaklawn Ltd and Penleigh Ltd, who then transferred their interests in Gold Wealth to Gorgeous Beauty (as to 99%) and William Liu (as to 1%) on the same day. ILS also prepared an operating agreement for Gold Wealth dated 20 August 2010. This was later signed by Irene Liu (as director of Gorgeous Beauty) and by William Liu.
152. Also on 20 August 2010 ILS sent GenPro a pack of documents relating to Gold Wealth under cover of a letter of the same date. The letter listed the enclosures as follows:
  - i) company seal;
  - ii) certificate of incorporation;
  - iii) resolution of members.
  - iv) transfer form to Gorgeous Beauty;
  - v) transfer form to William Liu;
  - vi) resignation letters of Penleigh and Oaklawn;
  - vii) member certificate issued to Gorgeous Beauty;
  - viii) member certificate issued to William Liu;
  - ix) copies of forms LLTM01, LLIN01, LLAP01 and LLLAP02 filed at Companies House;
  - x) “Original Declaration of Trust for Gorgeous Beauty Limited to be signed by an authorised signatory and witness. Please scan copy for our files”;
  - xi) operating agreement to be signed by both members and returned;
  - xii) receipted invoice.
153. It appears that GenPro received the pack of documents and forwarded them to YSC together with a receipt for signature. Someone ticked off the documents and Irene Liu signed the receipt. The receipt was then returned to GenPro. Eric Wu’s evidence was that this was in accordance with GenPro’s normal practice. It is far from clear from

the evidence, however, how long this process would have taken. In particular, it is not clear how long it took for the pack of documents to get to YSC, since it is not clear how the pack was transmitted either from ILS to GenPro or from GenPro to YSC. I think it is probable that it was transmitted from ILS to GenPro by courier, and that it was transmitted from GenPro to YSC by post.

154. It can be seen from this review that the documentation relating to the establishment of Gold Wealth is supportive of the Defendants' case that Gold Wealth was set up with the intention that it should be beneficially owned by William. On the other hand, it does not prove that Lien-Sheng Liu or Ching-I Yang were aware of that at the time. Furthermore, it supports Gorgeous Beauty's case that the setting up of Gold Wealth was paid for by YSC (through Great View).

*Creation and execution of the Declaration of Trust*

155. The Declaration of Trust is in English. It reads as follows:

"Declaration of Trust

We, GORGEIOUS BEAUTY LIMITED

HEREBY ACKNOWLEDGE AND DECLARE that we hold  
99%

Limited Liability interest in the Company called GOLD  
WEALTH LLP

(hereinafter called 'the Membership Interest') registered in our  
name as nominee of and Trustee

For William Liu of No 18, Alley 25, Lane 363, Chin Hu Rd,  
Nei Hu Dist, Teipei, Taiwan, R.O.C.

(hereinafter called 'the Owners') and WE UNDERTAKE  
AND AGREE not to transfer deal with or dispose of the  
Membership Interest save as the Owner may from time to time  
direct. FURTHERMORE we irrevocably assign to the Owner  
the right to receive any dividends which may be declared on the  
Membership Interest together with all profits and other monies  
which may be paid or payable to use from time to time upon  
the Membership Interest or in respect thereof, AND WE  
FURTHER AGREE AND UNDERTAKE to exercise our  
voting power as Holders of the Membership Interest in such a  
manner and for such purpose as the Owner may from time to  
time direct or determine.

DATED THIS 20<sup>th</sup> August 2010

SIGNED: [Irene Liu]

Authorised Signatory

Witness: [Mei-Chuan Liu]

Address: [No. 5, Lane 8, Guoji 2nd Rd, Yingge Township,  
Taipei, Taiwan (R.O.C.)]

Occupation: [MERCHANT]”

156. Curiously, neither side has disclosed the original of this document. A copy was disclosed by Gorgeous Beauty, but not by the Defendants. Although Gorgeous Beauty had challenged the authenticity of the document, the challenge was not pursued at trial.
157. It is common ground that:
- i) It is probable that the Declaration of Trust was drafted by ILS.
  - ii) The Declaration of Trust was signed by Irene Liu as authorised signatory. It is unlikely that she signed the document on 20 August 2010, since she was on a business trip from 16 to 26 August 2010. It is likely that she signed it shortly after her return.
  - iii) It was signed by Mei-Chuan Liao as witness.
  - iv) Yan-Fan Xue wrote Mei-Chaun’s address and occupation on the document in manuscript in English.
158. It is not suggested by either side that either Lien-Sheng Liu was involved in the creation or the execution of the Declaration of Trust. Nor is it suggested by either side that either Lien-Fa Liu or William Liu were involved.
159. In her first witness statement Irene Liu said that, at the time, she had assumed that the Declaration of Trust had been drafted by GenPro, and was not aware of the involvement of ILS. She did not say that she had given instructions for the Declaration of Trust to be created. Rather, she implied that GenPro had created the document in order to give effect to her instructions as to the beneficial ownership of Gold Wealth. In cross-examination, she confirmed that she had not instructed anyone to draft the Declaration of Trust.
160. As to the execution of the document, Irene Liu said that Yan-Fan Xue had brought the document to her. Given that the document was in English, Yan-Fan Xue had told her that Yan-Fan Xue had already telephoned GenPro to ask what it was and who it was for. GenPro had explained to her what the document was and its content, and told her that the document had to be signed by Irene Liu and witnessed. After Yan-Fan Xue explained this, Irene Liu signed it. She and Yan-Fan Xue then took it to Ching-I Yang for Ching-I Yang to sign as a witness. She explained the purpose of the document to Ching-I Yang and left Yan-Fan Xue to explain it further. Later Yan-Fan Xue reported that Ching-I Yang had approved the document, but directed that it be witnessed by Mei-Chuan Liao. Irene Liu asked Yan-Fan Xue to take the document to Mei-Chuan Liao, and heard Yan-Fan Xue explain the document to Mei-Chuan Liao. After Mei-Chuan Liao had signed it, Yan-Fan Xue had brought the document back to Irene Liu, who asked her to post it back to GenPro. Irene Liu did not offer any explanation as to

why or how Mei-Chuan Liao's address and occupation came to be written in English. In her third witness statement, however, Irene Liu said that Mei-Chuan Liao "dealt with these matters herself as it was her role to process documents" and that she did not know where Mei-Chuan Liao got the address from. She maintained this account in cross-examination.

161. Counsel for Gorgeous Beauty submitted that counsel for the Defendants had not properly put Irene Liu's account to Ching-I Yang, but I disagree. I consider that counsel for the Defendants did put the essential points to Ching-I Yang. Ching-I Yang denied that Irene Liu and Yan-Fan Xue had explained the Declaration of Trust to her and denied that she had instructed Mei-Chuan Liao to sign it.
162. Yan-Fan Xue gave evidence that she was asked by Irene Liu to obtain the English version of Mei-Chuan Liao's address and write it on the Declaration of Trust together with the word MERCHANT which Irene Liu gave her to copy. Since she does not read English, she did not understand the document. When asked how she was able to obtain Mei-Chuan Liao's address in English, she said that she obtained it from the Taiwan Post Office website. It is common ground that this is possible (there is a slight discrepancy between the address as it appears on the Declaration of Trust and the address as it appears on website now, but it is common ground that this could be explicable by a change in the website). Yan-Fan Xue denied that she had received the Declaration of Trust from GenPro, or that she had received the pack of documents in which the Declaration of Trust was included. She also denied telephoning GenPro to ask about the Declaration of Trust. She also denied taking the document with Irene Liu to Ching-I Yang and explaining it to Ching-I Yang. She also denied telling Mei-Chuan Liao that Ching-I Yang had instructed Mei-Chuan Liao to sign the document.
163. It was put to Yan-Fan Xue that she was lying because she was close to the Lien-Sheng Branch and was afraid of losing her job. Yan-Fan Xue has only been employed by YSC for nine years, however. Unlike Mei-Chuan Liao, she is not a shareholder in YSC. Unlike Mei-Chuan Liao, nothing specific was put to her to establish that she was close to the Lien-Sheng Branch. Counsel for the Defendants submitted that an analysis of the evidence showed that she had downplayed her involvement in various aspects of the dispute, and hence that she was untruthful. I am not convinced of this, however.
164. Mei-Chuan Liao gave evidence that Irene Liu had asked her to sign the document. Since she does not read English, she did not understand what she was signing. She was told by Irene Liu that it was a banking document. She denied that Yan-Fan Xue had explained it to her. She also denied that Yan-Fan Xue had told her that Ching-I Yang had instructed her to sign the document.
165. It was put to Mei-Chuan Liao that she was lying because she was close to the Lien-Sheng Branch (particularly Ching-I Yang). There is no doubt that Mei-Chuan Liao has been employed by YSC for a long time. Furthermore, she is a shareholder and thus has a small financial interest. I accept that the evidence shows that Mei-Chuan Liao is close to Ching-I Yang. I have already concluded that another aspect of Mei-Chuan Liao's evidence is unreliable. Accordingly, if Mei-Chuan Liao's evidence on this topic stood alone, I would treat it with caution.

166. Eric Wu denied knowing anything about the Declaration of Trust. He said that his role was as a salesman, and that he passed on the client's instructions to other people in GenPro to implement them. Thus he would not have been involved with the documentation for the establishment of Gold Wealth (evidence that is corroborated by the names of the GenPro representatives on the documents).
167. Counsel for the Defendants relied strongly on hearsay evidence given by Eric Wu that someone had telephoned someone at GenPro asking for a translation of the Declaration of Trust, the document had been briefly translated and the caller had been informed that for a complete translation they should ask a professional translator. While I recognise the potential importance of this evidence, I do not feel able to place weight on it. First, Eric Wu was not personally involved. Secondly, Eric Wu's unknown informant did not identify the caller. Thirdly, in my view there is some uncertainty as to the time when the call took place. Counsel for the Defendants submitted that it was clear that it was August 2010, but I do not agree. Particularly given the reference to getting a professional translation, I think it is at least possible that the evidence referred to a call in June or July 2012 (see further below). Fourthly, I am doubtful that Yan-Fan Xue would have called GenPro in August 2010 for the reasons explained below.
168. Again, I will defer expressing a conclusion for the moment. At this stage I note the following points.
169. First, it is Irene Liu's word against that of Ching-I Yang, Mei-Chuan Liao and Yan-Fan Xue. For the reasons I have given, I accept that the evidence of Ching-I Yang and Mei-Chuan Liao is to be treated with caution. I have less hesitation in accepting the evidence of Yan-Fan Xue, however.
170. Secondly, given the conflict of evidence, it is necessary to consider which account is more probable. Both counsel attacked the plausibility of the other side's account. Counsel for Gorgeous Beauty submitted in particular that it was implausible that Irene Liu had not instructed anyone to draft the Declaration of Trust. Counsel for the Defendants submitted in particular that it was implausible that Mei-Chuan Liao was told by Irene Liu that the Declaration of Trust was a banking document. I do not regard either of these suggestions as particularly implausible, however. Overall, I consider that Gorgeous Beauty's account is more plausible than Irene Liu's, but only somewhat so.
171. Thirdly, it is also necessary to consider which account is more consistent with the documentary evidence. Here it seems to me that there are two matters which favour Gorgeous Beauty's account. The first is that, as described above, it seems clear that what GenPro sent YSC was a pack of documents relating to Gold Wealth, of which the Declaration of Trust was one. It is not clear from the documentary evidence whether the pack was received by Irene Liu or Yan-Fan Xue. Even if the pack was received by Yan-Fan Xue, however, I consider it probable that Yan-Fan Xue would have brought Irene Liu the whole pack. It does not strike me as likely that Yan-Fan Xue would only have brought Irene Liu the Declaration of Trust. Nor does it strike me as probable that Yan-Fan Xue would have spontaneously telephoned GenPro for a translation of the Declaration of Trust.

