TAKEOVERS AND MERGERS PANEL

Panel Decision

Disciplinary Proceedings in relation to shares of ENM Holdings Limited ("ENM") (formerly known as e-New Media Company Limited) (stock code: 00128) Reasons for Panel finding of breach of Rule 26.1 of The Code on Takeovers and Mergers (the "Code")

Introduction

1. The Panel met on 2, 3, 4, 5, 7, 10, 12 and 13 March 2015 to hear and consider disciplinary proceedings against Dr. Chow Yei Ching ("Dr. Chow"), his son, Mr. Oscar Chow Vee Tsung ("Oscar Chow") and Mr. Joseph Leung Wing Kwong ("Joseph Leung") (collectively the "Respondents") arising out of the purchase by Dr. Chow of 160 million shares in ENM Holdings Limited ("ENM"), formerly known as e-New Media Company Limited, a company whose shares are listed on The Stock Exchange of Hong Kong Limited (the "Exchange"), for and at the request of the late Ms. Nina Kung Yu Sum, also known as Mrs Nina TH Wang ("Ms. Kung"). The Executive instituted these disciplinary proceedings pursuant to section 12.1 of the Introduction to the Code (the "Introduction").

The Executive's Case

2. The Executive's case against Dr. Chow, Oscar Chow and Joseph Leung was set out in the paper dated 20 November 2013 (the "Paper" attached as Annexure 1 but without the bundle of documents referred therein) and particularised in Particulars of allegations against each Respondent dated 17 April 2014 (attached as Annexure 2) served at the direction of the Chairman of the Panel in these disciplinary proceedings.

3. The essence of the Executive's case against the Respondents was as follows: "*that at the instigation of and together with the late Nina Kung, also known as Nina T H Wang ("**Ms Kung**"), Dr. Chow, Mr. Leung and Oscar Chow, acted in concert in relation to ENM Holdings Ltd ("**ENM**") in order to avoid the triggering of a mandatory general offer under the Takeovers Code. Such a failure constituted a breach of Rule 26.1 of the Takeovers Code.*" (Emphasis added).

   The Executive's case as framed in paragraph 2 of the Paper therefore appeared to be that the intention and purpose of Ms. Kung and the object or purpose of the agreement or understanding with the Respondents was to avoid the triggering of a mandatory general offer.

4. In its written Opening Submissions, the Executive focussed its case on alleging that the Respondents together with Ms. Kung "acted in concert", that the concert party, having collectively held less than 35% of the voting rights of ENM, "any one or more of them" acquired voting rights with the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of ENM, that such acquisition required the making of a general offer by the principal members of the concert group and that

no such offer was made.[1] In addition, the Executive invited the Panel to conclude that "*the co-operation was instigated by Ms. Kung in order to circumvent the requirements of Rule 26.1, she obviously being aware that if it was publicly known that she owned more than 35% she would be forced to make a general offer. By purchasing the ENM shares through Dr. Chow, and by the subsequent "warehousing" of the ENM shares, she was able to conceal her ownership*."[2]

The Panel's approach

5. The Panel has been able to reach a unanimous decision by focussing on whether there was a breach of Rule 26.1 on the part of the Respondents in acting in concert with Ms Kung to obtain and consolidate control of ENM through the acquisition of voting rights, it being common ground that no general offer was ever made. "Acting in concert" is defined in the Code. For the purposes of considering "acting in concert" and "control", the Panel has applied the Code as it was in 2000. For matters of procedure relating to the conduct of the disciplinary proceedings, the Code which was in force at the initiation of these proceedings has been applied. Relevant portions of Rule 26.1 of the Code and definitions as they were in 2000 for the purposes of these disciplinary proceedings are reproduced in Annexure 3.

6. The Panel accepts and has applied the Panel Decision in Hung Hing Printing Group Limited[3] which sets out the three conditions which have to be met for "acting in concert" under the Code:-

"…*it requires more than one person actively cooperating pursuant to an agreement or understanding; the purpose of the cooperation is to obtain or consolidate control of the company to which the provisions of the Codes apply; and at least one of the persons actively cooperating to acquire voting rights attaching to shares in that company*."

The Panel is of the view that it is not necessary that every person in the concert group must have as his or her purpose the obtaining or consolidation of control of the company *personally* so long as at least one person within the concert group has that purpose. Further, it is not necessary that every person in the concert group actively seeks to acquire voting rights of such company so long as at least one person within the concert group does so.

7. Rule 26.1 provides expressly for the circumstances when a mandatory offer is required. In the absence of a waiver, a failure to make a general offer where the circumstances require it is a breach of Rule 26.1. Rule 26.1 specifies who are the person or persons liable to extend offers to the shareholders. In the context of these disciplinary proceedings, the Executive accepts that the obligation is upon the principal members of the concert party and that neither Oscar Chow nor Joseph Leung were principal members of the concert party nor liable to extend offers to the shareholders of ENM but argues that they are nonetheless persons within the concert party.

8. The Panel is of the view that in order to institute disciplinary proceedings against any individual under section 12.1 of the Introduction, the Executive must at least show that that individual falls within one of the classes of persons to whom the responsibilities provided for in the Code apply under section 1.5 of the Introduction. The Code, as it was in April 2000, provided the following classes of persons: (a) directors of public

[1] Paragraphs 22-25 of the Opening Submissions for the Executive.
[2] Paragraph 26 of the Opening Submissions for the Executive
[3] Panel Decision dated 24-May-2011, at http://www.sfc.hk/web/doc/EN/cfd/mergers/panel/Panel%20Decision%20-%20Hung%20Hing%20%28final%29.pdf

companies; (b) persons or groups of persons who seek to gain or consolidate control of public companies; (c) their professional advisers; and (d) those who are actively engaged in the securities market in all its aspects.

9. The Executive accepts that "acting in concert" is not itself a breach of the Code. This is clearly correct; the combined voting rights of a concert party might not, for example, reach the threshold of "control" and thereby trigger a general offer obligation. The Panel also accepts that persons falling within any of the classes under section 1.5 of the Introduction may be subject to disciplinary action under the Code for a breach of Rule 26.1 through the failure to make a general offer even though the person is not a principal member of the concert party nor liable to make a general offer, if the person actively co-operates in the obtaining or consolidation of control of a company by two or more persons acting in concert through the acquisition of voting rights and either also actively participates in any arrangement whereby the increase above 35% or more of the voting rights of the company is concealed, or knows or believes that no general offer is to be made and no general offer is in fact made. Since the primary purpose of the Code is to afford fair treatment for shareholders who are affected by takeover transactions (section 1.2 of the Introduction) and since a general offer to all shareholders is normally required if control of a company changes or is acquired or is consolidated (General Principle 2), the Panel is of the view that the actions or conduct of members of the concert party who are not principal members, and whether or not they themselves acquire voting rights, which have the effect of depriving the shareholders of a general offer should be sufficient to give rise to disciplinary action. The definition of "acting in concert" clearly provides that the acquisition of voting rights may be "by any of them" and not necessarily by each of them.

10. While it is not an essential element to establishing a breach of Rule 26.1 that the making of a general offer is intentionally avoided, the failure to make a general offer when it is required may be the result of arrangements which have the effect of concealing the fact that the trigger point has been reached or of concealing the true ownership of the shares to which the voting rights are attached. In these disciplinary proceedings, the Panel does not consider it necessary or appropriate to make findings in relation to any allegation of an intention or purpose, on the part of any Respondent in common with Ms. Kung that a general offer be avoided nor any agreement or understanding with her with that intent or purpose.

11. In relation to the standard of proof, the Panel accepts that the correct approach is as set out by Bokhary PJ in *Solicitor (24/07)* v. *Law Society of Hong Kong* (2008) 11 HKCFAR 117 at paragraphs 112-116. Essentially, the more serious an allegation, the more compelling must be the evidence to overcome the improbability of the serious allegation being true and thus proved on a preponderance of probability. In the passage from *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 at 586 relating to assessment of probabilities cited with (qualified) approval in *In re B (Children) (Care Proceedings: Standard of Proof)* [2009] 1 A.C.3217 at paragraph 62, fraud is given as an example as something less likely than negligence. The Panel therefore accepts the Executive's submission that it is inappropriate to apply the principle applicable to criminal cases that "*an inference of guilt may not properly be drawn from primary facts unless it is the only inference which can reasonably be drawn from those facts*" which was contended for by Mr. Graham Harris SC for Dr. Chow.

12. The Executive had already granted a waiver to the Joint Administrators of the Estate of Ms. Kung immediately prior to initiating these disciplinary proceedings. In response to the Chairman's inquiries over a period of time of all parties' views on whether the Estate of Ms. Kung should be represented at the hearing or participate in the hearing and the manner or extent of any such participation, the Executive's repeated response

was that they did not consider it necessary to invite the Joint Administrators or their legal representatives to attend the hearing nor to be made a respondent in the proceedings or to otherwise participate in the hearing nor was there any basis for instituting proceedings against the Joint Administrators.

13. At the request of the Chairman, the Executive by letter to the Joint Administrators, informed them that the Executive did not intend to name Ms. Kung or anyone representing her as a respondent in the disciplinary proceedings but that Ms. Kung's conduct might be the subject of comment in the Panel's decision and served a copy of the Paper on the Joint Administrators highlighting all passages containing reference to Ms. Kung and Annexure 2 to the Paper so that the Joint Administrators might consider whether they wished to be represented at the hearing or to present any evidence concerning the conduct of Ms. Kung or otherwise to be heard. By the same letter, the Joint Administrators were also informed of the possibility that should the Panel find that a general offer should have been made to the shareholders of ENM, such shareholders might seek compensation from the estate of Ms. Kung and that the Joint Administrators should therefore consider whether they wished to be represented or to present any evidence or otherwise to be heard. The Joint Administrators responded that having carefully considered the contents of the Executive's letter, they intended to instruct legal counsel together with their representative to hold a watching brief on their behalf at the hearing of the proceedings. As the Panel has no power to make any person a respondent to disciplinary proceedings nor to compel any person to be represented or to participate in a disciplinary proceeding, there was no-one representing her Estate and no-one to answer any allegations made against her. In the interests of fairness, the Panel has therefore confined the findings of fact made in respect of Ms. Kung to the minimum necessary for the purposes of these reasons based upon the evidence before the Panel.

14. In reaching its decision, the Panel has considered all the evidence put before it and the submissions, both written and oral, made by the Executive and the Respondents. The fact that not all of the evidence and submissions have been mentioned in these reasons does not mean that they were not considered in reaching the decision.

Background

15. This Section consists of facts found by the Panel based upon either the facts agreed by all parties (hereafter "the AF"), facts not in dispute or from documents available to the Panel and to all parties which have not been disputed.

16. From the time of the death in 1999 of her husband, Teddy Wang Teh Huei ("Mr. Wang"), until her own death in April 2007, Ms. Kung was the Chairwoman and sole beneficial owner of the Chinachem group of companies ("Chinachem").

17. Dr. Chow was the founder and Chairman of the Chevalier group of companies ("Chevalier"), a multinational conglomerate with businesses spanning China, South-East Asia, North America and Australia. At all material times, he has also been the controlling shareholder, Chairman and Executive Director of Chevalier International Holdings Limited ("CIHL") a company whose shares are listed on the main board of the Exchange.

18. Dr. Chow had known Ms. Kung and her husband for more than 40 years and they had become close friends. They had also been business partners for a long time and there had been many business dealings between them. Dr. Chow's firm Chevalier was one of the contractors for Chinachem. As a result, they shared a high level of mutual trust

and confidence and that high level of mutual trust and confidence between Dr. Chow and Ms. Kung continued after the disappearance and death of Mr. Wang.

19. Since 1984, Dr. Chow has been the Chairman/director of a number of companies listed on the Exchange. Each of these companies was subject to the requirements of the Code.

20. Dr. Chow played a key role in the restructuring of Chevalier. Between 1997 and 2011, Dr. Chow was involved in a number of Code transactions set out in item 5 of the AF. In particular:

    (i) In 1997, Dr. Chow jointly with CIHL and 2 other Chevalier companies applied to the Executive for a waiver of the mandatory offer obligation which might have arisen as a result of the implementation of the proposed reorganisation. Dr. Chow, CIHL and the 2 companies were presumed to be parties acting in concert under the Code and relied on Note 6 to Rule 26.1 of the Code in support of their application.

    (ii) In 1999, Chevalier Development International Limited ("CIDL") was privatised by CIHL. CIHL and Dr. Chow together held approximately 45.4% of CIDL. Dr. Chow was the Chairman of both companies. Dr. Chow took responsibility under Rule 9.3 of the Code for all eight of the related announcements and the privatisation documents.

