

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 6347 / November 20, 2018

Administrative Proceeding
File No. 3-17886

In the Matter of

**China Biopharma, Inc.,
China Linen Textile Industry,
Ltd.,
China Water Group, Inc.,
Scout Exploration, Inc., and
Teryl Resources Corp.**

Order Regarding Service

The Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents on March 21, 2017. Only China Linen Textile Industry, Ltd., which has not been served with the OIP, remains in the proceeding.¹ According to the OIP, China Linen is a Cayman Islands corporation located in China. The Division of Enforcement reported that the Commission's Office of International Affairs has been attempting to serve the OIP on China Linen through the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *done* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, *available at* <https://assets.hcch.net/docs/f4520725-8cbd-4c71-b402-5aae1994d14c.pdf>. That process is still pending.

¹ On July 11, 2017, the Commission issued a notice that the initial decision revoking the registrations of the registered securities of the other four Respondents had become final. *China Biopharma, Inc.*, Securities Exchange Act of 1934 Release No. 81127, 2017 SEC LEXIS 2063; *see China Biopharma, Inc.*, Initial Decision Release No. 1127, 2017 SEC LEXIS 1253 (ALJ Apr. 27, 2017). The Commission did not order further proceedings as to those Respondents in its order of August 22, 2018.

On October 9, 2018, the Division stated its intention to move for default under Article 15 of the Hague Convention “based on the failure of the Chinese Ministry of Justice, the China Hague Authority, to provide a certificate of service or delivery within six months of the delivery of the [OIP] on June 4, 2017.” I have concerns about the Division’s proposal. According to Article 15, where a document had to be transmitted abroad for the purpose of service and the defendant did not appear, a judgment cannot be given unless it is established that the document was served by a prescribed state method or that it was actually delivered to the person or to his residence by another method provided for in the Convention. Hague Convention, art. 15. However, a contracting state may provide that a default judgment can be rendered if no certificate of service or delivery has been received if (a) the document was transmitted by a method provided for in the Convention; (b) a minimum of six months has elapsed since the date of transmission; and (c) no certificate of any kind has been received even though every reasonable effort has been made through competent state authorities. *Id.*

Deciding whether the requirements of Article 15 have been met appears awesome. It might be wiser to achieve service on an “agent authorized by appointment or law to receive” notice under 17 C.F.R. § 201.141(a)(2)(ii) using a method that accords with the Commission’s Rules of Practice without implicating considerations of international relations and comity. China Linen’s last annual report, available in the Commission’s EDGAR database, provides two potential agents for service. The report gives the name and address of China Linen’s “registered office” in the Cayman Islands and of China Linen’s “agent for service of process in the United States.” China Linen Textile Industry, Ltd., Annual Report for Fiscal Year Ended Dec. 31, 2011 (Form 20-F) at 26 (filed Feb. 21, 2012). While that report was filed more than six years ago, it is worth attempting to reach out to those entities to determine whether they still serve as agents for China Linen and whether they have more current information about China Linen. Other filings in the EDGAR database contain email addresses for officer and directors of China Linen that may still be active. It is also possible that the Cayman Islands corporation registry has more up-to-date information on China Linen.

If neither agent is still active, but the Division’s inquiries uncover an email address or a physical address for China Linen that is not in China, I would entertain a request that I order service by an alternative method “not prohibited by international agreement.” 17 C.F.R. § 201.141(a)(2)(iv)(D); *see, e.g., Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (collecting cases on various alternatives, including email). The Division would have to show that its proposed alternative method satisfies due

process. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950).

The Rules of Practice do not expressly authorize a default under Article 15 and do not contain any express provision to deem service effective or waive the service or notice requirements in these circumstances. *See, e.g.*, 17 C.F.R. §§ 201.141(a)(2), .155(a), .200(a)(1). If the Division's further attempts to serve China Linen are unsuccessful and it seeks to pursue a motion for default under Article 15, I would, of course, address the motion.

Brenda P. Murray
Chief Administrative Law Judge