

Settlement agreement

Chief Executive of Land Information New Zealand

Agria (Singapore) PTE Limited

Lai Guanglin (Alan Lai)

Parties

Chief Executive of Land Information New Zealand, of level 7, 155 The Terrace, Wellington, the designated Regulator under the Overseas Investment Act 2005 (**Act**) (**Regulator**)

Agria (Singapore) PTE Limited, a company incorporated in Singapore having its registered office at 80 Raffles Place, 16-20 Uob Plaza 2, Singapore (**Agria Singapore**)

Lai Guanglin (Alan Lai), businessperson, of 12/F, Phase 1, Austin Tower, 22-26A Austin Avenue, Tsim Sha Tsui, Kowloon, Hong Kong (**Mr Lai**)

(together the **Parties**)

1 Background

- 1.1 The Regulator is designated under s 30(1) of the Act and various letters of designation and delegation as the regulator of that Act. The Regulator's functions include enforcement of the Act, and monitoring compliance with the conditions of consents granted under the Act.
- 1.2 Agria Singapore is a company registered in Singapore. It is ultimately owned by Agria Corporation.
- 1.3 Mr Lai is a businessperson. He is a citizen of Singapore and a resident of Hong Kong. He is the founder, Executive Chairperson of the Board of Directors, and principal shareholder of Agria Corporation, owning more than 40% of shares in Agria Corporation.
- 1.4 Agria Corporation and Mr Lai were subject to an investigation by the United States Securities and Exchange Commission (**SEC**) relating to matters described in the Notice of Admissions attached as Schedule 2 to this Agreement (**SEC Investigation**). Agria Corporation and Mr Lai subsequently resolved the SEC Investigation in the manner described in Agreed Statement of Facts and Notice of Admissions attached to this Agreement as Schedules 1 and 2 (**SEC Settlements**).
- 1.5 In the course of their compliance with the terms of consents granted under the Act to Agria Singapore in respect of overseas investments in PGG Wrightson Limited (**PGW**), and information provided in relation to related applications to the Regulator, Agria Singapore and Mr Lai voluntarily provided information to the Regulator about the SEC Investigation and the SEC Settlements.
- 1.6 Based on that information, and in the course of its compliance monitoring and investigatory functions under s 31 of the Act, the Regulator formed the view that:
 - (a) the fact of the SEC Investigation into Agria Corporation and Mr Lai, and the SEC Settlements, breached the "good character" conditions of the terms of consents granted under the Act to Agria Singapore in respect of overseas investments in PGG Wrightson Limited (**PGW**); and
 - (b) that Agria Singapore and Mr Lai had therefore breached the Act.

- 1.7 The Parties have agreed to settle all matters arising from the SEC Settlements as between the Parties on the terms set out in this Agreement.

2 Interpretation

2.1 In this Agreement:

- (a) **Admissions** means the admissions contained in clause 4.
- (b) **Admitted Cause of Action** means the Admitted Cause of Action at clause 5.3.
- (c) **Agreed Penalty** means the pecuniary penalty defined in clause 6.5.
- (d) **Agreed Statement of Facts** means the Agreed Statement of Facts attached at Schedule 1.
- (e) **Agreement** means this settlement agreement including all schedules attached to it.
- (f) **Alleged Conduct** means the alleged conduct that was the subject of the SEC Investigation, and includes the matters set out in the Agreed Statement of Facts.
- (g) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand.
- (h) **Court Costs** means Court costs as the Court may order.
- (i) **Defaulting Party** has the meaning set out at clause 12.1.
- (j) **Default Notice** means a written notice issued under clause 12.3 by one Party giving notice that the other Party is in breach of the Agreement.
- (k) **Enforcing Party** has the meaning set out at clause 12.7.
- (l) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the:
 - (i) Regulator's monitoring and enforcement activities referred to at clause 2.1(n); and
 - (ii) anticipated proceeding referred to at clause 2.1(v) (including any information created before or after the commencement of that proceeding).
- (m) **Joint Memorandum of Counsel** means the draft Joint Memorandum of Counsel attached as Schedule 4.
- (n) **Monitoring and Enforcement Activities** means consent compliance monitoring and enforcement activities carried out by the Regulator under the Act.
- (o) **Monitoring and Enforcement Costs** has the meaning set out at clause 7.1.
- (p) **Notice of Admissions** means the Notice of Admissions attached as Schedule 2.

- (q) **Notifying Party** has the meaning set out clause 12.1.
- (r) **Party** means any party to this Agreement.
- (s) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the Parties will ask the Court to approve the orders set out in clauses 6.5 and 6.6.
- (t) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by Agria Singapore and Mr Lai in the Proceeding, whether confidential or public. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court.
- (u) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not.
- (v) **Proceeding** means the anticipated proceeding that will be commenced upon the acceptance of the Statement of Claim for filing, and includes any subsequent proceedings including appeals and enforcement proceedings.
- (w) **SEC** has the meaning set out at clause 1.4.
- (x) **SEC Investigation** has the meaning set out at clause 1.4.
- (y) **SEC Settlements** has the meaning set out at clause 1.4.
- (z) **Statement of Claim** means the draft Statement of Claim attached as Schedule 3.
- (aa) **Working Day** has the definition set out at rule 1.3 of the High Court Rules 2016.

3 Settlement considerations

- 3.1 In determining to enter into this Agreement, the Regulator has taken the following considerations into account (without limitation):
- (a) the importance of ensuring that overseas investors keep the commitments they make when they apply for consents;
 - (b) the public interest in maintaining public confidence in the integrity of the overseas investment regime;
 - (c) the SEC Investigation;
 - (d) the terms of the SEC Settlements;
 - (e) that Agria Corporation and Mr Lai do not admit or deny the SEC allegations arising from the SEC Investigation;
 - (f) that the SEC Investigation relates to alleged activity outside of New Zealand and do not involve any alleged activity or statements made in New Zealand;
 - (g) the nature, seriousness, time, and frequency of the activity alleged by the SEC, and the absence of any further allegations against Agria Singapore or Mr Lai;

- (h) the steps Agria Corporation and Mr Lai have taken following the SEC Investigation, including the SEC Settlements;
- (i) all other mitigating factors relating to Agria Singapore and Mr Lai;
- (j) the likely penalty that may be imposed;
- (k) Agria Singapore and Mr Lai's cooperation with the Regulator;
- (l) the nature of the interests of Agria Singapore in PGW, and Mr Lai's roles in relation to PGW;
- (m) that PGW is a company incorporated in New Zealand and listed on the New Zealand Stock Exchange, and is one of New Zealand's leading providers of agricultural and products and services;
- (n) that PGW has approved a conditional sale of its seed business, PGG Wrightson Seeds Holdings Limited;
- (o) the interests of PGW's minority shareholders; and
- (p) the steps that Agria Singapore and Mr Lai will take under this Agreement.

4 Cooperation

4.1 Agria Singapore and Mr Lai will promptly, fully and voluntarily:

- (a) assist the Regulator in relation to its Monitoring and Enforcement Activities or to otherwise advance such Monitoring and Enforcement Activities and/or the Proceeding, including by facilitating the provision of such information reasonably required by the Regulator;
- (b) consent to disclosure to the Regulator of information relevant to the Proceeding, or to Monitoring and Enforcement Activities by current and former directors, employees and contractors, whether before or after the date of the Agreement. This consent is given for the benefit of both the Regulator and those persons. For the avoidance of doubt, this clause does not derogate from the Regulator's powers under Part 2 Subpart 4 of the Act. For the avoidance of doubt, nothing in this clause derogates from any disclosure obligations under the terms of clause 3 of consent 200920070, or the terms of clause 4 of the consent 201110005 in relation to matters that are not the subject of this Agreement;
- (c) use all reasonable endeavours to retain and preserve all documents and records (including documents and records located outside of New Zealand), and make those documents available to the Regulator as reasonably required, that are potentially relevant to the Proceeding. Documents in electronic form which are potentially relevant to the Proceeding must be preserved in readily retrievable form even if they would otherwise be deleted in the ordinary course of business;
- (d) co-operate and assist the Regulator, if requested, by facilitating witness evidence in relation to the Proceeding; and

- (e) provide full, frank and truthful responses to all inquiries of it by the Regulator in relation to the obligations set out in 4.1(a) to (d) above.
- 4.2 Subject to clause 4.3, the obligations in clause 4.1 above are continuing obligations and will cease when the Regulator:
 - (a) has concluded the Proceeding; or
 - (b) gives notice of the termination of the Agreement as provided for in clause 12.5; or
 - (c) otherwise releases Agria Singapore and Mr Lai from some or all of their obligations in writing.
- 4.3 For the avoidance of doubt, nothing in clause 4.2 above constitutes consent by Agria Singapore or Mr Lai to waiver of legal professional privilege.