    (iii) In September 2000, Dr. Chow, jointly with CIHL, sought the Executive's ruling as to whether an investor and its associates in a proposed subscription for the shares of Chevalier Construction Holdings Limited ("CCHL") would be regarded as parties acting in concert with Dr. Chow and CIHL and whether Dr. Chow and/or CIHL would be required to make a general offer for the shares in CCHL as a result of the acquisition of additional voting rights in CCHL by CIHL.

21. Oscar Chow is the only son of Dr. Chow. He joined Chevalier in 2000. On 29 March 2004, he was appointed an executive director of CIHL. Lisa Chow Wai Chi ("Lisa Chow") is one of 6 daughters of Dr. Chow and sister to Oscar.

22. Joseph Leung was invited by Mr. Wang and Ms. Kung to join Chinachem as a director in April 1987. From then on, he worked for them at Chinachem, and after April 1990, for Ms. Kung. Ms. Kung died on 3 April 2007. As at 21 December 2000, Joseph Leung was a director of some 356 companies beneficially owned by Ms. Kung.

23. ENM has at all material times been principally engaged in wholesale and retail fashion wear and accessories, resort and recreational club operations, investment holding and securities trading.

Acquisition of voting rights of ENM/Arrangements for the holding of the ENM shares

24. This Section consists of facts found by the Panel based upon either the AF, facts not in dispute or from documents available to the Panel and to all parties which have not been disputed.

25. At some point, Ms. Kung began acquiring shares in ENM, a fact which attracted press coverage when her shareholding reached the 10% threshold requiring disclosure of her interest to the Exchange at the end of August 2000. Details of her shareholdings were publicly disclosed under the now repealed Securities (Disclosure of Interests) Ordinance.

26. In late 2000, Ms. Kung asked Dr. Chow to acquire ENM shares and hold them on her behalf. Dr. Chow agreed to this request and between 6 November 2000 (or later) and 30 March 2001 bought 136,008,000 shares (about 8.24%) of ENM from the market in his own name for Ms. Kung. These acquisitions were not disclosed to the public.

27. These purchases were made through two brokerage firms, Chung Lee & Company and Chung Hsin & Company.

28. In an announcement[4] dated 7 November 2000 and published the next morning[5], in response to a press article, ENM stated that its then substantial shareholder, Mr. Chee Ying Cheung ("Mr. Chee") had recently been in touch with several parties including Ms. Kung for preliminary discussions regarding the disposal of his 27% shareholdings in part or in whole. The announcement stated that Ms. Kung's shareholding in ENM through Diamond Leaf Limited was 13.6% and that this would be reduced to 12.3% following an allotment of 163,500,000 shares in consideration for an acquisition announced 5 days earlier.

29. In an announcement[6] dated 5 December 2000, ENM stated that among other things:

    (i) Solution Bridge Limited (a company wholly and beneficially owned by Ms. Kung) conditionally agreed to acquire 408,757,642 shares (about 24.77%) of ENM at HK$1.40 per share from Mr. Chee, being all of his shares.

    (ii) At that time, Ms. Kung was the beneficial owner of 205,884,503 shares (about 12.48%) of ENM.

    (iii) The agreement was conditional on obtaining the Executive's written confirmation that no general offer obligation would arise.

    (iv) Ms. Kung would dispose of a certain number of ENM shares currently beneficially owned by her to independent third parties through a placing agent, Celestial Capital Limited, so that immediately after completion of the share acquisition, Ms. Kung together with her concert party would not beneficially own more than 34.9% of ENM.

    The threshold in the Code which would mandate the making of a general offer was then 35%.

30. In an announcement[7] dated 21 December 2000, ENM announced the completion of the acquisition and the disposal by Ms. Kung on the previous day of 43,000,000 shares (about 2.61%) of ENM and that upon completion, Ms. Kung held in aggregate 571,642,145 shares (about 34.64%) of ENM. The announcement also stated that Solution Bridge Limited had received the Executive's written confirmation that no general offer obligation would arise in connection with the share acquisition from Mr. Chee. Further, the announcement also confirmed Joseph Leung's appointment that day as a director of ENM.

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[4] At http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1108/LTN20001108017.doc
[5] At the time, company announcements were often published in newspapers and uploaded to the Exchange web site both on the morning after the date on the face of the announcement.
[6] At http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1206/LTN20001206010.doc
[7] At http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1222/LTN20001222019.doc

31. By 21 December 2000, Dr. Chow had purchased between 91.3 million and 97.3 million shares (5.53% to 5.89%) of ENM for Ms. Kung.

32. In early 2001, Ms. Kung asked Dr. Chow to purchase 4 British Virgin Islands ("BVI") companies and to transfer the 136,008,000 shares that he then held on her behalf into these companies. Ms. Kung also asked Dr. Chow to open accounts in the name of these companies with Merrill Lynch Wealth Management ("Merrill Lynch") and to deposit the shares into these accounts.

33. Dr. Chow then asked his son, Oscar Chow to purchase the 4 BVI companies, to arrange the transfer of the 136,008,000 ENM shares that Dr. Chow held into these companies, to open accounts in the name of these companies with Merrill Lynch and to deposit the shares into these accounts.

34. Oscar Chow then arranged to purchase 4 BVI companies, namely Accuvantage Limited ("Accuvantage"), Owens Assets Limited ("Owens"), Throphill Enterprises Limited ("Throphill") and Cathnor Holdings Limited ("Cathnor"). The 4 companies were each activated by holding their first board meeting on 2 May 2001 and in July 2001 Oscar Chow opened accounts for the 4 companies at Merrill Lynch. The shares were then deposited into these accounts on 2 August 2001 as follows:

Account holder	Shares	Stake in ENM
Accuvantage	40,000,000	2.42%
Cathnor	35,660,000	2.16%
Owens	30,000,000	1.82%
Throphill	30,348,000	1.84%
Total	136,008,000	8.24%

35. Dr. Chow also arranged for 2 of his children, Oscar Chow and Violet Chow to be the directors of the 4 BVI companies, each of the companies having 2 directors. Dr. Chow paid for the cost of setting up the 4 BVI companies. One bearer share was issued by each of the 4 BVI companies and the bearer shares were kept by Dr. Chow in his personal office.

36. Under BVI law at the relevant time and until 2005, the share register did not need to record the names and addresses of the persons who held bearer shares. A bearer share was transferrable by delivery of the certificate relating to the share. Thus, bearer shares could be held by persons the identity of whom was not recorded in the share register of the company and hence the legal and beneficial owners could not be ascertained or traced by means of a review of the company's statutory records.

37. Later in 2001, Ms. Kung asked Dr. Chow to purchase an additional approximately 24 million shares (about 1.45%) of ENM on her behalf from the market, increasing the total to exactly 160 million shares (about 9.69%) of ENM. Dr. Chow bought such shares and then on 7 January 2002 the shares were deposited into the accounts at Merrill Lynch of 3 of the 4 BVI companies as follows:

Account holder	Shares added	Stake added	Total shares	Total stake
Accuvantage	0		40,000,000	2.42%
Cathnor	4,340,000	0.26%	40,000,000	2.42%
Owens	10,000,000	0.61%	40,000,000	2.42%
Throphill	9,652,000	0.58%	40,000,000	2.42%
Total	23,992,000	1.45%	160,000,000	9.69%

38. As Oscar Chow was responsible for opening the accounts with Merrill Lynch, all statements issued by Merrill Lynch concerning the 4 BVI companies were sent to him.

39. None of the shareholdings of Dr. Chow in ENM for Ms. Kung were publicly disclosed until May 2013.

40. Dr. Chow paid for the 160 million ENM shares and was reimbursed by Ms. Kung. He also paid for the cost of setting up the 4 BVI companies and was reimbursed by Ms. Kung. On several occasions after Dr. Chow purchased ENM shares for Ms. Kung, he would give Oscar Chow the relevant broker statements and ask him to work out the total number of ENM shares he had bought and the total cost. Oscar Chow would in accordance with Dr. Chow's request then prepare Excel spread sheets which set out the relevant details.

41. Oscar Chow resigned as director of the 4 BVI companies with effect from 15 March 2004, shortly before he became an executive director of CIHL.

42. In January 2005 a new BVI law came into force introducing tighter regulation as to the use of bearer shares with the objective of achieving greater transparency with regard to share ownership. The deadline for compliance was 31 December 2009.

43. As a result, Dr. Chow asked Oscar Chow to use another 2 BVI companies, namely Capital Tycoon Limited ("Tycoon") and Assets Island Limited ("Assets") to hold the shares of the 4 BVI companies which held the 160 million ENM shares. Oscar Chow and Lisa Chow were the respective sole registered owners of Tycoon and Assets. On 23 December 2009, the bearer shares of the 4 BVI companies were then converted into registered shares held by Tycoon and Assets. The shares in Accuvantage and Cathnor were registered to Assets and the shares of Owens and Throphill were registered to Tycoon. This structure enabled the ownership of the 160 million shares to be split equally between Oscar Chow and Lisa Chow. After the splitting of shares Oscar Chow and Lisa Chow each held 4.845% of ENM, just below the 5% disclosure threshold imposed by the disclosure requirements under Part XV of the Securities and Futures Ordinance since it came into effect on 1 April 2003.

44. On 26 February 2007 and 1 March 2007, Dr. Chow bought 15 million and 14,116,000 shares respectively for himself. These shares represented about 1.76% of ENM and brought the combined holdings of Dr Chow, the 4 BVI Companies and Ms Kung to 760,090,145 shares (about 46.05%) of ENM.

45. On 25 April 2012, the Joint Administrators of Ms. Kung's Estate sent a letter to Dr. Chow stating that it had recently come to their notice that Dr. Chow might have knowledge of certain assets belonging to the Estate, specifically some shares in ENM, and asking Dr. Chow to let them know whether this was the case and if so, when he would be able to meet with them for the purpose of providing them with information in

relation to these assets. Upon receipt of the letter, Dr. Chow sought legal advice and on 28 May 2012, Dr. Chow brought the matter to the attention of the SFC through his solicitors. The 160 million shares were later transferred back to the Estate/the Joint Administrators.

Dr. Chow

46. This Section contains the relevant findings of fact made by the Panel in relation to Dr. Chow and the reasons for finding a breach on his part of Rule 26.1 of the Code including but without repeating paragraphs 17-21 and 25 to 45 above. On the basis of the Panel's findings of fact, Dr. Chow did act in concert with Ms. Kung to obtain or consolidate control of ENM through the acquisition of shares in ENM which he purchased upon her instruction and on the basis that he was to be reimbursed by her, which he was. He also held the 160 million ENM shares purchased for her according to her instructions in 4 BVI companies, an arrangement which effectively concealed her beneficial ownership of those shares. He became a principal member of the concert group. A general offer was clearly required. No general offer was ever made to the shareholders of ENM after the combined shareholdings of Ms. Kung and Dr. Chow for Ms. Kung exceeded the 35% trigger.

47. In addition to the transcript of Dr. Chow's interview with the SFC on 11 June 2012 and his witness statement, Dr. Chow gave oral evidence before the Panel. On the direction of the Chairman, the public (including the media) were excluded during his oral testimony and his medical condition was monitored while he was giving evidence. This direction was given after considering an application made on Dr. Chow's behalf that in the light of his medical condition, the stress of giving evidence in the full glare of media attention was likely to affect his ability to do himself justice when giving evidence. In the event, his fears proved unfounded as there was little media interest in the hearing. At certain points during his testimony, Dr. Chow was visibly tired or confused and the Panel has made allowances for that. Also, the Panel takes into account that he and the other Respondents were dealing with events which stretched back to late 2000/2001, notwithstanding that the facts only came to light in 2012. Nonetheless, in relation to two alleged conversations between Dr. Chow and Joseph Leung, the Panel has preferred the evidence of Joseph Leung over that of Dr. Chow.

48. Sometime in late 2000, Ms. Kung requested Dr. Chow to purchase ENM shares on her behalf on the basis that she would reimburse him. On his evidence, Dr. Chow had never before been requested by anyone to buy shares in a listed company on his or her behalf. Dr. Chow made the purchases on the market through brokers but it is not clear when exactly (on or after 6 November 2000) the first purchase was made and therefore what was the percentage of ENM's issued share capital Ms. Kung held at the time when Ms. Kung first instructed Dr. Chow to buy ENM shares. For obvious reasons, there is no evidence from Ms. Kung and scant evidence from Dr. Chow as to what was agreed between them about these purchases. However, on the basis of his evidence, the Panel finds that Dr. Chow was willing to act on Ms Kung's instructions as to when to purchase and how many shares to purchase provided he was reimbursed. He was therefore prepared to buy as and when instructed and he therefore knew that she was building up a stake in ENM.

