

## MEMORANDUM

Re: **Legal issues related to forest land occupation and operation blocking in [●] Forest Farm**

To: [●]

From: Zhou Quan

Date: August 16, 2010

Per the management's request at the [●] task force establishment meeting on May 19, 2010, we went to the State-owned [●] Forest Farm of Guangxi Zhuang Autonomous Region (“[●] Forest Farm”) on May 26, 2010, inquired Mr. [●], the vice director of the Forest Resources Section (林政科) of the [●] Forest Farm, reviewed documents held by [●] Forest Farm, and conducted necessary legal research. In addition, Mr. [●], the former Party Secretary of [●] Forest Farm, and now the forest protection manager of our company, also responded to various questions raised by us.

Below is a memorandum reporting legal issues related to the forest land occupation and operation blocking situation in [●] Forest Farm. The memorandum is divided into five sections, among which the first section introduces the developments of rural land policies of China since 1949, including both the policies for agricultural lands in general and those specifically for forest lands. The second section describes the forest land history of [●] Forest Farm, focusing on events that may affect [●] Forest Farm's legal rights to forest lands. The third section discusses the transfer of forest assets from [●] Forest Farm to OUR COMPANY, and the legal rights obtained by OUR COMPANY by way of such transfer. The fourth section analyzes in detail issues related to the ownership disputes over [●] Forest Farm's forest lands, including the circumstances under which such disputes may arise, the legal rules for resolving typical cases of such disputes, and the procedures for the enforcement of government rulings in favor of [●] Forest Farm. The fifth section provides a summary of different categories of the local villagers/collectives' acts of infringements of [●] Forest Farm and/or OUR COMPANY's legal rights, and corresponding remedies available for rectifying such infringements. The last section summarizes the policy issued by the Government of the Autonomous Region for solving problems arising from the relocation of residents due to the construction of the Hongchaojiang Reservoir, which are closely related to [●] Forest Farm, and discusses the experiences that could be drawn on this policy.

### **1. Background of agricultural and rural land policies in China**

#### **(1) Rural land policies in general**

Private land ownership was the basis of Chinese agriculture for more than two thousand years, before the establishment of the People's Republic of China in

1949.<sup>1</sup> Until 1940s, the Chinese Communist Party (“CCP”) still maintained the policy that it would improve, rather than replace, the system of private land ownership of family farms.<sup>2</sup> Therefore, the Land Reform initiated by the CCP in the 1940s did not eliminate the private land ownership, but expropriated property owned by landlords, and redistributed such property to poor peasants who constitute the majority of the Chinese population.<sup>3</sup> In this way, the CCP won great support across the rural areas, contributing to its victory during the civil war in the late 1940s.

However, private land ownership was short-lived after the CCP took power. Starting from around 1953, due to the CCP leaders and particularly Mao Zedong’s anticipated goal of the eventual socialist collectivization,<sup>4</sup> and the state’s desperate need to extract agricultural income to fund its urban industrialization,<sup>5</sup> the CCP began a collectivization campaign in rural areas.<sup>6</sup> By 1956, 120 million agricultural households, or 96.3 percent of China’s rural families, were organized in 750,000 collectives, in the form of lower (semi-socialist) or higher (fully-socialist) agricultural producers’ cooperatives (农业生产合作社) (“APC”).<sup>7</sup>

A typical lower APC encompassed a small village or section of a village (20 to 40 households). While still retaining nominal ownership of lands and large agricultural tools, members of a lower APC pooled those properties, and worked them together.<sup>8</sup> A management committee kept records, usually measuring in daily “work points” of the amount of labor done by each family.<sup>9</sup> At the end of a year, the crop and other income (after taxes had been paid and reserve funds had been subtracted) would be divided among the members of the lower APC, according to the accumulated work points of each family and the land and tools they had contributed.<sup>10</sup>

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<sup>1</sup> 参见张传玺，《中国古代土地私有制形成的三个阶段》，《北京大学学报》1978年第02期；《中华民国宪法》第143条，由制宪国民大会于1946年12月25日通过。

<sup>2</sup> 参见《中国土地法大纲》第1条、第2条与第6条，由中国共产党全国土地会议于1947年9月13日通过。

<sup>3</sup> 参见《中国土地法大纲》第1条、第2条与第6条；《中华人民共和国土地改革法》第1条、第2条与第10条。

<sup>4</sup> 参见毛泽东，《组织起来》，1943年11月29日，《毛泽东选集》第2版第3卷第931页。

<sup>5</sup> 参见贺雪峰，《人民公社的三大功能》，载于<http://wen.org.cn/modules/article/view.article.php/1389>，最后点击于2010年6月11日。

<sup>6</sup> 参见《中国共产党中央委员会关于发展农业生产合作社的决议》，由中共中央于1953年12月16日通过。

<sup>7</sup> 参见《中国共产党大事记（1956年）》，载于[http://news.xinhuanet.com/ziliao/2004-10/15/content\\_2094228.htm](http://news.xinhuanet.com/ziliao/2004-10/15/content_2094228.htm)，最后点击于2010年6月11日。

<sup>8</sup> 参见《农业生产合作社示范章程草案》第3条，由全国人民代表大会常务委员会于1955年11月9日通过。

<sup>9</sup> 参见《农业生产合作社示范章程草案》第50条。

<sup>10</sup> 参见《农业生产合作社示范章程草案》第63条。

A typical higher APC contained 150 to 200 households. Unlike in the lower APC, the ownership of lands was transferred from members to the higher APC.<sup>11</sup> In addition, the amounts of land and capital contributed by each family were no longer taken into account in determining how much each family would receive at the end of a year. The higher APC would distribute crops solely on the basis of each family's labor contributions: to each according to his deeds.<sup>12</sup>

The next step was to transform the above collectives into "people's communes", a milestone marking the completion of the collectivization campaign in rural China. Endorsed by Mao Zedong, the communes were organized in the countryside in 1958 on the basis of higher APCs.<sup>13</sup> Each commune was organized in turn into progressively larger units: production teams, production brigades, and the commune itself, and had twenty-five thousand people on average.<sup>14</sup> Typically, all the lands within the boundaries of a commune were owned by the production brigades, but were allocated for use and operation to production teams, which were the basic accounting and farm production units within a commune.<sup>15</sup> The production teams were also responsible for income distribution among its members, who were individual peasant households.<sup>16</sup>

Provincial and lower-level cadres implemented the collectivization drive for establishing people's communes with such enthusiasm that China's agricultural socialization was completed in less than a year. By the end of 1958, there were twenty-six thousand people's communes across China, in which 98 percent of China's rural population lived.<sup>17</sup> Since then, the commune had been a major organizational form for the countryside, combining political, administrative, economic, and military functions in one organization, until it was dismembered in 1982 and replaced with township governments.<sup>18</sup>

After the collapse of the people's communes, family farms soon became again the basis of the Chinese agriculture; by 1983, more than 97 percent of peasants ran

