

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under sections 194 and 196 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

CHOI CHI KIN, CALVIN

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Tribunal: Mr. Michael Lunn, GBS, Chairman

Date of Hearing: 12 to 16 December 2022

Date of Reasons for Determination: 29 September 2023

REASONS FOR DETERMINATION

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A
B **Part 1 - Introduction**

C *Notice of Application for Review*

D 1. By a Notice of Application for Review ¹, filed with the Tribunal on
E 4 February 2022, pursuant to section 217 of the Securities and Futures Ordinance (the
F “Ordinance”), the applicant, Mr. Choi Chi Kin, Calvin, said that he was a person aggrieved by
G the specified decision of the Securities and Futures Commission (the “Commission”), namely
H a Decision Notice, dated 14 January 2022. Mr. Choi said that it was alleged *inter alia* that he:

- I 1. was guilty of misconduct and not fit and proper to be a licensed person;
J 2. was involved in the business of LR Capital Management Company (Cayman)
K Ltd (“**LR Cayman**”) and/or its group companies (collectively “**LR Capital**
L **Group**”) between around November 2014 and December 2015 during his
M employment at UBS AG; such involvement exceeded the scope of a typical
N coverage banker, potentially placing him in a position of conflict with UBS AG
O and/or its clients;
P 3. failed to disclose to UBS AG the actual or potential conflicts of interest;
Q 4. breached

R General Principle 6 (Conflicts of interest), paragraph 10.1 (Disclosure and fair
S treatment) of the Code of Conduct for Persons Licensed by or Registered with
T the Securities and Futures Commission (the “**Code of Conduct**”),

U paragraph 4 (Conflicts of interest) and paragraph 4.1 (Conflicts of interest) of
V the Corporate Finance Adviser Code of Conduct (the “**CFA Code of Conduct**”).

1. Pursuant to section 31 of Schedule 8 of the Ordinance, by notices in writing,
dated 7 March 2022 and 10 March 2022, the Applicant and the Commission respectively
informed the Tribunal that they agreed that the review be determined by the Chairman alone as
the sole member of the Tribunal.

¹ Core Bundle, pages 92-100. [Amended version filed on 12 April 2022]

3. The Decision Notice² stated that, pursuant to sections 194 and 196 of the Ordinance, the Commission had decided to prohibit him from doing various acts for two years.³

4. As relief, Mr. Choi sought declarations that various acts of the Commission were *ultra vires* its statutory powers, namely:⁴

- the Investigation commenced by the Commission, pursuant to section 194(1)(b) of the Ordinance;⁵
- the Notice, dated 17 October 2017, issued pursuant to section 183(1) of the Ordinance, requiring Mr. Choi to attend an interview;⁶
- the Notice of Proposed Disciplinary Action (the “NPDA”), issued pursuant to sections 194 and 196 of the Ordinance, dated 16 December 2020⁷; and
- the Decision Notice, issued pursuant to sections 194 and 196 of the Ordinance, dated 14 January 2022.⁸

5. In addition, Mr. Choi sought that the Notice, dated 17 October 2017, the NPDA and the Decision Notice be set aside.⁹

The Decision Notice

6. The Decision Notice stated:

“14. We have set out in paragraphs 20 to 39 of the NPDA the email exchanges between you and Devon Fu (**Emails**) which formed the basis of our preliminary view that you were involved in the business of the LR Capital Group between around November 2014 and December 2015 during your employment at UBS AG and such involvement exceeded the scope of a typical coverage banker, potentially placing you in a position of conflict of interest with UBS AG and/or its clients.”

² Core Bundle, pages 78-91, at paragraph 49.

³ applying to be licensed or registered; applying to be approved under section 126(1) of the Ordinance, as a responsible officer of a licensed corporation; applying to be given consent to act as an executive officer of a registered institution under section 71C of the Banking Ordinance; and seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

⁴ Core Bundle, pages 93-94, paragraphs 1-4.

⁵ Core Bundle, pages 1-14.

⁶ Core Bundle, pages 15-27.

⁷ Core Bundle, pages 28-39.