5 Admissions

- 5.1 The Parties have reached a full and final settlement of the claims against Agria Singapore and Mr Lai made in the Statement of Claim on the terms set out in this Agreement.
- 5.2 Agria Singapore admits that it is liable under s 48(1)(d), and Mr Lai admits that he is liable under s 48(1)(d), of the Act for contravening s 19(1)(b) of the Act in respect of the matters detailed in the Agreed Statement of Facts and Notice of Admissions attached as Schedules 1 and 2 respectively.
- 5.3 Agria Singapore and Mr Lai admit the Admitted Cause of Action by signing:
 - (a) this Agreement;
 - (b) the Agreed Statement of Facts attached as Schedule 1; and
 - (c) the Notice of Admissions attached as Schedule 2.
- 5.4 Agria Singapore and Mr Lai's admissions are made only for the purposes, and in respect, of resolving the Proceeding as between the Parties, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 5.5 The Regulator's acceptance of the Agreed Statement of Facts and the Notice of Admissions are only for the purpose of resolving the Proceeding against Agria Singapore and Mr Lai and not against any other person.
- 5.6 The Parties will recommend that the Court impose penalties (after any applicable discounts) of:
 - (a) \$100,000 on Agria Singapore; and
 - (b) \$120,000 on Mr Lai;in accordance with clause 6.5 of this Agreement (collectively **Agreed Penalty**).
- 5.7 Agria Singapore undertakes to:

- (a) reduce its shareholding in PGW from 50.22% to below 50% by no later than 1 January 2019, and to notify the Regulator in writing on the date on which that reduction in Agria Singapore's shareholding is effected; and
 - (b) use its best endeavours to ensure that a majority of the PGW audit committee will at all times for a period of five years after the date of this Agreement be comprised of directors independent of Agria Singapore or any of its subsidiaries or interconnected bodies corporate.
- 5.8 Mr Lai undertakes:
- (a) not to assume directorship of PGW for a period of at least five years from the date of this Agreement; and
 - (b) not to assume the role of Chairperson of PGW for a period of at least five years from the date of this Agreement.
- 5.9 Agria Singapore and Mr Lai undertake to use their best endeavours to ensure that Joo Hai Lee resigns as Chairperson of PGW by no later than 31 December 2018. The Regulator may in its sole discretion grant a request by Mr Lee for an extension of time, provided that any such extension granted by the Regulator shall not extend beyond 28 June 2019.
- 5.10 The Regulator will not take any further proceedings against Agria Singapore or Mr Lai in respect of the alleged activity described in the SEC Investigation and SEC Settlements in accordance with clause 9.1 of this Agreement.
- 5.11 The Regulator may take into account the existence and content of this Agreement in respect of any future application made under Part 2 of the Act by Agria Singapore or any subsidiary of Agria Corporation, whether wholly owned or otherwise, or Mr Lai.
- 5.12 The Regulator confirms that, having investigated and considered the matters raised in this Agreement, including the SEC Investigation and SEC Settlements, the Regulator has formed no adverse views of PGW arising from the matters raised in this Agreement. For the avoidance of doubt, this does not include any views that may be formed by the relevant Minister or Ministers, as that term is defined in section 6 of the Act.
- 5.13 For the avoidance of doubt, nothing in this Agreement (including but not limited to clauses 5.1, 5.10, and 9.1) shall be construed as:
- (a) resolving any past, continuing, or future contraventions of the Act arising from the alleged activity described in the SEC Investigation and SEC Settlements about which the Regulator does not have reasonable notice; or
 - (b) preventing the Regulator from commencing or continuing any civil or criminal proceedings against Agria Singapore, Mr Lai, or any other person in respect of the matters described in clause 5.13(a).

6 Imposition of the Agreed Penalty

Parties to file Agreed Statement of Facts and Notice of Admissions

- 6.1 Within two Working Days of execution of the Agreement, the Regulator will file in the High Court of New Zealand at Auckland, and will serve on Agria Singapore and Mr Lai:

- (a) the Statement of Claim attached to this Agreement as Schedule 3; and
 - (b) a notice of proceeding.
- 6.2 Within two Working Days after receiving service of the endorsed Statement of Claim, Agria Singapore and Mr Lai will file and serve the signed Notice of Admissions attached as Schedule 2.
- 6.3 Within two Working Days of the filing of the Notice of Admissions, the Regulator will file:
 - (a) the signed Agreed Statement of Facts attached as Schedule 1; and
 - (b) the Joint Memorandum of Counsel requesting a penalty hearing attached as Schedule 4.

Progression to Penalty Hearing

- 6.4 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes.

Agreed Penalty and content of penalty submissions

- 6.5 The Parties agree and undertake that:
 - (a) they will each recommend that the Court impose the Agreed Penalty (which reflects a discount of 35 per cent on the appropriate starting point for early admissions of liability and all other mitigating factors) for the Admissions;
 - (b) they will make written and oral submissions recommending to the Court that it impose the Agreed Penalty;
 - (c) none of the Parties will seek in any way to suggest or argue to the Court that a different penalty should be imposed; and
 - (d) they will otherwise support the Agreed Penalty before the Court.

Court Costs

- 6.6 The Parties will advise the Court that:
 - (a) Agria Singapore and Mr Lai have agreed to pay the Monitoring and Enforcement Costs to the Regulator; and
 - (b) they have resolved the issue of costs in the High Court, and will ask the Court to order by consent that the costs of the Parties are to lie where they fall.
- 6.7 Other than the costs referred to in clause 7, the Parties agree that, other than any costs arising from any breach of this Agreement, no Party is entitled to any other costs award in this Proceeding.

7 Monitoring and Enforcement costs

- 7.1 Within 15 Working Days of the date of this Agreement, Agria Singapore and Mr Lai will make a combined payment of \$30,000 to the Regulator, in cleared funds, to a bank account to be nominated by the Regulator. This sum represents a contribution to the

cost of the Regulator's Monitoring and Enforcement Activities (**Monitoring and Enforcement Costs**).

- 7.2 The Parties will advise the Court that Agria Singapore and Mr Lai have arranged for the Monitoring and Enforcement Costs to be paid to the Regulator.

8 Payment of penalty

- 8.1 If the High Court imposes the Agreed Penalty in the Penalty Judgment, Agria Singapore and Mr Lai will each pay the amount of the Agreed Penalty in cleared funds into the bank account nominated by the Regulator within 15 Working Days of the Penalty Judgment or within any other time period specified by the High Court (together with any accrued interest ordered by the High Court), whichever is later.

- 8.2 If the High Court does not impose the Agreed Penalty in the Penalty Judgment, then:

- (a) Agria Singapore and Mr Lai will pay into the bank account nominated by the Regulator any pecuniary penalties ordered by the High Court; and
- (b) Agria Singapore and Mr Lai will make the payment within 20 Working Days of the date of the Penalty Judgment ordering payment of a pecuniary penalty or within any other time period specified by the High Court, unless a stay of the Penalty Judgment is granted.

- 8.3 In the event that Agria Singapore and/or Mr Lai applies for a stay of the Penalty Judgment (as provided for at clause 8.2(b)):

- (a) Agria Singapore and Mr Lai agree that any interest ordered by the Court will continue to accrue until payment is made in full following disposal of any appeal of the Penalty Judgment, as prescribed by the Interest on Money Claims Act 2016; and
- (b) the Regulator will not oppose such an application for a stay of the Penalty Judgment.

