Summary of Petition

THE COMPANY

1. The 4th Respondent, First China Financial Network Holdings Limited ("**Company**") was incorporated as an exempted company with limited liability in the Cayman Islands on 24 May 2001. The Company was then known in its former name as Stockmartnet Holdings Limited. It was registered in Hong Kong under Part XI of the Companies Ordinance, Cap 32 on 26 July 2001.

2. The registered office of the Company is at Century Yard, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman KYI-1111, Cayman Islands, and its principal place of business is at 16th Floor, CMA Building, No. 64-66 Connaught Road, Central, Hong Kong.

3. The nominal capital of the Company is HK$100,000,000 divided into 10,000,000,000 shares of HK$0.01 each. The amount of the capital paid up or credited as paid up is HK$40,289,641.20.

4. The Company and its subsidiaries principally provide financial services in Hong Kong, such as stock brokerage services, margin financing, corporate finance services, wealth management services, stock information and research services.

5. On 11 January 2002, the shares of the Company were listed on the Growth Enterprise Market ("**GEM**") of the Stock Exchange of Hong Kong Limited by way of placing with stock code 08123.,

6. On 28 April 2003, the Company changed its name to Stockmartnet Holdings Ltd and its Chinese name from "證券業合作社控股有限公司" to "金融社控股有限公司". On 8 March 2006, the name of the Company was further changed to International Financial Network Holdings Ltd ("**IFN**"). On 17 June 2008, the name of the Company was changed from IFN to First China Financial Holdings Limited and then, on 24 November 2009, to First China Financial Network Holdings Limited.

7. At the time of listing, the Company had no substantial or significant shareholder. It had a number of initial management shareholders, including Mr Lee Yiu Sun ("**2nd Respondent**").

8. On 11 May 2005, Mr Yin Yingneng Richard ("**1st Respondent**"), a substantial shareholder, was appointed an executive director of the Company. He later became Chairman of the Company's board on 1 June 2005.

9. On 1 June 2005, the 2nd Respondent was appointed an executive director of the Company.

10. Further, Wu Wai Chung Michael and Mr Tsang Hing Lun became independent non executive directors of the Company on 1 June and 30 June 2005 respectively.

11. Mr Wang Wen Ming ("**3rd Respondent**") was appointed an executive director of the Company on 8 May 2008.

THE ACQUISITION AGREEMENT

12. In about early to mid 2007, representatives of IFN, including the 1st Respondent and the 2nd Respondent, negotiated with the 3rd Respondent (together with the 1st and 2nd Respondents, the "**Respondents**"), a PRC based businessman, about the terms on which IFN might acquire, indirectly through a wholly owned BVI subsidiary, Aceview International Ltd ("**Aceview**"), a financial services company in the PRC called First China Investment Services Ltd ("**First China Investment**") by way of an acquisition of all the issued shares of its sole shareholder, GoHi Holdings Ltd ("**GoHi**"), from the sole owner of GoHi, ie Fame Treasure Ltd ("**Fame Treasure**").

13. The 3rd Respondent was the majority shareholder of Fame Treasure.

14. On or about 11 July 2007, a board meeting was held for the directors of IFN formally to consider and approve a proposal for Aceview to acquire all GoHi shares from Fame Treasure. In a board paper tabled by the 2nd Respondent at the meeting for the purpose of seeking the board's approval of the proposed acquisition ("**Board Paper**"), it was stated, inter alia, that Fame Treasure and the 3rd Respondent would give a guarantee

that the net asset value of First China Investment at completion would not be less than RMB 8 million. It was resolved, inter alia, at the board meeting that the recommendations stated in the board paper be approved.

15. On or about 11 July 2007, IFN, Aceview, First China Investment, GoHi, Fame Treasure and the 3rd Respondent executed a Sale and Purchase Agreement in respect of Aceview's acquisition of GoHi ("**Agreement**").