⁸ Core Bundle, pages 78-91.

⁹ Core Bundle, page 94, paragraph 5.

7. Of the written Representations¹⁰, dated 16 April 2021, made on behalf of Mr. Choi by his then solicitors the Decision Notice asserted:¹¹

“We consider that you have not been able to rebut the allegations contained in the NPDA. In particular, you fail to provide any reasonable explanation for the Emails:

- (a) You fail to explain why in Project Frontier, you provided information and documents in relation to the investment opportunity to Devon Fu ahead of the official communication to LR Capital, and why you provided input and offered comments on the transaction documents from the perspective of LR Capital, the buyer, when you were advising the sellers.
- (b) You fail to explain why you provided assistance and information in relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client, in Project Oasis.

15. The Emails show that you acted improperly, in a manner beyond and inconsistent with the scope of your responsibilities both as a deal team member advising UBS’ clients in Project Frontier and Project Oasis as well as a coverage banker for the LR Capital Group. You fail to explain why no question of likely or actual conflict arose out of your conduct. We do not see any reason to refrain from taking the disciplinary action proposed in the NPDA.”

8. The Commission’s NPDA¹², dated 16 December 2020, described Mr. Choi’s employment at UBS:¹³

“You were employed by UBS AG in the China International team within the Corporate Client Solutions (CCS) Department during the period from 25 October 2010 to 29 January 2016. You held the corporate title of Managing Director at UBS AG.”

Project Frontier and Project Oasis

9. Of Project Frontier, the NPDA asserted:

“14. In Project Frontier, UBS AG acted as Financial Advisor to a group of sellers led by Morgan Stanley Private Equity Asia (**MSPE**) in the sale of its shares in AMTD Group Company Limited (**AMTD Group**) to LR Capital Financial Holdings Ltd (**LR Capital Financial**), a wholly-owned subsidiary of LR Capital. According to UBS AG and UBSSHK:

- (a) you were the Project Sponsor on Project Frontier;

¹⁰ Core Bundle, pages 69-77.

¹¹ Core Bundle, page 85, at paragraphs 14 and 15.

¹² Core Bundle, pages 28-39.

¹³ Core Bundle, page 29 at paragraph 8.

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- (b) under UBS AG’s policies and procedures, the Project Sponsor is ultimately responsible for the work performed by the Project Director and the deal team on a transaction;
- (c) the Project Sponsor must ensure that the project is executed to the appropriate standard and is responsible for ensuring that any issues identified and referred to him by the Project Director, which may give rise to reputational risk and/or legal or regulatory liability, are appropriately resolved;
- (d) MSPE, the lead investor in the private equity consortium owning and selling AMTD Group, reached out to UBS AG regarding the sale of shares in AMTD Group on or around 12 March 2015; and
- (e) the project kicked off on 9 May 2015.

15. Your formal participation in Project Frontier was in the capacity of adviser to the seller (i.e. MSPE) as opposed to the buyer (i.e. LR Capital Financial). LR Capital Financial submitted its bid on 29 May 2015. The sale and purchase agreement (**SPA**) was executed on 19 June 2015.”

10. Of Project Oasis, the NPDA asserted:¹⁴

“16. In Project Oasis, UBSSHK acted as Joint Sponsor in the initial public offering (**IPO**) of Xinte Energy Co., Ltd. (stock code: 1799) (**Xinte**)¹⁵. UBS AG acted as Joint Global Coordinator, Joint Bookrunner and Joint Lead Manager. The following entities were also involved in the project:

- (a) LR Capital China Growth I Company Limited (**LR Capital Growth**), a subsidiary of LR Capital, was a pre-IPO investor of Xinte.
- (b) CM International was another pre-IPO investor of Xinte.
- (c) LRC. Belt and Road Investments Limited (**LRC. Belt and Road**) was a cornerstone investor in the Xinte IPO.

17. You were a member of the deal team in Project Oasis and Xinte was your client. According to UBSSHK, Project Oasis kicked off on 15 September 2014. Xinte was listed on the Main Board of The Stock Exchange of Hong Kong Limited (**SEHK**) on 30 December 2015.”

