

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Northern District of California

Case number (if known): \_\_\_\_\_ Chapter 15

Check if this is an amended filing

Official Form 401

Chapter 15 Petition for Recognition of a Foreign Proceeding

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

1. Debtor's name Jun Qin aka Qin Jun

2. Debtor's unique identifier For non-individual debtors:
Federal Employer Identification Number (EIN)
Other
For individual debtors:
Social Security number:
Individual Taxpayer Identification number (ITIN):
Other R962988(1) Describe identifier Hong Kong identity card

3. Name of foreign representative(s) Pui Sze Chan; Hau Yin Mak

4. Foreign proceeding in which appointment of the foreign representative(s) occurred
In re Jun Qin, HCB 3231 of 2016
Hong Kong Misc. Proc. HCMP 1655/2017 Plaintiffs, Pui Sze Chan and Hau Yin Mak vs. Defendant, Jue Wang

5. Nature of the foreign proceeding
Check one:
Foreign main proceeding
Foreign nonmain proceeding
Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding
Certified copies
A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.
A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.
Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.
Certified copies of the foreign main proceeding, and the order for appointing of foreign representatives, attached. Also attached is the foreign nonmain Proceeding (without exhibits).

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?
No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.)
Yes

**8. Others entitled to notice**

Attach a list containing the names and addresses of:

- (i) all persons or bodies authorized to administer foreign proceedings of the debtor,
- (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and
- (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

**9. Addresses**

Country where the debtor has the center of its main interests:

Hong Kong

Debtor's registered office:

Number Street

P.O. Box

City State/Province/Region ZIP/Postal Code

Country

Individual debtor's habitual residence:

Room 201, 2/F, Block A, Commercial St.  
Number Street

Minzu Lane, Fukang City  
P.O. Box

Xinjiang  
City State/Province/Region ZIP/Postal Code

China  
Country

Address of foreign representative(s):

c/o Briscoe Wong Advisory Limited  
Number Street

602 The Chinese Bank Building  
P.O. Box

61-65 Des Voeux Road  
City State/Province/Region ZIP/Postal Code

Hong Kong  
Country

**10. Debtor's website (URL)**

\_\_\_\_\_

**11. Type of debtor**

Check one:

Non-individual (check one):

Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.

Partnership

Other. Specify: \_\_\_\_\_

Individual

Debtor Jun Qin aka Qin Jun  
Name

Case number (if known) \_\_\_\_\_

12. Why is venue proper in this district?

Check one:

- Debtor's principal place of business or principal assets in the United States are in this district.
- Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:
- \_\_\_\_\_
- If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:
- \_\_\_\_\_

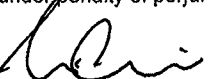
13. Signature of foreign representative(s)

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct,

x   
Signature of foreign representative

Pui Sze Chan

Printed name

Executed on 07/28/2017  
MM / DD / YYYY


x   
Signature of foreign representative

Hau Yin Mak

Printed name

Executed on 07/28/2017  
MM / DD / YYYY

14. Signature of attorney

x   
Signature of Attorney for foreign representative

Date 08/01/2017  
MM / DD / YYYY

Robert A. Franklin

Printed name

Dorsey & Whitney LLP

Firm name

305 Lytton Avenue

Number Street

Palo Alto,

City

CA 94301  
State ZIP Code

650-857-1717

Contact phone

Franklin.Robert@Dorsey.com  
Email address

Bar No. 91653

Bar number

CA  
State



- 3 AUG 2016

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
BANKRUPTCY PROCEEDINGS NO.3231 OF 2016

Re : Qin Jun  
(Holder of Hong Kong Identity Card No.R962988(1) (“the Debtor”))

Ex Part : Win Wind Resources Limited (formerly  
known as Enerchine Resources Limited) (“the Creditor”)

**BEFORE MASTER HUI OF THE HIGH COURT IN COURT**

**BANKRUPTCY ORDER**

ON the Petition dated 6<sup>th</sup> day of May 2016 of the Creditor herein, i.e. Win Wind Resources Limited (formerly known as Enerchine Resources Limited), whose registered office is at 25/F, China United Centre, 28 Marble Road, North Point, Hong Kong, filed herein on 6<sup>th</sup> day of May 2016, AND UPON reading the said Petition, the Affirmation of Sam Nickolas David Hing Cheong filed herein on the 6<sup>th</sup> day of May 2016, the 4<sup>th</sup> Affirmation of Ng Kar Wa filed herein on 11<sup>th</sup> day of July 2016 together with the exhibit therein referred to, the 5<sup>th</sup> Affirmation of Ng Kar Wa filed herein on 25<sup>th</sup> day of July 2016 together with the exhibit therein referred to, the Certificate for proof of existing debt in bankruptcy proceedings dated 27<sup>th</sup> day of July 2016, AND UPON hearing the Solicitors for the Petitioning Creditor and the Debtor being absent.

