

Monetary Authority of Singapore v Huang Zhong Xuan and another  
[2013] SGHC 242

**Case Number** : Originating Summons No 311 of 2012  
**Decision Date** : 12 November 2013  
**Tribunal/Court** : High Court  
**Coram** : Belinda Ang Saw Ean J  
**Counsel Name(s)** : Cavinder Bull SC, Woo Shu Yan, Liew Wey-Ren Colin (Drew & Napier LLC) for the plaintiff; Philip Fong Yeng Fatt, Tan Yong Seng Nicklaus (Harry Elias Partnership LLP) for the first defendant; Goh Phai Cheng SC (Goh Phai Cheng LLC) for the second defendant.  
**Parties** : Monetary Authority of Singapore — Huang Zhong Xuan and another

*Injunctions – Application*

12 November 2013

Judgment reserved.

**Belinda Ang Saw Ean J:**

**Introduction**

1 This application *vide* Originating Summons No 311 of 2012 (“OS 311/2012”) is for an injunction pursuant to s 324 of the Securities and Futures Act (Cap 289, 2006 Rev Ed) (“the SFA”).

2 Acting pursuant to its regulatory and law enforcement functions, the Monetary Authority of Singapore (“MAS”) filed OS 311/2012 in the wake of investigations by the Commercial Affairs Department (“CAD”) into the affairs of a Singapore Exchange Limited mainboard-listed Cayman Islands-incorporated company, China Sky Chemical Fibre Co Ltd (“China Sky”), whose operating subsidiaries in the People’s Republic of China (“PRC”) are engaged in the manufacture and sale of chemical fibres like nylon-fibres. CAD’s investigations into China Sky and its former directors are still on-going in relation to “interested-party transactions” and a failed land purchase in Fujian, PRC. [\[note: 11\]](#)

3 On 28 March 2012, MAS obtained *ex parte* an interim order (“the Interim SFA Injunction”) that restrained the defendants from disposing of, or otherwise dealing with the money in bank account number [xxx(redacted)] (“the Bank Account”) maintained with Credit Suisse AG, Singapore Branch (“the Bank”) in the name of the second defendant, Build Up International Investments Limited (“D2”) over which the first defendant, Mr Huang Zhong Xuan (“D1”), has control as the true account holder and authorised operator (being an authorised signatory). The Interim SFA Injunction against the defendants was later ordered to continue on 11 April 2012 until further order.

4 Presently, before this court, MAS is seeking to make the Interim SFA Injunction permanent in relation to the account balance in the sum of US\$3.7m in the Bank Account pending the outcome of the on-going investigations and any subsequent prosecution and determination of civil actions and/or criminal enforcement proceedings for breaches of the SFA. Section 324 of the SFA permits such an application to be made when an investigation is being carried out and, in this case, on China Sky and its former directors including D1. It is MAS’s position that there was and still is concern with the

potential disposal of US\$3.7m in the Bank Account in view of the way D1, on the evidence, had dealt with the Bank Account in the past.

5 The central issue before me is whether D1 is the beneficial owner of the Bank Account or has some interest in US\$3.7m in the Bank Account. This question looks into whether D1 is the true account holder of the Bank Account, or is the beneficial owner of D2. For this court to determine the beneficial ownership issue, orders were made for deponents of various affidavits to be cross-examined. That took place over four days from 9 to 12 July 2013.

6 Mr Cavinder Bull SC ("Mr Bull") appeared for MAS, Mr Philip Fong ("Mr Fong") represented D1, and Mr Goh Phai Cheng SC ("Mr Goh") appeared for D2.

7 For the sake of completeness, s 324 of the SFA was amended *vide* the Securities and Futures (Amendment) Act 2012 (Act 34 of 2012). These amendments which came into effect on 18 March 2013 do not affect the present application.

### **History of the proceedings**

8 D1 is a PRC national. He was the executive director of China Sky and he served as its Chief Executive Officer ("CEO") until his resignation on or about 8 February 2012. D2 is a company incorporated in the British Virgin Islands ("BVI") and is the named account holder of the Bank Account.

9 The assets held in the Bank Account were, at various times, shares in a public listed company known as Trony Solar Holdings Company Limited ("Trony Solar") ("Trony Solar Shares"), dividends declared on those shares as well as the proceeds from the sale of some of those shares.

10 The first time MAS heard about the Bank Account was after D1 had transferred approximately US\$10m from the Bank Account on 5 March 2012 and that D1 had given further instructions to the Bank on 27 March 2012 to transfer the account balance sum of US\$3.7m. As the fund transfer instructions were occurring during investigations into China Sky's affairs, MAS promptly filed OS 311/2012 and successfully obtained the Interim SFA Injunction pursuant to s 324 of the SFA on an *ex parte* hearing, which took place before Steven Chong Horng Siong J on 28 March 2012, to prevent D1 from dissipating US\$3.7m remaining in the Bank Account. As stated, this interim injunctive relief was continued against the defendants on the same terms by Chong J on 11 April 2012. By the terms of the Interim SFA Injunction, the defendants were restrained from doing, *inter alia*, the following: [\[note: 2\]](#)

(a) paying, transferring or otherwise parting with possession of all or any of the moneys in [the Bank Account], whether it is to [D1] or to any other person at [D1's] direction or request or otherwise; and

(b) taking or sending out of Singapore any of the moneys in [the Bank Account].

11 Almost nine months after the Interim SFA Injunction was obtained, D2 filed Summons No 153 of 2013 ("SUM 153/2013") to set aside the Interim SFA Injunction on 8 January 2013. This setting aside application was filed after MAS took out two earlier applications to cross-examine some of the defendants' deponents of various affidavits, namely Summons No 6168 of 2012 ("SUM 6168/2012") filed on 30 November 2012 and Summons No 20 of 2013 ("SUM 20/2013") filed on 3 January 2013.

12 SUM 153/2013 was dismissed on 9 April 2013. On the same day, I allowed SUM 6168/2012 and

SUM 20/2013 for the cross-examination of the defendants' witnesses on their affidavits. There were additional applications filed by D1 (*vide* Summons No 2190 of 2013) and D2 (*vide* Summons No 2144 of 2013) for Ms Lillian Liao ("Ms Liao"), a relationship manager from the Bank, to be cross-examined on her affidavits. MAS did not oppose the applications. Orders to cross-examine Ms Liao on her affidavits were made on 9 May 2013.

13 In summary, the deponents to be cross-examined on their respective affidavits were as follows:

- (a) D1;
- (b) Ms Huang Yiling ("Ms Huang"), director and 50% shareholder of D2, and alleged beneficial owner of D2 and the Trony Solar Shares;
- (c) Mr Hui San Wing ("Mr Hui"), also known as Sunny Hui, D1's assistant in Hong Kong;
- (d) Mr Lau Kam Sze ("Mr Lau"), director and 50% shareholder of D2, and alleged beneficial owner of D2 and the Trony Solar Shares; and
- (e) Ms Liao, the Bank's relationship manager responsible for the Bank Account.

14 On the morning of the cross-examination on 9 July 2013, the court was informed that D1 and Mr Hui were not in Singapore to attend for cross-examination on the affidavits they had filed. I ordered that, in the absence of an application for leave under O 38 r 2(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), the affidavits filed by D1 on 4 October and 13 December 2012, and the affidavit filed by Mr Hui on 13 December 2012 were not to be used as evidence in these proceedings. I also disallowed the application made by D1's counsel, Mr Fong, to cross-examine Ms Liao. However, Mr Fong was permitted to submit on D1's case at the conclusion of the cross-examination.

### **The principal issue and observations**

15 This case concerns the opening of a bank account in the name of an offshore company incorporated in the BVI and whose sole function was to hold assets (seeing that it did not trade). Often, those who choose to conduct their affairs and make investments through offshore structures in tax havens do so with the objective to deflect attention away from themselves and, as far as possible, conceal the true beneficial ownership of assets which they control. Whilst corporate structures can be devised to give a particular impression, some of them will be entirely genuine.

16 Legally, the Bank's customer is D2, a BVI corporation which holds assets, *ie*, the Trony Solar Shares. The directors and D2's shareholders were, and still are, Mr Lau and Ms Huang. Against this description of the corporate customer, there exist, in this case, other typical characteristics found in corporate vehicles incorporated for the purpose of holding assets, such as the involvement of family members (like Ms Huang who is D1's daughter) and close friends and associates (like Mr Lau) in the corporate structures. As stated, such a setup is usually designed to afford the true beneficial owner an opportunity to distance himself from the legal entity in question.

17 Banks have a general guide to account opening and customer identification which contains some essential elements to an effective customer due diligence procedure. Such "Know Your Customer" procedures require customer identification to be complied with in detail. Detailed personal and business information from the owner and controller of the company would be required. Furthermore, information provided by the corporate customer should be verified by the bank through additional inquiries or other sources of information. In particular, anti-money laundering laws regulating

the banking industry require banks to know and identify the actual beneficial owner of their corporate customers. [\[note: 3\]](#) To comply with the legal obligation to identify and report on the ultimate beneficial owner of a corporate customer, banks will require corporate customers to complete a declaration of beneficial ownership and this declaration is usually completed by the representatives of the corporate customers, *ie*, the directors.

18 For present purposes, the inquiry was into the beneficial ownership of the Bank Account which was held in the name of D2. The fact-specific inquiry would determine whether assets legally vested in a corporate customer were beneficially owned by its controller who was neither a director nor shareholder of the corporate customer. Notably, proof of beneficial ownership of a bank account opened in the name of a corporate customer is usually confirmed by a different legal document such as a declaration by a nominee stating with absolute certainty the identity of the beneficial owner. Typically, the declaration of beneficial ownership would have been such a legal document. A trust deed is another example.

19 The high-water mark of D2's case is that Mr Lau and Ms Huang did not sign the Bank's declaration of beneficial ownership dated 1 October 2010 ("DBO") and that their signatures were forged. The forgery was confirmed by a handwriting expert, one Mr William Pang ("Mr Pang"). It is thus not surprising that Mr Goh submits that the court should dismiss OS 311/2012 and discharge the Interim SFA Injunction seeing that MAS has not established a case showing that D1 owns the money in the Bank Account presently subject to the Interim SFA Injunction or that D1 has some interest in the money.

20 Mr Bull's challenge is to unravel the layers of ownership to find the person who exercised ultimate effective control over the legal entity D2 and the Bank Account without the aid of a valid DBO. Mr Bull informed the court that there were, amongst other things, pieces of positive documentary evidence that would substantiate the factual issue that D1 was the beneficial owner of D2 with control over it and the Bank Account. In brief, Mr Bull would be relying on three events to establish D1's beneficial ownership:

- (a) the incorporation of D2;
- (b) the acquisition of the Trony Solar Shares in 2006; and
- (c) the setting up of the Bank Account in the name of D2.

21 A contrary stance is strenuously maintained by Mr Goh and Mr Fong for the defendants. Besides challenging the credibility of the Bank's relationship manager as a truthful witness, the defendants rely heavily on the authenticity of the DBO and a Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding ("W-8BEN Form") for their case. D2 argues that it is "an unrelated third party" and that MAS has wrongly targeted D2.

