IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD 157 of 2021 (DDJ)

BETWEEN

XIAOHU FAN

Petitioner

AND

AQUAPOINT L.P.

Respondent

Appearances:	**Ben Valentin QC and Bhavesh Patel of Travers Thorp Alberga for Xiaohu Fan** **James Corbett QC and Michael Wingrave of Dentons for GenScript Corporation the general partner for and on behalf of AquaPoint L.P.**
Before:	**Hon. Justice David Doyle**
Heard:	**26 January, 20-21 April 2022 with an additional affidavit sworn on 7 May 2022 being adduced with leave of the court granted on 23 May 2022**
Draft Judgment Circulated:	**2 June 2022**
Judgment Delivered:	**10 June 2022**

HEADNOTE

Partnership wound up on the just and equitable ground on the basis of frustration of legitimate expectation and understanding, irretrievable breakdown because of lack of trust and confidence and conflict of interest of general partner

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JUDGMENT

Introduction

1. Xiaohu Fan ("Dr Fan") is a man of science and was not a man of significant business experience prior to the events with which this case is concerned. He specialises in the research and advancement of cell therapy, immunology and cell biology.

2. In late 2014 Fangliang Zhang ("Dr Zhang") and Ye Wang ("Ms Wang"), who had founded what was called the GenScript group, wished to create a subsidiary company to develop novel biological drugs. Dr Zhang invited Dr Fan to become involved in the new business in order to develop novel cell therapies for oncological and other purposes.

3. There is some dispute as to the exact involvement of Dr Fan and whether he was a co-founder of the new venture and de facto Chief Executive Officer but it is common ground that he became Chief Scientific Officer and made a "significant contribution."

4. Dr Zhang astutely recognised that Dr Fan could play a key role in significantly adding to the value of the business and wished to encourage him to remain within the business with the incentive of financial rewards. In early 2015 Dr Zhang proposed that Dr Fan should invest in Nanjing Legend Biotechnology Co Ltd ("Legend Nanjing") a company established in the People's Republic of China. This led to the entering into of what was described throughout the hearing as the "2016 Agreement" and is dealt with in further detail below. Put very briefly under the 2016 Agreement Dr Fan was to be granted 10,000,000 shares in Legend Nanjing (representing 10% of the shares) and prior to the initial public offering ("IPO") without the approval of Legend Nanjing he was not permitted to transfer or sell any of his shares.

5. Between late 2014 and May 2016 Dr Fan was significantly involved in critical developments and inventions of a number of important therapies including the breakthrough therapy for the treatment of multiple myeloma patients, ciltacabtageneautoleucel (Cilta-cel), an investigational B-cell maturation antigen directed chimeric antigen receptor T cell (CAR-T) therapy (the "CAR-T Invention"). This was clearly a ground-breaking therapy and Dr Fan's role in the CAR-T Invention was significant.

6. It was subsequently decided that rather than using Legend Nanjing, Legend Biotech Corporation ("Legend Cayman" of the "Company" as appropriate), a Cayman Islands registered exempted limited company, would be used as the listing vehicle. Legend Cayman was subsequently listed on the NASDAQ (referred to with its associated companies and subsidiaries as the "Legend Group" being a group of biotech companies that specialise in the discovery and development of novel cell therapies for oncology and other indications). The listing documents indicated that existing shareholders could not dispose of their shares until after the period of 180 days following the listing.

7. At some point it appears that Dr Zhang decided that Dr Fan should be persuaded (via communications from himself and Ms Wang) to enter into a new incentive/investment agreement and this should be facilitated by way of an exempted limited partnership formed under the laws of the Cayman Islands.

8. AquaPoint L.P. (the "Partnership") was created in the Cayman Islands as an exempted limited partnership on 16 February 2017 under the Exempted Limited Partnership Act (the "ELPA"). The general partner of the Partnership is GenScript Corporation, a Delaware company (the "GP") which it is common ground is and was at all material times under the control of Dr Zhang. There are only two limited partners namely Dr Fan (69.95%) and Ms Wang (30.05%). Dr Zhang also has beneficial ownership of a number of shares in Legend Cayman.

9. The parties then entered into what was described throughout the hearing as the "2017 Agreement". This comprised a package of three documents namely the Subscription Agreement, the amended and restated exempted limited partnership agreement (the "LPA") and the Acknowledgement which are all referred to in further detail below.

10. The IPO took place in June 2020. Subsequent to the IPO Dr Fan asked for his 10% stake in Legend Cayman (the "Legend Shares"), but he has not received any despite repeated demands.

11. It was in these circumstances that Dr Fan presented a petition for the winding up of the Partnership on the just and equitable ground.

12. This case has had a somewhat protracted history. The winding up petition was presented in June 2021 with a summons for directions dated 10 June 2021. Directions were made by consent on 19 July 2021 with a three day trial set for 26 October 2021. Shortly before the trial the Partnership on 17 September 2021 applied for the petition to be struck out. Further directions were made by consent on 24 September 2021 vacating the trial dates for the petition and setting down the strike out application to be heard on 26 October 2021. On 26 October 2021 I made an order dismissing the strike out application and listed the trial of the petition for three days commencing on 26 January 2022. I delivered my reasons for dismissing the strike out application on 23 November 2021. This judgment should be read in conjunction with that judgment. The trial of the petition eventually commenced on 26 January 2022 but towards the end of the first day the GP applied for an adjournment on the ground in effect that it no longer validly existed in law in the Cayman Islands as its registration as a foreign company had been "ceased by the Cayman Islands Registry on 6 January 2022". The hearing was adjourned with an indemnity costs order being made against the GP. On 16 February 2022 an order was made that the adjourned trial of the petition recommence at 8am on 20 April 2022 for two days. It was further ordered that in

the event that the GP was not restored by 4pm on 28 March 2022 the Partnership be wound up. The GP was restored. The adjourned trial recommenced on 20 April 2022 and concluded on 21 April 2022. On 23 May 2022, having received confirmation of no objection from Dr Fan, I granted leave for the GP to adduce the third affidavit of Dr Zhang sworn on 7 May 2022 which basically confirmed that a criminal investigation in China, involving Dr Zhang, had been discontinued.

Summary

13. I apologise for the length of this judgment but felt it necessary, in the particular circumstances of this case, to set out the evidence in some considerable detail in the hope that this would enable the parties and other readers of the judgment to better understand the evidential base of the decisions I have arrived at. Those decisions and the reasons for them are set out in the determination section of this judgment which runs to less than 10 pages.

14. I can summarise my main decision in one line. It is just and equitable to bring an end to the Partnership.

The Evidence

15. The evidence before the court is contained in various affidavits and some oral evidence from Dr Fan, Ms Wang and Dr Zhang. There is also various communications and documentary evidence that impacts on the issues to be decided in this case.

The Evidence given by way of affidavits and oral testimony

Dr Fan's first affidavit

16. Dr Fan in his first affidavit states that he is the co-founder of the Legend Group and served as its de facto CEO from early 2015 until 2018 in addition to serving as its Chief Scientific Officer "from the inception". He says Dr Zhang is "one of the ultimate owners and the director of" the GP. Dr Fan refers to the 2016 Agreement.

17. Dr Fan says that in early 2017 he was informed by Ms Wang that "Legend, the Cayman entity, rather than Legend Nanjing would be the listing vehicle. Ms Wang informed me that the 2016 Agreement was not a formal contract and was inadequate to accomplish its purpose, and that it was in my best interest to sign a subscription agreement and become a limited partner in the Partnership. I was informed that I would be granted the right to subscribe for 65.96% of the interest in the Partnership in exchange for the payment of RMB 2,500,000, which would entitle me to own 10% of Legend shares through the Partnership, which was substantially the same as what I was entitled to under the 2016 Agreement. In connection with the execution of the subscription agreement, I was asked to sign a Confirmation Letter to confirm that the 2016 Agreement would terminate upon the signing of the subscription agreement."

18. Dr Fan says:

> "I relied on the representations made to me by Sally Wang and trusted Frank Zhang to be acting in good faith, and did not have any legal advice with regard to the signing of the Confirmation Letter and the subscription agreement. I always understood that the terms under the subscription agreement and the Limited Partnership Agreement were similar to those under the 2016 Agreement, and I would be able to freely access and dispose of the Legend shares once the IPO had

happened. I therefore entered into the subscription agreement dated 25 May 2017 … and agreed to the terms of the Limited Partnership Agreement which was amended and restated on 25 May 2017 … I would not have done so had I understood that the representations were false and that I was being taken advantage of."

19. Dr Fan says that Dr Zhang "holds shares in Legend [Cayman] and Genscript through the GP. By holding the Legend shares owned by the limited partners via the Partnership, he is able to indirectly exercise voting control over such Legend shares, further strengthening his control of Legend, which I believe is a conflict of interest as it means the Partnership acts in Frank Zhang's interests, not the Partnership's or the partners."

Dr Fan's second affidavit

20. In his second affidavit Dr Fan states:

> "I do not intend on selling all or any substantial portion of the shares that I own in Legend after the in specie transfer to me."

And:

> "The Partnership was without a registered office since around April 2021 until very recently …" (his second affidavit was sworn on 6 October 2021).

21. Dr Fan states:

> "In early 2017, I was informed by Sally Wang, who was the Chief Operating Officer at Genscript at the time, that Legend, the Cayman entity, rather than Legend

Nanjing would be the listing vehicle. Ms Wang informed me that the 2016 Agreement was not a formal contract and was inadequate to accomplish its purpose, and that it was in my best interest to sign a subscription agreement and become a limited partner in the Partnership. I was informed that I would be granted the right to subscribe for 65.96% of the interest in the Partnership in exchange for the payment of RMB 2,500,000, which would entitle me to own 10% of Legend shares through the Partnership, which reflected my entitlement under the 2016 Agreement. In connection with the execution of the subscription agreement, I was asked to sign a Confirmation Letter to confirm that the 2016 Agreement would terminate upon the signing of the subscription agreement …"

22. Dr Fan states that he relied on the representations made to him by Ms Wang and trusted Dr Zhang to be acting in good faith. Dr Fan adds:

> "Frank Zhang had told me that the 2016 Agreement needed to be replaced, and he knew I did not have any legal advice with respect to the signing of the Confirmation Letter and the subscription agreement. I was given to understand by Frank Zhang and Sally Wang that the terms under the subscription agreement and the LPA were substantially the same to those under the 2016 Agreement. I was also told that I would be able to freely access and dispose of the Legend shares once the IPO had happened. I therefore entered into the subscription agreement dated 25 May 2017 and agreed to the terms of the LPA which was amended and restated on 25 May 2017. I would not have done so had I understood that the representations were false."

23. Dr Fan says that in order to obtain the 10% share interest in Legend Cayman he made a payment of RMB 2,500,000 on 12 October 2017 and:

> "As was always the intention, I was then reimbursed RMB 2 million over a four-year period such that my 10% shareholding in Legend reflect the same agreement as had been contemplated in the 2016 Agreement. This was further confirmed by Sally Wang in an email dated 23 June 2016 …. that the shares under the 2016 Agreement would fully vest if the purchase price was paid in full."

24. Dr Fan states:

> "My understanding has always been that I was to receive 10% of the shares of the listed Legend entity as co-founder, and Frank Zhang confirmed the same through a series of WeChat messages with me …"

25. Dr Fan states:

> "Following the IPO in June 2020 there was a 6-month lockup period applicable to the Legend shares. I always operated on the understanding that six months after the IPO, I would be able to deal freely with my shares and that they would be transferred into my personal name."

26. Dr Fan refers to his attempts to obtain a transfer of the shares into his name and in respect of the GP's concern that if Dr Fan sold his shares in Legend Cayman this would have a negative impact on the share price and states:

> "I have made it clear to the GP that I do not intend selling the majority of my Legend shares, and have even made an offer to undertake only to sell a small number within certain periods following the transfer."

27. Dr Fan says that "the GP offered to agree to sell 30,000 of my ADS shares in any given year, which would mean that it would take over 300 years for my total shares of over 10,000,000 ADS shares to be sold."

28. Dr Fan say that Dr Zhang "subsequently agreed to a partial sale of some of my shares, then reneging on that agreement". Dr Fan refers to the GP arranging for individuals at "Legend to change press announcements so that any reference to me being a founder of Legend be removed." Dr Fan says that during "a telephone conversation on 23 April 2021, Dr Zhang threatened that if I was to commence legal proceedings, it would result in the termination of my employment or even loss of my entitled shares."

29. Dr Fan refers to the criminal investigation involving Dr Zhang and says that "as a respected specialist in clinical research, I have no intention of being associated or involved in any criminal investigation into Dr Zhang. I therefore wish to remove myself from the Partnership by having my shares transferred to me."

30. On the conflict point Dr Fan says:

> "[31]. Frank Zhang holds shares in Legend through the GP. I also understand he has an interest in Legend via his ownership of other entities. By holding the Legend shares owned by the limited partners via the Partnership, he is able indirectly to exercise voting control over such Legend shares. In other words, he is able to leverage my shares to strengthen his control of Legend. I believe that his own interest in doing so is in conflict with his duty, on behalf of the GP, to me as a partner. There was no consultation with the limited partners on how the assets of the Partnership were to be managed or when Legend shares might be sold. Instead, Dr Zhang has been able to influence Legend at a level greater than he would if his own economic interest in it were held separately. This clear conflict of interest is another reason that I wish to have my shares transferred to me in specie. Until that

point, I am unable to receive dividends from them without the GP authorizing any dividend being distributed by the Partnership (which, for the avoidance of doubt, has never happened).

[32] Sally Wang and Frank Zhang informed me in 2016 that there was an apparent need to restructure ownership to be in the form of the Partnership due to the apparent inadequacy of the 2016 Agreement. I now believe that their true purpose in creating the Partnership was to allow Frank Zhang to exercise control over shares in Legend without having any economic interest in those shares. The GP has not, despite being asked, explained why the Partnership was set up or what its purpose is."