I, the undersigned, do hereby certify that I have examined the foregoing document with its original (or a properly certified copy or attested copy of the original) and that the same is a true and complete copy thereof

Dated 28/7/17

HAU CHI KI

Solicitor, Hong Kong S.A.S.

YUEN & PARTNERS

Solicitors

IT IS ORDERED that QIN JUN (holder of Hong Kong Identity Card No.R962988(1)) with his last known addresses at ((i) Room 3216, Convention Plaza Apartment, 1 Harbour Road, Wanchai, Hong Kong; (ii) Room 3201, 32/F, Tower 1, Admiralty Centre, 18 Harcourt Road, Admiralty, Hong Kong; and (iii) Flat A, 9/F, Seymour, 9 Seymour Road, Hong Kong be adjudged bankrupt and the Official Receiver hereby becomes the provisional trustee of the estate of the said Debtor.

AND IT IS FURTHER ORDERED that the costs of the Creditor be taxed and paid out of the estate of the Debtor.

Dated the 27<sup>th</sup> day of July 2016

Registrar

NOTE : The abovenamed Debtor is required, after the service of this Order upon him, to attend the trustee at such time and place as the trustee may specify.

**ENDORSEMENT ON ORDER**

The name and address of the Solicitors for the Petitioning Creditor are Messrs. Ching & Solicitors of Suite 2001, 20/F, China United Centre, 28 Marble Road, North Point, Hong Kong.

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
BANKRUPTCY PROCEEDINGS NO.3231 OF 2016

Re : Qin Jun  
(Holder of Hong Kong Identity Card  
No.R962988(1)) ("the Debtor")

Ex Part : Win Wind Resources Limited (formerly  
known as Enerchine Resources Limited )  
("the Creditor")

---

---

**BANKRUPTCY ORDER**

---

Filed on - 3 AUG 2016

Ching & Solicitors,  
Solicitors for the Creditor  
Suite 2001, 20/F.,  
China United Centre,  
28 Marble Road,  
North Point,  
Hong Kong.

Tel : 3198 0486  
Fax : 2590 6913

Ref: AC/LIT/16/1544

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
IN BANKRUPTCY PROCEEDINGS

NO. 3231 OF 2016

Re : Qin Jun

Certified True Copy  
  
(Miss M L Mak)  
for Official Receiver

MEMORANDUM TO COURT OF RESOLUTIONS  
PASSED AT THE GENERAL MEETING OF CREDITORS

Minutes of resolution come to and proceedings had at the General Meeting of Creditors held at the Official Receiver's Office, the 26 August 2016 at 3:45 p.m., Ms. Annie yeung, Acting Chief Insolvency Officer acting on behalf of the Official Receiver, Chairman.

RESOLVED unanimously as follows :-

"That Chan Pui Sze and Mak Hau Yin both of Briscoe Wong Advisory Limited be appointed joint and several trustees of the property of the bankrupt, Qin Jun with immediate effect";

"That there should be a Creditors' Committee in this bankruptcy comprising Win Wind Resources Limited, Capital Union Inc and Credit Suisse AG, Singapore Branch";


"That the creditors do declare that any act required or authorized to be done by the trustees is to be done either by Chan Pui Sze and Mak Hau Yin jointly or any one of them singly"; and

"That the trustees' remuneration shall be fixed by the Creditors' Committee."

I, the undersigned, do hereby certify that I have examined the foregoing document with its original (or a properly certified copy or attested copy of the original) and that the same is a true and complete copy thereof

Dated 28/7/17

  
**HAU CHI KIT**  
Solicitor, Hong Kong S.A.R.  
YUEN & PARTNERS  
Solicitors

  
(Ms. Annie Yeung)  
Chairman  
for Official Receiver





Plaintiff: CPS: 1<sup>st</sup>: [25/7/2017]  
HCMP 1655/2017

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO. 1655 OF 2017

---

IN THE MATTER of QIN JUN, a  
bankrupt

and

IN THE MATTER of Section 49 of the  
Bankruptcy Ordinance (Cap. 6), Laws  
of Hong Kong

---

BETWEEN

CHAN Pui Sze and MAK Hau Yin . . . . . Plaintiff  
(The Joint and Several Trustees of the Property of the Bankrupt)

and

WANG JUE . . . . . Defendant

---

**FIRST AFFIRMATION OF CHAN PUI SZE**

I, CHAN Pui Sze of 602, The Chinese Bank Building, 61-65 Des Voeux Road Central, Hong Kong, do hereby solemnly, sincerely and truly affirm and say as follows:-

1. I am a principal of Briscoe Wong Advisory Limited and together with MAK Hau Yin, also of Briscoe Wong Advisory Limited, we act as the joint and several trustees (“Trustees”) of the property of QIN Jun, a bankrupt (“Qin” or “the Bankrupt”). I am duly authorised to make this affirmation on behalf of the Plaintiff.