22 With regard to D2's "unrelated third party" point, MAS has explained that it has taken the position that D1 is the beneficial owner of the Bank Account and of D2, and as such D2 is a related third party. [\[note: 4\]](#)

23 Before I turn to the issue of beneficial ownership proper, I must mention a related issue that arose from the evidence on the authenticity of the DBO. On the evidence of the forgery now available (MAS did not lead evidence to oppose the handwriting expert's opinion), the question that I now have to consider on this aspect of the case is whether the matter was fully, frankly and fairly put to Chong J. I am satisfied that it was. Certainly, the evidential value of the DBO now appears to be weaker

than it was at the time MAS was before Chong J. However, there was nothing improper in the way in which the assertion of beneficial ownership of the Bank Account was based on the DBO. This was because there was no evidence then that MAS was aware that two signatures on the DBO were forged at the time the Interim SFA Injunction was granted on 28 March 2012 and then continued on 11 April 2012 until further order. Even now, there is no evidence of who forged the two signatures and the motive for doing so, though the defendants have nonetheless continued to maintain that it was Ms Liao who forged the signatures as she was keen to have D2 open a bank account with the Bank.

### **Assessment of credibility**

24 A preliminary point to note before evaluating the evidence is the assessment of credibility.

25 In assessing the credibility of witnesses, especially from those who were present when the alleged events occurred, the court has to have regard to all the relevant circumstances, including the inherent probabilities or improbabilities of the story, the contemporaneous documents or records, or any evidence which is undisputed or indisputable, tending to support or contradict one account or the other and the overall impression of the characters or motivations of the witnesses (*per* Baroness Hale of Richmond in *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2009] AC 11 at [31]). This same approach to testing conflicting evidence was earlier observed by Robert Goff LJ (as he then was) in *Armagas Ltd v Mundogas SA* [1985] 1 Lloyd's Rep 1 (at 57):

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 witness's motives and to the overall probabilities, can be a very great assistance to a judge in ascertaining the truth.

26 I should add that the credibility of a witness is to be judged in the light of his or her evidence as a whole. It is generally not something that can be dealt with issue by issue.

27 I have to bear these general points in mind when considering the beneficial ownership issue and the evidence.

### **Impressions of witnesses**

28 In a case like this, the court has to be vigilant of self-serving assertions as well as *ex post facto* reasoning and arguments made with the benefit of hindsight and passed off as facts in evidence. I will discuss the evidence of the witnesses in detail in due course, but for now I set out my impressions of the witnesses who were cross-examined. This is useful when evaluating the evidence put forth by the parties.

29 Ms Liao was an articulate and intelligent witness. She was sharp-witted and able to readily react and answer with a fair degree of exactitude the questions asked of her in cross-examination. She was astute without seeking to be dishonest, and answered the questions in a manner which was in the best interests of the Bank. At times, Ms Liao came across as defensive, but most of the time, she gave her evidence in a clear, coherent and consistent fashion. Overall, she was a witness whose evidence I could rely on with confidence and particularly so when it was consistent with the documents or corroborated or related to a fact which was undisputed or indisputable. Moreover, in the absence of D1 and Mr Hui's testimonies, Ms Liao's evidence on her conversations and interactions with D1 and Mr Hui went unchallenged. In any case, the occasions for conflicting evidence between Ms Liao and Mr Lau were minimal because they did not speak to each other until well after the Bank

Account was opened. This leaves Ms Huang. I will deal with the meeting between Ms Huang and Ms Liao on 1 October 2012 in due course.

30 However, Ms Liao is to be criticised for being less than conscientious in the handling of the Bank's "Know Your Customer" due diligence measures. So far as it relates to Mr Lau, the Bank Account was a non-face-to-face opening account and this meant that independent information and verification of the identity and signatures of Mr Lau were needed. Ms Liao's idea of verification could hardly count as independent. She took comfort from the fact: (a) that the account opening documents were sent to Mr Hui on the instructions of D1; and (b) that since it was Mr Hui who returned the account opening documents duly signed, she accepted the signatures as ostensibly being that of Mr Lau. In particular, Ms Liao has to take the blame for not independently verifying the questioned signatures on the DBO.

31 Mr Lau and Ms Huang were aggrieved that the assets of D2 had been frozen by MAS, seeing as D2 was not involved in the investigations by CAD and neither D2 nor they had had any commercial transactions with China Sky. This position was later established during cross-examination to be inaccurate because Mr Lau was the owner of a company called Deluxe Dragon International Ltd that was acquired by China Sky for RMB450m.

32 Both Mr Lau and Ms Huang plainly have a stake in the outcome of OS 311/2012. Even with the usual allowance for the fact that these two witnesses gave evidence through an interpreter, this alone cannot explain the gaps and inconsistencies in their oral evidence including the inability to answer questions raised by the documents which were produced in support of D2's case. I note that whenever they ran into a tight spot, they chose from a range of possible answers which they considered most likely to assist, or least likely to damage, D2's case. In the result, whilst both valiantly attempted to corroborate each other's evidence to maintain a common front that the assets in the Bank Account did not belong to D1 but rather to D2, their oral testimonies were, at times, incompatible with each other and internally inconsistent with their respective affidavits. They were quite often accused of making up their evidence during cross-examination.

33 However, an important piece of evidence in D2's favour is the DBO. Evidentially significant in the context of the case was the authenticity of the DBO. D2 had alleged that the ostensible signatures of Mr Lau and Ms Huang on the DBO were forged. Expert evidence supported the conclusion that the questioned signatures of Mr Lau and Ms Huang were not theirs.

### **Circumstances leading to the opening of the Bank Account in 2010**

#### ***Ms Liao's contact with D1 and Mr Hui***

34 The bulk of the evidence pertaining to the opening of the Bank Account was led by Ms Liao who was the Bank's point of contact with D1 and Mr Hui, both of whom chose not go into the witness box to be cross-examined on their respective affidavits by staying away from Singapore with no valid reasons furnished. The effect of their absence and consequent silence on matters on which they could have been expected to be cross-examined left Ms Liao's version of the evidence intact and undiminished. The failure of D1 and Mr Hui to have their evidence on the beneficial ownership issue tested in cross-examination is of such importance to OS 311/2012 that it is a factor which the court is entitled to give some weight.

35 Ms Liao stated that she became acquainted with D1 at the end of 2009, and had met him a few more times thereafter. Her unchallenged evidence was that when she first approached D1 to open an account with the Bank in early 2010, D1 had informed her that: (a) he was thinking of doing just that

to hold his shares in Trony Solar in custody; (b) D2 was a vehicle to hold his shares in Trony Solar; and (c) the directors of D2 were his nominees, one of whom was his daughter. [\[note: 5\]](#)

36 It was D1 who advised Ms Liao of his decision to open an account in the name of D2. She was further advised of his decision to transfer his account in the name of Firm Miracle Limited from the Bank's Hong Kong branch to the Bank's branch in Singapore. [\[note: 6\]](#) D1 was the director and shareholder of Firm Miracle Limited, a BVI company.

37 Ms Liao met D1 on or around 22 April 2010 at the Fullerton Hotel in Singapore. On that occasion, D1 signed the Bank's "Corporate and Other Entity Account Application Form" ("Account Application Form"). She was directed to contact Mr Hui who would provide her with the necessary information and assist in Mr Lau's execution of the documents for the opening of the Bank Account. [\[note: 7\]](#) She duly contacted Mr Hui in mid-May 2010, and again in mid-July 2010. In this regard, she exhibited her e-mail communications with Mr Hui in her affidavit. [\[note: 8\]](#)

38 Whatever Mr Lau had said about Ms Liao's persuasions to open a bank account with the Bank was derived from D1. This accounted for Mr Lau's inability to explain how Ms Liao approached D1 and Ms Huang to set up the Bank Account for D2. It also explains why Mr Lau was conspicuously silent on the dates or the period of time when he alleged Ms Liao had initially approached D1 and Ms Huang to open the Bank Account, and when the Bank Account was opened. Ms Huang vaguely mentioned that she was "informed" by one Mr Shek and Mr Hung of Ms Liao "sometime in 2010", [\[note: 9\]](#) while Mr Lau stated that he was informed of Ms Liao persuading D1 and Ms Huang to open a bank account in the "last quarter of 2010".

39 Mr Lau admitted that he had not met or spoken with Ms Liao before the Bank Account was opened, [\[note: 10\]](#) and that he had only signed the documents passed to him by Mr Hui. [\[note: 11\]](#) It follows that Mr Lau could not have been the person who told Ms Liao at the time the Bank Account was being opened that he and Ms Huang were the beneficial owners of D2 as well as the Trony Solar Shares registered in the name of D2. [\[note: 12\]](#)

40 There is no evidence of Ms Liao's interaction with Ms Huang *before* 29 September 2010 when she sent some bank account opening documents to Ms Huang via e-mail. [\[note: 13\]](#) Ms Huang confirmed that she met Ms Liao for the first time on 1 October 2010. [\[note: 14\]](#)

41 In the circumstances, I accept Ms Liao's evidence that it was D1 who wanted to open the Bank Account in D2's name and it was D1 who gave instructions to Ms Liao to do so in April 2010, and following D1's instructions, she contacted Mr Hui in May 2010 with the object of transmitting the documents to open an account with the Bank.

### ***The account opening documents***

42 The documents relating to the opening of the Bank Account ("Account Opening Documents") were exhibited in the various affidavits. The documents relevant to the cross-examination were:

- (a) the Account Application Form; [\[note: 15\]](#)
- (b) an Investment Profile Questionnaire; [\[note: 16\]](#)

- (c) the W-8BEN Form; [\[note: 17\]](#)
- (d) a Company Mandate; [\[note: 18\]](#) and
- (e) the DBO. [\[note: 19\]](#)

43 Mr Lau and Ms Huang were cross-examined on the Account Opening Documents. I shall deal with the documents signed by D1 and then those signed by Mr Lau and Ms Huang. Apart from the DBO, it cannot be seriously disputed that D1, Ms Huang and Mr Lau signed the other Account Opening Documents. It follows that unless the *non est factum* doctrine applies, the general rule is that a person of full age and capacity is bound by his signature to the documents embodying contractual terms, whether he reads or understands them or not.