31. Dr Fan says that the Partnership was without a registered office between April to September 2021 following the resignation of its previous registered agent Walkers Corporate Services and the fact that the GP took so long to ensure the Partnership had a registered office in compliance with Cayman law is a matter of further concern to Dr Fan as a limited partner.

Dr Fan's third affidavit

32. The following are extracts from Dr Fan's third affidavit sworn on 3 December 2021:

"In the end of 2014, Genscript group wanted to seed a subsidiary company named "Legend" to develop novel biological drugs of some kind that were undecided. I was invited by Frank Zhang to lead that arm of the business, which was put under the "Project Legend" banner. I thereby co-founded the Legend Group to specialize and develop its business in the discovery and development of novel cell therapies for oncology and other indications…"

33. Dr Fan says that from the outset "I was entrusted by Genscript to lead the set up and growth of the Legend business and, in particular, to focus on development important therapies … My official title was and is Chief Scientific Officer of Legend and I have been listed as co-founder of Legend on Legend's website as well as in Legend's registration statements filed with the US Securities and Exchange Commission."

34. Dr Fan refers his "role as Leader of the Legend project" and the requests to him by Dr Zhang to invest in Legend and adds "my understanding was always that I was to receive 10% of the Legend business regardless of the specific entity whose shares were being issued."

35. Dr Fan says:

> "Sometime between 10 July 2015 and 18 August 2015, following further discussions with Frank Zhang, we agreed that (i) Legend Nanjing would start with a registered capital of RMB 25,000,000, and (ii) I would invest a total of RMB 500,000 (RMB 100,000 each year for 5 years) in exchange for 10% of Legend Nanjing. There was documentation in an agreement which was signed by me and Frank Zhang on 18 August 2015 but was dated 1 January 2016 … (the "2016 Agreement")."

36. Dr Fan says that "During 2016, the Legend business achieved good progress in its first patient dosing of Cilta-cel which I invented in March 2016 … The product I developed is still currently the main asset of the Legend group which is now the largest biotech company in Asia Pacific and one of the world's top companies in the field of cell and gene therapy".

37. Dr Fan says that in mid-2016 he had emails with Ms Wang and she "confirmed that the shares would fully vest once the purchase price was paid in full, and I confirmed that I

would pay RMB 2.5 million to subscribe for 10% of the shares in Legend Nanjing (which was at the time the entity envisaged to be listed)."

38. Dr Fan says that in mid to late 2016 Ms Wang and Dr Zhang told him that there was a need to restructure into some kind of partnership to facilitate the IPO of the Legend Group. At some stage a decision was made to list Legend Cayman on NASDAQ rather than listing Legend Nanjing on a Chinese stock exchange and that triggered the restructuring. Dr Fan says he "did not fully understand the reasons for a change in structure that Ms Wang was proposing but raised queries that I thought were appropriate at the time."

39. Dr Fan says that Ms Wang informed him that the 2016 Agreement "was not a very formal contract and may not be adequate to accomplish its purpose, and that it was in my best interest to sign a more formal subscription agreement and become a limited partner in the Partnership."

40. Dr Fan says that he was informed that he would be granted the right to subscribe for 65.96% of the interest in the Partnership in exchange for the payment of RMB 2,500,000 which he understood would entitle him to "effectively own 10% of Legend Cayman shares through the Partnership essentially the same as to what" he was entitled to under the 2016 Agreement.

41. Dr Fan says:

> "I relied on the representations made to me by Sally Wang and trusted Frank Zhang to be acting in good faith. Frank Zhang had told me that the 2016 Agreement needed to be formalized and replaced, and he knew I did not have any legal advice with respect to the signing of the Confirmation Letter and the subscription agreement. I was given to understand by Frank Zhang and Sally Wang that the terms under the subscription agreement and the LPA were substantially the same

to those under the 2016 Agreement. I was also told that I would be able to freely access and dispose of the Legend shares once the IPO had happened."

42. Dr Fan said that he raised his queries in respect of the draft LPA in early 2017 and he says he had a phone call with Ms Wang when he discussed his concerns and she gave him assurances and made representations. Dr Fan also had WeChat conversations with Ms Wang and Dr Zhang. Dr Fan entered into the 2017 Agreement "on the basis of the representations given to me by Sally Wang and Frank Zhang. I would not have done so had I understood that the representations were false and that I was being taken advantage of. My understanding was always that these were agreements that reflected the 2016 Agreement but with more technical and legal terms."

43. Dr Fan says:

> "In any event, following the signature of those documents, and in order to obtain my 10% share interest in Legend, I made payment of RMB 2,500,000 on 12 October 2017. As was always the intention, I was then reimbursed RMB 2 million over a four-year period such that my 10% shareholding in Legend Cayman reflected the same agreement as had been contemplated in the 2016 Agreement. This was further confirmed by Sally Wang in an email dated 23 June 2016 …. that the shares under the 2016 Agreement would fully vest if the purchase price was paid in full, and the specific percentages that were envisaged at the time is reflected in Sally's emails to me of 7 June 2017 'Percentage', where my 10% stake in Legend Cayman is confirmed despite the Subscription Agreement not being 'straight-forwardly stated as 10%'."

44. Dr Fan refers to the growth of the Legend Group between 2017 and 2020:

"The group was growing and becoming financially stronger and I was integral to the growth of the Legend Group and worked hard and diligently to ensure its success, and I was happy to do so because I was always under the impression that the success of the group would result in my own financial benefit via my 10% ownership stake."

45. Dr Fan describes the listing of Legend Cayman on NASDAQ in June 2020 as "the culmination of years of hard work". Dr Fan says he understood after the 6-month lock up period that he would be able to deal freely with his shares and he believed they would be transferred into his personal name "automatically". Dr Fan made various requests for the shares and says:

"the GP ultimately made two offers to allow the sale of some of Legend Cayman shares with the proceeds distributed to me. However, the first offer would have taken over 300 years for all of my shares in Legend Cayman to fully transfer to me so that I could enjoy the economics of the Legend Cayman shares, and would not allow me to control the voting of the Legend shares … The second 'deal' was to a partial sale of some of my shares, which was initially agreed upon until Frank Zhang then reneged on that agreement."

46. Dr Fan says:

"The GP has suggested that it is fearful of my selling of the shares in Legend Cayman which could have a negative impact upon Legend's share price. However, I have made it clear to the GP that I do not intend selling the majority of my Legend Cayman shares and have even made an offer to undertake only to sell a small number within certain periods following the transfer."

47. Dr Fan refers to the criminal investigation and the involvement of Dr Zhang which "had a drastic impact on Legend Cayman's stock price" and "increased my concerns over the ability of the GP to properly manage the affairs of the Partnership." Dr Fan says as a respected specialist in cancer drug research and clinical development he did not wish to be "associated or involved in any of the criminal investigation into Dr Zhang. I therefore wish to remove myself from the Partnership by having my shares transferred to him."

48. Dr Fan says he has also lost faith and trust in the GP's ability to manage the Partnership because:

(1) references to him being a co-founder of Legend have been removed;

(2) in a telephone conversation on 23 April 2021 Dr Zhang threatened that if Dr Fan commenced legal proceedings that would "result in the termination of my employment or even loss of all my initial shares";

(3) the Partnership was without a registered office for a period of at least 5 months between April to September 2021; and

(4) the GP failed to pay annual fees and was struck off the Cayman register.

49. Dr Fan deals with the conflict of interest point as follows:

> "Frank Zhang controls shares in Legend Cayman through the GP. I also understand he has an interest in Legend Cayman via his ownership of other entities. By holding the Legend Cayman shares owned by the limited partners via the Partnership, he is able indirectly to exercise voting control over such Legend Cayman shares. In other words, he is able to leverage my shares to strengthen his control of Legend Cayman. I believe that his own interest in doing so is in conflict with his duty, on behalf of

the GP, to me as a partner. There was no consultation with the limited partners on how the assets of the Partnership were to be managed or when Legend Cayman shares might be sold. Instead, Dr Zhang has been able to influence Legend Cayman at a level greater than he would if his own economic interest in it were held separately. This clear conflict of interest is another reason that I wish to have my shares transferred to me in specie. Until that point, I am unable to receive dividends from them without the GP authorizing any dividend being distributed by the Partnership (which, for the avoidance of doubt, has never happened, despite distributions being permissible.)"

Dr Fan's fourth affidavit

50. Dr Fan in his fourth affidavit maintains the significance of his contribution to Cayman Legend and denies that the credit for the success of Legend's CAR-T business can be taken by Dr Zhang and Dr Chou. Dr Fan recognises the important role Dr Zhang had in germinating the idea of starting a drug development arm with the GenScript group and setting up the Legend project. Dr Fan maintains that he was "co-founder" in addition to the Chief Scientific Officer of Legend. Dr Fan feels that Dr Zhang has tried to undermine his experience and expertise.

51. Dr Fan says that he did not invite a lawyer to review the position prior to the execution of the 2017 Agreement "because of the assurances given to me by Sally Wang and Frank Zhang."

52. Dr Fan says that he simply wishes to have his shares in Cayman Legend transferred to him personally something which he says he "was entitled to under 2016 Agreement. As a co-founder and the Chief Scientific Officer of the Legend Group, and the key inventor of the Cital-cel drug, I care deeply about the success of Legend and do not intend to do anything

to harm the company. Any suggestion that I am going to set about selling off all my shares at once as soon as I get hold of them and thereby causing the company's stock price to dip is unfounded." Dr Fan confirms that he has "every intention on (sic) complying with any and all insider trading policies at Legend." Dr Fan says:

> "There is no legitimate reason why my Shares should not now be transferred to my personal name. The General Partner is effectively saying that I should be forever locked up in the AquaPoint arrangement, without giving any reason for that to be either necessary or desirable."

53. Dr Fan refers to the risk of being "denied of all of the fruits I have toiled for over the years" and adds:

> "Owning Legend Shares indirectly through AquaPoint means nothing if the only way to have any benefit from those shares is dependent on the actions of the GP in whom I have lost all faith and confidence based on its actions."

Dr Fan's fifth affidavit

54. Dr Fan in his fifth affidavit (sworn on 7 April 2022) says that it was brought to the court's attention during the course of the first day of the trial on 26 January 2022 that the GP had been de-registered as a foreign company under the Cayman Companies Act and the GP had no standing and was unable to represent the Partnership which led to the adjournment of the trial. Dr Fan says whilst he understands that the GP has managed to reinstate itself by registering in Cayman "the facts that led to the de-registration provide further evidence of the manner in which the Partnership is being mismanaged and the lack of probity that is being demonstrated by the GP." Dr Fan adds that "in letting its own registration by the

Registrar lapse, the GP placed the Partnership into a position where it was in breach of Cayman law." Dr Fan adds:

> "The GP's conduct in allowing the above to take place was incompatible with standards of competence and professionalism that a limited partner is entitled to expect from a general partner acting bona fide in the best interests of the Partnership. This episode, which has resulted in the delay to trial following what was already a delayed trial after the GP's belated and unsuccessful attempt to strike out the Petition, is a further example of why I have lost all faith and confidence in the GP's ability to properly manage and conduct the Partnership."

55. Dr Fan adds:

> "I tendered my resignation to Legend on 11 March 2022, right after I found the secret removing of my "co-founder" title from Legend's official website. Whilst I have been honoured to be part of the success of the Legend group and am proud of the progress made in the field of cell and gene therapy, I felt compelled to end my time with the organization because I could no longer endure the long-term and systematic oppression from Frank Zhang and those in favour with him, including the aforementioned removal of my role as co-founder. The manner in which this dispute has been conducted by the GP and the attempts to discredit my reputation and misuse the legal process to damage my name all underline and demonstrate the fundamental breakdown which is the subject of the Petition, and which made my role within Legend untenable and my time at Legend over the past two years very challenging. It was a very difficult decision for me as I have co-founded the company and invented the only drug of the company that has received FDA approval."

56. Dr Fan says he still believes in the prospects of the new drug and of Legend as a whole and has "no intention of selling off any significant portion of my Shares once they are transferred to me. My resignation is driven by the circumstances mentioned above and is by no means a reflection of loss of confidence in Legend."

57. Dr Fan says that the "GP and the Partnership continue to operate in a manner which is unfair and improper" and that he has had to "borrow money in order to pay for the current litigation" and the actions by the GP and Dr Zhang have had the effect of making it difficult to assert his rights.

Ms Wang's affidavit

58. Ms Wang in her affidavit sworn on 20 December 2021 states that she is authorised to make the affidavit on behalf of the GP. She states that she has held a number of positions across the GenScript group of companies, is the President of GenScript Biotech Corporation and has a beneficial interest in the Partnership. Ms Wang covers the following points, amongst others:

> "The management team of GenScript Biotech Corporation learned that stock options are generally considered by employees to have less, or no, inherent immediate value than being granted shares."

59. Ms Wang refers to consideration of providing employees "with incentives where a business unit was likely to proceed to listing. The preferred option, which was adopted across a number of business units, including Legend, was the general partnership/limited partnership approach."

60. Ms Wang says that she was asked by Dr Zhang to take the lead on exploring the best way to put in place incentive schemes for employees "who make and will make significant contribution to the growth of GenScript Group and its subsidiaries, including Legend."

61. Ms Wang says in mid-2016 "I began to have discussions with Dr Fan about admitting him to AquaPoint LP in order that he would have an interest, albeit an indirect one, in Legend."

62. Ms Wang says Walkers were engaged to help and a copy of a draft LPA was "forwarded to Dr Fan for review and comments. I recall that it took a relatively long period of time before Dr Fan came back with questions, comments and suggested revisions."