¹⁴ Core Bundle, pages 30-31.

¹⁵ The other Joint Sponsor was GF Capital (Hong Kong) Limited.

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Dramatis personae

Mr. Calvin Choi

11. From 25 October 2010 to 29 January 2016, Mr. Calvin Choi was licensed as a representative to carry on Type 6 regulated activity under the Ordinance. Between 30 October 2010 and 29 January 2016, he was a relevant individual for Type 1 (dealing in securities), Type 4 (advising on securities) regulated activities accredited to UBS AG, Hong Kong Branch. Between 7 June 2012 and 30 January 2016, Mr. Choi was accredited to UBS Securities Hong Kong Limited under the Ordinance. Between 19 July 2016 and 9 December 2016, he was accredited to AMTD Global Markets Limited as a responsible officer for Type 1 and Type 4 regulated activities.¹⁶

Mr. Choi's role as a 'coverage banker' of LR Capital

12. In his witness statement, Mr. Andy Lee, the head of APAC Investment Bank Compliance and Operational Risk at UBS AG said that Mr. Choi was recorded as being the 'coverage banker' for:¹⁷

- LR Capital Financial Holdings Limited; and
- LR Capital China Growth I Company Limited.

He said that the available records described that status from "...around July 2015".

13. At the request of the Chairman, in a letter to the Tribunal, dated 13 December 2022, Mr. Lee provided the Tribunal with copies of the primary records of the bank about which he had testified. Those records state that Mr. Choi became the coverage banker for those companies 'Effective From' 28 July 2015.

Mr. Gao Yu and Mr. Kingsley Chan

14. At all material times Mr. Gao Yu was the managing director of Morgan Stanley and co-head of Morgan Stanley Private Equity Asia (MSPE)'s China Investment operations and Mr. Kingsley Chan was also a managing director of Morgan Stanley and a member of the MSPE team. In October 2014, through a wholly-owned company, MSPE acquired the majority

¹⁶ Core Bundle, page 28, NPDA at paragraphs 1 and 2.

¹⁷ Bundle 33, page 11158-Bundle 34, page 11823, at paragraph 18.

A of the shares of AMTD, after which Mr. Gao Yu and Mr. Kingsley Chan became directors of
B AMTD.

C *Mr. Howard Cong Lin*

D 15. Mr. Howard Cong Lin was the Managing Partner and a founder of LR Capital
E Group, which was incorporated in December 2014.

F *Mr. Devon Fu*

G 16. In his witness statement, Mr. Howard Cong Lin said that Mr. Devon Fu had first
H become employed by LR Capital in or around early-2015. He said that he had known Mr. Fu
I for many years and that, “I recruited Mr. Fu to join LRC after its initial establishment in
December 2014.” He added, “...prior to joining LRC, Mr. Fu worked in various leading
investment banks and private equity funds, having spent the most time with Standard Chartered
Private Equity in Beijing.”¹⁸

J 17. Emails, dated 27 and 28 October 2014, exchanged between Mr. Devon Fu and
K UBS, including Mr. Choi, evidence the fact that even then Mr. Devon Fu was acting on behalf
L of Mr. Howard Cong Lin, as Managing Partner of LR Asia Capital Management (HK) Ltd, in
the potential pre-IPO investment in Xinte.¹⁹

M *Mr. Devon Fu’s prior employment by UBS*

N 18. In cross-examination, having been referred to biographical detail of Mr. Devon
O Fu contained in an email, dated 20 November 2015, sent by Mr. Devon Fu to Mr. Choi for the
preparation of biographical information for use in promotional material by LR Capital²⁰,
P Mr. Howard Cong Lin accepted that Mr. Devon Fu had worked for UBS AG in Hong Kong and
Q Beijing in the period 2012 to 2014, prior to working for Standard Chartered. Of course, that
was at a time when Mr. Choi was also an employee of UBS AG in Hong Kong.