172. The second matter is the English address and occupation given for Mei-Chuan Liao on the Declaration of Trust. As noted above, Irene Liu didn't really have an explanation for how these came to be there. By contrast, Yan-Fan Xue did have an explanation and a plausible explanation at that.

*The power of attorney*

173. On 25 August 2010 a power of attorney was signed by Irene Liu (as director of Gorgeous Beauty) and William Liu on behalf of Gold Wealth appointing Michael Liu as agent. The scope of his authorisation was specified as:

“All matters concerning the investment application to the government of the Republic of China, application and document filing and receiving with regard to investment and capital increase.”

174. This is a rather odd document, but in the end neither counsel relied upon it as supporting their respective cases and so I will not delve into the evidence relating to it.

*The establishment of Golden Up*

175. Golden Up was incorporated in Taiwan on 25 October 2010. Michael Liu, William Liu and Chao-Yu Liu were appointed as directors and Jessie Liu as “supervisor” by a document signed by Irene Liu (on behalf of Gorgeous Beauty) and William Liu on 6 October 2010.
176. Irene Liu gave evidence that the reason why Michael Liu and Chao-Yu Liu were appointed as directors of Golden Up was that this was requested by Lien-Sheng Liu in order to ensure that the Longtan Property could not be sold without the Lien-Sheng Branch's consent. Counsel for Gorgeous Beauty submitted that this account was not credible, because it was inconsistent with Irene Liu's own evidence that, at that time, the family operated on the basis of trust and that, for that reason, there was no need to record the alleged loan from YSC to William.
177. Michael Liu gave evidence that he could not recall who had asked him to be a director of Golden Up, but that the reason he and Chao-Yu Liu had been asked was so that the directors roughly reflected the shareholding in YSC. Counsel for the Defendants submitted that this account was not credible because it did not explain why no director from the Lin or Yang families was appointed and because YSC's normal practice in appointing directors of offshore affiliate companies was to appoint a single individual.
178. I do not consider either account to be very plausible. Since, in my view, the appointment of the directors, and the reasons for it, are only a small factor in the overall assessment I see little point in trying to decide which account I prefer.
179. Perhaps more importantly, it is common ground that the set-up costs were paid by YSC.

*Payment for the Longtan Property*

180. An important, but complicated, aspect of the dispute over the Longtan Property concerns the manner in which the purchase was intended to be financed and was in fact financed. Under the contract for the purchase of the Longtan Property, the price was due to be paid in four instalments between 6 August 2010 and 31 December 2010. In the event, it was paid in five instalments between 6 August 2010 and 15 December 2011. There is relatively little dispute as to what the documentary evidence shows with regard to when and how these payments were made. The dispute is as to what was intended and why the payments were made in the manner that they were.
181. In summary, Gorgeous Beauty says that it was always intended that YSC would finance Golden Up's acquisition of the Longtan Property, albeit that it ended up doing so partly with the assistance of two bank loans. The Defendants say that it was originally intended that William Liu would obtain a bank loan for 70-80% of the purchase price and borrow the remainder from YSC, but in the event there were problems with the bank loan and William Liu ended up borrowing about 80% of the money from YSC (or its affiliates) while the rest came from Trillion. Thus it is common ground that most of the money came from YSC even if Trillion was Lien-Fa Liu's company rather than a YSC affiliate. It is also common ground that none of the money came from William Liu personally or from Lien-Fa Liu personally. It is also common ground that there are no documents to show that the money borrowed from the bank, and from YSC or its affiliates, was to be an interest-free loan to William Liu (or Lien-Fa Liu). Gorgeous Beauty relies on these matters as showing that the Longtan Property was purchased for the benefit of YSC's shareholders. The Defendants dispute this.
182. Before turning to the details of what actually transpired, it is convenient first to consider the Defendants' evidence as to how the Lien-Fa Branch intended to finance the purchase of the Longtan Property. Lien-Fa Liu said in his witness statement that he had asked Irene Liu about obtaining a bank loan, and she said that she thought it was likely that a bank would lend 70-80% of the purchase price. Lien-Fa Liu explained this to Lien-Sheng Liu and asked if he could temporarily borrow the remainder from YSC and repay the money when the land was sold. Lien-Sheng Liu agreed to this. Lien-Fa Liu asked Irene Liu to make the necessary arrangements.
183. In cross-examination, Lien-Fa Liu maintained that he had discussed obtaining a bank loan for part of the purchase price, and YSC lending the remainder, with Lien-Sheng Liu. There were at least two oddities in his account, however. First, he was singularly unclear as to whether it was William or himself that Lien-Sheng Liu had agreed could borrow from YSC. Secondly, and more importantly, he said he had not discussed either the amount or the period of the loan from YSC with Lien-Sheng Liu. On his account, he appears to have assumed that Lien-Sheng Liu would somehow understand that he/William were going to borrow 70-80% of the purchase price from the bank, and the balance from YSC, for an indeterminate period. I do not find this plausible.
184. William Liu simply confirmed his father's account in his witness statement. It was clear from his oral evidence that he had little, if any, involvement in the financing of the purchase.
185. Irene Liu said in her first witness statement that her father had told her that Lien-Sheng Liu had agreed to William being given a temporary interest-free loan from YSC, for which Lien-Fa Liu would effectively stand as surety. She also said that she



had agreed to look into William taking out a bank loan. She went on to deal with the details of the payments made and how they were funded. She did not say that she had told her father that a bank would be likely to lend 70-80% of the purchase price, or what the split between bank borrowing and YSC borrowing was intended to be, or how it was intended to service the interest on the bank loan. Nor did she clarify these matters in her second and third witness statements.

186. In cross-examination, Irene Liu said that the intention was to borrow 70-80% of the purchase price from a bank and 20-30% from YSC. When asked about how the interest on the bank loan was to be serviced, she said that 80% would be borrowed from the bank, of which 10% would be used to service the interest payments for up to five years. When it was put to her that this did not make economic sense, she said that Taiwanese banks were making very little profit and were inviting customers to borrow more money than they needed and to deposit the extra with the bank. I do not find this plausible.
187. It is common ground that the first instalment of NTD 30 million was paid by YSC on 6 August 2010 by means of two cheques made payable to the vendors of the Longtan Property and that the payment was authorised by the chops of YSC, Lien-Sheng Liu and Lien-Fa Liu. It does not appear to be disputed that the payment was accounted for as an inter-company loan from YSC to Golden Up. Irene Liu said that the payment had been made by YSC because Golden Up had not yet been set up.
188. Irene Liu's evidence was that, shortly after 6 August 2010, she had approached the Pingzhen branch of Yuanta Bank seeking a loan of 70-80% of the purchase price. She told the bank that the borrower would be a company owned by the Lien-Fa Branch, but not that the beneficial owner would be William Liu in particular. Nor did she give the bank any indication of how much she was looking to borrow or what the term of the proposed loan was. She was told that a valuation would be necessary. After her return from a business trip on 26 August 2010, she had a further discussion with the bank about the loan. She was told that in principle the bank could authorise the loan, but not how much the bank was prepared to loan. She assumed that the bank had undertaken a valuation, but she was not expressly told that it had, let alone what the valuation (if any) was. Subsequently, she spoke to the bank a number of times about arranging the documentation for the loan, during which she explained the investment structure in rough outline. Even leaving aside that the absence of any supporting documentary evidence, I find this account implausible.
189. It is common ground that between the end of September 2010 and 6 October 2010 Great View made a series of five transfers in various currencies totalling NTD 92 million via Gold Wealth to Golden Up, which was the paid up capital required to establish Golden Up. Irene Liu said that she agreed this with Ching-I Yang.
190. It is common ground that the second instalment of the purchase price of the Longtan Property of NTD 107 million was paid by Golden Up on 1 November 2010 and that this sum came from two sources. NTD 92 million came from the funds Golden Up had received from Great View. NTD 15 million came from a YSC account in the name of Yi-Hui Lin. It is also common ground that, in effect, both sums were lent by YSC. Irene Liu said that she had asked Ching-I Yang to agree to this because the bank had not issued a loan and that Ching-I Yang had agreed.

191. Irene Liu gave evidence that, after the second instalment had been paid, she chased Yuanta Bank for an update on the progress of the loan, and was told that the bank was concerned about lending to Golden Up because of the complexity of the corporate structure. There was still no discussion about the amount of the loan. When asked why she did not ask Lien-Fa Liu to intervene, she said that she did not think that this was necessary. On the Defendants' case, however, Lien-Fa Liu had more than sufficient assets to repay the loans to both the bank and YSC in full. It is therefore difficult to see why the bank would not have been reassured by the offer of a guarantee from Lien-Fa Liu.
192. It is common ground that the third instalment of the purchase price of the Longtan Property of NTD 55 million was paid by Golden Up on 30 November 2010 and that YSC lent this money to Golden Up. It is also common ground that in late December 2010 Golden Up took out a bank loan of up to NTD 170 million from Yuanta Bank, which was secured on the Longtan Property and guaranteed by YSC, and that NTD 85 million was drawn down and used to repay the first and second loans from YSC (of NTD 30 million and NTD 55 million respectively). It is also common ground that the interest payable on this loan was offset against interest earned by Gold Wealth on a deposit of US\$ 5 million transferred by Great View to Gold Wealth in late November 2010 and that the reason why this was done was because the NTD was expected to appreciate against the US\$ by April/May 2011.
193. Aspects of this part of the story can be said to support both sides' case. Gorgeous Beauty's case is supported not only by the fact that YSC was the source of both the NTD 55 million and the US\$ 5 million, but also by the fact that the Yuanta Bank loan was guaranteed by YSC rather than by Lien-Fa Liu. I consider that it also receives some support from a memorandum setting out the proposal to set off the interest payments dated 22 December 2010 which was prepared by Yan-Fan Xue and approved by Mei-Chuan Liao, Lien-Fa Liu, Irene Liu, Ching-I Yang and Lien-Sheng Liu. This reads as if Golden Up is a YSC affiliate.
194. On the other hand, there is documentary evidence that, when Golden Up repaid YSC the NTD 85 million on 31 December 2010, it also paid NTD 336,493 in interest. Lien-Fa Liu and Irene Liu gave evidence that they did this because of the amount of the money borrowed from YSC.
195. It is common ground that the fourth instalment of the purchase price of NTD 62,354,189 was paid by Golden Up on 4 January 2011 using a further loan of NTD 65 million from YSC. It is also common ground that a further NTD 55 million was drawn down from Yuanta Bank on 17 June 2011 (making a total of NTD 140 million). NTD 35 million of this sum was repaid to YSC on 20 June 2010 (without interest).
196. It appears from the documentary evidence that on 9 August 2011 Golden Up received the proceeds of the US\$ 5 million deposit (plus interest) converted into NTD, which it used to repay Yuanta Bank.
197. It is common ground that the fifth and final instalment of the purchase price of NTD 20 million was paid by Golden Up on 15 December 2011 using the remainder of the second tranche of the loan which had been drawn down from Yuanta Bank in June.