63. Ms Wang said she had had no involvement with the 2016 Agreement. Ms Wang says Dr Fan was "initially reluctant to move from one arrangement to the other" and adds:

> "Dr Fan made it clear to me that he wished to hold the shares in Legend instead of an interest in a partnership that held the shares of Legend and that it was not reasonable to offer him an interest in the AquaPoint partnership rather than access to Legend shares directly… During our discussions, I did not tell Dr Fan that he would at any point have direct access to shares after the public offering as this would not be an option available to him. I recall explaining that he would obtain ownership in AquaPoint and thus indirectly benefit from Legends' shares."

64. Ms Wang refers to discussions with Dr Fan recording that Dr Fan:

> "asked me whether we intended to honor what Dr Zhang had promised him, which I understood to be a reference to being provided with the 2016 Agreement. I replied that the lengthy negotiations we had been having were aimed at doing just that."

Ms Wang denies the suggestions that she misled or coerced Dr Fan into signing the LPA.

Dr Zhang's first affidavit

65. Dr Zhang in his first affidavit refers to the exit route under the LPA.

Dr Zhang's second affidavit

66. Dr Zhang in his second affidavit says he resigned various GenScript positions to place "company before the person and resigning was in the best interest of the GenScript Group due to legal proceedings in China."

67. Dr Zhang says the concept of what eventually became Legend was his idea, following his attendance at a conference in which CAR-T was discussed. Dr Zhang says in February 2014 he engaged Dr Chuan-Chu Chou to work on the CAR-T project and it was only after the project was well underway that Dr Fan became involved. Dr Chou recommended Dr Fan be a team leader for CAR-T and in March 2015 Dr Fan first began participating in the CAR-T project. Dr Zhang says he led the new project at the beginning. Dr Zhang adds:

> "Dr Fan constantly asked us to promote him. We first promoted him from Director to Vice President, and later to Chief Scientific Officer. We also recognized Dr Fan as a co-founder in public relations materials for Legend because he was one of the most senior scientists and team leaders … Dr Fan was never the CEO of Legend, either in title or responsibilities … At times, we were concerned about his lack of leadership and noticed he puts his own interests above the interests of our company. One example of when we expressed concern about his leadership appear in an email

exchange I had with him in June 2017 concerning incentives for the team beneath him."

68. Dr Zhang says in 2015 he "communicated with Dr Fan to offer him an opportunity to invest in Legend Nanjing … we eventually offered what we has (sic) been called in this case the 2016 Agreement … The incentive plan gives the team rights to 10% of the total share capital of Legend Nanjing."

69. Dr Zhang refers to the lead up to the 2017 Agreement and says: "Sally Wang was the person with the primary responsibility for discussing the new incentive plan with Dr Fan. She handled the majority of the negotiations with Dr Fan on the subject … The discussions with Dr Fan took much longer than expected." Dr Zhang says that Ms Wang "kept me reasonably informed of the status of her conversations with him."

70. Dr Zhang says: "I never told Dr Fan (or Sally Wang) that a limited partner would be free to dispose of his interest six months after the IPO or at any time after the IPO."

71. Dr Zhang says:

> "58. In February 2021, Dr Fan got in touch with me and asked me for permission to sell about 2 million shares of Legend stock (about $56 M value) to the public market. After receiving his request, I then communicated Dr Fan's request to Legend executives, and we mutually decided that Dr Fan's request was unreasonable especially as Legend was in the process of raising capital. Such a big sale to the public market will result in dramatically driving down Legend's stock price and would damage our company since we were in the middle of raising funds from investors. If the stock price goes down, it will cause investors to lose confidence. In order to partially satisfy his demands, after communicating with Legend executives, we

agreed we would offer Dr Fan the opportunity to sell shares and obtain $4 to $5 million. This would make him an immediate multi-millionaire."

72. Dr Zhang says that he was shocked and disappointed to receive a letter from Dr Fan's lawyers dated 22 April 2021 with the threat of legal proceedings. He says he reached out to Dr Fan to make sure that he had in fact authorised the letter. Dr Zhang says that he made no threats to fire him but told him "if he was intent on filing a lawsuit, we would defend ourselves to the best of our ability." Dr Zhang refers to Dr Fan apparently recording one of Dr Zhang's conversations with him and adds:

> "We then decided to freeze the approval to sell shares because we believed the whole situation should be reviewed with both inside and outside counsel."

73. Dr Zhang says that he discussed the decision to authorise shares of $4 – 5 million in stock "with, amongst others, the Legend Chief Executive Officer."

74. Dr Zhang at paragraph 64 of his second affidavit states:

> "I have no personal animus against Dr Fan. His work has been of benefit first to the GenScript Group and now to Legend. His request was simply one that we did not believe was in the best interest of the GenScript Group in general or Legend specifically, and I explained to him why."

75. In the very next paragraph (65), Dr Zhang states:

> "I, as a representative of the general partner, have no conflict of interest in the case."

76. Dr Zhang refers to the need to keep control of the voting rights attached to the shares otherwise the company "would become extremely difficult to govern" and there would be the spectre of "shareholder activism". Dr Zhang says that "Dr Fan released inside information and caused us problems with the Hong Kong stock exchange. It can hardly be surprising that the general partner and Legend are wary of placing a large volume of Legend stock in to Dr Fan's hands as he requests, and this is one of the purposes (sic) which AquaPoint was created. Such a course of action would be a substantial risk in all the circumstances and one that does not appear to be balanced by the benefits to be gained by one individual."

77. In respect of the criminal investigation concerning GenScript, Dr Zhang says that "No charges have ever been laid against the company or against me." When the investigation was announced and Dr Zhang was detained the proper course was, he adds, for him to "step down as Chairman and Chief Executive Officer or Legend Biotech and Chairman of GenScript." Dr Zhang says that he was released without charge.

78. Dr Zhang refers to the difficulties with the Partnership "lacking a registered office for a period of time" as Walkers resigned as registered office provider and adds that there was "nothing sinister or improper." in that.

Dr Zhang's third affidavit

79. Dr Zhang in his third affidavit sworn on 7 May 2022 and adduced pursuant to leave given on 23 May 2022 says that on 28 April 2022 he received a "telephone communication from the Zhenjiang Municipal People's Procuratorate concerned the investigation commenced against GenScript Biotech Co Ltd and myself by the Zhenjiang Customs Anti-Smuggling Sub-Bureau in September 2020." Dr Zhang says:

> "I was informed that the investigation had been concluded and it had been determined not to charge me or GenScript Biotech Co Ltd with any crime arising out of that investigation."

80. Dr Zhang refers to a statement dated 30 April 2022 from his lawyers (Allbright Law Offices):

> "Accordingly, the criminal procedure for this case has been concluded, and Dr Zhang Fangliang is not guilty and will have no criminal liability with respect to the case."

Mr Meng's affidavit

81. Jiange "Robin" Meng ("Mr Meng") in his affidavit says that he has been involved with the GenScript group of companies for over 11 years and, in late 2020, stepped into the Chairman's role when Dr Zhang stepped down. Mr Meng refers to various payments to Dr Fan and says that he was aware that Dr Fan received RMB 1,900,000 in bonus over 2017, 2018 and 2020:

> "I recall that the original amount was RMB 2,000,000 but RMB 100,000 was deducted from his bonus because of an inside information disclosure breach that Dr Fan committed."

Dr Zhu's affidavit

82. Dr Li Zhu ("Dr Zhu"), who occupies the position of Chief Strategy Officer at GenScript Biotech Corporation, says that Dr Fan did "not work on CAR-T alone" and that "the reality is that he is the leader of a team, each member of which has contributed to its achievements" and "Dr Fan was not the CEO of Legend."

Dr Wu's affidavit

83. Dr Sheng "Shawn" Wu, VP of GenScript Biotech Corporation, and says that:

> "Dr Fan suffered a loss of part of his bonus in one year for making an unauthorised disclosure of insider information at a conference."

Ms Qian's affidavit

84. Yan "Elaine" Qian, Head of Human Resources of Legend Nanjing, refers to a bundle of documents and suggests that they usually advise employees "to seek their own individual advisors" in respect of "incentive agreements".

Mr Murphy's affidavit

85. Richard Murphy ("Mr Murphy") Senior Manager of FFP (Corporate Services) Limited ("FFP") in an affidavit sworn on 4 February 2022 says that FFP have agreed to act as the new registered agent for the GP, identified in the Order of 26 January 2022, subject to the provision of complete and adequate know your customer documentation.

86. Mr Murphy says that the GP had until 6 January 2022 been registered as a foreign company in the Cayman Islands but "consequent upon resignation of the former registered office of [the GP] the Register of Companies removed [the GP] from the register of companies on 6 January 2022 … [and] [the GP] ceased to fulfil the formal requirements to be a 'qualifying general partner' …". FFP has agreed to "process the reinstatement and registration [the GP] with the Registrar of Companies." Mr Murphy "expected that [the GP] will be reinstated administratively within a few days of the provision of the requested material and fees to the General Registry."

Cross-examination of Dr Fan

87. Dr Fan during his cross-examination gave the following evidence on material matters:

(1) he is a person who pays attention to detail;

(2) he did not get answers to all the questions he asked before signing up to the LPA;

(3) he was working long hours and was under pressure to sign the LPA. He signed it but felt it was unfair;

(4) Dr Fan appeared to find it difficult to directly answer the question "when one person deals with another, then they should each stand by their word? Yes or no?" with his initial response being "Not if there's not a fair deal." Dr Fan says "I keep my promise always";

(5) Dr Fan accepted that as Chief Scientific Officer he was the leader of the team but added "I'm the major scientist for sure, in the early stages of Legend especially for the invention of a Cilta-cel. I'm the sole, I would say I am more than 90% of the contributions, my team won't doubt about it";

(6) "I founded a company in Japan back in 2001." Dr Fan seemed to have difficulty in answering directly and concisely the question as to whether he had "significant business experience" by 2015;

(7) Dr Fan says it was a "bargaining strategy" to say in his 10 July 2015 7:45 email to Dr Zhang that he would think about it with his wife as to whether or not he would participate;

(8) Dr Fan says "I think Dr Zhang means "allowance" to me because he wanted me to invest, but obviously I don't have that fund to invest to 10% investment of that investment. The company …. he promised to give allowance to deduct or reimburse the extra money I need to pay";

(9) Dr Fan believed that Dr Zhang had more business experience than he had;

(10) Dr Fan accepts that he signed the 2016 Agreement of his "own will"; "It's not a perfect agreement but overall I'm confident I can accept the terms … No other person signed a similar deal."

(11) Dr Fan says that the 2017 Agreement was effectively the same as the 2016 Agreement in giving him "a right to shares in Legend". It changed from Legend Nanjing to Legend Cayman but Dr Fan's understanding was that it was still 10% of the shares. Dr Fan says that his understanding was that whatever the 2017 Agreement says it gave him a direct right to shares in Cayman Legend once the IPO has taken place;

(12) Dr Fan accepts that his team were involved in the invention of Cilta-cel: "I lead the team to develop";

(13) Dr Fan said in a phone call with Ms Wang that the 2016 Agreement was a formal one: "Then, I clearly remember, she was amused. She said, "Really? You think the 2016 Agreement is a formal one?";

(14) it was put to Dr Fan that there was nothing in the build up to the 2017 Agreement to stop him asking a lawyer for assistance and Dr Fan responded:

> "I have a lot of work to do. I am very busy, and I trusted Frank and Sally during that time."

(15) Dr Fan was referred to his email to Ms Wang dated 26 September 2016 at 4:46 where he had stated "Recently Frank told me you're helping roll over the share purchase plan to Legend Cayman" and it was put to him that it was clear to him that there was " a move away from any direct shareholding in Legend." Dr Fan responded "No.";

(16) it was Dr Fan's understanding that after the IPO "everything will be released". Dr Fan said he did not know that the incentive was not going to be "directly in shares in Legend";

(17) Dr Fan did not agree that he had a free choice of remaining with the 2016 Agreement or moving to the 2017 Agreement;

(18) Dr Fan appeared to have difficulty in giving a yes or no answer to the question "In the end you decided not to stick with the 2016 Agreement, but to go with the 2017 Agreement.";

(19) Dr Fan accepted that he was given drafts of the LPA and the Subscription Agreement for his consideration and that he made a number of comments and suggested amendments but added:

> "I never imagined that what I hold, what the share I hold in the Partnership is not Legend … My understanding is, even indirectly holding, it's my share" … "I try to not irritate them … so I always using my wife as an excuse to comfort them … My understanding … was I'm holding Legend share, even inside the Partnership, and after IPO it will release";

(20) Dr Fan agreed that he had read and signed the Subscription Agreement. He also agreed that he read the LPA. Dr Fan stated that in 2017 he was 46 years old. It was

put to him that he should at least take some responsibility for his own actions. Dr Fan said he was a scientist and he was relying on Dr Zhang and Ms Wang in respect of the 2017 Agreement and he was in a weak position "it's overwhelming";

(21) it was put to Dr Fan that his evidence that although the 2017 Agreement provided he pay RMB 2.5 million in fact he did not pay more than 500,000. Mr Corbett stated 100,000 "was withheld from you for a reason that perhaps doesn't matter anymore". Dr Fan said it was "arranged by Frank and Sally …. Sally told me that a lawyer can't write down the actual arrangement in the formal legal terms. They will reimburse me later, year by year, and that's happened: I think both sides are avoiding to say that because it secret arrangement during that time".