2. I make this affirmation in support of the application under section 49 of the Bankruptcy Ordinance, Cap 6 (“**the Ordinance**”) to set aside two transfers of the Bankrupt’s interest in the properties in the United States to his wife, WANG Jue, the Defendant (“**Wang**”).
3. There is now produced and shown to me marked ‘**CPS-1**’, a paginated bundle of documents to which I shall refer to throughout this affirmation.
4. The facts and matters to which I depose in this affirmation are within my own knowledge and are true, or have been derived by me in the conduct of this matter from the sources indicated below and are true to the best of my knowledge, information and belief.

#### **Background**

5. On 6 May 2016, Win Wind Resources Limited (formerly known as Enerchine Resources Limited) (“**Win Wind**”) presented a bankruptcy petition against Qin (“**the Petition**”) in respect of an unpaid debt of HK\$54,989,100. A bankruptcy order was then made on 27 July 2016 (“**the Bankruptcy Order**”). A copy of the Petition is at **pages 1 to 4 of CPS-1** and a copy of the Bankruptcy Order is at **pages 5 to 7 of CPS-1**.
6. On 26 August 2016, MAK Hau Yin and I were appointed the Trustees pursuant to the resolution passed at the meeting of creditors. A copy of the Memorandum to Court of Resolutions Passed at the General Meeting of Creditors is at **pages 8 to 9 of CPS-1**.

#### **Trustees’ Duties and Powers**

7. Section 60(1)(aa) of the Ordinance states that a trustee has the power to take into

his custody or under his control of all the property to which the bankrupt is or appears to be entitled.

8. Section 58(2) of the Ordinance states that on the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.
9. Section 2 of the Ordinance defines “property” as including money, goods, things in action, land and every description of property, whether real or personal and whether situate in Hong Kong or elsewhere, also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined.
10. Section 49 of the Ordinance states that where a debtor is adjudged bankrupt and he has at a relevant time entered into a transaction with any person at an undervalue, the trustee may apply to the court for an order, as the court thinks fit, for restoring the position to what it would have been if that debtor had not entered into that transaction.
11. Pursuant to sections 49(3)(a) and 49(3)(c) of the Ordinance, a debtor enters into a transaction with a person at an undervalue if he makes a gift to that person or he enters into a transaction with that person at a consideration the value of which is significantly less than the value of the consideration provided by the debtor.
12. Section 51(1)(a) of the Ordinance defines “relevant time” in the case of transaction at an undervalue to be 5 years ending with the day of the presentation of the bankruptcy petition on which the debtor is adjudged bankrupt.
13. Section 51(2) of the Ordinance sets out that unless the debtor is proven to be insolvent at that time or becomes insolvent in consequence of the transaction, the relevant time is only 2 years ending with the day of the presentation of the bankruptcy petition but the requirement is presumed to be satisfied, unless the

contrary is shown, if the transaction at undervalue is entered into with an associate of the debtor.

14. Section 51B(2) of the Ordinance states that a person is an associate of the debtor if that person is, inter alia, the debtor's spouse.

### Trustees' Investigation

15. From the Trustees' investigation, the Bankrupt had an interest in two landed properties in the United States of America ("US") located at 2430 Ross Road, Palo Alto, California 94303, US ("**the Ross Road Property**") and 3680 Paradise Drive, Tiburon, California 94920, US ("**the Paradise Drive Property**") (collectively "**the US Properties**").
16. As disclosed from the Disclosure of Interests from the Stock Exchange of Hong Kong Limited ("**HKEX**"), Wang is disclosed as the spouse of Qin. Therefore, Wang is considered as an associate of the Bankrupt pursuant to section 51B(2) of the Ordinance. A copy of the Disclosure of Interests (FORM 1 - Individual Substantial Shareholder Notice) filed with the HKEX on 23 October 2015 is at **pages 10 to 11 of CPS-1**.
17. According to the results of the land search conducted by the Trustees in the US, it was revealed that the Bankrupt transferred his interests in the US Properties to Wang in August 2013 ("**the Transfers**"), which is within 5 years prior to the date of the presentation of the Petition.
18. Paragraphs 19 to 30 below set out a summary of the public records retrieved from the land search relating to the US Properties:-

### **The Ross Road Property**

19. By a Grant Deed dated 22 January 2010 and notarised on 25 January 2010 (“**1st Grant Deed**”) the Bankrupt and Wang became the co-owners of the Ross Road Property. The 1st Grant Deed stated that the Bankrupt and Wang were husband and wife and joint tenants of the Ross Road Property. A copy of the 1st Grant Deed is at **pages 12 to 13 of CPS-1**.
  