- 8.4 If a Penalty Judgment is issued by any appellate Court, the Regulator, or Agria Singapore and Mr Lai, will pay to the other the difference between the pecuniary penalty and/or Court Costs ordered by the High Court and paid by Agria Singapore and Mr Lai in accordance with clause 8.2 and the amount ordered by the appellate Court into the bank account nominated by the Regulator or Agria Singapore and Mr Lai, together with any costs awarded by the appellate Court. The payment will be made within 20 Working Days of the date of the appellate Penalty Judgment or within any other time period specified by the appellate Penalty Judgment, whichever is later.

9 No further proceedings against Agria Singapore and Mr Lai

- 9.1 Except as provided for in clauses 5.13 and 12.5, the Regulator will not commence or continue further civil or criminal proceedings against Mr Lai or Agria Singapore or any subsidiaries or interconnected bodies corporate, or any present or former director, officer, agent or employee of Agria Singapore, or any subsidiary in connection with matters that are the subject of the claims set out in the Statement of Claim.

10 Confidentiality and comment

Comment on settlement of Proceeding prior to release of Penalty Judgment

- 10.1 Subject to clauses 10.2 and 10.7, any Party may issue a press release or make a public comment:
- (a) prior to the Penalty Hearing, stating that:
 - (i) the Parties have entered into a settlement to resolve the Proceeding on terms acceptable to both parties; and
 - (ii) a penalty hearing before the High Court will take place in due course; or
 - (b) after the hearing but before the High Court orders the pecuniary penalty payable in the Penalty Judgment, stating that the matter is before the court and a judgment will be issued in due course or, in the event the court orders the pecuniary penalty payable but does so before delivering the penalty judgment, stating that while the court has ordered the pecuniary penalty payable, the matter is otherwise still before the court and that no other further comment will be made until after the Penalty Judgment is issued.
- 10.2 Agria Singapore and Mr Lai will not issue any media release or make any public comment permitted by clause 10.1 until after the Regulator has made a media release or public comment as permitted by clause 10.1.

- 10.3 The Parties will not otherwise disclose the terms of this Agreement (including the Agreed Penalties) prior to the release of the Penalty Judgment except as required by law or (in the case of Agria Singapore) as required pursuant to the terms of any funding agreement.

Comment after release of Penalty Judgment

- 10.4 Subject to clauses 10.5 and 10.7, any Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment.
- 10.5 Agria Singapore and Mr Lai will not issue any media release or make any public comment permitted by clause 10.4 until after the Regulator has made a media release, unless required to comply with listing obligations, provided that the Regulator makes its media release as promptly as possible on the public release of the Penalty Judgment.
- 10.6 The Parties may disclose the full terms of this Agreement following the release of the Penalty Judgment. This may include, but is not limited to, the Regulator publishing this Agreement on its website.

Comments to be consistent with Admissions, Agreement and Agreed Statement of Facts

- 10.7 No Party will issue any media release or make any public comment that is inconsistent with either Agria Singapore or Mr Lai's admissions in the Admitted Causes of Action, the Agreed Statement of Facts, or this Agreement.

11 Appeals from the Penalty Judgment

- 11.1 If the Court imposes the Agreed Penalty, no Party may appeal or apply to recall or set aside that Penalty Judgment.
- 11.2 If, following submissions from the Parties consistent with clauses 6.5 and 6.6 the Court imposes a penalty that differs from the Agreed Penalty, then either Party may appeal the Penalty Judgment.
- 11.3 In the event that an appeal is brought under clause 11.2:
- (a) the terms of this Agreement will remain binding on the parties, including, for the avoidance of doubt, clause 6.5; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

12 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 12.1 Except as provided for in clause 12.7 below, if any Party (the **Notifying Party**) suspects or believes that a Party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 12.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party 10 Working Days to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, and any remedial action taken.
- 12.3 If the Notifying Party has followed the process in clauses 12.1 and 12.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).

- 12.4 No Party may give a Default Notice after the full amount of the Monitoring and Enforcement Costs and any pecuniary penalty have been paid in accordance with clause 7.1 and clause 8. For the avoidance of doubt, the Regulator acknowledges that clauses 5.11 and 5.12 have ongoing effect.

Notifying Party may take steps or commence proceedings following a Default Notice

- 12.5 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including applying to set aside or appeal from or enforce the Penalty Judgment;
 - (b) take any steps to enforce the obligations outlined in this Agreement; or
 - (c) terminate the Agreement.
- 12.6 If the Notifying Party takes further steps in the Proceeding pursuant to clause 12.5, the Defaulting Party may take any further steps in the Proceeding without restriction. Clauses 13.4 to 13.6 to 13.9 continue in full force and effect notwithstanding that any Party has terminated, or has purported to terminate, the Agreement.

Breach of obligation to pay pecuniary penalty and costs

- 12.7 If a Party fails to make all or part of the payments referred to in clauses 8.1 to 8.4 within the time specified in those clauses, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:
- (a) entitled to enforce the Penalty Judgment;
 - (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty (or difference owing) and the Monitoring and Enforcement Costs are paid in full; and
 - (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clauses 8.1 to 8.3.
- 12.8 Nothing in clause 12.7 limits the ability of the Enforcing Party to also issue a Default Notice in accordance with clauses 12.1 to 12.3 above.

Effect of Default Notice on Penalty recommendation

- 12.9 If a Default Notice has been given by a Party, in any subsequent penalty hearing the Regulator may submit that:
- (a) the Agreed Penalty included discounts for cooperation, remorse, and cost savings to the public;
 - (b) the breach of the Agreement demonstrates:
 - (i) a lower level of cooperation by Agria Singapore and Mr Lai;
 - (ii) a lack of remorse by Agria Singapore and Mr Lai; and
 - (iii) reduced cost savings to the public;

- (c) the Court should impose a higher pecuniary penalty than the Agreed Penalty to reflect an appropriate, lower level of discount in light of the factors described at clause 12.9(b).

13 General

Entire Agreement

- 13.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 13.2 The Parties represent and agree that:
 - (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
 - (b) in the course of the Monitoring and Enforcement Activities, and in the Proceeding, they have exchanged or will exchange Information. Each Party has made its own assessment of the merits of that Information, and in reaching this settlement each Party acknowledges that it is yielding its right to test, challenge, supplement or amend that Information at trial;
 - (c) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
 - (d) they are each voluntarily entering into this Agreement after having had the opportunity to receive independent legal advice.

No misrepresentation arising from Information provided

- 13.3 The Parties acknowledge that neither Party has been induced to enter the Agreement by any representation made in, or in connection with, any Information provided by the other Party. Accordingly, neither Party may cancel the Agreement or be entitled to damages on account of any misrepresentation alleged to arise from or in connection with the provision of such Information (whether under the Contract and Commercial Law Act 2017 or otherwise).

Use and disclosure of Information

- 13.4 The Regulator may use Information provided by Agria Singapore and Mr Lai for the purpose of carrying out any of the Regulator's functions or obligations under any enactment, but may not disclose such information to any third party other than in accordance with clauses 13.5 and 13.6 below.
- 13.5 Subject to seeking appropriate Court orders to protect any Information that is confidential:
 - (a) the Regulator may disclose Information provided to it by Agria Singapore and Mr Lai in the following circumstances:
 - (i) to witnesses, solicitors, barristers and other advisers or consultants retained by the Regulator in the Proceeding;

- (ii) to any Court in the Proceeding (including without limitation to the parties in the Proceeding pursuant to a discovery order made under Part 8 High Court Rules), including proceedings instituted in accordance with clauses 5.13 and 12.5;
- (iii) as the Regulator otherwise considers necessary or desirable with Agria Singapore and Mr Lai's prior written consent; or
- (iv) as required by law.

13.6 Subject to clause 13.5, if any third party requests from the Regulator disclosure of any Information provided to it by Agria Singapore or Mr Lai during the Investigation or in the Proceeding, the Regulator will notify Agria Singapore and Mr Lai and will provide them with a reasonable opportunity to oppose such a request, including by Court action. The Regulator will take account of any response made by Agria Singapore and/or Mr Lai, and to the nature of the Information and any undertakings as to confidentiality before determining whether to release the Information.