#### *Documents signed by D1*

44 Ms Liao stated that around 22 April 2010, she met D1 in Singapore to sign the Account Opening Documents. In her presence, D1 signed the Account Application Form, the Company Mandate, and the Investment Profile Questionnaire. [\[note: 20\]](#) Ms Liao stated that D1 had signed the Company Mandate wrongly as the "Chairman of the Meeting of Directors", [\[note: 21\]](#) and this was struck out. [\[note: 22\]](#) Ms Huang subsequently signed in that capacity. Since D1 did not attend the cross-examination, Ms Liao's evidence on this error on D1's part was not contested. Nonetheless, the defendants in their respective submissions rejected Ms Liao's evidence, arguing that the error actually supported their case as it was clearly indicative of the fact that Ms Liao had initially thought that D1 was a director of D2, [\[note: 23\]](#) and that she had only found out much later that D1 was not. I am not convinced that this contention is a proper deduction from D1's signature on the Company Mandate. D1 signed not less than three different documents, of which there were various places where he could have inadvertently signed as the director of D2. In reality, he did not do so as Ms Liao did not point out that D1 was to sign as the director of D2 in those documents. It is plausible that the signing of the Company Mandate was an innocent mistake. Besides, nothing significant turns on the signature being struck out. Similarly, I am not persuaded by Mr Goh's submissions that the mistake itself pointed to the fact that Ms Liao only found out that D1 was not a director of D2 after she received a copy of D2's Certificate of Incumbency on or after 31 August 2010. A notarised copy of the Certificate of Incumbency came later on or after 11 October 2010. [\[note: 24\]](#)

#### *Documents signed by Mr Lau and Ms Huang*

##### (1) The Account Application Form

45 There is no dispute that Mr Lau and Ms Huang signed the Account Application Form, and there is no dispute that they were aware that the purpose of the Account Application Form was to open a bank account with the Bank. Both Mr Lau and Ms Huang attempted to undermine or nullify the legal effect of their signatures in respect of one section of this binding documentation with one flimsy excuse after another. I will comment on these excuses below. Suffice to say, D2 is bound by the signatures of Mr Lau and Ms Huang.

46 Mr Bull relies on section 4.3 of the Account Application Form ("Section 4.3"), which states that D1 is the beneficial owner of the assets in the Bank Account. [\[note: 25\]](#) I agree with Mr Bull's submissions that the DBO and Section 4.3 are intended for two different things: the DBO identifies the beneficial owner of the account holder of the Bank Account whereas Section 4.3 identifies the



beneficial owner of the assets in the Bank Account. [\[note: 26\]](#) This difference is apparent from the face of the two documents. As a matter of construction, the language of Section 4.3 is wide enough to encompass the situation where the beneficial owner of the assets in the account is not the same person or legal entity as the named account holder.

47 Section 4.3 reads as follows:

#### **4.3 Beneficial Owners(s)**

Please tick one of the boxes below.

- ☐ You are the beneficial owner (see definition at end of this section 4.3) of the assets in the account, now and in the future.
- ☐ The beneficial owner(s) of the assets in the account are ***listed below*** :

#### **First Beneficial Owner**

[Particulars of D1 filled in by hand]

...

[emphasis in original in bold, emphasis added in bold italics]

48 Mr Goh argues that the declaration in Section 4.3 has no effect because the second box below the heading "4.3 Beneficial Owner(s)" was not ticked. I agree with Mr Bull that if the first box is ticked, this means that the beneficial owner is the same as the account holder and there is no need to fill in the details of the beneficial owner as that information is already present in the earlier parts of the form. If the second box is to apply, details of the beneficial owner have to be supplied in the space below the second box. When information is supplied in the space indicated, there is no doubt that this is an indication of the second option. In the context of this case, the fact that the second box was not ticked is not fatal as the requisite information concerning the "First Beneficial Owner" was provided in the space below.

49 The weakness of D2's argument was probably appreciated, and as a result D2 suggested for the first time in its submissions that Section 4.3 was not filled up at the time when both Mr Lau and Ms Huang signed the Account Application Form. [\[note: 27\]](#) I agree with Mr Bull that this is a new point and quite different from the two grounds (forged DBO and nondisclosure of the W-8BEN Form) relied on in SUM 153/2013.

50 Significantly, Mr Lau and Ms Huang did not challenge Section 4.3 in their respective affidavits even though they would have known and seen the Account Application Form since it was first exhibited by MAS in Ms Lee King See's first affidavit dated 28 March 2012. Furthermore, it was not Ms Huang's evidence, written or oral, that Section 4.3 was left blank when she signed the Account Application Form on 1 October 2010. It is apparent on an analysis of her evidence that at the material time, Ms Huang was unperturbed by D1's name in Section 4.3. By signing the Account Application Form, she had accepted what was stated in Section 4.3.

51 For the purposes of understanding the Account Application Form, the statements in Section 4.3 must be read with Section 8 of the same form ("Section 8") which is a section on signatures. The box at the top of the relevant page explains: [\[note: 28\]](#)

In this section, you declare that you fully understand this account application and the related documents and formally sign this account application to accept the Terms and Conditions.

Immediately below this box on the same page are the various confirmations required of the corporate customer:

You confirm that:

- you have read, fully understand and agree to the Terms and Conditions of our Agreement;
- the ***details on this application form and the declaration of beneficial ownership*** are correct;
- you will get, or have received, full and independent legal and other professional advice; and

...

[emphasis added]

52 Leaving aside the DBO for present purposes, the Section 8 confirmation read in conjunction with Section 4.3 was an absolute and explicit acknowledgement and confirmation by both Mr Lau and Ms Huang that the beneficial owner of the assets in the Bank Account was D1.

53 Both Mr Lau and Ms Huang argued against the legal effect of Section 4.3 and Section 8 by claiming that they did not know what they were signing. It is obvious that they were at pains to avoid the consequences of having signed documents that the Bank (and consequently MAS) now relies upon. I do not think that they can blow hot and cold by claiming that D2 is the legal account holder, and yet claim that another part of the Account Application Form that contained unfavourable terms was non-binding on the grounds that they did not read or understand what they signed as it was not explained to them.

54 For Mr Lau, the Account Opening Documents were sent through Mr Hui following D1's instructions. Mr Lau accepted that he signed the Account Opening Documents as required by Mr Hui. Ms Liao was informed by D1 that she would not be able to meet Mr Lau due to his busy travel schedule. [\[note: 29\]](#) It was never suggested that Mr Lau had, at any material time, asked to be supplied an Account Application Form in Mandarin instead of the English copy. Mr Lau did not ask anybody from the Bank to explain the documents to him in detail, [\[note: 30\]](#) and he relied on Mr Hui to explain the pages that required his signature. [\[note: 31\]](#) The only exhibited document with Mandarin translations was an Investment Profile Questionnaire from the Bank. Mr Lau did not request for any translations of the other documents that he had signed, [\[note: 32\]](#) although he maintained that he was illiterate in the English language. With the Investment Profile Questionnaire, he admitted that he did not think he had read it before he signed it. [\[note: 33\]](#) As for Section 8, Mr Lau said that Mr Hui did not explain the page to him. [\[note: 34\]](#)

55 Whilst Mr Lau maintained that he was the beneficial owner of D2, he could not remember when discussions to open the Bank Account to hold the Trony Solar Shares began, but agreed that he would know of any discussions to open a bank account for D2. [\[note: 35\]](#) He repeatedly asserted that these documents were "simple bank account-opening documents". [\[note: 36\]](#) It is evident that Mr Lau's casual attitude was in keeping with D1's instructions that Mr Hui would arrange for the Account

Opening Documents to be signed. This casual attitude is quite symptomatic of a nominee who was following instructions.

56 Ms Liao's evidence is that that she went through the Account Opening Documents with Ms Huang in detail at the meeting on 1 October 2010. [\[note: 37\]](#) Ms Huang's evidence on this topic initially suffered from contradictions but she eventually come round to accepting some of Ms Liao's evidence on what transpired on 1 October 2010. At the beginning, Ms Huang alleged that Ms Liao did not explain the Account Application Form and the related documents to her, and that she had simply signed the pages that required her signature without asking for an explanation of the documents. [\[note: 38\]](#) Ms Huang also suggested that she was not proficient in English at the time she signed the Account Application Form, and did not understand what she was signing. Ms Huang subsequently changed her evidence and testified that Ms Liao had explained the purpose of the documents in Mandarin, and she had no difficulty in understanding Ms Liao. [\[note: 39\]](#) When pressed further by Mr Bull, she admitted that she understood that she was confirming certain matters in an account-opening document but did not pay attention to them even though she was aware that she had responsibilities as a director of D2 to do so. [\[note: 40\]](#)

57 Ms Huang's testimony in court, however, contradicted her actions when she had initially received some of the Account Opening Documents. Ms Huang demonstrated caution when she first heard from Ms Liao. Before she met Ms Liao to sign the Account Opening Documents, she had checked and sought clarification, first from her brother and then her father (D1) about the opening of a bank account that required her signature. It is clear from the evidence that Ms Liao had e-mailed to Ms Huang some of the documents she was to sign at the meeting with Ms Liao. She was told by Ms Liao in her e-mail that Mr Huang had already signed the documents. [\[note: 41\]](#) Minutes after receiving Ms Liao's e-mail, she forwarded Ms Liao's attachments to her brother to check on what was required of her, and was advised by him to speak to D1. [\[note: 42\]](#) She contacted D1 who told her to check with Mr Hui who was assisting D1. [\[note: 43\]](#) A day later, she forwarded Ms Liao's attachments to Mr Hui for his review. [\[note: 44\]](#) In total, she had sought clarification and confirmation from three different people in the span of two days that it was required of her to sign the documents to open a bank account in the name of D2.

58 Curiously, during this period, Ms Huang did not contact her co-director, Mr Lau, to check on the opening of the Bank Account. This noticeable absence is telling. Ms Huang's action is an example of the way in which she perceived the realities of the situation: D1 was the controlling force behind D2. Her contact with Mr Hui also reflected D1's advice to Ms Liao of his decision to open a bank account with the Bank. The common denominator was D1 whose assistant, Mr Hui, was tasked with liaising with Ms Liao to open a bank account with the Bank. I find that Ms Huang understood, after checking with three persons, that she was required to sign the Account Opening Documents for her father's company, D2. As such, D1's name in Section 4.3 was expected and there was nothing unusual or out of the ordinary to elicit any comment or query from Ms Huang when the Account Application Form was shown to her by Ms Liao.

## (2) The W-8BEN Form

59 According to the evidence before me, I understand the W-8BEN Form to be intended for non-Americans and is meant to clarify one's status as a non-US person for tax purposes in the USA. Both Mr Lau and Ms Huang had signed this W-8BEN Form.

60 Ms Huang argues that the W-8BEN Form's declaration of beneficial ownership represented that

she and Mr Lau were the beneficial owners of the Trony Solar Shares [\[note: 45\]](#) and this declaration thereby undermines MAS's case against D2. There is nothing to this point. Upon closer scrutiny, the declaration in the W-8BEN Form states that the beneficial owner was D2, and Mr Lau and Ms Huang had signed the form on behalf of D2. [\[note: 46\]](#) The form does not state that Mr Lau and Ms Huang are beneficial owners of the Trony Solar Shares as they had wanted this court to believe. My observation was supported by the affidavit of Mr Todd M Beutler ("Mr Beutler"), a foreign lawyer practising US law and who deposed on behalf of D2. This affidavit was relied on by Mr Goh in SUM 153/2013 where he argued that the Interim SFA Injunction should be set aside. In the affidavit, Mr Beutler clarified that the W-8BEN Form was a document used to identify the beneficial owner of the assets being held, and to certify the beneficial owner's foreign status as a non-US person. For a foreign corporation, the form must be signed by an authorised representative or officer of that foreign corporation under penalty of perjury, affirming the identity and status of the beneficial owner. [\[note: 47\]](#) In this case, both Mr Lau and Ms Huang clearly signed as directors of D2. If they really were the beneficial owners of the Trony Solar Shares, D2 would not have been identified as the beneficial owner in the form.