20. The 1st Grant Deed also stated that the documentary transfer tax was US\$1,738 and that the city transfer tax was US\$5,214, the aggregate of which is US\$6,952. The 1st Grant Deed also stated that the transfer tax was ‘*computed on the consideration or full value of property conveyed*’ but did not state the amount of the consideration.
  
21. According to the county office of Santa Clara, where the Ross Road Property is located, the county transfer tax and additional conveyance tax (for San Jose, Mountain View and Palo Alto only) are calculated based on a county rate of US\$0.55 for every US\$500 of value of consideration and the city rate is US\$1.65 for every US\$500 of value of consideration, respectively, the aggregate of which is US\$2.20 for every US\$500 of value of consideration. This indicates that the consideration relating to the transfer of the Ross Road Property was US\$1,580,000 [US\$6,952/US\$2.20 \* US\$500]. A copy of an extract of the recording fees published on the official website of the County of Santa Clara is at **pages 14 to 17 of CPS-1**.
  
22. In other words, the Bankrupt and Wang purchased the Ross Road Property on 25 January 2010 for US\$1,580,000 as joint tenants. Prima facie, the Bankrupt being a joint co-owner had an equal share in the Ross Road Property.
  
23. By an Interspousal Transfer Grant Deed dated 7 August 2013 and notarised on 26 August 2013 (“**1<sup>st</sup> Interspousal Grant Deed**”), the Bankrupt transferred his

interest in the Ross Road Property to Wang, following which Wang became the sole owner thereof. In the 1<sup>st</sup> Interspousal Grant Deed, the Bankrupt was described as the '*spouse of the grantee therein*' and Wang was described as '*a married woman*'. A copy of the 1<sup>st</sup> Interspousal Grant Deed is at **page 18 of CPS-1**.

24. The recording page of the 1<sup>st</sup> Interspousal Grant Deed stated that the document transfer tax is nil and did not state the amount of the consideration in respect of the transfer of the Bankrupt's interest in the Ross Road Property to Wang. The 1<sup>st</sup> Interspousal Grant also stated that it '*is exempt from imposition of the Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11927(a), on transferring community, quasi- community, or quasi-marital property, assets between spouses pursuant to a judgment, and order, or a written agreement between spouses in contemplation of any such judgment, and order, or a written agreement between spouses in contemplation of any such judgment or order*' and was '*A creation, transfer, or termination, solely between spouses of any co-owner's interest.*'.

#### **The Paradise Drive Property**

25. By a Grant Deed dated 29 March 2010 which was notarised on 1 April 2010 ("**2nd Grant Deed**"), the Bankrupt became the sole owner of the Paradise Drive Property. In relation to the Paradise Drive Property, Wang had executed a Quitclaim Deed dated 25 March 2010 and notarised on 31 March 2010 ("**Quitclaim Deed**"), to remise, release and forever quitclaim to the Bankrupt the ownership of the Paradise Drive Property. A copy of the 2nd Grant Deed is at **pages 19 to 20 of CPS-1** and a copy of the recording pages of the Quitclaim Deed is at **pages 21 to 23 of CPS-1**.
26. The 2nd Grant Deed stated that the documentary transfer tax was US\$8,580, which was stated to be '*computed on full value of property conveyed*' but did not

state the amount of the consideration.

27. According to the county office of Marin, where the Paradise Drive Property is located, the county transfer tax is calculated based on a county rate of US\$0.55 for every US\$500 of value of consideration. No other taxes are imposed when a property is transferred in Marin County. This indicates that the consideration relating to the transfer of the Paradise Drive Property was US\$7,800,000 [US\$8,580/US\$0.55 \* US\$500]. A copy of an extract of the recording fees published on the official website of the County of Marin is at **pages 24 to 29 of CPS-1**.
28. In other words, the Bankrupt purchased the Paradise Drive Property at US\$7,800,000 on 1 April 2010 as sole owner.
29. By an Interspousal Transfer Grant Deed dated 8 August 2013 and notarised on 27 August 2013 ("**2<sup>nd</sup> Interspousal Grant Deed**"), the Bankrupt transferred the whole of his interest in the Paradise Drive Property to Wang. A copy of the recording page of the 2<sup>nd</sup> Interspousal Grant Deed is at **pages 30 to 32 of CPS-1**.
30. The recording page of the 2<sup>nd</sup> Interspousal Grant Deed stated that the document transfer tax is nil and did not state the amount of the consideration in respect of the transfer of the Bankrupt's interest in the Ross Road Property to Wang. The 2<sup>nd</sup> Interspousal Grant also stated that it '*is exempt from imposition of the Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11927(a), on transferring community, quasi- community, or quasi-marital property, assets between spouses pursuant to a judgment, and order, or a written agreement between spouses in contemplation of any such judgment, and order, or a written agreement between spouses in contemplation of any such judgment or order.*' and was '*A creation, transfer, or termination, solely between spouses of any co-owner's interest.*'.