Defence to enforcement proceedings

13.7 Agria Singapore and Mr Lai agree that:

- (a) the Penalty Judgment, or any other judgment obtained on the Agreement, and/or on the Agreed Statement of Facts pursuant to the Agreement, is enforceable in the Courts of New Zealand;
- (b) they will not raise by way of defence to any proceedings to enforce the Agreement or to obtain judgment on the Agreed Statement of Facts, and/or the Statement of Defence or the Penalty Judgment pursuant to the Agreement, the fact that the sums payable under the Agreement, or in respect of the Penalty Judgment, are a penalty; and
- (c) they will submit to the jurisdiction of the Courts of New Zealand for the purpose of any proceeding arising from this Agreement.

Monetary amounts

13.8 Dollar amounts stated in this Agreement are in New Zealand dollars.

Amendments in writing

13.9 No amendment to this Agreement will be effective unless it is in writing and signed by each of the Parties.

Authorities

13.10 Each person executing this Agreement warrants that he or she has the full authority to enter into this Agreement and bind the Party for which he or she purports to enter into this Agreement.

Severance

13.11 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Parties to bear their own costs

- 13.12 Each Party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

Governing law

- 13.13 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further assurances

- 13.14 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

No waiver

- 13.15 Failure by the Regulator to enforce any provision of this Agreement will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 13.16 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

14 Communications

- 14.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the Regulator, by hand delivery or email to the following addresses:

Overseas Investment Office
Level 7, Radio New Zealand House
155 The Terrace
Wellington 6011
New Zealand

Attention: Kirsty Millard
KMillard@linz.govt.nz

Copy to: Meredith Connell
Level 13, Pencarrow House
58-66 Jervois Quay
New Zealand
Attention: Fionnghuala Cuncannon
fionnghuala.cuncannon@mc.co.nz


- (b) If addressed to Agria Singapore or Mr Lai, by hand delivery or email to the following address:

Chen Palmer

Level 8, 187 Featherston Street
PO Box 2160
Wellington
Attention: Mai Chen
mai.chen@chenpalmer.com


Execution


Signed by and on behalf of **Chief Executive
of Land Information New Zealand**
in the presence of:


Authorised signatory

Lisa Barnett

Name


Signature of witness


Witness Name


Wellington, NZ

Witness Address

Executive Assistant


Witness Occupation

Signed by and on behalf of **Agria
(Singapore) PTE Limited**
in the presence of:


First authorised signatory


Lai Guanglin


Name


Second authorised signatory

Li Kean Seng

Name


Signature of witness


Witness Name

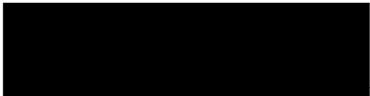
Shenzhen, China


Witness Address


Financial Controller

Witness Occupation

Signed by Lai Guanglin (Alan Lai)
in the presence of:


Lai Guanglin (Alan Lai)


Signature of witness


Witness Name

China Shenzhen
Witness Address

Accountant
Witness Occupation

**Schedule 1: Agreed Statement of Facts between the Plaintiff and First
and Second Defendants**

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2018-404-

Under Overseas Investment Act 2005

Between **Chief Executive of Land Information New Zealand**
Plaintiff

And **Agria (Singapore) PTE Limited**
First Defendant

And **Lai Guanglin (also known as Alan Lai)**
Second Defendant

Agreed Statement of Facts

**MEREDITH
CONNELL**

Solicitors:
F Cuncannon | K Muirhead
PO Box 24546, Wellington 6140
T: +64 4 914 0530
fionnghuala.cuncannon@mc.co.nz |
kate.muirhead@mc.co.nz

Counsel:
John Dixon QC
PO Box 4338, Auckland 1140
Ph: 09 306 2775, Fax: 09 309 1119
john.dixon@shortlandchambers.co.nz

Agreed Statement of Facts

1 Introduction and overview

- 1 The Plaintiff (**Regulator**) alleges, and the First and Second Defendants (**Agria Singapore** and **Mr Lai** respectively), accept that:
 - (a) the fact of the investigation by and settlements reached with the United States Securities and Exchange Commission (**SEC**) are matters that reflect adversely on the fitness of Mr Lai under s 19(1)(b) of the Overseas Investment Act 2005 (**Act**) in respect of overseas investments that are the subject of "good character" conditional consents;
 - (b) Mr Lai is an individual with control over the applicants named in those consents;
 - (c) the effect of these matters is that Mr Lai failed to comply with the good character condition of those consents and was thereby in breach of the good character condition of those consents; and
 - (d) Agria Singapore accordingly accepts that it is in breach of the terms of the good character conditions of those consents.

2 The Defendants

Agria Singapore

- 2.1 Agria Singapore was incorporated in 2009. It is majority owned by Agria Corporation, and operates as a subsidiary of Agria Asia Investments Limited, a joint venture between Agria Group Limited (a subsidiary of Agria Corporation), New Hope International (Hong Kong) Limited and Ngai Tahu Capital Limited.
- 2.2 Agria Singapore operates in the agricultural sector. It is based in Singapore, having its registered office at 80 Raffles Place, 16-20 Uob Plaza 2, Singapore.
- 2.3 Agria Singapore owns a 50.22% shareholding in PGG Wrightson Limited (**PGW**).

Mr Lai

- 2.4 Mr Lai is a businessperson, a citizen of Singapore, and a resident of Hong Kong.
- 2.5 Mr Lai has been the Chairperson of the Agria Corporation Board of Directors since June 2007. Mr Lai has been the Executive Chairman of Agria Corporation since March 2013. He is also one of its principal shareholders, owning more than 40% of shares in Agria Corporation.

3 Agria Corporation

- 3.1 Agria Corporation is a Cayman Island-registered company. It was incorporated on 4 May 2007. It is engaged in the agricultural business. It operates in the People's Republic of China, New Zealand, and Australia.

- 3.2 Agria Corporation is the ultimate owner of Agria Singapore.
- 3.3 Agria Corporation's American Depositary Shares (ADS) were formerly registered with the SEC and traded on the New York Stock Exchange (NYSE).
- 3.4 On 3 November 2016, the NYSE suspended trading in Agria Corporation ADS.
- 3.5 On 2 January 2017, the NYSE delisted Agria Corporation.

4 PGG Wrightson Limited

- 4.1 PGW is a registered company incorporated in New Zealand. It was incorporated on 1 February 1900. It has its registered address at 57 Waterloo Road, Hornby, Christchurch.
- 4.2 PGW is one of New Zealand's leading providers of agricultural products and services. It employs 2,100 people in New Zealand and in key regions within Australia and South America. PGW announced an Operating EBITDA for the year end 30 June 2018 of \$70.2 million.
- 4.3 PGW was listed on the New Zealand Stock Exchange on 1 January 1982.

5 Consents to acquire shares in PGW

- 5.1 Agria Singapore is an "overseas person" under s 7(2)(b) of the Act because it is incorporated outside New Zealand.
- 5.2 Agria Singapore was required to and did obtain consent under the Act when it sought to acquire shares in PGW.
- 5.3 On 16 November 2009, consent 200920070 was granted to "Agria Corporation, or a 100% subsidiary of Agria Corporation (the Applicant)" to make an overseas investment in PGW, which owned "sensitive land" in terms of section 12 of the Act (**First Consent**). Agria Singapore was designated as the Applicant for the purpose of the First Consent. The First Consent enabled Agria Singapore to acquire up to 19.99% of PGW shares. A condition of that consent was that Agria Corporation, Agria Singapore, or individuals with control of the Applicant, "continue to be of good character" (at clause 3(c)). At the time the First Consent was granted, Agria Singapore was a 100% subsidiary of Agria Corporation.
- 5.4 Mr Lai was an individual with control of the Applicant under section 15(2)(a) and section 15(2)(b) of the Act because at all relevant times:
 - (a) Mr Lai was:
 - (i) the owner of more than 40% of Agria Corporation shares; and
 - (ii) the Executive Chairperson of the Board of Directors of Agria Corporation; and
 - (b) Agria Corporation was the majority shareholder of Agria Singapore via its interest in Agria Group Limited and Agria Asia Investments Limited.
- 5.5 Mr Lai was accordingly subject to the terms of clause 3(c) of the First Consent.

