

收購及合併委員會

委員會決定

關乎安寧控股有限公司（“安寧”）（前稱安寧數碼科技有限公司）（股份代號：00128）股份的紀律研訊
委員會裁斷違反《公司收購及合併守則》（“《收購守則》”）規則 26.1 的理由

引言

1. 委員會於 2015 年 3 月 2、3、4、5、7、10、12 及 13 日舉行會議，聆聽並考慮因周亦卿博士（“周博士”）應已故龔如心女士（又名王德輝夫人）（“龔女士”）的要求為龔女士購買安寧控股有限公司（“安寧”）（前稱安寧數碼科技有限公司，其股份在香港聯合交易所有限公司（“聯交所”）上市）1.6 億股股份而針對周博士、其子周維正先生及梁榮江先生（統稱“該等答辯人”）展開的紀律研訊。本紀律研訊由執行人員依據《收購守則》〈引言〉第 12.1 項展開。

執行人員的論據

2. 執行人員針對周博士、周維正及梁榮江提出的論據列於日期為 2013 年 11 月 20 日的文件（“該文件”；載於附件 1，但當中不含該文件所提述的文件冊），並詳述於日期為 2014 年 4 月 17 日並按紀律研訊委員會主席的指示送達各方、針對各答辯人而提出的指控詳情書（載於附件 2）內。
3. 執行人員針對該等答辯人提出的論據精髓如下：
“在已故龔如心（又名王德輝夫人）（“龔女士”）的唆使下，周博士、梁先生及周維正聯同龔女士就安寧控股有限公司（“安寧”）採取了一致行動，藉此迴避觸發《收購守則》所規定的強制全面要約。未有作出強制全面要約構成違反《收購守則》規則 26.1 的行為。”（底線後加，以示強調）。

因此，該文件第 2 段所呈述的執行人員論據看來是要指出，龔女士的意圖及目的和與該等答辯人之間的協議或諒解所具的目標或目的均旨在迴避觸發強制全面要約。

4. 執行人員在其《開案陳詞書》中提出的論據主要指稱，該等答辯人聯同龔女士採取了“一致行動”；該等一致行動人士持有安寧的投票權合共不足 35%，而“其中任何一人或以上”取得了投票權，結果令他們合共持有安寧投票權的百分比增至 35%或以上；該一致行動集團的主要成員因取得該等投票權而須作出全面要約；以及有關人士並無作出該項要約。¹此外，執行人員請求委員會作出以下結論：“有關合作是在龔女士唆使下進行，目的是規避規則 26.1 的規定，而她顯然知道，假如她擁有超過 35% 投票權一事為公眾所知，她便會被迫作出全面要約，但透過周博士買入並於其後交由他人“代持”該等安寧股份，她便能夠隱瞞其擁有權。”²

¹ 執行人員的《開案陳詞書》第 22-25 段。

² 執行人員的《開案陳詞書》第 26 段。

委員會的研判方針

5. 委員會透過著眼於該等答辯人與龔女士一致行動藉取得投票權來取得及鞏固對安寧的控制權一事有否違反規則 26.1，及基於有關人士從未作出全面要約這一共同理據，成功地達成一致決定。“一致行動”的定義載於《收購守則》。在考慮何謂“一致行動”及“控制權”時，委員會採用了於 2000 年期間適用的《收購守則》。至於有關進行紀律研訊的程序事宜，則以提起本研訊之時有效的《收購守則》為準。為本紀律研訊的目的而參照的 2000 年期間適用的《收購守則》規則 26.1 的相關部分及定義，載錄於附件 3 內。
6. 委員會接納並引用了鴻興印刷集團有限公司一案的《委員會決定》³，當中列明《收購守則》所指的“一致行動”若要成立，必須符合的三項條件：

“……有多於一人依據一項協議或諒解積極合作；其合作目的是取得或鞏固兩份守則的條文所適用的公司的控制權；及當中有至少一人積極合作以取得該公司的股份所附帶的投票權。”

委員會認為，一致行動集團內無須每名人士都以親身取得或鞏固公司控制權作為其目的，只要當中有至少一人具有該目的便可。此外，一致行動集團內無須每名人士都積極謀求取得該公司的投票權，只要當中至少有一人如此行事便可。

7. 規則 26.1 明確訂明必須作出強制要約的情況。在必須作出全面要約的情況下，若不獲寬免而又沒有作出全面要約，即屬違反規則 26.1。規則 26.1 指明了哪人或哪些人有責任向股東作出要約。就本紀律研訊而言，執行人員認同，有關責任在於一致行動人士的主要成員上，而周維正及梁榮江並非一致行動人士的主要成員，故沒有責任向安寧股東發出要約，不過執行人員指出，二人依然是一致行動人士的成員。
8. 委員會認為，若要根據〈引言〉第 12.1 項針對任何個人展開紀律研訊，執行人員必須至少證明，有關人士符合〈引言〉第 1.5 項所述，屬於《收購守則》規定的責任所適用的其中一類人士。於 2000 年 4 月期間適用的《收購守則》所列明的有關類別人士如下：
(a) 公眾公司的董事；(b) 試圖取得或鞏固公眾公司的控制權的人或群體；(c) 其專業顧問；及 (d) 積極地從事證券市場各方面活動的人。
9. 執行人員認同，“一致行動”本身並不構成違反《收購守則》。這觀點顯然正確無誤；一致行動人士合共持有的投票權不一定（舉例說）觸及“控制權”界線，故未必會觸發全面要約責任。委員會亦認同，屬於〈引言〉第 1.5 項所述任何一個類別的人士，若就兩名或以上一致行動人士透過取得投票權而取得或鞏固某公司的控制權一事一起積極合作，並積極參與任何安排以隱瞞對該公司的投票權增至超過 35%或以上一事，或知道或相信有關人士將不會作出全面要約以及事實上並無作出全面要約，則即使該人並非一致行動人士的主要成員且沒有責任作出全面要約，仍可能會因沒有作出全面要約，違反規則 26.1，而根據《收購守則》遭採取紀律行動。鑑於《收購守則》的基本目的是要令受收購交易影響的股東得到公平的對待（〈引言〉第 1.2 項），而且如某公司的控制權有所改變、被取得或受到鞏固，有關人士通常必須向所有股東作出全面要約（第 2 項一般原則），故委員會認為，假如並非主要成員的一致行動人士成員的行動或行為（不論他們本身有否取得投票權）致使股東無法獲得全面要約，應足以引致紀律行動。“一致行動”的定義清楚訂明，投票權可由“其中任何一人”而不必是當中各人取得。

³ 日期為 2011 年 5 月 24 日的《委員會決定》，其文本登載於 [http://www.sfc.hk/web/doc/TC/cfd/mergers/panel/Hung%20Hing%20%20Panel%20Decision%20\(Final%20-%20Chi\).pdf](http://www.sfc.hk/web/doc/TC/cfd/mergers/panel/Hung%20Hing%20%20Panel%20Decision%20(Final%20-%20Chi).pdf)