198. It is common ground that Trillion paid Gold Wealth US\$ 1 million on 10 November 2011. This was then transferred to Golden Up, converted into NTD and used to make repayments to YSC as follows: NTD 15 million on 30 December 2011, NTD 14.8 million on 23 May 2012 and NTD 200,000 on 25 May 2012. If Trillion was a YSC affiliate, then these sums came from YSC.
199. Overall, I consider that the evidence with regard to the financing of the purchase of the Longtan Property is more supportive of Gorgeous Beauty's case than of the Defendants' case, but that it is not all one way.

*Did YSC intend to build a new factory on the Longtan Property?*

200. As discussed above, it is Gorgeous Beauty's case that YSC's shareholders purchased the Longtan Property for use as the site of a new factory. The Defendants dispute this. I have already addressed the Defendants' contention that the Longtan Property was not suitable for that purpose, and concluded that the evidence failed to establish this. Both sides rely upon events in 2011 as supporting their case with regard to the intended use of the site.
201. Gorgeous Beauty relies on evidence given by Lien-Sheng Liu that, in about May 2011, he had requested an employee at YSC called Sin Jie Chen to draw up a floor plan for the factory to be built at the Longtan Property which on its face is dated 3 May 2011. This was based on a draft which Lien-Sheng Liu had himself made and which he said he had spent some time working on. The Defendants challenge the authenticity of these documents, but there is no specific evidence that they are not what they appear to be. Counsel for the Defendants submitted that Lien-Sheng Liu's evidence on this topic was incredible. I do not consider it incredible, but nor do I consider it particularly convincing.
202. For their part, the Defendants rely upon the admitted fact that YSC extended its existing Taiwanese factory in 2011. The Defendants suggest that this belies the idea that YSC intended to build a new factory. I do not consider that this sheds much light on the issue, however. After all, it is common ground that in December 2009 YSC was contemplating building a new factory in China.

*Deterioration of relations between late 2011 and June 2012*

203. It is common ground that the relationship between the Lien-Sheng Branch and the Lien-Fa Branch began to deteriorate from late 2011 or early 2012, but the parties paint a different picture as to the causes, and course, of the deterioration.
204. Gorgeous Beauty relies on a series of disputes over the management of YSC as showing that the Lien-Fa Branch were frustrating the proper operation of the company. I will briefly consider each of these incidents in turn.
205. First, on 24 November 2011 Irene Liu sent Michael Liu and a colleague at the Dongguan factory complaining that they had used certain funds without the prior approval of the Head Office Finance Department. Michael Liu gave evidence that he could not remember the details of this incident, but nevertheless claimed that it was an attempt by the Lien-Fa Branch to control YSC's finances. This is plainly an exaggeration, not least because the Finance Department was headed by Ching-I Yang.

Nevertheless, I consider that the email does evidence a degree of ill-feeling between Irene and Michael, since it includes the statement “This constituted a minor violation of ethical standards at workplace and a lack of respect we deserve”.

206. Secondly, on 27 April 2012 Lien-Sheng Liu issued a direction that Irene Liu would be responsible for auditing YSC’s financial statements and making any supplemental tax payments, in order to ensure that YSC’s tax affairs were in order with a view to YSC being listed on the stock exchange, and that Lien-Fa Liu would be responsible for supervising this. Irene Liu sent Lien-Fa Liu a memo on 30 April 2012 saying, in short, that Ching-I Yang and Mei-Chuan Liao would be better placed to undertake this task since she had only been in her current role since 1 May 2010 and therefore did not know “whether or not there existed any flaws in the past accounting and tax practices”. On the same day Lien-Fa Liu sent Lien-Sheng Liu a memo making the same point. His memo included the following passage:

“Based on the above: Employees (from the Chairman downwards, including all work colleagues) of the Company receive salaries from the Company, and should dedicate themselves to striving for maximum benefits of the Company and all shareholders. It is not the proper conduct of a responsible man to shirk responsibilities when something goes wrong. Furthermore, the neglect of duties in the course of work involved corruption or even malicious evasion of taxes, resulting in serious damage to the Company that must be legally prosecuted.

This letter solemnly describes the chronic, terminal illness of the Company. Those in power, instead of governing the Company in the way of good sovereigns, are instead behaving selfishly and high-handedly. Such behaviour would only accelerate the destruction of the Company.”

207. It is evident that Lien-Fa Liu and Irene Liu were concerned, or at least professing to be concerned, about being implicated in tax evasion by YSC. (This may relate to the Defendants’ contention regarding fictitious shareholder loans discussed above.) It is neither necessary nor appropriate for me to decide whether the Lien-Sheng Branch are justified in criticising Lien-Fa Liu and Irene Liu for taking this stance. What is clear that, by this time, relations between the two branches had become very strained.
208. Thirdly, on 17 May 2012 Lien-Sheng Liu promoted an employee of YSC. On the same day Lien-Fa Liu circulated a memo declaring the promotion “null and void” on the ground that, under the company’s regulations, the proposed promotion should be considered in August. Again, it is clear that there was disagreement between the two branches as to how the company should be run.
209. Fourthly, on 23 May 2012 Irene Liu refused to implement an order to transfer money from Trillion for the payment of shareholders’ dividends and on 4 June 2012 Irene Liu refused to implement an order to transfer money from Trillion to Balmore. These incidents, of course, reflect the dispute between the parties as to the ownership of Trillion (see paragraphs 63-64 above).

210. Fifthly, on 24 May 2012 Irene Liu declined to approve a request by one of YSC's Chinese factories to convert some yuan into dollars to repay overseas debts on the ground that a term deposit was not due to mature until 16 July 2012. Ching-I Yang's response on 25 May 2012 was that "the motive is dubious" because the request had been made in April 2012 and the amount had not been retained when a term deposit had matured on 23 April 2012. Again, it does not matter who is right. It is another manifestation of disagreement between the branches over the running of the company.
211. In summary, I do not consider that the evidence provides much support for Gorgeous Beauty's complaint that the Lien-Fa Branch were frustrating YSC's operations, but it is clear that there were differences of opinion as to how the company should be run and that this led to relations between the two branches becoming increasingly strained as the first half of 2012 wore on.
212. What is more significant in my view that it is common ground that, as result of the differences of opinion which had emerged, after the company's annual general meeting on 18 January 2012, Lien-Fa Liu gave a presentation in which he proposed a "new mode of operation" of YSC. The essence of the proposal was that groups of shareholders would be able to tender for the right to manage each of the factories, the tender would be won by the highest bidder and the winning shareholders would bear their profits and losses. As Irene Liu said in her first witness statement, it was effectively a proposal to split the business.
213. It is also common ground that in about April 2012 the Lien-Fa Branch made another proposal to split the business, although there are minor differences as to precisely what was proposed. According to Irene Liu, the essence of the proposal was that the Lien-Fa Branch would sell their shares in the same as way as Kuang-Hui Liu had done. No agreement was reached on this proposal during April and May 2012. The reason these matters are significant is that they set the stage for what happened during the period from 5 June to 28 June 2012. Before considering that, I must first address another issue.

*When did the Lien-Sheng Branch discover the Declaration of Trust?*

214. One of the most troubling aspects of Gorgeous Beauty's case concerns the question when the Lien-Sheng Branch discovered the Declaration of Trust. Gorgeous Beauty's case on this important point has changed a number of times during the course of the proceedings.
215. The first version of Gorgeous Beauty's case was set out in a witness statement made by its solicitor Anthony Poulton in February 2013, in which Mr Poulton stated that he had been told by Mana Liu that the Lien-Sheng Branch had discovered the Declaration of Trust in June 2012, prior to the meeting on 17 June 2012 (as to which, see below).
216. The second version was contained in its Reply served in August 2013, which stated that the Lien-Sheng Branch discovered the Declaration of Trust between 17 June 2012 and 28 June 2012.
217. The third version was contained a response to a request for further information served in November 2013. This stated:

“In early July 2012, Lien-Sheng Liu and Yi-Hui Lin went to visit Gen Pro to ask them about the off-shore companies. During that meeting, Gen Pro provided them with copies of the corporate documentation for Gorgeous Beauty, including the Declaration of Trust. The Declaration of Trust was provided in English and, as Lien-Sheng Liu did not understand the contents of this document, in around mid-July 2012 he returned to Gen Pro with Yi-Hui Lin, Mana Liu, Mei-Chuan Liao, Yan-Fen Xu and Mei-Jung Yang to ask for a translation. It was only at that point that they came to understand the contents of the Declaration of Trust”.

This version was also repeated in Lien-Sheng Liu’s witness statement dated 14 February 2014, except that he added they had not received the translation until 23 July 2013. It was also supported to a greater or lesser extent by the statements of a number of Gorgeous Beauty’s other witnesses.

218. The fourth version was set out in a correction to Lien-Sheng Liu’s witness statement made shortly before he gave evidence. This stated that Lien-Sheng Liu and Yi-Hui Lin first obtained the Declaration of Trust from GenPro in May or June 2012. Lien-Sheng Liu adhered to this account in cross-examination. He also said that he and Yi-Hui Lin asked Mana Liu to translate the Declaration of Trust in June 2012 and she had attempted to do, but it was not until 23 July 2012 that he had seen a proper translation of the Declaration of Trust following another visit to GenPro’s offices on 22 July 2012. Subsequently, all of the other witnesses also changed their evidence on this point.
219. As counsel for the Defendants submitted, these changes affect more than just the dates on which events occurred, they also affect the purpose of the meetings on 17 June and 28 June 2012 discussed below.
220. Before proceeding further, however, it is important to note that there is documentary evidence that Julia Chyn of GenPro emailed a Mandarin translation of the Declaration of Trust to Yu-Hui Lin on 23 July 2012. Counsel for the Defendants submitted that Lien-Sheng Liu’s explanation for the delay in obtaining this translation was contradictory and implausible. I agree with this, but nevertheless I agree with counsel for Gorgeous Beauty that what is more important is the fact that a translation was obtained at all. Furthermore, it was not suggested to any of Gorgeous Beauty’s witnesses that the obtaining of the translation was a charade in anticipation of these proceedings.
221. Counsel for Gorgeous Beauty accepted, as he had to, that Gorgeous Beauty’s evidence on this aspect of the case was confused and unsatisfactory, but he submitted that the most likely explanation was that Lien-Sheng Liu and Yu-Hui Lin had indeed discovered the Declaration of Trust in May or early June 2012, but that they had not fully appreciated its significance until they saw the Mandarin translation on 23 July 2012.
222. In my view, this aspect of the case casts doubt on the credibility both of Lien-Sheng Liu and the other witnesses and of Gorgeous Beauty’s case with regard to the Declaration of Trust. On the other hand, it is important not to make too much of this,

for a number of linked reasons. First, although Gorgeous Beauty's evidence as to precisely when the Lien-Sheng Branch discovered the Declaration of Trust is unsatisfactory, Gorgeous Beauty has been consistent in maintaining that the Lien-Sheng Branch were not aware of the Declaration of Trust before May 2012 at the earliest. Secondly, the key piece of the information was that Gold Wealth (and hence Golden Up and the Longtan Property) was beneficially owned by William Liu, rather than the mechanics of the Declaration of Trust. For the reasons discovered below, there seems little doubt that the Lien-Sheng Branch had become aware of that information before 17 June 2012 and probably before 5 June 2012. Thirdly, it is not implausible that the Lien-Sheng Branch did not fully understand the Declaration of Trust until they received the Mandarin translation of it on 23 July 2012, and that for that reason the witnesses became confused as to when it was discovered.

