

IN THE HIGH COURT OF THE
 HONG KONG SPECIAL ADMINISTRATIVE REGION
 COURT OF FIRST INSTANCE
 CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
 NO. OF 2011

Order 63 Rule 51
 Rules of the High Court
 Section 63 Rule 51

REAL GOLD MINING LIMITED

Applicant

**NOTICE OF APPLICATION FOR LEAVE
 TO APPLY FOR JUDICIAL REVIEW
 (O.53 r.3(2))**

To the Registrar, High Court, Hong Kong

<p><i>Name, description and address of Applicant</i></p>	<p>Real Gold Mining Limited, a Cayman Islands company listed on the main board of the Hong Kong Stock Exchange (Stock Code: 246)</p> <p>Address: 20/F, 633 King's Road, North Point, Hong Kong</p>
<p><i>Name and description of proposed respondent</i></p>	<p>Securities and Futures Commission ("Commission")</p>
<p><i>Judgment, order, decision or other proceeding in respect of which relief is sought</i></p>	<p>(1) The decision of the Commission to not inform the Applicant of the Commission's decision to obtain electronic data and/or physical information owned by the Applicant or copies thereof (collectively "Information") from the Applicant's IT service provider, thus denying the Applicant the opportunity to claim legal professional privilege ("LPP") and relevance in respect of that Information in the same way that the Applicant has so done in respect of similar or identical Information which the Commission had previously obtained directly from the Applicant pursuant to a search warrant which was issued on 5 July 2011 and executed on 6 July 2011.</p> <p>(2) The decision of the Commission to not confirm whether it has obtained Information from the Applicant's IT service provider and/or any other third party, thus denying the Applicant the opportunity to claim LPP and relevance in respect of such Information.</p>

Judgment, order, decision or other proceeding in respect of which relief is sought (cont.)

- (3) The decision of the Commission to not undertake that it has sealed the Information which it has obtained from the Applicant's IT service provider and that it will not review that Information until the Applicant has reviewed the same for LPP and relevance.
- (4) The decision of the Commission to not undertake that it will seal Information (if any) obtained by it from any third party (other than the Applicant's IT service provider) until such time as Applicant has reviewed the Information for LPP and relevance.
- (5) The decision of the Commission to not allow the Applicant to inspect the Information which the Commission has obtained from the Applicant's IT service provider and Information (if any) obtained by the Commission from other third parties, so that the Applicant can confirm whether that Information has been sealed.
- (6) The decision of the Commission to not provide the Applicant with a copy of the Information which the Commission has obtained from the Applicant's IT service provider and Information (if any) obtained by the Commission from other third parties, so that the Applicant can review that Information for LPP and relevance.

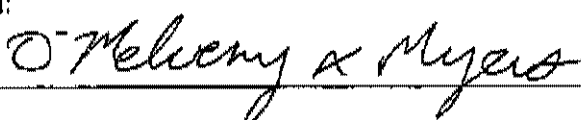
Relief Sought

The Applicant seeks the following relief:

- (1) An order of *mandamus* to compel the Commission to confirm whether or not it has obtained Information from the Applicant's IT service provider and/or any other third party.
- (2) An order of *mandamus* to compel the Commission to seal all Information obtained by it from the Applicant's IT service provider and/or any other third party (if any) and an order of prohibition to prevent the Commission from reviewing such Information until such time as the Applicant has had a reasonable opportunity to review the Information for LPP and relevance.
- (3) An order of *mandamus* to compel the Commission to allow the Applicant to inspect all Information obtained by it from the Applicant's IT service provider and/or other third party (if any) in order to ensure that such Information has been in fact sealed.
- (4) An order of *mandamus* to compel the Commission to provide the Applicant with a copy of all Information obtained by it from the Applicant's IT service provider and/or any other third party (if any).

Relief Sought (cont.)

- (5) An interim injunction to compel the Commission to seal all Information obtained by it from the Applicant's IT service provider and/or any other third party (if any) and to restrain the Commission from reviewing such Information during the period before the application for judicial review is decided. Such interim order to be made at the same time that leave to apply for judicial review is granted.
- (6) A hearing of this application under O53 r3(3) RHC if leave is not granted on papers.
- (7) Such further and other relief as the court may provide.
- (8) An order for costs.

<i>Name, description and address of all interested parties, (if any) known to the applicant</i>	One Solution Limited (the Applicant's IT service provider) Unit E, 6/F., Camelpaint Buildings Block 3, 60 Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong
<i>Name and address of Applicant's solicitors</i>	O'Melveny & Myers 31/F AIA Central, 1 Connaught Road Central, Hong Kong
Signed: 	Dated: 22 nd August 2011

Grounds on which the relief is sought

The grounds on which the relief is sought are as follows:

- (1) The decision of the Commission to not inform the Applicant of its decision to obtain Information from the Applicant's IT service provider, especially in circumstances where the Commission knew or ought to have known that the Commission would likely request that such Information be sealed until such time as Applicant has had an opportunity to review the Information for LPP and relevance, is unreasonable, an unlawful interference with the Applicant's fundamental right to confidential legal advice, a denial of natural justice, and, if the Commission has reviewed that Information, an act of bad faith.
- (2) The decision of the Commission to not confirm whether it has obtained Information from the Applicant's IT service provider and/or any other third is unreasonable and an unlawful interference with the Applicant's fundamental right to confidential legal advice, and a denial of natural justice.
- (3) The decision of the Commission to not undertake that it has sealed the Information which it has obtained from the Applicant's IT service provider and that it will not review that Information until such time as Applicant has reviewed the same for LPP and relevance is unreasonable, an unlawful interference with the Applicant's fundamental right to confidential legal advice, and a denial of natural justice.
- (4) The decision of the Commission to not undertake that it will seal Information (if any) obtained by it from any third party (other than the Applicant's IT service provider), until such time as Applicant has reviewed the Information for LPP and relevance is unreasonable, an unlawful interference with the Applicant's fundamental right to confidential legal advice, and a denial of natural justice.
- (5) The decision of the Commission to not allow the Applicant to inspect the Information which it has obtained from the Applicant's IT service provider and Information (if any) obtained by the Commission from other third parties, so that the Applicant can confirm whether that Information has been sealed is unreasonable, an unlawful interference with the Applicant's fundamental right to confidential legal advice, and a denial of natural justice.
- (6) The decision of the Commission to not provide the Applicant with a copy of the Information which the Commission has obtained from the Applicant's IT service provider and the Information (if any) obtained by the Commission from other third parties, so that the Applicant can review that Information for LPP and relevance is unreasonable, an unlawful interference with the Applicant's fundamental right to confidential legal advice, and a denial of natural justice.

The grounds are supported by the affirmation of Leung Wai Chiu Albert dated 22nd August 2011.