16. The Agreement states, inter alia, as follows:

"***1. INTERPRETATION***

…

"Dividends" the undistributed profits of the Company prior to 30 June 2007 in the amount of RMB34,743,349.13 to be distributed as dividends to the Seller prior to Completion;

…

"Net Assets" all the assets of the Company and the Subsidiaries including intangible assets, intellectual property and goodwill less all the liabilities of the Company and the Subsidiaries including all contingent liabilities;

…

2. SALE OF SHARES

2.1 Subject to the terms of this Agreement, the Seller shall sell as beneficial owner and the Purchaser (relying on the representations, warranties, agreements, covenants, undertakings and indemnities hereinafter referred to) shall purchase the Sale Shares free from all options, liens, charges, pledges, claims, agreements, encumbrances, equities and other third party rights of any nature whatsoever and together with all rights of any nature whatsoever now or hereafter attaching or accruing to it including all rights to any dividends or other distribution declared paid or made in respect of them after the date of this Agreement, save and except for the Dividends.

…

4. CONDITIONS PRECEDENT

…

4.7 From the date of this Agreement until Completion, except for the transactions described herein or otherwise with the prior written consent of the Purchaser:

…

(b) Each of the Seller and the Warrantor warrants and undertakes to cause the Holding Company, the Company and the Subsidiaries not to:

…

5. except as agreed in this Agreement, declare or pay any dividend or make any distribution to any of its shareholders;

…

9. NET PROFIT AND NET ASSETS GUARANTEE BY THE WARRANTOR AND THE SELLER

…

9.3 If the Net Asset of the Company as at Completion is less than RMB8,000,000, then the Seller and/or the Warrantor shall pay the Purchaser the amount of the shortfall in cash within 30 days from the dispatch of a notice from the Purchaser to the Seller and/or the Warrantor.

…

14. COMPLETE AGREEMENT

This Agreement represents the entire and complete agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement whether written or oral in relation thereto. No variations to this Agreement shall be effective unless made or confirmed in writing and signed by all the parties hereto."

17. Clause 7.7 of Schedule 5 of the Agreement entitled "Seller's Warranties" also provides as follows:

"*Since the Accounts Date of the Accounts, no dividend or other distribution has been, or is treated as having been, or has been proposed to be, declared, made or paid by the Holding Company and the Company. All dividends or distributions declared, made or paid by the Holding Company and the Company have been declared, made or paid in accordance with their articles of association and applicable laws.*"

18. On or about 30 July 2007, a supplemental agreement was executed by the same parties to the Agreement ("**Supplemental Agreement**"). The Supplemental Agreement stated, inter alia, that the liabilities of the parties under the net assets guarantee as prescribed in clause 9.3 of the Agreement ("**Net Assets Guarantee**") were joint and several and that the definition of "Net Assets" in the Agreement be modified to refer to the assets of the "Holding Company and the Subsidiaries (as consolidated)". Otherwise, no amendment was made to the wording of clause 9.3 of the Agreement.

19. On 30 July 2007, IFN published an announcement informing the public about the Agreement ("**2007 Announcement**"). It referred to, inter alia, the Net Assets Guarantee, although it was silent on how any excess net assets would be dealt with.

20. On or about 22 October 2007, IFN issued a circular ("**Circular**") to its shareholders giving details of the Agreement and the Supplemental Agreement as well as notice of an extraordinary general meeting to be held on 8 November 2007 ("**EGM**") to consider and/or approve such transactions.

21. At the EGM held on 8 November 2007, the shareholders of IFN resolved to approve the terms of the Agreement and the Supplemental Agreement together with the transactions contemplated thereunder. The EGM was attended by, inter alia, the 1st, 2nd and 3rd Respondents.

22. Completion of the transactions under the Agreement as supplemented by the Supplemental Agreement took place on 16 November 2007 as scheduled.

EXCESS OF NET ASSETS

23. By the latest in around February/March 2008 if not earlier, the Respondents became aware that the net assets of First China Investment were likely to exceed RMB8 million.

24. In this regard, on 5 February 2008, Mr Albert Lee, financial controller of IFN, circulated a set of balance sheets of First China Investment as at 16 November 2007 and 31 December 2007 showing substantial assets.