R 19. The biographical promotional material said of Mr. Devon Fu, that he had,
S “...significant knowledge and expertise in matters relating to corporate advisory and capital
markets transactions in Hong Kong and Mainland China. He has previously been registered
with the commission for Type 6 regulated activities.” In particular, it was noted that:

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U ¹⁸ Bundle 35, page 11842 at paragraph 5.

¹⁹ Bundle 2, pages 650-664.

²⁰ Bundle 30, page 10428.

A “While working at UBS in Hong Kong and Beijing between 2012 and 2014,
B Mr. Fu worked on a number of significant deals, including...”

C The material described no less than five Hong Kong IPOs in the overall period of
D December 2012 to December 2013.

E 20. Mr. Cong Lin said that there was no reason why his witness statement made no
F reference to Mr. Devon Fu’s prior employment with UBS. He did know that the case in the
G Tribunal involved UBS: ²¹

H “ (it) was not my intention to avoid this matter. It’s just I am not sure why I
I didn’t mention it here but I did mention it in other places.”

J He did not remember if they knew each other before working on Project Frontier.

K *Emails evidencing the relationship between Mr. Devon Fu and Mr. Choi*

L 21. In cross-examination of Mr. Cong Lin, Mr. Li, SC drew his attention to a series
M of emails over many months, beginning on 9 March 2015, between Mr. Devon Fu and Mr. Choi
N as evidencing the relationship between Mr. Devon Fu and Mr. Choi. ²²

O *March 2015*

P 22. In an email, dated 9 March 2015, Mr. Choi forwarded to Mr. Devon Fu a Direct
Q Banking report sent to him by Deloitte, asking him to send the attachment to Mr. Choi’s mobile
R telephone number. ²³

S 23. Later in March 2015, Mr. Devon Fu became involved in the logistics of the
T supply of Rugby Sevens Tickets to Mr. Choi. An exchange of emails on 25 March 2015 between
U Mr. Choi, Mr. Devon Fu and Ms. Jeannie Chu addressed the issue of the payment of \$27,000
V for 15 sets of 3-day Rugby Sevens tickets. On the face of the exchange, Mr. Devon Fu’s role
was to provide a copy of the deposit slip evidencing payment to Ms. Jeannie Chu for Mr. Choi. ²⁴

²¹ Transcript, page 313 M-T.

²² Transcript, pages 316 K-332 P.

²³ Bundle 12, page 4272.

²⁴ Bundle 14, page 5010.

A 24. In an email, dated 30 March 2015, Mr. Devon Fu received an email ticket in the
B name of Mr. Calvin Choi for a flight to Hong Kong from Zhengzhou on 30 March 2015.²⁵ B

C *June 2015* C

D 25. In an email from Mr. Choi to Mr. Devon Fu, dated 9 June 2015, the Subject
E heading stated:²⁶ D

E “your attitude has some problem, as always.” E

F There was no text in the email. F

G 26. The Subject heading of an email sent by Mr. Choi to Mr. Devon Fu on 10 June
H 2015 was: “work list 1.” In the text, Mr. Choi said:²⁷ G

I “Things to do today and you must maintain a checklist for each item I assign to
I you.”

- J 1. Quingtao bank nda and closely follow-up on next steps and obtain more
J info including investment story deck etc
- K 2. Lrc website update: (a) advisory board is wrong; (b) news archive not
K yet update to reflect all the latest news in both Chinese AND English;
L (c) takeaway Raymond qu L
- M 3. Geo Swift next steps re jonathan dd? You never follow-up and nail this
M down...”

N The ‘work list’ contained a total of nine items. N

O *July 2015* O

P 27. In an exchange of emails on 14 July 2015 under the Subject heading: Shuttle car
P arrangement, Mr. Devon Fu liaised on behalf of Mr. Choi in making arrangements for a “Meet
Q & Greet Service” at the airport for a party that included Ms. Christine Kwok, to whom Mr. Choi
Q was/had been married. Mr. Choi initiated the exchange in an email to Worldwide Flight
R Services, copied to Mr. Devon Fu:²⁸ R

S “We want to order two shuttle cars to pick up 5 adults and 3 kids to arrive today
S by CX 507 today

T ²⁵ Bundle 1, page 476. T

U ²⁶ Bundle 22, page 7608. U

V ²⁷ Bundle 29, page 9963. V

²⁸ Bundle 26, pages 9217-9218.