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<sup>11</sup> 参见《高级农业生产合作社示范章程》第2条与第13条。

<sup>12</sup> 参见《高级农业生产合作社示范章程》第43条。

<sup>13</sup> 参见《中共中央关于在农村建立人民公社问题的决议》，由中共中央办公厅于1958年8月29日通过。

<sup>14</sup> 参见《中共中央关于在农村建立人民公社问题的决议》第二项。

<sup>15</sup> 参见《农村人民公社工作条例（修正草案）》第17条，由中国共产党第八届中央委员会第十次全体会议通过。

<sup>16</sup> 参见《农村人民公社工作条例（修正草案）》第35条。

<sup>17</sup> 参见中国共产党新闻网（<http://cpc.people.com.cn/GB/64162/64165/66833/4709475.html>），最后访问于2010年6月11日。

<sup>18</sup> 参见《中华人民共和国宪法》（1982年）第95条与第107条，以及《中共中央、国务院关于实行政社分开建立乡政府的通知》（1983年10月12日）。

their own farms under the household responsibility system (家庭承包责任制),<sup>19</sup> under which the rural collectives, while still holding the ownership of lands, allotted and contracted out the lands to peasant households for the latter's operation and management, under land leases for a term of initially 15 years,<sup>20</sup> and then 30 years.<sup>21</sup> This household responsibility system was ratified by both Party policies and state laws over the years, and was most recently confirmed again by the legislation of the Real Right Law of China in 2007.<sup>22</sup>

## (2) Rural land policies specifically for forest lands

### a. “Three Fixes Policy“ (三定政策)

In the early 1980s, when the policy of household responsibility system was being implemented across China, a wave of forest tenure reform also began. In March 1981, the State Council issued the “Decision on Several Issues Concerning Forest Protection and Forestry Development” (《关于保护森林发展林业若干问题的决定》), also known as the “Three Fixes Policy” (三定政策). Similar to the household responsibility system policy, the “Three Fixes” policy sought to allot and contract out forest lands to peasant households within rural collectives by:

- Clarifying rights to forests, with an emphasis on mountainous areas;
- Allocating forest lands to individual peasant households as “private plots”(自留山), based on their specific needs; and
- Establishing a forestry production responsibility system (林业生产责任制), under which the collectives should transfer responsibility, and subsequently the benefits, of forest planting and management to peasant households.

Under the above reform policy, two types of household management models were recognized, one being the private plots, and the other being the responsibility plots (责任山). For the latter, and in some places for both, peasant households were required to sign contracts with their village committee or production teams, in order to obtain user rights for forestland. By 1986, when the “Three Fixes” policy was considered fully implemented, nearly 70% of the collectively-owned forest

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<sup>19</sup> 参见《六五计划(1981~1985): 走向改革开放》, 载于2006年3月20日的《中国青年报》, 转载于新浪新闻中心 (<http://news.sina.com.cn/c/2006-03-20/03349389582.shtml>), 最后访问于2010年6月11日。

<sup>20</sup> 参见《中共中央关于一九八四年农村工作的通知》, 1984年1月1日。

<sup>21</sup> 参见《中共中央、国务院关于当前农业和农村经济发展的若干政策措施》, 1993年11月5日。

<sup>22</sup> 参见《中华人民共和国物权法》第11章。

lands had been transferred to rural peasant households.<sup>23</sup>

In 1985, shortly after the Three Fixes policy was initiated, the government liberalized the timber market.<sup>24</sup> However, the sudden liberalization of the timber market from heavy regulation, and the Three Fixes policy on the forest tenure reform that provided peasants with legal access to forest resources, were blamed for the widely observed deforestation in some provinces in south China.<sup>25</sup>

Because of the above allegations, in 1987, the State Council restored the monopolistic control by state-owned timber companies over the timber market, and ordered an abrupt suspension of the forest tenure reform under the Three Fixes policy carried out since 1981.<sup>26</sup>

#### b. Experiments of Fujian and other provinces

By the early 2000s, constrained forest tenure rights were more and more criticized as a key impediment to sustainable forest management, increased timber production, and poverty alleviation.<sup>27</sup> To ease such political pressure, in 2003, the central government modified its stance that has remained unchanged since 1987, and issued a bold policy encouraging provinces to experiment with tenure reform and forest transfer.<sup>28</sup>

Under the encouragement of the state government, in April 2003, the provincial government of Fujian approved the decision to launch a new round of collective forest tenure reform.<sup>29</sup> According to instructions issued by the Fujian government:

- While the forest land ownership right to forest assets were to be retained by collectives, the forest land use right, timber ownership right and timber use right to forest assets were required to be reallocated to peasant households during this reform;
- Once the above forest rights are allocated to peasant households, they should be duly registered on uniformed forest right certificates designed by the State Forestry Administration; and
- An open, fair and regulated market for the transfer of forest land use right and timber ownership right should be established, and the transfer of the

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<sup>23</sup> 参见《中国林业年鉴》（1987年），中国林业出版社。

<sup>24</sup> 参见《中共中央、国务院关于进一步活跃农村经济的十项政策》，1985年1月1日。

<sup>25</sup> 参见《山林的界碑——中国林权制度改革纪实》，2007年8月17日，载于人民网（<http://nc.people.com.cn/GB/61161/6126109.html>），最后访问于2010年6月11日。

<sup>26</sup> 参见《中共中央、国务院关于加强南方集体林区森林资源管理坚决制止乱砍滥伐的指示》，1987年6月30日。

<sup>27</sup> See, Xu Jintao and Jiang Xuemei, *Collective Forest Tenure Reform in China: Outcomes and Implications*,

<sup>28</sup> 参见《中共中央国务院关于加快林业发展的决定》，2003年12月12日。

<sup>29</sup> 参见《福建省人民政府关于推进集体林权制度改革的意见》，2003年4月4日。

forest rights should be encouraged.

From 2004 to 2006, Jiangxi, Liaoning and Zhejiang started their experiments in reforming the collective forest tenure, modeled on Fujian's experience.<sup>30</sup> Other provinces also gradually participated in the course of the reform. By the end of 2007, 12 provinces have started the new round of collective forest tenure reform.<sup>31</sup>

Although similar in the final goal of the de-collectivization of forest assets, legally speaking, this round of collective forest tenure reform, carried out under the legal framework provided under the *Land Administration Law of the PRC* (1998) and the *Rural Land Contract Law of the PRC* (2002), was significantly different from the 1980s reform under the Three Fixes Policy, in at least the following aspects:

- Most of the provincial governments required the 2/3 majority vote has to be obtained from villagers for carrying out any reform policy;
- Four separate forest rights were created; and except for forest land ownership right, all of the forest rights were reallocated to peasant households;
- The reallocation or redistribution of forest rights was required to be implemented by performing legal contracts entered into by collectives and peasant households;
- A uniformed version of forest right certificates was used, and boundary maps attached to such certificates were required to be more accurately drawn;
- Contract period of forest lands was extended to 30 – 70 years;
- Peasant households were allowed to transfer the forest rights reallocated to them during the reform.