25. On 20 March 2008, a Farrah Lam of Angela Ho & Associates (IFN's lawyers advising on the GoHi acquisition) wrote an e-mail to the 1st Respondent and Ms Irene Cheng ("**Ms Cheng**") (IFN's company secretary) stating their understanding that the dividends to be distributed by IFN to First China Investment prior to completion would be changed from RMB34,743,349.13 to RMB41,773,000. This e-mail was then forwarded by Ms Cheng on even date to Mr Jonathan Lai ("**Mr Lai**") of HLB Hodgson Impey Cheng, CPAs ("**HLB**") and copied to, inter alia, the 1st and 2nd Respondents.

26. At around the time of completion in November 2007, the Company would have prepared a completion statement of account which enclosed a Net Asset Value Schedule of First China Investment as at November 2007. In fact, the schedule recorded the net assets of First China Investment to be around RMB26.7 million.

27. There were also Company financial statements for the year ended 31 December 2007 which showed that that the fair value of the net assets acquired to be valued at over HKD28 million.

28. On 25 March 2008, the Company held a board meeting and approved the draft annual results of the Company and its subsidiaries for the year ended 31 December 2007.

29. On 12 June 2008, the 1st Respondent was re-designated as a non-executive director of the Company and the 3rd Respondent was appointed the Chairman of the Company's board.

30. On 17 June 2008, IFN was officially renamed First China Financial Holdings Ltd.

LETTER OF CONFIRMATION AND CLARIFICATION ANNOUNCEMENT

31. On 5 December 2008, the Company's board passed a written resolution approving the execution of a letter of confirmation and the publication of a clarification announcement.

32. The letter of confirmation dated 5 December 2008, which was made between the parties to the Agreement and the Supplemental Agreement and signed by the Respondents ("**Letter of Confirmation**"), stated, inter alia, that:

"*Notwithstanding any provision to the contrary in the Sale and Purchase Agreement, the Parties hereby confirm that before Completion it was their mutual understanding and agreement that provided that the consolidated accounts of the Holding Company as at Completion showed that the Net Assets were in excess of the said RMB8,000,000, the Parties agreed and allowed a distribution of dividends of the amount in excess of the said RMB8,000,000 to the Seller as the sole shareholder of the Holding Company prior to Completion.*"

33. A clarification announcement was also published by the Company on 16 December 2008 ("**Clarification Announcement**") stating, inter alia, as follows:

"***The Mutual Understanding & Agreement***

As stated in the 2007 Announcement and the Circular, the Parties entered into the Agreements in relation to the sale and purchase of the entire issued share capital of the Holding Company.

Pursuant to clause 9.1(d) of the Agreement, each of the Seller and the Warrantor warrants, represents and undertakes that the Net Assets as at Completion shall not be less than RMB8,000,000.

Notwithstanding any provision to the contrary in the Agreement, before Completion the Parties had a Mutual Understanding & Agreement that provided that the consolidated accounts of the Holding Company as at Completion showed that the Net Assets were in excess of the said RMB8,000,000, the Parties agreed and allowed the Distribution.

The Completion Date for the Acquisition of the entire equity interests in the Holding Company was 16 November 2007.

Clarification by Letter of Confirmation

The 2007 Announcement and Circular did not mention the Mutual Understanding & Agreement and the Distribution. On 5 December 2008, the Parties executed the Letter of Confirmation clarifying that notwithstanding any provision to the contrary in the Agreement, the Parties have confirmed that before Completion they had a Mutual

Understanding & Agreement that provided that the consolidated accounts of the Holding Company as at Completion showed that the Net Assets were in excess of the said RMB8,000,000, the Parties agreed and allowed the Distribution.

…"

34. The Clarification Announcement also explained that:

"*The 2007 Announcement and Circular have already disclosed that each of the Seller and the Warrantor warrants, represents and undertakes that the Net Assets as at Completion shall not be less than RMB8,000,000. The Pro Forma Financial Information has also reflected such intention of the Parties by adjusting the Net Assets as at 30 June 2007 to RMB8,000,000 through a distribution of reserves of RMB23,652,000 to the Seller. Therefore, the intention regarding the Distribution to the Seller as per the Mutual Understanding & Agreement is one of the material terms to the Agreement. As such intention has made known clearly in the 2007 Announcement and the Circular and the non-disclosure of the Distribution of RMB18,692,000 is due to the prudence of the Company as mentioned above, the omission of the Mutual Understanding & Agreement in the 2007 Announcement and the Circular is not considered material.*"

35. In the meantime, the Company published an announcement on 9 December 2008 stating that the 1st Respondent had resigned as a non executive director of the Company with effect from 9 December 2008.