*YSC board meeting on 5 June 2012*

223. On 5 June 2012, there was a board meeting of YSC. According to Lien-Sheng Liu and Michael Liu, during the course of that meeting, William Liu left the room and returned with Lien-Fa Liu (who was not a director), a man named Ts'un-hsu Chou (who was not a director) and two or three men who the Lien-Sheng Liu Family Branch did not recognise (and who certainly were not directors). The unnamed men demanded to know why Ts'un-hsu Chou (who had recently purchased a small shareholding in YSC from Lien-Fa Liu's wife Mei-Chen Hsu) had not yet been registered as a YSC shareholder, and were threatening and aggressive towards the Lien-Sheng Branch.
224. Counsel for the Defendants submitted that Lien-Sheng Liu's and Michael Liu's account was untrue. He relied upon the written decision of the Taiwanese prosecutor rejecting the complaint made by Lien-Sheng Liu and Yi-Hui Lin (as to which see below). I do not accept this submission. The complaint was that Lien-Sheng Liu and Yi-Hui Lin had been coerced into agreeing to register Ts'un-hsu Chou's shareholding. The prosecutor accepted that the evidence showed that Ts'un-hsu Chou and his companions had uttered the threatening words attributed to them, but not that Lien-Sheng Liu and Yi-Hui Lin were intimidated. This was because they had already agreed to register the shares before the threats were uttered. In their evidence in these proceedings Lien-Sheng Liu and Michael Liu did not say that they had been coerced into transferring the shares, they simply complained about the threatening behaviour.
225. More importantly, it is clear that by this time relations between the Lien-Sheng Branch and the Lien-Fa Branch were close to breaking down.

*"Mediation meeting" on 17 June 2012*

226. It is common ground that on 9 June 2012 Lien-Sheng Liu called a "mediation meeting" of YSC's shareholders, which took place on 17 June 2012. All the shareholders attended apart from Mei-Chuan Liao and Ts'un-hsu Chou. There is relatively little dispute as to what transpired at this meeting, but there is an important dispute as to what the real purpose of the meeting was. Gorgeous Beauty's case is that it was an attempt to resolve the dispute between the Lien-Sheng branch and the Lien-Fa Branch. The Defendants' case is that it was a set-up staged by the Lien-Sheng Branch to marginalise the Lien-Fa Branch, in order to pave the way for taking their assets and expelling them from YSC.

227. The notice of the meeting states that the purpose of the meeting was to discuss the following matters:
- “(1) Discussion of original shareholders’ domestic and overseas investments and asset allocation issues.
  - (2) Discussion of the company division proposal raised by four shareholders including Lien-Fa Liu. ...”

Although there is no evidence on the point, it appears to me that “original shareholders” meant the family shareholders.

228. Prior to this meeting, it appears that Yi-Hui Lin, probably with the assistance of YSC’s lawyer, put together a document concerning the offshore companies (“the Proposal”) which explained when and why they had been set up, summarised their current shareholdings and directorships and proposed that the registered shareholders of the companies should be changed by removing the nominal representatives and replacing them with YSC shareholders apportioned in the same way as their shareholdings in YSC and that their directorships should be adjusted to reflect the shareholdings of the Lien-Sheng Branch, the Lien-Fa Branch and the Minor Shareholders.
229. The Proposal treats Golden Up, Gold Wealth and Trillion as YSC offshore affiliates. It records that Golden Up is 100% owned by Gold Wealth which is 99% owned by Gorgeous Beauty and 1% by William Liu and that Gorgeous Beauty is owned by Intelligent Power (Irene Liu), Lead Champion (Jessie Liu), Ever Giant (Chao-Yu Liu), Huge Champion (Mana Liu) and More & More (Shu-Fen Yang). It does not refer to William Liu being the beneficial owner of Gold Wealth.
230. It seems likely that it was in connection with the preparation of the Proposal that Lien-Sheng Liu and Yi-Hui Lin visited GenPro and obtained copies of all the documents GenPro had on file relating to the offshore affiliates. It is therefore plausible that it was at this point that the Lien-Sheng Branch obtained a copy of the Declaration of Trust, even if they did not fully appreciate its significance. For the reasons explained below, it seems likely that they did appreciate that the documents indicated that Gold Wealth (and hence Golden Up and the Longtan Property) was beneficially owned by William Liu.
231. It is common ground that the Lien-Sheng Branch arranged for the meeting on 17 June 2012 to be recorded on video and for it to be attended by YSC’s lawyer and by security guards. Gorgeous Beauty’s witnesses say that this was because of what had happened at the meeting on 5 June 2012. It is also common ground that Lien-Fa Liu asked the lawyer and the security guards to leave, and this led to an argument between Lien-Fa Liu, YSC’s lawyer and Shu-Ying Yang (whom Lien-Sheng Liu had asked to present the Proposal). After around 15 minutes of argument, the Lien-Fa Liu Branch left the meeting. There is a dispute as to whether or not the Proposal had been presented by this point, but this matters little.
232. Followed the Lien-Fa Branch’s departure, Shu-Ying Yang took the remaining shareholders through the Proposal, which was put to a vote and approved by those present. The transcript and minutes of the meeting both record that, during the



discussions, it was stated that the capital for the founding of Golden Up and the purchase of the Longtan Property had been entirely borrowed by Gold Wealth from Great View without interest being charged and that interest should be charged from the date notified by Great View. Although Lien-Fa Liu's proposal to divide the company was not the subject of any decision, owing to the withdrawal of the Lien-Fa Branch from the meeting, it was the subject of some discussion. In particular, Shu-Ying Yang suggested that YSC be dissolved.

233. By a resolution of the majority shareholders in Gorgeous Beauty (Mana Liu representing Huge Champion, Chao-Yu Liu representing Ever Giant and Shu-Fen Yang representing More & More) dated 17 June 2012, Irene Liu's appointment as a director of Gorgeous Beauty was terminated and Mana Liu was appointed in her place. The resolution states that the representatives of Intelligent Power and Lead Champion arrived, but refused to attend the meeting. This would fit with the resolution being passed immediately after the mediation meeting. Counsel for the Defendants submitted that Mana Liu's evidence as to the circumstances in which the resolution was signed was unconvincing. I agree with this, but this seems to me to be of little significance.
234. Counsel for the Defendants also pointed out that a very similar resolution was passed dated 11 July 2012. This version does not state that the representatives of Intelligent Power and Lead Champion arrived, but refused to attend the meeting. It also differs from the first version in referring to articles 47 and 49 of Gorgeous Beauty's articles of association. This supports Mana Liu's explanation for the existence of the second version, which is that GenPro advised that that they were unable to register the first version and drafted the second version after discussions with Yi-Hui Lin.

*Events between 17 June and 28 June 2012*

235. According to Lien-Sheng Liu, a couple of days after the 17 June 2012 meeting, Ts'un-hsu Chou visited Lien-Sheng Liu with an ultimatum: the Lien-Fa Branch wanted either to sell their shares in YSC or be given the Taiwanese factory. Lien-Sheng Liu agreed that they could sell their shares, subject to three conditions which he wrote down on a piece of paper. They both signed this and Ts'un-hsu Chou took a copy. The first condition was that "all assets and properties shall be registered according to the regular shareholding percentage as they were". It appears from Lien-Sheng Liu's account that he did not receive any response to this proposal, and took that as a rejection of it. Accordingly, he concluded that it was necessary to bring the Lien-Fa Branch's involvement in YSC to an end. To that end, he called a board meeting and a shareholders' meeting for 28 June 2012.
236. On 19 June 2012 a text message was sent from Lien-Fa Liu's phone to Shu-Ying Yang. According to Shu-Ying Yang, it was actually sent by Irene Liu. This seems doubtful, but it does not matter. At all events, the sender wrote "Please look into who instructed the concealment of the Longtan Property from you and what their motive was?". Shu-Ying Yang denied that the purchase of the Longtan Property had been concealed from her, and said that she was aware that it had been purchased for YSC's shareholders. Be that as it may, she replied by text the same day saying "It is only now that we know of such an arrangement. Since we found out, we have requested Irene Liu and William Liu to return the rights to the Yang family." It appears from this that Shu-Ying Yang had recently found out that the Longtan Property was

effectively owned by William and had asked for it to be returned. No doubt she referred to it being returned to the Yang family, because, as she made clear in her evidence, it was their share that she was concerned about. In my view this evidence has relatively little significance with regard to the question of whether the Longtan Property was in fact purchased for the benefit of William Liu or the YSC shareholders, although it does support Gorgeous Beauty's case on that issue. What is more significant about it is that it suggests that the Lien-Sheng Branch, and hence other shareholders such as Shu-Ying Yang, had discovered that an arrangement had been made under which William Liu owned the Longtan Property by the date of the mediation meeting, even if they did not understand all the details of that arrangement. This would explain why the Gorgeous Beauty shareholders' resolution was passed on 17 June 2012, assuming it was.

*YSC board meeting on 28 June 2012*

237. The board meeting started at 8 am. Lien-Sheng Liu proposed that the Lien-Fa Branch be dismissed from the management of YSC on the grounds that they were not properly performing their duties and were obstructing the operation of the company. The majority of the directors voted in favour of the proposal. The Lien-Fa Branch members were given until 5 pm that day to remove their possessions from YSC.

*YSC shareholders' meeting on 28 June 2012*

238. The shareholders' meeting started at 9 am on the same day. Lien-Fa Liu's proposal to divide the company was tabled, but rejected by majority vote. The financial statements for 2010 and 2011 were also approved by a majority.