Re-examination of Dr Fan

88. In re-examination Dr Fan said no one else in his team was offered a 10% stake in Legend Nanjing;

Cross-examination of Ms Wang

89. Ms Wang during her cross-examination gave the following evidence on material matters:

(1) Ms Wang said in respect of the 2016 Agreement so long as he met the requirements "it gave him direct access to Legend Nanjing shares";

(2) Ms Wang denied that it was her task to persuade Dr Fan to move from the 2016 Agreement to the new arrangement:

"My task is not to persuade him. To be honest, the Company has no obligation to move Dr Fan from the 2016 Agreement to the new Partnership Agreement. So my task was actually to set up investment platform to award, or keep the key talents.";

(3) Ms Wang accepted that there were only two limited partners in the Partnership namely Dr Fan (69.95%) and herself (30.05%) with Legend Cayman as of 20 April 2022 having a market capitalisation of just over US$6 billion and the Partnership holds 30,320,000 ordinary shares in Legend Cayman at a value of about $593 million;

(4) Ms Wang accepts that she is "a co-founder of the GenScript Group" and agrees that she is giving evidence on behalf of the GP (of which she is a director) and she says that she is not taking any sides but just giving evidence "to the extent that I have been involved in the negotiation process with Dr Fan."

(5) Ms Wang accepts that the GP has a duty to "act in good faith in the interests of the limited partnership", a "fiduciary duty";

(6) Ms Wang had no hesitation in accepting that "Dr Fan led the team that developed the CAR-T breakthrough" and she recognized "he was a successful member or key employee"; "Dr Fan led the effort of making significant progress on the CAR-T programme…Dr Fan led the effort and made a significant breakthrough in that area". Ms Wang agreed that Dr Fan was the only person who got an agreement (the 2016 Agreement) conferring a 10% shareholding on him and "it was his importance and the work he was doing that led to this breakthrough that merited reflecting that contribution with a shareholding in the business" but added that "in 2017 was only limited to Nanjing Legend."

(7) it was put to Ms Wang that the reference by her to the "original agreement" in her WeChat message to Dr Fan on 8 June 2017 was to the 2016 Agreement. Ms Wang hesitated, took a few minutes to look at the whole of the message and then said: "I don't get enough context to guess what the original agreement I was referring to in this message". Mr Valentin asked her what she thought the candidates might be. Ms Wang responded:

> "It could be first, of course, the 2016 Agreement and also the agreement I sent him initially in mid of June. That was our first proposal for a partnership set up in China". Dr Fan's communication dated 2 June 2017 was put to Ms Wang and she was asked when he refers to "original agreement" that must be to the 2016 Agreement:
>
> > "I believe the agreement was cancelled in the 2016 Agreement. That's the only agreement that was cancelled.";

(8) it was put to Ms Wang that what she was conveying to Dr Fan in her 8 June 2017 message was that the "stake be held under the 2016 Agreement in Legend Nanjing, whatever ownership interest he had under the 2016 Agreement, would be converted or turned into an interest in the Cayman Legend entity." Ms Wang responded:

> "That's actually what the agreement did."

(9) Ms Wang agreed that Dr Zhang trusted her to negotiate or put the arrangements with Dr Fan into existence;

(10) Ms Wang says that Dr Fan "made his own decision" and the discussions "took quite a long time"; "He had the option to stay within the 2016 Agreement";

(11) Ms Wang agreed that the concept that she was helping with was "through this new structure, to roll over the share purchase that Dr Fan had in the Nanjing entity into the new Cayman entity."; "The concept, I think, is still to ensure Dr Fan can get the benefit of the success and growth of Legend";

(12) Ms Wang was referred to the 15 June 2016 email from Dr Fan and her response and says in respect of the "original agreement" reference she believes he was referring to the partnership agreement she sent to him on 6 June "I'm not referring to the 2016 Agreement";

(13) on the conflict of interest point Ms Wang accepted that Dr Zhang with her and one other co-founded the GP and Dr Zhang "owns a significant part of GenScript Corporation" and that Dr Zhang controlled the GP. Ms Wang also accepted that Dr Zhang has an indirect holding in Cayman Legend (15.2%). It was put to Ms Wang that when Dr Zhang is wearing his GP hat "he has to put out of his mind the interests of Legend Cayman, the interests of GenScript, his own personal interest as a shareholder. He has to think about the Partnership, doesn't he?" Ms Wang replied "That's correct";

(14) Ms Wang was asked how could Dr Zhang do that, "isn't there obviously a conflict in the way he acts as the GP representative in that situation?". Ms Wang responded "That's a very good question" and added: "we have certain kinds of mechanism to governance, to make sure when we are acting in differing roles, we are doing what we are supposed to do."

(15) Ms Wang was asked what purpose the Partnership served and was asked to confirm that Dr Fan is the only one incentivised which she duly did. Ms Wang says she believes Dr Zhang's concern "is if we sell too many shares at a very short period of time, of course, that's going to be a big concern for the stability of the share price for both Legend Cayman and its parent company, GenScript.";

(16) Ms Wang says she did not have the impression that during the discussions about the "2017 arrangements" that Dr Fan trusted her because every time she spoke to him it took him a few days before he came back "with a lot of questions … we actually discuss on the same question over and over again and again. If he trusted me, that's not the way."

Re-examination of Ms Wang

90. In re-examination the email of 23 June was put to Ms Wang and she said that the reference to original agreement coming after RMB 2.5 million was not to the 2016 Agreement but to the partnership agreement she sent to Dr Fan on 6 June that was "a partnership agreement in Chinese". Ms Wang said the purpose of the platform was not just to incentivise "one employee":

> "It's to have a kind of controlled exit mechanism to make sure the share price won't be significantly impacted from one big, large sale, which is also good for all the shareholders' interest, including the Partnership."

Cross-examination of Dr Zhang

91. Dr Zhang during his cross-examination gave the following evidence on material matters:

(1) Dr Zhang was asked what role Dr Fan played in the development of the CAR-T project and his answer (through the interpreter) was as follows:

> "So, our firm started the CAR-T project at the beginning of 2014. At the beginning, Dr Cho planned the project … Dr Fan joined the firm in 2014 … and in March 2015 he joined this new CAR-T project. Later on, Dr Cho left the CAR-T and Dr Fan started to lead the CAR-T project in September of 2015 and therefore, he also played an important role in the CAR-T project";

Dr Zhang accepted that Dr Fan led the team that discovered the CAR-T breakthrough and that "Dr Fan made a significant contribution to the success of" Legend Cayman. Dr Zhang, despite the content of his affidavit evidence, did not accept that he had tried to diminish the role of Dr Fan in his affidavit evidence;

(2) Dr Zhang said the 10% stake in Legend Nanjing was not just to Dr Fan but to Dr Fan and his team. Dr Zhang criticised Dr Fan for putting himself above his team: "He worries about himself on top of their needs";

(3) Dr Zhang, somewhat unconvincingly, said that where he uses references to "your stock" in a communication dated 14 June 2017 "what I mean is that he has some stock in the limited partnership";

(4) Dr Zhang said that the 2016 Agreement was dated and signed on 1 January 2016 and was not signed in August 2015;

(5) Dr Zhang agreed that the 2016 Agreement prevented Dr Fan from selling any shares prior to the IPO;

(6) Dr Zhang agreed that the purpose of the 2016 Agreement was to incentivise Dr Fan to stay so that the CAR-T project could succeed with his involvement and the success of the project played "a very significant" "an important" role to do a future IPO. Dr Zhang was asked "you couldn't afford to lose Dr Fan, could you?" and responded somewhat evasively "We don't want to lose any talent, not just him." Dr Zhang did however accept if Dr Fan had left in 2016 the progress of the CAR-T project "would have been affected." Dr Zhang however seemed to have difficulty in unhesitatingly accepting the value and significant role of Dr Fan. It was put to Dr Zhang that he granted Dr Fan a 10% shareholding in Legend Nanjing "because you needed him to stay" and, despite the fact that there was no evidence before the court of any claims by any members of Dr Fan's team, he replied:

> "I would like to repeat one more time, this was for his team and not just for him, one person.";

(7) Dr Zhang was referred to exchanges of messages with Dr Fan on 19 February 2017 and his comment "How can you question your partners" and seemed to accept that he was trying to reassure Dr Fan that he would honour the 2016 Agreement:

> "Yes, we will, we will honour 2016 Agreement."

Dr Zhang agreed to Ms Wang's evidence that the "aim was to ensure that the new arrangement honoured what Dr Zhang had promised Dr Fan":

> "Yes, but the 2017 Agreement is a totally different agreement to the 2016 [Agreement]."

Dr Zhang said Dr Fan had a choice to stay with the 2016 Agreement or move to the 2017 Agreement.

Dr Zhang said that "Dr Fan would enjoy the same benefits whether the subject matter of the agreement was shares in Legend Nanjing or shares in Legend Cayman". Dr Zhang did not agree that a shareholding in Legend Nanjing would be worth considerably less than a shareholding in Legend Cayman if an IPO took place;

(8) it was put to Dr Zhang that the shares that the Partnership holds in Legend Cayman on 19 April 2022 were worth approximately US$590 million and he was asked what were the shares in Legend Nanjing worth and Dr Zhang said he did not know their exact worth. Dr Zhang accepted that on 19 April 2022 the market capitalisation of Legend Cayman was just over US$ 6 billion. Dr Zhang gave "a rough number" for the value of Legend Nanjing at "maybe $4 billion, you know, but my CFO will know the answer better. The exact number." Dr Zhang agreed that Legend Nanjing was not listed;

(9) Dr Zhang openly accepted that he co-founded the GP and that he "substantially" owns it and at the time of the IPO had control over the GP and he still does. Dr Zhang agrees that he has an interest in Cayman Legend shares. Dr Zhang agrees that he personally controls the GP and he personally controls the shares in Legend Cayman that are held by the Partnership;

(10) Dr Zhang said that employees who own shares have to get approval before they sell shares and, without referring to any evidence in support, added "even after they leave the Company they still have to follow the Company's policies" as "if he or she has the freedom to sell them at any time, that would cause great damage to the Company. It is essentially like suicide for the firm";

(11) Dr Zhang was asked what detriment to the Company's business had to do with the interests of the Partnership and illuminatingly replied:

> "So my rule in the Partnership is, we always want to keep the stock price stable. If the stock price stable, it's good for the Company, it's good for the partners, the limited partners, the LP. My role as the GP of AquaPoint, I have an obligation to the LP …. When we sell shares … there were damages in interest of another LP. If Dr Fan sells shares … he will damage the interests of Ms Sally Wang and also damage Legend Biotech, damage the investors and all the employees. So, that's just not right … we want this company to succeed, we don't want to damage this company … I can control with key stakeholder in the Company and the top management, so we make a consensus decision … the long term benefits of the Company".

(12) Dr Zhang accepted that the Company agreed to a 180 day lock-up period but after the lock-up again insisted that the "employee when they sell off their shares, they need to get the Company's approval.";

(13) Dr Zhang agreed that he was a representative of the GP and he understood that it was the GP's "duty to act at all times in good faith and in the interests of the limited partnership." Dr Zhang was asked when he takes account of the interests of the Partnership what he is taking account of and responded as follows:

> "I take account of the individual LP, I take account of the Company as a whole, the Legend Biotech as a whole, because those two things cannot be separated from each other and this LP. Dr Fan … in … selling the shares should be bound by the Company policy … if the Company does well, the LP does well … It's damaging the other LP, then damaging the whole company."

(14) In a remarkably frank and illuminating exchange Mr Valentin put the following to Dr Zhang:

> "If both limited partners came to the GP and said, "We would like our shares to be transferred to us" wouldn't you have to agree with them in that situation?"

Dr Zhang, without hesitation, responded:

> "I will working for their interest, and I will working for also the Company's interest, in that mission. I am working for the LP's interest, the Company's interest, together.";

(15) it was put to Dr Zhang that he was confusing the interests of the limited partners with the interests of the Company in which he holds shares: "You're blending the two together, aren't you". To which Dr Zhang replied "You are blending them together, you know."

(16) it was put to Dr Zhang that he had not approved any of Dr Fan's requests to distribute shares to him and Dr Zhang responded:

"I give approval $4 to $5 million of his share, his partner share, his partner's share to sell, but he filed a lawsuit, immediately. So that was, and then I consulted with our internal legal counsel and our internal legal counsel asked to put a hold on the shares.";

(17) it was put to Dr Zhang that he knew that when Dr Fan entered into the 2017 arrangement he had not got independent legal advice. Dr Zhang responded.

"He was very, very smart guy and he has done business before and I don't know whether he got a lawyer or not.";

(18) it was directly put to Dr Zhang that the respect in which the 2016 Agreement and the 2017 Agreement were the same was that "Dr Fan was led to believe, by you and Sally Wang, that he would get his 10% of shares once the IPO was complete and he entered into the 2017 arrangements on the basis of those assurances, that nothing materially would change between the two arrangements." Dr Zhang sought the assistance of the interpreter and through the interpreter protested as follows:

"This is absurd. We have never told him that he would directly hold 10% of shares of Legend. We have also never told him that after IPO, that he can directly access those shares. He, himself, also knows that the 2017 Agreement is different from the 2016 Agreement. In the 2016 Agreement, there were only two pages but in the 2017 Agreement, there were at least 40 pages. Dr Fan is a very good scientist and he also has business experience. Nobody misled him and he knew about it.";

(19) Dr Zhang was asked about the difficulties with the lack of registered office and the registration issue. He accepted that mistakes had been made and he took responsibility for the mistakes: "I should have thought about it more closely."

Re-examination of Dr Zhang

92. In re-examination Dr Zhang said that clause 10 of the Subscription Agreement dealt with the position as to "what happens if conflicts of interest arise". Dr Zhang said that when the decision was made about distribution to Dr Fan of some shares Dr Zhang was not the only person who was involved in that decision:

"When Dr Fan want to sell partners shares, so that fact, mentioned to Biotech, so, I conferred with Legend Biotech executives and the board members, and also GenScript Corp."

93. Dr Zhang referred to the $4 to $5 million possibility. Dr Zhang denied that it was the GP's intention to keep the "shares in the Partnership forever."