MISREPRESENTATION OR MISLEADING PRESENTATION OF FACTS IN THE CLARIFICATION ANNOUNCEMENT

36. In the Clarification Announcement, it was expressly stated as follows:

"*The announcement, for which the directors of the company (the "Directors") collectively and individually accept full responsibility, includes particulars given in compliance with the GEM Listing Rules for the purpose of giving information with regard to the Company. The Directors, having made all reasonable enquiries, confirm that, to the best of their knowledge and belief: (1) the information contained in this*

announcement is accurate and complete in all material respects and not misleading; (2) there are no other matters the omission of which would make any statement in this announcement misleading; and (3) all opinions expressed in this announcement have been arrived at after due and careful consideration and are founded on bases and assumptions that are fair and reasonable."

37. It was stated in the Clarification Announcement that the "Mutual Understanding & Agreement" referred to therein:

"*means the Parties' mutual understanding and agreement that provided that the consolidated accounts of the Holding Company as at Completion showed that the Net Assets were in excess of the said RMB8,000,000, the Parties agreed and allowed the Distribution of dividends of the amount in excess of the said RMB8,000,000 to the Seller as the sole shareholder of the Holding Company prior to Completion*".

38. In turn:

38.1. "Parties" was defined to mean the Company, Aceview (as Purchaser), First China Investment, GoHi, Fame Treasure (as Seller) and the 3rd Respondent.

38.2. "Net Assets" was defined to mean "all the assets of the Holding Company and the Subsidiaries (as consolidated) including intangible assets, intellectual property and goodwill less all the liabilities of the Holding Company and the Subsidiaries (if applicable) including all contingent liabilities".

39. It is not clear from these definitions or the rest of the provisions of the Clarification Announcement as to exactly when the Mutual Understanding & Agreement was reached between the parties save that it was "before Completion" (ie before 16 November 2007).

40. However, the alleged Mutual Understanding & Agreement did not in fact exist.

<u>Inconsistency of Terms between the alleged Mutual Understanding & Agreement and the Agreement</u>

41. Nowhere in the Agreement, the Supplemental Agreement, the 2007 Announcement and the Circular was there any mention of any Mutual Understanding & Agreement.

42. Clause 2.1 of the Agreement clearly stipulated that the purchase of the shares in GoHi was free from all options, liens, charges and agreements, encumbrances and other third party rights of any nature including "all rights to any dividends or other distribution declared paid or made in respect of them after the date of this Agreement" save and except for the amount of RMB34,743,349.13 as undistributed profits of the Company prior to 30 June 2007. There was otherwise no mention of any distribution of dividends in excess of RMB8 million to Fame Treasure.

43. In fact, clause 9.3 of the Agreement specifically provides that if the net assets of First China Investment were less than RMB8 million as at Completion, then Fame Treasure and/or the 3rd Respondent shall pay Aceview the shortfall in cash within 30 days. There was no provision for any distribution of excess to Fame Treasure.

44. When the Supplemental Agreement subsequently amended the Agreement to provide for an amended definition of "Net Assets" and a new definition of "Net Assets Guarantee", there was still no mention of any Mutual Understanding & Agreement.

45. All parties had agreed by clause 14 of the Agreement that this written Agreement contained the "entire and complete agreement between the parties in relation to the subject matter" and superseded all previous agreements whether written or oral. There was no room for supplementing the agreement reached between the parties by further oral understandings or agreements.

Lack of Supporting Documentation

46. The terms of the alleged Mutual Understanding & Agreement as alleged in the Clarification Announcement are vague and uncertain. There were no details of the time, place or method of reaching the alleged Mutual Understanding & Agreement. There were also no details on when and how the excess should be distributed.

47. Neither the Company nor any of the Respondents has disclosed any minutes or resolutions of any board meetings held by the Company, First China Investment, GoHi,

Fame Treasure or Aceview before 16 November 2007 regarding the alleged Mutual Understanding & Agreement.

