





shares in UDL at \$0.04 each ("Subscription"). As a result of this acquisition, Harbour Front's shareholding in UDL increased from 31.11% to 42.89% of the enlarged issued share capital. However, according to UDL's advisers, its Voting Rights increased from 62.21% to 73.01% and hence no general offer was made.

9. Between May 2001 and July 2001, Charterbase and its legal advisers raised a number of questions regarding the calculation of the Voting Rights held by Harbour Front and whether the Subscription should trigger a general offer obligation by

deliberately putting Harbour Front to unnecessary expense so as to drain its resources and force it to sell this property to him at below market price.

13. Charterbase denied the allegations made by Harbour Front, describing them as "scandalous and unfounded without any clear and unequivocal evidence produced in support."
14. In a letter dated 10 August 2001, the Acting Chairman of the Panel asked Charterbase to provide various information relating to its identity and shareholding which, at that time, remained outstanding despite repeated requests from the Executive and Harbour Front. This same letter of 10 August 2001 also noted that the allegations made by Harbour Front taken together with Charterbase's and their advisers' continued failure to provide the requested information regarding its identity and shareholding, raised concerns as to whether the present application was an abuse of process or frivolous. The Acting Chairman further noted that, as a

and in good faith.

- (b) The Panel has carefully considered the evidence before it (including both documentary and oral evidence given by Ms Irene Leung of Harbour Front during the hearing). The Panel is however not satisfied that the allegations by Harbour Front have been substantiated. The Panel is therefore not satisfied that the application by Charterbase constitutes an abuse of process.

(2) *Frivolous*

- (a) Section 11.1 of the Introduction to the Codes provides that "The Panel has a discretion to entertain a request for review by an aggrieved shareholder, if it is satisfied that such request is not frivolous." The Panel notes that for the application to be frivolous, there must be no substance to it or no prospect of success at all.
- (b) The Panel is of the view that the main issue raised in Charterbase's application, namely whether the Scheme Shares carried Voting Rights, is an important issue deserving the Panel's consideration. Accordingly, the Panel is satisfied that the application for review raises an issue of substance and hence is not frivolous.

The Panel accordingly directs that this matter proceed to a full substantive hearing.

**Conduct of Charterbase and its advisers**

17. Finally, the Panel notes its disappointment with Charterbase's conduct of this case up to the date of the preliminary hearing. In particular, it is disappointed in their failure to provide information and respond to the Panel's enquiries expeditiously and in the failure of the beneficial owners of Charterbase to attend the preliminary hearing. The Panel further notes that in future it expects full cooperation from Charterbase and its advisers in this matter as is required by General Principle 10 of the Introduction to the Codes, which provides that "All parties concerned with takeovers and mergers are required to co-operate to the fullest extent with the Executive, the Panel and the Takeovers Appeal Committee, and to provide all relevant information."

Dated 4 September 2001