10. 雖然刻意迴避作出全面要約並非一項確立違反規則 26.1 的要素，但在必須作出全面要約的情況下沒有如此行事，卻可能是某些安排的結果，其作用是要隱瞞已屆觸發點一事，或隱瞞附有投票權的股份的真正擁有權。在本紀律研訊中，委員會認為，無必要或不適宜就有關任何答辯人與龔女士一樣具有迴避全面要約的意圖或目的的任何指稱，或任何答辯人曾本著該意圖或目的與她達成任何協議或諒解，作出裁斷。
11. 在舉證準則方面，委員會認同，應以包致金法官（Bokhary PJ）在一名律師（24/07）訴香港律師會（2008）11 HKCFAR 117 一案第 112-116 段所列的方針為準。基本上，指稱愈是嚴重，用以壓倒該嚴重指稱有不實之虞的證據必須愈具說服力，因此須按可能性佔優勢原則進行舉證。根據 *In re B (兒童)*（監管法律程序：舉證準則）[2009] 1 A.C.3217 一案第 62 段在（有限度）認可下所引述的 *In re H (未成年人)*（性虐待：舉證準則）[1996] AC 563 一案第 586 項中有關評估可能性的部分，文中以欺詐為例，說明該類事件發生的可能性較疏忽為低。委員會因此接納執行人員的陳詞，認為不適宜採納由代表周博士的夏偉志（Graham Harris）資深大律師所提出適用於刑事案的原則——“除非有罪推斷是從基本事實所能合理得出的唯一推斷，否則基於該等事實而作出有罪推斷並不恰當”。
12. 緊接本紀律研訊展開之前，執行人員已向龔女士的聯合遺產管理人授予寬免。主席在過去一段時間內曾就龔女士的遺產應否委派代表出席聆訊或參與聆訊，以及就任何相關參與的方式或程度，先後徵詢各方意見，而執行人員回應時均重複表示，他們認為無必要邀請聯合管理人或其法律代表出席聆訊或將他們列為本研訊的答辯人，亦無必要邀請他們以其他方式參與聆訊，而且亦不存在任何針對聯合管理人而展開研訊的理據。
13. 在主席要求下，執行人員致函聯合管理人，向其表示雖然執行人員無意將龔女士或其任何代表列為本紀律研訊的答辯人，但委員會在其決定中可能會對龔女士的行為加以評論，並且已向聯合管理人送達該文件的副本（當中標示了所有提及龔女士的段落）及該文件的附件 2，以供聯合管理人考慮是否希望委派代表出席聆訊，或就龔女士的行為提交任何證據，或接受聆訊。在同一函件中，聯合管理人亦獲告知，倘若委員會裁斷理應向安寧股東作出全面要約，該等股東便有可能會向龔女士的遺產索取賠償，因此，聯合管理人應考慮是否希望委派代表或提出任何證據或接受聆訊。聯合管理人回覆表示，經仔細考慮執行人員來函的內容後，他們有意指派律師聯同他們的代表在有關研訊的聆訊期間代表他們列席旁聽。由於委員會無權將任何人列為紀律研訊的答辯人，亦無權迫令任何人委派代表出席或參與任何紀律研訊，故龔女士的遺產並無任何代表人，亦無人就任何針對她的指稱答辯。為公平起見，並為達致本裁決理由所需，委員會已根據其席前的證據，對關乎龔女士的事實只作出最低限度裁斷。
14. 在達致決定時，委員會已考慮其席前所有證據，以及由執行人員及該等答辯人作出的書面及口頭陳詞。本裁決理由雖未有提及所有有關證據及陳詞，但並不表示在達致本決定時未有顧及該等證據及陳詞。

背景

15. 本節載有委員會根據經各方議定的事實（“經議定事實”）、無爭議事實或從委員會及各方所得文件中獲知且不受爭議的事實而得出對事實的裁斷。
16. 自龔女士的丈夫王德輝（“王先生”）於 1999 年離世後，直至龔女士於 2007 年 4 月身故為止的期間內，龔女士是華懋公司集團（“華懋”）的主席兼唯一實益擁有人。

17. 周博士是其士公司集團（“其士”）的創辦人兼主席，該集團是一家業務遍布中國、東南亞、北美洲及澳洲的跨國企業集團。在所有關鍵時間，他亦是其士國際集團有限公司（“其士國際”，一家股份在聯交所主板上市的公司）的控股股東、主席兼執行董事。
18. 周博士與龔女士及其夫相識超過 40 年，並結成好友。他們過去亦一直是長期生意夥伴，並進行了多宗生意買賣。周博士的公司其士是華懋其中一家外判商。故此，他們彼此間建立了高度互信及信心，而周博士與龔女士之間的高度互信及信心在王先生失蹤及離世後一直延續。
19. 周博士自 1984 年起擔任多家在聯交所上市的公司的主席／董事。上述各公司均須遵守《收購守則》的規定。
20. 周博士在其士重組一事上擔當關鍵角色。於 1997 年至 2011 年，周博士涉及經議定事實第 5 項內的多項《收購守則》交易。具體而言：
 - (i) 周博士於 1997 年聯同其士國際及其他兩家其士公司，向執行人員申請寬免因實施建議重組而本來可能會產生的強制要約責任。周博士、其士國際及該兩家公司被推定為《收購守則》所指的一致行動人士，及依據《收購守則》規則 26.1 註釋 6 以支持其申請。
 - (ii) 其士發展國際有限公司（“其士發展”）於 1999 年被其士國際私有化。其士國際及周博士合共持有其士發展約 45.4% 股權。周博士是這兩家公司的主席。根據《收購守則》規則 9.3，周博士對全部八份相關公布及私有化文件承擔責任。
 - (iii) 周博士於 2000 年 9 月聯同其士國際尋求執行人員就以下事宜作出裁定：其士建築集團有限公司（“其士建築”）股份認購建議中的投資者及其聯繫人會否被視為周博士及其士國際的一致行動人士，及周博士及／或其士國際會否因其士國際取得其士建築的額外投票權而須就其士建築股份作出全面要約。
21. 周維正是周博士唯一的兒子。他於 2000 年加入其士，及於 2004 年 3 月 29 日獲委任為其士國際的執行董事。周蕙芝是周博士六名女兒之一，亦是周維正的胞姊。
22. 梁榮江於 1987 年 4 月獲王先生及龔女士邀請加入華懋擔任董事。由那時起，他在華懋為兩人工作；於 1990 年 4 月後則為龔女士工作。龔女士於 2007 年 4 月 3 日逝世。截至 2000 年 12 月 21 日，梁榮江在龔女士實益擁有的約 356 家公司擔任董事。
23. 安寧在所有關鍵時間主要從事時裝和飾物批發及零售、經營度假中心及俱樂部、投資控股和證券買賣。