49. As to Dr. Chow's state of knowledge concerning Ms. Kung's shareholding in ENM, although the Panel accepts that he may not have known exactly how many other shares she held at any one point when he was making purchases for her, the Panel finds that he knew from some point during those purchases onwards that she was (in his words) "the major shareholder" of ENM and that she was or was about to become the "boss" of ENM meaning that "she was in control of everything and she was the

biggest figure in the company", notwithstanding that she never joined the board of directors. He also continued to purchase shares for her after she had completed the acquisition from Mr. Chee on 21 December 2000, which was the date on which their combined voting rights first exceeded the then "control" threshold of 35%, and resumed purchases on her request in late 2001.

50. The Panel considers that on these facts alone, the Executive has established that Dr. Chow was acting in concert with Ms. Kung for the purpose of obtaining or consolidating control in ENM. There was either an agreement or an understanding that he would continue to purchase ENM shares on her instructions without limit provided he was reimbursed and the only reasonable inference which can be drawn is that to his knowledge, Ms. Kung was in the process of obtaining or consolidating control of ENM and he was actively co-operating with her in doing so.

51. Before Dr. Chow made these purchases, he was fully aware of there being disclosure requirements in listed shares by virtue of his position as a substantial shareholder of various listed Chevalier companies and he was aware that if a single shareholder of a listed company acquired more than 35% of the issued shares, a general offer was required to be made to all shareholders unless a waiver was granted by the Executive. He had since 1984 been the Chairman/director of a number of listed companies all of which were subject to the requirements of the Code and he had by that time been involved in several Code transactions. In particular, a few months before Ms. Kung made this unprecedented request to him to which he agreed, he and CIHL had applied for a ruling from the Executive as to whether an investor and its associates in a proposed subscription for the shares of CCHL would be regarded as parties acting in concert with Dr. Chow and CIHL and whether Dr. Chow and/or CIHL would be required to make a general offer for the shares in CCHL as a result of the acquisition of additional voting rights in CCHL by CIHL. So the need to make a general offer and the concept of "acting in concert" would have been fresh in his mind when he received Ms. Kung's request and he was therefore fully aware of all the relevant regulatory requirements.

52. Even Dr. Chow's evidence that he was told by Ms. Kung that she would handle all regulatory matters concerning the purchase of ENM shares and that he relied on her assurance supports the fact that he knew that these ENM purchases required to be disclosed. It would also have been obvious to him that if the purchases had been disclosed when made, then there would have been no purpose in having him buy shares on her behalf rather than simply buying them herself. As for relying on her assurance, he clearly did not engage his own in-house team and/or company secretarial department to monitor what Ms. Kung's shareholding in ENM was at any time. Had he done so, he would have become aware that no disclosure had been made of the share purchases that he was making on her behalf. He would also have become aware that the 35% threshold had been crossed. He therefore accepted the risk of a breach of the Code by a concert group of which he was a principal member. As a principal member, he knew he too was responsible to see that a general offer was made.

53. In Joseph Leung's witness statement dated 22 April 2014 and his second witness statement dated 24 November 2014 confirmed in his oral testimony and about which he was cross-examined, Joseph Leung gave evidence of a meeting which he had with Dr. Chow which according to him was a meeting arranged by Ms. Kung for her to seek advice from Dr. Chow as a result of her insecurity about her stake in ENM. According to Joseph Leung, during this meeting, he informed Dr. Chow that Ms. Kung could not purchase further shares in ENM. It was his understanding that Dr. Chow already knew that Ms. Kung was in the process of purchasing the largest shareholding in ENM. At

this meeting, according to Joseph Leung, he discussed with Dr. Chow Ms. Kung's purchase of ENM shares, her intention to become the largest shareholder of ENM, her conditional oral agreement with Mr. Chee, her firm intention not to make a general offer and her concern that her control of ENM might not be secure; also his advice to Ms. Kung that she could not purchase any more shares in ENM nor could anyone on her behalf or acting in concert with her. According to Joseph Leung's evidence, none of this came as a surprise to Dr. Chow and the meeting ended with Dr. Chow saying that he need to consider the matter further and would contact Ms. Kung directly.

54. Dr. Chow denies that any such meeting ever took place and it is clear that the date which Joseph Leung gave in his statement as the date when the meeting took place was a date which was wrong. However, notwithstanding the detailed submissions made by the Executive in closing about the credibility of Joseph Leung's evidence as to this meeting and Dr. Chow's denial of it ever having taken place, the Panel finds that Joseph Leung did meet with Dr. Chow regarding Ms Kung's insecurity about her control of ENM even after her agreement to purchase Mr. Chee's stake in ENM. Regardless of the exact content of the discussion, either this meeting is a complete invention and lie on the part of Joseph Leung or it did occur. To give this evidence can only implicate Joseph Leung himself. The only exculpatory part is Joseph Leung's denial of knowledge that Dr. Chow was purchasing or would purchase ENM shares on Ms. Kung's behalf to address her insecurity and his assertion that he warned Dr Chow not to. But it makes no sense then to place himself as having any contact with Dr. Chow during this period let alone having a discussion with Dr. Chow which makes it clear that Joseph Leung knows Ms. Kung had no intention of making a general offer while wishing to address her insecurity. Unless, of course, the evidence that the meeting occurred is true.

55. That Dr. Chow should not recall this meeting is not surprising. Dr. Chow has referred to Joseph Leung as Chief Accountant at Chinachem, a position which he has never held so Dr. Chow regards him as an employee of Ms. Kung, but is mistaken as to the position he held, a matter of no importance to Dr. Chow. That Dr. Chow would see him to satisfy Ms. Kung's request is not surprising but according to Joseph Leung it was a short meeting and Dr. Chow ended it by saying nothing of consequence to Ms. Kung's employee but without being impolite.

56. The Panel therefore finds that Dr. Chow did know of Ms. Kung's proposed purchase of Mr. Chee's stake in ENM, her intention to gain or consolidate control of ENM and her intention to avoid making a general offer.

57. As noted above (paragraphs 33 and 34), Dr. Chow also carried out Ms. Kung's instructions as to how the ENM shares were to be held by 4 BVI companies by instructing his son, Oscar, to make the arrangements.

58. Later in 2001, Ms. Kung requested Dr. Chow to purchase an additional approximately 24 million ENM shares on her behalf from the market so as to increase the total holding to 160,000,000 shares. Dr. Chow bought such shares and then transferred them to Owens, Throphill and Cathnor so that each BVI company then held 40,000,000 ENM shares. The 160 million shares represented approximately 9.69% of the issued share capital of ENM. By then, Dr. Chow cannot have been in any doubt that the 35% threshold had been crossed and that no general offer had been made to the shareholders of ENM. This state of affairs remains so to this day.

59. In oral evidence, Dr. Chow stated that when bearer shares were phased out and the 4 BVI companies needed to convert to having registered shareholders, the purpose of having the 4 BVI companies held under 2 BVI companies as opposed to a single BVI

company, with each ultimately held by two different adult children was to avoid the 5% disclosure limit. The steps taken in 2009 to maintain the original secrecy regarding the ownership of the ENM shares held for the late Ms Kung points again to the original purpose of having Dr Chow purchase the shares instead of Ms Kung herself.

Oscar Chow

60. The first issue which must be resolved by the Panel is whether any responsibilities under the Code applied to Oscar Chow at the time of the events in question namely at the time when the relevant purchases of ENM shares were made by Dr. Chow for Ms. Kung. The Executive has submitted that Oscar Chow fell within section 1.5 (b) and/or (d) of the Introduction, being respectively persons or groups of persons who seek to gain or consolidate control of public companies and those who are actively engaged in the securities markets in all its aspects.

61. As to the latter class (d), there is no evidence that Oscar Chow was actively engaged in the securities markets (in any of its aspects) at the time when these purchases were made, although Oscar Chow gave evidence that he might have bought some shares in HSBC before joining Chevalier in 2000 but he was definitely not an active investor. What the Executive relies upon is Oscar Chow's involvement with the arrangements whereby Dr. Chow was reimbursed by Ms. Kung for the purchase of the shares, secondly his opening of the BVI accounts with Merrill Lynch and thirdly, the fact that he became legal owner of 80 million shares in 2009. In the Panel's view, these matters do not constitute active engagement in the securities markets by Oscar Chow.

62. Whether he falls within the class of persons under section 1.5(b) can only be considered along with the question whether he was a member, albeit not a principal member of the concert group consisting of Ms. Kung and his father, Dr. Chow. Although the Executive seeks to rely on the rebuttable presumption in class (8) of the definition of "acting in concert" which presumes an individual to be acting in concert with (among others) his close relative unless the contrary is established, the Executive appeared to accept in closing oral submissions that for a non-shareholder, there obviously needs to be some "action" on his or her part for the "acting in concert" presumption to arise although the Executive submitted that it was not necessary for any particular person to have purchased shares before the presumption arises. Since the issue is whether Oscar Chow became a member of the concert group consisting of his father and Ms. Kung, the Panel considers it impermissible, even if it be presumed that he was acting in concert with his father, to presume that he is also acting in concert with Ms. Kung. The presumption only applies to those within the same class and Ms. Kung is not within that class. The presumption is therefore irrelevant.

63. In order to consider the question of whether Oscar Chow was within a group of persons seeking to obtain or consolidate control of ENM, the Panel considers it is permissible to look at the definition of "acting in concert" in the context of Rule 26.1. Firstly, the Panel does not consider it necessary for it to be established that Oscar Chow was a party to the agreement or understanding between his father and Ms. Kung. It would be sufficient if it is shown that he has actively co-operated in the obtaining or consolidation of control of ENM by them or by her through the purchase of shares by any of them with knowledge that they had such agreement or understanding and has actively participated in any arrangement whereby the increase in the shareholdings of the two of them above 35% has been concealed.

64. The remainder of this Section contains the relevant findings of fact made by the Panel in relation to Oscar Chow and the reasons for finding a breach on his part of Rule 26.1 of the Code. Principally, the Panel finds that Oscar Chow did have knowledge of the

agreement or understanding between his father and Ms. Kung to obtain or consolidate control of ENM through the purchase of ENM shares and that his involvement in the reimbursement whereby Dr. Chow was reimbursed by Ms. Kung and in the arrangements for the holding of the ENM shares by the BVI companies amounted to active co-operation and that the latter amounted to active participation in an arrangement whereby the increase in the shareholdings above 35% held by the concert group was concealed. Reimbursement of Dr. Chow was an essential aspect of the agreement or understanding between Ms. Kung and Dr. Chow.

65. The Panel finds that on several occasions after Dr. Chow had purchased ENM shares for Ms. Kung, he would give Oscar Chow the relevant broker statements and ask him to work out the total number of ENM shares he had bought and the consideration and other costs involved. Oscar Chow would in accordance with Dr. Chow's request then prepare Excel spread sheets which set out the relevant details. These were then given to Joseph Leung in an envelope for the purpose of Ms. Kung's reimbursing Dr. Chow for the purchase of ENM shares. According to Oscar Chow's evidence in his witness statement, he met Joseph Leung a few times in a coffee shop in the Nikko Hotel, close to the offices of Chinachem, for the purposes of passing the spread sheets to him. In his oral evidence, Oscar Chow gave evidence that they met in total on 4 or 5 occasions. Prior to that Dr. Chow had given him the details of the bank account to which payment was to be made and had told him to meet with Joseph Leung and to pass him the details of the bank account to which payment was to be made. The Panel finds that Oscar Chow did meet Joseph Leung on a number of occasions from late 2000 to 2001 for the purposes of giving him the designated bank account and passing him the spread sheets so that Dr. Chow could be reimbursed for the purchase of the ENM shares for Ms. Kung and that Dr. Chow was fully reimbursed as a result.