- 5.6 In 2009, Agria Singapore acquired shares in PGW. In December 2009, Mr Lai was appointed a Director of PGW.
- 5.7 On 15 April 2011, consent 201110005 was granted to Agria Singapore for further investment in PGW (**Second Consent**). The Second Consent enabled Agria Singapore to acquire up to a further 41.0% of the total issued ordinary shares in PGW. The Second Consent was subject to a condition that: "The individuals with control of Agria Corporation, [Agria Singapore], and New Hope Group Co. Limited must continue to be of good character" (at clause 4(a)).
- 5.8 Mr Lai was an individual with control of Agria Corporation and Agria Singapore under section 15(2)(a) and section 15(2)(b) of the Act because at all relevant times:
- (a) Mr Lai was:
 - (i) the owner of more than 40% of Agria Corporation shares; and
 - (ii) the Executive Chairperson of the Board of Directors of Agria Corporation; and
 - (b) Agria Corporation was the majority shareholder of Agria Singapore via its interest in Agria Group Limited and Agria Asia Investments Limited.
- 5.9 Mr Lai was accordingly subject to the terms of clause 4(a) of the Second Consent.
- 5.10 In 2011, PGW increased its shareholding in PGW to 50.22%.
- 5.11 As at 30 October 2018, Agria Singapore continued to own 50.22% of PGW shares.

6 SEC investigates Agria Corporation and Mr Lai

- 6.1 Agria Corporation, and Mr Lai, were the subjects of civil enforcement actions arising out of an investigation by the SEC for alleged breaches of the Securities Exchange Act of 1934 (**Exchange Act**) and Rules made under the Exchange Act (**SEC Investigation**).
- 6.2 As a result of the SEC Investigation, the SEC alleged that:
- (a) Agria Corporation violated:
 - (i) section 10(b) of the Exchange Act and Rule 10b-5 by:
 - (A) materially underreporting the loss it incurred on the disposal of its Chinese operating entity, Taiyuan Primalights III Modernized Agriculture Development Company Limited (**P3A**);
 - (B) overvaluing shares it acquired from P3A in a related-party asset exchange with P3A's president;

- (C) knowingly or recklessly reporting a materially inflated carrying value of Chinese land use rights for fiscal years (FY) 2010 to 2012; and
 - (D) reporting a materially inflated value of its land use rights in 2013 which it retained after the divestiture of its interest in P3A;
 - (ii) section 13(a) of the Exchange Act, and Rules 13a-1, 13a-16, 12b-20, by filing annual reports for FY 2010 to 2013 that materially misstated its financial position in light of the matters described at paragraph 6.2(a)(i);
 - (iii) section 13(b)(2)(A) of the Exchange Act by maintaining false and misleading books, records, and accounts concerning the loss it incurred on the disposal of P3A, the value of the shares it acquired, and the value of its land use rights for FY 2010 to 2013; and
 - (iv) section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that Agria Corporation's assets were properly recorded;
- (b) Mr Lai violated:
- (i) section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) by engaging in a scheme to manipulate the price of Agria Corporation ADS through trading in order to regain compliance with the a minimum listing standard of the NYSE; and
 - (ii) section 10(b) and Rule 10b-5(b) of the Exchange Act by making materially misleading statements in an Agria Corporation press release dated 24 April 2013,

(collectively **SEC Allegations**).

6.3 On 3 November 2016, the NYSE suspended trading in Agria Corporation ADS.

6.4 On 2 January 2017, the NYSE delisted Agria Corporation.

7 Agria Corporation and Mr Lai resolve SEC Investigation

7.1 In November 2018, Agria Corporation and Mr Lai separately made settlement offers to the SEC, which the SEC accepted in December 2018, in order to resolve the SEC Investigation, without admitting or denying the SEC Allegations, on the following terms:

- (a) Agria Corporation agreed to:
 - (i) cease and desist from committing or causing any violations and any future violations of:
 - (A) sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act; and

- (B) Rules 10b-5, 12b-20, 13a-1, and 13a-16 and
 - (ii) pay a civil money penalty of USD3,000,000 to the SEC;
 - (e) Mr Lai agreed to:
 - (i) cease and desist from committing or causing any violations and any future violations of section 10(b) of the Exchange Act and Rule 10b-5;
 - (ii) cease acting as an officer or director of any issuer that has a class of securities registered pursuant to the Exchange Act section 12 or that is required to file reports pursuant to Exchange Act section 15(d) for a period of five years (ie until not later than 10 December 2023); and
 - (iii) pay a civil money penalty of USD400,000 to the SEC,
- (collectively **SEC Settlements**).

7.2 Additional details of Agria Corporation and Mr Lai's settlements with the SEC in respect of the SEC Allegations are **attached** as a schedule to this agreed statement of facts.

7.3 On 30 October 2018, Mr Lai resigned as a director and Chairperson of PGW.

8 Accepted breaches of the Act

8.1 Agria Singapore and Mr Lai accept that the fact of the SEC Investigation and the SEC Settlements are matters that reflect adversely on the fitness of Mr Lai under section 19(1)(b) of the Act to hold the overseas investments in PGW that are the subject of:

- (a) the First Consent; and
- (b) the Second Consent.

8.2 Agria Singapore and Mr Lai accordingly accept that:

- (a) the effect of the matters described in this agreed statement of facts is that Mr Lai has failed to comply with the good character conditions of the First and Second Consents; and
- (b) the SEC Investigation and the SEC Settlements have caused Agria Singapore to breach:
 - (i) clause 3(c) of the First Consent; and
 - (ii) clause 4(a) of the Second Consent.

8.3 For the purpose of this proceeding only, Agria Singapore and Mr Lai accept that the Regulator is entitled to seek judgment in respect of the first cause of action in the Statement of Claim.

9 Other factual matters relevant to penalty

Cooperation

- 9.1 Agria Singapore has acknowledged that it breached the terms of the First Consent and the Second Consent. Mr Lai has acknowledged that he breached the terms of the First Consent and the Second Consent.

Nature of the SEC Allegations

- 9.2 The SEC Allegations concern serious violations of the U.S. federal securities laws. The SEC Allegations do not, however, relate to alleged activity in New Zealand, and do not involve any activity or statements made in New Zealand.
- 9.3 The SEC Allegations do not disclose any alleged activity occurring after 2013.
- 9.4 Agria Singapore and Mr Lai therefore consider the allegations of limited significance to assessing their good character as investors in New Zealand.

Penalties paid elsewhere

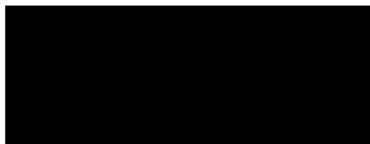
- 9.5 Agria Corporation and Mr Lai have paid or agreed to pay significant penalties in the United States of America as set out at paragraph 7.1 in respect of the SEC Investigations and SEC Settlements.