取得安寧的投票權／關於持有安寧股份的安排

24. 本節載有委員會根據經議定事實、無爭議事實或從委員會及各方所得文件中獲知且不受爭議的事實而得出對事實的裁斷。
25. 龔女士從某個時間開始取得安寧股份，當其持股量於 2000 年 8 月底達到須向聯交所披露其權益的 10% 界線時，此事引來新聞界報道。龔女士的持股詳情根據現已廢除的《證券(權益披露)條例》作出了公開披露。

26. 龔女士於 2000 年底要求周博士代其取得及持有安寧股份。周博士同意這項要求，並於 2000 年 11 月 6 日（或其後）至 2001 年 3 月 30 日期間以其本身名義代龔女士從市場買入 136,008,000 股（約 8.24%）安寧股份。上述取得股份的行動並無向公眾披露。
27. 該等購股交易透過兩家經紀行進行，即眾利股票公司及 Chung Hsin & Company。
28. 為回應某份報章的報道，安寧在日期為 2000 年 11 月 7 日並於翌日上午發表⁴的公布⁵中表示，不久前有若干人士（包括龔女士）與其當時的大股東支盈章先生（“支先生”）接觸，就部分或全部出售其 27% 股權進行初步商討。有關公布表示，龔女士透過 Diamond Leaf Limited 於安寧的持股量為 13.6%，但在配發 163,500,000 股安寧股份作為一宗在五天前公布的收購的代價後，有關數字將下降至 12.3%。
29. 安寧在日期為 2000 年 12 月 5 日的公布⁶中表示（除其他事項外）：
- (i) Solution Bridge Limited（一家由龔女士全資實益擁有的公司）有條件地同意以每股 1.40 港元向支先生取得其全部 408,757,642 股（約 24.77%）安寧股份。
 - (ii) 當時，龔女士是 205,884,503 股（約 12.48%）安寧股份的實益擁有人。
 - (iii) 有關協議在取得執行人員書面確認不會產生全面要約責任後方可作實。
 - (iv) 龔女士會將其當時實益擁有的若干數目的安寧股份，透過配售代理時富融資有限公司出售予獨立第三方，以致緊隨取得股份的交易完成後，龔女士連同其一致行動人士不會實益擁有超過 34.9% 安寧股份。
- 當時，《收購守則》規定必須作出全面要約的界線為 35%。
30. 安寧在日期為 2000 年 12 月 21 日的公布⁷中宣布已完成有關取得股份的交易，龔女士亦已在前一天出售 43,000,000 股（約 2.61%）安寧股份；在完成上述交易後，龔女士合共持有 571,642,145 股（約 34.64%）安寧股份。該公布亦表示，Solution Bridge Limited 已接獲執行人員的書面確認，向支先生取得股份不會產生全面要約責任。此外，該公布亦確認，梁榮江於當日獲委任為安寧董事。
31. 及至 2000 年 12 月 21 日，周博士已代龔女士買入介乎 9,130 萬至 9,730 萬股（5.53% 至 5.89%）安寧股份。
32. 龔女士於 2001 年初要求周博士買入四家英屬處女群島公司，並將他當時代她持有的 136,008,000 股股份轉移至這四家公司。龔女士亦要求周博士以這些公司的名義，在 Merrill Lynch Wealth Management（“Merrill Lynch”）開立帳戶，並將股份存入這些帳戶中。
33. 周博士其後吩咐其子周維正買入上述四家英屬處女群島公司，將周博士所持有的 136,008,000 股安寧股份轉移至這些公司，並以這些公司的名義在 Merrill Lynch 開立帳戶，以及將股份存入這些帳戶中。

⁴ 當時，公司公布通常在公布上註明的日期後翌日上午才會在報章上刊登及上載至聯交所網站。

⁵ 見 http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1108/LTN20001108017_C.doc

⁶ 見 http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1206/LTN20001206010_C.doc

⁷ 見 http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1222/LTN20001222019_C.doc

34. 周維正隨後作出安排，買入四家英屬處女群島公司，即 Accuvantage Limited（“Accuvantage”）、Owens Assets Limited（“Owens”）、Throphill Enterprises Limited（“Throphill”）及 Cathnor Holdings Limited（“Cathnor”）。這四家公司全部藉著於 2001 年 5 月 2 日舉行的首次董事會會議來啟動。2001 年 7 月，周維正在 Merrill Lynch 替這四家公司開立帳戶，之後於 2001 年 8 月 2 日按下表所述比例將股份存入帳戶中：

帳戶持有人	股份	於安寧的權益
Accuvantage	40,000,000	2.42%
Cathnor	35,660,000	2.16%
Owens	30,000,000	1.82%
Throphill	30,348,000	1.84%
總計	136,008,000	8.24%

35. 周博士亦安排他兩名子女（周維正及周蕙蕙）出任上述四家英屬處女群島公司的董事，即每家公司有兩名董事。成立這四家英屬處女群島公司的費用由周博士支付。這四家英屬處女群島公司分別發行了一股不記名股票，而該等不記名股票均由周博士存放在其私人辦公室內。
36. 在有關時間及直至 2005 年，根據英屬處女群島法例，股份登記冊內無須記錄不記名股票持有人的姓名及地址。不記名股票可藉由交付與股票相關的證書進行轉讓。因此，任何人即使在公司股份登記冊內未有記錄身分，仍可持有不記名股票，故即使查閱公司的法定紀錄，亦無法確認或追查法定及實益擁有人是誰。
37. 2001 年後期，龔女士要求周博士代她從市場再買入約 2,400 萬股安寧股份（約 1.45%），令她在安寧的總持股量增至剛好 1.6 億股（約 9.69%）。周博士買入該等股份後，於 2002 年 1 月 7 日按下表所述的比例存入上述四家英屬處女群島公司中的三家在 Merrill Lynch 的帳戶中：

帳戶持有人	新增的股份	新增的權益	股份總數	總權益
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%
總計	23,992,000	1.45%	160,000,000	9.69%

38. 由於周維正負責在 Merrill Lynch 開立帳戶，故所有由 Merrill Lynch 發出、有關上述四家英屬處女群島公司的結單均會寄給他。
39. 周博士代龔女士持有安寧股權一事，於 2013 年 5 月之前一直沒有公開披露。
40. 買入上述 1.6 億股安寧股份的款項由周博士支付，並由龔女士付還，而成立上述四家英屬處女群島公司的費用亦同樣由周博士支付，並由龔女士付還。有幾次，在周博士代龔女士買入安寧股份後，他都會將相關的經紀結單交給周維正，並著周維正計算已買入的安寧股份總數及總金額。周維正之後會應周博士要求，編製試算表列出相關詳情。