c. National reform of collective forest tenure

Based on experiences of provincial governments, the central government enacted a state policy on the collective forest tenure reform in July 2008, mandating that in about 5 years, the collective forest assets all around the country should be reallocated to individual rural households, and that the contract period of collectively-owned forest lands should be extended to 70 years, the allowed maximum under law.<sup>32</sup>

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<sup>30</sup> 参见《中共江西省委、江西省人民政府关于深化林业产权制度改革的意见》，2004年8月27日；《辽宁省人民政府关于深化集体林产权制度改革的意见》，2005年11月9日。

<sup>31</sup> 参见新华网新闻报道，载于[http://news.xinhuanet.com/fortune/2007-11/30/content\\_7174567.htm](http://news.xinhuanet.com/fortune/2007-11/30/content_7174567.htm)，最后访问于2010年6月19日。

<sup>32</sup> 参见《中共中央国务院关于推进集体林权改革的意见》，2008年7月14日。

The substances of the above state policy are of few differences from those of the provincial policies. However, as a formal endorsement of the collective forest tenure reform carried out since the early 2000s, the enacting of the state policy was considered to have greatly pushed forward the reform on the state level by promising to lift various current institutional limits, such as procedural hurdles related to harvest licensing, lacking of uniformed rules for forest asset transfer, inefficiency in resolving forest disputes, and restraints on mortgage of collectively-owned forest lands, etc.

By the end of 2009, the forest rights to 1.514 billion mu of collectively-owned forest lands have been confirmed during the nationwide reform, among which 75% have been registered and covered by forest right certificates.<sup>33</sup> With respect to supporting measures of the reform, the State Forestry Administration has issued a directive for streamlining the collective forest harvest licensing system,<sup>34</sup> and is now drafting administrative measures for the transfer and registration of forest rights.<sup>35</sup>

## 2. Land History of [●] Forest Farm

- (1) [●] Forest Farm was approved to be established and to acquire forest lands in 1963

In May 1963, the People's Commission of Guangdong Province (广东省人民委员会) approved the establishment of [●] Forest Farm, by ratifying a *Task Report for the Design of [●] Forest Farm of Guangdong Province (Continued Construction)* (《广东省钦廉林场 (续建) 设计任务书》) proposed by the Forestry Department of Guangdong Province (广东省林业厅). This Report provided the purpose, organization, budget, location, business scale, construction plans, etc., of the [●] Forest Farm. Also according to this *Report*, the total area of the [●] Forest Farm would be around 1,030,000 mu upon the completion of its constructions.

For carrying out the design task as approved in the above, in 1964, the Measurement and Survey Team of the Forestry Department of Guangdong

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<sup>33</sup> 参见国家林业局网站新闻报道，载于

<http://www.forestry.gov.cn/ZhuantiAction.do?dispatch=content&id=303242&name=lqgg>，最后访问于

<sup>34</sup> 参见《国家林业局关于改革和完善集体林采伐管理的意见》，2009年7月17日。

<sup>35</sup> 参见《关于举办〈林木和林地权属登记管理办法〉修改研讨会的通知》，载于

<http://www.forestry.gov.cn/portal/slzy/s/1592/content-400276.html>，最后访问于2010年6月19日；以及

《关于征求〈集体林权流转管理办法（征求意见稿）〉等草案修改意见的函》，载于

<http://www.forestry.gov.cn/ZhuantiAction.do?dispatch=content&id=402180&name=lqgg>，最后访问于2010年6月19日。

Province (广东省林业厅测绘大队) drafted a *Design and Planning Chart* (《设计规划版图》), specifying the exterior boundaries of the [●] Forest Farm. Forest lands covered under this *Design and Planning Chart* mainly comprised of those that had been distributed to various production teams (生产队) since the establishment of people's communes (人民公社) in the late 1950s.<sup>36</sup>

In order to acquire those forest lands, the branches of the [●] Forest Farms, such as Wujia (乌家), Shiwan (石湾), Tiantang (天堂), etc., entered into agreements with neighboring production brigades and production teams in the mid of 1960s, under which the production teams agreed to transfer the ownerships of forests to [●] Forest Farm without receiving any compensation. According to our rough review and the introduction of Mr. [●], those agreements have neither maps nor clearly-stated “four corners” describing the status of the transferred forest lands.

According to Mr. [●], the production brigades and production teams mentioned above, and their members of peasant households, generally supported, or at least did not oppose, the establishment of [●] Forest Farm in the 1960s, because most of the forest lands allocated by the government to [●] Forest Farm under the 1963 approval were barren or wasted and without much economic values; furthermore, people at that time tended to be enthusiastic in participating in, and contributing for, the building of a state-owned socialist economy.

## (2) Areas and boundaries of [●] Forest Farm's forest lands are adjusted in 1975

Series of forest land disputes led to the signing of agreements between the [●] Forest Farm and the local production teams in 1975, under which [●] Forest Farm returned the possession of some parcels of forest lands, which are deemed necessities for peasants' living, to the production teams, and redrew some forest land boundaries.

## (3) [●] Forest Farm obtained certificates in the late 1980s and early 1990s

From the late 1980s to the early 1990s, the people's governments on the county/district level issued *Mountain Border and Forest Right Certificates* (山界林权证) to the name of [●] Forest Farm. Basically, the certificates confirmed the forest land use status of [●] Forest Farm after the adjustments in the 1970s, according to Mr. [●].

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<sup>36</sup> In China, the people's communes were formerly the highest of three administrative levels in rural areas during the period of the late 1950s to the 1980s, until they were replaced by townships. Each commune was organized in turn into progressively larger units: production teams, production brigades, and the commune itself. The communes had governmental, political, and economic functions.

On one of those certificates, which we reviewed during our visit to [●] Forest Farm, the boundaries of a parcel of forest land held by [●] Forest Farm are described by both elevation values recorded on the certificate, and a map attached to it. But Mr. [●] admitted that not all of such certificates contain boundary data as accurate as those on the one we reviewed.

In addition, Mr. [●] told us that those certificates do not cover all of the forest lands claimed by [●] Forest Farm, i.e., some of those forest lands are operated and managed by [●] Forest Farm under the agreements signed in 1960s and 1970s, for which no certificates have ever been issued. But Mr. [●] is unable to provide us with the exact number of the total area of such forest lands.

#### (4) Current status of [●] Forest Farm

[●] Forest Farm is now existing and organized as an “institutional unit managed as an enterprise” (“企业化管理的事业单位”) under the direct administration of the Guangxi Forestry Bureau. It asserts that it has the forest land use right to about 880,000 mu of forest lands, including those already handed over to OUR COMPANY. Among those forest lands, [ ] mu are unable to be operated by [●] Forest Farm or OUR COMPANY, due to reasons of ownership disputes, or blockings or obstructions caused by third parties.