66. The Panel also finds that Oscar Chow knew from the broker statements and the instructions his father gave him that Dr. Chow had purchased ENM shares for which he was seeking reimbursement, Oscar Chow also knew how many ENM shares Dr. Chow had purchased and that the shares were not purchased by Dr. Chow for himself but for someone else from whom he was seeking reimbursement. Despite his denial of knowing that Ms. Kung was the person from whom Dr. Chow was seeking reimbursement, the Panel finds that Oscar Chow did know from the fact that he was handing the spread sheets to Joseph Leung who was to his knowledge employed by Ms. Kung. Oscar Chow was and clearly is an educated, intelligent individual. Prior to joining Chevalier, he had had two jobs, one of which was working in Peregrine/BNP and the other in an insurance company. Oscar Chow also knew of the agreement or understanding between his father and Ms. Kung that his father would purchase ENM shares for her and would be reimbursed by her. Oscar Chow accepted in cross-examination that he knew that Ms. Kung was a wealthy person who could have afforded to buy the ENM shares herself. With his admitted knowledge of the Listing Rules and the Code, he understood the reason for his father purchasing the ENM shares instead of Ms. Kung herself. Oscar Chow also knew that after the spread sheets had been passed to Joseph Leung, reimbursements were to be made to the designated bank account.

67. As to the arrangements for the holding of the shares, Oscar Chow carried out his father's instructions for the acquisition of the 4 BVI companies and the opening of accounts with Merrill Lynch. By then, he knew that his father was not the true owner of the shares but Ms. Kung was. He also knew that the ownership of the BVI companies which held the ENM shares would not be known because of the existence of the bearer shares.

68. The Panel therefore finds that in arranging the repeated reimbursements during ongoing purchases, and the holding of the ENM shares by the 4 BVI companies, Oscar Chow was actively co-operating as a member, but not a principal member, of the concert party to obtain or consolidate control of ENM and in arrangements which had the effect of concealing the true ownership of the ENM shares purchased by his father for Ms. Kung with the requisite knowledge of, and pursuant to, the agreement or understanding between Ms. Kung and his father.

Joseph Leung

69. Joseph Leung became a director of ENM on 21 December 2000. The responsibilities in the Code clearly applied to him from that date under section 1.5(a) of the Introduction. Also, if he was within a group of persons seeking to obtain or consolidate control of ENM, the obligations in the Code would also apply to him. Whether he falls within the class of persons under section 1.5(b) of the Introduction can only be considered along with the question whether he was a member, albeit not a principal member of the concert group led by Ms. Kung and Dr. Chow.

70. In order to consider the question of whether Joseph Leung was within a group of persons seeking to obtain or consolidate control of ENM, the Panel considers it is permissible to look at the definition of "acting in concert" in the context of Rule 26.1. The Panel does not consider it necessary for it to be established that Joseph Leung was a direct party to the agreement or understanding between Dr. Chow and Ms. Kung to have been acting in concert and to be in breach of Rule 26.1. It would be sufficient if it is shown that he has actively co-operated in the obtaining or consolidation of control of ENM by them through the purchase of shares taking their combined shareholding in ENM above 35% and with knowledge that no general offer was to be made.

71. The Executive's case against Joseph Leung is based upon his playing an active role as a member of the concert group in handling the reimbursement of funds from Ms. Kung to Dr. Chow to cover the costs incurred by Dr. Chow in purchasing the 160 million ENM shares and in allegedly telling Dr. Chow to remain quiet about his holding of the ENM shares and not to inform Dr. Kung Yan Sum ("Dr. Kung"), the brother of Ms. Kung, about them. This event was alleged to have occurred at the L'hotel in Causeway Bay at a meeting shortly after the death of Ms. Kung to discuss the funeral arrangements.

72. In Factual Submissions on behalf of Joseph Leung dated 18 February 2014 and his first witness statement confirmed in his oral testimony, Joseph Leung has set out in detail his knowledge of the facts relating to Ms. Kung's acquisition of ENM shares dating from 1999. It is clear from this evidence that excluding the 160 million shares purchased by Dr. Chow for Ms. Kung, Joseph Leung had knowledge of her building up her stake in ENM, her attempts to purchase Mr. Chee's holdings in ENM from October 2000 onwards and the basis for her insecurity concerning the sufficiency of these acquisitions to have control over ENM. In an announcement[8] dated 2 November 2000, ENM stated that it would issue 163,500,000 ENM shares (9.9% of the enlarged issued shares) at HK$1.40 per share in exchange for 72,300,000 existing shares in AcrossAsia Multimedia Limited ("AcrossAsia"), a member of the Indonesian Lippo Group. This was at a price more than double the closing price of ENM shares on 1 November 2000 of HK$0.68 but equal to net asset value as at 30 June 2000. According to Joseph Leung, Ms. Kung was already set on accumulating a substantial

[8] At http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1103/LTN20001103021.doc

and controlling beneficial shareholding in ENM. She was already in negotiation with Mr. Chee and this issue had the effect of diluting her existing stake in ENM. According to Joseph Leung, Ms. Kung had previously been engaged in a bitter battle with the Lippo Group for the control of another company as a result of which she ended up with a minority shareholding in a company controlled by the Lippo Group and she was determined not to let history repeat itself. The Panel has no reason to doubt this evidence. In particular, it goes to Joseph Leung's knowledge of Ms. Kung's intentions in relation to control of ENM. Further, within Chinachem, Joseph Leung had overall supervision of the Company Secretarial department which had responsibility for ensuring that regulatory requirements were met in relation to Ms. Kung's investments. He therefore had knowledge of the disclosures which were made in relation to Ms. Kung's holdings of ENM shares.

73. According to Joseph Leung's evidence, on or about 4 November 2000, after Ms. Kung had reached a conditional agreement with Mr. Chee, she was informed by a source that her position was far from secure as Across Asia and parties acting in concert with the Lippo Group could have a larger combined shareholding than her. This added to Ms. Kung's feeling of insecurity. She asked Joseph Leung for his advice and he told her that she could not buy any more shares after the completion of the transaction with Mr. Chee because she would then reach the 35% threshold and would need to make a general offer which she had no intention of doing. It was in these circumstances that Ms. Kung asked Joseph Leung to seek advice from Dr. Chow.

74. The Panel also refers to paragraphs 53 to 56 above. The Panel having found that Joseph Leung did indeed meet with Dr. Chow and having made findings as to what Joseph Leung did inform Dr. Chow of, the Panel finds that Joseph Leung knew that Ms. Kung intended to obtain control of ENM and was seeking, on Ms Kung's behalf, advice from Dr. Chow on her situation. Joseph Leung also knew that Ms. Kung could not purchase any more shares after completion of her acquisition from Mr. Chee, that she had had to place out some ENM shares in advance of completion to keep her below the 35% trigger and that although she intended to obtain or consolidate her control, she did not intend to make a general offer.

75. With that knowledge, Joseph Leung actively cooperated in the obtaining or consolidating of control of ENM by Ms. Kung through Dr. Chow in arranging for the reimbursement of Dr. Chow. Joseph Leung's evidence is also that sometime after the meeting with Dr. Chow, he was instructed by Ms. Kung to arrange the transfer of some money to a company related to Dr. Chow, that he asked her what the money was for and was told by her that it was something between Dr. Chow and herself, a personal matter. His evidence is essentially that he did not know the transfer was for the purchase of ENM shares. The Panel does not accept this aspect of Joseph Leung's evidence.

76. It is undisputed that Joseph Leung met Oscar Chow on a number of occasions, that at such meetings, Oscar Chow handed to Joseph Leung an envelope to be passed onto Ms. Kung. According to Joseph Leung, Oscar Chow told him this was on the instruction of Dr. Chow. On returning to the Chinachem office, he would hand over the envelope to Ms. Kung. He maintains that he was not told about any designated account to which payment was to be made. He believed that the payments to Dr. Chow were payments for expenses incurred by Dr. Chow in Taiwan to help trace the whereabouts of Mr. Wang. Dr. Chow in his testimony denied that he had ever sought any payment from Ms. Kung for expenses incurred in Taiwan.

77. The Panel does not find Joseph Leung's evidence in relation to the reimbursements credible. According to him, his instructions from Ms. Kung were to arrange the transfer

of some money to a company related to Dr. Chow, which he did. At the same time, he denies that Oscar Chow gave him any information as to the designated account to which money was to be paid. The Panel finds that Oscar Chow did give Joseph Leung the account to which money was to be paid along with the first reimbursement spread sheet and that Joseph Leung with his knowledge of Ms. Kung's determination to obtain and consolidate control of ENM, knew that Ms. Kung had sought Dr. Chow's help, a long-time close friend of hers whom she trusted to purchase ENM shares on her behalf. Both Joseph Leung and Oscar Chow knew what the payments were for. These were the transfers of money which Joseph Leung arranged. If the share purchases by Dr. Chow had been kept secret from Joseph Leung, then Ms Kung would have been taking a great risk and an unnecessary risk by involving him in the reimbursement arrangements.

78. It was Oscar Chow's evidence in his draft statement to the SFC that he passed to Joseph Leung some of the Merrill Lynch statements for the 4 BVI companies. Joseph Leung denies knowledge of this, but it is consistent with the AF, given that Ms. Kung had instructed for the 4 BVIs to hold the shares, that evidence of that would be provided to her at least by the time of the final reimbursement claim in late 2001. Whether or not Joseph Leung was aware of the arrangements to hold the shares in the 4 BVI companies, Joseph Leung knew that no disclosures had been made of the purchases.

79. As to the alleged meeting at the L'hotel which is said to have occurred after Ms. Kung's death in the course of which Joseph Leung is alleged to have gone into a room with Dr. Chow to tell him not to reveal his shareholdings in ENM to Dr. Kung, the Panel finds the allegation not credible. According to the evidence of Dr. Kung, there were several people present at this meeting including his sisters. That Joseph Leung would have so obviously taken Dr. Chow aside in a manner as to excite curiosity in the very persons from which Joseph Leung wished to conceal the ENM shareholdings does not make sense.

80. The Panel did not find Dr. Kung to be a reliable witness. His hostility to Joseph Leung was evident from the way in which he gave his testimony. Moreover, it is clear that in early 2012, Dr. Kung set up a meeting between Dr. Chow and a solicitor, John Chan to try to extract a statement from Dr. Chow in relation to the alleged incident at the L'hotel. Dr. Chow refused to sign the statement which was prepared for him. The suggestion that Joseph Leung was seeking to embezzle assets from Ms. Kung's estate and therefore wished to keep quiet the 160 million shares in ENM also does not make sense since to the knowledge of Dr. Kung and Dr. Chow those shares were at all times held by Dr. Chow. The Panel does find that at some point soon after the death of Ms. Kung, Dr. Chow did inform Dr. Kung about the existence of these shares held for Ms Kung. Dr. Chow's evidence was that he told Dr. Kung of these shares in the context of their availability to help fund the costs of the Chinachem Charitable Foundation in its litigation against Tony Chan over the will of Ms. Kung. This the Panel does accept but it appears that both Dr. Chow and Dr. Kung preferred to keep quiet about the existence of these shares while the estate was in dispute and the Panel finds that the Joint Administrators appointed in 2007 were not told about these shares until 2012. The Panel finds that Dr. Chow did tell Dr. Kung some time in 2007 shortly after Ms. Kung's death about the existence of the ENM shares which he held but that there was no meeting at the L'hotel at which Joseph Leung was present at the same time as Dr. Chow and at which Joseph Leung called Dr. Chow aside to tell him not to inform Dr. Kung that Dr. Chow held ENM shares for Ms. Kung.

81. The Panel therefore finds that Joseph Leung did actively co-operate as a member, but not a principal member, of the concert party by his arranging for the reimbursement of

Dr. Chow pursuant to the agreement or understanding between Ms. Kung and Dr. Chow at a time when he knew that Dr. Chow was purchasing ENM shares for Ms. Kung to obtain or consolidate control of ENM when she had no intention of making a general offer to the shareholders of ENM.

Decision

82. For the reasons stated, the Panel unanimously found a breach of Rule 26.1 on the part of Dr Chow, Joseph Leung and Oscar Chow in that they acted in concert with the late Ms Kung to obtain and consolidate control over ENM through the acquisition of voting rights and there has been a failure to make a general offer as required by that Rule.

8 April 2015

TAKEOVERS AND MERGERS PANEL

Paper prepared by the Executive

Re: ENM Holdings Limited

The Proceedings

1. The Executive institutes disciplinary proceedings before the Takeovers Panel under section 12.1 of the Introduction to the Code on Takeovers and Mergers ("**Takeovers Code**")[1] against Dr Chow Yei Ching ("**Dr Chow**"), his son, Mr Chow Vee Tsung Oscar ("**Oscar Chow**") and Mr Joseph Leung Wing Kong ("**Mr Leung**").

The Executive's Case

2. The Executive's case is that at the instigation of and together with the late Nina Kung, also known as Nina T H Wang ("**Ms Kung**"), Dr Chow, Mr Leung and Oscar Chow, acted in concert in relation to ENM Holdings Limited ("**ENM**") in order to avoid the triggering of a mandatory general offer under the Takeovers Code. Such a failure constituted a breach of Rule 26.1 of the Takeovers Code.

