



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 153 OF 2020 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF CENTURY SUNSHINE GROUP HOLDINGS LIMITED

ORDER

UPON THE APPLICATION of **SO KIT YEE ANITA** of Ernst & Young Transactions Limited of 22nd Floor, CITIC Tower, 1 Tim Mei Avenue, Central, Hong Kong, **ROY BAILEY** of Ernst & Young Ltd, 4th Floor, Ritter House, Wickhams Cay 2, Road Town, Tortola, British Virgin Islands VG1110, and **TAMMY KARINA FU** of EY Cayman Ltd, 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman KY11106, Cayman Islands (the **Joint Provisional Liquidators**) who were appointed as the joint provisional liquidators of Century Sunshine Group Holdings Limited (the **Company**) on 14 July 2020

AND UPON READING the Third Affidavit of Tammy Karina Fu and Exhibit TKF-3

AND UPON [the Honourable Justice Parker considering the application suitable to be disposed of on the papers without the need for an oral hearing] / [hearing Counsel for the Joint Provisional Liquidators]

IT IS ORDERED as follows:

1. The cross-border court-to-court communications protocol as appended hereto (the **Cross-Border Protocol**), as it may be amended or supplemented by further order of this Honourable Court, be approved and adopted in all respects with regard to communications with the other Courts that also approve and adopt the Cross-Border Protocol including but not limited to the Supreme Court of Bermuda, the Eastern Caribbean Supreme Court of the British Virgin Islands, and the High Court of the Hong Kong Special Administrative Region (the Courts).

2. The costs of and incidental to this Summons be paid out of the assets of the Company as an expense of the provisional liquidation.

Dated this 10TH day of November 2020

Filed this 10TH day of November 2020



THE HONOURABLE JUSTICE PARKER
JUDGE OF THE GRAND COURT

THIS ORDER was filed by Harney Westwood & Riegels, Attorneys-at-Law for the Applicants, whose address for service is 3rd Floor, Harbour Place, 103 South Church Street, P.O. Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: JNW/CAR/047173.0010.0001).

**CROSS-BORDER INSOLVENCY PROTOCOL
FOR THE CENTURY SUNSHINE GROUP OF COMPANIES**

This cross-border insolvency protocol (the **Protocol**) establishes a framework for the conduct of the Proceedings (as such term is defined in paragraph 1.3 herein) concerning Century Sunshine Group Holdings Limited (**Century Sunshine**) and its affiliated group companies, being (subject to amendment and modification as necessary) Rare Earth Magnesium Technology Group Holdings Limited (**Rare Earth**), New Bright Group Limited (**New Bright**), Ming Xin Developments Limited (**Ming Xin**), Long Xiang Enterprises Limited (**Long Xiang**), Acronagrotrans Ltd (**Acronagrotrans**) (Acronagrotrans together with New Bright, Ming Xin and Long Xiang, the **BVI Subsidiaries**, and collectively with Century Sunshine and Rare Earth, the **Group**) and the Joint Provisional Liquidators pursuant to these Proceedings. The Guidelines For Communication and Cooperation Between Courts in Cross-Border Insolvency Matters (**Guidelines**), annexed hereto as **Schedule 1**, shall be incorporated by reference and form part of this Protocol. In the event of any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