*"Coffee shop meeting" on 28 June 2012*

239. After the shareholders' meeting, Irene Liu invited a number of shareholders to meet in the coffee shop of the hotel where the shareholders' meeting had been held ("the coffee shop meeting"). This meeting was attended by Irene Liu, Lien-Fa, Mei-Chen Hsu, Michael Liu, Shu-Fen Yang, Shu-Ying Yang, Mei-Jung Yang (the fourth Yang sister), Ts'un-hsu Chou and three of his friends.
240. At the meeting, Irene Liu produced a document containing valuations of YSC and its affiliated companies based on a spreadsheet produced by Mei-Chuan Liao in March 2012 ("the coffee shop document"). On its face, this document appears to list all the assets of YSC and YSC's shareholders collectively. It is common ground that Irene Liu's purpose in producing the coffee shop document was to show where she agreed and disagreed with Mei-Chuan Liao's valuations, and hence to try and reach an agreement as to the value of the assets under discussion in order to provide the basis for a negotiation over the splitting of the assets. During the meeting, Irene Liu took Shu-Ying Yang through the document, and Shu-Ying Yang made some notes on it. Shu-Ying Yang faxed the document to Ching-I Yang the next day.
241. The first page of the coffee shop document is a summary in which each of the entities is referred to by a letter. This is followed by a series of schedules containing valuations of each entity. One of the entities is identified by the letter W. In the summary this has been annotated "land" by Shu-Ying Yang. Schedule W includes four pieces of land: the three pieces of farmland of 30 ping, 1437 ping and 1029 ping

discussed above and a piece of industrial land of 1270.69 ping, which it is common ground is the Longtan Property. It also includes as a liability a loan of NTD 15 million payable to YSC and the same amount is recorded as an asset of YSC in Schedule A and described as a loan receivable from Golden Up. (Incidentally, it may be noted that other schedules include the Changshu factory, which was partly owned by Xin Gao, and Trillion's accounts.)

242. Shu-Ying Yang's evidence was that the coffee shop document showed that, as at 28 June 2012, Irene Liu accepted that Golden Up, and specifically the Longtan Property, formed part of the assets of YSC and its affiliates. She maintained this account in cross-examination.
243. It is a striking feature of Irene Liu's evidence that, despite giving a detailed account of the events of 28 June 2012 in her first witness statement, she did not mention the coffee shop meeting, or the coffee shop document, at all. Nor did she do so in her second witness statement, despite the fact that it had been referred to in Gorgeous Beauty's witness statements, in particular by Shu-Ying Yang, who gave a detailed account of the meeting and commentary on the coffee shop document running to 21 paragraphs. In his skeleton argument for trial, counsel for Gorgeous Beauty drew attention to this failure on the part of Irene Liu, and commented "By the time she gives her oral evidence, she will no doubt have an explanation as to why this valuation document does not mean what it says".
244. In her third witness statement, Irene Liu discussed the coffee shop meeting and the coffee shop document for the first time. She said that W stood for William, because Schedule W listed Golden Up's assets and liabilities and Golden Up was owned by William. She said that she was not clear why Mei-Chuan Liao had included Schedule W in her spreadsheet, but in any event it was clear by then that there was a dispute about who owned Golden Up (and hence the Longtan Property). It was therefore sensible for her to include all the assets, including the disputed ones, in her valuation as a first step towards an overall settlement.
245. Although I accept that, as indicated above, there is evidence that the dispute as to the ownership of the Longtan Property had emerged by the date of the coffee shop meeting, I find this account implausible for a number of reasons. First, not only did Irene Liu not advance this explanation until her third witness statement, but also the account put to Shu-Ying Yang in cross-examination on her instructions before the third witness statement was served differed in one small but telling detail: it was not suggested that W stood for William. (Mei-Chuan Liao's response when the point was subsequently put to her was that W stood for Gold Wealth and that she choose W rather than G because G had already been used to designate Balmore.)
246. Secondly, there is absolutely nothing on the face of the coffee shop document to show that any distinction was being made between the ownership of the assets in Schedule W and the assets in the other schedules.
247. Thirdly, Schedule W includes the adjacent farmland, but even on the Defendants' case this did not belong to William, but rather (in two cases) to Lien-Fa Liu (given that Mei-Chuan Liao's spreadsheet dates from before the agreement dated 15 May 2012 concerning the 1437 ping land) and (in the other case) Lien-Sheng Liu, Lien-Fa Liu and Yi-Hui Lin. (Indeed, it is common ground that companies cannot own farmland in

Taiwan, only individuals can, so the land could not owned by Golden Up. It is nevertheless plausible that it was convenient for Mei-Chuan Liao to include the farmland in Schedule W given that it was adjacent to the Longtan Property and that there was no other obvious home for it.) Moreover, I have concluded that the farmland belonged to YSC's shareholders.

248. Fourthly, there is no reference in Schedule W to all the money which, on the Defendants' case, had been lent by YSC to William (or Lien-Fa Liu) to finance the purchase of the Longtan Property. This omission is particularly striking given that, on Irene Liu's own evidence, it was she who included the NTD 15 million liability in Schedule W, and the corresponding asset in Schedule A, when these were not included in Mei-Chuan Liao's original spreadsheet. Irene Liu's explanation of why she had done this made little sense. By contrast, when counsel for the Defendants asked Mei-Chuan Liao why the US\$ 5 million loan from Great View was not included in Schedule W, she explained that there was no point, because it would be offset by a corresponding entry in another schedule.

*Alleged removal of documents*

249. According to Michael Liu, during the course of the coffee shop meeting, he received a phone call from an employee at the YSC premises informing him that people were removing documents from the premises. When Michael Liu arrived at the premises, Jessie Liu and William Liu's wife, Ya-Pei Chang, had loaded the documents into their car and were trying to leave. The documents included technical papers, customer accounting lists, and the corporate documentation of Gorgeous Beauty. They were prevented from leaving by YSC's security guards, and the corporate documentation was recovered. The Defendants dispute this account, and say that Jessie Liu and Ya-Pei Chang were violently prevented by the security guards from taking any documents which might support the Lien-Fa Branch's claims. It is not necessary to decide who is right about this.

*The Transfer*

250. On 6 July 2012 Irene Liu was appointed as a new member of Gold Wealth by form LLAP01 received by Companies House on 25 July 2012 and again on 17 August 2012, Gorgeous Beauty was removed as a member by form LLTM01 received by Companies House on 17 August 2012 and Gold Wealth's registered address was changed by form LLAD01 received by Companies House on 17 August 2012. By a "limited liability partnership agreement" between Irene Liu and William Liu also dated 6 July 2012, Irene and William purported to vary the Gold Wealth operating agreement so as to convert Gold Wealth into a new limited liability partnership of the same name whose members were Irene, with a 51% interest, and William, with a 49% interest. Although the document provides for Irene's and William's signatures to be witnessed, there is no witness. Nevertheless there is no dispute as to the authenticity, as opposed to the legal effect, of the document. Gorgeous Beauty refers to these documents collectively as "the Transfer".
251. The Transfer is significant for four reasons. The first is procedural. By these proceedings, Gorgeous Beauty seeks to rectify the Register of Companies in relation to these documents, so as to remove Irene Liu as a member of Gold Wealth and reinstate Gorgeous Beauty and to change back the registered address of Gold Wealth.

252. The second reason relates to the circumstances in which Gorgeous Beauty says the Lien-Sheng Branch discovered the Transfer, which I shall consider below.
253. The third reason is that Gorgeous Beauty contends that Irene Liu's evidence about the Transfer is incredible. Irene's evidence in her first witness statement was that, following the events of 28 June 2012, the Lien-Fa Branch had realised that it was important to take steps to protect William's investment in the Longtan Property, but that since a lot important documents were in the Lien-Sheng Branch's hands there was a limit to what they could do. Accordingly:

“...William Liu (as the sole beneficiary under the Declaration of Trust) directed me to bring the trust to an end and to transfer the trust property (i.e. Gorgeous Beauty's interest in Gold Wealth) to me (as to 51%), to hold as the new trustee for William Liu, and as to William (as to 48%, in addition to his existing 1%). This structure was adopted, rather than simply transferring the whole 99% interest formerly held by Gorgeous Beauty to William Liu directly, in order to enable me to execute documents on William's behalf as and when necessary.”

She then went on to describe the execution of the Transfer documents.

254. William Liu's account in his witness statement was somewhat different:

“I then discussed with my sister the issue of the Declaration of Trust and agreed with her that we should end the Declaration of Trust to protect my investment and instead that Irene should be the trustee acting on my behalf.”

255. Furthermore, as counsel for Gorgeous Beauty submitted, it is clear from Irene Liu and William Liu's other evidence that William's involvement with financial and tax matters relating to the investment in the Longtan Property was minimal. It is implausible that William “directed” Irene to bring the trust to an end.
256. The fourth reason why the Transfer is significant is because of the light that it casts on the Declaration of Trust. It is not suggested by the Defendants that any replacement declaration of trust was drawn up. Furthermore, contrary to Irene Liu's evidence in relation to the Declaration of Trust that William Liu needed to have less than a 20% interest in order for the structure to be tax efficient, the effect of the Transfer was to give him a 49% interest. Counsel for Gorgeous Beauty submitted that this showed that the real reason for the Declaration of Trust was not tax avoidance. Irene Liu's answer to this in cross-examination was that the situation was an emergency and she was not concerned about the tax implications at that stage. I do not find this convincing.

#### *Sale of the Longtan Property*

257. It is common ground that on 12 July 2012 the majority shareholders in Gorgeous Beauty passed a resolution authorising Mana Liu to instruct Golden Up to sell the Longtan Property to YSC and reimburse the money lent to Golden Up by Great View. It is also common ground that, pursuant to this resolution, the Longtan Property was

sold by Golden Up to YSC on 2 September 2012 for approximately NTD 316 million. Once again, there is a dispute as to the timing of, and motivation for, this decision. Gorgeous Beauty contends that it was a protective step to wrest the Longtan Property from the clutches of Irene and William. The Defendants contend that it was another premeditated step in the Lien-Sheng Branch's offensive against the Lien-Fa Branch.

258. As Lien-Sheng Liu accepted, the documents attached to YSC's subsequent land registration application were obtained by the Lien-Sheng Branch for the purpose of YSC purchasing the Longtan Property. Those documents are stamped with two dates. The first is 25 October 2010, which was when the documents were first sent by the Ministry to Lien-Sheng Liu when the Longtan Property was registered in Golden Up's name. The second is 5 June 2012. The Defendants contend that that must be when the documents were requested by the Lien-Sheng Branch. Lien-Sheng Liu and Michael Liu both denied this, but neither was able to explain the stamp, or to suggest a different date on which the documents were requested. Accordingly, I conclude that the Defendants are right about this.
259. I do not accept, however, that it necessarily follows that the Lien-Sheng Branch had decided to sell the Longtan Property to YSC as early as 5 June 2012. Assuming that the Lien-Sheng Branch had discovered that, in effect, Golden Up was owned by William Liu as a result of preparing the Proposal in May or early June 2012, it would have made sense for them to check the registration of the land.
260. Counsel for the Defendants submitted that Lien-Sheng Liu had given false evidence in relation to the sale of the Longtan Property because he said that it was sold following the discovery that Irene Lieu had attempted to change the registered members of Gold Wealth, which as discussed below was in mid August 2012. I do not accept this submission. Lien-Sheng Liu's evidence was literally true, since the property was not sold until 2 September 2012, and I am not satisfied that he was attempting to mislead the court.
261. On the other hand, it is fair to say that none of Gorgeous Beauty's witnesses who dealt with the topic (Lien-Sheng Liu, Mana Liu and Michael Liu) was able to give a clear and convincing explanation as to why it was felt necessary to sell the Longtan Property to YSC. Despite this, I am prepared to accept that it is at least possible that the reason was as Gorgeous Beauty contends.
262. Gorgeous Beauty's evidence is that most of the proceeds of sale were used to repay the loans that had been obtained in order to acquire the Longtan Property with US\$ 4.8 million being transferred to Great View for the purposes of a joint investment between it and Golden Up.