Pls send the form - devon will complete and fill in details and revert before noon.”

Subsequent emails evidence the fact that Mr. Devon Fu did as requested.²⁹

November 2015

28. In an email, dated 30 November 2015, sent by Mr. Choi to Devon Fu, the text stated:³⁰

“I asked u to coordinate with ming-lin to send weekly report to gao and others and include certain capital market updates. Did you????

Pls start doing it now”

December 2015

29. Finally, in an email, dated 9 December 2015, without any message, Mr. Choi simply forwarded his Aberdeen Marina Club Monthly statement for November 2015 to Mr. Fu.³¹

30. At the conclusion of that cross-examination of Mr. Howard Cong Lin, having summarised the nub of the emails sent between them, the following exchange ensued:³²

“Q. Mr. Cong, by the various emails I have shown you...
Would you agree with me that Mr. Choi and Mr. Fu obviously had a close relationship?

A. I recall that Kevin (sic) was already a partner and Devon was just an associate, so it is very -- it is normal that Kevin assigned duties to Devon in investment bank, such a hierarchic business.

A. It’s understandable.

Q. It is understandable, you say, but did you know that Devon was doing these things for Mr. Choi; did you know at the time?

A. I don’t know.”

²⁹ Bundle 26, page 9216.

³⁰ Bundle 31, page 10493.

³¹ Bundle 31, page 10679.

³² Transcript, pages 331 R-332 P.

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Part 2 - The Law

The nature of the review

31. There is no dispute that the review of the Commission’s decisions, conducted pursuant to section 218 of the Ordinance, is a hearing *de novo* and is to be conducted as a full merits review, including the determination in respect of sanctions, if any, to be imposed on Mr. Choi.³³

The burden of proof

32. Given that the review is a hearing *de novo*, the burden of proof remains on the Commission to prove that Mr. Choi is not a fit and proper person for the purposes of the Ordinance.

The standard of proof

33. As provided by section 218(7) of the Ordinance the standard of proof required to determine any question or issue before the Tribunal is the standard of proof applicable to civil proceedings in a court of law. That is, matters must be proved on a balance of probability.

Inferences

34. In drawing of inferences, given the nature of these proceedings, the Tribunal does not have to be satisfied that it is the only inference to be drawn from proved facts. That is required in criminal proceedings. Rather, in these circumstances the Tribunal has to be satisfied that that it has been established as a compelling inference.³⁴

Failure to call a witness

35. Where a party without explanation fails to call as a witness a person who might reasonably be expected to give direct evidence on the matters in question it is permissible for the court to draw adverse inferences.

36. There must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party’s failure to rebut

³³ *Tsien Pak Cheong David v Securities and Futures Commission* [2011] 3 HKLRD 533.

³⁴ *HKSAR v Lee Ming Tee (2003) 6 HKCFAR 336*; Sir Anthony Mason NPJ at paragraph 72.

A
B it.³⁵ The issue is to be approached in the manner described by Lord Lowry in his judgment in
the House of Lords in *R v IRC, ex p. TC Coombs & Co*³⁶:

C “...the silence of one party in face of the other party’s evidence may convert that
D evidence into proof in relation to matters which are, or are likely to be, within
E the knowledge of the silent party and about which that party could be expected
F to give evidence. Thus, depending on the circumstances, a prima facie case may
become a strong or even an overwhelming case. But, if the silent party’s failure
to give evidence (or to give the necessary evidence) can be credibly explained,
even if not entirely justified, the effect of his silence in favour of the other party
may be either reduced or nullified.”

G 37. The applicable relevant principles are:³⁷

H “(1) In certain circumstances a court may be entitled to draw adverse inferences
from the absence or silence of a witness who might be expected to have
material evidence to give on an issue in an action.