48. Nor has the Company or any of the Respondents disclosed any contemporaneous documentation evidencing the negotiation of the terms of, or entering into, the Mutual Understanding & Agreement.

49. In fact, neither the Board Paper nor the minutes of the Company's board meeting of 11 July 2007 contained any reference to any alleged Mutual Understanding & Agreement.

50. In the premises, the alleged Mutual Understanding & Agreement is a bare assertion unsupported by documentary evidence.

Inconsistencies with Documentation

51. The Company was trying to find ways to deal with the excess of net assets and one possible excuse it came up with was that the excess belonged to Fame Treasure, rather than because of any alleged Mutual Understanding & Agreement. That suggestion is consistent with the minutes of the Company's board meeting held on 13 November 2008 which recorded that:

"*Mr. Lee Yiu Sun said that prior to the completion of the acquisition (the "Acquisition") of GoHi Holdings Limited ("GoHi") by the Company on 16 November 2007 (the "Completion Date"), GoHi and its subsidiary had a profit of about RMB$18 million from 1 July 2007 to the Completion Date which should belong to the seller but had not yet been distributed as dividend to the seller…*"

52. Subsequently, on 1 December 2008, Mr Lai sent an e-mail entitled "GoHi accounts to 30 June 2008" to his colleagues at HLB recording his earlier telephone conversation with the 1st Respondent as follows:

"*FYI.*

Richard Yin called me at 09:30 hours 01/12/2008 and advised that he had a meeting with Wang Wenming on 30/11/2008 that an additional dividend be declared by GoHi in respect of its profits for the years ended 31/12/2004, 2005 and 2006 to the former

shareholder of GoHi pre-acquisition, such that the NAV at completion is RMB 8 million. Richard Yin told me that he had also agreed the same with Gordon Tsang. Richard Yin said that the above will be confirmed at a board meeting today."

53. This e-mail suggests that even according to the 1st Respondent, any alleged Mutual Understanding & Agreement could only have been reached in November 2008, well after the completion date of 16 November 2007.

54. In the premises, not only is the existence of the alleged Mutual Understanding & Agreement not supported by documentary evidence, it is contradicted by various pieces of documentation.

Lack of Consistent/Satisfactory Explanations from the Respondents

55. In interviews with the Petitioner, the 1st Respondent denied that he had entered into any Mutual Understanding & Agreement on behalf of IFN/Company. He said that in a meeting at the Four Seasons Hotel, Hong Kong in early November 2008, the 3rd Respondent told him that there was a mutual understanding that any excess of net assets above RMB8 million would belong to him. There was a 2nd meeting at the Four Seasons Hotel, Hong Kong in early December 2008 in which the 3rd Respondent brought along the 2nd Respondent who apparently told the 1st Respondent that "Wang would say there was this mutual understanding". On the following day, the 3rd Respondent apparently telephoned the 1st Respondent to say that the mutual understanding was reached between him and the 2nd Respondent.

56. The 2nd Respondent gave a conflicting version of events in his interview with the Petitioner. He said that it was the 1st Respondent and not him who reached the mutual understanding with the 3rd Respondent. The 2nd Respondent said that he did not participate in the GoHi acquisition and he only realised from Mr Gordon Tsang (an independent non executive director of the Company) before the 13 November 2008 board meeting that the 1st Respondent and the 3rd Respondent had reached the oral agreement/understanding. That was allegedly why all directors waited on 5 December 2008 for the 1st Respondent's signature on the Letter of Confirmation and the board resolution approving it and the Clarification Announcement before signing. However:

56.1. The minutes of board meeting of the Company dated 11 July 2007 recorded that it was the 1st and 2nd Respondents who briefed the board members of the Company's potential investment in GoHi and that the "executive directors have been in negotiation with the shareholders" of First China Investment.

56.2. The Board Paper stated that it was presented by the 2nd Respondent.

56.3. The 2nd Respondent in fact executed the Agreement and the Supplemental Agreement.

56.4. There was an earlier draft version of the 5 December 2008 resolution which bore a fax header of 4 November 2008 which was only signed by the 2nd Respondent.