1 THE PROCEEDINGS

- 1.1 Pursuant to the order of the Honourable Justice Parker of the Grand Court of the Cayman Islands (the **Cayman Islands Court**) dated 14 July 2020 (the **Cayman Islands JPL Order**), Mr. Yen Ching Wai David (**Mr. Yen**) and Ms. So Kit Yee Anita (**Ms. So**) of Ernst & Young Transactions Limited, 22nd Floor, CITIC Tower, 1 Tim Mei Avenue, Central, Hong Kong, Mr. Roy Bailey (**Mr. Bailey**) of Ernst & Young Ltd., 4th Floor, Ritter House, Wickhams Cay 2, Road Town, Tortola and Ms. Tammy Fu (**Ms. Fu**) of EY Cayman Ltd., 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, Cayman Islands were appointed as the Joint Provisional Liquidators of Century Sunshine in proceedings FSD 153 of 2020 (the **Cayman Islands Proceedings**).
- 1.2 Pursuant to the order of the Honourable Chief Justice Hargun of the Supreme Court of Bermuda (the **Bermuda Court**) dated 16 July 2020 (the **Bermuda JPL Order**), Mr. Yen, Ms. So, Mr. Bailey and Ms. Fu were appointed as the Joint Provisional Liquidators of Rare Earth in proceedings No 212 of 2020 (the **Bermuda Proceedings**).
- 1.3 Pursuant the order of the Honourable Justice Jack of the Eastern Caribbean Supreme Court of the British Virgin Islands dated 16 July 2020 (the **BVI JPL Orders**, and together with the Cayman Islands JPL Order and the Bermuda JPL Order, the **Orders**), Ms. So, Mr. Bailey and Ms. Fu were appointed as the Joint Provisional Liquidators of New Bright, Long Xiang, Acronagrotrans and Ming Xin in proceedings BVIHCOM 102, 103, 104 and 105 of 2020 respectively (the **BVI Proceedings**, and collectively with the Cayman Islands Proceedings and Bermuda Proceedings and any proceedings for recognition in Hong Kong and/or any other jurisdiction as the case may be, together the **Proceedings**).
- 1.4 On 7 August 2020, Mr. Yen resigned as a joint provisional liquidator of Rare Earth, which was accepted by the Bermuda Court pursuant to the Order of the Honourable Chief Justice Hargun of the same date.
- 1.5 On 18 August 2020, Mr. Yen resigned as a joint provisional liquidator of Century Sunshine, which was accepted by the Cayman Islands Court pursuant to the Order of the Honourable Mr. Justice Parker of the same date.

- 1.6 Ms. So, Mr. Bailey and Ms. Fu remain the Joint Provisional Liquidators (the **JPLs**) of Century Sunshine, Rare Earth, New Bright, Long Xiang, Acronagrotrans and Ming Xin.
- 1.7 The board of directors of each of Century Sunshine, Rare Earth, New Bright, Long Xiang, Acronagrotrans and Ming Xin (collectively, the **Boards** and each a **Board**) retain management powers over the relevant companies within the Group and will continue to have conduct over the ordinary day-to-day business operations of the relevant company, pursuant to the terms of the Orders. The JPLs have been appointed to monitor, oversee and supervise the Boards with a view to develop and propose a restructuring of the companies' indebtedness in a manner designed to allow the relevant companies to continue as going concerns and to return to solvency.

2 THE BUSINESS OF THE GROUP

- 2.1 Century Sunshine is an investment holding company of the subsidiaries within the Group, which are principally located in the People's Republic of China (**PRC**), Hong Kong, Bermuda and the British Virgin Islands (**BVI**). The Group's businesses can be separated into two arms, namely: (1) its development and production of ecological fertilisers; and (2) production of magnesium alloy and associated mining operations. Rare Earth and the BVI Subsidiaries hold the key operations and operating subsidiaries of the fertiliser and magnesium alloy businesses of the Group which account for 99% of the Group's overall assets.

3 PURPOSE AND GOALS OF THE PROTOCOL

- 3.1 Whilst the Proceedings are separate proceedings before the Cayman Islands Court, the Bermuda Court, the BVI Court and the High Court of the Hong Kong Special Administrative Region (**Hong Kong Court**), and together with the Cayman Islands Court, the Bermuda Court, BVI Court and the Hong Kong Court, the **Courts** and each a **Court**), the implementation of this Protocol is both necessary and desirable to coordinate the efficient administration of the Proceedings and, among other things, to protect the rights of all stakeholders interested in the Proceedings, and to preserve the respective independence of each of the Courts. This Protocol has, therefore, been developed to create a framework within which to promote the following mutually desirable goals and objectives in the Proceedings:
- (a) harmonise and coordinate activities between the Courts involved in the Proceedings;
 - (b) promote and facilitate the just, open, orderly, efficient and expeditious administration of the Proceedings to, amongst other things, maximise the efficiency of the same, reduce associated costs, ensure transparency and avoid both the possibility of conflict and the duplication of work and effort, for the benefit of all stakeholders;
 - (c) maintain the independence and integrity of the Courts and all other courts and tribunals of the Cayman Islands, Bermuda, BVI, Hong Kong and any court which may deal with any matter in relation to the restructuring of the Group, as the case may be;
 - (d) promote international cooperation and respect for comity among the Courts, and all other stakeholders involved, including but not limited to, the Group and its creditors; and,

- (e) implement a framework of general principles to address certain issues arising out of the cross-border nature of the Proceedings.