Any quantifiable gain, cost of remedying the breach of condition, or loss suffered by a person in relation to the breach

- 9.6 The parties have not attempted to quantify the cost of remedying the breach of the consent conditions, or any loss suffered by a person in relation to a breach of condition.
- 9.7 The Regulator considers that Agria Singapore has had the benefit of holding consents to make overseas investments in PGW, including of sensitive land held by PGW, while falling short of the standard expected of consent holders.
- 9.8 Agria Singapore and Mr Lai do not consider that Agria Singapore has derived any benefit from the breach. Nor do they consider there has been any cost or loss to any person as a consequence of the breach, having regard to the agreement to pay monitoring and enforcement costs to the Regulator as part of this settlement.
- 9.9 Agria Singapore and Mr Lai consider that as a consequence of Agria Singapore's investments, PGW has recovered from the brink of bankruptcy and from the global financial crisis, to become a significant contributor to the New Zealand economy. As a result of Agria Singapore's investments, the following benefits have been created:
- (a) Agria Singapore's investment in PGW has created significant benefits for New Zealand's economy;
 - (b) Agria Singapore's 2009 investment of over NZ \$117 million in PGW provided financial stability to PGW;

- (c) Between 2009 and 2011 Agria Singapore invested approximately \$260 million in PGW;
- (d) Since 2013, PGW has also consistently delivered a cash dividend of 3.75ct to 4.00ct/share to its shareholders;
- (e) As of June 2018, PGW employs 2,600 people of which approximately 2,000 are based in New Zealand;
- (f) Since 2009, PGW's expenditure on employee benefits has nearly doubled from NZ \$86 million to NZ \$166 million in 2018;
- (g) Agria Singapore has established a strong commitment to the New Zealand community through its partnership with Ngai Tahu, and since 2011 has provided full scholarships for potential Ngai Tahu leaders to attend Beijing University and Tsinghua University.

Date: 19 December 2018



K Millard
Authorised representative of
Chief Executive of Land Information New Zealand



Lau Ganang
Authorised representative of
Agria (Singapore) PTE Limited

Schedule

Summary of SEC Allegations concerning Agria Corporation

Background

- 1 The SEC civil enforcement action against Agria Corporation relates to the anti-fraud, reporting, books and records, and internal accounting and control provisions contained in federal securities law.
- 2 The alleged conduct related to Agria Corporation's July 2010 divestiture of P3A, which was a consolidated affiliated entity. P3A was a China-based company that operated three product lines: corn seed, sheep breeding and seedlings.
- 3 The SEC alleged that Agria Corporation materially overstated the value of the assets received in, and concealed material losses that resulted from, the divestiture.
- 4 Agria Corporation has entered into a settlement agreement with the SEC staff without admitting or denying these allegations.

SEC Civil Enforcement Action

- 5 The SEC alleged that Agria Corporation violated ss 10(b), 13(a) and 13(b)(2)(A), and rules 10b-5, 12b-20, 13a-1 and 13a-16 of the Exchange Act.
- 6 Agria Corporation allegedly violated section 10(b) and rule 10b-5 by:
 - (a) materially underreporting the loss it incurred on the divestiture of P3A;
 - (b) overvaluing the value of the shares in P3A that it acquired pursuant to an agreement; and
 - (c) reporting a materially inflated value of its land use rights for FY 2010 to 2012.
- 7 Agria Corporation allegedly violated section 13(a) and rules 13a-1 and 13a-16 by filing with the SEC annual reports for FY 2010 to 2013 that materially misstated its financial position.
- 8 Agria Corporation allegedly violated section 13(b)(2)(A) by maintaining false and misleading books, records and accounts concerning the loss it incurred on the divestiture of P3A, the value of the shares it acquired and the value of its land use rights for FY 2010 to 2013.
- 9 Agria Corporation allegedly violated section 13(b)(2)(B) by failing to devise and maintain a system of internal accounting controls capable of providing reasonable assurances that Agria Corporation's assets were properly recorded.

Divestiture agreement

- 10 Agria Corporation accounted for the P3A divestiture as a discontinued operation.

- 11 Agria's board approved (on 13 July 2010) the divestiture of 100% of its ownership interest in P3A. In connection with the divestiture, Agria Corporation received land use rights transferred by P3A, while allegedly:
- (a) Knowing that the land was of poor quality: the soil was poor and there was little rainfall, no irrigation infrastructure, and serious water shortages.
 - (b) Having received a legal opinion that the transfer of interests in that land from P3A to Agria Corporation was not "legal and effective" and could not be made so.
 - (c) Having received a report that calculated the value of the rental prepayments for that land based on assumptions provided by Agria Corporation, namely that Agria Corporation could sublease that land, contrary to the legal advice it had received.
 - (d) Having received a financial report that calculated the value of the P3A net assets divested. The report was based on Agria Corporation's instruction that the value be measured by the difference between the value of P3A's total assets, and the calculated value of the rental prepayments for the land-use rights. The report was based on the assumptions provided by Agria Corporation that were contrary to the legal advice it had obtained.

Allegations relating to the agreement

- 12 Agria Corporation's alleged improper valuation of the Agria Corporation shares it acquired pursuant to its agreement with P3A allowed it to book the shares at an inflated value of \$1.88 per share. At the time, the price per Agria Corporation share on the NYSE was \$0.635.
- 13 The alleged inflated share price value allowed Agria Corporation to report a loss on the divestiture of approximately USD\$200,000, when its actual loss was about USD\$17.5 million.
- 14 Agria Corporation's valuation was allegedly improper because:
- (a) As a publicly traded company, the observable market price of Agria Corporation's shares was the more clearly evident measure of fair value, not the value of P3A's net assets divested as calculated by Agria Corporation's method.
 - (b) Agria Corporation's method for calculating the value of P3A's net assets divested relied on assumptions that Agria Corporation knew to be false.

Allegations relating to land use rights

- 15 Agria Corporation allegedly breached its financial reporting requirements in respect of the land use rights retained from the time of the divestiture in 2010 up through FY 2012 because:
- (a) Its divestiture of its sheep breeding operations meant that it could not use the land to generate revenue and, as of June 2011, Agria

Corporation had not developed a plan to use the land to generate future revenue.

- (b) Its land use rights were not legal or effective and it could not generate revenue through leases or sub-leases.
 - (c) It was required to test for the land use rights for impairment using estimates of future cash flows in respect of the use of the land and Agria Corporation's senior financial officers knowingly or recklessly failed to conduct this testing for FY 2010, 2011, and 2012.
 - (d) If Agria Corporation had conducted this testing, it would have had to write down the value of the land for FY 2010 because it had no basis for developing estimates of future cash flows in respect of the use of the land.
- 16 In FY 2013, Agria Corporation allegedly wrote down the full value of the land even though the factors triggering this write down were known in 2010: the soil was poor and there was little rainfall, no irrigation infrastructure, and serious water shortages. The SEC alleged that Agria Corporation knew or was reckless as to the existence of these conditions prior to 2013 and should have written down the value of the land sooner.
- 17 Because the factors triggering this write down were known in FY 2010, Agria Corporation was required to restate its financial statements for FY 2010-2012. The SEC alleged that Agria Corporation failed to do this and knew or was reckless in not knowing that it should have done so.

Allegations relating to a press release

- 18 On 13 March 2013, Agria Corporation announced the impairment of its land use rights. The SEC alleged that the statements contained in the announcement were materially misleading because Agria Corporation presented the reasons for impairment as having arisen in 2012 (during its FY 2013), when Agria Corporation knew about these factors in 2010. The SEC also alleged that the misstatements concealed the fact that Agria Corporation had overstated the value of the land-use assets for FY 2010-2012.

Summary of SEC Allegations concerning Mr Lai

Background

- 19 The SEC agreement relates to alleged manipulation of the market price of Agria Corporation ADS on the NYSE.
- 20 The relevant conduct was the alleged use of nominee brokerage accounts to engage in trading to inflate the market price of Agria Corporation ADS in order to satisfy the NYSE's listing standards.
- 21 This included the practice known as "marking the close", which involves the execution of purchase orders at or near the close of trading in order to better influence the closing price.

- 22 Mr Lai has entered into the settlement agreement with the SEC staff without admitting or denying these allegations.

SEC Civil Enforcement Action

- 23 The SEC averred that Mr Lai allegedly violated section 10(b) and rules 10b-5(a), (b) and (c) of the Exchange Act. In particular, the SEC alleged:
- (a) Mr Lai violated section 10(b) and rules 10b-5(a) and (c) by engaging in a scheme to manipulate the price of Agria Corporation ADS through trading (including marking the close) in order to regain compliance with the NYSE's minimum listing standards.
 - (b) Mr Lai violated section 10(b) and rule 10b-5(b) by making materially misleading statements in an Agria Corporation press release of 24 April 2013.