Evidence provided by way of documents and communications

94. I now turn to the evidence provided by way of documents and communications.

95. An email dated 3 April 2015 from Dr Zhang to Jingwei and Qian Yan:

"Can you set up a temporary structure using Project Legend name? Frank Fan will be the project leader and he will report to me directly."

96. The 2016 Agreement was contained in a document entitled "Nanjing Legend Biotechnology Co. Ltd. Share Incentive Plan" dated "7 January 1, 2016". Under a clause headed "Eligibility" it was indicated that eligible would be Nanjing Legend Biotechnology Co. Ltd's management personnel as approved by the board of directors. It is further indicated that "The total planned investment of the Company shall be RMB25, 000,000, and the total share capital of the Company shall be 100,000,000 shares with a par value of RMP 0.25 each." In respect of the numbers of shares:

"It is intended to grant 10,000,000 shares of the Company to the Participants as from June 1, 2016 under this Plan (total share capital of the Company: 100,000,000 shares), representing 10% of the existing shares of the Company."

Four conditions are specified in Clause 2 (d) including "Making investment of RMB 100,000 in the Company annually for five (5) years from January 1, 2016."

Clause 2(e) provides:

"Prior to the Company's IPO, without the approval of the Company, no Participant shall transfer any of his/her shares to others …"

There is another version of this document which refers to "Equity Incentive Plan" rather than "Share Incentive Plan" and the word "Participant" rather than "Participants" is used.

97. By email dated 23 March 2016 Dr Zhang congratulates Dr Fan and his team on the "good progress" that has been made.

98. There is an email dated 6 June 2016 from Ms Wang to Dr Fan which counsel said attached what was referred to as a proposed draft "Chinese Partnership" which led to nowhere and was not executed. There were many blanks in the document and no figures or names were included. It seemed to contemplate establishing a limited partnership under the provisions of the Partnership Law of the People's Republic of China.

99. Extracts from email Dr Fan to Ms Wang copied to Dr Zhang 15 June 2016 at 10:54 a.m.:

> "Hi Sally & Frank
>
> Thank you very much for your sincere communication last week. I understand that the company has undergone some changes compared with last year. But I fully appreciate that you and Frank really want to help me become a formal partner, and I really appreciate your trust and recognition of my past work …

I don't have experience in investing …. I can only try my best to raise the 500K RMB that I committed to last year. The other 2 million RMB is really difficult …. I hope you can help me here, and provide me in advance the amount of the original promised bonus … I definitely will work hard to make the Legend achieve great things and take off!"

100. Email Ms Wang to Dr Fan 15 June 13:25:

"Could you please come to my office at 10:30 tomorrow morning to discuss the following matters."

101. Email Ms Wang to Dr Fan 23 June 2016 14:22 re "Share Purchase Plan":

"As for the share purchase plan we talked about last time, since the group has recently completed its contribution to the capital increase of Legend, and it is better to complete the capital increase and the equity investment plans simultaneously or at a similar time, so please let me know your decision not later than June 25. If I fail to receive your reply before that time, you will be considered as giving up the right to purchase shares in such capital increase.

The RMB 2.5 million equity incentive under the original agreement can be determined as vested in advance by way of subscription. If you would like early vesting, please let me know the specific number of shares.

If you wish to participate in the equity investment plan, please be prepared for the payment shortly …"

102. Dr Fan thanks Ms Wang for the "reminder" by email dated 23 June 2016 14:43 and adds:

"After careful consideration, my wife and I decide to try to raise such funds shortly to participate in this capital increase equity investment plan and share the risks and

benefits of starting the business of Legend. We will pay RMB 2.5 million to subscribe for 10% of the shares. Thank you and Frank for giving me this opportunity." (My underlining)

103. On 25 August 2016 Dr Fan sent Ms Wang a chaser and asked if it was "possible to change the lock-up period of the restricted shares held by me as a limited partner from 5 years to 4 years" in view of the time which had lapsed since the 2016 Agreement had been signed (which on Dr Fan's case was 18 August 2015).

104. Ms Wang in her email dated 26 August 2016 refers to "some policy obstacles with the government in China in taking forward limited partnerships." Dr Fan responded on the same day: "Understood. Thank you for your detailed explanation. I hope the issue can be resolved soon."

105. Dr Fan later that day sent an email to Ms Wang with the question: "Is it possible to establish the partnership in Hong Kong, or even the Cayman Islands or the British Virgin Islands to address the equity investment issue?" Dr Fan also added:

> "I would like to know the legal effect of the agreement I signed with Frank last year … My anxiety is that I don't wish to hold on my hands any agreements I totally do not understand."

And added:

> "Legend R & D and clinical achievements are amazing and will have a huge impact. Now it is coming into the public vision soon, so I hope you and Frank can help me get the shares that are legally protected as soon as possible …"

106. Ms Wang responded on 29 August 2016 referring to the problems in China, indicating it was difficult to have a "specific timetable" and suggesting that Dr Fan talk to Dr Zhang who was in Nanjing.

There then follows an email from Dr Fan to Ms Wang (cc Dr Zhang) dated 26 September 2016:

> "Recently Frank [Dr Zhang] told me that you are helping roll over the share purchase plan to Legend Cayman. For me, it is a good thing to operate in the red chip structure at the Cayman level, as I hold a Canadian passport …" (my underlining)

107. Ms Wang responded by email dated 28 September 2016 indicating that they were "actively facilitating this matter, but it is difficult to give you a specific schedule … we will definitely proceed with this matter, and there are no substantial obstacles at this stage …"

108. Email dated 21 November 2016 subject "name for an investment fund" Ms Wang to Dr Fan:

> "We are going to set up a Limited Partnership Fund in the Cayman Island (sic) for the purpose of investing in Legend by key personnel. We need a name for the fund. Any suggestions?"

109. Dr Fan responded on 22 November 2016 and on 23 November 2016 Ms Wang emailed Dr Zhang (cc Dr Fan) suggesting a number of names including "AquaPoint".

110. On 19 February 2017 9:46 PM Dr Fan sent an email to Ms Wang (cc Dr Zhang) stating:

> "Thank you for your long-term hard work to get the partnership project to proceed to this far. I briefly read it and find it is comparable to the previous Chinese version of the agreement. My main concern is that throughout the partnership agreement,

I fail to see any reasonable legal protection of the interest of the limited partner. Especially the Clause 7.8 is too harsh to the limited partner …

If the whole Clause 7.87 remain in the agreement, we prefer to say with the original agreement which at least reasonably protect my earning of Legend shares based on an annual basis even it also has some vague conditions …. If an agreement make the limited partners wishes the general partner's goodwill all the time for keeping their own "investment", it is meaningless to encourage the limited partner's peace of mind and confidence. By the way, I believe given the key role and contribution of mind into Legend Biotech so far, I deserve to be granted generously at least 10% of unconditional share …?

111. WeChats 19 February 2017:

Dr Fan:

"Frank, another two to three months have passed with the so-called investment plan. And Sally has never contacted me regarding the progress or any issue, or even replied to me on WeChat… how come execution is so inconceivably poor with this particular lawyer? I trust you act in good faith, but there're problems with her attitude and execution. Do you and Sally see me as a partner for Legend at all? Or"

Dr Zhang:

"Xiaohu: It's totally understandable and right for you to follow up this issue, but you question too much, don't you think so? As you may know if you check GenScript's statements, the company has offered almost 25% of its shares to employees, and sets aside a lot of its shares to retain staff members each year after the IPO. After all, it is the company, not you, that proposed your shareholding in Legend first, correct? Also, the company has previously (sic) signed an agreement

with you to this end, the new investment agreement is executed only to make things clearer. Although it's clearer, it's still merely a file, if you don't trust the agreement previously signed by the company, how can you possibly trust the new one? Do you think Legend will grow into a big company if you, one of the main leaders of Legend, always question your partners? Frank." (my underlining)

Dr Fan:

> "Frank, you know I'm short-tempered … I don't mean to be impatient but just want to keep on top of progress … it's not that I don't trust you and Sally, I didn't expect it's so complicated …"

112. On 20 February 2017 2:27am Ms Wang sent an email to Dr Fan (cc Dr Zhang) indicating that the Partnership "the fund for investing Legend was finally incorporated on Feb 16th". Ms Wang attaches the "ARLPA agreement" and asks Dr Fan to review it "and let me know if you have any question" and "Once the ARLPA is finalised, we will move on the subscription agreement …. Since this is our first time to set up such a fund, we don't have any previous experience for reference to understand how much time the whole process will take. The only thing we can do is to push it forward as soon as we can."

113. On 16 March 2017 Dr Fan sends Ms Wang an email:

> "Sorry for taking so long to get back to you. It took me lots of time to convince my wife that this ELP initiative may serve our interest than the previously signed incentive plan in which I can directly access the share of Legend Biotech. Please find attached a revised agreement which we may accept.
> We really appreciated your efforts on this ELP plan are expecting a full agreement with schedule 1 to be available."

Schedule 1 was to include details of capital commitment and contributions. The tracked changes to the draft, amongst other issues, suggested amendments to paragraph 6.6 under the heading "Transfer of Limited Partner Interest" and paragraph 7.8 "mandatory withdrawals".

114. Ms Wang appeared to have forwarded these comments and suggested amendments to Walkers by email 21 March 2017. Some of the changes were accepted and some were rejected.

115. On 27 March 2017 Ms Wang sent an email to Dr Fan attaching a revised draft of an "Amended and Restated Exempted Limited Partnership Agreement by AquaPoint L.P." prepared by Walkers adding:

> "Please give me a call after you review it. I can explain to you the opinion from the attorney."

116. On 28 March 2017 Ms Wang sent an email to Walkers asking for another change suggested by the "employee" in respect of item 7.8 which they thought was reasonable.

117. In the bundle (at page 533) is a document dated "May 25, 2017" entitled "SUBSCRIPTION DOCUMENTS AquaPoint L.P. a Cayman Islands Exempted Limited Partnership" and on the following page (which is signed by Dr Fan) "Subscription Amount: RMB 2,500,000" there is in bold a warning that:

> "EACH ACQUIROR OF A PARTNERSHIP INTEREST MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME. THE SUBSCRIBERS ARE ENCOURAGED TO SEEK INDEPENDENT LEGAL, ACCOUNTING, INVESTMENT AND TAX ADVICE REGARDING THEIR INDIVIDUAL CIRCUMSTANCES AND

FINANCIAL OBJECTIVES IN DETERMINING WHETHER TO SUBSCRIBE FOR AN INTERST IN THE PARTNERSHIP."

Dr Fan is the Subscriber and at paragraph 5 of the Subscription Agreement (which appears to have been signed on page 11 by Dr Fan) Dr Fan gives various representations, warranties and covenants. At paragraph 5(b) Dr Fan states he has "no intention of distributing or reselling any portion" of his Partnership Interest and "understands the Interest is transferable only with the consent of the General Partner." At paragraph 5(c) Dr Fan agrees that he will not sell or otherwise dispose of "the Interest without the consent of the General Partner, which may be granted or withheld in its sole discretion." Paragraph 5 (e) reads:

> "(e) in formulating a decision to invest in the Partnership, the Subscriber has not relied or acted on the basis of any representation or other information purported to be given on behalf of the Partnership or the General Partner except as set forth in the Partnership Agreement (it being understood that no person has been authorised by the Partnership or the General Partner to furnish any such representation or other information); and
>
> (f) the Subscriber recognises that there is not now any public market for the Interests and that such a market is not expected to develop; accordingly, it may not be possible for the Subscriber readily to liquidate the Subscriber's investment in the Partnership."

At paragraph 7(b) Dr Fan represents and warrants that he "has reviewed and understands the Partnership Agreement and this Subscription Agreement". At paragraph 7(c) it is provided that Dr Fan has not received, nor is entitled to rely upon, any representations by the Partnership, the General Partner or any agent thereof. At paragraph 7(d):

"the Subscriber is aware that except as provided in the Partnership Agreement, the Subscriber will have no right to withdraw from the Partnership or to receive distributions in liquidation of the Partnership Interest"

Paragraph 7(g)

"the Subscriber is not relying on the Partnership, the General Partner or any of their partners, members, directors, officers, employees agents or representatives for legal accounting, investment or tax advice, and the Subscriber has sought independent legal, accounting, investment and tax advice to the extent the Subscriber has deemed necessary or appropriate in connection with the Subscriber's decision to subscribe for Partnership Interest."

Paragraph 10 concerns conflict of interest and provides:

"The Subscriber acknowledges and is aware that the General Partner or its directors may from time to time provide investment management or advisory service or be otherwise involved in other collective investment schemes established by parties other than the Partnership whether or not such schemes have similar objectives to those of the Partnership. It is, therefore, possible that the General Partner or its directors or any of them may, in the course of business, have potential conflicts of interest with the Partnership and the Subscriber will not hold the General Partner or its directors liable to any damage suffered by the Subscriber arising therefrom.

The Subscriber further acknowledges and is aware that the General Partner, its directors or any of its associates may invest in, directly or indirectly, or manage or advise other collective investment schemes or accounts which invest in assets which may also be purchased or sold by the Partnership. Neither the General

Partner, its directors nor any of its affiliates nor any of its associates is under any obligation to offer investment opportunities of which any of them becomes aware to the Partnership or to account to the Partnership (or share with the Partnership or inform the Partnership) any such transaction or any benefit received by any of them from any such transaction."

118. The LPA is dated "May 25 2017". Clause 6.6 concerns the "Transfer of Limited Partner Interest" and was set out in full in my judgment delivered on 23 November 2021. Clause 9 concerns distributions and provides:

> "At the time or times determined by the General Partner, the General Partner shall cause the Partnership to distribute any assets of the Partnership that it does not, in its discretion, consider to be necessary to the operation of the Partnership. Any distribution pursuant to this Clause 9 shall be made to the Partners pro rata in accordance with the Partners' respective interests determined by reference to their Capital Contribution from time to time."