4 COMITY AND INDEPENDENCE OF THE COURTS

4.1 Each of the Courts shall have sole and exclusive jurisdiction and power over all aspects of the Proceedings within its jurisdiction. In accordance with the principles of comity and judicial independence, the approval, endorsement and/or implementation of this Protocol shall not be construed to:

- (a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of any of the Courts, including but not limited to the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* basis;
- (b) require any of Courts to take any action that is inconsistent with its obligations under its domestic laws;
- (c) interfere with or derogate from the rules or ethical principles by which the JPLs of the Group are bound according to any applicable law or professional rules;
- (d) require the Group or any of its directors, officers, employees, agents or representatives appointed by the Group from time to time (including the Group's legal representatives and financial advisors who may be appointed in the Proceedings), to take any action or refrain from taking any action that would result in a breach of any duty imposed on such parties by any applicable law;
- (e) authorise any action that requires the specific approval of any of the Courts (except to the extent that such action is specifically described in this Protocol);
- (f) preclude the Group or any of its directors, officers, employees, agents or representatives appointed by the Group from time to time (including the Group's legal representatives and financial advisors who may be appointed in the Proceedings), any creditor, or any other interested party from asserting such party's substantive rights under the applicable laws of the Cayman Islands, Bermuda, BVI, Hong Kong or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one of more of the Courts; or
- (g) prevent the Courts from refusing to take an action that would be manifestly contrary to the public policy of its jurisdiction.

4.2 For the avoidance of doubt, this Protocol is procedural in nature and is not intended to and shall not constitute a limitation on or waiver by either of the Courts of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before any of the Courts or a waiver by the Group, its creditors or any other stakeholders interested in the Proceedings of any of their substantive rights and claims.

5 COOPERATION

5.1 To assist and promote the efficient and timely administration of the Proceedings, and in recognition of the fact that the Proceedings are inextricably intertwined, the Courts may coordinate activities, including but not limited to the following:

- (a) communication with one another, using any means as may be appropriate, including post, facsimile or other forms of electronic communication, with or without the parties present, with respect to any procedural or substantive matter in connection with the Proceedings. For the avoidance of doubt, such communication may include sending or transmitting copies of formal orders, judgments, opinions, reasons for decisions, endorsements, transcripts of proceedings or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Courts may consider appropriate and two-way communications by telephone or other electronic means;
- (b) where the parties are entitled to be present for any communications between the Courts, advance notice of the communications shall, where possible, be given by the Courts to all parties in accordance with the rules of procedure applicable to the law of the jurisdiction of the relevant Court;
- (c) any communication between the Courts, with or without the parties present, may be recorded, and any such recorded communications may be transcribed and a written transcript may be prepared from a recording of the communication that, with the approval of each Court involved in the communications, may be treated as the official transcript of the communications;
- (d) copies of any recording of the communications between the Courts or any transcript of the communications prepared pursuant to any direction of any Court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as either Court may consider appropriate;
- (e) the time, place and manner of communications between the Courts shall be determined by the Courts;
- (f) personnel other than judges in each Court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties;
- (g) the Courts may direct the parties within its jurisdiction to make available copies of documents or papers which have been filed to the other Court in such manner as may be appropriate;
- (h) if the issue of the proper jurisdiction or Court to determine an issue is raised by any stakeholder interested in the Proceedings, with respect to any proceeding that has been commenced in either Court, the Court before which such proceeding was initiated may contact the other Court to determine an appropriate process by which to determine the issue of jurisdiction. Such process shall be subject to submissions by the Group, through

their legal representatives in the relevant jurisdictions, and any other stakeholder interested in the Proceedings prior to any determination on the issue of jurisdiction being made by either Court;

- (i) the Courts may, to the extent permitted by practice and procedure, but are not required to, with the prior consent of each respective Court, conduct joint hearings (each, a **Joint Hearing**) with respect to any cross-border matter in which each Court considers such a Joint Hearing to be desirable and without limiting the generality of the foregoing, to facilitate or coordinate the efficient and timely administration of the Proceedings. With respect to any such Joint Hearing, unless otherwise ordered by both or more Courts, the following procedures shall apply:
 - (i) a telephone or video link shall be established so that each Court will be able to simultaneously hear the proceedings in the other Court;
 - (ii) documents or papers filed by any party that are or become the subject of a Joint Hearing shall be initially filed only with the Court or Courts in which such party is appearing and seeking relief;
 - (iii) the Judges of the Court(s) who will be presiding over the Joint Hearing (or such other personnel appointed by the relevant Judge) may communicate with each other in advance of such Joint Hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the Joint Hearing;
 - (iv) where the Courts have fixed a time, place and manner in which the Joint Hearing is to be held, advance notice of the Joint Hearing shall be given by the Courts to all parties in accordance with the rules of procedure applicable to the law of the jurisdiction of the relevant Court;
 - (v) as soon as practicable after the scheduling of any Joint Hearing, the party submitting documents or papers to a Court shall submit courtesy copies with each other Court in such manner as may be appropriate;
 - (vi) the parties shall ensure that all written materials (including any skeleton arguments, submissions or evidence) in connection with any Joint Hearing shall be filed or otherwise submitted to each Court in advance of the Joint Hearing (in the usual manner prescribed by the rules for those Courts). To the fullest extent possible, the materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court;
 - (vii) in any Joint Hearing where one Court has jurisdiction over a matter the determination of which requires the application of the law of the jurisdiction of another Court, such Court may, without limitation, hear expert evidence on such law or seek the written advice of the other Court, which written advice will be made available to all parties interested in the matter;