41. 周維正出任其士國際的執行董事之前不久，辭去上述四家英屬處女群島公司的董事職務，自 2004 年 3 月 15 日起生效。
42. 2005 年 1 月，英屬處女群島實施新法例，以增加股份擁有權的透明度，對使用不記名股票採取更嚴厲的規管，並以 2009 年 12 月 31 日作為符合規定的最後限期。
43. 有鑑於此，周博士便吩咐周維正利用另外兩家英屬處女群島公司（即 Capital Tycoon Limited（“Tycoon”）及 Assets Island Limited（“Assets”）），作為持有該 1.6 億股安寧股份的四家英屬處女群島公司的股東。周維正及周蕙芝分別是 Tycoon 及 Assets 的唯一登記擁有人。2009 年 12 月 23 日，上述四家英屬處女群島公司的不記名股票轉換為登記股票，並由 Tycoon 及 Assets 持有。Assets 是 Accuvantage 及 Cathnor 的股份的登記持有人，而 Tycoon 則是 Owens 及 Throphill 的股份的登記持有人。這持股架構令 1.6 億股股份的擁有權得以平均地分配予周維正及周蕙芝。經進行股份攤分後，周維正及周蕙芝各持有安寧 4.845% 股權，僅低於自 2003 年 4 月 1 日起生效的《證券及期貨條例》第 XV 部下的披露規定所施加的 5% 披露門檻。
44. 周博士於 2007 年 2 月 26 日及 2007 年 3 月 1 日分別替自己買入 1,500 萬及 14,116,000 股股份，約相當於安寧 1.76% 的股權，令周博士、上述四家英屬處女群島公司及龔女士於安寧的合共持股量達到 760,090,145 股股份（約 46.05%）。
45. 龔女士的聯合遺產管理人於 2012 年 4 月 25 日向周博士發出一封函件，指他們不久前留意到周博士或許知道有若干資產（具體來說，即一些安寧股份）是屬於遺產的一部分，故請周博士確認是否屬實；及假如屬實，請周博士回覆何時能與遺產管理人會面以提供關於這些資產的資料。周博士收到函件後尋求法律意見，並於 2012 年 5 月 28 日透過律師將此事通知證監會。該 1.6 億股股份後來獲轉回至遺產內／聯合管理人。

周博士

46. 本節載有委員會對關乎周博士的事實作出的相關裁斷，以及裁斷他違反《收購守則》規則 26.1 的理由，包括（但不在此複述）上文第 17-21 段及 25-45 段。根據委員會所作的事實裁斷，周博士確有與龔女士採取一致行動，藉他依照龔女士的指示買入而取得的安寧股份來取得或鞏固對安寧的控制權，並且以龔女士會向他付還（且他確獲付還）股款為條件。他亦按照龔女士的指示，以四家英屬處女群島持有為她買入的 1.6 億安寧股份，此安排實際上隱瞞了她對該等股份的實益擁有權。周博士成為了該一致行動集團的主要成員，而有關人士顯然須作出全面要約。當由龔女士持有及由周博士代她持有的股權合共超過 35% 的觸發點後，他們從未向安寧股東作出全面要約。
47. 除了周博士於 2012 年 6 月 11 日與證監會進行會見的錄音謄本及其證人陳述書外，他亦在委員會席前以口頭方式作供。在主席指示下，在他給予口頭證供期間謝絕了公眾（包括傳媒）旁聽，並在他作供時一直觀察其健康狀況。此項指示是考慮到代表周博士所提出的申請後作出的，當中指出，基於周博士的健康狀況，在傳媒眾目睽睽下作供所承受的壓力，可能會影響他在作供時自我辯白的的能力。可是，他的顧慮最終證實不成立，因為媒體對此聆訊的報道不多。周博士在作供期間，一度顯得疲憊或困惑，委員會對此已作出考慮。委員會亦考慮到，雖然事件至 2012 年才曝光，但他與其他答辯人早於 2000 年底／2001 年便已參與其中。不過，對於兩段被指是周博士與梁榮江之間的對話，委員會認為梁榮江的證供較周博士的可信。
48. 2000 年底某個時間，龔女士要求周博士代她買入安寧股份，並答應會向他付還股款。周博士供稱，此前從沒有任何人要求他代為購買任何上市公司的股份。周博士透過經紀在

市場上買入有關股份，但對於首次購股的確切時間（於 2000 年 11 月 6 日或之後）則不大清楚，故亦難以確定龔女士首次指示周博士買入安寧股份時由龔女士所持有安寧已發行股本的百分比。至於二人就該等購股交易所達成的協議內容，顯然已無法向龔女士查證，而周博士就此給予的證供則極為有限。不過，委員會根據周博士的證供裁斷，在他獲付還股款的條件下，他願意依照龔女士所指示的時間及數量購入股份。因此，他當時是準備好隨時依照指示買入股份，並因而知道龔女士在囤積安寧股權。