According to Mr. Wang Zongixa, the above disputes, blockings or obstructions are caused by the following reasons: (i) peasants have been eager to profit from agricultural lands, including forest lands, ever since the establishment of the household responsibility system; (ii) recent years have witnessed the sharp rise in land values and prices, especially after the large-scale plantings of fruits and eucalyptus were introduced in Guangxi in 1990s and 2000s, respectively; (iii) there no longer exists the enthusiasm for the support of state-owned forest farms, since those forest farms have been considered by local peasants as serving solely the interests of a few forest farm staff and officials; and (iv) [●] Forest Farm itself has not done well in the management and operation of forestry assets, causing parcels of forest lands to lie waste.

### 3. Transfer of Forest Assets from [●] Forest Farm to OUR COMPANY

#### (1) Transfer Agreements

Since 2003, [●] Forest Farm has already handed over to OUR COMPANY the possession of [ ] mu of forest lands under the *Forest Land Rental Contract* (“**Contract 0682**”) and other agreements, and the ownership of [ ] mu of existing plantations under the Existing Plantation Purchase Contract (“**Contract 1026**”) and other agreements.

#### (2) Rights Obtained by OUR COMPANY under Transfer Agreements

First, in accordance with Contract 0682, OUR COMPANY has obtained the contractual management right (承包经营权) to the above forest lands. By exercising such right, OUR COMPANY may occupy, use, and enjoy the fruits of those forest lands, but may not transfer or collateralize them. Such right is in essence an obligee's right (债权), rather than a real right (物权), since (i) it is subject to a legal relationship between two parties, and (ii) it does not confer the legal power to dispose of the concerned property. Therefore, while OUR COMPANY has obtained the contractual management right to the above forest lands under Contract 0682, [●] Forest Farm is still holding the forest land use right to those forest lands.

Second, in accordance with Contract 1026, OUR COMPANY should have obtained from the [●] Forest Farm the full ownership right to the above existing plantations, without any restrictions. However, up to present, such ownership right has not been properly registered with local governments, due to Guangxi's lacking of a unified forest right registration system for state-owned forest assets.

Third, OUR COMPANY should be considered to have obtained the ownership right to plantations established by itself on the above forest lands, even such ownership right has not been registered with local governments, since under the *Real Right Law* (《物权法》), the act of establishing plantations should be deemed as a "factual behavior" to create a real right for the one who has actually conducted such behavior.<sup>37</sup>

#### **4. Ownership Disputes over Forest Lands**

##### (1) Circumstances under which ownership disputes may arise

Based on state and Guangxi regulations and our experiences, if both [●] Forest Farm and a third party claim that they have the ownership right or use right to a certain piece of forest land, then ownership disputes over [●] Forest Farm's forest lands may arise under the following circumstances:

- a. Both parties are holding certificates, agreements, government approvals or other documents evidencing their forest land ownership right or forest land use right, and forest land boundaries under such legal documents are the same, or overlap with each other;
- b. Only one of the two parties is holding certificates, agreements, government approvals or other documents evidencing its forest land ownership right or forest land use right, but boundaries recorded on such documents are not clear, or are not recorded at all, causing it unable to determine whether the forest land concerned is within the

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<sup>37</sup> See Article 30 of the Real Right Law of the People's Republic of China.

area under such documents; or

- c. Neither of the two parties is holding any certificates, agreements, government approvals or other documents evidencing their forest land ownership right or forest land use right.

In accordance with Guangxi regulations, only when at least one of the disputing parties is able to submit legal documents evidencing its rights to forest lands, will the local governments entertain the application for resolving an ownership dispute.<sup>38</sup> Under such regulations, the government will only intervene and resolve ownership disputes under the above circumstances a and b, upon requests of the parties. This might be a legal flaw, as it will cause some of the ownership disputes unable to be resolved at all, no matter in any way, if neither parties are in possession of any legal documents. We will have to further investigate on how such regulations are being actually implemented in Guangxi.

In addition, according to Mr. [●], among all the forest lands handed over to OUR COMPANY by [●] Forest Farm, only two parcels of such forest lands are involved in ownership dispute cases that have been actually accepted by government authorities. The total are of these two parcels is less than 600 mu.

- (2) Ownership disputes could affect the business operations of [●] Forest Farm and OUR COMPANY

If ownership disputes arise between [●] Forest Farm and the local villagers/collectives, such disputes could affect [●] Forest Farm or OUR COMPANY's business operations, since the local villagers/collectives often occupy the disputed forest lands.

Even if the local villagers/collectives do not occupy such forest lands, none of [●] Forest Farm, OUR COMPANY, or the local villagers/collectives will be allowed to change the status quo of such forest lands under law, provided that the dispute is already submitted to and accepted by the government, and no reconciliation agreement has been reached between the disputing parties, or no ruling has been made by the government.

- (3) Typical cases of ownership disputes between [●] Forest Farm and local villagers/collectives

According to Mr. [●] and Mr. [●], in typical cases of ownership disputes between [●] Forest Farm and local villagers/collectives, the latter usually make their claims of [●] Forest Farm's forest lands based on their land certificates, agreements or other documents that took effect before the establishment of [●] Forest Farm in 1963, such as land certificates issued by the people's governments during the Land Reform in the 1940s and 1950s, and certificates, resolutions, decisions or other documents issued in 1962 for confirming rural collectives' ownership right to, or

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<sup>38</sup> 《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 21 条第 2 款。

individual peasants' use right to arable land or forest land, during the "Period of Allocation of Four Types of Assets" (四固定时期), including labor, land, livestock, and farming utensils.

Generally speaking, in the above typical cases, it is probable that governments and courts will rule in favor of [●] Forest Farm, due to the following reasons.

- a. The ownership of disputed forest lands has been transferred to the state under law

In China, the procedures for the expropriation of collectively-owned lands have never been established until May 1982.<sup>39</sup> To maintain and stabilize the historical land use status, the state government enacted a regulation in 1995, providing that during the period of September 1962 to May 1982, if governments on the county level or above approved a state-owned forest farm's use of collectively-owned lands, or the state-owned forest farm entered into an agreement with production teams for the transfer of collectively-owned lands, the ownership of such lands shall be deemed as having been transferred from collectives to the state upon the effectiveness of such approval or agreement,<sup>40</sup> even if the state and the concerned collectives have not gone through the expropriation procedures.

Therefore, under state regulations, the abovementioned People's Commission of Guangdong Province's ratification of the *Task Report for the Design of [●] Forest Farm of Guangdong Province (Continued Construction)*, and the agreements entered into between [●] Forest Farm and production teams in the 1960s and 1970s, are all legal and valid instruments under which the ownership of the originally collectively-owned forest lands has been transferred to the state.

Upon the above transfer of ownership, the land certificates or land agreements held by local villagers/collectives, which were issued or signed before 1963 certifying their forest land ownership right, should all be deemed null and void, since they have lost their ownership of lands by way of such transfer. Hence, the local villagers/collectives' claims for ownership of the disputed forest lands are without legal grounds.