(viii) each Court, subsequent to a Joint Hearing, may communicate with the other Court(s), with or without counsel being present, for the purpose of determining both procedural and/or substantive issues, including without limitation, to establish guidelines for the rendering of decisions to deal with any other procedural, administrative or preliminary matters or for the purpose of determining whether consistent rulings may be made by each Court and the terms upon which such rulings should be made. All such communications between the Courts may be recorded and transcribed at the discretion of the Courts.

5.2 Notwithstanding paragraph 5.1, this Protocol recognises that each of the Courts are independent courts. Accordingly, while the Courts will seek to cooperate and coordinate with each other in good faith and to the greatest extent reasonably possible, any of the Courts may at any time, in its sole and absolute discretion, exercise its independent jurisdiction and authority with respect to the matter(s) presented to and properly before such Court and the conduct of the parties appearing in such matter(s).

5.3 In implementing the terms of this Protocol, each of the Courts may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) the Court, as applicable, may determine whether such advice or guidance is appropriate under the circumstances;
- (b) the Court issuing such advice or guidance shall provide it to the other Court in writing;
- (c) copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 7 below;
- (d) the Courts may jointly decide to invite the JPLs and any other interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and
- (e) the provisions of this paragraph 5.3 shall not be construed to restrict the ability of either Court to confer with the other Court as provided in paragraph 5.1 above whenever it deems it appropriate to do so.

6 THE RIGHT TO APPEAR AND BE HEARD

6.1 Either Court may authorise a party, or an authorised representative of a party, to appear before and be heard by the other Court(s), subject to the approval of the other Court(s) to such appearance.

6.2 A Court may authorise persons authorised to appear before and be heard by the other Court(s) to appear before and be heard by the first Court without thereby becoming subject to its jurisdiction for any purpose other than the specific matter on which the party is appearing.

7 NOTICE

- 7.1 Notice of any application or other pleading or paper filed in one or more of the Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile, or other electronic forms of communication) to the following:
- (a) the legal representatives of the Group and/or the JPLs in the relevant jurisdiction, as the case may be; and
 - (b) to the extent not otherwise entitled to receive notice under paragraph 7.1(a) above, all parties otherwise entitled to notice, in accordance with the rules and practice of the jurisdiction where the papers are filed or the proceedings are to occur.
- 7.2 Notice in accordance with paragraph 7.1 shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Group shall provide a Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by another Court in the Proceedings.
- 7.3 When any cross-border issues or matters address by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 7 above

8 EFFECTIVENESS AND MODIFICATIONS

- 8.1 This Protocol shall take effect from the date this Protocol is approved by the Cayman Islands Court, Bermuda Court, BVI Court and the Hong Kong Court.
- 8.2 This Protocol shall not be amended, modified, terminated or replaced in any manner except with the prior approval of the Courts that have approved the Protocol as at the time of the proposed amendment, modification, termination or replacement.

9 PROCEDURES FOR RESOLVING DISPUTES UNDER THIS PROTOCOL

- 9.1 Any dispute arising out of, in connection with and/or as a result of this Protocol, including any dispute as to its existence or interpretation, may be referred by any interested party in the Proceedings to the Court(s) (as the case may be, whether concurrently or otherwise).
- 9.2 In rendering a decision to any such dispute, the Court to which the issue is addressed shall consult with the other Court(s) and may, in its sole and absolute discretion:
- (a) render a binding decision after such consultation;
 - (b) defer to the determination of the other Court by transferring the dispute, in whole or in part, to the other Court(s); or
 - (c) seek a Joint Hearing of each Court in accordance with paragraph 5.1(i) above.

9.3 Notwithstanding the foregoing, in rendering a decision under paragraph 9 of this Protocol, each Court shall give due consideration to the independence, comity and jurisdiction of the other Court(s).