### Transactions at an Undervalue

31. Both the recording pages of the 1<sup>st</sup> and 2<sup>nd</sup> Interspousal Grant Deeds did not indicate the amount of the consideration in respect of the Transfers. The Trustees were advised by their US lawyer that there is no legal requirement that the amount of consideration for any properties be disclosed or made available in public records. Unless the Bankrupt and/or Wang voluntarily provide information to confirm the amount of consideration paid, if any, it is impossible to find out whether any consideration was paid or paid at market value from any public records.
  
32. The Trustees have written to the Bankrupt on a number of occasions to request him to provide a statement of affairs and to contact the Trustees to arrange a time to discuss his affairs. However, no statement of affairs or response was received from the Bankrupt to date. The Bankrupt has not contacted or met with the Trustees since the commencement of his bankruptcy. The Trustees' investigation into the Bankrupt's affairs has been severely hampered by his lack of cooperation.
  
33. Due to the lack of cooperation from the Bankrupt, the Trustees have to rely on the public information, information from third parties or circumstantial information to ascertain the circumstances which potentially led to the Transfers and whether the Transfers are potentially transactions at undervalue.
  
34. Based upon the Trustees' investigations, I verily believe that the Transfers are transactions at undervalue in view of:-
  - (1) the circumstances under which the documentary transfer taxes were exempted in the Transfers; and
  - (2) the circumstances from which the true intention of the Bankrupt behind the Transfers could be inferred.



### Exemption of Documentary Transfer Tax

35. As mentioned in paragraphs 24 and 30 above, the documentary transfer tax was exempted in the 1<sup>st</sup> and 2<sup>nd</sup> Interspousal Grant Deeds.
36. Section 11911 of the California Revenue and Taxation Code (“CRTC”) defines documentary transfer tax as tax imposed on *“each deed, instrument, or writing by which any lands, tenements, or other realty sold within the county shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction...”* A copy of an extract of Section 11911 of the CRTC is at **pages 33 to 34 of CPS-1.**
37. There are exemptions that can avoid the application of the documentary transfer tax in California and they are set out as follows:-
  - (1) writings to secure a debt (section 11921 of CRTC);
  - (2) transfers to or from governmental entities (sections 11922 and 11928 of CRTC);
  - (3) transfers incident to reorganisations or adjustments (section 11923 of CRTC);
  - (4) transfers pursuant to order of the Securities and Exchange Commission (section 11924 of CRTC);
  - (5) transfers of interests in entities taxed as partnership (section 11925 of CRTC);
  - (6) transfers that reflect mere changes in the method of ownership (section 11926 of CRTC);
  - (7) transfers pursuant to divorce or separation (section 11927(a) of CRTC);
  - (8) transfers by the State of California to nonprofit corporation (section 11929 of CRTC); and

- (9) transfers by gifts or death (section 11930 of CRTTC).
38. It is shown on the recording pages of the 1<sup>st</sup> and 2<sup>nd</sup> Interspousal Grant Deeds that the Bankrupt claimed documentary tax exemption pursuant to section 11927(a) of CRTTC, i.e. when spouses divide assets pursuant to a judgment or order related to divorce or legal separation. A copy of an extract of section 11927(a) of the CRTTC is at **page 35 of CPS-1**.
39. However, the Trustees are of the view that the Bankrupt and Wang did not divorce or separate due to the following reasons:-
- (1) First, the Bankrupt and Wang and their issue are still the beneficiaries of the J&J Trust, a revocable and discretionary trust founded by Wang Mingquan, the father-in-law of the Bankrupt, as disclosed in the 2015 Annual Report of Up Energy Development Group Limited (“Up Energy”), a company listed on the Main Board of the HKEX (Stock Code: 307). If the Bankrupt and Wang were separated in 2013, it is unlikely that the Bankrupt would still remain as one of the beneficiaries of the J&J Trust at the time when the 2015 Annual Report of Up Energy was published;
  - (2) Second, as mentioned in paragraph 16 above, the Disclosure of Interests filed with the HKEX on 23 October 2015 stated that Wang was still the spouse of the Bankrupt at the time of the Disclosure of Interests;
  - (3) Third, the Bankrupt and Wang are still the joint owners of a property located in West Vancouver, Canada as at the date of this affirmation;
  - (4) Fourth, the Bankrupt appears to be in control of the Paradise Drive Property. The Trustees made enquiries to L.A. Stevens & Associates, Inc (“LA Stevens”), a land surveying firm in California, US, regarding a