- b. [●] Forest Farm is legally holding the forest land use right to disputed forest lands

First, also according to the government approval in 1963 and/or the 1960s or 1970s agreements concluded by [●] Forest Farm and various Production Teams, and under the *Mountain Border and Forest Right Certificates* issued to [●] Forest Farm in the late 1980s and early 1990s, [●] Forest Farm is the only party that may legally use the disputed forest land, which is determined by the government and agreed by local production teams.

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<sup>39</sup> 《国家建设征用土地条例》由国务院于 1982 年 5 月 14 日公布实施。

<sup>40</sup> 《国家土地管理局关于印发〈确定土地所有权和使用权的若干规定〉的通知》第 16 条第 2 款。

Second, after 1970s, [●] Forest Farm has never concluded any agreements granting others the forest land use right to the disputed forest lands. Hence, [●] Forest Farm has not transferred the forest land use right to the disputed forest land to any third parties.

Therefore, under law, [●] Forest Farm is the holder of the forest land use right to the disputed forest lands at present. The local villagers/collectives' claims for the forest land use right to the disputed forest lands are also without legal grounds.

- c. The boundaries of the disputed forest land can be confirmed by descriptions on certificates or by taking reference to Class II Survey data

In accordance with Guangxi regulations, the boundaries and areas recorded on certificates, agreements, contracts, government decisions, or other legal instruments, shall be used to determine the actual boundaries and areas of the disputed forest lands, during the handling of ownership dispute cases by governments. If there are no clearly stated boundaries or areas contained in the above legal instruments, the Class II Survey data shall be taken **as reference** for determining the actual boundaries and areas of the disputed forest lands.<sup>41</sup>

As discussed above, for parts of the forest lands under [●] Forest Farm's operation and management, [●] Forest Farm has obtained the *Mountain Border and Forest Right Certificates*, on which the boundaries and areas are clearly recorded; but for some other forest lands, no accurate boundaries are recorded on the certificates, or no certificates have been issued at all. But for all of the forest lands under its operations, [●] Forest Farm has acquired the Class II Survey data of 1988, 1999 and 2004 from the Guangxi Forest Inventory and Planning Institute (广西林业勘测设计院).

Therefore, under the above Guangxi regulations, during the resolution of ownership disputes, local governments shall first take the boundaries and areas recorded on the certificates held by [●] Forest Farm to determine the actual boundaries and areas of the disputed forest lands; and if no clear information can be obtained from the certificates, the local governments shall then take as reference the Class II Survey data provided by [●] Forest Farm for determining the actual boundaries and areas of the disputed forest lands.

Although we think the government will be likely to rule in favor of [●] Forest Farm in the above typical cases, detailed and further analyses will still be needed to determine the possible outcomes of specific cases.

#### (4) Procedures for resolution of ownership disputes

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<sup>41</sup> 《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 10 条、第 11 条与第 15 条。

In Guangxi, the procedures for the resolution of ownership disputes over forest lands are complicated and lengthy, and may involve the review and ruling procedures by governments and courts at several different levels, before the disputes are finally settled. According to Mr. [●], the whole process for resolving ownership disputes may last for about two to three years.

Generally speaking, the procedures for the resolution of ownership disputes involving state-owned forest farms as parties include the following basic steps:

- a. Mediation between the disputing parties by a government on the township level;<sup>42</sup>
- b. Ruling by the government on the county (district) or municipality level, if the disputing parties fail to reach an agreement during the mediation;<sup>43</sup>
- c. Reconsideration decision (复议决定) made by the government on the municipality or the Autonomous Region level, if any or both of the disputing parties file applications for reconsideration of the lower government's ruling;<sup>44</sup>
- d. First instance judgment made by the court on the county (district) or municipality level, if any or both of the disputing parties bring a lawsuit against the government's reconsideration decision;<sup>45</sup>
- e. Second instance judgment made by the court on the municipality level or by the High People's Court of Guangxi Zhuang Autonomous Region, if any or both of the disputing parties appeals against the first instance judgment;<sup>46</sup>
- f. Retrial judgment (再审判决) made by the court on the municipality level, or by the Higher People's Court of Guangxi, if either or both of the disputing parties file application for retrial against the second instance judgment, and the court on the municipality level, or the High Court of Guangxi decides to accept such application.<sup>47</sup>

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<sup>42</sup> 《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 18 条第 1 项。

<sup>43</sup> 《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 18 条第 2 项。

<sup>44</sup> 《行政复议法》第 12 条、第 13 条，《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 32 条。

<sup>45</sup> 《行政诉讼法》第 13 条、第 17 条，《广西壮族自治区土地山林水利权属纠纷调解处理条例》第 32 条。

<sup>46</sup> 《行政诉讼法》第 58 条。

<sup>47</sup> 《行政诉讼法》第 62 条、第 63 条。

In addition, in the above steps d, e or f, if the judiciary renders an effective judgment against a government's ruling or reconsideration decision, then the steps a, b and/or c will have to be performed again by the governments, since under law, the judiciary may only affirm or repeal a government's ruling, or order the government to make a new one, but does not have the power to directly revise a government's ruling in its substances.

#### (5) Enforcement of rulings on ownership disputes

Under law, the government may apply to the court to enforce the ruling on the ownership dispute,<sup>48</sup> if any of the disputing parties:

- a. does not obey the government's ruling on an ownership dispute (the above step b), nor request the government to reconsider such ruling (the above step c) within 60 working days upon the making of such ruling;<sup>49</sup> or
- b. does not obey the government's reconsideration decision (the above step c), nor bring a lawsuit against such reconsideration decision within 15 days (not working days) upon the making of such reconsideration decision.<sup>50</sup>

Besides, if the government fails to apply to the court to enforce a ruling on an ownership dispute within 180 days, the party whom the above ruling favors may apply by itself to the court to enforce such ruling within 90 days upon the expiration of 180 days period.<sup>51</sup>

Therefore, if a government on the township or county level has ruled in favor of the [●] Forest Farm on an ownership dispute, and the local villagers/collectives neither carry out nor appeal against the ruling within a certain time period, then [●] Forest Farm may request the government to apply to the court, or apply to the court on its own if the government fails to do so within 180 days, for enforcing such ruling.

## 5. Infringements of Legal Rights to Forest Lands

Provided that on a certain piece of forest land, there does not exist any of the circumstances under which the ownership dispute may arise between [●] Forest Farm and the local villagers/collectives as those discussed in Section 4 (1), i.e., [●] Forest Farm has legal documents clearly demonstrating its forest land use right

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<sup>48</sup> 《行政诉讼法》第 66 条、《最高人民法院关于执行〈中华人民共和国行政诉讼法〉若干问题的解释》第 88 条。

<sup>49</sup> 《行政复议法》第 9 条。

<sup>50</sup> 《行政诉讼法》第 38 条第 2 款。

<sup>51</sup> 《最高人民法院关于执行〈中华人民共和国行政诉讼法〉若干问题的解释》第 88 条、第 90 条。

and the boundaries of the forest lands, and no third party has any legal document demonstrating all or part of the same. However, the local villagers/collectives still occupy such piece of forest land, or prevent [●] Forest Farm or OUR COMPANY from carrying out normal business operations on such piece of forest land. Under such circumstances, the local villagers/collectives' acts of occupation and/or prevention should be deemed as infringements of the [●] Forest Farm and/or OUR COMPANY's legal rights to such piece of forest land, and [●] Forest Farm and/or OUR COMPANY may take remedies available under law to rectify such infringements.