*A mysterious bank loan*

263. On 27 July 2012 Michael Liu drew down a loan of NTD 29 million from Yuanta Bank purportedly on behalf of Golden Up. Michael Liu was unable to explain the purpose of this loan. It remains a mystery, but not one I can attach any significance to.

*Gorgeous Beauty's revocation of the Declaration of Trust*

264. On 8 August 2012 Mana Liu sent an email to a Mr Yu of GenPro to which was attached a “statement on revocation of trust” in which she stated that Irene Liu had not informed the shareholders of Gorgeous Beauty, or sought their approval, before signing the Declaration of Trust and therefore Gorgeous Beauty refused to acknowledge the Declaration of Trust which was null and void. It also stated that Gorgeous Beauty had appointed Mana Liu as its new sole director to revoke the Declaration of Trust.
265. On 9 August 2012 Mana Liu sent GenPro drafts of a letter revoking the Declaration of Trust and a declaration or certificate confirming the revocation which it appears were based on some discussions she had had with GenPro. Between 9 and 14 August 2012 GenPro redrafted these into a declaration of ownership which recited the registered shareholdings in Gorgeous Beauty and declared that the Declaration of Trust had been revoked and a new declaration of trust in which Gorgeous Beauty acknowledged that it held its 99% interest in Gold Wealth on trust for itself and that its ultimate beneficial owners were Ever Giant, Huge Champion, More & More, Intelligent Power and Lead Champion. These documents were both dated 13 July 2012, but witnessed by a notary public on 14 August 2012.
266. Counsel for the Defendants submitted that Mana Liu had “told a string of obvious lies” about this episode. I agree that her evidence was unsatisfactory, but I would not go that far. In particular, I disagree with counsel’s assertion that she lied about drafting the documents. It seems to me to be perfectly clear that, as set out above, she did create the original drafts. I think she was uncomfortable about the fact that the final documents had been backdated to 13 July 2012, which she had no explanation for. But it is difficult to see what advantage the Lien Sheng Branch could have hoped to gain from this, and I am unable to regard it as significant.

*The discovery of the Transfer*

267. At the end of August 2012 Mana Liu and Michael Liu flew to the UK and visited Companies House. Mana Liu’s evidence was that they did so in order to obtain all the documents Companies House had on file relating to Gold Wealth and a result of their concerns following the translation of the Declaration of Trust. It was during their visit to Companies House that they discovered the Transfer.
268. As counsel for Gorgeous Beauty pointed out, it was not put to either Mana Liu or Michael Liu that they had visited Companies House for anything other than the reason given by Mana Liu.

*Alleged intimidation of the Lien-Sheng Branch*

269. Gorgeous Beauty alleges that, since the events described above, members of the Lien-Sheng Branch have become the victims of a campaign of intimidation and attacks against their personal property. Gorgeous Beauty’s witnesses suggested that Ts’un-hsu Chou and/or Chien-Hwa Wang had been responsible for this campaign and it had been carried out at the behest of Lien-Fa Liu. Lien-Fa Liu vigorously disputed this and produced evidence that neither Ts’un-hsu Chou nor Chien-Hwa Wang had had any criminal convictions in the last 20 years. There is no direct evidence to implicate

either Ts'un-hsu Chou or Chien-Hwa Wang, let alone Lien-Fa Liu, in the incidents. Understandably, counsel for Gorgeous Beauty did not pursue the matter in cross-examination or closing submissions. I have therefore disregarded these allegations.

*Related proceedings in Taiwan*

270. The dispute between the Lien-Sheng and Lien-Fa Branches has led to various related criminal and civil proceedings in Taiwan:
- i) In summer of 2012 Lien-Sheng Liu and Yu-Hui Lin brought criminal proceedings against Lien-Fa Liu and Ts'un-hsu Chou for alleged intimidation at the YSC board meeting on 5 June 2012. As noted above, this allegation was rejected by the Taiwanese prosecutor in a written decision in December 2012.
  - ii) In September 2012 criminal proceedings were brought by Lien-Fa Liu against Mei-Chuan Liao and Ching-I Yang relating to a sum of NTD 9.5 million which had been transferred from YSC to Ching-I Yang and then covered up. On 31 October 2013 the Taiwanese prosecutor held in a written decision that there was sufficient evidence to prosecute both defendants for embezzlement and false accounting. These proceedings are ongoing.
  - iii) In November 2012 Irene Liu brought criminal proceedings against Michael Liu alleging that Michael Liu had sold the Longtan Property without authority and had forged the company seal of Golden Up in order to do so and selling the Longtan Property without obtaining authorisation. These proceedings are ongoing.
  - iv) At around the same time, Michael Liu brought criminal proceedings on behalf of Golden Up against Irene Liu for alleged forgery. The prosecutor held on 29 August 2013 that there was insufficient evidence to prosecute, and an appeal by Michael Liu was dismissed on 16 October 2013.
  - v) On 5 February 2013 YSC brought civil proceedings against William Liu in relation to the ownership of a piece of land at Zhongli in Taiwan. Later that year, the claim was dismissed and the court held that William Liu was the true owner of the land.
  - vi) On 24 May 2013 Great View brought civil proceedings against Trillion and Lien-Fa Liu for a debt of US\$ 1,900,157.50. As mentioned above, this case is ongoing.
271. With one possible exception, the existence of these proceedings sheds little light on the issue I have to determine. The possible exception is the proceedings referred to in sub-paragraph (iii) in the list. One of Michael Liu's defences in those proceedings is that he had authority to sell the Longtan Property because Golden Up and Gold Wealth were really owned by YSC's shareholders. The Defendants allege that the Lien-Sheng Branch's motive for bringing these proceedings is that they hope that a decision in Gorgeous Beauty's favour will provide Michael Liu with a good defence. I am not persuaded that this is likely. There is no evidence that a decision of this court would be admissible as evidence of the facts found in a Taiwanese court. Even if it



would be, I do not consider it plausible that the Lien-Sheng Branch would undertake the substantial expense and burden of these proceedings, and the risk of failure, purely for that reason.

The key factual issue

272. As noted at the outset of this judgment, the key factual issue in this case is whether the purchase of the Longtan Property was agreed to be for the benefit of YSC's shareholders (as Gorgeous Beauty contends) or whether it was agreed to be for the benefit of William Liu (as the Defendants contend). This issue can be divided into three sub-issues. The first is whether Lien-Sheng Liu agreed with Lien-Fa Liu in late July 2010 that William would buy the Longtan Property and that YSC would lend William money for this purpose. The second is whether Ching-I Yang agreed with Irene Liu in early-mid August 2010 that Irene could "borrow" the Gorgeous Beauty structure for the purpose of acquiring the Longtan Property for William. The third is whether Ching-I Yang consented to the Declaration of Trust in late August 2010. It is common ground, however, that each of these sub-issues stands or falls with the others.
273. In order to determine the key factual issue, I must draw together a number of the threads considered above and put them into context. The starting point is that Gorgeous Beauty is the claimant, and so it bears the burden of proof. Furthermore, Gorgeous Beauty's claim is essentially one of fraud, and so it must prove its claim by cogent evidence, although the standard of proof is the balance of probabilities.
274. Next I shall consider the character of those accused of the fraud. Gorgeous Beauty's case is that the fraud was perpetrated by Irene Liu at the behest of Lien-Fa Liu for the benefit of William Liu. It is clear from the evidence that, even though he was beneficiary of the alleged fraud, William Liu's involvement was peripheral. The key figures are Lien-Fa Liu and Irene Liu. Lien-Fa Liu had a distinguished career in the police and Irene Liu had a successful, albeit short, career in PwC. It is inherently improbable that such persons would engage in fraud. Nevertheless, it is not impossible. In this regard, two points should be noted. First, even on his own account, Lien-Fa Liu was sufficiently interested in improving his personal financial position to set up Trillion as a middleman between YSC and its customers. Secondly, the impression I gained from the evidence was that, in Taiwanese culture, the patriarch of a family has considerable authority over the other members of the family. This applies to both Lien-Sheng Liu and Lien-Fa Liu. Accordingly, it is not implausible that Irene Liu should have carried out instructions from her father without questioning them.
275. I turn next to consider the question of motive. In the present case, this must be considered at two stages. The first is in August 2010. Counsel for the Defendants submitted that Lien-Fa Liu and Irene Liu had no motive to commit a fraud at that date, since relations between the two branches of the family were good at that time. I accept that relations between the two branches were good at that time, but I do not agree that necessarily means that Lien-Fa Liu and Irene Liu had no motive to commit a fraud. Gorgeous Beauty suggested that Lien-Fa Liu and Irene Liu were motivated by resentment over the level of bonuses paid by YSC or the control exercised over YSC by the Lien-Sheng Branch. There is little evidence to support this suggestion, but on the other hand, it was Lien-Fa Liu's own evidence that, after he started working for YSC, he had become increasingly concerned at what he characterised as a lack of transparency in YSC's financial affairs.

276. A separate point on motive which arises at this stage concerns the motivation suggested by the Defendants for the Lien-Sheng Branch agreeing to YSC lending money to William Liu for the acquisition of the Longtan Property. I have considered the matters which are relied upon the Defendants in this respect at paragraphs 67-74 and 93-99. My conclusion is that the evidence does not provide a great deal of support for the Defendants' case.
277. The second stage is in June 2012. Counsel for the Defendants submitted that the Lien-Sheng Branch had a motive to lie in June 2012, after the two sides of the family had fallen out and the Lien-Fa Branch had sought to sell their shares. I am unconvinced of this. The Lien-Sheng Branch had agreed to Kuang-Hui Liu and Hui-Min Yang selling or exchanging their shares. Counsel for the Defendants was on stronger ground when he submitted that the Lien-Sheng Branch had behaved secretly in holding the meetings in June 2012 without disclosing that they were aware of the Declaration of Trust and of William Liu's claim to beneficial ownership of Gold Wealth. This, of course, ties in with their unsatisfactory evidence about the discovery of the Declaration of Trust. But, as I have already said, I do not think it would right to make too much of that. Given that the Declaration of Trust, or more generally William's claim to beneficial ownership of Gold Wealth and hence of Golden Up and the Longtan Property, was discovered in May or early June 2012, it is plausible that the Lien-Sheng Branch's actions in June 2012 were motivated at least partly by anger at that discovery. But that is not inconsistent with the proposition that they were the victims of fraud.
278. Overall, I consider that consideration of motive provides little assistance in resolving the issue. At most, it reinforces the caution which must be exercised before concluding that Lien-Fa Liu and Irene Liu are guilty of fraud.
279. Both counsel relied upon a series of matters as demonstrating that their case was more plausible than the opposing side's case. I will take these in turn, beginning with the ones relied on by counsel for Gorgeous Beauty.
280. First, he relied on the fact that the Longtan Property had been acquired using the Gorgeous Beauty structure, which had been set up for the purpose of acquiring the Yanjiang Property, and in particular the fact that the structure includes the five Seychelles companies which were owned in the same proportions as YSC. I agree that this supports Gorgeous Beauty's case, but against this one has to take into account the evidence with regard to the insertion of Gold Wealth into the structure and the creation and execution of the Declaration of Trust.
281. Secondly, he pointed to the absence of any written record crossing the line between the Lien-Sheng Branch and the Lien-Fa Branch that the purchase of the Longtan Property was in fact for the benefit of William Liu. Given the informality with which YSC was run, and the absence of documentation which one would expect to see, I do not regard this as a strong point; but I do agree that there is a degree of inconsistency between the Defendants' evidence that this transaction did not need to be recorded in writing because of the trust that existed between the family members and their evidence that other, smaller transactions did need to be recorded in some way (notably, the alleged NTD 6,467,945 loan to Lien-Sheng Liu in connection with purchase of the Taoyuan Property, as to which see paragraph 95 above).