I (2) If a court is willing to draw such inferences, they may go to strengthen the
J evidence adduced on that issue by the other party or to weaken the
evidence, if any, adduced by the party who might reasonably have been
expected to call the witness.

K (3) There must, however, have been some evidence, however weak, adduced
L by the former on the matter in question before the court is entitled to draw
the desired inference: in other words, there must be a case to answer on
that issue.

M (4) If the reason for the witness’s absence or silence satisfies the court, then
N no such adverse inference may be drawn. If, on the other hand, there is
some credible explanation given, even if it is not wholly satisfactory, the
potentially detrimental effect of his/her absence or silence may be reduced
or nullified.”

O
P *Codes of Conduct*

Q 38. Section 193(3) of the Ordinance provides in having regard to the issue of
R misconduct and in forming an opinion whether an act or omission is or is likely to be prejudicial
S to the interest of the investing public or to the public interest, the Commission shall have regard

T ³⁵ *Prest v Petrodel Resources Ltd* [2013] AC 415; Lord Sumption at paragraph 44.

U ³⁶ *R v IRC, ex p. TC Coombs & Co* [1991] 2 AC 283, at page 300 F-H, cited with approval in the judgment of
Kwan JA, as Kwan VP then, in *Pacific Electric Wire & Cable Co Ltd v Texan Management Ltd* (CACV
95/2012) 17 September 2013, at paragraph.107.

V ³⁷ *Wiszniewski v Central Manchester Health Authority* [1998] PIQR 324, Brooke LJ at page 340, cited with
approval by Kwan JA, at paragraph 106.

A to any code of conduct published under section 169 and to guidelines published under section
B 399 of the Ordinance in force at the time of the occurrence and applicable to the act or omission.

C 39. The Code of Conduct for Persons Licensed by or Registered with the Securities
D and Futures Commission, published by the Commission in March 2014, is relevant as is the
E Corporate Finance Adviser Code of Conduct, published by the Commission in October 2013.

E *Fit and proper person*

F 40. Sections 194(3) and 196(3) of the Ordinance provides that in determining
G whether a regulated person is a fit and proper person, within the meaning of those respective
H sections, the Commission:

I “...may, among other matters (including those specified in section 129), take
H into account such present or past conduct of the regulated person as it considers
I appropriate in the circumstances of the case”

J 41. Section 129 provides that in making that determination, in addition to any other
K matter the Commission may consider relevant, the Commission shall have regard to the
L following in respect of the person:

- L “(a) the financial status or solvency;
M (b) the educational or other qualifications or experience having regard to the
N nature of the functions which, if the application is allowed, the person will
O perform;
P (c) the ability to carry on the regulated activity competently, honestly and
Q fairly; and
R (d) the reputation, character, reliability and financial integrity.”

***Part 3 - The ambit of the Review - Mr. Choi's personal and familial connections
with the LR Capital Group***

R 42. At the outset, it is necessary to determine the ambit of the review in this Tribunal
S of the Commission's specified decisions. Of particular significance, is the relevance of
T evidence of Mr. Choi's alleged personal and familial connections with the LR Capital Group at
U times at which the LR Capital Group was involved in transactions as an investor with UBS's
V clients and his alleged failure to declare those connections.

A *Background: statements made by the SFC to Mr. Choi and his written Representations* A

B 43. Relevant to that issue were statements made by the SFC to Mr. Choi in the
C NPDA and the Decision Notice. In the NPDA, the Commission had informed Mr. Choi that it
D did not consider the disciplinary action was warranted in relation to his alleged failure to declare
E those connections.³⁸ Nevertheless, in written Representations, dated 16 April 2021, made to the
F Commission by solicitors acting for Mr. Choi, the issue of a conflict of interest in Mr. Choi
arising from the interests of his father, mother, brother and brother's fiancée, was addressed at
some length.³⁹

G 44. In the Decision Notice, the Commission adverted to its statement in the NPDA
and said:⁴⁰

H "...we do not consider that disciplinary action against you is warranted in
I relation to your failure to declare connections of your family members in the
J transactions in which the LR Capital Group was involved as investor (actual or
K potential) of UBS AG's clients. Contrary to your understanding of the
L allegations against you, *we did not allege in the NPDA that the interests of your
father, mother, brother and brother's fiancée give rise to a material interest for
you in the transactions. Instead, our disciplinary action is based on your own
involvement in the business of the LR Capital Group which exceeded the scope
of a typical coverage banker, potentially placing you (rather than your father,
mother, brother or brother's fiancée) in a position of conflict of interest with
UBS AG and/or its clients.*" [Italics added.]