A table is set for the below to summarize the different categories of infringing acts, and the corresponding remedies that [●] Forest Farm and/or OUR COMPANY may seek to rectify such infringements.

No.	Villagers/collectives' infringing acts	Legal rights being infringed by villagers/collectives	Available remedies for rectifying the infringing acts
1.	Occupation of [●] Forest Farm's forest lands managed and operated by OUR COMPANY, but no actual harm is caused to OUR COMPANY's timbers.	<ul style="list-style-type: none"> <li>➤ [●] Forest Farm's forest land use right;</li> <li>➤ OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of forest lands;</li> <li>➤ OUR COMPANY's timber ownership right.</li> </ul>	<p>(1) <b>A lawsuit demanding the infringing party to assume civil liabilities</b> – [●] Forest Farm and/or OUR COMPANY may bring a lawsuit requesting the court to order the infringing party to cease the infringing act (停止侵害), return the original object (返还原物), remove the impediment (排除妨碍) and/or compensate for the losses.<sup>52</sup></p> <p>(2) <b>A report to the local police requesting punishments against the infringing party</b> – [●] Forest Farm and/or OUR COMPANY may report to the local police, requesting the said authority to detain the infringing party for less than 15 days, and/or impose a fine of less than RMB 1,000.<sup>53</sup></p>
2.	Planting of timbers on [●] Forest Farm's forest lands managed and operated by OUR COMPANY, but no actual harm is caused to OUR COMPANY's timbers.	<ul style="list-style-type: none"> <li>➤ [●] Forest Farm's forest land use right;</li> <li>➤ OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of</li> </ul>	Ditto

<sup>52</sup> 《民法通则》第 117 条、《物权法》第 34 条至第 37 条和/或《侵权责任法》第 2、3、6、15 条。

<sup>53</sup> 《治安管理处罚法》第 26 条第 3 项、《森林法》第 20 条、《公安部关于印发〈公安机关执行〈中华人民共和国治安管理处罚法〉有关问题的解释〉的通知》第 10 项。

		<p>forest lands; OUR COMPANY's timber ownership right.</p> <p>➤ [●] Forest Farm's forest land use right; OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of forest lands; OUR COMPANY's timber ownership right.</p>	<p>(1) The same two remedies in the above Part No.1 of this table.</p> <p>(2) <b>A report to the forestry bureau requesting prevention of the infringing act, and punishments against the infringing party</b> – [●] Forest Farm and/or OUR COMPANY may report to the forestry on the county level or above, requesting the said authority to prevent the infringing act, order the infringing party to restore the original state of the forest lands concerned, and impose on the infringing party of a fine of RMB 10/m<sup>2</sup>.<sup>54</sup></p>
3.	<p>Planting of <b>crops other than timbers</b> on [●] Forest Farm's forest lands managed and operated by OUR COMPANY, but no actual harm is caused to OUR COMPANY's timbers.</p>	<p>➤ [●] Forest Farm's forest land use right; OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of forest lands; OUR COMPANY's timber ownership right.</p>	<p>(1) The first remedy in the above Part No.1 of this table.</p> <p>(2) <b>A report to the forestry bureau or the forestry police requesting prevention of the infringing act, and punishments against the infringing party</b> – [●] Forest Farm and/or OUR COMPANY may report to the forestry bureau on the county level or above or the forestry police, requesting the said authority to prevent the infringing act, order the</p>
4.	<p>Planting of <b>crops other than timbers</b>, building of kilns, tombs or houses, digging of sand, stones or soils, mining, piling of wastes, or other non-forestry production or construction activities on [●] Forest Farm's forest lands managed and operated by OUR COMPANY, and actual harm has been caused to OUR COMPANY's timbers by such activities.</p>	<p>➤ [●] Forest Farm's forest land use right; OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of forest lands; OUR COMPANY's</p>	<p>(1) The first remedy in the above Part No.1 of this table.</p> <p>(2) <b>A report to the forestry bureau or the forestry police requesting prevention of the infringing act, and punishments against the infringing party</b> – [●] Forest Farm and/or OUR COMPANY may report to the forestry bureau on the county level or above or the forestry police, requesting the said authority to prevent the infringing act, order the</p>

<sup>54</sup> 《森林法实施条例》第 41 条第 2 款。

		<p>timber ownership right.</p>	<p>infringing party to replant timbers of 1 – 3 times of the amount of the damaged timbers, and impose a fine of 1 - 5 times of the value of the damaged timbers;<sup>55</sup> may also request the forestry police to detain the infringing party for less than 15 days,<sup>56</sup> and prosecute for the infringing party’s criminal liabilities if the damaged forests (if not shelter forests or other special-purpose forests) cover an area larger than 10 mu.<sup>57</sup></p>
<p>5.</p>	<p>Cutting of OUR COMPANY’s timbers planted on [●] Forest Farm’s forest lands.</p>	<ul style="list-style-type: none"> <li>➤ [●] Forest Farm’s forest land use right;</li> <li>➤ OUR COMPANY’s contractual right to occupy, use, and enjoy the fruits of forest lands;</li> <li>➤ OUR COMPANY’s timber ownership right.</li> </ul>	<p>(1) The first remedy in the above Part No.1 of this table.  (2) <b>A report to the forestry bureau or the forestry police requesting prevention of the infringing act, and punishments against the infringing party – OUR COMPANY and/or [●] Forest Farm</b> may report to the forestry bureau on the county level or above or the forestry police, requesting the said authority to order the infringing party to replant timbers of 10 times of the amount of the timbers that have been illegally cut, confiscate any gains from the selling of the illegally-cut timbers, impose a fine</p>