49. 至於周博士對龔女士的安寧持股量的了解程度，委員會雖然認同他為龔女士買入股份時未必知道她當時尚持有其他股份的確切數量，但委員會斷定，由他代購股份那時起的某個時間，他已知道龔女士是安寧的（套用周博士的措詞）“大股東”，而且她是或將會成為安寧的“老細”，意即雖然她從未加入董事會，但“她掌管一切，是該公司的頭號人物”。他亦於龔女士向支先生取得股權的交易於 2000 年 12 月 21 日完成後繼續為她買入股份；而該日為龔女士與周博士二人的合共投票權首度超過當時的 35% “控股權”界線。及後於 2001 年底，他再應龔女士的要求恢復替她買入股份。
50. 委員會認為單憑上述事實，執行人員已足以確立周博士與龔女士就取得或鞏固安寧的控制權採取了一致行動。二人間存在協議或諒解，據此，他會在獲付還股款的條件下一直依照龔女士的指示無限地購入安寧股份，而由此可得出的唯一合理推斷是，他知道龔女士當時正在取得或鞏固安寧的控制權，而他則積極與她合作進行此事。
51. 周博士身為其士旗下多家上市公司的主要股東，在進行上述購股交易前已完全知道有關上市股份的披露規定，並知道除非獲執行人員授予寬免，否則上市公司的單一股東一旦取得了超過 35% 已發行股份，便須向全體股東作出全面要約。他自 1984 年起便一直擔任多家上市公司的主席／董事，該等公司均須遵從《收購守則》的規定，而他在那時之前已參與過數宗《收購守則》交易，特別是在龔女士首度向他提出（而他亦答應了）有關要求前數月，他及其士國際曾申請要求執行人員就以下事宜作出裁定：其士建築股份認購建議中的投資者及其聯繫人會否被視為周博士及其士國際的一致行動人士，及周博士及／或其士國際會否因其士國際取得其士建築的額外投票權而須就其士建築的股份作出全面要約。有鑑於此，當他接獲龔女士的要求時，理應對須作出全面要約的情況及“一致行動”的概念記憶猶新，亦因而完全知道所有的相關監管規定。
52. 周博士供稱，龔女士告訴他，購買安寧股份涉及的所有監管事宜一概由她處理，他亦信賴她的保證，這便更加證明了他知道須就買入該等安寧股份作出披露。他亦理應清楚知道，假如在進行該等購股交易時作出披露，由他代為購買股份而不是由龔女士親自入股的安排便會失去意義。就有關周博士信賴龔女士的保證，他顯然並無委派本身的內部團隊及／或公司秘書部門監察龔女士在任何時間所持有的安寧股權。假如他有此安排，他理應會知道，他代龔女士進行的購股交易從未對外披露，並且已跨越了 35% 的界線。因此，他接受了某一致行動集團違反《收購守則》的風險，而他正是該集團的主要成員，以及因而知道本身亦有責任確保有關人士作出全面要約。
53. 根據梁榮江日期為 2014 年 4 月 22 日的證人陳述書及日期為 2014 年 11 月 24 日的第二份證人陳述書（經由他所作的口頭證供確認，而他亦就此接受盤問），他供稱他曾與周博士會面，並指該次會面是由龔女士安排，原因是她擔心其持有的安寧股權不夠穩固，故希望徵詢周博士的意見。梁榮江稱，他在該次會面期間曾向周博士表示，龔女士不可再增購安寧股份。據他理解，周博士已知道龔女士當時正收購安寧的最大股權。梁榮江表示，他在該次會面期間與周博士討論了龔女士購買安寧股份的情況、她欲成為安寧最大股東的意向、她與支先生之間的有條件口頭協議、她堅決不欲作出全面要約的意向及她對其安寧控制權可能不夠穩固的疑慮；另外亦談及他向龔女士建議不可再增購安寧股份，亦不可由任何人代她或與她一致行動增購安寧股份。根據梁榮江的證供，周博士對

上述事宜毫不詫異，該次會面結束時，周博士表示他需對有關事宜再作考慮，並會直接與龔女士聯絡。

54. 周博士否認曾進行任何有關會面，而梁榮江在其陳述書中提及該次會面發生的日期顯然有誤。不過，儘管執行人員在結案陳詞中，對梁榮江就該次會面所作證供的可信度和周博士否認曾有過該次會面一事作出了詳細論述，但委員會裁斷，梁榮江確曾就龔女士在協定向支先生收購安寧股權後仍擔心她在安寧的控制權不夠穩固一事，與周博士會面。姑勿論商談的實質內容，該次會面若非全由梁榮江憑空捏造、砌詞作假，就是確有其事。在證供中提及此事，只會令梁榮江作繭自縛。在他的證供中，唯一可以證明他是清白的是他否認知悉周博士當時為紓解龔女士的不安全感而正在或將會代她購買安寧股份，而且他堅稱已警告周博士不要如此行事。但如梁榮江將自己說成曾在該段期間曾與周博士有任何聯繫，便於理不合，更遑論承認他與周博士曾作商談，因為此舉清楚證明梁榮江知道龔女士一方面希望紓解心中的不安全感，另一方面卻無意作出全面要約。當然，若有關證供屬實，該次會面確曾進行，則可解釋梁榮江何以提及此事。
55. 周博士記不起該次會面並不足為奇。周博士一直稱梁榮江為華懋的會計總監（後者從未擔任此職位，但卻被前者誤認為是會計總監），所以視他為龔女士的僱員；不過，此事對周博士來說根本無關重要。周博士為了滿足龔女士的要求而接見梁榮江亦不足為奇，但據梁榮江稱，該次會面歷時短暫，而周博士結束時對龔女士的僱員所說的話雖無實質意義，但並非無禮之言。
56. 有鑑於此，委員會裁斷，周博士確實知道龔女士擬買入支先生所持有的安寧股權、她欲取得或鞏固安寧控制權的意圖，以及她欲迴避作出全面要約的意向。
57. 如上文（第 33 及 34 段）所述，周博士另吩咐其子周維正依照龔女士所指示的方式，安排以四家英屬處女群島公司持有該等安寧股份。
58. 2001 年稍後，龔女士要求周博士代她從市場上增購約 2,400 萬股安寧股份，令總持股量增至 1.6 億股股份。周博士買入該等股份後，便轉讓予 Owens、Throphill 及 Cathnor，令該等英屬處女群島公司當時各持有 4,000 萬股安寧股份。該 1.6 億股股份佔安寧已發行股本約 9.69%。及至當時，周博士對於已跨越 35% 界線以及並無向安寧股東作出全面要約，不可能再有任何疑惑，而該事件的狀況至今仍維持不變。
59. 周博士的口頭證供指，當不記名股票不再通用，及該四家英屬處女群島公司須改由註冊股東持有時，他們便以兩家英屬處女群島公司（而非單一英屬處女群島公司）持有該四家英屬處女群島公司，而該兩家英屬處女群島控股公司則分別由兩名不同的成年子女最終持有，藉此迴避 5% 披露界限。為了令替已故龔女士持有的安寧股份的擁有權繼續得以保密而在 2009 年採取的相關步驟，再次表明了由周博士而非龔女士本人來買入該等股份的原本目的。

周維正

60. 委員會必須解決的第一個問題，是於事發時（即周博士為龔女士購買相關的安寧股份之時）《收購守則》下的任何責任是否適用於周維正。執行人員指出周維正屬於〈引言〉第 1.5(b) 及／或(d) 項所界定的人士，分別是試圖取得或鞏固公眾公司的控制權的人或群體，以及積極地從事證券市場各方面活動的人。
61. 就(d) 類別而言，並無證據顯示周維正於進行該等購買時曾積極地從事證券市場任何方面的活動，雖然周維正曾供稱，他可能曾於 2000 年加入其士前買入一些滙豐股份，但他

肯定不是一名活躍投資者。執行人員依據的是，周維正曾參與周博士因購買股份而獲龔女士付還股款的多項安排；第二是他在 Merrill Lynch 開立英屬處女群島帳戶；而第三則是他於 2009 年成為 8,000 萬股股份的法定擁有人這個事實。委員會認為該等事宜不構成周維正積極參與證券市場活動。