M *The SFC's case in the Tribunal* M

N (i) *Opening Submissions for the Commission* N

O 45. In his written Opening Submissions for the Commission, Mr. Li SC made it
P clear that he invited the Tribunal to have regard to Mr. Choi's "personal and familial
Q connections" with the LRC Group, not only as part of the broader picture of his close
R relationship with the Group but also as evidence that:⁴¹

S ³⁸ Core Bundle, pages 29-30, paragraphs 9 and 13:

T "...the SFC does not consider that disciplinary action is warranted in relation to the allegation in paragraph
9(a) above" namely, the Mr. Choi had failed, "...to declare connections of your family members in certain
transactions in which the LR Capital Group was involved as investor (actual or potential) of UBS AG's
clients."

U ³⁹ Core Bundle, pages 73-76, at paragraphs 26 and 31.

V ⁴⁰ Core Bundle, page 89, at paragraph 43.

⁴¹ The SFC's Opening Submissions, paragraph 141.

“...there was at least a real risk of conflict between Choi’s personal and familial connections and MSPE and Xinte’s interest in Project Oasis and Project Frontier.”

Specifically, it was contended that:⁴²

“By reason of his personal connections with LR Capital (including his father’s acquisition of shares in LR Capital which were held on behalf of Choi) Choi had a personal interest or a relationship which gave rise to actual or potential conflict of interest in Project Oasis.”

46. That interest was not disclosed to Xinte or reported to UBS. The latter failure was a breach of the UBS policies and guidelines.⁴³ The Tribunal was invited to conclude that his conduct was not only in breach of:⁴⁴

“General Principle 6 and paragraphs 4 and 4.1(a) of the SFC Code of Conduct, (but) it also amounted to breaches of paragraph 10.1 of the SFC Code of Conduct and paragraph 4.1(b) of the CFA Code of Conduct.”

47. It was asserted that, in consequence:⁴⁵

“Choi’s conduct was likely to be prejudicial to the interest of the investing public or to the public interest within the meaning of s 193(1) SFO, triggering the disciplinary powers under ss194(1)(a) and 196(1)(a).”

(ii) Closing Submissions for the Commission

48. The Commission’s submissions of the relevance of Mr. Choi’s personal and family connections to LRC were re-affirmed in its’ written Closing Submissions:⁴⁶

“Choi’s personal and family connections are relevant... (2) as an independent source of conflict of interest.”

49. In support of that submission, the Commission relied on its’ submissions in the earlier application by Mr. Choi to expunge various passages of the witness statement of Mr. Andy Lee.⁴⁷

⁴² *Ibid*, paragraph 154.1.

⁴³ *Ibid*, paragraph 146.

⁴⁴ *Ibid*, paragraph 154.3.

⁴⁵ *Ibid*, paragraph 155.

⁴⁶ The SFC’s Closing submissions, paragraph 110.

⁴⁷ The SFC’s Closing Submissions, paragraph 113.1.

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Issues arising

50. Having regard to those statements of the Commission, in the course of Mr. Li's oral closing submissions, the Tribunal raised the issue:⁴⁸

"...as to the propriety of this Tribunal inquiring into matters, in the language Mr. Shieh would use, that have been disavowed by the SFC at an earlier stage."