The Takeovers Code

3. The Takeovers Code regards two or more persons as acting in concert in respect of a company if pursuant to an agreement or understanding they actively cooperate, through the acquisition of shares by any of them, to obtain or consolidate control[2] of that company.

4. The Takeovers Code requires a mandatory general offer to be made for all the shares in the company if a person or group of persons acting in concert acquired shares resulting in either:

   (i) the person or concert group collectively holding 35% or more of the voting rights (known as the "**trigger**"); or

[1] References to the Takeovers Code refer to the version of the Takeovers Code in force at the relevant time

[2] Before 19 October 2001, control was defined as "*…a holding, or aggregate holdings, of 35% or more of the voting rights of a company…*" The relevant percentage was lowered to 30% on 19 October 2001.

(ii) the person or concert group collectively holding between 35% and 50% of the shares and then going on to acquire, either individually or as a group, more than 5% in any 12 month period (known as the "**creeper**")[3].

Relevant provisions of the Takeovers Code are set out in ***Annex 1*** to this Paper.

ENM

5. ENM, formerly known as e-New Media Company Limited[4], has at all material times been principally engaged in wholesale and retail fashion wear and accessories, resort and recreational club operations, investment holding and securities trading. Its shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited ("**Exchange**").

The Personalities

6. Dr Chow was the founder and chairman of Chevalier Group, a multinational conglomerate with businesses spanning China, South East Asia, North America and Australia. At all material times he has also been the controlling shareholder, chairman and executive director of Chevalier International Holdings Limited ("**Chevalier**"), a company listed on the Main Board of the Exchange.

7. Ms Kung was the largest shareholder of ENM. She was also the chairwoman and the sole beneficial owner of the Chinachem Group (華懋集團).

8. Mr Leung was a trusted friend and close business associate of Ms Kung. He joined the Chinachem Group in April 1987 as a director at the invitation of Ms Kung and her late husband Teddy Wang[5]. Mr Leung is currently the chairman, executive director and acting chief executive officer of ENM.

9. Dr Chow had been a close friend of Ms Kung and her late husband Teddy Wang for more than 40 years. They were also long-term business partners and there had been many business dealings between them[6]. Dr Chow was one of the

[3] Full text of Rule 26.1 at the relevant time at Tab 31 of the Bundles
[4] ENM's announcement dated 28 June 2005 at Tab 11 of the Bundles. According to the announcement, e-New Media Company Limited changed its name to ENM Holdings Limited with effect from 24 June 2005
[5] Counter 64 - 66, Mr Leung's interview transcript at Tab 2 of the Bundles
[6] Paragraph 1, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

principal contractors for the Chinachem Group[7]. Dr Chow and Ms Kung shared a high level of mutual trust and confidence[8].

10. Oscar Chow joined the Chevalier Group in 2000[9]. On 29 March 2004, he was appointed an executive director of Chevalier.

Chronology of events

11. A chronology of events is set out in ***Annex 2*** to this Paper.

The Relevant Events: 2000-2002

12. On 7 November 2000, ENM announced that its then substantial shareholder Mr Chee Ying Cheung (支盈章) ("**Mr Chee**") had recently been in touch with several parties including Ms Kung for preliminary discussions regarding the disposal of his shareholdings in part or in whole[10].

13. On 5 December 2000, ENM announced that, among other things, Solution Bridge Limited (a company wholly and beneficially owned by Ms Kung) proposed to acquire 408,757,642 ENM shares (representing approximately 24.77% of the then issued share capital of ENM) at HK$1.40 for each sale share from Mr Chee. At that time, Ms Kung was the beneficial owner of 205,884,503 ENM shares representing 12.48% of ENM. The relevant sale and purchase agreement with Mr Chee was conditional on obtaining the Executive's written confirmation that no general offer obligation would arise. The announcement also stated that Ms Kung would dispose of a certain number of her ENM shares to independent parties through a placing agent, Celestial Capital Limited, so that immediately after the completion of the share acquisition, Ms Kung and her concert parties would not beneficially own more than 34.9% of ENM, i.e. just below the then 35% threshold which would mandate the making of a general offer[11].

14. On 21 December 2000, ENM announced the completion of the acquisition and the disposal (of approximately 2.61% of the issued shares of ENM) and that as a result of these transactions Ms Kung held in aggregate 571,642,145 shares

[7] Counter 236, Mr Leung's interview transcript at Tab 2 of the Bundles
[8] Paragraph 1, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[9] Counter 46, Oscar Chow's interview transcript at Tab 3 of the Bundles
[10] ENM's announcement dated 7 November 2000 at Tab 7 of the Bundles
[11] ENM's announcement dated 5 December 2000 at Tab 8 of the Bundles

representing an approximately 34.64% interest in ENM. The announcement also stated that Solution Bridge Limited had received the Executive's written confirmation that no general offer obligation would arise in connection with the share acquisition from Mr Chee[12].

15. In late 2000, Ms Kung asked Dr Chow to acquire ENM shares and hold them on her behalf[13]. Dr Chow agreed to this request and between November 2000 and March 2001 proceeded to buy 136,008,000 ENM shares (approximately 8.24% of ENM's issued share capital) from the market in his own name for Ms Kung[14]. As at 21 December 2000, Dr Chow had purchased not less than 91.3 million ENM shares (approximately 5.53% of ENM's share capital)[15].

16. These purchases were executed through two brokerage firms, Chung Lee & Company and Chung Hsin & Company[16]. The market value of the 136 million ENM shares as at 30 March 2001 amounted to approximately HK$ 56 million (based on the closing market price of HK$0.415).

17. In early 2001, Ms Kung asked Dr Chow to purchase four British Virgin Islands ("**BVI**") companies and to transfer the 136,008,000 shares that he then held on her behalf into these companies. Ms Kung also asked Dr Chow to open accounts in the name of these companies with Merrill Lynch Wealth Management ("**Merrill Lynch**") and to deposit the 136,008,000 ENM shares into these accounts[17]. Dr Chow then asked his son, Oscar Chow to carry out these requests[18].

18. Oscar Chow then arranged to purchase four BVI companies, namely Accuvantage Limited ("**Accuvantage**"), Owens Assets Limited ("**Owens Assets**"), Throphill Enterprises Limited ("**Throphill Enterprises**") and Cathnor Holdings Limited ("**Cathnor Holdings**"). He opened accounts for these companies with Merrill

[12] ENM's announcement dated 21 December 2000 at Tab 9 of the Bundles. According to the announcement, Ms Kung's interest in ENM was held through two investment vehicles namely Diamond Leaf Limited and Solution Bridge Limited.
[13] Paragraphs 3-4, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles. At his interview with the SFC, Dr Chow confirmed that he first bought around 130,000,000 ENM shares and then he acquired further shares resulting in a total shareholding of 160 million (Counter 139-142, Dr Chow's interview transcript at Tab 1 of the Bundles.)
[14] Chronology of events provided by Dr Chow's solicitors at Tab 13 of the Bundles, Disclosure of Interest form of Dr Chow dated 28 May 2013 at Tab 20 of the Bundles
[15] See the chronology of events at Tab 13 of the Bundles, and the further submission by Robertsons dated 15 June 2012 at Tab 14 of the Bundles. The Executive has reviewed the trading information of these two brokers obtained from the Market Surveillance System of the SFC at Tab 22 of the Bundles
[16] Paragraph 2, Robertsons' letter dated 15 June 2012 at Tab 14 of the Bundles
[17] Paragraphs 6-9, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[18] Counter 105 -112, 285-290, Oscar Chow's interview transcript at Tab 3 of the Bundles

Lynch[19]. The 136,008,000 ENM shares were then transferred to these companies in August 2001 as follows[20]:

- 40,000,000 shares to Accuvantage (approximately 2.42% of ENM's issued share capital)
- 30,000,000 shares to Owens Assets (approximately 1.82% of ENM's issued share capital)
- 30,348,000 shares to Throphill Enterprises (approximately 1.84% of ENM's issued share capital)
- 35,660,000 shares to Cathnor Holdings (approximately 2.16% of ENM's issued share capital)

19. Each of the BVI companies had two directors, namely, Oscar Chow and one of Dr Chow's daughters, Ms Chow Wai Wai Violet ("**Violet Chow**")[21].

20. Dr Chow paid for the cost of setting up of the four BVI companies and was subsequently reimbursed by Ms Kung. The reimbursement was handled through Mr Leung[22].

21. Later in 2001, Ms Kung asked Dr Chow to purchase an additional 24 million ENM shares (approximately 1.45% of its issued share capital) on her behalf from the market. Dr Chow bought such shares and then transferred them to three of the four BVI companies as follows[23]:

- 10,000,000 shares to Owens Assets (approximately 0.61% of ENM's issued share capital)
- 9,652,000 shares to Throphill Enterprises (approximately 0.58% of ENM's issued share capital)
- 4,340,000 shares to Cathnor Holdings (approximately 0.26% of ENM's issued share capital)

[19] Counter 77- 84, Oscar Chow's interview transcript at Tab 3 of the Bundles. Account opening documents of the four BVI companies with Merrill Lynch Wealth Management attached to Robertsons' letter dated 15 June 2012 at Tab 14 of the Bundles

[20] Merrill Lynch's account statements of the four BVI companies at Tab 13 of the Bundles. Disclosure of Interest forms at Tab 20 of the Bundles

[21] Paragraph 10, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

[22] Paragraph 9, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

[23] Counter 135-138, Dr Chow's interview transcript at Tab 1 of the Bundles, Paragraph 3, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles, Disclosure of Interest forms at Tab 20 of the Bundles

22. As Oscar Chow was responsible for opening the accounts with Merrill Lynch, all statements issued by Merrill Lynch concerning the four BVI companies were sent to him[24].

23. By the beginning of January 2002, Dr Chow, through the four BVI companies, held in aggregate 160 million ENM shares, representing approximately 9.69% of the issued share capital of ENM[25]. Each of the four BVI companies held 40 million ENM shares[26]. None of these shareholdings in ENM were publicly disclosed until May 2013[27].

24. Dr Chow paid for the purchase of the 160 million ENM shares and was subsequently reimbursed by Ms Kung. The reimbursement was handled by Oscar Chow and Mr Leung[28]. Each time Dr Chow purchased ENM shares for Ms Kung, he would give Oscar Chow the relevant broker statements and ask him to work out the total number of ENM shares he had bought and the consideration involved. Oscar Chow would, in accordance with Dr Chow's request, then prepare excel spread sheets which set out the relevant details[29]. Oscar Chow personally handed the spread sheets over to Mr Leung who then arranged for payment to be paid into a bank account the details of which were provided by Dr Chow[30]. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements[31].

25. Ms Kung's shareholding position in ENM was public knowledge and had been the subject of wide media coverage as well as a number of announcements by ENM. At all material times details of Ms Kung's shareholdings in ENM were in the public domain:

    (a) Ms Kung's acquisition of ENM shares including the sale and purchase agreement with Mr Chee attracted broad coverage in the press in late 2000[32] ;

[24] Counter 243-244, Counter 325-326 Oscar Chow's interview transcript at Tab 3 of the Bundles
[25] The market value of the 160 million ENM shares amounted to approximately HK$ 70 million as at 7 January 2002 based on the closing price extracted from the Market Surveillance System of the SFC
[26] Paragraph 7, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[27] Disclosure of Interest forms dated 16 May 2013 at Tab 20 of the Bundles
[28] Paragraphs 9 and 15, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles. Counter 153-154 of Oscar Chow's interview transcript at Tab 3 of the Bundles
[29] Counter 135-154, Oscar Chow's interview transcript at Tab 3 of the Bundles
[30] Counter 153-154, 159-164, Oscar Chow's interview transcript at Tab 3 of the Bundles
[31] Counter 177-178, Oscar Chow's interview transcript at Tab 3 of the Bundles
[32] By way of example the press articles at Tab 30 of the Bundles

(b) Ms Kung's shareholdings were disclosed in each of the announcements dated 7 November 2000, 5 and 21 December 2000 issued by ENM relating to Ms Kung's acquisition of 24.77% of ENM from Mr Chee[33]. Further details of Ms Kung's shareholdings were regularly disclosed in interim and annual reports subsequently issued by ENM[34];

(c) ENM's announcement dated 5 December 2000 contained clear reference to the placing down of shares by Ms Kung in order to keep her shareholding below the 35% trigger threshold and the fact that the sale and purchase agreement was conditional on the Executive's confirmation that no general offer would arise[35]; and

(d) Ms Kung became a substantial shareholder holding more than 10% of ENM in August 2000 and details of her shareholdings were publicly disclosed in compliance with the now repealed Securities (Disclosure of Interests) Ordinance[36].