282. Thirdly, he pointed to the absence of any written record of any description of any loan to William Liu, despite the fact that ultimately YSC allegedly loaned him over US\$ 8 million (assuming Trillion belonged to YSC's shareholders). In particular, he pointed out that Irene Liu had accepted that no record was ever made of the differing sums William Liu owed YSC. I agree that this is implausible, but not overwhelming so. I also agree that there is a degree of inconsistency between this and the Defendants' evidence that Lien-Sheng Liu requested that Chao-Yu Liu and Michael Liu be made directors of Golden Up in order to protect the loan.
283. Fourthly, he submitted that the Defendants' evidence with regard to the intended financing of the purchase of the Longtan Property was incredible. I have considered this aspect of this case at paragraphs 180-199 above. As stated there, I consider that the evidence with regard to the financing of the purchase of the Longtan Property is more supportive of Gorgeous Beauty's case than of the Defendants' case, but it is not all one way.
284. Fifthly, he submitted that the size of the transaction (purchase price US\$ 8.6 million) compared to (a) YSC's shareholder dividends in 2007, (b) the net value of YSC and its affiliates in 2009 (about US\$ 39.7 million) and (c) the loans/misuse of monies by the Lien-Sheng Branch alleged by the Defendants (totalling about US\$ 400,000) made the Defendants' case implausible, particularly given that Michael Liu (who is five years older than William Liu) had received no such favourable treatment. I agree that this is a pointer against the Defendants' case.
285. Sixthly, he pointed out that William Liu had accepted that he had not spoken to a single member of the Lien-Sheng Branch about the transaction, even to thank them, at any point. He submitted that it was incredible that, if the transaction was an investment for William Liu to mark his reaching maturity, as the Defendants contend, nothing should have been said about this. I agree that this does seem unlikely.
286. Seventhly, he pointed to the absence of any proper evidence as to the tax benefit to William Liu of using the Gorgeous Beauty structure and to the conflict between the evidence of Eric Wu and Irene Liu with regard to the advice he provided. I have considered this aspect of the case in paragraphs 132-140 above, and concluded that I prefer Eric Wu's evidence to Irene Liu's. This conclusion undermines an important aspect of the Defendants' case.
287. Eighthly, he submitted that Irene Liu's evidence with regard to the correction of the letter of authorisation was implausible. I have considered this aspect of the case in paragraphs 148-149 above. As stated there, I find Irene Liu's evidence on this question plausible.
288. Ninthly, he pointed to the evidence with regard to the creation and execution of the Declaration of Trust. I have considered this aspect of the case in paragraphs 155-172 above. For the reasons stated there, I consider that Gorgeous Beauty's case is both more probable and more consistent with the documentary evidence than the Defendants' case.
289. Tenthly, he submitted that the Defendants' evidence with regard to the changing of the date of execution of the contract for the Longtan Property from 4 to 6 August

2010 was incredible. I have considered this aspect of the case in paragraph 109 above, and concluded that it casts some doubt on the Defendants' case.

290. Eleventhly, he relied on the evidence with regard to Trillion. I have considered this aspect of the case in paragraphs 52-65 above. I have concluded on the balance of probabilities that Trillion was a YSC affiliate as Gorgeous Beauty contends. Although this does not directly contradict any aspect of the Defendants' case with regard to the acquisition of the Longtan Property, it does undermine Lien-Fa Liu's and Irene Liu's credibility.
291. Twelfthly, he relied on the evidence with regard to the adjacent farmland. I have considered this aspect of the case in paragraphs 112-126 above. I have concluded that the balance of the evidence points towards this land having been acquired for YSC's shareholders. Again this does not directly contradict any aspect of the Defendants' case with regard to the acquisition of the Longtan Property, but it does undermine Lien-Fa Liu's credibility.
292. Finally, he relied on the Transfer and the discovery of the Transfer. I have considered these matters in paragraphs 250-256 and 267-268 above. I consider that they do provide some support for Gorgeous Beauty's case.
293. Turning to the matters relied on by counsel for the Defendants, first he pointed out that it was clear from the evidence that the Declaration of Trust was an authentic document which had been signed by Mei-Chuan Liao whose address had been written by Yan-Fan Xue. I agree that this is a point in favour of the Defendants, but it does not detract from the conclusion expressed in paragraph 288 above.
294. Secondly, he pointed out that, contrary to Gorgeous Beauty's case that most of the shareholders in YSC had visited the Longtan Property before it was purchased, it had turned out that only Lien-Sheng Liu, Lien-Fa Liu and William Liu had done so. I considered this in paragraph 106 above. As stated there, I agree that this casts some doubt on Gorgeous Beauty's case, but I do not regard it as a strong point in the Defendants' favour.
295. Thirdly, he relied on the evidence with regard to YSC's alleged purpose in acquiring the Longtan Property. I considered this aspect of the case in paragraphs 103-104 and 200-202 above. Overall, I consider that the evidence is more supportive of Gorgeous Beauty's case than it is of the Defendants' case. In particular, as I have explained, I accept Ming-Zhen Xu's evidence as to the circumstances in which he brought the property to the attention of Lien-Sheng Liu.
296. Fourthly, he submitted that it was improbable that Irene Liu would have carried out the alleged fraud because of the risk that it would be discovered given that she worked in a small open-plan office close to Mei-Chuan Liao and Yan-Fan Xue, that she used GenPro to set up Gold Wealth, that she received communications from GenPro via the shared fax machine in YSC's Finance Department and that Mei-Chuan Liao and Yan-Fan Xue were (at least in the case of Mei-Chuan Liao) loyal to Ching-I Yang. I agree that these factors mean that the fraud would have been a somewhat high-risk one and that this is a pointer against Gorgeous Beauty's case, but I do not consider it a strong one.

297. Fifthly, he pointed to the unsatisfactory nature of Gorgeous Beauty's evidence with regard to the discovery of the Declaration of Trust. I have considered this aspect of the case in paragraphs 214-221 above. As stated there, I agree that it casts some doubt on the credibility of Gorgeous Beauty's case, but I am not persuaded that it has as much significance as counsel for the Defendants contended.
298. Sixthly, he relied on Lien-Fa Liu's and Irene Liu's previous good character. I have considered this above.
299. Seventhly, he relied upon the submissions as to motive I have considered above.
300. Finally, he submitted that many of Gorgeous Beauty's witness had given untruthful evidence. To this end, he provided me with a detailed analysis of their evidence. I have addressed the points which I regard as most significant above, and I have considered all of them. While I accept that a number of the witnesses gave some evidence that was untruthful, or at least unreliable, I am not persuaded that the untruthfulness was as extensive as counsel submitted. Furthermore, I have also been critical of some of the evidence given by Lien-Fa Liu and Irene Liu. In any event, for the reasons I have explained, I do not consider that it would be safe to determine this case purely by reference to the credibility of the witnesses.
301. Taking everything into consideration, the conclusion I have come to is that the preponderance of the evidence supports Gorgeous Beauty's case on each of the sub-issues which make up the key factual issue. I therefore conclude that the Longtan Property was purchased for the benefit of YSC's shareholders, not for the benefit of William Liu, and that the Declaration of Trust was made without the consent of the majority of the shareholders in Gorgeous Beauty.

#### Legal issues

302. There are a number of legal issues between the parties, including issues of the law of the Seychelles. It is common ground that the legal issues depend to a very substantial extent on the resolution of the key factual issue. The Defendants do not dispute that, if the key factual issue is resolved in favour of Gorgeous Beauty, then it follows that Gorgeous Beauty is entitled to the relief it seeks by one legal route or another. Gorgeous Beauty contends, however, that it is entitled to the relief it seeks even if the key factual issue is resolved in favour of the Defendants. Since I have resolved the key factual issue in favour of Gorgeous Beauty, I shall deal with this aspect of the case relatively briefly.

#### *The governing law of the Trust*

303. Gorgeous Beauty contends that the governing law of the trust established by the Declaration of Trust ("the Trust") is Seychelles law. The Defendants contend that it is English law. Neither side contends for Taiwanese law.
304. *Applicable principles.* The governing law of a trust is generally determined by the Recognition of Trusts Act 1987, which incorporates the Hague Convention on the Law Applicable to Trusts and on their Recognition ("the Convention") into English law. Where this legislation is inapplicable, the common law applies.

305. The relevant provisions of the Convention are as follows:

**“Chapter I - Scope**

...

*Article 5*

The Convention does not apply to the extent that the law specified by Chapter II does not provide for trusts or the category of trusts involved.

**Chapter II – Applicable Law**

*Article 6*

A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

Where chosen under the previous paragraph does not provide for trusts or the category of trusts involved, the choice shall not be effective and the law specified in Article 7 shall apply.

*Article 7*

Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

In ascertaining the law with which a trust is most closely connected reference shall be made in particular to—

- (a) the place of administration of the trust designated by the settlor;
- (b) the situs of the assets of the trust;
- (c) the place of residence or business of the trustee;
- (d) the objects of the trust and the places where they are to be fulfilled.”