payment made by the Bankrupt to LA Stevens. Frank Stevens of LA Stevens responded in an email to the Trustees on 30 March 2017, which was also copied to the Bankrupt, and the subject line of the email was "*Qin\_3680 Paradise Dr., Tiburon\_121386*". Therefore, it appeared to the Trustees that the services provided by LA Stevens were related to the Paradise Drive Property and that LA Stevens considered the Bankrupt as their client but not Wang as Wang was excluded in the said email correspondence.

40. A copy of an extract of the Up Energy 2015 Annual Report relating to the beneficiaries of the J&J Trust is at **page 36 of CPS-1**, a copy of the title search of the West Vancouver property is at **page 37 to 38 of CPS-1**, and copies of correspondence between the Trustees, LA Stevens and the Bankrupt are at **pages 39 to 42 of CPS-1**.
41. Due to the reasons mentioned in paragraph 39 above, I am of the view that the tax exemption claimed under section 11927(a) of the CRTC was not a genuine claim as the Bankrupt and Wang were not divorced or separated.
42. Other than the tax exemption claimed under section 11927(a), the Bankrupt also claimed documentary transfer tax exemption by declaring that the Transfers were made solely between spouses of any co-owner's interest.
43. In the 1<sup>st</sup> and 2<sup>nd</sup> Interspousal Grant Deeds, a check box stating that "*A creation, transfer, or termination, solely between spouses, of any co-owner's interest*" was checked. The 1<sup>st</sup> and 2<sup>nd</sup> Interspousal Grant Deeds did not mention which specific section of the CRTC was relied on for the tax exemption. With reference to paragraph 37 above, it appears that the only other applicable provision related to such tax exemption would be made under section 11930 of the CRTC. A copy of an extract of section 11930 of CRTC is at **page 43 of CPS-1**.

44. Pursuant to section 11930 of the CRTC, documentary transfer tax is exempted “by reasons of such *inter vivos* gift or by reason of the death of any person”. Assuming that the tax exemption declaration was related to section 11930 of the CRTC, it would be more likely to be due to an *inter vivos* gift made by the Bankrupt to Wang, i.e. the transfer was likely to be made as a gift with no consideration.

#### **True Intention behind the Transfers**

45. The Bankrupt was the former Chairman, CEO and an executive director of Up Energy. He resigned from these positions on 6 August 2016 after he was adjudged bankrupt. A copy of Up Energy’s announcement dated 8 August 2016 is at pages 44 to 47 of CPS-1.
46. As stated above, the Bankrupt is the son-in-law of Wang Mingquan, the founder of the J&J Trust and a substantial shareholder of Up Energy. The J&J Trust is a discretionary trust, the beneficiaries of which are the Bankrupt and Wang. At the material time, the Bankrupt had a substantial indirect interest of at least 35% in the issued shares of Up Energy through Up Energy Group Ltd. (“UEGL”). A copy of Up Energy’s circular dated 26 July 2013 which sets out this background information is at pages 48 to 66 of CPS-1.
47. The financial affairs of the Bankrupt were intertwined with the financial affairs of UEGE because of the undertakings and guarantees provided by the Bankrupt in respect of UEGE’s obligations and borrowings.
48. Set out below is chronicle of the events affecting the Bankrupt and UEGE leading up around the time of the Transfers, both of which occurred in August 2013:-
- (1) On 29 March 2011, UEGE entered into a Convertible Notes Purchase Agreement with Credit Suisse AG (“CS”) for the sale of two tranches of

convertible notes in Up Energy at a consideration of HK\$195,000,000 (“**the Option Securities**”). On the same day, CS, UEGL and the Bankrupt entered into a Deed of Undertaking pursuant to which CS was granted an option to require UEGL to purchase some or all of the Option Securities on 2 April 2013 at a consideration of HK\$234,000,000 (“**the Option Consideration**”). Pursuant to the Deed of Undertaking, the Bankrupt guaranteed to CS the punctual performance of UEGL’s obligations thereunder. Also on the same day, the Bankrupt entered into a written personal guarantee with CS in substantially the same terms as the Deed of Undertaking.