Bearer Shares

26. When the four BVI companies were first set-up, one bearer share was issued for each company. Dr Chow kept the four bearer shares in his personal office[37]. Under BVI law at the relevant time the share register did not need to record the names and addresses of the persons who held bearer shares. A bearer share was transferable by delivery of the certificate relating to the share. Thus, bearer shares could be held by persons the identity of whom was not recorded in the share register of the company and hence the beneficial owner could not be ascertained or traced by means of a review of the company's statutory records.

Events Subsequent to 2002

27. Oscar Chow resigned as director of the four BVI companies with effect from 15 March 2004. Since that resignation, Violet Chow has been the sole director of these companies[38].

[33] See Tab 7, Tab 8, and Tab 9 of the Bundles
[34] See the extracts from ENM's annual reports for 2000, 2001 and 2002 disclosing Ms Kung's shareholdings at Tab 21
[35] See Tab 8 of the Bundles
[36] See Tab 19 of the Bundles
[37] Paragraph 10, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[38] Paragraph 10, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

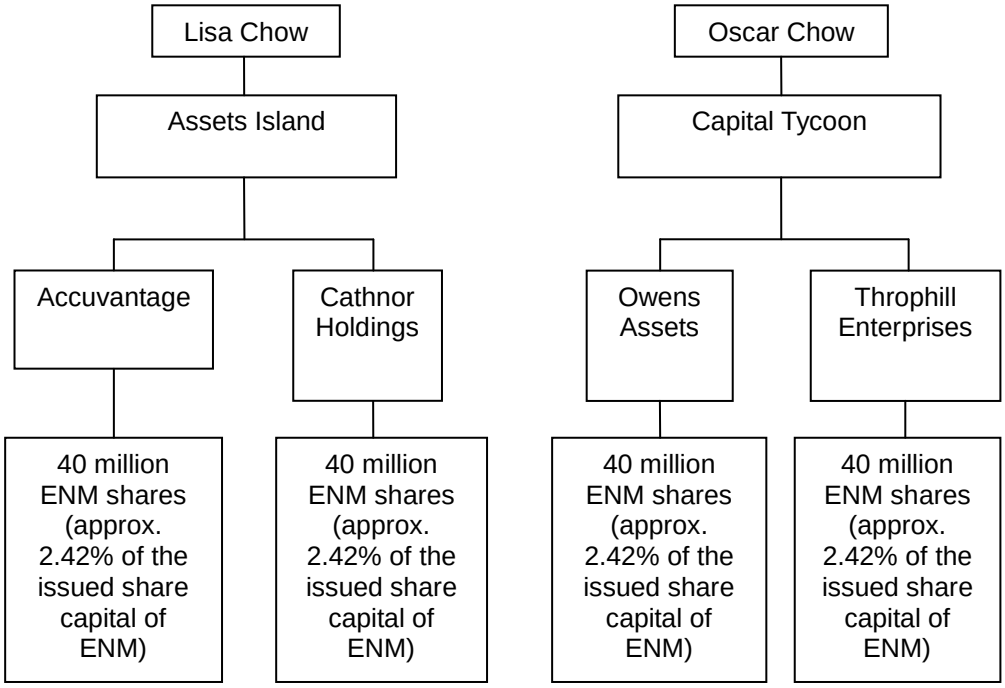
28. On 26 February 2007 and 1 March 2007, Dr Chow bought 15 million and 14,116,000 ENM shares respectively for himself. These shares were registered in Dr Chow's name and represented about 1.76% of ENM[39].

29. Ms Kung died in April 2007.

30. In January 2005 a new BVI law came into force introducing tighter regulation as to the use of bearer shares with the objective of achieving greater transparency with regard to share ownership. The deadline for compliance was 31 December 2009. Consequently, Dr Chow asked Oscar Chow to use another two BVI companies, namely Capital Tycoon Limited ("**Capital Tycoon**") and Assets Island Limited ("**Assets Island**"), to hold the shares of the four BVI companies which held the 160 million ENM shares[40]. Oscar Chow and another daughter of Dr Chow, Chow Wai Chi Lisa ("**Lisa Chow**"), were the respective sole registered owners of Capital Tycoon and Assets Island. The bearer shares of the four BVI companies were then exchanged for shares issued to Capital Tycoon and Assets Island. The shares in Accuvantage and Cathnor Holdings were issued to Assets Island. The shares of Owens Assets and Throphill Enterprises were issued to Capital Tycoon[41].

[39] Paragraph 1, Robertsons' letter dated 15 June 2012 at Tab 14 of the Bundles
[40] Counter 405-406, Oscar Chow's interview transcript at Tab 3 of the Bundles
[41] Paragraphs 11-13, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles. Corporate documents of Accuvantage, Cathnor Holdings, Owens Assets, Throphill Enterprises, Capital Tycoon and Assets Island attached to Robertsons' letter dated 15 June 2012 at Tab 14 of the Bundles

31. The shareholding structure after the share exchange was as follows:



32. In late April 2012, Dr Chow received a letter from the administrator of Ms Kung's estate making enquiries into Dr Chow's knowledge of certain assets belonging to the estate, specifically, some shares in ENM[42]. Subsequently, on 28 May 2012, Dr Chow brought the matter to the attention of the Securities and Futures Commission ("**SFC**") through his solicitors.

SFC Investigation

33. Following the report from Dr Chow's solicitors the SFC conducted an investigation.

34. At no time between 2000 and 2002 was a general offer made to the shareholders of ENM in accordance with Rule 26 of the Takeovers Code.

35. Interviews were conducted with a number of people including Dr Chow, Mr Leung and Oscar Chow.

[42] Letter from PricewaterhouseCoopers dated 25 April 2012 at Tab 12 of the Bundles and paragraph 21, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

Relevant provisions under the Takeovers Code

36. "Acting in concert" is defined in the Takeovers Code as follows:

> *"Persons acting in concert comprise persons who, pursuant to an agreement or understanding, actively cooperate to obtain or consolidate "control" … of a company through the acquisition by any of them of voting rights of the company."*

37. The definition of "acting in concert" also states:

> *"Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established –*
>
> *…*
>
> *(8) an individual with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts."*
>
> *[#] Control: The normal test for whether a person is controlled by, controls or is under the same control as another person, will be by reference to the definition of control, that is by reference to holding 35% or more of the voting rights of a company. In cases of doubt, the Executive should be consulted.* [43]

38. Rule 26.1 of the Takeovers Code ("When mandatory offer required") provides that:

> "*Subject to the granting of a waiver by the Executive, when*
>
> *(a) any person acquires, whether by a series of transactions over a period of time or not, 35% or more of the voting rights of a company;*
>
> *(b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of the company; …*

[43] The relevant percentage was lowered to 30% on 19 October 2001

that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this Rule, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares…" [44]

Dr Chow

39. The following factors support the proposition that Dr Chow was an active member of the concert group and assisted Ms Kung in circumventing the requirements of Rule 26.1 of the Takeovers Code.

40. Dr Chow had known Ms Kung as a close friend and business partner for more than 40 years[45].

41. At the request of Ms Kung, Mr Leung approached Dr Chow in or around late 2000 to explain Ms Kung's concern regarding her shareholding position in ENM and seek his views[46].

42. In or around late 2000, Ms Kung asked Dr Chow to acquire a substantial number of ENM shares and hold them on her behalf. Dr Chow subsequently acquired a total of 160 million ENM for Ms Kung and at her request[47].

43. At the time he was asked to acquire the ENM shares Dr Chow understood Ms Kung to be the *"boss"* of ENM[48].

44. At the relevant time Ms Kung was a very well known wealthy business woman. The fact that Ms Kung asked Dr Chow to buy the ENM shares when she was clearly in a position financially to do so herself must have alerted Dr Chow, himself a businessman with experience of listed companies.

45. Dr Chow had previous experience with the Takeovers Code including issues relating to acting in concert, the mandatory offer trigger threshold and the general offer obligation, as well as disclosure obligations related to listed companies:

[44] See full text of the then Rule 26.1 of the Takeovers Code at Tab 31 of the Bundles
[45] Paragraph 1, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[46] Counter 253 - 278, Mr Leung's interview transcript at Tab 2 of the Bundles
[47] Paragraph 4, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles
[48] Counter 188, Dr Chow's interview transcript at Tab 1 of the Bundles

(a) Since 1984 Dr Chow has been chairman/director of a number of companies listed on the Hong Kong Stock Exchange[49]. Each of these companies was subject to the requirements of the Takeovers Code.

(b) Dr Chow played a key role in the restructuring of the Chevalier Group. Between 1997 and 2011, he was involved in a number of Takeovers Code transactions including the following[50]:

(i) In 1997, Dr Chow, jointly with Chevalier International Holdings Limited ("**CIHL**"), Chevalier Development International Limited ("**CDIL**"), and Chevalier Construction Holdings Limited ("**CCHL**") applied to the Executive for a waiver of the mandatory offer obligation which might have arisen as a result of the implementation of the proposed reorganisation. Dr Chow, CIHL, CDIL and CCHL were presumed to be parties acting in concert under the Takeovers Code and relied on Note 6 to Rule 26.1 of the Takeovers Code (acquisition of voting rights by members of a group acting in concert) in support of their application[51].

(ii) In 1999, Chevalier Development International Limited was privatised by Chevalier International Holdings Limited. Dr Chow was the controlling shareholder of Chevalier International Holdings Limited[52]. Chevalier International Holdings Limited and Dr Chow together held approximately 45.4%[53] in Chevalier Development International Limited. Dr Chow was the chairman of both companies. This transaction was subject to the requirements of the Takeovers Code. In this transaction, Dr Chow took responsibility under Rule 9.3 of the Takeovers Code for all eight of the related announcements, and the privatisation document[54].

(iii) In 2000, Dr Chow, jointly with Chevalier International Holdings Limited ("**CIHL**"), sought the Executive's ruling as to (i) whether an

[49] See Tab 24 of the Bundles for a list of Dr Chow's directorships
[50] In each of these transactions, Dr Chow took responsibility for the accuracy and completeness of the information disclosed in the application and/or documents. See Tab 25 – 29 of the Bundles
[51] See Tab 25 of the Bundles
[52] Dr Chow held approximately 48.7% in Chevalier International Holdings Limited (see the extract of the privatisation document dated 22 October 1999 at Tab 26)
[53] Chevalier International Holdings Limited (38.2%) and Dr Chow (7.2%) based on the information contained in the privatisation document dated 22 October 1999. See Tab 26 of the Bundles
[54] See Tab 26 of the Bundles

investor and its associates in a proposed subscription for the shares in Chevalier Construction Holdings Limited ("**CCHL**") would be regarded as parties acting in concert with Dr Chow and CIHL, and (ii) whether Dr Chow and/or CIHL would be required to make a general offer for the shares in CCHL as a result of the acquisition of additional voting rights in CCHL by CIHL[55].

(iv) In 2004, Chevalier Construction Holdings Limited was privatised by Chevalier International Holdings Limited. Dr Chow was the controlling shareholder and chairman of both companies[56]. Again this transaction was subject to the requirements of the Takeovers Code. In this transaction, Dr Chow took responsibility under Rule 9.3 of the Takeovers Code for all seven of the related announcements, and the privatisation document[57].

(v) In 2011, Chevalier International Holdings Limited disposed of its 54.14% interest in Chevalier Pacific Holdings Limited to a third party. Dr Chow was the controlling shareholder and the chairman of both companies[58]. A mandatory general offer in respect of the shares of Chevalier Pacific Holdings Limited was made in October 2011. In this transaction, Dr Chow took responsibility under Rule 9.3 of the Takeovers Code for all nine of the related announcements, the special deal circular and the composite document[59].

46. Dr Chow played an active and prolonged role as a member of the concert group, engaging the help of his children to conceal the true ownership of the ENM shares.

(a) Ms Kung asked Dr Chow to (i) purchase four BVI companies and transfer 136 million of the ENM shares into these companies, and (ii) open accounts in the name of these BVI companies with Merrill Lynch and

[55] See Tab 27 of the Bundles
[56] Dr Chow held approximately 50.27% in Chevalier International Holdings Limited. Dr Chow and Chevalier International Holdings Limited together held approximately 60.41% in Chevalier Construction Holdings Limited (being Dr Chow's personal interest of 24.51% plus Chevalier International Holdings Limited's interest of 35.9%). See the extract of the privatisation document dated 22 December 2003 at Tab 28 of the Bundles
[57] See Tab 28 of the Bundles
[58] Dr Chow held approximately 55.73% in Chevalier International Holdings Limited. See the extract of the special deal circular dated 25 August 2011 at Tab 29 of the Bundles
[59] See Tab 29 of the Bundles

deposit the ENM shares into these accounts. Dr Chow asked Oscar Chow to carry out these requests.