<sup>55</sup> 《森林法》第 44 条。

<sup>56</sup> 《治安管理处罚法》第 49 条。

<sup>57</sup> 《最高人民法院关于审理破坏林地资源刑事案件具体应用法律若干问题的解释》第 1 条第 2 项。

	<p>of 3 - 10 times of the value of the timbers that have been illegally cut,<sup>58</sup> and prosecute for the infringing party's criminal liabilities if the volume of the illegally-cut timbers exceed 2 m<sup>3</sup>.<sup>59</sup></p>	<p>(1) The first remedy in the above Part No.1 of this table.  <b>(2) A report to the local police requesting prevention of the infringing act, and punishments against the infringing party</b> – OUR COMPANY may report to the local police, requesting the said authority to detain the infringing party for less than 15 days, and/or impose on the infringing party a fine of less than RMB 1,000,<sup>60</sup> and prosecute for the infringing party's criminal liabilities, if (i) the value of the damaged equipment exceeds RMB 5,000 before the damage; (ii) the infringing party has damaged OUR COMPANY's equipment for more than three times; and/or (iii) the infringing party comprises of more than three natural persons.<sup>61</sup></p>	<p>(1) The first remedy in the above Part No.1 of this table.  <b>(2) A report to the local police requesting prevention</b></p>
<p>6.</p>	<p>Damage of OUR COMPANY's vehicles, machines or other equipment used for operations.</p>	<ul style="list-style-type: none"> <li>➤ OUR COMPANY's contractual right to occupy, use, and enjoy the fruits of forest lands;</li> <li>➤ OUR COMPANY's titles to its property other than timbers.</li> </ul>	
<p>7.</p>	<p>Gathering of people to disturb or prevent OUR COMPANY's business operations such as planting,</p>	<ul style="list-style-type: none"> <li>➤ OUR COMPANY's contractual right to</li> </ul>	

<sup>58</sup> 《森林法》第 39 条。

<sup>59</sup> 《最高人民法院于审理破坏森林资源刑事案件具体应用法律若干问题的解释》第 4 条、第 6 条。

<sup>60</sup> 《治安管理处罚法》第 26 条第 3 项、《公安部关于印发〈公安机关执行〈中华人民共和国治安管理处罚法〉有关问题的解释〉的通知》第 10 项。

<sup>61</sup> 《最高人民法院、公安部关于公安机关管辖的刑事案件立案追诉标准的规定（一）》第 34 条。

	cutting, transportations, etc.	occupy, use, and enjoy the fruits of forest lands.	<p><b>of the infringing act, and punishments against the infringing party – OUR COMPANY</b> may report to the local police, requesting the said authority to detain the infringing party for less than 15 days, and/or impose on the infringing party a fine of less than RMB 1,000,<sup>62</sup> and prosecute for the infringing party’s criminal liabilities if the infringing act of disturbing or prevention of business operations has caused severe losses to OUR COMPANY.<sup>63</sup></p>
8.	Damage, stealing, and/or looting of OUR COMPANY’S timbers that have already been cut.	<p>➤ OUR COMPANY’S titles to its timbers that have already been cut (deemed as movable property under law).</p>	<p>(1) The first remedy in the above Part No.1 of this table.  (2) <b>A report to the local police requesting prevention of the infringing act and punishments against the infringing party – OUR COMPANY</b> may report to either the forestry or the local police, requesting the said authority to detain the infringing party for less than 15 days, and/or impose on the infringing party a fine of less than RMB 1,000,<sup>64</sup> and prosecute for the infringing party’s criminal liabilities if (i) the</p>

<sup>62</sup> 《治安管理处罚法》第 26 条第 3 项、《公安部关于印发〈公安机关执行〈中华人民共和国治安管理处罚法〉有关问题的解释〉的通知》第 10 项。

<sup>63</sup> 《刑法》第 290 条。

<sup>64</sup> 《治安管理处罚法》第 26 条第 3 项、《公安部关于印发〈公安机关执行〈中华人民共和国治安管理处罚法〉有关问题的解释〉的通知》第 10 项。

			<p>value of the damaged timbers exceeds RMB 5,000 before the damage;<sup>65</sup> (ii) the value of the stolen timbers exceeds RMB 500 – RMB 800;<sup>66</sup> or (iii) the value of the timbers having been looted exceeds 5 m<sup>3</sup>.<sup>67</sup></p>
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<sup>65</sup> 《最高人民法院、公安部〈关于公安机关管辖的刑事案件立案追诉标准的规定（一）〉》第 33 条。

<sup>66</sup> 《广西壮族自治区高级人民法院、广西壮族自治区人民检察院、广西壮族自治区公安厅〈关于盗窃数额认定标准的规定〉》。

<sup>67</sup> 《最高人民法院关于审理破坏森林资源刑事案件具体应用法律若干问题的解释》第 14 条。

## 6. Special policy issued by Guangxi Government related to Hongchaojiang Reservoir

When the Hongchaojiang Reservoir was being constructed in 1964, the state allocated the lands within the reservoir area to [●] Forest Farm for its development of forestry. But some of the residents living in the reservoir area (“**Relocated Residents**”) did not follow the requirement of the state to relocate to settlements outside, but continued to live and reside on the forest lands within the reservoir area for past decades. Those Relocated Residents have been leading an impoverished life due to their possession of only a few arable lands, and occasionally clash with [●] Forest Farm due to disputes related to forests and timbers.

In order to improve those Relocated Residents’ living conditions, the Autonomous Region Government issued the *Notice for the Distribution of the Investigation Report Regarding Historical Problems Related to the Relocation of Residents Due to the Construction of the Hongchaojiang Reservoir* (Gui Zheng Ban Fa (2000) No. 189) (“**Relocation Policy**”) in 2000, and formulated several solutions for handling disputes and conflicts between the Relocated Residents and the [●] Forest Farm. Those solutions are worth mentioning in this Report for our proposed plan.

### (1) Contracting-out of forest lands to Relocated Residents

Following the Relocation Policy, [●] Forest Farm should contract out forest lands satisfying the following conditions to Relocated Residents for a period of not less than 30 years, while charging them only a little contracting fee or nothing at all and **maintaining the ownership right, the use right, and the land use purpose unchanged**, based on the standard that each of the Relocated Residents should have 6 mu to 8 mu of land (including arable land, dry land, and forest land):

- a. The forest land use right to such forest lands have already been registered to the name of [●] Forest Farm on the Mountain Boundary and Forest Right Certificate (山界林权证书) or other certificates; and
- b. Such forest lands are surrounding the settlements of the Relocated Residents.

Still following the Relocation Policy, with regard to the procedure aspect, the contracting-out of those forest lands should be planned by both the local people’s governments and the [●] Forest Farm, and be subject to the approval of the Forestry Bureau of the Autonomous Region, before it may be carried out.<sup>68</sup> Due to this procedural requirement, any of the Relocated Residents demanding the transfer of possession of any parcel of forest land from the [●] Forest Farm has to get approvals or consents from three parties: a county-level people’s government, [●] Forest Farm, and the Forestry Bureau of the Autonomous Region. In practice, getting those approvals or consents is obviously quite difficult for a Relocated Resident.

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<sup>68</sup> 参见移民政策第三部分第一项第(一)点。

(2) Correction of registered land boundaries and reissue of certificates

In accordance with the Relocation Policy, if the land boundaries registered on any of the Mountain Border and Forest Right Certificate issued to [●] Forest Farm were not surveyed and checked on field, and hence cause confusions and disputes, then the local people's governments should organize relevant departments to line out parcels of land necessary for the subsistence of the Relocated Residents, check the boundaries of such parcels on field, and reissue the Mountain Border and Forest Right Certificate.