57. The 3rd Respondent did not attend any interview with the Petitioner but said in writing that he had always only negotiated with the 1st Respondent and that the Mutual Understanding & Agreement was reached with him. The 3rd Respondent said he only met the 2nd Respondent in 2008 and that his e-mail dated 20 July 2007 to Ms Cheng indicating his intention to cause distribution of a sum of RMB37,362,412 as dividends to Fame Treasure already fully reflected the Mutual Understanding & Agreement. There was, however, no explanation from the 3rd Respondent as to why the contents of the Mutual Understanding & Agreement were not reflected in the Agreement.

58. None of the Respondents or any persons interviewed by the Petitioner have been able to give any clear and satisfactory account of:

58.1. the events concerning the negotiation of the Agreement;

58.2. the entering into the alleged Mutual Understanding & Agreement and the specific terms reached; and

58.3. the reasons for the long delay in publishing the Clarification Announcement if the alleged Mutual Understanding & Agreement in fact existed.

59. In the premises, statements contained in the Clarification Announcement concerning the alleged Mutual Understanding & Agreement are false or, at the very least, misleading.

False or Misleading in a Material Particular

60. The statements contained in the Clarification Announcement concerning the Mutual Understanding & Agreement are false or misleading in a material particular.

60.1. As a result of the Mutual Understanding & Agreement, the Company had to distribute an additional dividend of RMB18,692,000 to Fame Treasure. Given that the total consideration for the GoHi acquisition was only HK$90 million, the additional distribution represents a significant and material sum.

60.2. As disclosed in the 2007 Announcement, the only dividend originally intended to be distributed was RMB34,743,349.13. The actual distribution made in November 2007 was in fact RMB41,773,000 and that the distribution of RMB18,692,000 came on top of this sum. This distribution pursuant to the Mutual Understanding & Agreement is even more significant and material in this regard.

60.3. The shareholders' financial interests were plainly compromised as a result of the false and misleading statements in the Clarification Announcement.

61. In the premises the affairs of the Company have been conducted in a manner which:

61.1. is oppressive to its members;

61.2. involves defalcation of the additional dividend payable to the Fame Treasure;

61.3. involves misfeasance or other misconduct on the part of the 1st, 2nd and 3rd Respondents in causing the Clarification Announcement to be made;

61.4. results in the Company's members not having been given all of the information with respect to the Company's business that they might reasonably expect on a timely basis;

61.5. is unfairly prejudicial to the members of the Company, in that an additional dividend has been paid to Fame Treasure in circumstances where it ought not have been paid.

THE RESPONDENTS CAUSED THE CLARIFICATION ANNOUNCEMENT TO BE PUBLISHED

62. All of the Respondents were involved in causing the Clarification Announcement (and therefore the false or misleading statements contained therein) to be published.

63. Since June 2005, the 2nd Respondent has acted as an executive director of the Company. He therefore held such a position at the time when the Clarification Announcement was prepared and published.

64. Although Ms Cheng was primarily the one who liaised with Messrs Angela Ho & Associates on the drafting of the Letter of Confirmation and the Clarification Announcement, the 2nd Respondent was copied in on such drafts and correspondence with the solicitor. The 2nd Respondent also took part in the board meeting on 13 November 2008 to discuss the pre-acquisition profits issue.

65. Importantly, the 2nd Respondent signed the written resolution of the Company's board dated 5 December 2008 approving the issuance of the Letter of Confirmation and the Clarification Announcement. The 2nd Respondent also signed on the Confirmation Letter itself in circumstances in which he knew or ought to have known that the Clarification Announcement was false and misleading and that its publication would have the consequences set out in paragraph 61 above. The 3rd Respondent became an executive director of the Company on 8 May 2008. He later became the Chairman of the Company on 12 June 2008 and has held that position since. He participated in the board meeting held on 13 November 2008 and signed the board resolution dated 5 December 2008 as well as the Letter of Confirmation in circumstances in which he knew or ought to have known that the Clarification Announcement was false and misleading and that its publication would have the consequences set out in paragraph 61 above. He was the Chairman of the Company at the time when the Clarification Announcement was published. The 3rd Respondent was a key figure in all discussions with the 1st and 2nd Respondents on the alleged Mutual Understanding & Agreement leading up to the publication of the Clarification Announcement.