- (2) On 19 December 2012, the Bankrupt provided an irrevocable guarantee for the performance of obligations by Up Energy and its subsidiaries (“**the Group**”) in relation to the agreements with Cinda Financial Leasing Company Limited (“**Cinda**”) under which Cinda provided funds amounting to HK\$296 million and HK\$59 million to UE Coking and UE Coal Washing respectively. A copy of relevant pages of the Up Energy’s Annual Report 2013 relating to the irrevocable guarantee provided by the Bankrupt is at **pages 67 to 68 of CPS-1**.
- (3) On 2 April 2013, CS exercised the option under the Deed of Undertaking. UEGL was required to repurchase all of the Option Securities for the Option Consideration to be paid on 13 May 2013, but it failed to do so.
- (4) On 20 May 2013, CS demanded the Bankrupt to perform his guarantee obligations but he failed to do so.
- (5) On 28 June 2013, Up Energy announced its annual results for the year ended 31 March 2013 showing a trading loss of HK\$60,376,000 (HK\$101,266,000 in 2012). A copy of Up Energy’s announcement dated 28 June 2013 is at **pages 69 to 98 of CPS-1**.

- (6) On 9 July 2013, Baosteel Resources International Company Limited (“**Baosteel**”) presented a bankruptcy petition in the High Court against the Bankrupt (“**Baosteel’s Bankruptcy Petition**”) and a winding-up petition against UEGL, the controlling shareholder of Up Energy. A copy of Up Energy’s announcement dated 17 July 2013 is at **page 99 of CPS-1**.
- (7) The Bankrupt only informed Up Energy of Baosteel’s Bankruptcy Petition on 17 July 2013, as he allegedly discovered about it when his attention was brought to an article in a local newspaper published on 11 July 2013. I verily believe that the said newspaper article was the one published by Oriental Daily News on 11 July 2013, a copy of which is at **pages 100 to 101 of CPS-1**.
- (8) The basis of Baosteel’s Bankruptcy Petition, as stated in Up Energy’s announcement dated 17 July 2013, was that the Bankrupt refused to pay the sum of HK\$3,875,000 pursuant to the terms of a contract dated 23 March 2011 in respect of certain convertible notes of Up Energy then held by Baosteel with an aggregate principal sum of HK\$155,000,000.
- (9) On 14 August 2013, CS commenced proceedings against both UEGL and the Bankrupt in the English Commercial Court for the sum of HK\$234,000,000. A copy of the Amended Particulars of Claim of CS dated 22 November 2013 and filed in the English Commercial Court is at **pages 102 to 109 of CPS-1**.
- (10) Against this background, the Bankrupt entered into the 1<sup>st</sup> Interspousal Grant Deed on 7 August 2013 and the 2<sup>nd</sup> Interspousal Grant Deed on 8 August 2013. As stated above, the 1<sup>st</sup> Interspousal Grant Deed and 2<sup>nd</sup> Interspousal Grant Deed were only notarised on 26 August 2013 and

27 August 2013, respectively. The Trustees have been advised by their legal advisers in the United States that the 1<sup>st</sup> Interspousal Grant Deed and the 2<sup>nd</sup> Interspousal Grant Deed only took effect upon notarisation.

- (11) On 30 September 2013, the winding-up petition against UEGL was struck out on the basis that UEGL was incorporated in the BVI and no grounds were stated in the winding-up petition why the Hong Kong court should exercise jurisdiction to wind it up. A copy of the court's decision in *Re Up Energy Group Limited* (unrep., HCCW 185/2013, 25 October 2013) is at **pages 110 to 113 of CPS-1**.
  - (12) There is no publicly available information regarding how Baosteel's Bankruptcy Petition against the Bankrupt was resolved or determined.
  - (13) On 12 October 2013, Wang Chuan, the Bankrupt's brother-in-law, was appointed to the board of directors of Up Energy. A copy of Up Energy's announcement dated 11 October 2013 is at **pages 114 to 115 of CPS-1**.
49. Based on the chronicle set out above, I verily believe that the true intention of the Transfers was to place the assets of the Bankrupt out of the reach of the potential bankruptcy trustees to be appointed or his creditors, some of which had initiated proceedings against the Bankrupt at around the time of the Transfers.
50. Indeed, the Transfers took place on 26 and 27 August 2013, just two weeks after CS had initiated legal proceedings in the UK against both UEGL and the Bankrupt and seven weeks after the filing of Baosteel's Bankruptcy Petition. The Transfers appear to be an attempt made by the Bankrupt to prevent the bankruptcy trustees, if he was adjudged bankrupt due to the bankruptcy petition presented by Baosteel, from pursuing the US Properties or an effort to conceal his assets.