### (3) The DBO

61 I now come to the DBO purportedly signed by Mr Lau and Ms Liao and also by D1.

62 The DBO states that in the opening of the Bank Account, Mr Lau and Ms Huang held the Trony Solar Shares of D2 as nominees for D1, and that D1 was the beneficial owner of the shares. [\[note: 48\]](#) The DBO was produced as evidence of the facts stated therein.

63 According to Ms Liao, the DBO was part of the documents required to open the Bank Account as D1 had repeatedly told her that he was the beneficial owner of the assets in the Bank Account and that the directors and shareholders of D2 were his nominees. [\[note: 49\]](#) She testified that she had sent the DBO amongst other Account Opening Documents to Mr Hui to obtain only Mr Lau's signature as she was planning to meet Ms Huang. Ms Liao received the DBO from Mr Hui with, ostensibly, the signatures of Mr Lau and Ms Huang. She stated that she was surprised to see Ms Huang's signature as she was going to meet Ms Huang for her signature. [\[note: 50\]](#)

64 As regards the DBO signed by D1, Ms Liao explained that she met D1 in Hong Kong at the Shangri-La Hotel on 7 October 2010. It was the day the Trony Solar Shares were listed on the Hong Kong Stock Exchange. She got him to sign the DBO and was able to give an eyewitness account of the fact that she saw him sign the DBO on 7 October 2010. [\[note: 51\]](#)

65 Mr Goh submits that Ms Liao's evidence does not stand up to scrutiny. Ms Liao's internal call report dated 16 October 2010 on her meeting with D1 referred to Trony Solar as D1's company. It referred to another bank, JP Morgan, as the "sole book runner of this IPO and according to [D1], the shares [*sic*] now placed with [JP Morgan]". [\[note: 52\]](#) Her internal call report also made no mention of the DBO, but noted her own assessment on the chances of securing D1's account in these terms:

I evaluated the chance to capture his business. I think it may be after the 6month block period [*sic*].

That said, Mr Fong for D1 did not deny that D1 signed the DBO on 7 October 2010.

66 Furthermore, D2's case is that the DBO was an afterthought. [\[note: 53\]](#) The DBO was not prepared *before* 29 September 2010 and as such, it was not sent to Mr Hui for Mr Lau's signature, nor

was a copy of the DBO e-mailed to Ms Huang on 29 September 2010. [\[note: 54\]](#)

67 Mr Bull points out that the DBO was required by the Bank because D1 was the beneficial owner of D2 and the assets in the Bank Account. [\[note: 55\]](#) Ms Liao did collect D1's signature on the DBO but as the account was not yet activated because no decision to transfer the shares was made, she kept the DBO in her drawer. In her mind, it was "meaningless" for the Bank to open an account with no assets. [\[note: 56\]](#)

68 I now come to the question of the authenticity of the DBO. If the authenticity of the DBO is established, it is admitted at common law against the defendants. In this case, the court has to decide whether the DBO can be admitted or not. D2's main complaint is that Mr Lau and Ms Huang did not sign the DBO, and that it was Ms Liao who forged their signatures on the DBO. D2 relies on their expert witness, Mr Pang, who looked at the photocopied questioned signatures and photocopied specimen signatures of Mr Lau and Ms Huang. He observed that the questioned signatures were not that of Mr Lau and Ms Huang: it seems that another writer had copied the form of a genuine signature either freehand or by a tracing process produced the questioned signatures. MAS did not lead evidence to challenge Mr Pang's opinion. In light of the evidence, proof of the authenticity of the DBO is not established and this is so despite Ms Huang not commenting on her signature on the DBO. In the circumstances, the DBO cannot be relied upon by MAS.

69 With regard to the defendants' allegation that Ms Liao had forged the questioned signatures, [\[note: 57\]](#) the basis for the defendants' contention is that the DBO was not in existence before 29 September 2010, and that Ms Liao created this document after she saw D2's Certificate of Incumbency sometime in August 2010 and realised that D1 was not a beneficial owner of the shares in D2. It was at that stage that she made changes to the Account Application Form to reflect that D1 was not a director of D2 but the beneficial owner. [\[note: 58\]](#) This line of argument raises the further question why Ms Liao would want to forge Mr Lau and Ms Huang's signatures. Ms Liao strongly rejected this accusation.

70 I find the allegation that Ms Liao forged the questioned signatures to be a conjecture. The identity of the person who had forged the signatures is unknown, and the defendants' allegation is unsupported by the evidence. First, Mr Pang's report is limited to establishing whether Mr Lau and Ms Huang signed the DBO, and it did not extend to an examination of Ms Liao's signature. [\[note: 59\]](#) Second, given my earlier finding that Ms Liao was advised by D1 that the latter was the beneficial owner of the Trony Solar Shares and D2, she already knew from the time she was discussing with D1 the opening of a bank account that D1 was not a director of D2. The Certificate of Incumbency would have confirmed D1's earlier advice. Third, Ms Liao had described the DBO as a part of the Bank's "due diligence checks and Know Your Client requirements". [\[note: 60\]](#) It was not a pre-requisite for the Bank Account to be opened as seen from the fact that the Bank Account was opened and activated on 6 December 2010 after Ms Liao heard from Mr Hui that D1 had decided to deposit the Trony Solar Shares with the Bank, and the DBO was submitted after 14 December 2010. [\[note: 61\]](#) Finally, Ms Liao was an experienced relationship manager and was aware that D2's application to open a bank account would go to the Bank's compliance team responsible for processing a customer's application for account opening. As it turned out, the compliance team spotted the missing DBO and it was submitted by 3 January 2011.

71 As I mentioned earlier, it was not disputed that D1 had signed the DBO. There is no evidence to support the contention that D1 did not know what he was signing when he signed the DBO. Ms Liao confirmed that she had explained the contents of the DBO to D1 when they met on 7 October 2010.

[\[note: 62\]](#) The inference that can be drawn from this evidence is that D1 recognised that the DBO was a means to affirm his beneficial ownership in the Trony Solar Shares, and this was in line with his prior representations to Ms Liao and the details of the Account Application Form.

## **D1's control over the Bank Account**

### ***Authorised signatory***

72 The authorised signatories of the Bank Account were D1 and Ms Huang. [\[note: 63\]](#) It is significant that Mr Lau was not an authorised signatory of the Bank Account. For all intents and purposes, D1 was the operator of the Bank Account, especially since a sole signatory could operate the same. Ms Huang explained and considered herself as the "back-up" second signatory since she was studying in Singapore at the material time. In other words, she was there to back up her father rather than Mr Lau. As Mr Bull submits, and I agree, Ms Huang was made the other authorised signatory in order to ensure control of the Bank Account was kept within the family. [\[note: 64\]](#) Besides, it is hard to imagine Ms Huang giving instructions to her father on the operation of the Bank Account.

73 The fact that Mr Lau was never made a signatory of the Bank Account is consistent with his signed declaration in Section 4.3 that D1 was the beneficial owner of the Bank Account. His answer in cross-examination to the question why D1 was the signatory and not himself if he owned the Trony Solar Shares lacked credibility. He started off by confirming that he could have been made a signatory at any time. [\[note: 65\]](#) Mr Lau then stated that D1 was an authorised signatory as it was a requirement for the opening of the Bank Account. Mr Lau repeatedly insisted that he had authorised D1 to operate the account and that D1 acted upon his instructions. [\[note: 66\]](#) He gave only one example of him instructing D1 to sell the Trony Solar Shares in early 2012, but no evidence of this was found in his affidavits. [\[note: 67\]](#) When pressed for some documentary proof, he said he did not know how to use the computer and could not send e-mails. [\[note: 68\]](#) Immediately after that, he said that there was no proof because he gave instructions to D1 over the phone. [\[note: 69\]](#) Mr Lau later added that he was comfortable handing control of the Bank Account and the Trony Solar Shares to D1 as D1 was a close friend, a CEO of a Singapore-listed company, had integrity, and his daughter was a director of D2. [\[note: 70\]](#) Mr Lau further reasoned that he was not made an authorised signatory as he was based in Hong Kong and rarely visited Singapore. [\[note: 71\]](#) It is quite obvious that Mr Lau was making up his evidence in the course of his testimony as he was trying to find excuses to explain why he was not an authorised signatory.

74 Mr Lau maintained that he paid for all the Trony Solar Shares. Payment of the shares in itself is not determinative of the beneficial ownership issue. Significantly, he lacks the power to control the movement of the shares as assets in the Bank Account. Mr Lau was not the authorised signatory of the Bank Account though the Account Application Form contained sufficient space to include Mr Lau as an authorised signatory alongside the other two.

75 As for Ms Huang, her evidence was that as she was then studying in Singapore, Mr Lau agreed to have her as an authorised signatory of the Bank Account. [\[note: 72\]](#) She considered herself as a "back-up plan" as it would be easier for her to give instructions to the Bank since she was in Singapore. However, the Bank Account was never operated by her or from Singapore. From the evidence, it was D1 who was signing off on instructions sheets to the Bank, and who spoke to various staff members of the Bank in relation to the dealings with the Trony Solar Shares. [\[note: 73\]](#) Ms Huang never contacted the Bank with instructions for any transactions in respect of the Bank Account.

[\[note: 74\]](#) Her reason was that she “did not wish to do so”. [\[note: 75\]](#) I do not accept Ms Huang’s reasoning that she was made a signatory based on her location. I have already dealt with this point in [72] above.

### ***Controller of Trony Solar Shares***

76 On 22 December 2010, a huge block of 204,200,000 Trony Solar Shares were placed in the Bank Account. At that time, those shares were worth US\$144,982,893.01. [\[note: 76\]](#) Prior to that date, taped conversations between Ms Liao and Mr Hui and thereafter between Ms Liao and D1 demonstrated that D1 was the controller of the Trony Solar Shares and the Bank Account. This state of affairs continued in the months after. D1 was the only person dealing with the shares and the operation of the Bank Account. In the Account Application Form, D1 was named as the contact person for D2 with Mr Hui’s contact e-mail address. [\[note: 77\]](#)

77 The inference to be drawn from Ms Huang’s role as her father’s “back up” and Mr Lau’s lack of authority is that both were nominees of D1. This inference is consistent with Ms Liao’s evidence that D1 had advised her that his daughter and Mr Lau were the directors and shareholder of D2, and that he wanted to be made an authorised signatory of the Bank Account. [\[note: 78\]](#) As D1 was not here to refute Ms Liao’s testimony, and as both Mr Lau and Ms Huang are not to be believed for the reasons stated, I find D1’s control of the Bank Account to be one objective circumstance pointing to D1 being the beneficial owner of the assets in the Bank Account.

78 As stated, the taped conversations reinforced my view. I refer to a conversation on 6 December 2010 that began with Ms Liao (referred to therein as Lillian) and Mr Hui (referred to therein as Sunny) where Ms Liao explained the advantages of scripless trading. [\[note: 79\]](#) Mr Hui, who referred to D1 as “the boss”, was interested as he revealed that it was not D1’s intention to deposit all the Trony Solar Shares with the Bank.