(b) Dr Chow initially held the ENM shares through bearer shares of the four BVI companies thereby ensuring that the identity of the beneficial owner could not be ascertained. Dr Chow kept the BVI shares in his office until the changes to the BVI law in 2009.

(c) Dr Chow arranged for his children, Oscar Chow and Violet Chow, to be the directors of the four BVI companies when these companies were purchased in 2001.

(d) To comply with changes to the BVI law Dr Chow arranged for the ownership of the 160 million ENM shares to be split equally between his son (Oscar Chow) and daughter (Lisa Chow). After the split, Oscar Chow and Lisa Chow each held 4.845% of ENM, just below the 5% disclosure threshold imposed by the disclosure requirements under Part XV of the Securities and Futures Ordinance ("**SFO"**)[60].

Mr Leung

47. The following factors support the proposition that Mr Leung was an active member of the concert group and assisted Ms Kung in circumventing the requirements of Rule 26.1 of the Takeovers Code.

48. Mr Leung was a long term trusted friend and business associate of Ms Kung. As at 21 December 2000, he was a director of some 356 companies beneficially owned by Ms Kung[61].

49. Mr Leung had worked at the Chinachem Group as a director since April 1987[62].

50. Mr Leung was familiar with Ms Kung's corporate shareholdings. The completion of Ms Kung's acquisition of the 24.77% from Mr Chee and Mr Leung's appointment as a director of ENM both took place on 21 December 2000. Ms Kung had nominated Mr

[60] Part XV of the SFO came into effect on 1 April 2003. Under s.311(3) and s.315(1) of the SFO, a person has a notifiable interest if his/her percentage level of interest in the issued share capital of the listed corporation is equal to or more than 5%.
[61] A list of companies submitted by Clifford Chance on behalf of Mr Leung is attached at Tab 18 of the Bundles
[62] Counter 64, Mr Leung's interview transcript at Tab 2 of the Bundles

Leung for this appointment[63]. On the same day ENM issued an announcement confirming the completion of the acquisition from Mr Chee and Mr Leung's appointment[64].

51. Mr Leung became the chairman of ENM on 31 March 2001[65]. He has held 200,000 ENM shares (approximately 0.012% of ENM's issued share capital) since 30 June 2000[66].

52. Mr Leung played an active role as a member of the concert group. At around the time Ms Kung increased her shareholding in ENM to 34.64% by acquiring an additional 24.77% interest of ENM from Mr Chee she told Mr Leung that she felt insecure about her shareholding and asked him to explain her position to Dr Chow and seek his views. Mr Leung then approached Dr Chow to discuss the matter[67].

53. Mr Leung subsequently handled the reimbursement of funds from Ms Kung to Dr Chow to cover the costs incurred by Dr Chow in the setting up of the four BVI companies and the acquisitions of ENM shares on Ms Kung's behalf[68]. Mr Leung met Oscar Chow on approximately five occasions in connection with the reimbursements[69].

54. Shortly after Ms Kung's death (at a funeral organising committee meeting) Mr Leung approached Dr Chow and indicated that Dr Chow should keep quiet about the fact that he (Dr Chow) kept shares on behalf of Ms Kung, nor should he tell members of the Kung family about this[70].

Oscar Chow

55. Oscar Chow is presumed to have been acting in concert with his father, Dr Chow, under Class (8) of the definition of acting in concert (see paragraph 37 above). In any event, at all relevant times Oscar Chow played an active role as a member of the

[63] Counter 77-80, Mr Leung's interview transcript at Tab 2 of the Bundles
[64] ENM's announcement dated 21 December 2000 at Tab 9 of the Bundles
[65] ENM's announcement dated 31 March 2001 at Tab 10 of the Bundles
[66] Mr Leung bought 200,000 ENM shares on 30 June 2000 through his broker (SBI E2- Capital Financial Services Limited). Mr Leung has not dealt in ENM shares since the purchase of the 200,000 shares on 30 June 2000. See the submission by Clifford Chance on behalf of Mr Leung dated 26 August 2013 at Tab 17 of the Bundles
[67] Counter 253 - 278, Mr Leung's interview transcript at Tab 2 of the Bundles
[68] Paragraph 9, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles, Counter 282 - 294, Mr Leung's interview transcript at Tab 2 of the Bundles,
[69] Counter 177-178, Oscar Chow's interview transcript at Tab 3 of the Bundles
[70] Paragraph 18 of Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

concert group and assisted Ms Kung in circumventing the requirements of Rule 26.1 of the Takeovers Code.

56. Oscar Chow handled the reimbursement of the costs Dr Chow had incurred through acquiring ENM shares in accordance with Dr Chow's instructions. Each time Dr Chow purchased ENM shares for Ms Kung, he would give Oscar Chow the relevant broker statements and ask him to work out the total number of ENM shares he had bought and the consideration involved. Oscar would then prepare detailed spread sheets of the amounts of ENM shares acquired and the costs incurred. In accordance with his father's request, Oscar Chow personally handed the spread sheets to Mr Leung who then arranged for reimbursement to be made to Dr Chow. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements[71]. Oscar Chow assumed that the funds for the reimbursement came from Ms Kung[72].

57. In 2001 Oscar Chow arranged, at the request of Dr Chow, for the purchase of the four BVI companies which subsequently held the ENM shares and opened accounts for these four companies with Merrill Lynch. He was a director of each of these companies until 15 March 2004. All the Merrill Lynch statements concerning the four BVI companies were sent to him even after his resignation as director.

58. To comply with the changes to BVI law, the bearer shares of the four BVI companies were exchanged for registered shares. Capital Tycoon became the registered owner of Owen Assets and Throphill Enterprises in 2009. Thereupon, Oscar Chow (being the sole registered owner of Capital Tycoon since 15 December 2004) indirectly held 80 million ENM shares.

Triggering of mandatory offer obligation and breach of Rule 26.1

59. The Takeovers Code treats persons acting in concert as being the equivalent of a single person and aggregates their shareholdings. As a result of Dr Chow's acquisitions of the 160 million ENM shares the concert group holdings in ENM increased from 34.64% to 44.33%. It follows that the requirement for a general offer was triggered under Rule 26.1(b) of the Takeovers Code as early as 21 December 2000. ENM shareholders were deprived of their right to receive a general offer to buy

[71] Counter 135-178, Oscar Chow's interview transcript at Tab 3 of the Bundles
[72] Counter 187-190, Oscar Chow's interview transcript at Tab 3 of the Bundles

their shares. Under Rule 26.3 of the Takeovers Code, the offer should have been made at the highest price paid by Ms Kung or the concert parties in the six months preceding 21 December 2000 namely, at HK$1.40 per share. The failure to make the offer was a breach of Rule 26.1 of the Takeovers Code.

20 November 2013

Annex 1

Relevant Code provisions

1. Acting in concert is defined in the Definitions section of the Takeovers Code as follows:

"Persons acting in concert comprise persons who, pursuant to an agreement or understanding, actively cooperate to obtain or consolidate "control" … of a company through the acquisition by any of them of voting rights of the company."

2. The definition of "acting in concert" also states that:

"Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established –

…

(8) an individual with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts."

[#] Control: The normal test for whether a person is controlled by, controls or is under the same control as another person, will be by reference to the definition of control, that is by reference to holding 35% or more of the voting rights of a company. In cases of doubt, the Executive should be consulted. [1]

[1] The relevant percentage was lowered to 30% on 19 October 2001

3. Rule 26.1 of the Takeovers Code[2] ("When mandatory offer required") provides that:

"*Subject to the granting of a waiver by the Executive, when*

(a) any person acquires, whether by a series of transactions over a period of time or not, 35% or more of the voting rights of a company;

(b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of the company;

(c) any person holds not less than 35%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than 5% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or

(d) two or more persons are acting in concert, and they collectively hold not less than 35%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 5% from the lowest collective percentage holding of such persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;

that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this Rule, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares…"

[2] See full text of the then Rule 26.1 at Tab 31 of the Bundles

4. Note 6 to Rule 26.1 (acquisition of voting rights by members of a group acting in concert) provides that:

"6. Acquisition of voting rights by members of a group acting in concert

While the Executive accepts that the concept of persons acting in concert recognises a group as being the equivalent of a single person, the membership of such groups may change at any time. This being the case, there will be circumstances when the acquisition of voting rights by one member of a group acting in concert from another member will result in the acquirer of the voting rights having an obligation to make an offer. In addition to the circumstances set out in Note 7, the Executive will apply the following criteria:

(a) Whenever the holdings of a group acting in concert total 35% or more of the voting rights of a company and as a result of an acquisition of voting rights from another member of the group a single member comes to hold 35% or more or, if already holding between 35% and 50%, has acquired more than 5% of the voting rights in any 12 month period, an obligation to make an offer will normally arise. The factors which the Executive will take into account in considering whether to waive the obligation to make an offer include:-

(i) whether the leader of the group or the largest individual shareholding has changed and whether the balance between the shareholdings in the group has changed significantly;

(ii) the price paid for the shares acquired; and

(iii) the relationship between the persons acting in concert and how long they have been acting in concert.

(b) The Executive would normally grant the acquirer of such voting rights a waiver from such general offer obligation if:

(i) the acquirer is a member of a group of companies comprising a company and its subsidiaries and the acquirer has acquired

the voting rights from another member of such group of companies; or

(ii) the acquirer is a member of a group of persons comprising an individual, his close relatives and related trusts, and companies controlled by him, his close relatives or related trusts, and the acquirer has acquired the voting rights from another member of such group of persons.

(c) When the group holds between 35% and 50% of the voting rights, an offer obligation will arise if there are acquisitions from non-members of more than 5% in aggregate in any 12 month period. When the group holds over 50%, subject to Note 17 no obligations normally arise from acquisitions by any member of the group. However, subject to considerations similar to those set out in paragraph (a), the Executive may regard as giving rise to an obligation to make an offer the acquisition by a single member of the group of voting rights sufficient to increase his holding to 35% or more or, if he already holds between 35% and 50%, by more than 5% in any 12 month period.

(d) For the purpose of calculating the highest price paid in the event of an offer under this Rule, the prices paid for voting rights transferred between members of a group acting in concert may be relevant where, for example, all voting rights held within a group are transferred to that member making the offer or where prices paid between members are materially above the market price."

Annex 2

ENM Holdings Limited

Chronology of events

Date	Event	Related document(s)	Ref. Bundle
7 November 2000	Announcement of the preliminary discussions between Mr Chee (the then substantial shareholder of ENM) and several parties, including Ms Kung, regarding the disposal of ENM shares by Mr Chee.	Copy of ENM's announcement dated 7 November 2000	Tab 7
5 December 2000	Announcement of (i) the conditional sale and purchase agreement in relation to the acquisition of 24.77% interest in ENM by Ms Kung from Mr Chee, and (ii) placing of shares by Ms Kung to independent third parties to keep her shareholding below the then 35% trigger threshold upon completion of the share acquisition.	Copy of ENM's announcement dated 5 December 2000	Tab 8
Sometime in late 2000	Ms Kung felt insecure about her shareholding in ENM and asked Mr Leung to explain her position to Dr Chow and seek his views. Mr Leung approached Dr Chow to discuss the matter.	Copy of Mr Leung's interview transcript	Tab 2
Sometime in late 2000	Ms Kung asked Dr Chow to acquire ENM shares and hold them on her behalf.	Copy of Dr Chow's submission dated 30 October 2012	Tab 15

Date	Event	Related document(s)	Ref. Bundle
Between November 2000 and March 2001	(i) Dr Chow bought approximately 136 million ENM shares (approximately 8.24%) through two brokers. (ii) Dr Chow paid for the purchase of the ENM shares and was subsequently reimbursed by Ms Kung. The reimbursement was handled by Oscar Chow and Mr Leung. Oscar Chow, in accordance with Dr Chow's instructions, would prepare excel spread sheets setting out the number of ENM shares bought and the consideration amount based on the broker statements provided by Dr Chow. Oscar Chow personally handed the spread sheets over to Mr Leung who then arranged for payment. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements.	Copies of chronology of events provided by Dr Chow's solicitors in or around May 2012, Oscar Chow's interview transcript, and Robertsons' submission dated 15 June 2012	Tab 13, Tab 3, and Tab 14