119. There is a WeChat message:

28 May 2017 Frank Fan to Ms Wang:

"I have signed it, and will send it right away."

120. On 1 June 2017 Ms Wang sent Dr Fan an email:

> "Our attorney requests one more document to be signed before the new investment documents can be fully executed. Please find it attached. Basically it will stop the previous contract."

The document attached was entitled "Acknowledgement" (sometimes referred to as the "Confirmation Letter" in Dr Fan's evidence) and Dr Fan acknowledged that the "Original

Share Incentive plan" only contained "general provisions and principles." Dr Fan agrees it is terminated on the execution of the LPA and that he will not claim any rights "in accordance with any provisions of the Original Share Incentive Plan." It is common ground that the Acknowledgement was executed.

121. On 2 June 2017 Frank Fan in a WeChat message to Ms Wang raises concerns in respect of the 25 May 2017 date and asks what the difference is between the "Partnership Agreement" and the "Restated Partnership Agreement" adding:

> "I don't quite get certain parts of the agreement …"

In an apparent reference to the Acknowledgement by WeChat message 2 June 2017 to Ms Wang, Dr Fan says: "Now under this agreement, all the shares in Legend previously awarded to me are cancelled … So could the lawyer take my concerns into consideration, and carefully revise the provisions of the agreement to duly protect my interests under the original agreement under such circumstances or under other unforeseeable extreme conditions. If so I'll sign it without any hesitation. Otherwise, I hope to sign a new agreement that is duly revised based on the original agreement."

122. There then follows further WeChat messages:

3 June 2017

Ms Wang:

> "…the risk you mentioned does not exist … They aren't going to divest Legend … <u>The best news for you is that your stake in Nanjing Legend will be turned into shares in Cayman Legend</u>. The entity to be listed will definitely be Cayman Legend, and can't be Nanjing Legend by any means. This is what really matters." (my underlining)

3 June 2017:

Dr Fan

> "Is the AquaPoint investment only a capital increase? How much does my modest investment account for the total equity in Legend?"

3 June 2017 Ms Wang:

> "It'll hit CNY 25 million after the capital increase as set out in the original agreement. You will hold a 10% stake in AquaPoint."

3 June 2017 Dr Fan:

> "… I just want to get a full understanding of the partnership program, and details concerning me …"

Ms Wang:

> "No problem. The one that has already been signed is about the establishment of AquaPoint. It was prepared by the Cayman lawyer. AquaPoint investment in Legend involves a listed company … The shareholding ratio that you're concerned about is clearly specified in it."

123. Email 7 June 2017 from Ms Wang to Dr Fan:

> "Attached please find the Legend subscription agreement. Please keep it confidential. Your percentage of share may not be straightforward stated as 10% in this document. I will forward another email from the attorney explaining how it was set up. The document hasn't been completed yet, mainly they have to determine if RMB can be accepted in this document. Do let me know first if you have any question." (my underlining)

124. Further WeChat messages on 8 June 2021 Dr Fan:

> "…The original plan is that I contribute CNY 2.5 million, of which CNY 2 million will be paid by the company as allowance over the five years … Then will it soon

become even worse for me than the original deal? … Can you find time to talk and explain to me? Thanks. Or rather, I misunderstand. Please advise, thanks."

Ms Wang:

"It's always been CNY 25 million. The allowances remain the same, only that no such clause will be included in this agreement. The 10 million refers to the number of shares."

Dr Fan:

"OK. Got it"

Ms Wang:

"The total investment in the company is CNY 25 million"

Dr Fan:

"I understand now, thanks."

Ms Wang:

"The valuation is conducted based on this. This agreement is not to change any material personal interest of your's. It's only intended to make the original agreement legitimate, and to create scope for future development. You made headlines in the past couple of days. Won widespread international recognition! Chinese cancer immunotherapy achieved breakthrough …" (my underlining)

125. Email 8 June 2017 8:39 PM from Ms Wang to Dr Fan:

"If you don't have any further concern, please signed the attached document and return one original copy to me at your earliest convenience so that we can move forward."

126. Email 8 June 107 9:32 PM from Ms Wang to Dr Fan:

> "Make sure you use the version I sent today since it has some changes and also with dates filled in. I will try my best to push it faster. At the same time, let's hope everything goes smoothly."

127. Dr Fan returns the signed Acknowledgement by email to Ms Wang dated 9 June 2017 10:21 AM and that appears to have completed the execution of the three documents which comprised the 2017 Agreement, namely (1) the Subscription Agreement, (2) the LPA and (3) the Acknowledgement.

128. By email dated 14 June 2017 subject "Option award" Dr Zhang requests Dr Fan to send to him a list of key employees who need to be awarded options. Dr Fan responds on 15 June 2017 specifying twelve names with his name first on the list and adds:

> "However, I do suggest the first option plan to cover all Legend employees."

129. Dr Zhang responded on 14 June 2017:

> "A good leader should take care of their employees first. If their employees are not successful, the leader cannot possibly be successful.
> Since it has taken a long time take care of <u>your stock</u>, can we spend some time to take care of your employees first?" (my underlining)

130. WeChat message 11 January 2020 Dr Fan to Ms Wang in respect of a questionnaire: "Does the aqurapoint (sic) fund have any voting power on Legend Cayman? and further, do I need to list all my share as "no voting power" and "no investment power"?"

131. In the registration statement filed by Legend Cayman 13 May 2020 with the Securities and Exchange Commission in Washington page 207 there is reference to "Lock-up Agreements" and an agreement that the shares shall not be sold or otherwise disposed of until 180 days after the date of the prospectus.

132. The principal shareholders are specified on page 176 and include:

(1) GenScript Biotech Corporation Number of Ordinary Shares Beneficially Owned 169,680,000; Percentage of Shares Beneficially Owned Before Offering 76.9%;

(2) AquaPoint L.P 30,320,000; 13.7%; and

(3) Dr Zhang 34,234,267; 15.2%.

133. By email dated "01/06/2021" subject "Request the dissolve of AP partnership" Dr Fan wished Ms Wang a happy new year and added:

> "As the lock up period for the holding of the shares in Legend Biotech Corporation ("Legend") by AquaPoint L.P. (the "Partnership") has expired, I would like to discuss with you the status of the Partnership.
>
> As you know, I had agreed to have my shares in Legend to be held through the Partnership. Now that the IPO of Legend has taken place successfully and the lock up period has expired, I do not see any reason for me to continue to hold the shares through the Partnership … I understand that you are now exercising the powers of Genscript Corporation, the general partner, and that you could therefore take the appropriate steps to implement this dissolution and distribution of the shares … I hope you can appreciate the importance of this matter for me and the reason why I want to have it resolved quickly and amicably."

Dr Fan sent a chaser on 18 January 2021 and Ms Wang responded that day as follows:

> "There is one thing I have to clarify that I'm not authorised to exercise the power of GenScript Corporation, meaning that I can pass your request and collect information needed but I'm not the person to make the decision."

134. Dr Fan on the same day raised the following question:

> "Could you please further clarify who can fully represent the GP of AP partnership for now and how to efficiently communicate with the GP in the future for the interest of the LP?"

135. Ms Wang responds on 20 January 2021:

> "We have considered your request and the proposal stated in your email and consulted Cayman legal advice in this.
>
> Pursuant to the amended and restated exempted limited partnership agreement (the "LPA" of AquaPoint L.P. (the "Partnership") may be wound up voluntarily upon certain Winding Up Event (as defined in the LPA). Based on your circumstances described, this does not fall within any of the Winding Up Event stated, and we also do not consider it a viable option to wind up the Partnership as this would involve the interest of the other limited partners.
>
> We propose that the Partnership will consider and assist in the sale of shares in Legend Biotech Corporation ("Legend") upon your written request and prior notice. After receiving such notice, the General Partner will exercise its discretion

to approve and determine the amount of shares to sell and the manner of such mechanism to facilitate the sale and distribution upon your request. Please be advised that all such sales has to follow regulations.

Please let us know your plans on selling.

Thank you."

136. Dr Fan replies on "2021-02-03" and sets out the reasons for his view that it would be appropriate for the Partnership to be dissolved and its assets distributed to the limited partners in accordance with their partnership interests. Dr Fan states:

"Given that I am a key found of Legend Biotech and continue to serve as the Chief Scientific Officer, I believe my request to be very reasonable. I simply wish to hold my shares in Legend directly myself, particularly now that the lockup period has expired for a while.

We have worked together for a number years and have always sought the growth and benefit of Legend. I do not wish for this matter to become contentious or litigious and believe that it is in our mutual best interest as well as the best interest of Legend to have this resolved amicably as soon as possible so that we can move on and focus our efforts on advancing the research and development of Legend and bring the company to a new level.

In any event, I would like to request that up to 2,000,000 Legend ADR shares be sold in one year and the proceeds distributed to me while we sort out our differences regarding the Partnership. I will send you a rule 10b5-1 plan in a separate email to get the process started. Please note that this request is an interim request and does not in any way compromise my position above."

Dr Fan sends the draft sales plan on 9 February 2021 with chasers on 11 and 20 February 2021. Ms Wang asks him to contact Dr Zhang "directly".

137. GenScript Biotech Corporation on 9 February 2021 provided an announcement to the Stock Exchange of Hong Kong entitled "Update on the Investigation". It referred to announcements dated 21 September and 22 November 2020. The Board reported that Dr Zhang, the former chairman and chief executive officer of the Company and the former Chairman of the board of directors and chief executive officer of Legend Biotech was released on bail on 9 February 2021. To the best of the Company's knowledge it is stated that "no formal charge has been made against Dr Zhang."

138. By email dated 17 February 2021 Dr Fan communicates with Dr Zhang and Ms Wang regarding "the sales plan of my shares in Legend" (my underlining) and noting that "it is great that now you are more accessible" but if Dr Zhang wanted to delegate his authority to Ms Wang he should confirm that he'll set up a 1:1 meeting with her and send all future communications to her. Ms Wang responded on 19 February 2021 asking Dr Fan to contact Dr Zhang directly.

139. There appears in the bundle a note from Dr Fan of a call on 19 February 2021 with Dr Zhang suggesting a 1:1 meeting rather than communicating via email. Dr Fan's note of the meeting on 26 February at Dr Zhang's office says that Dr Zhang refused the sales plan "and only mentioned maybe let me sale 1 million $ amount (about 30k ADR) in one year. His reason is that Legend need to raise fund this year and my sales plan will crash the stock price …" I decided to communicate with him via instant messaging (WeChat) in Chinese which we used to interact efficiently."

140. Dr Fan sent an email dated 5 March 2021 to Dr Zhang subject "Request of discussing sale plan of Frank Fan's security" Importance: High:

"Since we very briefly discussed my stock sales plan last time on the 1:1 appointment, I haven't heard back from you …

It has been extremely difficult to access you since Sept 2020 and I was very happy that you become more reachable after you was granted a parole. However, obviously, my application of the 10b-5-1 sales plan encounter unexpected difficulties. I was ever very optimistic to my very first time stock sales in improving my life style after enduring so many years of low salary pay given the key leader position I am holding in field of global cell therapy since 2017.

Again, since I never expected such difficulties in the communication of approval as well as the surprisingly still very restricted position even after IPO of Legend Biotech, I did initiate a few personal financial plan which now will highly likely giving me trouble down the road, given the trade window (Mar 22-24) will be missed soon if I still fail to win your cooperation.

So, please, please do response to my requests in writing (either by WeChat, phone messaging or email) and give me your offer ASAP of a reasonable amount of my stocks you allow me to sell so the trade window can be catch. Otherwise I will be in big trouble in personal financing. I also modified the 10b-5-1 plan and further reduced the asked sales amount to merely up to 1 million ADR. I attached the modified 10b-5-1 document for your approval. If you are still not satisfied with my current bargain please do offer me ASAP a maximum number which you think is reasonable and fair.

I really appreciate your consideration and looking forward to a prompt reply with these."

141. Dr Zhang (signing off as "Frank Zhang, Ph.D. Former Chairman of GenScript Biotech") responded on 5 March 2021:

"I have talked to Legend Management team and board. Since they are in the process of raising capitals, they feel very uncomfortable that one of the major shareholder will sell stocks. They intend not to grant stock selling. After many rounds of discussions, here is the amount of share they will allow you to sell:
ADS: 200,000 shares.
That will give you around $4-5 M USD.
This is the final offer. We hope that you understand the effort and current situation. So many of our employees are working very hard to get over the crisis, and your stock in Legend will become more valuable after the crisis."

142. Dr Fan responded on 5 March 2021 thanking Dr Zhang for the offer and accepting it. He asked who the contact person will be. Dr Zhang responded on 5 March 2021 "For the procedures, Sally will appoint a person for you to contact".

143. By email dated 10 March 2021 from Ms Wang to Dr Zhang (cc Dr Fan) the following question was asked:

"Can you please advise how many ADS you approved to sell?"

144. By letter dated 22 April 2021 from Travers Thorp Alberga ("TTA"), the attorneys representing Dr Fan, to the Partnership and the GP. TTA stated that Dr Fan was "the scientific founder of the Legend group." Reference was made to the 2016 Agreement and the 2017 Agreement and a demand was made that the GP transfer to Dr Fan the shares held by the Partnership in Legend Cayman. It was stated that Dr Fan is "a limited partner holding 65.96% of the partnership interests."

145. There follows various WeChat conversation records between Emma Dong and Dr Fan in respect of progress of the selling of the shares including the following exchange:

"23 April 2021 at 15:13, Emma Dong

Hi Dr Fan! Today Frank [Dr Zhang] said let's delay the AquaPoint trade, and he needs to consider other things, but he didn't give any details. How about this, you will discuss with him, and I continue the preparation work as formal for now.