66. As regards the 1st Respondent, he resigned from his executive directorship in the Company and became a non-executive director in June 2008. However, he was involved in the process leading to the publication of the Clarification Announcement.

67. For example, at the 2nd Four Seasons Hotel meeting with the 3rd Respondent and attended also by the 2nd Respondent, the 1st Respondent suggested convening a board meeting to discuss whether the excess net assets should be paid to Fame Treasure. On 4 December 2008, Ms Cheng sent an e-mail to, inter alia, the 1st Respondent attaching draft minutes of the board meeting held on 13 November 2008 despite his absence from that meeting.

68. On 4 December 2008, Ms Cheng sent the following e-mail to the 1st Respondent:

"*Dear Richard,*

After you signing the confirmation letter together with the board resolution, definitely I will submit the clarification announcement to SFC with the help from Angela Ho and the company will act according to the requests from SFC.

Regards

Irene"

69. In a reply e-mail sent at around 9:47am on 5 December 2008 by the 1st Respondent to Ms Cheng, it was stated that:

"*Dear Irene*

Please ensure company obtains no objection confirmation from SFC with regards to the announcement and distribution of dividends. This was what Mr Wang agreed and undertake

Thanks and regards

Richard"

70. Later in the morning on 5 December 2008, Ms Cheng sent the blank Letter of Confirmation, Clarification Announcement and board resolution to the 1st Respondent by e-mail for his execution. In a reply e-mail from the 1st Respondent shortly afterwards that morning, he stated that:

"*Dear Irene*

As I am no longer a director of Aceview, I believe it is inappropriate for me to sign on its behalf but I have no objection to signing on behalf of the Listed Company

Please amend letter of confirmation

Thanks

Richard"

71. The 1st Respondent then signed the Letter of Confirmation as well as the board resolution on 5 December 2008 and returned them to Ms Cheng on even date in circumstances in which he knew or ought to have known that the Clarification Announcement was false and misleading and that its publication would have the consequences set out in paragraph 61 above. He also tendered his resignation from the Company's board on even date. Although the 1st Respondent had ceased to be a director of the Company by the time it issued the Clarification Announcement on 16 December 2008, the 1st Respondent was clearly responsible for its approval and publication.

FAILURE TO EXERCISE REASONABLE SKILL, CARE AND DILIGENCE AND/OR TO ACT IN THE BEST INTERESTS OF THE COMPANY

72. Rule 5.01 of the GEM Listing Rules provided that:

"*The board of directors of an issuer is collectively responsible for the management and operations of the issuer. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director:-*

(1) act honestly and in good faith in the interests of the company as a whole;

(2) act for proper purpose;

(3) be answerable to the issuer for the application or misapplication of its assets;

…

(6) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office with the issuer."

73. Rule 5.03 of the GEM Listing Rules further provided that:-

"*The directors of an issuer are collectively and individually responsible for ensuring the issuer's full compliance with the GEM Listing Rules.*"

74. Further each of the 1st, 2nd and 3rd Respondents in their capacities as directors of the Company, owed at common law a duty to the Company:

74.1. to act bona fide in the best interests of each of the company at all times;

74.2. to exercise their own, independent judgment in the exercise of their powers and the performance of their duties;

74.3. to avoid any situation in which they had or could have a direct or indirect interest or duty that conflicted, or might conflict, with the interests of the company and a duty not to act in the affairs of any such company in circumstances where there existed any actual or potential conflict of interest or duty;

74.4. to exercise their powers and discharge their duties with the reasonable care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that might reasonably be expected of a person carrying out their functions in relation to the company and with the general knowledge, skill and experience that each of them possessed.

75. By reason of the matters aforesaid, the Respondents failed to exercise reasonable skill, care and diligence in the management of the business and affairs of the Company, and/or failed to act in the best interests of the Company, contrary to their common law duty of care and/or fiduciary duty and/or Rule 5.01 of the GEM Listing Rules.