Date	Event	Related document(s)	Ref. Bundle
21 December 2000[1]	(i) Completion of the share acquisition from Mr Chee and the placing down of shares by Ms Kung, and as a result, Ms Kung held 34.64% in ENM. (ii) Mr Leung became a director of ENM. As at 21 December 2000, he was also a director of some 356 companies beneficially owned by Ms Kung.	Copies of ENM's announcement dated 21 December 2000, and submission by Clifford Chance on behalf of Mr Leung dated 17 September 2013	Tab 9, and Tab 18
In early 2001	Ms Kung asked Dr Chow to (i) purchase four BVI companies and transferred the 136 million ENM shares into these companies, and (ii) open accounts in the name of these BVI companies with Merrill Lynch Wealth Management and deposit the ENM shares into these accounts. Dr Chow asked Oscar Chow to carry out these requests.	Copies of Oscar Chow's interview transcript, and Dr Chow's submission dated 30 October 2012	Tab 3, and Tab 15

[1] As a result of Dr Chow's acquisitions of the ENM shares, the concert group holdings in ENM exceeded 35% (the then trigger threshold)

Date	Event	Related document(s)	Ref. Bundle
Between May and July 2001	Oscar Chow arranged for the purchase of four BVI companies, namely Accuvantage, Cathnor Holdings, Owens Assets, and Throphill Enterprises and opened accounts for these four BVI companies with Merrill Lynch. He was a director of each of these companies until 15 March 2004. All statements issued by Merrill Lynch concerning the four BVI companies were sent to Oscar Chow. The bearer shares issued for the four BVI companies were kept in Dr Chow's office.	Copies of Oscar Chow's interview transcript, chronology of events provided by Dr Chow's solicitors in or around May 2012, and further submission provided by Robertsons on behalf of Oscar Chow dated 22 August 2012	Tab 3, Tab 13, and Tab 16
August 2001	Transferred the 136 million ENM shares to the accounts held by the four BVI companies with Merrill Lynch.	Copy of chronology of events provided by Dr Chow's solicitors in or around May 2012	Tab 13
Later in 2001	At Ms Kung's request, Dr Chow purchased an additional 24 million ENM shares (approximately 1.45%) and transferred them to three of the four BVI companies.	Copies of chronology of events provided by Dr Chow's solicitors in or around May 2012, and Dr Chow's submission dated 30 October 2012	Tab 13, and Tab 15

Date	Event	Related document(s)	Ref. Bundle
Beginning of 2002	Dr Chow, through four BVI companies, held in aggregate 160 million ENM shares (approximately 9.69%).	Copy of Dr Chow's submission dated 30 October 2012	Tab 15
3 April 2007	Ms Kung died.	-	
Sometime in April 2007	Mr Leung approached Dr Chow and indicated that Dr Chow should keep quiet about the ENM shares that he (Dr Chow) held on behalf of Ms Kung.	Copy of Dr Chow's submission dated 30 October 2012	Tab 15
December 2009	To comply with the changes to the BVI law, the bearer shares of the four BVI companies were exchanged for registered shares. Dr Chow arranged the ownership of the 160 million ENM shares to be split equally between his son (Oscar Chow) and daughter (Lisa Chow). After the spilt, Oscar Chow and Lisa Chow each held 4.845% of ENM, just below the 5% disclosure threshold imposed by the disclosure requirements under Part XV of the SFO.	Copies of Dr Chow's submission dated 30 October 2012, and the corporate documents of the four BVI companies attached to Robertsons' letter dated 15 June 2013	Tab 14, and Tab 15
April 2012	Dr Chow received a letter from PricewaterhouseCoopers (the Joint and Several Administrators of the Estate of Nina Kung) making enquiries into Dr Chow's knowledge of certain assets belonging to the Estate, specifically, some shares in ENM.	Copy of letter from PricewaterhouseCoopers to Dr Chow dated 25 April 2012	Tab 12
Around May 2012	Dr Chow reported the matter to the SFC through his solicitors.	-	

ENM Holdings Limited
(formerly known as e-New Media Company Limited)

Particulars of allegations against each Respondent

1. Joseph Leung

(1) Conduct alleged to be in breach of the Code:

(a) Discussing with Nina Kung her concerns relating to the ENM shares;

(b) Approaching Dr Chow to discuss the matter of Nina Kung's insecurity about her ENM shareholding and to seek Dr Chow's views;

(c) Subsequently handling the reimbursement of funds from Nina Kung to Dr Chow to cover the costs incurred by Dr Chow in the setting up of the four BVI companies and the acquisitions of ENM shares on Nina Kung's behalf, and meeting with Oscar Chow on approximately five occasions in connection with the reimbursements; and

(d) Indicating to Dr Chow that he should keep quiet about the fact that Dr Chow kept shares on behalf of Nina Kung, nor should he tell members of the Kung family about this.

(2) Facts alleged as known and when:

(a) By 21 December 2000 (at the latest) he knew the extent of Nina Kung's shareholding in ENM.

(b) In or around November 2000, when approaching Dr Chow, he knew Nina Kung felt insecure about her shareholding in ENM, and he knew that Nina Kung was financially capable of buying ENM shares herself.

(c) Between November 2000 and late 2001 when handling the reimbursements and meeting with Oscar Chow for the same, he knew that Nina Kung was financially capable of buying the shares (for which Dr Chow was being reimbursed) herself.

(d) Between November 2000 and late 2001, when handling the reimbursements and meeting with Oscar Chow for the same, he knew that the reimbursements he gave to Oscar Chow related to ENM share purchases on behalf of Nina Kung.

(e) Shortly after Nina Kung's death, when indicating to Dr Chow that he should keep quiet about the shares and that he should not tell members of the Kung family about the shares, he knew that Dr Chow had purchased and had held shares on behalf of Nina Kung

despite Nina Kung being financially capable of buying ENM shares herself.

(3) What state of mind he had in relation to conduct set out in (1) above:

(a) Mr Leung knew Nina Kung very well. He was a long term trusted friend and business associate of hers. He had worked at the Chinachem Group as a director since April 1987.

(b) He was familiar with the Takeovers Code provisions and the Listing Rules.

(c) In approaching Dr Chow to discuss the matter of Nina Kung's insecurity about her ENM shareholding, he knew of Nina Kung's insecurity about her ENM shareholding.

(d) In subsequently handling the reimbursement of funds and meeting with Oscar Chow in connection with the reimbursements, he knew such reimbursements related to the ENM shares purchased on Nina Kung's behalf by Dr Chow and he knew that Nina Kung was financially capable of buying ENM shares herself.

(e) In indicating to Dr Chow that he should keep quiet about the fact that Dr Chow kept shares on behalf of Nina Kung, nor should he tell members of the Kung family about this, he knew that such shares were held by Dr Chow on Nina Kung's behalf.

2. Dr. Chow

(1) Conduct alleged to be in breach of the Code:

(a) Acquiring approximately 160 million ENM shares for Nina Kung at her request and holding them on her behalf;

(b) Receiving the reimbursements handled by Joseph Leung and Oscar Chow to reimburse his purchases of ENM shares at Nina Kung's request; and

(c) Engaging the help of his children to conceal the true ownership of the ENM shares, via purchase of and transfer of ENM shares to four BVI companies, arranging that his children be the directors of the four BVI companies, and subsequently arranging that his children own the BVI companies.

(2) Facts alleged as known and when:

(a) Between November 2000 (at the latest) to late 2001, being before and when acquiring approximately 160 million ENM shares for Nina Kung at her request and holding them on her behalf and when receiving the reimbursements handled by Joseph Leung and Oscar Chow, he knew the extent of Nina Kung's shareholding in ENM.

(b) Between November 2000 to late 2001, being before and when acquiring approximately 160 million ENM shares for Nina Kung at her request and holding them on her behalf and when receiving the reimbursements handled by Joseph Leung and Oscar Chow, he knew that Nina Kung was financially capable of buying ENM shares herself.

(c) Between early 2001 (at the latest) to December 2009, when engaging the help of his children to conceal the true ownership of the ENM shares, he knew the extent of Nina Kung's shareholding in ENM.

(3) What state of mind he had in relation to conduct set out in (1) above:

(a) Dr Chow had known Nina Kung as a close friend and business partner for more than 40 years.

(b) Dr Chow had previous experience with the Takeovers Code including issues relating to acting in concert, the mandatory offer trigger threshold and the general offer obligation, as well as disclosure obligations related to listed companies. Accordingly, he was familiar with these provisions.

(c) He knew that Nina Kung had asked him to acquire 160 million ENM shares on her behalf; he also knew that he was acquiring those shares on her behalf and that he held them on her behalf.

(d) He knew the reimbursements that he received and which had been handled by Oscar Chow and Joseph Leung were related to the ENM shares that he had purchased at the request of Nina Kung.

(e) He knew that in engaging the help of his children, he was concealing the fact that the 160 million shares were held on behalf of Nina Kung.

3. Oscar Chow

(1) Conduct alleged to be in breach of the Code:

(a) Handling the reimbursements for Dr Chow's purchase of ENM shares (ie. including but not limited to working out the number of ENM shares purchased and consideration involved and preparing detailed spreadsheets on the acquisition of ENM shares) and meeting with Joseph Leung for the same;

(b) Purchasing four BVI companies and transferring ENM shares to those BVI companies, becoming a director of four BVI companies, and subsequently owning two of the BVI companies; and

(c) Opening accounts for the four BVI companies with Merrill Lynch and receiving the Merrill Lynch statements.

(2) Facts alleged as known and when:

(a) Between November 2000 to late 2001, when handling the reimbursements for Dr Chow's purchase of ENM shares and meeting with Joseph Leung for the same, he knew the spread sheets he prepared for Joseph Leung were for his father's purchases of ENM shares and that the reimbursements Joseph Leung arranged were for his father's purchases of ENM shares.

(b) Between November 2000 to late 2001, when handling the reimbursements for Dr Chow's purchase of ENM shares and meeting with Joseph Leung for the same, he knew that Dr Chow had purchased those shares for Nina Kung.

(c) Between November 2000 to late 2001, when handling the reimbursements for Dr Chow's purchase of ENM shares and meeting with Joseph Leung for the same, he knew that Nina Kung was financially capable of buying the shares herself.

(d) Between early 2001 and December 2009, when making the purchase of and transfer of ENM shares to four BVI companies, becoming a director of four BVI companies, and subsequently owning two of the BVI companies, he knew that he was helping to conceal the true ownership of the ENM shares.

(3) What state of mind he had in relation to conduct set out in (1) above:

(a) In handling the reimbursements for Dr Chow's purchase of ENM shares (ie. including but not limited to working out the number of ENM shares purchased and consideration involved, and preparing detailed spreadsheets on the acquisition of ENM shares) and meeting with Joseph Leung for the same, he knew that such reimbursements related to shares purchased by Dr Chow on Nina Kung's behalf. Alternatively he was reckless.

(b) In helping to conceal the true ownership of the ENM shares, he knew that he was concealing the fact that the 160 shares were held on behalf of Nina Kung. Alternatively he was reckless.

(c) At all material times he knew that his father and Nina Kung had been friends for many years and had had business dealings.

Extract of relevant provisions under the Takeovers Code as they were in 2000

Rule 26.1

26.1 When mandatory offer required

Subject to the granting of a waiver by the Executive, when

…

(b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of the company; …

that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this Rule, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares. Offers for different classes of equity share capital must be comparable and the Executive should be consulted in advance in such cases. (See Rule 14.)

Definitions

2. **Acting in concert:** Persons acting in concert comprise persons who, pursuant to an agreement or understanding, actively cooperate to obtain or consolidate "control" (as defined below) of a company through the acquisition by any of them of voting rights of the company.

Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established –

(1) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;

(2) a company with any of its directors (together with their close relatives, related trusts and companies controlled# by any of the directors, their close relatives and related trusts);

(3) a company with any of its pension funds, provident funds and employee share schemes;

(4) a fund manager with any investment company, mutual fund, unit trust or other person, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;

(5) a financial or other professional adviser, including a stockbroker*, with its client in respect of the shareholdings of the adviser and persons controlling#, controlled by or under the same control as the adviser;

(6) directors of a company (together with their close relatives, related trusts and companies controlled# by such directors, their close relatives and related

trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;

(7) partners; and

(8) an individual with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts.

[#] See Note 1 at end of Definitions Section.
* See Note 2 at end of Definitions Section.

…

8. **Control:** Unless the context otherwise requires, control shall be deemed to mean a holding, or aggregate holdings, of 35% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control.