NYSE threat of delisting Agria

- 24 Agria Corporation listed on the NYSE on 7 November 2007. The price of Agria Corporation ADS declined to below \$1 per ADS by July 2011.
- 25 In July 2012, the NYSE informed Agria Corporation that it was trading below the \$1 minimum for the second consecutive 30-day period.
- 26 In December 2012, Agria Corporation announced to the NYSE it would raise its share price through a reverse split of its shares. On 8 January 2013, Agria Corporation filed this proposal with the NYSE.
- 27 In March 2013, due to tight cash flow and reimbursement requirements from the reverse split, Agria Corporation decided to abandon the proposal.

Allegations relating to market transactions

- 28 On 7 and 8 March 2013, Mr Lai allegedly arranged the transfer of \$2.3 million to a nominee brokerage account opened in the name of associates.
- 29 The SEC alleged that one of Mr Lai's associates then began to place large orders at or above the best offer price, and often near the close of trading. This raised Agria Corporation's ADS price above \$1 on 8 March 2013.
- 30 For the following 30 trading days, the SEC alleged that Mr Lai's associates strategically placed orders to ensure that Agria Corporation's ADS price remained between \$1.02 and \$1.04.
- 31 These purchases allegedly accounted for approximately 46% of Agria Corporation's total ADS traded between 7 March and 23 April 2013. The SEC alleged that on average, 52% of the daily purchases were made by Mr Lai's associates.

Allegations relating to press release

- 32 On 24 April 2013, Agria Corporation issued a press release which stated that, because Agria Corporation had traded above \$1 per share for 30 consecutive

trading days, Agria Corporation expected to regain compliance with the NYSE's listing standards. The statement concluded by stating that, in light of Agria Corporation's performance, the reverse split proposal was not necessary.

- 33 Mr Lai authorised the statement and the statement included a quote from Mr Lai and included a "commitment ... to deliver shareholders' value, preferably with and through organic growth and efforts", and that reverse splits should only be an incremental tool to achieve this purpose.
- 34 The SEC alleged that Mr Lai's statement at paragraph 33 was materially misleading because:
- (a) it would have led a reasonable investor to believe that the ADS price increase was due to Agria Corporation's economic performance and market conditions, rather than price manipulation;
 - (b) the statement failed to include material facts necessary to support the statements; and
 - (c) it would have led a reasonable investor to believe that the reverse split was unnecessary due to Agria Corporation's economic performance and market conditions, rather than price manipulation.

Schedule 2: Notice of Admissions

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2018-404-

Under Overseas Investment Act 2005

Between Chief Executive of Land Information New Zealand
Plaintiff

And Agria (Singapore) PTE Limited
First Defendant

And Lai Guanglin (also known as Alan Lai)
Second Defendant

Notice of Admissions by First and Second Defendants

20 December 2018

Chen Palmer Partners
Barristers and Solicitors
AUCKLAND

Mai Chen / Nicholas Russell
Telephone: 09 557 0350
Facsimile: 09 915 0003
P O Box 106114, Auckland 1143
DX CX 10073
Level 14, 52 Swanson Street, Auckland


Notice of Admissions

The First Defendant and Second Defendant by their solicitors say:

For the purposes of rules 15.15 and 15.16 of the High Court Rules 2016, the First Defendant and Second Defendant admit, for the purpose of this proceeding only:

- (a) the facts set out in the agreement statement of facts dated 19 December 2018; and
- (b) to that extent, the first cause of action in the Statement of Claim dated 20 December 2018.

Date: 20 December 2018



Mai Chen
Counsel for the First Defendant
and Second Defendant

This document is filed by **Mai Chen**, solicitor for the first and second defendants, of the firm **Chen Palmer** whose address for service is **Level 14, 52 Swanson Street, Auckland** and whose telephone number is **09 557 0350**; whose fax number for service is **09 915 0003**; whose document exchange is **DX CX 10073**, whose email address for service is **mai.chen@chenpalmer.com**

Schedule 3: Statement of claim

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2018-404-

Under Overseas Investment Act 2005

Between **Chief Executive of Land Information New Zealand** of
level 7, 155 The Terrace, Wellington
Plaintiff

And **Agria (Singapore) PTE Limited**, a company incorporated in
Singapore having its registered office at 80 Raffles Place, 16-20 Uob
Plaza 2, Singapore
First Defendant

And **Lai Guanglin (also known as Alan Lai)**, businessperson, of
12/F, Phase 1, Austin Tower, 22-26A Austin Avenue, Tsim Sha Tsui,
Kowloon, Hong Kong
Second Defendant

Statement of claim

20 December 2018

**MEREDITH
CONNELL**

Solicitors:

F Cuncannon | K Muirhead
PO Box 24546, Wellington 6140
T: +64 4 914 0530
fionnghuala.cuncannon@mc.co.nz |
kate.muirhead@mc.co.nz

Counsel:

John Dixon QC
PO Box 4338, Auckland 1140
Ph: 09 306 2775, Fax: 09 309 1119
john.dixon@shortlandchambers.co.nz

Statement of claim

The Plaintiff by her solicitors says:

The Parties

- 1 The Plaintiff, the Chief Executive of Land Information New Zealand, is designated under section 30 of the Overseas Investment Act 2005 (**Act**), and under letters of designation and delegation, as the regulator of that Act (**Regulator**).

Particulars

- (a) Letter from the Minister of Finance, the Hon Dr Michael Cullen and the Minister for Land Information, the Hon Pete Hodgson, to the Chief Executive of Land Information New Zealand, Brendan Boyle, dated 24 August 2005.
 - (b) Letter from the Minister of Finance, the Hon Dr Michael Cullen and the Minister for Land Information, the Hon David Parker, to the Chief Executive of Land Information New Zealand, Brendan Boyle, dated 12 December 2007.
 - (c) Letter from the Minister of Finance, the Hon Bill English, and the Minister for Land Information, the Hon Dr Richard Worth, to the Chief Executive of Land Information New Zealand, Colin MacDonald, dated 22 April 2009.
- 2 The Regulator's functions include enforcement of the Act, and monitoring compliance with the conditions of consents granted under the Act.
- 3 The First Defendant, Agria (Singapore) PTE Limited (**Agria Singapore**), is a company incorporated in Singapore. Agria Singapore's registered office is at 80 Raffles Place, 16-20 Uob Plaza 2, Singapore.
- 4 Agria Singapore is an "overseas person" under section 7(2)(b) of the Act because it is incorporated outside New Zealand.
- 5 The Second Defendant, Lai Guanglin (also known as Alan Lai), is a business person (**Mr Lai**). Mr Lai is a citizen of Singapore and is a resident of Hong Kong.
- 6 Mr Lai is:
 - (a) the Executive Chairperson of the Board of Directors of Agria Corporation; and
 - (b) a principal shareholder of Agria Corporation, owning more than 40% of shares in Agria Corporation.
- 7 Mr Lai is an "overseas person" under section 7(2)(a) of the Act because he is an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand.

Agria Corporation

- 8 Agria Corporation is a Cayman Island-registered company. Agria Corporation carries out agricultural business. It has operations in the People's Republic of China, New Zealand, and Australia.
- 9 At all relevant times, Agria Singapore was either the wholly owned subsidiary of Agria Corporation or Agria Corporation was the majority shareholder of Agria Singapore via its interest in Agria Group Limited and Agria Asia Investments Limited.
- 10 At present, the majority of the shares in Agria Singapore are ultimately owned by Agria Corporation because:
- (a) Agria Singapore is a wholly owned subsidiary of Agria Asia Investments Limited;
 - (b) Agria Asia Investments Limited is 80.81% owned by Agria Group Limited; and
 - (c) Agria Group Limited is a wholly owned subsidiary of Agria Corporation.
- 11 Prior to 3 November 2016, Agria Corporation's American Depositary Shares (ADS) were:
- (a) registered with the United States Securities and Exchange Commission (SEC); and
 - (b) traded on the New York Stock Exchange (NYSE).