SUNNY: (In Chinese)

[Translation: (inaudible)]

LILLIAN: (In Chinese), Sunny?

[Translation: Wey! Sunny?]

SUNNY: (In Chinese)

[Translation: Hey!]

LILLIAN: (In Chinese) Lillian!

[Translation: Hey, how are you? I am Lillian!]

SUNNY: (In Chinese) Lillian!

[Translation: Hey, Lillian!]

LILLIAN: (In Chinese)

[Translation: Ah, yes. Let me tell you I---I have asked our side, that means I want to ask you to help me do something, that is now it’s a piece of paper, right? This share?]

SUNNY: (In Chinese)

[Translation: Ah.]

LILLIAN: (In Chinese)

[Translation: Ah, then I have to trouble you for the front and back page of the certificate of that share, you scan both and give me, then we will confirm with our trusteeship bank about this share. After that, we will ask---we would pay the insurance charges ourselves, **then we will ask a special messenger to go to Hong Kong to look for you and bring back this piece of paper for this share .**]

SUNNY: (In Chinese)

[Translation: **Ah.** ]

LILLIAN: (In Chinese)

[Translation: **Then we will hold in trust in our bank, then we will convert it into electronic share.** ]

SUNNY: (In Chinese)

[Translation: **Orh, ah, er, the boss is thinking of splitting, not everything will be placed with you.** ]

LILLIAN: (In Chinese)

[Translation: **Orh, I know. But that means there is a portion which he wants to give to other people, right?** ]

SUNNY: (In Chinese)

[Translation: **Ah, ah.** ]

LILLIAN: (In Chinese)

[Translation: **That's why your (this) piece of paper you cannot split now?** ]

SUNNY: (In Chinese)

[Translation: **Ah, right.** ]

LILLIAN: (In Chinese)

[Translation: **This piece of paper you have to after converting into electronic shares the ---**]

SUNNY: (In Chinese)

[Translation: **Ah, (I) understand.** ]

LILLIAN: (In Chinese A, B, C, in Chinese)

[Translation: --- **you can say give to A, B, C, give to so and so, then ---**]

SUNNY: (In Chinese)

[Translation: **Okay.** ]

LILLIAN: (In Chinese)

[Translation: ---you (inaudible) give according to the situation.]

SUNNY: (In Chinese)



[Translation: Okay.]

LILLIAN: (In Chinese)

[Translation: (You) understand?]

SUNNY: (In Chinese)

[Translation: Okay.]

LILLIAN: (In Chinese)

[Translation: ***Then I will---these two days I will arrange for that person to look for you to get that---that thing from you. I request that you give me a scan copy first, which is the front page---*** ]

SUNNY: (In Chinese)

[Translation: ***Okay.*** ]

LILLIAN: --- (In Chinese)

[Translation: ---and the back page, you give both to me.]

...

[emphasis added in bold italics]

79 The subsequent taped conversation on 7 December 2010 between Ms Liao (again referred to therein as Lillian) and D1 (referred to therein as Mr Huang) was on the same subject matter of scripless trading and it goes some way towards demonstrating D1's absolute control over the Trony Solar Shares and D1's discretion in dealing with them as he pleased: [\[note: 80\]](#)

MR HUANG: (In Chinese)

[Translation: Wey!]

LILLIAN: (In Chinese)

[Translation: Wey! President Huang!]

...

MR HUANG: (In Chinese)

[Translation: Ah, you go ahead and speak.]

LILLIAN: (In Chinese)

[Translation: Okay, I want to tell you thank you, that---that---]

MR HUANG: (In Chinese)

[Translation: Ah.]

LILLIAN: ---Sunny (In Chinese)

[Translation: ---Sunny has contacted me, that means---]

MR HUANG: (In Chinese)

[Translation: Ah.]

LILLIAN: --- (In Chinese)

[Translation: --- (about) putting the shares.]

MR HUANG: (In Chinese)

[Translation: Mm.]

LILLIAN: (In Chinese)

[Translation: **Let me tell you briefly about the procedure. The procedure is we will make arrangement specially for this DHL, then (they) will go and take this piece of paper for the shares and bring it to [the Bank]. After that because I heard that Sunny saying that in future you may plan to give to some friends or family members, like this, right? ]**

MR HUANG: (In Chinese)

[Translation: **Also not---not---may not be, that means this---this one I may--may not be, now I put it at your side, of course maybe I will---will transfer to other---to other account because over at your side so many shares are put at your side is also---is also no good, also no---also not of use, also meaningless, right? ]**

LILLIAN: (In Chinese)

[Translation: Mm, mm, anyway I---I just tell you---]

MR HUANG: (In Chinese)

[Translation: Mm.]

LILLIAN: --- (In Chinese)

[Translation: ---that means the---the procedure is like cause now yours is a piece of paper, then we will obtain an authorisation from you, maybe there are some documents that need to be signed by you.]

MR HUANG: (In Chinese)

[Translation: Ah, ah.]

LILLIAN: (In Chinese)

[Translation: **After that it will become an electronic share. Only then this electronic share---** ]

MR HUANG: (In Chinese)

[Translation: [sic]]

LILLIAN: --- (In Chinese) ---

[Translation: --- **can then be traded, for example, you want to put it into another account** ---]

MR HUANG: (In Chinese)

[Translation: Right.]

LILLIAN: --- (In Chinese) ---  
[Translation: ---or give to other people, whatever---]

MR HUANG: (In Chinese)  
[Translation: Mm,mm.]

LILLIAN: --- (In Chinese)  
[Translation: --- **only then it can be traded. Then this is generally after the share lock-in period.** ]

MR HUANG: (In Chinese) ---  
[Translation: **Won't give to other people. I---now I want---even if (I) transfer, it will also be transfer to the same---other bank the same---same account---still the same, it's still the same Build Up, but different---not one bank, that is it.** That means---]

LILLIAN: (In Chinese)  
[Translation: **Orh, (I) understand, (I) understand. That means not third party.** ]

MR HUANG: (In Chinese)  
[Translation: Ah, ah.]

LILLIAN: (In Chinese)  
[Translation: Right?]

MR HUANG: (In Chinese)  
[Translation: **Ah, right, no third party, right, right. Won't be.** ]

LILLIAN: (In Chinese)  
[Translation: Mm, mm, (I) understand. (I) understand. Then anyway---]

MR HUANG: (In Chinese)  
[Translation: (inaudible) then---then (inaudible) going to trade already, your (plural) trading what is (inaudible)?]

LILLIAN: (In Chinese)  
[Translation: **Right, right. That's why---that's why I want to tell you that generally it's after the share lock-in period only then can give to third party.** ]

MR HUANG: (In Chinese)  
[Translation: Ah, right, right, right, right.]

LILLIAN: (In Chinese)  
[Translation: Ah, right, right, right. Because Sunny also told me---]

MR HUANG: (In Chinese)

[Translation: That's why share lock-in period--- (inaudible) that one it's not possible for me---not possible to transfer to third party.]

LILLIAN: (In Chinese)

[Translation: Ah, (I) understand, (I) understand. Anyway it means that one I will help you convert into electronic share and it will be done in our bank.]

MR HUANG: (In Chinese)

[Translation: Ah, right, right, right.]

LILLIAN: (In Chinese)

[Translation: Then when the time comes there are some documents---]

MR HUANG: (In Chinese)

[Translation: See how---see how to deal with it, you---you coordinate and deal with it, coordinate with them and deal with it, see whether it's necessary to make a trip to Hong Kong. If it's necessary, then you make a trip to Hong Kong.]

LILLIAN: (In Chinese)

[Translation: Okay, okay, no problem. I will directly---]

MR HUANG: (In Chinese)

[Translation: Ah, then you contact them, mm.]

LILLIAN: (In Chinese) Sunny (In Chinese)

[Translation: Okay, I will contact Sunny.]

MR HUANG: (In Chinese)

[Translation: Okay.]

...

[emphasis added in bold italics]

80 I now come to the transfers made after the shares became scripless. I refer to the communications on 11 and 12 April 2011 between Ms Liao and Mr Hui about the transfer of the Trony Solar Shares to a JP Morgan bank account in Hong Kong ("JP Morgan Bank Account"). [\[note: 81\]](#) The named account holder was D2. This JP Morgan Bank Account was purportedly opened on 6 April 2011 and the Confirmation of Beneficial Ownership was signed by Mr Lau and Ms Huang as directors of D2. In that document, Mr Lau and Ms Huang were identified as the "principal beneficial owners" of D2. [\[note: 82\]](#)

81 Notably, Mr Hui's e-mail on 11 April 2011 reads as follows: [\[note: 83\]](#)

Dear Lillian,

Please transfer 100M share of [Trony Solar] to **Mr Huang's [JP Morgan Bank Account]**, you may call **him** confirm [*sic*] the amount or you need other documents please prepared [*sic*] and **I will get Mr Huang sign** [*sic*].

[emphasis added in bold]

82 According to Ms Liao, after she received Mr Hui's e-mail, she spoke to D1 who gave instructions to transfer 80 million Trony Solar Shares first instead of the 100 million referred to in Mr Hui's e-mail. She replied to Mr Hui on the same day as follows:

Hi Sunny,

I just called [D1], and he said transfer 80Million share first. Pls [sic] let me have the client instruction. Usually beneficiary bank prepares the instruction for the client, not the payment bank, as we don't have the [JP Morgan Bank Account] details.

Once we received [sic] the client payment instruction, we will process without delay.

83 The next day, Ms Liao received an instruction form signed by D1 to deliver 80 million Trony Solar Shares to the JP Morgan Bank Account. D1's instructions were executed on the next day. [\[note: 84\]](#)

84 Mr Lau disputed Ms Liao's evidence. He stated that it was he who had instructed Mr Hui to send the e-mail, and it was Mr Hui who had mistakenly typed "Mr Huang" instead of "Ms Huang". [\[note: 85\]](#) However, the person referred to in the e-mail was male rather than female. Realising this, Mr Lau then changed his evidence during his cross-examination to say that the affidavit was wrong and "Mr Huang" should have been "Mr Lau". [\[note: 86\]](#) I conclude from Mr Lau's limp excuses that he was prepared to lie about these matters to show that he was the beneficial owner of the Bank Account and the Trony Solar Shares.

85 Significantly, reference to "Mr Huang" in Mr Hui's e-mail is another example of the way in which Mr Hui perceived the realities of the situation, and it also reflected the fact that D1 was in reality the controlling force behind D2 and the Trony Solar Shares. The e-mail showed that Mr Hui was referring to the JP Morgan Bank Account as belonging to D1, and that it was D1 who wanted the Trony Solar Shares to be transferred. There was no indication from the e-mail that Mr Hui, who was D1's assistant, was taking instructions from Mr Lau. Furthermore, this corroborated Ms Liao's evidence that she had taken instructions from D1 directly. Mr Hui's e-mail suggested that Ms Liao had telephoned D1 to confirm the number of shares to be transferred. Reference to "him" in the e-mail was certainly not Mr Lau since the latter had not spoken to Ms Liao *before* their first conversation in November 2011. [\[note: 87\]](#) All this shows, and I am satisfied, that D1 was dealing with the Trony Solar Shares as their beneficial owner.