62. 周維正是否屬於第 1.5(b)項所述類別的人士，必須與他是否屬於由龔女士及其父親周博士組成的一致行動集團的成員（即使不是主要成員）這個問題一併考慮。雖然執行人員尋求援引“一致行動”的定義當中有關第(8)類人士的可推翻推定，即除非相反證明成立，否則一名人士將被推定為與（其中包括）其近親一致行動，但執行人員似乎於口頭結案陳詞中接受就一名非股東而言，他或她顯然需要採取某些“行動”才可以產生“一致行動”的推定，即使執行人員指出任何特定人士無需已購買股份才能夠產生這項推定。由於所涉及的問題是周維正是否屬於由其父親及龔女士組成的一致行動集團的成員，委員會認為，即使他被推定為與其父親一致行動，亦不可以同時推定他是與龔女士一致行動。此項推定只適用於屬同一類別的人士，而龔女士並不屬於該類別，故這項推定與本案無關。
63. 為考慮周維正是否屬於試圖取得或鞏固安寧控制權的群體的成員，委員會認為可以根據規則 26.1 的整體文義來檢視“一致行動”的定義。首先，委員會認為無須確立周維正屬於其父親與龔女士之間的協議或諒解的其中一方。只要能夠顯示周維正曾在其父親與龔女士或龔女士藉由他們任何人購買股份而取得或鞏固安寧控制權的過程中予以積極合作，並知悉他們已就此存在協議或諒解，以及曾在隱瞞他們二人的股權增至超過 35% 以上的任何安排中積極參與，便已足夠。
64. 本節餘下部分載列委員會就關乎周維正的事實作出的相關裁斷，以及裁斷他違反《收購守則》規則 26.1 的理由。主要來說，委員會作出以下裁斷：周維正確實知道其父親與龔女士就透過購買安寧股份而取得或鞏固安寧的控制權一事存在協議或諒解；他在付還股款（周博士據此獲龔女士付還股款）及透過英屬處女群島公司持有安寧股份的安排中的參與構成積極合作，而他在後者中的參與亦構成積極參與一項隱瞞一致行動集團所持有的股權增至超過 35% 的安排。向周博士付還股款是龔女士與周博士之間的協議或諒解的重要一環。
65. 委員會裁斷，有幾次當周博士為龔女士購買安寧股份後，他都會將相關的經紀結單交給周維正，並著周維正計算已買入的安寧股份總數及所涉及的代價和其他成本。周維正之後便會應周博士的要求，編製試算表列出相關詳情。該等試算表會放入信封內，然後交給梁榮江，以便龔女士向周博士付還購買安寧股份的款項。周維正在其證人陳述書內供稱，他曾數次於鄰近華懋辦事處的日航酒店內的一間咖啡室與梁榮江會面，以便將試算表轉交給他。周維正在其口頭證供中稱，他們曾總共見面四或五次。在此之前，周博士已把入帳銀行帳戶的資料交給他，並吩咐他與梁榮江見面，以將該等銀行帳戶資料轉交給梁榮江以供入帳。委員會斷定，周維正確實曾多次於 2000 年底至 2001 年期間與梁榮江會面，以便向他提供指定銀行帳戶的詳情及將試算表轉交予他，令周博士能夠得以獲付還為龔女士購買安寧股份的款項，而周博士亦因而獲全數付還股款。
66. 委員會亦裁斷，周維正從其父親交給他的經紀結單及指示得知，周博士曾購買他尋求付還股款的安寧股份，而周維正亦知道周博士曾購買的安寧股份數目，以及該等股份並非為周博士本人而買入，而是為他尋求付還股款的其他人買入。雖然周維正否認知道龔女士是周博士向其尋求付還股款的人，但委員會裁斷，周維正從其把試算表交予據他所知受聘於龔女士的梁榮江這一事實知道此事。不論是當時還是現在，周維正顯然是一個曾接受良好教育及聰明的人。加入其士之前，他有過兩份工作，一份是在百富勤／法國巴黎銀行（Peregrine/BNP）任職，另一份則是效力一家保險公司。周維正亦知道其父親

與龔女士之間的協議或諒解，而其父親會根據該協議或諒解為龔女士購買安寧股份並獲她付還股款。周維正在接受盤問時承認他知道龔女士是富有的人，有能力自行購買安寧股份。就著他承認對《上市規則》及《收購守則》有所認識，他因而明白到龔女士透過其父親而不親自購買安寧股份的理由。周維正亦知道將試算表轉交予梁榮光後，須予付還的股款將會存入指定的銀行帳戶內。

67. 至於持有股份的安排方面，周維正已按其父親的指示，購入了四家英屬處女群島公司及於 **Merrill Lynch** 開立帳戶。他在當時已知道其父親並非股份的真正擁有人，龔女士才是。他亦知道由於不記名股票的存在，無人會知曉持有安寧股份的英屬處女群島公司的擁有權誰屬。
68. 委員會因此裁斷，周維正透過在持續購買股份期間多次安排付還股款，以及利用四家英屬處女群島公司持有安寧股份，以一致行動集團成員（但非主要成員）的身分積極合作以取得或鞏固安寧的控制權，以及在必須知道龔女士及其父親之間的協議或諒解的情況下且根據該協議或諒解，在隱瞞由其父親為龔女士購買的安寧股份的真正擁有人身分的多項安排中積極合作。

梁榮江

69. 梁榮江於 2000 年 12 月 21 日成為安寧的董事。根據〈引言〉第 1.5(a)項，《收購守則》所述的責任由那日開始顯然已適用於他。此外，如他屬於試圖取得或鞏固安寧控制權的群體，《收購守則》所述的責任也將適用於他。他是否屬於〈引言〉第 1.5(b)項所指的任何類別的人士，必須與他是否屬龔女士及周博士所帶領的一致行動集團內的成員（即使不是主要成員）這個問題一併考慮。
70. 為了考慮梁榮江是否屬於試圖取得或鞏固安寧控制權的群體，委員會認為可根據規則 26.1 的整體文義來檢視“一致行動”的定義。委員會認為其無須確立梁榮江是周博士與龔女士之間的協議或諒解的直接方，來證明他曾採取一致行動，及違反規則 26.1。只要有證據顯示他就兩人透過購買股份至兩人在安寧的合共持股量增至超過 35%，曾積極合作以取得或鞏固對安寧的控制權，並且知道不會作出全面要約，便已足夠。
71. 執行人員針對梁榮江的論據，是基於他在為龔女士處理向周博士的付還股款，以支付周博士買入 1.6 億股安寧股份的費用，以及在被指曾告訴周博士要將其持有安寧股份一事保密，並且不要將股份的事告知龔女士的胞弟龔仁心醫生（“龔醫生”）的事情上，以一致行動集團成員的身分擔當主動角色。此事被指是發生於龔女士逝世後不久在銅鑼灣的 L’hotel 討論喪禮安排的會議上。
72. 在代表梁榮江、日期為 2014 年 2 月 18 日的事實陳述及他在口供所確認的首份證人陳述書內，梁榮江詳述他對於龔女士由 1999 年起取得安寧股份的事實是知情的。這證供清楚顯示，除了周博士為龔女士買入的 1.6 億股股份外，梁榮江知道她在累積其於安寧的權益，並有意由 2000 年 10 月起向支先生買入其安寧股份，以及她對取得這些股份是否足以讓她控制安寧感到不安全的原因。在日期為 2000 年 11 月 2 日的公布⁸內，安寧表示將會以每股 1.40 港元發行 163,500,000 股安寧股份（佔經擴大已發行股份的 9.9%），以換取光亞科技有限公司（“光亞”）72,300,000 股現有股份。光亞是印尼力寶集團的成員。這較安寧股份於 2000 年 11 月 1 日的 0.68 港元收市價增加逾一倍，但卻相當於截至 2000 年 6 月 30 日止的資產淨值。按照梁榮江所說，龔女士早已準備累積安寧的重大及控制實益股權。她已跟支先生展開磋商，而此事會令她在安寧當時的權

⁸ 見 http://www.hkexnews.hk/listedco/listconews/SEHK/2000/1103/LTN20001103021_C.doc

益被攤薄。按照梁榮江所述，龔女士早前曾就另一家公司的控制權與力寶集團展開一場激烈的爭奪戰，以致她最終持有力寶集團所控制的一家公司的少數股權，故她決定不讓歷史重演。委員會沒有理由質疑上述證供，尤其是，這說明了梁榮江為何知悉龔女士有控制安寧的意圖。再者，梁榮江對華懋的公司秘書部有整體監察權，而該部門有責任確保龔女士的投資符合監管規定。因此，他對有關龔女士因安寧持股而作出的披露是知情的。

73. 根據梁榮江的證供，在或大約在 2000 年 11 月 4 日，繼龔女士與支先生達成有條件協議後，她從一個消息來源得知她的地位仍未夠穩固，因為光亞加上與力寶集團一致行動的人士的合共持股量可能大於她的持股量。這令龔女士愈發感到不安全。她便徵詢梁榮江的意見，梁榮江著她在完成與支先生的交易後不可再買入任何股份，因為這樣做的話，她會觸及 35% 的界線及需要作出全面要約，但她並不打算作出全面要約。就是在這些情況下，龔女士著梁榮江向周博士徵詢意見。
74. 委員會亦參考上文第 53 至 56 段。委員會在裁斷梁榮江確曾與周博士會面及就梁榮江確實告訴周博士的內容作出裁斷後，裁斷梁榮江知道龔女士有意取得安寧的控制權，並且正在代表龔女士就她的情況徵詢周博士的意見。梁榮江亦知道，龔女士在完成向支先生購入股份的交易後，不可再買入任何股份，以及她需要在完成交易前配售部分安寧股份，以保持其持股在 35% 的觸發點以下。梁榮江亦知道，她雖然有取得或鞏固其控制權的意向，但她無意作出全面要約。
75. 梁榮江知悉上述事宜，並在龔女士透過周博士取得或鞏固安寧的控制權一事上積極合作，安排向周博士付還股款。梁榮江供稱，在他與周博士會面後的一段時間，龔女士指示他安排將一些資金轉移至一家與周博士有關的公司，當他問到該等資金的用途時，龔女士只表示這是她與周博士之間的私事。他的證供基本上是指他並不知道有關轉帳是用來購買安寧股份。委員會並不接納梁榮江這方面的證供。
76. 梁榮江曾多次與周維正會面，而周維正在會面期間都會將一個信封交給梁榮江以轉交龔女士，這是沒有爭議的。根據梁榮江所述，周維正向他表示這是按周博士的指示。在返回華懋的辦事處後，他會將信封交給龔女士。他堅稱無人曾將任何指定入帳帳戶的資料告訴他。他相信，給周博士的款項是支付周博士在台灣協助追查王先生的下落而產生的費用。周博士在供詞中否認自己曾因在台灣所產生的費用而向龔女士索取任何款項。
77. 委員會不認為梁榮江有關付還股款的證供可信。按照他所述，龔女士給他的指示是安排將部分資金轉移至一家與周博士有關的公司，而他確實已這樣做。與此同時，他否認周維正有就指定入帳帳戶向他提供任何資料。委員會裁斷，周維正確實已將相關入帳帳戶的資料連同首份付還股款試算表交了給梁榮江，並裁斷梁榮江在獲悉龔女士決心取得或鞏固安寧控制權的情況下，知道龔女士已尋求周博士（一個她認識很久並信任的好友）的幫忙，代她買入安寧股份。梁榮江及周維正均知道該等款項的用途，而有關的轉帳正正是由梁榮江所安排的。如果不讓梁榮江知道周博士購買股份一事，龔女士便會因牽涉他在付還股款的安排中而蒙上重大及不必要的風險。
78. 周維正在向證監會呈交的陳述書草擬本內供稱，他將該四家英屬處女群島公司在 Merrill Lynch 的部分結單給了梁榮江。梁榮江否認知道此事，但這卻與經議定事實相符，因為龔女士曾指示由該四家英屬處女群島公司持有該等股份，以及因為有關這方面的證據最遲會於 2001 年底最後一次向她要求付還股款時提供給她。無論梁榮江是否留意到由該四家英屬處女群島公司持有該等股份的安排，他都知道購買股份一事並沒有對外披露。

79. 關於被指據說是在龔女士逝世後在 L'hotel 舉行的會議，梁榮江被指在會議進行期間曾與周博士進入房間內，要求周博士不要將他在安寧的股權向龔醫生披露，委員會認為有關指稱不可信。根據龔醫生的證供，當時還有多名人士出席這個會議，當中包括他的胞姊和胞妹。如果梁榮江這麼明顯地將周博士拉到一旁，令在場的每名人士產生好奇心的話，這便不合理，因為梁榮江原想向這些人士隱瞞安寧的股權。
80. 委員會不認為龔醫生是可靠的證人。從他給予證供的方式，清楚看到他對梁榮江懷有敵意。此外，龔醫生顯然曾於 2012 年初，為周博士及陳莊勤律師安排了一個會議，試圖就被指在 L'hotel 發生的事件，向周博士取得一份聲明。周博士拒絕簽署該份為他擬備的聲明。有指梁榮江企圖從龔女士的遺產中侵吞資產，故希望將安寧 1.6 億股股份一事保密，但這說法並不合理，因為龔醫生及周博士均知道該等股份在任何時候都是由周博士所持有。委員會裁斷，在龔女士逝世後不久，周博士確實有將他為龔女士持有該等股份一事告知龔醫生。周博士供稱，他將該等股份一事告訴龔醫生，以便有關股份可用來為華懋慈善基金就龔女士的遺囑與陳振聰進行的訴訟提供資金。委員會接受有關證供，但即使遺產受到爭議，周博士及龔醫生看來仍傾向將存在該等股份一事保密；而委員會亦裁斷，聯合管理人於 2007 年獲委任後一直沒獲告知有該等股份，直至 2012 年才知情。委員會裁斷，周博士確實曾在龔女士逝世後不久於 2007 年的某個時間，將自己持有安寧股份一事告訴龔醫生，惟委員會裁斷在 L'hotel 並無任何梁榮江與周博士同時出席的會議，梁榮江亦沒有在該會議期間請周博士走到一旁，著周博士不要將他為龔女士持有安寧股份一事告訴龔醫生。
81. 因此，委員會裁斷梁榮江在知道周博士為龔女士購買安寧股份以取得或鞏固對安寧的控制權，而龔女士又無意向安寧的股東提出全面要約的情況下，依據龔女士與周博士之間的協議或諒解，以該一致行動人士的成員（但非主要成員）的身分積極合作，安排向周博士付還股款。

決定

82. 基於上述原因，委員會一致裁斷周博士、梁榮江及周維正違反規則 26.1，因為他們與已故龔女士採取一致行動，透過取得投票權以取得及鞏固對安寧的控制權，以及未有根據該規則的規定作出全面要約。

2015 年 4 月 8 日

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 control² 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 Limited⁴, 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 Wang⁵. 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 them⁶. 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 Group⁷. Dr Chow and Ms Kung shared a high level of mutual trust and confidence⁸.

10. Oscar Chow joined the Chevalier Group in 2000⁹. 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 whole¹⁰.
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 offer¹¹.
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 Chee¹².

15. In late 2000, Ms Kung asked Dr Chow to acquire ENM shares and hold them on her behalf¹³. 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 Kung¹⁴. 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 & Company¹⁶. 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 accounts¹⁷. Dr Chow then asked his son, Oscar Chow to carry out these requests¹⁸.
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

Lynch¹⁹. The 136,008,000 ENM shares were then transferred to these companies in August 2001 as follows²⁰:

- 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 Leung²².

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 follows²³:

- 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 him²⁴.
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 ENM²⁵. Each of the four BVI companies held 40 million ENM shares²⁶. None of these shareholdings in ENM were publicly disclosed until May 2013²⁷.
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 Leung²⁸. 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 details²⁹. 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 Chow³⁰. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements³¹.
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 2000³² ;

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 Chee³³. Further details of Ms Kung's shareholdings were regularly disclosed in interim and annual reports subsequently issued by ENM³⁴;
- (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 arise³⁵; 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) Ordinance³⁶.

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 office³⁷. 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 companies³⁸.

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

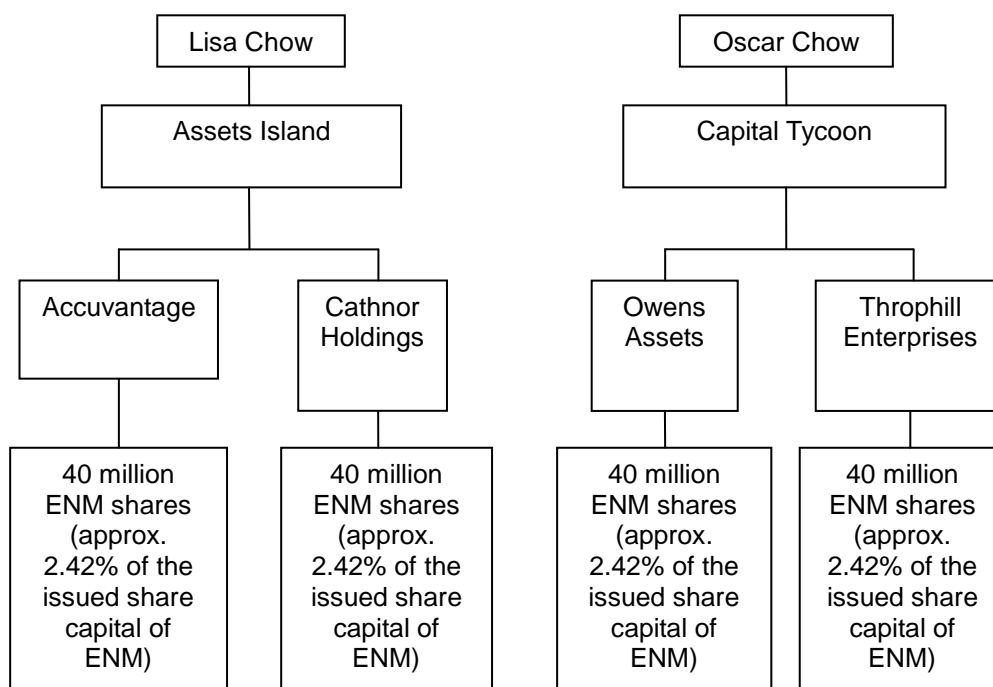
28. On 26 February 2007 and 1 March 2007, Dr Chow bought 15 million and 14,116,000 ENM shares respectively for himself. These shares were registered in Dr Chow's name and represented about 1.76% of ENM³⁹.
29. Ms Kung died in April 2007.
30. In January 2005 a new BVI law came into force introducing tighter 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 shares⁴⁰. 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 Tycoon⁴¹.

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 ENM⁴². 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 years⁴⁵.
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 views⁴⁶.
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 request⁴⁷.
43. At the time he was asked to acquire the ENM shares Dr Chow understood Ms Kung to be the “boss” of ENM⁴⁸.
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 Exchange⁴⁹. 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 following⁵⁰:
- (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 application⁵¹.
 - (ii) In 1999, Chevalier Development International Limited was privatised by Chevalier International Holdings Limited. Dr Chow was the controlling shareholder of Chevalier International Holdings Limited⁵². 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 document⁵⁴.
 - (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 CIHL⁵⁵.

- (iv) In 2004, Chevalier Construction Holdings Limited was privatised by Chevalier International Holdings Limited. Dr Chow was the controlling shareholder and chairman of both companies⁵⁶. 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 document⁵⁷.
- (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 companies⁵⁸. 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 document⁵⁹.

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 Kung⁶¹.
- 49. Mr Leung had worked at the Chinachem Group as a director since April 1987⁶².
- 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 appointment⁶³. On the same day ENM issued an announcement confirming the completion of the acquisition from Mr Chee and Mr Leung's appointment⁶⁴.

51. Mr Leung became the chairman of ENM on 31 March 2001⁶⁵. He has held 200,000 ENM shares (approximately 0.012% of ENM's issued share capital) since 30 June 2000⁶⁶.
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 matter⁶⁷.
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 behalf⁶⁸. Mr Leung met Oscar Chow on approximately five occasions in connection with the reimbursements⁶⁹.
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 this⁷⁰.

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 reimbursements⁷¹. Oscar Chow assumed that the funds for the reimbursement came from Ms Kung⁷².
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 Code² (“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	<p>(i) Dr Chow bought approximately 136 million ENM shares (approximately 8.24%) through two brokers.</p> <p>(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.</p>	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	<p>(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.</p> <p>(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.</p>	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 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 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.