In addition, with respect to procedures, the above lining out of the parcels of land and the reconfirmation of the land boundaries involve **the transfer of state-owned forest assets without any consideration**, and are subject to the review and approval of the People's Government of the Autonomous Region, before they may be carried out.

The above reissue of the Mountain Border and Forest Right Certificate is an administrative behavior of the local people's government, and a "correction registration" ("更正登记") of items erroneously registered on original certificates. Therefore, under the *Real Right Law of the PRC*, the *Measures for the Administration of Timber and Forest Land Tenure Registration* (《林木和林地权属登记管理办法》), and other effective laws and regulations at present, the registration authority, i.e., the local people's government, may only conduct such correction registration upon the fulfillment of all of the following conditions:

- a. The registered right holder ([●] Forest Farm) or the interested party (Relocated Residents or their collectives) considers that the registered items (land boundaries, etc.) are in error;
- b. The registered right holder ([●] Forest Farm) or the interested party (Relocated Residents or their collectives) have already filed an application to the registration authority (the county-level people's government) for correcting the registered items in error; and
- c. The registered right holder ([●] Forest Farm) has consented to the correction in writing, or the interested party (Relocated Residents or their collectives) has proof to demonstrate that the registered items are in error.<sup>69</sup>

Based on the above legal requirements, for implementing the Relocation Policy for the correction of land boundaries and reissue of certificates, the county-level government may only carry out the correction **upon the request** of the registered right holder or the interested party, but may not initiate such correction **on its own**.

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<sup>69</sup> 《物权法》第 19 条、《林木和林地权属登记管理办法》第 17 条。

In addition, a condition for such correction is that the Relocated Residents or their collectives should have proof of the errors, or that the [●] Forest Farm has consented to the correction of the land boundaries.

Hence, if a Relocated Resident intends to obtain forest land use right to certain parcel of forest land through the correction of land boundaries and the reissue of certificates, he or she should not only file an application, but also obtain the [●] Forest Farm's consent for making such correction, or bear the burden of proof for demonstrating that the land boundaries are actually in error. Additionally, under the Relocation Policy, the county-level people's government will reissue the Mountain Border and Forest Right Certificate, with the land boundaries corrected, only upon approval by the People's Government of the Autonomous Region.

It is very rare that the Relocated Residents possess any written proof of the errors or defects contained in Mountain Border and Forest Right Certificates issued during the "Three Fixes Period". Under current circumstances, it is also very unlikely that any of the Relocated Residents will be able to obtain the [●] Forest Farm's consent for changing the land boundaries. Consequently, it is also very difficult for Relocated Residents to obtain forest land use right in this way in the local practice.

### (3) Confirmation of titles to unregistered forest land

Under the Relocation Policy, for any parcel of land for which no certificate has been issued and no title or use right has been confirmed, the local governments should clearly confirm that such parcel of land is owned by the local rural collectives, and should be operated and managed by the collectives of the Relocated Residents.

### (4) Law enforcement against illegal occupation of forest land

Still under the Relocation Policy, as for land (including forest land) illegally occupied by Relocated Residents living around [●] Forest Farm, local people's governments should conduct a clear-up investigation, make registration of such land, and require relocated residents to return the possession of such land to [●] Forest Farm within a specified period of time.

### (5) Implementation status of the Relocation Policy

According to Mr. [●], in carrying out the Relocation Policy, the People's Government of Lingshan County and [●] Forest Farm established a joint working group to conduct an in-depth investigation at the settlements of Relocated Residents, and laid down a detailed plan for [●] Forest Farm's contracting-out of forest land to Relocated Residents, based on the standard that each of those Relocated Residents should have access to 6 mu to 8 mu of forest land. The plan required [●] Forest Farm to contract out a total area of about 10,000 mu of forest land, and was approved by the Forestry Department of the Autonomous Region after it was jointly submitted by the People's Government of Lingshan County and

the [●] Forest Farm.

However, during the implementation of the above plan, because the actual area of [●] Forest Farm's forest land occupied and used by Relocated Residents was highly above 10,000 mu, the Relocated Residents generally refused to accept the plan, and continued to occupy [●] Forest Farm's forest land without the latter's authorization. The above joint working group hence had no choice but to halt the work for the contracting-out of forest land to Relocated Residents.

(6) Experiences drawn from the Relocation Policy

The provisions and the formulation process of the Relocation Policy may provide the following experiences for OUR COMPANY.

a. Form of solutions

In our report proposed to be submitted to the People's Government of the Autonomous Region, we may request the People's Government of the Autonomous Region to draft a regulating document with structures similar to those of the Relocation Policy. Specifically, we may request the government to issue a notice providing the solutions for resolving disputes and conflicts related to forest land based on our suggestions, and also providing the requirement that the Forestry Department of the Autonomous Region and local governments on all levels should thoroughly implement such solutions.

b. Solutions in favor of local residents

We may conclude from the text of the Relocation Policy that the People's Government of the Autonomous Region is not partial to the state-owned forest farms in its past experiences of resolving disputes between a state-owned farm and local residents, but creates solutions under which the state-owned farm is required to abandon some of its forest resources for enhancing local residents' interests. It is possible that this principle will still set the tone for the government's future policy in resolving disputes and conflicts to which a state-owned forest farm is a party.

c. Contracting-out of forest lands and correction of land boundaries

Provided that the above principle of enhancing the local residents' interests will be adopted by OUR COMPANY, then the contracting-out of forest lands to Relocated Residents, and the reconfirmation of the land boundaries, which are two methods contained under the Relocation Policy and difficult to be carried out in practice without [●] Forest Farm's support, may still be considered effective means for mitigating disputes, and for bringing reconciliation to conflicting parties.

Of those two means, the contracting-out of the forest lands could be arranged as avoiding the transfer of any state-owned forest assets, and compensating local residents' investments and labor only after timbers are cut and sold. Hence,

compared to the correction of land boundaries and the reissue of certificates involving the transfer of state-owned assets, the approval procedures of the contracting-out of forest lands will be simpler and easier. Furthermore, such contracting-out of forest lands will not decrease the amount of assets proposed to be transferred to the Forestry Group, and therefore will be more practical for both our Chinese partners and us.

d. OUR COMPANY must get support from various parties

Based on both the provisions and the implementation status of the Relocation Policy, we may conclude that it is the local governments and [●] Forest Farm that will be in charge of the detailed implementation of any solution of forest land disputes and conflicts. Besides, we may also see that the implementation of any of such solutions is subject to the approval of the Forestry Department or even the People's Government of the Autonomous Region. Therefore, provided that OUR COMPANY adopts the principle of giving up some of the forest resources for enhancing the local residents' interests, and proceeds to suggest measures such as the contracting-out of forest lands, or the correction of land boundaries and reissue of certificates, it must above all obtain support from all the parties mentioned earlier, as well as from the Forestry Group. Otherwise, any solutions and measures will only be staying on paper in the implementation process.