23 April 2021 at 15:22, Frank Fan [Dr Fan]. "Noted, he is punishing me."

146. In a document entitled "Apr. 23, B1 recording" the following appears (upon which Dr Zhang and Dr Fan were not cross-examined):

Frank Zhang:
Let's help you, OK? You can think about it again. Once you file a lawsuit, the nature of the matter will change …. First you asked to sell shares and the company has agreed. If now you intend to file a lawsuit, I'm not sure whether it will affect your sale.)

Frank Fan:
What do you mean? You have already approved.

Frank Zhang:
That is to say, you aim at me … I can't intervene in how the legal department deals with these matters right now … I can only advise you as a friend and a former co-worker. But you have brought things to a deadlock. If you still decide to file a lawsuit against me and the company, everyone will suffer a bad end, right? ….

Frank Zhang:

….If you really file a lawsuit, that will definitely become a fight between the two sides …. In a lawsuit, each side will try every mean to find reasons to defend itself.

Frank Fan:

That's completely different from what you just said. You didn't listen to my explanation at all. You said that I didn't have the right. You implied that I would be fired if I file a lawsuit, right? I would lose my job and be taken back my shares because I violate the AquaPoint agreement.

Frank Zhang:

Xiaho, you have the right to file a lawsuit, and you even have your right to kill a person. Do you understand? ….

Frank Zhang:

All decisions are risky, right? Once you make a decision, such as going to kill a person today, you have the right to kill. But what would happen after killing? You have to think about it, right?

Frank Fan:

At least it's not like what you just said – you're going to fire me once I file a lawsuit. Not that attitude, right?

Frank Zhang:

No, not at all.

Frank Fan:

Thank you for changing your attitude …

Frank Zhang:

> …. It's possible that you will win the lawsuit and get your voting rights, and you can sell your shares as many as you want. In other words, I have also got that right to sell my shares at any time, but how many can I sell? …

Frank Fan:

> … I hope that you will not interfere with the sale as you have approved …

Frank Zhang:

> Xiaohu, I have no right to do that, OK? … The legal department here doesn't report to me. And I can only approve the matters that others want me to approve. If they don't want me to approve, I can only do accordingly.

Frank Fan:

> Really? What do you mean? You are still the GP of Aqua Point. I hope …

Frank Zhang:

> I'm the GP, but the GP is also under control by others.

Frank Fan:

> OK. I'm just talking about your rights as a GP.

Frank Zhang:

> It's still about control. If I was told not to allow you to sell shares, then of course I need to obey the order.

Frank Fan:

> As far as I know, you are still the actual controller of GenScript. You have all the rights. No one will interfere with your rights. If the 200,000 shares that have been approved for me to sell cannot be sold, it must be your own decision, not that others can influence you. So I hope you can keep your promise and fulfil your promise. You have approved it!

Frank Zhang:

> I can't … I can't promise you that, okay? …

Frank Fan:

> … But don't threaten my job and don't threaten to take back my equity. I don't think you have such right, even based on Aqua Point's.

Frank Zhang:

> Yes, I don't have such right. You are right. Alright …

Frank Fan:

> … I am an employee, but I am also one founder of Legend. I have made so many contributions to the company. Did I get enough recognition and affirmation for my contributions? … You can know your rights and I will understand mine. Shall we still resolve this issue friendly through lawyers?

Frank Zhang:

> Yes, we can solve this issue through lawyers."

147. TTA sent a further letter dated 26 April 2021 referring to the discussions between Dr Zhang and Dr Fan and Dr Zhang's instruction to Emma Dong to suspend the sale of shares by the Partnership. TTA said this supported Dr Fan's position that the Partnership should be dissolved. TTA sent a chaser on 12 May 2021 enclosing a copy of the draft petition. Dentons, acting for the GP, responded on 21 May 2021 indicating that the 2016 Agreement was rescinded by the 2017 Agreement and referred to the other signed documentation. Dentons stated that Dr Fan had not adopted the correct methodology for attempting to transfer his interest in the Partnership. Dentons added:

> "There are perfectly good reasons for not wishing to allow Dr Fan to have the ability to directly sell 10% of the shares of the Company on the open market with their corresponding voting rights. The most obvious reason is that impact on share price would result from flooding the market with that proportion of shares, which would operate to the manifest disadvantage not only of the Partnership but also the Company and its shareholders. It cannot be suggested that avoiding such a result is anything other on the part of the GP than acting in full accordance with its duties to the Partnership."

148. By letter dated 26 May 2021 from Dentons to TTA the following was stated:

> "Our client is willing to release to your client 5% of the proportion of Legend shares held under his interest in the Partnership within 21 days of settlement, followed by 3.5% every year thereafter. This offer is conditional upon both parties bearing their own costs and is open for acceptance for a period of 14 days.
>
> We are sure your client will recognise that selling even the above number of shares in Legend on the market each year would present a substantial risk to the share price of the company and potentially disadvantage other shareholders. Naturally,

our client wishes to avoid unnecessary prejudice to the shareholders of Legend in general."

149. Dentons wrote further on 12 August 2021 asking if Dr Fan "will attempt an LPA compliant exit within the next 7 days."

150. TTA by letter dated 17 December 2021 suggested that the GP "transfer all of the proportionate shares in Legend Cayman attributable to our client's interest in the Partnership to our client and our client's name shall be placed onto the register of members of Legend Cayman. For the avoidance of doubt, should your client accept this offer of settlement, our client will be receiving, on our undertaking, 20,000,000 ordinary shares, or 10,000,000 ADS shares in Legend Cayman." and following the transfer the winding up petition would be withdrawn.

151. I bear in mind the point well made by Lord Briggs in *Lungowe v Vedanta* [2019] 2 WLR 1051 at paragraph 66 in respect of the potential for distortion involved in the translation of the evidence.

The Assessment of the Evidence

152. The contemporaneous documents and communications are of great assistance in my assessment of the evidence and the findings of the material facts in this case.

Dr Fan

153. As regards the oral evidence where there was any conflict on material points between the evidence of Dr Zhang and Dr Fan I generally preferred the evidence of Dr Fan. It is correct that Dr Fan did not always answer questions concisely and directly and frequently went off on a tangent. However, his evidence on the main factual issues in dispute had the ring of

truth about it and was largely supported by the contemporaneous communications between him and Dr Zhang and Ms Wang. He understandably had very strong feelings in respect of the unfair, unjust and inequitable way in which he had been treated. I do not think his evidence can be dismissed on the basis that he unduly exaggerated his contribution and his desire for the shares was just the "wishful thinking" of someone who plainly had a significant stake in the outcome of the hearing. Dr Fan's evidence is largely consistent with the contemporaneous communications put before the court. His evidence is largely internally consistent and also consistent with what he has said on other occasions. The inherent probabilities based on the evidence as a whole point to Dr Fan's evidence on the main issues in dispute being true. His evidence on the material points was largely unshaken by way of a lengthy cross-examination. It is unnecessary for me to determine the factual dispute as to whether Dr Fan was a co-founder and the de facto CEO. It was common ground that, at the very least, Dr Fan made a "significant contribution" and I so find.

Dr Zhang

154. Even taking into account language difficulties, the unreliability of human memory, the involvement of translators and an interpreter and difficulties with evidence being given via video link rather than in person I found, as will be plain from my findings below in the determination section of this judgment, Dr Zhang's evidence on various material points unsatisfactory and difficult to accept. His reluctance to openly acknowledge, without prompting, the very significant contribution of Dr Fan did not reflect upon him well. Dr Zhang's efforts to belittle Dr Fan were also unimpressive and tainted his evidence generally. He was however very open on the conflict of interest point and I shall refer to this in further detail below.

Ms Wang

155. Insofar as Ms Wang was concerned she came across as a very intelligent and astute person of business. She answered the majority of the questions in a direct and carefully considered manner. Her loyalties however were plainly towards Dr Zhang and supporting his position. It is likely that the GP called her in the knowledge that she was "on side". Her evidence on the "original agreement" exchanges seemed difficult to justify although Mr Corbett did his best to do so in his closing submissions. It is surprising that she did not express any views as to her position as a limited partner and her wishes in that respect. I gained the impression that she did not want to say anything that may displease Dr Zhang or the GP. Where her evidence on material disputed facts conflicted with Dr Fan's evidence, I preferred the evidence of Dr Fan.

The Law

156. There was no serious dispute as to the applicable law which was in effect one of the few areas of common ground between the parties. There was, however, a significant dispute as to the application of the relevant law to the facts and circumstances of this case.

Jurisdiction

157. Fortunately it is common ground between the parties that the court has jurisdiction to wind up the Partnership if it is just and equitable to do so and I accept that this court has such jurisdiction. It is unnecessary for me to enter the interesting debate at first instance as to the precise nature of the jurisdiction (see for example Parker J in *Padma Fund LP* unreported FSD judgment 8 October 2021; and Kawaley J in *Formation Group (Cayman) Fund I, LP* unreported FSD judgment 21 April 2022). It may require a judgment of the Court of Appeal, or the Privy Council or legislation to finally determine and put those

knotty jurisdictional issues to bed. Counsel in the case before me agreed that the court has jurisdiction to dissolve or wind up an exempted limited partnership. The debate at first instance is whether such jurisdiction arises pursuant to section 35 (e) of the Partnership Act as applied by section 3 of the ELPA or pursuant to section 92(e) of the Companies Act as applied by section 36(3) of the ELPA. Under section 35 (e) of the Partnership Act on application by a partner the court may decree a dissolution of the partnership "whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved". Section 92 (e) of the Companies Act provides that a company may be wound up by the court if "the Court is of the opinion that it is just and equitable that the company should be wound up." It is not in dispute between the parties that the court has jurisdiction and the main issue before the court is whether it is "just and equitable" that the Partnership be "wound up"/"dissolved".

Just and Equitable

158. Counsel referred to my brief summary of the law in respect of the just and equitable ground at paragraph 10 (11) and (12) of my judgment delivered on 23 November 2021 dismissing the application of the GP that the winding up petition be struck out and I do not repeat such summary here but have full regard to it and also to paragraphs 71 and 72 of such judgment and *Lau & Chu* [2020] I WLR 4656 (JCPC).

159. Ma CJ and Lord Millett NPJ delivering the leading judgment of the well regarded Hong Kong Court of Final Appeal in *Re Yung Kee Holdings Ltd* [2015] 6 HKC 644 applied the well-known authority *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 and held that considerations of a personal character arising between individuals might make it unjust, or inequitable to insist on legal rights, or to exercise them in a particular way. This might come in the form of a mutual understanding and there might be situations in which equity might find sufficient unfairness or breaches of good faith so as to attract relief granted by

the court. The jurisdiction to wind up on the just and equitable ground is a wide jurisdiction but it must be exercised in a principled manner. The relevant constitutional documents provide for the way in which the relevant entity should be run and normally govern the relations between the various stakeholders. However in certain circumstances equity will intervene by reference to notions of good faith "meaning that in certain circumstances equity would restrain the exercise of strict legal rights." (paragraph 44). There may be situations in which equity may find sufficient unfairness or breaches of good faith so as to attract relief being granted by the court but "this does not mean that a judge can do whatever he or she happens to regard as fair" (paragraph 45). The law needs to be as clear and as defined as possible so everyone knows as much as possible where they stand.

160. Lord Wilberforce in *Ebrahimi* wisely stated that it "would be impossible and wholly undesirable to define the circumstances in which these considerations may arise". Lord Wilberforce referred to relationships being sometimes adequately and exhaustively laid down in the relevant constitutional documents adding: "The superimposition of equitable considerations requires something more", typically including an element of a personal relationship involving mutual confidence and/or an agreement or understanding over and above what is specified in the constitutional documents.

161. Ribeiro PJ, Tang PJ and Fok PJ agreed with Ma CJ and Lord Millett NPJ. I agree that when courts at the first instance are considering whether there is "something more" they must conduct such exercise in a principled way and with full regard to the desirability of legal certainty especially in matters of commerce. They should not however sacrifice justice, equity and fairness on the altar of legal certainty.

162. The judgment of Moses JA in *FamilyMart China Holding Co. Ltd. v Ting Chuan (Cayman Islands) Holding Corporation* (23 April 2020) is also of assistance. I note that the Board granted permission to appeal on 29 September 2021 and the judgment of the Judicial

Committee of the Privy Council is awaited with interest. The general just and equitable and conflict of interests principles and their application in partnership cases however appeared to be common ground between the parties.

ELPA

163. I have also considered the ELPA and statutory context and caselaw within which exempted limited partnerships exist and operate under the laws of the Cayman Islands. I have noted the judgment of Parker J in *Kuwait Ports Authority v Port Link GP Ltd* (FSD unreported judgment 25 November 2021) which is also subject to a pending appeal and the judgment of the Court of Appeal is awaited with interest.

The submissions

164. I do not lengthen this already too lengthy judgment by setting out all the submissions, both in writing and orally, put before the court. They form part of the court record and I have full regard to them all. It should be obvious from the determination section of this judgment which submissions I have accepted and which submissions I have rejected.

Determination

165. When I conducted an initial, somewhat superficial, survey of the papers in this case some preliminary thoughts were that Dr Fan may be strictly bound by the 2017 Agreement he had signed up to and he may have to take the consequences of his failure to take legal advice. However, having now heard oral evidence and submissions and on mature and considered reflection, I am persuaded that there is "something more" and equitable considerations lead me to conclude that it is just and equitable that the Partnership be brought to an end. As will be seen below, I have concluded that there is plenty "more" in *Ebrahimi* terms.

Justifiable loss of trust and confidence

166. Dr Fan has proved a justifiable loss of trust and confidence in the management of the Partnership by the GP judged to the requisite objective standards in the circumstances of this case. Moreover, in my judgment the affairs of the Partnership have been conducted by the GP (with Dr Zhang being in the driving seat in that respect) in a manner which is oppressive and in breach of Dr Fan's legitimate expectation and understanding.