306. In considering whether there is an implied choice of law under Article 6, relevant circumstances include the legal style of the trust, the place where the affairs of the trust are administered and the *situs* of the assets: see Dicey, Morris and Collins, *The Conflict of Laws* (15<sup>th</sup> ed) at §§29-019 and 29-020.
307. In considering the law with which a trust is most closely connected under Article 7, the list of factors is not exhaustive, and all surrounding objective circumstances may be relevant: see *Dicey* at §29-022. The legal style of the trust may be a relevant factor given the focus of Article 7 is on connections with legal systems, rather than countries. On the other hand, it does not appear to be relevant that the trust is valid under one law, but not another: see *Dicey* at §29-023.
308. *Implied choice?* In the present case, there is no express choice of law. The Defendants contend, however, that the terms of the Declaration of Trust, interpreted in the light of the circumstances, demonstrate an implied choice of English law. Gorgeous Beauty disputes that there is any implied choice of law.
309. The main factors supporting the contention that there was an implied choice of English law are that (i) the Declaration of Trust is written in English, (ii) the style of drafting corresponds to English legal style and (iii) the sole assets of the Trust were the 99 shares in Gold Wealth, a UK LLP. So far as point (ii) is concerned, as is typical of English law, the Declaration of Trust names the settlor, trustee and beneficiary and defines the trustee’s powers and duties consistently with English law. With some hesitation, I conclude that these factors do demonstrate an implied choice of English law. In case I am wrong about that, I shall go on to consider the effect of Article 7.
310. *Most closely connected?* The Defendants contend that the Trust is most closely connected with English law, whereas Gorgeous Beauty contends that is most closely connected with Seychelles law.
311. Taking the factors listed in Article 7 in turn, it is common ground that (a) the place of administration of the Trust is Taiwan, (b) the *situs* of the trust assets (i.e. the 99% interest in Gold Wealth) is England and (c) the place of incorporation of the trustee (i.e. Gorgeous Beauty) is the Seychelles. The Defendants rely on the facts that

Gorgeous Beauty is not resident in the Seychelles, does not carry on business in Seychelles and, as an IBC, is prohibited from doing so under section 5(1)(a) of the Seychelles International Business Companies Act 1994 (“IBCA94”).

312. As to the fourth factor, the Defendants contend that the object of the Trust was to reduce William Liu’s tax liability. Assuming for present purposes that this is correct, I do not consider that this points to the Trust being more closely connected with either English or Seychelles law. William Liu was seeking to reduce his tax liability in Taiwan and the offshore structure employed for this purpose included both Seychelles companies and a UK LLP.
313. The Defendants also rely on the fact that the Declaration of Trust is drafted in the style of English law, and not Seychelles law. As discussed below, Seychelles law only recognises a specific category of trusts known as International Trusts, which must comply with the Seychelles International Trusts Act 1994 (“ITA94”). It is common ground that the Trust does not conform to this style. For example, the Declaration of Trust identifies the settlor and beneficiary by name, which is not permitted under section 76 ITA94. The trustee, Gorgeous Beauty, is neither a resident of Seychelles, nor an IBC authorised by the relevant authority to act as a trustee, and is thus not permitted to be a trustee under section 4 ITA94.
314. Again with some hesitation, I conclude that the Trust is most closely connected with English law.

*Validity of the Declaration of Trust applying English law*

315. It is common ground that, if Gorgeous Beauty succeeds on the key factual issue, then the Declaration of Trust is invalid even if the Defendants are correct that English law is the applicable law. If Gorgeous Beauty does not succeed on the key factual issue, it does not contend that the Declaration of Trust is invalid under English law.

*Sources of Seychelles law*

316. In case I am wrong that the applicable law is English law, I shall consider the position under Seychelles law. Before turning to the issues on Seychelles law, it is necessary to say a little about the law of the Seychelles. The Seychelles was a French colony which was ceded to the United Kingdom in 1814 and became independent in 1976. As a result, it is a mixed jurisdiction. Its civil law is governed by the Civil Code, which is based on French law. It has also statutes based on English law, however. Where this is the case, the Seychelles courts treat decisions of the English courts as of “very high persuasive value”: see *Jumeau v Jumeau* 3 SCAR 338 at 342 (Mustafa P). Furthermore, section 4 of the Seychelles Courts Act provides that the Seychelles Supreme Court “shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England” (and see also section 6 quoted below). Such powers “include not only inherent powers derived from Common Law but also from Statutes of general application existing [in June 1976]”: see *Florentine v Florentine* (Seychelles Court of Appeal, 12 April 1991) at 3 (Mustafa P).



*Validity of the Trust under Seychelles law*

317. It is common ground that the Trust does not satisfy the requirements of ITA94. Gorgeous Beauty contends that the law of the Seychelles does not recognise non-statutory trusts. The Defendants dispute this. Mr Chang-Sam's opinion supports Gorgeous Beauty's case. Mr Shah's opinion is that the better view is that law of the Seychelles does recognise non-statutory trusts, although he acknowledges that this is a grey area of Seychelles law.
318. Mr Shah particularly relies on the decision of the Seychelles Court of Appeal in *Chow v State Assurance Co Ltd* (24 August 2007). In that case the appellant's company First International Co Ltd became an insurance broker for the State Assurance Corporation on the terms of an agreement which provided that, pending remittance to the Corporation, the broker would hold premiums as trustee for the Corporation. The Court held that the effect of this was to create a *Quistclose* trust in respect of the premiums, so that they did not belong to the broker when it was wound up. But it is far from clear to me what extent this was in issue on the appeal given the rather odd circumstances of the case.
319. Mr Chang-Sam particularly relies on the more recent decision of the Seychelles Court of Appeal in *Zalazina v Zoobert Ltd* (29 April 2013). In that case the Court held at [17]:
- “Seychelles is a civil law country in terms of its private law. This sets its Civil Code on a collision course with not only the International Trusts Act but also the International Business Companies Act and the International Corporate Services Providers Act 2003 as the civil law regime does not recognise anonymity in terms of ownership of property. Hence international trusts in Seychelles are only statutory creations of the 1995 [sic] Act and not common law trusts. Despite the wording of section 3 of the 1995 [sic] Act the only trusts permitted under the law are statutory. The Act lays down strict conditions for the creation of such statutory international trusts possibly to avoid their incompatibility with our civil law regime. The trust document in this case runs afoul numerous mandatory provisions of the Act ...”
320. Mr Shah argues that *Zalazina* turned on the question of “anonymity in terms of ownership” which is a peculiar feature of Seychelles international trusts. This is a reference to section 76 ITA94, which provides that an international trust must not identify the settlor or the beneficiary unless the beneficiary is Seychellois. I do not follow this reasoning, since the trust document in that case identified the settlor. On the other hand, Mr Shah is correct to point out that *Chow* is not mentioned in *Zalazina*. I also agree with Mr Shah that the two decisions appear to be inconsistent, notwithstanding Mr Chang-Sam's attempt to reconcile them.
321. Mr Shah acknowledges that, as Mr Chang-Sam says, the traditional objection in the Seychelles to common law trusts is that they may be used to circumvent forced heirship rules, but he says that this objection falls away where the settlor is not

resident or domiciled in the Seychelles. This in itself does not establish that Seychelles law recognises a non-statutory trust in such circumstances, however.

322. Mr Shah identifies two legislative bases for such recognition. The first is section 9(2) IBCA94, which permits an IBC to “transfer any of its assets in trust”. I do not find this persuasive, since that could refer to a statutory trust under ITA94.
323. The second is section 6 of the Courts Act, which provides that the Supreme Court (i.e. the High Court) “shall continue to be a Court of Equity and is hereby invested with powers, authority and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles”. While this seems a more promising basis for recognition of non-statutory trusts, Mr Shah cites no authority in which a Seychelles court has relied on section 6 as entitling it to recognise a non-statutory trust (not even *Chow*).
324. In this uncertain state of the law, I think I should be guided by the most recent decision of the Seychelles Court of Appeal, namely *Zalazina*. Accordingly, I conclude that the law of the Seychelles does not recognise trusts other than those which comply with ITA94. It follows that, if Seychelles law applies, the Declaration of Trust did not create a valid trust.

*Validity of the disposition under Seychelles law*

325. Section 78 IBCA94 provides as follows:

“Any sale, transfer, lease, exchange or other disposition of more than 50 per cent, by value of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described under section 9(2), if not made in the usual manner or regular course of the business carried on by the company, shall be as follows:

- (a) the proposed sale, transfer, lease, exchange, transfer, lease, exchange or other disposition shall be approved by the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange, transfer, lease, exchange or other disposition, the directors shall submit the proposal to the members for it to be authorised by a resolution of members;
- (c) if the meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, shall be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the proposal shall be given to each member, whether or not he is entitled to consent to

the sale, transfer, lease, exchange, transfer, lease, exchange or other disposition.”

326. Gorgeous Beauty contends that the Declaration of Trust did not comply with section 78 and therefore it is invalid. The Defendants contend that section 78 does not apply to the Declaration of Trust, but if it does the Declaration of Trust complied with it and in any event non-compliance does not invalidate the Declaration of Trust.
327. First, the Defendants contend that section 78 does not apply to the Declaration of Trust because it was never intended that the 99% interest in Gold Wealth would be an asset of Gorgeous Beauty. This depends on the key factual issue.
328. Secondly, the Defendants contend that the disposition was a transfer pursuant to section 9(2). This provides that:
- “For the purposes of subsection (1)(i), notwithstanding any other provision of this Act or of any other law for the time being in force in Seychelles to the contrary save the law as to fraudulent preference and the law as to dispositions made with intent to defraud creditors, the directors may cause the company to transfer any of its assets in trust to one or more trustees and, with respect to such transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.”
329. Section 9(1)(i) provides that an IBC has power to:
- “protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company”.
330. Again, the Defendants’ reliance upon section 9(2) depends on the resolution of the key factual issue.
331. Thirdly, the Defendants contend that section 78 can be overridden by the principle recognised in the English case of *Re Duomatic* [1969] 2 Ch 365 (i.e. informal unanimous shareholder consent suffices without the need for strict compliance for formal procedures). This gives rise to an issue as to whether the *Duomatic* principle is recognised in Seychelles law. Mr Shah’s opinion is that it is, while Mr Chang-Sam’s opinion is that it is not. Even if it is, however, the Defendants’ argument depends on the resolution of the key factual issue.
332. Fourthly, the Defendants contend that, even if the Declaration of Trust did not comply with section 78, it does not follow that the Declaration of Trust is invalid. In this regard the Defendants rely on section 10(1) IBCA94, which provides:

“An act of a company incorporated under this Act and a transfer of movable or immovable property by or to a company so incorporated was without capacity or power to perform the the act or to transfer or receive the property ...”

333. The conclusion I have reached is that, if the Defendants were right on the key factual issue, then the Defendants would succeed on at least one of these arguments. In my view the simplest and most compelling is the first.

*Conflict of interest under Seychelles law*

334. Gorgeous Beauty also contends that Irene Liu had a conflict of interest with regard to the Declaration of Trust which triggered a requirement under section 55(2) IBCA94 for the transaction to be approved or ratified by a resolution of the members. The arguments in relation to this contention are essentially the same as in relation to section 78. Again, if the Defendants were right on the key factual issue, I would find in their favour on this point.

*Rectification of the Companies Register*

335. Under section 1096 Companies Act 2006 (applicable to LLPs by virtue of regulation 67 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009), the Court has the power to order the Registrar of Companies to remove any material from the register which (1) derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company or (2) that a Court declares to be factually inaccurate, to be derived from something that is factually inaccurate, or forged.
336. There is no dispute that, if the court finds in favour of Gorgeous Beauty on the key factual issue, the court has jurisdiction to order, and it would be appropriate for the court to order, that the Registrar expunge the forms LLAP01, LLTM01 and LLAD01 referred to in paragraph 250 above from the Register.

Result

337. I shall grant Gorgeous Beauty the relief it seeks.