86 While there was a subsequent telephone conversation on 13 April 2011 between a representative from the Bank and D1 referring to the JP Morgan Bank Account as belonging to D2, [\[note: 88\]](#) I find that this did not negate the inferences drawn from the e-mails sent between Mr Hui and Ms Liao. In any event, D1 was not present to contest Ms Liao's evidence.

87 From the taped conversations between the Bank and D1, it was evident that D1 was dealing with the Trony Solar Shares himself. In a conversation on 6 May 2011, D1 affirmed that the Bank had "received instructions from [him] today that [he] would like to transfer [his] shares, which is 40 million Trony Solar [Shares] to [the JP Morgan Bank Account]". [\[note: 89\]](#) There were subsequent conversations which indicated clearly that D1 was dealing with the Bank Account and giving specific instructions for the sale of the assets in the Bank Account, *ie*, the Trony Solar Shares. [\[note: 90\]](#)

88 Ms Liao's internal call report of a conversation with D1 on 4 October 2011 referred to the latter as the "BO" (*ie*, the beneficial owner) of D2. [\[note: 91\]](#) The internal call report read: [\[note: 92\]](#)

I contacted the BO, Mr Huang Zhongxuan on 4/10/11 at 10.56am (ext67180) to confirm, 1, Client wants to continue the retain mail service. 2, update the portfolio performance (the only investment in his account is **his company shares**).

[emphasis added]

89 With regard to the dividends declared by Trony Solar, Mr Lau stated that he instructed D1 to transfer the dividends to his bank account in Hong Kong. There was no mention of Mr Lau consulting Ms Huang on where the dividends were to be transferred to, although she was entitled to 50% of the dividends as a 50% shareholder of D2. [\[note: 93\]](#) Additionally, the proceeds of the sale of the Trony Solar Shares were sent to Mr Lau even though Ms Huang allegedly had a 50% share in the proceeds as well. Mr Lau was once again unable to provide any evidence of the proceeds being sent to Ms Huang, or being applied to other projects and investments. [\[note: 94\]](#) His excuse was that he did not know that he had to produce the documents in court. [\[note: 95\]](#) There was also no reference to Mr Lau instructing D1 to transfer the sale proceeds to Mr Lau's bank account in Ms Huang's affidavit although she was his fellow shareholder and ought to have had knowledge of this occurring. Ms Huang then added that there were many discussions with Mr Lau regarding the sale of the Trony Solar Shares, but she could not state a period when this was done and there was no evidence or statement in her affidavits of these discussions. [\[note: 96\]](#)

## **D2 as a corporate vehicle to hold the Trony Solar Shares**

90 D2 was described as an "investment holding company" for both Mr Lau and Ms Huang, with each holding 50% of the Trony Solar Shares in D2. [\[note: 97\]](#) They were also directors of D2. In 2006, Ms Huang's brother and Mr Lau were the directors and shareholders of D2.

91 D2 acquired 260 Trony Solar Shares on 17 November 2006. [\[note: 98\]](#) Subsequently, the company Trony Solar was listed on the Hong Kong Stock Exchange in 2010, and D2's shareholding multiplied to 204,200,000 shares. [\[note: 99\]](#)

92 In 2006, Ms Huang was not a shareholder and director of D2. Her brother was the shareholder and director. It has been suggested that she was too young at that time to be involved in D2 as she was not 18 years old. She did not take over as director and shareholder from her brother even after she turned 18 years old on 13 November 2006, four days before D2 acquired 260 Trony Solar Shares. Instead, she became a director and shareholder of D2 on 13 August 2009.

## **Ms Huang's shareholding in D2**

93 Mr Lau's first affidavit, filed on 17 August 2012, stated that he and Ms Huang had acquired equal shares in D2 in October 2006. [\[note: 100\]](#) In fact, the shares in D2 were acquired by Mr Lau and Ms Huang's brother, Mr Huang Yi Quan, on 4 October 2006. [\[note: 101\]](#) Ms Huang only became a shareholder of D2 on 13 August 2009 after her brother transferred his shares in D2 to her for US\$26. [\[note: 102\]](#) When confronted about this fact, Mr Lau attempted to recant his statement in the affidavit and changed the date of Ms Huang's shareholding. However, he eventually agreed that he had omitted to make any reference to Ms Huang's brother in his affidavit. [\[note: 103\]](#)

94 Mr Lau then testified that Ms Huang had told him that her brother was holding her shares on her behalf because she had yet to turn 18 years old as at 4 October 2006. That was similarly the only reason given by Ms Huang. [\[note: 104\]](#) She told Mr Lau about this when they were about to make their investment in the Trony Solar. [\[note: 105\]](#) Yet, when Ms Huang turned 18 years old on 13 November 2006, some one and a half months later, the shares in D2 held by her brother were not transferred to her. [\[note: 106\]](#) D2 then acquired 260 Trony Solar Shares on 17 November 2006, [\[note: 107\]](#) some four days after Ms Huang turned 18 years old. Therefore, if Ms Huang was really as interested in acquiring the Trony Solar Shares as she (and Mr Lau also) had made herself out to be, [\[note: 108\]](#) she could have become a shareholder of D2 from as early as 13 November 2006 and then have acquired the Trony Solar Shares shortly thereafter.

95 D2 was set up for the purposes of holding the Trony Solar Shares. There was no reason proffered by Mr Lau and Ms Huang on why Ms Huang became a director and shareholder of D2 in 2009 which was a long time after she turned 18 years old. Earlier, both Mr Lau and Ms Huang had agreed that her brother had held the shares initially because Ms Huang was underage. [\[note: 109\]](#)

96 I am not convinced that Ms Huang was interested in the Trony Solar investment, and her age as an excuse for her brother's involvement was questionable. The involvement of family members and close friends in an offshore special purpose vehicle gives a particular impression of nominee-appointments.

### ***Payment for the Trony Solar Shares***

97 On or about 17 November 2006, Mr Lau ostensibly paid RMB40m (approximately US\$5m at the time) for the 260 Trony Solar Shares although he was only a 50% shareholder in D2. [\[note: 110\]](#) Mr Lau admitted that when he decided to invest in the Trony Solar Shares with Ms Huang, she was only 17 years old, and that he had never made investments with anyone as young as Ms Huang before. [\[note: 111\]](#) He accepted that the amount was a large sum as well. [\[note: 112\]](#) As of the date of her cross-examination, Ms Huang's share of the RMB40m, ie, RMB20m, had yet to be paid back to Mr Lau. [\[note: 113\]](#) When further pressed for reasons why he had decided to invest with Ms Huang, Mr Lau embellished his evidence by saying that Ms Huang was a "smart kid" who was especially interested in investing in the solar-power business in Shenzhen, PRC. Also, as he was good friends with D1, he often talked to Ms Huang over the phone and "doted" on her from young. [\[note: 114\]](#) Mr Lau then went on to elaborate that Ms Huang had agreed to repay the RMB20m with interest when the company was listed. He said that she would pay 1% interest per month and that she would bear any losses if the company was not listed. [\[note: 115\]](#) None of these matters, which are important, were mentioned in either Mr Lau or Ms Huang's affidavits, but more importantly they do not have a ring of truth to it. Ms Huang then stated in her re-examination that the dividends would be apportioned, but in no way did she mention the alleged loan arrangement with Mr Lau. [\[note: 116\]](#) If Mr Lau did own the RMB40m, he could have easily invested in the Trony Solar Shares alone. He did not do that.

98 Even more incredible was Mr Lau's testimony after his round of embellishments. He kept switching between calling himself the only beneficial owner of the Trony Solar Shares and Ms Huang as a joint beneficial owner of the shares. Furthermore, Mr Lau had continuously embellished his evidence and blamed other people for misinterpreting his evidence. In his third affidavit dated 14 June 2013, Mr Lau stated that: [\[note: 117\]](#)

... Since I had paid for the Trony Solar [Shares] which were acquired by the [D2] in 2006, **I am the beneficial owner of the Trony Solar [Shares]** which were subsequently deposited with [the Bank] as the custodian of those shares. [emphasis added]

The same inconsistency was also seen when Mr Lau called Ms Liao on 29 March 2012. The transcript of the taped conversation showed that Mr Lau had spoken about the shares as belonging to him: [\[note: 118\]](#)

...

Mr Lau: I am saying, if you cannot, you have to tell the MAS and explain to them, if not, I will engage a lawyer to sue you. This is the only thing which I can do. I feel very unhappy now. This affects our investment and some of our business, right?

Ms Liao: Em..

Mr Lau: We may make a lot of losses. **It is my money** and you have frozen it and [sic] you did not give me a reasonable explanation. So shouldn't I take some action?

Ms Liao: Em..

...

[emphasis added]

99 Mr Lau's inconsistent evidence is the product of a story that was being made up at each turn. This accounted for his inability to properly justify why he had decided to set up D2 with Ms Huang and to jointly invest in Trony Solar. Upon further cross-examination by Mr Bull, Mr Lau then blamed the inconsistency on the incompetence of the translators of his affidavits. [\[note: 119\]](#)

100 In relation to the acquisition of the Trony Solar Shares by D2, Mr Lau maintained that he had paid RMB40m to Grand Sun International Investment ("Grand Sun") (now known as Trony Solar Holdings (Hong Kong) Limited) for D2 to acquire the shares from Lakes Invest Limited. [\[note: 120\]](#) This was in direct contradiction to the Trony Solar Share prospectus which stated that the shares were allotted by Trony Solar to D2 directly. [\[note: 121\]](#) Upon recognising the contradiction, Mr Lau replied that he did not read the prospectus as it was in English, and he only wrote what he knew in his affidavit. [\[note: 122\]](#) He then said that his staff would inform him about the amount he paid and the number of shares he received. [\[note: 123\]](#) This story later changed to his staff telling him about the contents of the prospectus. [\[note: 124\]](#) The extent of Mr Lau's knowledge of who he acquired the Trony Solar Shares from was not clear from his evidence, and suggested that he did not know the actual details about the acquisition himself.

101 Continuing with his evidence in his affidavit that he had paid Grand Sun for the shares, Mr Lau stated that he made three payments into the bank account of Grand Sun. [\[note: 125\]](#) He said he transferred HK\$11m to Grand Sun's bank account as the first payment. [\[note: 126\]](#) While the bank statement stated that there was such a transfer out, it did not state what the payment was for. [\[note: 127\]](#) Additionally, Mr Lau could not remember where two deposits of about HK\$11.2m, made just two days earlier, came from but maintained that they did not come from D1. While his affidavit suggested that the money came from the proceeds of the sale of his shares in certain companies,



[\[note: 128\]](#) he denied this during his cross-examination and claimed that he could not remember. [\[note: 129\]](#) Also, he could not explain why the deposits had to be made into one bank account two days prior to the transaction and then paid out to Grand Sun. [\[note: 130\]](#) He then sought to justify the lack of evidence for these two deposits on the basis that the bank had informed him that they could not provide documents made more than seven years ago. [\[note: 131\]](#) As to this e-mail, the evidence was incomplete. The bank's reply could not be interpreted as a standalone e-mail as it was in response to a query from Mr Lau which was not exhibited. In any case, the two deposits took place on 29 August 2006, which meant that the bank records would have been retained up till 29 August 2013. The inference I drew from this was that Mr Lau had not asked for documents exhibiting the deposits of 29 August 2006. Confronted with this conclusion, Mr Lau then blamed this on his inability to read English and send e-mails, and on his staff. [\[note: 132\]](#)

102 As for the second payment, Mr Lau said that he gave instructions for a transfer of HK\$6m to Grand Sun on 20 December 2006. Again, the evidence of the transfer was incomplete. Although the transfer form named Grand Sun as the beneficiary, there were no payment details and the portion which the bank was supposed to fill in was blank. It could not be seen from the exhibit if Mr Lau had even signed the transfer form. [\[note: 133\]](#) Mr Lau argued that he did not produce any bank account statements to reflect the payment to Grand Sun not because that it would have shown that the HK\$6m had come into his account only one or two days before, [\[note: 134\]](#) but because it was his habit to transfer funds at the last minute. [\[note: 135\]](#)

103 As for the third payment, Mr Lau said that he gave instructions for a bank transfer of HK\$24,050,000 to Grand Sun on 21 December 2006. [\[note: 136\]](#) He informed the court that like the first transaction, he could not exhibit the relevant documents as the bank could not provide documents made more than seven years ago. Again, as the deposit allegedly took place on 21 December 2006 (the form itself was undated), the bank would have retained the records up till 21 December 2013. Unlike the first transaction, Mr Lau exhibited the e-mail sent to the bank and the bank's reply that it could not provide the records. However, Mr Lau had requested for the bank to print out his records from "more than 7 years ago". [\[note: 137\]](#) He had evidently made an erroneous request. To this, Mr Lau's response was that "in [his] mind, it was more than seven years" that the transaction took place. [\[note: 138\]](#)

104 I find Mr Lau's evidence on his payments to be incomplete. His evidence on payments raised more questions than answers. Mr Lau claimed that he could not provide further information on the transactions when in truth they were still available in respect of transactions that were within the retention period of seven years. His evidence that he paid for the Trony Solar Shares himself was thus not convincing.

105 Ms Huang confirmed that she did not make any payment for the Trony Solar Shares. Her only reason for this was because there were currency controls imposed by China. [\[note: 139\]](#) Such an explanation was noticeably missing from Mr Lau's evidence. During her testimony, Ms Huang added that she did not have much cash to pay for her RMB20m share, but that she had other assets to do so. There was nothing in her affidavits to exhibit her resources to make the investment in 2006 at 17 years old. [\[note: 140\]](#) Furthermore, her affidavit initially stated that the Trony Solar Shares were "gifts" from her parents. At the start of her testimony, she amended her affidavit to read that the setting-up fees of D2 were "gifts" from her parents instead. The fees were for the setting up of D2 and they were about US\$500-600. [\[note: 141\]](#) Her affidavit then read that it was common for wealthy parents

to give daughters expensive gifts worth RMB100–200m. This evidence is inexplicable. She could not be referring to the setting-up fees, or that the Trony Solar Shares were a gift from her parents. It must be remembered that it was Mr Lau's case that Ms Huang had not paid for the shares and that he had done so all by himself. I find that the stark differences in Mr Lau and Ms Huang's testimonies and affidavits were not surprising; they were inconsistent because they were making up the evidence as they went along.

106 From the incompleteness of Mr Lau's evidence, and the contradictions of each of the shareholder's testimonies, I find that the money to pay for the Trony Solar Shares in 2006 could not have come from either Mr Lau or Ms Huang. Instead, the money must have originated from someone else, and Mr Lau was only a conduit for the transfer of moneys for the Trony Solar Shares.

107 Ms Liao's evidence on the Trony Solar Shares was limited to advice from D1 who had referred to the Trony Solar Shares as belonging to him, and that "his shares" would be the assets in the Bank Account. [\[note: 142\]](#) Throughout the proceedings and her affidavits, Ms Liao dealt with D1 as the beneficial owner of the assets in the Bank Account. [\[note: 143\]](#)

108 Mr Lau's evidence is hardly convincing in this respect, and the money paid by Mr Lau came from someone else. D1 had informed Ms Liao that he was a "financial investor" in Trony Solar. She said: [\[note: 144\]](#)

A: ... Mr Huang Zhong Xuan did tell me that he invested into the company and that he was the sole beneficial owner, and I believe that he told me the truth.

109 At the meeting with Ms Huang on 1 October 2010, Ms Huang had also informed Ms Liao that D1 was the beneficial owner of the Trony Solar Shares. [\[note: 145\]](#) According to Ms Liao, D1 had informed her that he was a financial investor in Trony Solar. [\[note: 146\]](#) Given Ms Liao's version of events, and having disregarded Mr Lau and Ms Huang's evidence, I find that D1 was the financial investor who had funded the purchase of the Trony Solar Shares in the name of D2.

### **Significant features of the case**

110 Taking into account the evidence discussed above, the significant features of this case taken cumulatively bore out the plaintiff's case on the beneficial ownership issue.

111 Despite its lack of authenticity, the DBO, until it was challenged, was one of the documents from which the Bank derived its understanding of D1's interest in the Bank Account and assets held in there. The suggestion that Ms Liao forged the signatures of Mr Lau and Ms Huang was inherently improbable and there is no evidence to back up this suggestion.

112 In this case, the directors were and still are Mr Lau and Ms Huang who were and still are D2's shareholders on record. Legally, the Bank's customer is D2, a BVI company to hold assets like the Trony Solar Shares. D2 has all the common characteristics of a special purpose vehicle used to divert attention from D1 and, so far as possible, conceal the true beneficial ownership of the assets. D2 is a corporate vehicle incorporated for the purposes of holding assets and its corporate structure involved D1's family members and close friend and associate. Ms Huang is D1's daughter and Mr Lau admitted that he is a close friend of D1. Ms Huang's brother and Mr Lau were the initial directors and shareholders of D2.

113 In the context of determining the extent of his beneficial ownership of the Trony Solar Shares,

rather than stating that he had disposed of the shares, D1's familiarity with BVI corporations and the advantages of such offshore corporations as vehicles to hold shares was affirmed in his "sophisticated" use of D2. I should mention that Ms Liao's impression of D1 after their initial meetings was that D1 appeared to be well-acquainted with the use of special purpose vehicles to hold assets.

[\[note: 147\]](#) Furthermore, Ms Liao's evidence on D1's instructions for the Bank to retain the executed copies of the Account Opening Documents is consistent with the sophisticated use of the BVI company. Ms Liao explained that on 24 February 2012, she met D1 at Marina Bay Sands in Singapore to hand over to him copies of the executed Account Opening Documents and to discuss with him the possible raising of funds against the collateral of the Trony Solar Shares. At the end of the meeting, D1 handed back to her copies of the executed Account Opening Documents with instructions to retain them at the bank as he did not want to carry the physical documents into China. His decision not to take away the executed Account Opening Documents did not surprise Ms Liao who had experienced the same behaviour from "high net worth private banking clients who wish to preserve the secrecy of their private account information", and Ms Huang had already signed "Retain Mail" instructions on the Bank Account on 1 October 2010. [\[note: 148\]](#)

114 Despite Mr Lau's claim that he had paid for the Trony Solar Shares, Mr Lau was not an authorised signatory of the Bank Account. In contrast, Ms Huang who did not pay for the shares was an authorised signatory. She was the other authorised signatory in order to ensure control of the Bank Account from within the Huang family.

115 Although the Bank's corporate customer was D2, in the context of the controlling party, D1 was known to the Bank and Ms Liao, the relationship manager, for some years. In its dealings with D1, the Bank regarded him as beneficial owner of the Bank Account seeing that D1 was the controller and operator of the Bank Account who gave instructions to the Bank and to whom the Bank turned to for instructions. Notably, after the Bank Account was established, it was D1 who, through Mr Hui, caused the Trony Solar Shares to be transferred to the Bank Account. I note and find the taped conversation between Ms Liao and D1 to be a contemporaneous record in December 2006 that is consistent with Ms Liao's evidence on D1's ability to control the Trony Solar Shares with apparently unfettered discretion. The evidence showed the transfer of the Trony Solar Shares from Hong Kong to Singapore and then a transfer back to Hong Kong. Those transfers were a sign of D1's beneficial ownership of the Trony Solar Shares and the Bank Account.

116 Both Mr Lau and Ms Huang struck me as particularly unsatisfactory witnesses, and all the more unconvincing given their far-fetched evidence as business partners. The business relationship between an experienced businessman and a minor was invented. Other parts of their evidence were inherently improbable, strained and unconvincing. Their ambivalent attitudes towards the opening of the Bank Account went towards showing that they were nominee directors and shareholders, and were acting on D1's instructions. Ms Liao's evidence on the other hand was consistent with the documents, and remained unchallenged in the absence of D1 and Mr Hui.

117 Both Mr Lau and Ms Huang signed the Account Application Form. The binding effect of Section 4.3 read with Section 8 is clear. Significantly, Mr Lau and Ms Huang did not challenge Section 4.3 in their respective affidavits.

118 The failure of D1 and Mr Hui to give evidence was a factor to which the court is entitled to give some weight.

## **Conclusion**

119 In the end, I accept the evidence of Ms Liao that D1 was the true owner of the Bank Account

and D2. This conclusion is sustainable in light of the evidence before me, even if the Trony Solar Shares were legally vested in D2.

120 Consequently, an order in terms of prayers 1(a) and 1(b) of OS 311/2012 is granted. Bearing in mind Mr Goh's valid concerns that investigations may drag on without any definitive conclusion to enable civil and/or criminal proceedings to be instituted, I further order that there be liberty to the parties to apply. The defendants are to bear the costs of OS 311/2012.

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[\[note: 1\]](#) Bundle of Plaintiff's Affidavits ("BPA"), Vol 2, Tab 8, para 13.

[\[note: 2\]](#) Plaintiff's Bundle of Court Documents ("PBCD"), Tab 2.

[\[note: 3\]](#) Bundle of 2<sup>nd</sup> Defendant's Affidavits ("BO2DA"), pp 456-475.

[\[note: 4\]](#) BPA, Vol 2, Tab 2, paras 10-16.

[\[note: 5\]](#) BPA, Vol 2, Tab 3, para 16.

[\[note: 6\]](#) BPA, Vol 2, Tab 3, para 17.

[\[note: 7\]](#) BPA, Vol 2, Tab 3, para 18; 20.

[\[note: 8\]](#) BPA, Vol 2, Tab 3, LL-1; LL-2.

[\[note: 9\]](#) BO2DA, p 279, para 34.

[\[note: 10\]](#) Transcripts of Evidence dated 10/07/13 at p 43; BO2DA, p12, para 26.

[\[note: 11\]](#) Transcripts of Evidence dated 11/07/13 at pp 14-15.

[\[note: 12\]](#) BO2DA, p 281, para 38.

[\[note: 13\]](#) BO2DA, Tab 1, LAU-12.

[\[note: 14\]](#) Transcripts of Evidence dated 11/07/13 at p78.