Frustration of legitimate expectation and reasonable understanding

167. Dr Fan had a legitimate expectation and reasonable understanding outside the 2017 Agreement. The legitimate expectation and reasonable understanding was that 6 months after the IPO he would be entitled to have access to 10% of the shares in Legend Cayman. The legitimate expectation and understanding was created and encouraged by Dr Zhang and Ms Wang on Dr Zhang's behalf. That legitimate expectation and understanding has been unreasonably frustrated by the Partnership, the GP and Dr Zhang.

168. There is ample supportive evidence before this court in this respect. I highlight some of the more obvious examples below:

(1) the affidavit and oral evidence of Dr Fan which I accept on this legitimate expectation/understanding issue;

(2) I do not accept that the references to the "original agreement" in the various communications were references to some agreement other than the 2016 Agreement. I find that the references to "original agreement" were in fact to the 2016 Agreement or at the very least this was Dr Fan's reasonable understanding. Even if I am wrong in this respect there is plenty of other evidence over and above

communications which rely on the "original agreement" reference to justify Dr Fan's reasonable understanding and legitimate expectation;

(3) the evidence of Ms Wang was that they intended to honour what Dr Zhang had promised by way of the 2016 Agreement and Dr Zhang seemed to accept this;

(4) the various email and WeChat messages are supportive of the legitimate expectation/understanding;

(5) I do not accept Dr Zhang's evidence that where he was referring Dr Zhang to "your stock" he was referring to "some stock in the limited partnership". The references to "your stock" were, I find, to the shares in the company which was the subject of the IPO;

(6) Dr Fan's uncontradicted legitimate expectation and understanding is plain from his email to Ms Wang (cc Dr Zhang) dated 26 September 2016 and his reference to "roll over the share purchase plan to Legend Cayman.";

(7) Dr Zhang in his WeChat with Dr Fan on 19 February 2017 referred to "After all, it is the company, not you, that proposed your shareholdings in Legend first, correct?...the new investment agreement is executed only to make things clearer..";

(8) Ms Wang in her WeChat with Dr Fan on 3 June 2017 openly confirmed the position:

"The best news for you is that your stake in Nanjing Legend will be turned into shares in Cayman Legend. The entity to be listed will definitely be Cayman Legend and can't be Nanjing Legend by any means. This is what really matters.";

(9) Ms Wang also recognised that Dr Fan had a 10% share in her email dated 7 June 2017;

(10) Dr Fan's legitimate expectation and understanding was further confirmed by Ms Wang by way of a WeChat exchange on 8 June 2021. Ms Wang confirmed that the 2017 Agreement "is not to change any material personal interest of yours. It's only intended to make the original he intended to make the original agreement legitimate and to create scope for future development." I find that the reference to the "original agreement" in that context was the 2016 Agreement. I also find that Ms Wang was at pains to provide reassurance to Dr Fan that his "material personal" interests would not be changed by way of the 2017 Agreement;

(11) Dr Zhang in effect confirmed this again by his email to Dr Fan on 14 of June 2017 and the reference to "your stock";

(12) furthermore when Dr Fan in his email dated 17 February 2021 to Dr Zhang and Ms Wang refers to "my shares in Legend" neither of them sought to contradict him; and

(13) Dr Zhang in his email dated 5 March 2017 to Dr Fan referred to "your stock in Legend."

169. Dr Fan in entering into the 2017 Agreement trusted Dr Zhang and Ms Wang to do the right thing and to honour the roll over of Dr Fan's Legend Nanjing shares to Legend Cayman

shares. Dr Zhang and the GP have betrayed that trust and it can easily be seen how Dr Fan legitimately and reasonably believes, after his significant contribution to the increasing value of Legend Cayman, that he has been badly let down by the GP and those that control the GP. Dr Fan has been unfairly treated. It was not mere "wishful thinking" by Dr Fan. It was a reasonable and legitimate expectation that he would get the Legend Shares after the IPO, whatever was stated in the 2017 Agreement.

170. Mr Corbett criticised Dr Fan for hunting down a goldmine but it was, I find on the evidence, a goldmine largely created by the efforts of Dr Fan. It is only fair, just and equitable that he shares in the benefits now rather than having to wait 300 years (as originally in effect suggested by the GP) or 26 years (as subsequently in effect suggested by the GP) to obtain his shares. The GP's consideration of and reactions to Dr Fan's reasonable requests for the shares shows the GP in a bad light. Such is indicative of the GP's breach of its fiduciary duties and its failure to act in the best interests of the Partnership and its limited partners. Dr Fan had nearly a 70% interest. He should have been treated with respect and fairness. He was not so treated. He was left with no reasonable alternative but to file the petition.

Fiduciary duties and conflicts of interest

171. There is considerable strength in Dr Fan's point that the GP has been acting in breach of its fiduciary duties in particular its duty to act in good faith and in the best interests of the Partnership. Dr Zhang is in control of the GP. Dr Zhang is hopelessly conflicted. He is the beneficial owner of shares in Legend Cayman. He also has control of the Partnership's shares in Legend Cayman. The GP (through the actions of Dr Zhang) is not acting in the best interests of the Partnership. The clearest example of this is the GP's approach when it receives a request from Dr Fan for his portion of the shares to be transferred to him. A general partner acting in good faith and in the best interests of the Partnership would primarily have regard to the position of the limited partners and yet remarkably there is no

evidence of the GP consulting Ms Wang and seeking her views. I also note that Ms Wang as a limited partner has not opposed the making of a winding up order.

172. It was put to Ms Wang, who came across as a very intelligent witness well aware of fiduciary duties and the need to properly manage conflicts of interests, that when Dr Zhang is wearing his GP hat "he has to put out of his mind the interests of Legend Cayman, the interests of GenScript, his own personal interest as a shareholder. He has to think about the Partnership doesn't he?" Ms Wang, in a well-considered answer, properly replied "That's correct". Ms Wang was asked how Dr Zhang could do that, "isn't there obviously a conflict in the way he acts as the GP representative in that situation?" Ms Wang responded "That's a very good question" and indeed it was. Ms Wang had no real answer to the question, although she sought refuge in vague generalisations that they had a "governance mechanism" to cover that. There was no evidence before the court as to the "governance mechanism" or as to compliance with it. Dr Zhang was hopelessly conflicted but even during cross examination refused to accept this obvious conflict. Dr Zhang said:

> "I take account of the individual LP. I take account of the Company as a whole, the Legend Biotech as a whole, because those two things cannot be separated from each other and this LP."

173. Dr Zhang was asked what if both limited partners had asked for their shares to be transferred to them? Dr Zhang, with extraordinary frankness, responded:

> "I will working for their interest, and I will working for also the Company's interest in that mission. I am working for the LP interest, the Company's interest together."

174. It was fairly put to Dr Zhang that he was confusing the interests of the limited partners with the interests of the Company in which he holds shares and that he was blending the two

together and all that Dr Zhang could come up with in response, no doubt on the basis that the best form of defence is to attack, was "You are blending them together, you know".

175. In re-examination Dr Zhang said when Dr Fan wanted to sell the "partners shares" Dr Zhang "mentioned to Biotech, so, I conferred with Legend Biotech executives and the board members, and also GenScript Corp"

176. Dr Zhang, at paragraph 58 of his second affidavit refers to the approach in February 2021 from Dr Fan for permission to sell about 2 million shares of "Legend stock (about $56M value)". Dr Zhang says he was in contact with "Legend executives" and they in effect decided against it because it would be bad for Legend Cayman. They decided to offer Dr Fan "the opportunity to sell shares and obtain $4 to $5 million." It is plain from the evidence that Dr Zhang was putting his own personal interests and the interests of Legend Cayman above the interests of Dr Fan. The GP (with its strings being pulled by Dr Zhang) was more concerned over the interests of Legend Cayman and Dr Zhang than the interests of Dr Fan a limited partner with a nearly 70% interest in the Partnership.

177. In my judgment Dr Zhang was hopelessly conflicted and he has caused the GP not to act in the best interests of the limited partners.

178. I was totally unpersuaded by Mr Corbett's valiant efforts to salvage something from this adverse conflict point by way of reliance on paragraph 10 of the Subscription Agreement. There is nothing in paragraph 10 that can come to the rescue of the GP in this case.

179. The conflicted position of the GP (under the control of Dr Zhang) and its preference of the interests of Dr Zhang, Legend Cayman and the Legend Biotech group as a whole over and above the interests of Dr Fan a limited partner (holding almost 70%) persuades me that the position of the GP is unsustainable and the Partnership must be brought to an end in the

best interests of the limited partners. Dr Fan applies for a winding up order and this has not been opposed by Ms Wang, the only other limited partner.

GP's cavalier attitude towards compliance with the laws of the Cayman Islands

180. Also of concern is the GP's somewhat cavalier attitude towards compliance with important local legal requirements in the Cayman Islands in respect of the maintenance of a registered office and the registration of the GP in the Cayman Islands. The latter led to the adjournment of the hearing on 26 January 2022 with indemnity costs against the GP. In respect of these serious failings Dr Zhang has in effect now held his hands up and openly accepted responsibility and that much is in his favour. However these failings are another reason which leads me to conclude that the GP has not conducted itself in a responsible way and such supports the making of a winding up order. I should, in fairness, make it plain that taken on their own these administrative failings (albeit serious), in the circumstances of this case, would not have led me to wind the Partnership up. I do not however intend to belittle the importance of proper compliance with local requirements in respect of the maintenance of a registered office and the registration of foreign companies.

Discontinued criminal investigation in China

181. In respect of the recently discontinued criminal investigation involving Dr Zhang, I can see why, from at least a reputational perspective, Dr Fan would be concerned over being associated with someone who was the subject of a criminal investigation in China. This on its own however would not be sufficient to justify the making of a winding up order.

Relationship has irretrievably broken down

182. It is plain to me that at the early stage when Dr Fan joined up with Dr Zhang that their relationship was one of mutual trust and confidence but that relationship has now irretrievably broken down and, on an objective analysis, Dr Fan has lost trust and confidence in Dr Zhang, the GP and the Partnership. Dr Fan's relatively recent resignation was not, in my judgment, a tactical ploy. It is plain that Dr Fan could not work in the environment created by Dr Zhang. Dr Zhang has attempted to belittle Dr Fan's role and contribution. Dr Zhang has preferred his own interests over the interests of Dr Fan. The GP, for reasons best known to itself, filed evidence that made reference to Dr Fan and an insider dealing incident. It had no relevance to the issues before the court for determination. It was not referred to in the comprehensive legal submissions before the court but the filing of it is a further indication of the lack of trust and confidence between the parties.

183. The GP agreed via Dr Zhang's communication of 5 March 2021 to permit 200,000 shares to be sold, but then reneged even on this meagre offering. There is significant hostility and lack of trust between the parties. Dr Fan has now resigned. That must have been a very difficult decision for him. Mutual trust and confidence no longer exists. This situation cannot continue indefinitely. The Partnership and the GP have already dragged these proceedings out for far too long.

184. This is not a case of a dissatisfied investor, having been treated fairly, simply wanting an early exit and a return on his investment outwith the terms of the agreements he signed up to and the relevant constitutional documents. In my judgment there is plainly "something more" in this case and fairness requires equitable considerations to trump the strict rights and obligations of the parties pursuant to the contractual and constitutional documents.

The LPA and the ELPA

185. I have considered possible arguments that if the GP is simply doing what it is entitled to do under the LPA and the ELPA how can it, in such circumstances, be just and equitable to wind up a solvent Partnership? I think the short answer to that is that the law expressly permits a partnership to be brought to an end on the just and equitable basis so the "equitable considerations" referred to in the case law are imported and plainly relevant in respect of the winding up of the Partnership.

No reasonable alternative remedy

186. In respect of the argument that there is a reasonable alternative remedy I dismiss that essentially for the reasons stated in my judgment delivered on 23 November 2021. Dr Fan is entitled to the shares and only a winding up order will give him his shares.

187. Having considered the evidence, submissions and the relevant law, I have reached the conclusion that Dr Fan has established that it is just and equitable to put an end to the Partnership.

The Order

188. I make an order substantially in terms of the prayer for relief in the petition but without blanket authorisation with respect to the powers specified in Schedule 3 of Part I of the Companies Act. The Part II powers are exercisable without sanction. If further powers are required they can be separately applied for. The relief I grant is as follows:

(1) The Partnership be wound up;

(2) Martin Trott of R & H Restructuring (Cayman) Limited and Kan Lap Kee also known as Terry Kan of Shinewing Specialist Advisory Services Limited be and are appointed as joint official liquidators of the Partnership (the "JOLs");

(3) the JOLs shall not be required to give security for their appointment;

(4) the JOLs shall have power to act jointly and severally in their capacity as liquidators of the Partnership;

(5) the JOLs are authorised to take such action as may be necessary or desirable to obtain recognition of their appointment in any relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose;

(6) the JOLs are authorised to exercise all the powers set out in Part II of the Third Schedule to the Companies Act;

(7) no disposition of the Partnership's property by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Act;

(8) the JOLs shall be at liberty to appoint attorneys, counsel and professional advisers, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties;

(9) the JOLs are authorised to render and pay invoices out of the assets of the Partnership for their own remuneration and the JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties; and

(10) liberty to apply.

Ancilliaries

189. Any ancillary applications (such as applications for costs) be filed within 14 days after the delivery of this judgment (with concise written submissions in support) and any concise written submissions in reply to be filed within 14 days thereafter. I intend to deal with any such applications on the papers.

190. Counsel to file a draft order reflecting the above for my approval and signature as soon as possible and in any event within 7 days of the delivery of this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT