

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

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

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 Limited³

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

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

conduct might be the subject 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

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 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 until her own death in April 2007, Ms. Kung was the Chairwoman and sole
17. Dr. Chow was the founder and Chairman of the Chevalier group of companies
East Asia, North America and Australia. At all material times, he has also been the controlling shareholder, T10 -3002essary fo

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) 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, jo
as to whether an investor and its associates in a proposed subscription for the

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
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

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. 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 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

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

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

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
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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

company, with each

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

prepare Excel spread sheets which set out the relevant details. These were then

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

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

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. 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, the brother of Ms. Kung, about them. 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 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 2000 onwards and the basis for her insecurity concerning the sufficiency of these acquisitions to have control over ENM. In an announcement⁸ 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 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

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 ination to obtain

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.

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.

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

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

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

there was no meeting at the 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.

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

- (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**”).

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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 () ("**Mr Chee**") (C)3tTw 1.19(.33t)-ad 2000etaneP <</MCID 13>BD0.0

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.

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)

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22.

- (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.

Relevant provisions under the Takeovers Code

- (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

Leung

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 Capi T.gishe four f Capi T.gisor58.In 2001 en aTng -11ggeg -11ner11(7

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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

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 offence,

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)*

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

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 phone call 105-5967.62 3,25	

Date

Event

Related document(s)

**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

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) insecurity about her ENM shareholding,
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

- (d) He knew the reimbursements that he received and which had been handled by Oscar Chow and Joseph Leung were related to the ENM

3. Oscar Chow

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

- (a) 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

- (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 al

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.