PGG Wrightson Limited

- 12 PGG Wrightson Limited (PGW) is a registered company incorporated in New Zealand. It has its registered address at 57 Waterloo Road, Hornby, Christchurch. PGW was incorporated on 1 February 1900.
- 13 PGW is one of New Zealand's leading providers of agricultural products and services.
- 14 PGW's business employs approximately 2,100 people throughout New Zealand and in key regions within Australia and parts of South America.

Conditional consents granted to Agria Corporation and/or Agria Singapore to make overseas investments in PGW

- 15 Agria Singapore and Agria Corporation were required to and did seek consent through the Regulator under the Act in order to enter into an overseas investment transaction to acquire shares in PGW.

First consent

- 16 On 29 September 2009, Agria Corporation submitted a written application to the Regulator seeking consent to make an investment in PGW.

- 17 On 16 November 2009, consent 200920070 was granted to “Agria Corporation, or a 100% subsidiary of Agria Corporation (the Applicant)” to make an overseas investment by the acquisition of up to 19.99% of PGW shares (**First Consent**).
- 18 Agria Singapore was designated as the Applicant for the purpose of the First Consent.
- 19 The First Consent, which is relied on as if pleaded in full, is conditional upon the Applicant or the individuals with control of the Applicant continuing “to be of good character” (clause 3(c)).
- 20 Mr Lai was an individual with control of the Applicant under section 15(2)(a) and (b) of the Act because at all relevant times:
- (a) Mr Lai was:
 - (i) the owner of more than 40% of Agria Corporation shares; and
 - (ii) the Executive Chairperson of the Board of Directors of Agria Corporation; and
 - (b) Agria Singapore was either the wholly owned subsidiary of Agria Corporation or Agria Corporation was the majority shareholder of Agria Singapore via its interest in Agria Group Limited and Agria Asia Investments Limited.
- 21 Mr Lai was accordingly subject to the terms of clause 3(c) of the First Consent.
- 22 In 2009, Agria Singapore acquired shares in PGW.
- 23 On or about 30 December 2009, Mr Lai was appointed a director of PGW.

Second consent

- 24 On 7 January 2011, Agria Singapore submitted a written application to the Regulator seeking consent to make an investment in PGW.
- 25 On 15 April 2011, consent 201110005 was granted to Agria Singapore to make an overseas investment in sensitive land and significant business assets by the acquisition of up to a further 41.0% of the total issued ordinary shares in PGW (**Second Consent**).
- 26 The Second Consent, which is relied up on as if pleaded in full, is conditional upon individuals with control of Agria Corporation or Agria Singapore continuing “to be of good character” (clause 4(a)).
- 27 Mr Lai was an individual with control of Agria Corporation and Agria Singapore under section 15(2)(a) and (b) of the Act because at all relevant times:
- (a) Mr Lai was:
 - (i) the owner of more than 40% of Agria Corporation shares; and
 - (ii) the Executive Chairperson of the Board of Directors of Agria Corporation; and

- (b) Agria Singapore was either the wholly owned subsidiary of Agria Corporation or Agria Corporation was the majority shareholder of Agria Singapore via its interest in Agria Group Limited and Agria Asia Investments Limited.
- 28 Mr Lai was accordingly subject to the terms of clause 4(a) of the Second Consent.
- 29 In 2011, Agria Singapore increased its shareholding in PGW to 50.22%.
- 30 On or about 22 October 2013, Mr Lai was appointed Chairperson of PGW.

SEC investigates Agria Corporation and Mr Lai

- 31 Agria Corporation and Mr Lai were subject to an investigation by the SEC relating to Agria Corporation and Mr Lai's alleged breaches of the Securities Exchange Act 1934 (**Exchange Act**) and rules made pursuant to the Exchange Act (**Rules**) (**SEC Investigation**).
- 32 As a result of the SEC Investigation, the SEC alleged that:
- (a) Agria Corporation violated:
 - (i) section 10(b) of the Exchange Act and Rule 10b-5 by:
 - (A) materially underreporting the loss it incurred on the disposal of its Chinese operating entity, Taiyuan Primalights III Modernized Agriculture Development Company Limited (**P3A**);
 - (B) overvaluing shares it acquired from P3A in a related-party asset exchange with P3A's president;
 - (C) knowingly or recklessly reporting a materially inflated carrying value of Chinese land use rights for fiscal years (FY) 2010 to 2012; and
 - (D) reporting a materially inflated value of its land use rights in 2013 which it retained after the divestiture of its interest in P3A;
 - (ii) section 13(a) of the Exchange Act, and Rules 13a-1, 13a-16, 12b-20, by filing annual reports for FY 2010 to 2013 that materially misstated its financial position in light of the matters described at paragraph 32(a)(i);
 - (iii) section 13(b)(2)(A) of the Exchange Act by maintaining false and misleading books, records, and accounts concerning the loss it incurred on the disposal of P3A, the value of the shares it acquired, and the value of its land use rights for fiscal years 2010 to 2013; and
 - (iv) section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting controls sufficient to

provide reasonable assurances that Agria Corporation's assets were properly recorded;

(b) Mr Lai violated:

- (i) section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) by engaging in a scheme to manipulate the price of Agria's ADS through trading in order to regain compliance with the a minimum listing standard of the NYSE; and
- (ii) section 10(b) and Rule 10b-5(b) of the Exchange Act by making materially misleading statements in an Agria Corporation press release dated 24 April 2013,

(collectively **SEC Allegations**).

33 On 3 November 2016, the NYSE suspended trading in Agria Corporation ADS.

34 On 2 January 2017, the NYSE delisted Agria Corporation.

Agria Corporation and Mr Lai resolve SEC Investigation

35 Agria Corporation and Mr Lai separately entered into settlement agreements with the SEC on or about 10 December 2018 in order to resolve the SEC Investigation, without admitting or denying the SEC Allegations, on the following terms:

(a) Agria Corporation agreed to:

- (i) cease and desist from committing or causing any violations and any future violations of:
 - (A) sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act; and
 - (B) Rules 10b-5, 12b-20, 13a-1, and 13a-16; and
- (ii) pay a civil money penalty of USD\$3,000,000 to the SEC;

(b) Mr Lai agreed to:

- (i) cease and desist from committing or causing any violations and any future violations of section 10(b) of the Exchange Act and Rule 10b-5;
- (ii) cease acting as an officer or director of any issuer that has a class of securities registered pursuant to the Exchange Act section 12 or that is required to file reports pursuant to Exchange Act section 15(d) for a period of five years (ie until not later than 10 December 2023); and
- (iii) pay a civil money penalty of USD\$400,000 to the SEC,

(collectively **SEC Settlements**).

36 On 30 October 2018, Mr Lai resigned as a director and Chairperson of PGW.

First cause of action: breach of terms of consent conditions by Agria Singapore and Mr Lai

37 The Regulator repeats paragraphs 1 to 36, above.

38 The fact of the SEC Investigation and the SEC Settlements are matters that reflect adversely on the fitness of Mr Lai to have the overseas investment in PGW under section 19(1)(b) of the Act and mean that he failed to comply with the good character condition of the First and Second Consents.

39 In light of the matters pleaded at paragraphs 19-21, 26-28, and 38 above:

(a) Agria Singapore has breached:

- (i) clause 3(c) of the First Consent; and
- (ii) clause 4(a) of the Second Consent; and

(b) Mr Lai has breached:

- (i) clause 3(c) of the First Consent; and
- (ii) clause 4(a) of the Second Consent.

Wherefore the Regulator seeks:

- (a) civil penalties under section 48(1)(d) of the Act in respect of Agria Singapore; and
- (b) civil penalties under section 48(1)(d) of the Act in respect of Mr Lai.

This document is filed by Fionnghuala Joy Cuncannon, solicitor for the Plaintiff, of the firm Meredith Connell. The address for service of the defendant is Level 13, 58-66 Jervois Quay, Wellington.

Documents for service on the filing party may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 24546, Manners Street, Wellington 6140; or
- (b) transmitted to the solicitor by fax to +64 4 914 0549; or
- (c) emailed to the solicitor at fionnghuala.cuncannon@mc.co.nz, with copies sent to litigation@mc.co.nz.