[\[note: 15\]](#) BPA, Vol 1, pp 26-65.

[\[note: 16\]](#) BO2DA, pp 525-540.

[\[note: 17\]](#) BO2DA, p 293.

[\[note: 18\]](#) BPA, Vol 1, pp 68-71.

[\[note: 19\]](#) BPA, Vol 1, pp 72-74.

[\[note: 20\]](#) BPA, Vol 2, Tab 3, para 33.

[\[note: 21\]](#) BPA, Vol 1, Tab 1, p 70.

[\[note: 22\]](#) BPA, Vol 2, Tab 3, para 34.

[\[note: 23\]](#) D1's submissions, para 25; D2's submissions, para 33.

[\[note: 24\]](#) D1's submissions, para 35.

[\[note: 25\]](#) BPA, Vol 1, Tab 1, p 50.

[\[note: 26\]](#) MAS's submissions, para 97.

[\[note: 27\]](#) D2's submissions, para 95.

[\[note: 28\]](#) PBA, Vol 1, Tab 1, p 56.

[\[note: 29\]](#) BPA, Vol 2, Tab 3, para 20; Transcripts of Evidence dated 10/07/13 at pp 21-23.

[\[note: 30\]](#) Transcripts of Evidence dated 11/07/13 at p 28.

[\[note: 31\]](#) Transcripts of Evidence dated 11/07/13 at p 33.

[\[note: 32\]](#) Transcripts of Evidence dated 11/07/13 at p 29.

[\[note: 33\]](#) Transcripts of Evidence dated 11/07/13 at p 30.

[\[note: 34\]](#) Transcripts of Evidence dated, 11/07/13 at p 34.

[\[note: 35\]](#) Transcripts of Evidence dated 11/07/13 at p 13.

[\[note: 36\]](#) Transcripts of Evidence dated 11/07/13 at pp 28-29; 39.

[\[note: 37\]](#) BPA, Vol 2, Tab 3, para 39-41.

[\[note: 38\]](#) BO2DA, p 271, para 15; Transcripts of Evidence dated 11/07/13 at p 78.

[\[note: 39\]](#) Transcripts of Evidence dated 11/07/13 at pp 80-81.

[\[note: 40\]](#) Transcripts of Evidence dated 11/07/13 at pp 65-69.

[\[note: 41\]](#) BO2DA, p 287.

[\[note: 42\]](#) BO2DA, p 298.

[\[note: 43\]](#) NE, 11/07/13, 74:19-75:21.

[\[note: 44\]](#) BO2DA, p 300.

[\[note: 45\]](#) BO2DA, p 270, para 13.

[\[note: 46\]](#) BO2DA, p293; NE, 11/07/13, 86:1-24.

[\[note: 47\]](#) Plaintiff's Bundle of Court Documents (SUM 6168 of 2012E/ SUM 20 of 2013/ SUM 153 of 2013) Tab 11, pp3-5.

[\[note: 48\]](#) BPA, Vol 1, Tab 1, p 73.

[\[note: 49\]](#) BPA, Vol 2, Tab 3, para 32.

[\[note: 50\]](#) BPA, Vol 2, Tab 3, para 37.

[\[note: 51\]](#) BPA, Vol 2, Tab 3, para 43-44.

[\[note: 52\]](#) BPA, Vol 2, Tab 3, p 67.

[\[note: 53\]](#) D2's submissions at para 63.

[\[note: 54\]](#) D2's submissions at para 71.

[\[note: 55\]](#) MAS's submissions at para 162.

[\[note: 56\]](#) MAS's submissions at para 190.

[\[note: 57\]](#) D2's Submissions, para 48-49; D1's Submissions, para 22.

[\[note: 58\]](#) D2's Submissions, pp 14-35; D1's Submissions, pp 11-15.

[\[note: 59\]](#) BO2DA, Tab 3.

[\[note: 60\]](#) BPA, Vol 2, Tab 3, para 32, 44.

[\[note: 61\]](#) BPA, Vol 2, Tab 3, para 45.

[\[note: 62\]](#) BPA, Vol 2, Tab 3, para 43-44.

[\[note: 63\]](#) BPA, Vol 1, p 54.

[\[note: 64\]](#) MAS's submissions, para 439.

[\[note: 65\]](#) NE, 11/07/13, 56:3-10.

[\[note: 66\]](#) NE, 10/07/13, 79:3-18.

[\[note: 67\]](#) BO2DA, p 17, para 36.

[\[note: 68\]](#) NE, 10/07/13, 81:7-82:12.

[\[note: 69\]](#) NE, 10/07/13, 82:14-18.

[\[note: 70\]](#) NE, 11/07/13, 18:9-21.

[\[note: 71\]](#) BO2DA, p 14, para 28.

[\[note: 72\]](#) BO2DA, p 280, para 36.

[\[note: 73\]](#) BPA, Vol 2, LL-11; LL-12; LL-15.

[\[note: 74\]](#) NE, 12/07/13, 29:2-9.

[\[note: 75\]](#) NE, 12/07/13, 30:22.

[\[note: 76\]](#) BPA, Vol 2, Tab 3, para 51.

[\[note: 77\]](#) BPA, Vol 1, p 29.

[\[note: 78\]](#) BPA, Vol 2, Tab 3, para 16; 28.

[\[note: 79\]](#) BPA, Vol 2, Tab 6, LL-26.

[\[note: 80\]](#) BPA, Vol 2, Tab 6, LL-27.

[\[note: 81\]](#) PBA, Vol 2, Tab 3, LL-10.

[\[note: 82\]](#) BO2DA, Tab 1, LAU-4.

[\[note: 83\]](#) PBA, Vol 2, Tab 3, p 102.

[\[note: 84\]](#) PBA, Vol 2, Tab 3, para 57-58; p 105.

[\[note: 85\]](#) BO2DA, p 453, para 17.

[\[note: 86\]](#) Transcripts of Evidence dated 11/07/13 at pp 43-44.

[\[note: 87\]](#) PBA, Vol 2, Tab 3, para 67.

[\[note: 88\]](#) PBA, Vol 2, Tab 3, p 117.

[\[note: 89\]](#) PBA, Vol 2, Tab 3, p 118.

[\[note: 90\]](#) PBA, Vol 2, Tab 3, pp 121-126.

[\[note: 91\]](#) PBA, Vol 2, Tab 6, para 8-9.

[\[note: 92\]](#) PBA, Vol 2, Tab 3, para 63; LL-13.

[\[note: 93\]](#) BO2DA, p 16, para 32; Transcripts of Evidence dated 12/07/13 at pp 1-2.

[\[note: 94\]](#) Transcripts of Evidence dated 10/07/13 at pp 83-84.

[\[note: 95\]](#) Transcripts of Evidence dated 10/07/13 at p 83.

[\[note: 96\]](#) Transcripts of Evidence dated 12/07/13, at pp 9-11.

[\[note: 97\]](#) BO2DA, p 10, para 19; p 11, para 21.

[\[note: 98\]](#) BO2DA, p 121.

[\[note: 99\]](#) BO2DA, p 10, para 20.

[\[note: 100\]](#) BO2DA, pp 5-6.

[\[note: 101\]](#) BO2DA, pp 311-312; NE, 10/07/13, 59:19-60:5.

[\[note: 102\]](#) BO2DA, p 308.

[\[note: 103\]](#) Transcripts of Evidence dated 10/07/13 at p 59.

[\[note: 104\]](#) Transcripts of Evidence dated 12/07/13 at p 13.

[\[note: 105\]](#) Transcripts of Evidence dated 10/07/13 at p 62.

[\[note: 106\]](#) Transcripts of Evidence dated 10/07/13 at pp 64-65; Transcripts of Evidence dated 12/07/13 at p 13.

[\[note: 107\]](#) BO2DA, p 121.

[\[note: 108\]](#) BO2DA, p 275, para 25.

[\[note: 109\]](#) Transcripts of Evidence dated 10/07/13 at p 65; Transcripts of Evidence dated 12/07/13, at pp 16-17.

[\[note: 110\]](#) Transcripts of Evidence dated 10/07/13 at p 68.



[\[note: 111\]](#) Transcripts of Evidence dated 10/07/13 at pp 69-70.

[\[note: 112\]](#) Transcripts of Evidence dated 10/07/13 at pp 68-69.

[\[note: 113\]](#) Transcripts of Evidence dated 11/07/13 at p 93.

[\[note: 114\]](#) NE, 10/07/13, 71:19-73:20.

[\[note: 115\]](#) Transcripts of Evidence dated 10/07/13 at pp 73-75.

[\[note: 116\]](#) Transcripts of Evidence dated 12/07/13 at pp 35-36.

[\[note: 117\]](#) BO2DA, p 565, para 9.

[\[note: 118\]](#) BPA, Vol 2, Tab 3, p 187.

[\[note: 119\]](#) Transcripts of Evidence dated 10/07/13 at pp 77-78.

[\[note: 120\]](#) BO2DA, p 566, para 12-13.

[\[note: 121\]](#) BO2DA, p 121.

[\[note: 122\]](#) NE, 10/07/13, 91:3-21.

[\[note: 123\]](#) NE ,10/07/13, 91:3-8.

[\[note: 124\]](#) NE, 11/07/13, 2:14-16.

[\[note: 125\]](#) BO2DA, p 567, para 15.

[\[note: 126\]](#) BO2DA, p 567, para 16.

[\[note: 127\]](#) NE, 10/07/13, 92:12-19.

[\[note: 128\]](#) BO2DA, p 569, para 21.

[\[note: 129\]](#) NE, 10/07/13, 93:16-94:18.

[\[note: 130\]](#) NE, 11/07/13, 4:6-17.

[\[note: 131\]](#) BO2DA, p 567, para 17; p 583.

[\[note: 132\]](#) NE 10/07/13, 97:20-99:21.

[\[note: 133\]](#) BO2DA, p 585.

[\[note: 134\]](#) NE 11/07/13, 9:18-23.

[\[note: 135\]](#) NE 11/07/13, 55:21-56:2.

[\[note: 136\]](#) BO2DA, p 568, para 19.

[\[note: 137\]](#) BO2DA, p 589.

[\[note: 138\]](#) NE, 11/07/13, 11:15-17.

[\[note: 139\]](#) BO2DA, p 276, para 27; NE 11/07/13, 91:12-16.

[\[note: 140\]](#) NE, 11/07/13, 92:11-93:12.

[\[note: 141\]](#) NE, 11/07/13, 95:9-23.

[\[note: 142\]](#) BPA, Vol 2, Tab 3, para 24.

[\[note: 143\]](#) BPA, Vol 2, p 649, para 32; NE, 09/07/13, 86:21-87:6.

[\[note: 144\]](#) Transcripts of Evidence dated 10/7/13 at p 10.

[\[note: 145\]](#) BPA, Vol 2, Tab 3, para 40.

[\[note: 146\]](#) Transcripts of Evidence dated 10/7/13 at p 6

[\[note: 147\]](#) BPA, Vol 2, Tab 3, para 14.

[\[note: 148\]](#) BPA, Vol 2, Tab 3, para 47; LL-6.

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