### Other Transfer During 2016

51. The Transfers were not the only time the Bankrupt had attempted to transfer his assets to Wang with a view to keeping his assets out of the reach of his potential bankruptcy trustees. The Trustees' investigation revealed that on 13 July 2016, the Bankrupt had attempted unsuccessfully to transfer his sole shareholding in Silk Road Outlets Limited ("SROL"), a company incorporated in the British Virgin Islands ("BVI"), to Wang at a consideration of US\$1. The share transfer was made after the presentation of the Petition and two weeks before the date of the Bankruptcy Order. Copies of the instrument of transfer are at **pages 116 to 117 of CPS-1**, a copy of the bought and sold notes is at **pages 118 to 119 of CPS-1**, and a copy of the written resolution of the sole director approving the transfer of shares in SROL is at **page 120 of CPS-1**.
  
52. According to the company search conducted by the Trustees in the BVI, it was noted that a register of members of SROL ("RoM") was filed with the Registrar and was available for public viewing. The RoM stated that the Bankrupt had been the sole shareholder of SROL since 14 February 2013. At the hearing on 7 February 2017, a BVI lawyer engaged by Wang alleged that the share held by the Bankrupt was transferred to Wang. However, the BVI Court was mindful of section 43A of the BVI Business Companies (Amendment) Act ("BVIBCA") which states, "*a company may elect to file for registration by the Registrar a copy of its register of members*". If a company in the BVI does elect to file its RoM with the Registrar, it is bound by the contents of the RoM filed unless a notice to cease registration is filed to the Registrar pursuant to section 43A(3) of the BVIBCA. SROL had not filed a notice to the Registrar electing to cease registration of change in the RoM. Consequently, the BVI Court granted an Order recognising the Bankruptcy Order and that the RoM be amended to record the Trustees as the sole shareholder of SROL.
  
53. The unsuccessful transfer of his sole shareholding in SROL to Wang appears to



be another attempt by the Bankrupt to either keep assets out of the reach of the Trustee or to conceal his assets.

#### **Other Relevant Facts showing Qin's Financial Difficulties**

54. On 29 September 2014, Qin borrowed a loan of HK\$45,000,000 from Win Wind. He further signed a supplemental agreement with Win Wind on 25 March 2015 to extend the deadline for repayment of the loan but he eventually failed to repay. A copy of the reasons for judgment of court dated 18 May 2017 which sets out the relevant background is at **pages 121 to 130 of CPS-1**.
55. Further, as the then Chairman, CEO and executive director of Up Energy, the Bankrupt must have been fully aware of Up Energy's dire financial condition. This has led to a need for debt restructuring which appears to have been ongoing for some time without much success. Indeed, Up Energy is now under the second delisting stage. A copy of Up Energy's announcement dated 24 April 2017 is at **pages 131 to 132 of CPS-1**.
56. The Trustees are fortified by the fact that in the said reasons for judgment dated 18 May 2017 granted by the court against the Bankrupt, it was mentioned that the reasons proffered by the Bankrupt for the loans from Win Wind was purportedly because one of the companies he was managing was in need of money. I believe that company was UEGL, part of the debts of which he has personally guaranteed.
57. It is also noteworthy that the Court found the Bankrupt to be of doubtful credibility.

#### **Conclusion**


58. I verily believe that there was at least a real risk which had arisen in July 2013

that the Bankrupt would be adjudged bankrupt due to Baosteel's Bankruptcy Petition against the Bankrupt. At the material time, the Bankrupt was exposed to potential liability under the personal guarantees he had given in favour of Cinda and CS.

59. If, as it appears from the evidence, that the purpose of the Transfers was to keep the creditors and bankruptcy trustees away from the US Properties, it is unlikely that any consideration was paid for the Transfers as any consideration paid by Wang to Qin would be at risk of being pursued by the bankruptcy trustee to be appointed.
60. In view of all the circumstances, the Trustees verily believe that the Transfers were transactions at an undervalue and that there is a lack of any explanation for the Bankrupt's entering into of the 1<sup>st</sup> Interspousal Grant Deed and 2<sup>nd</sup> Interspousal Grant Deed apart from the motive to put the properties beyond the reach of his creditors in the event that he was adjudged bankrupt.
61. The Trustees therefore humbly pray for an order in the terms of the Originating Summons.

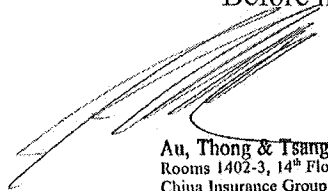
AFFIRMED AT )

)  
)  
**Au, Thong & Tsang, Solicitors**  
Rooms 1402-3, 14<sup>th</sup> Floor,  
China Insurance Group Building  
No. 141 Des Voeux Road Central  
Hong Kong )

)  
)  
  
)

Before me,

**AU CHUN WAI**  
Solicitor, Hong Kong SAR.

  
**Au, Thong & Tsang, Solicitors**  
Rooms 1402-3, 14<sup>th</sup> Floor,  
China Insurance Group Building  
No. 141 Des Voeux Road Central  
Hong Kong