51. In response, Mr. Li submitted that the Commission had not disavowed or abandoned this point. But, even if it had done so, given that this was a "*de novo* review", subject to considerations of fairness and prejudice, the Tribunal was required to consider the evidence. He confirmed in terms that the Commission invited the Tribunal to determine that it had jurisdiction to do so and to find that, because of his relevant personal and familial connections, Mr. Choi was in a conflict of interest and in breach of his obligations thereby and for his failure to disclose the same.⁴⁹

Expungement application; impugned passages in the witness statement of Mr. Andy Lee of Mr. Choi's familial connections

52. On 6 December 2022, immediately prior to the substantive hearing, the Tribunal received written and oral submissions in respect of an application made on behalf of Mr. Choi to expunge various passages of the witness statement of Mr. Andy Lee, filed by the Commission with the Tribunal on 19 October 2022. The Tribunal delivered its Ruling on 9 December 2022. In that application, issue was taken on behalf of Mr. Choi as to the scope of these review proceedings. The impugned passages in the witness statement of Mr. Andy Lee related to evidence of Mr. Choi's familial connections, allegedly relevant to the transactions under consideration by the Commission.

Submissions on behalf of Mr. Choi

53. In the context of the statements made by the Commission in the NPDA and the Decision Notice, quoted earlier, the arguments advanced by Mr. Shieh SC⁵⁰ on behalf of Mr. Choi were described in the Ruling as being that:⁵¹

"...it is plain that the Commission did not invoke its disciplinary power against the Applicant on the basis that he failed to disclose his family connections to

⁴⁸ Transcript, 16 December 2022, page 470 M-O.

⁴⁹ Transcript, 16 December 2022, pages 471 M-473K.

⁵⁰ The Applicant's Reply Submissions on the Expungement application, at paragraph 10.

⁵¹ Ruling, 9 December 2022, at paragraph 13.

UBS; nor did the SFC make any allegation (let alone any finding) in this respect, whether in the NPDA or the DN. Indeed, the SFC expressly disavowed this as a ground warranting disciplinary action against the Applicant.”

54. The Ruling noted that, in consequence of that primary submission, it was contended that:⁵²

“...allegations concerning his alleged failure to disclose family connections are outside the scope of these reviews proceedings and therefore irrelevant, in that: (i) the present review is solely concerned with the merits of the SFC’s findings in support of its disciplinary actions against the Applicant; and (ii) the SFC made no finding in respect of the aforesaid failure, let alone based its disciplinary actions upon it.”

The submissions of the Commission

55. In the Ruling, the nub of the submissions advanced by Mr. Li as to the matters relevant to a review hearing *de novo* were summarised as being:

“37. As relevant to the understanding of the ambit of a hearing *de novo* in a full merits review, Mr. Li invited the Tribunal to note the description of the nature of a hearing *de novo* given in the judgment of Dawson J in in the High Court of Australia in *Harris v Caladine*⁵³:

“That means that the court reviewing the order begins afresh and exercises for itself any discretion exercised below by the Registrar. The parties commence the application again, subject to any restrictions in the rules upon the calling of evidence or provisions relating to the use before the court of evidence called before the Registrar. A hearing *de novo* involves the exercise of the original jurisdiction and ‘the informant or complainant starts again and has to make out his case and call his witnesses’.”

....

39. Mr. Li submitted that there was no jurisdictional limit on the scope of the review before the Tribunal “...to only the basis on which the SFC came to its original decision”. He contended that the arguments advanced by Mr. Shieh incorrectly involved treating the application as an appeal *strictu sensu* or by way of rehearing. On the contrary, the essence of a full merits review was the power of the reviewing body to substitute a decision. That implies addressing all issues, so that it is in no way bound by what has gone before. In support of those submissions Mr. Li invited the Tribunal to note the observations of the Editors of ‘*The Securities and Futures Ordinance (Cap. 571) Commentary and Annotations (2019)*’, at paragraph 217.08”

⁵² Ruling, 9 December 2022, at paragraph 14.

⁵³ *Harris v Caladine* (1991) 172 CLR 84, at page 124.

A 56. In ruling against the application to expunge the various passages from Mr. Lee’s
B statement, the issue of whether Mr. Choi’s “failure to disclose family connections are outside
C the scope of these review proceedings and therefore irrelevant” was left unresolved. At the
D outset of the substantive hearing on 12 December 2022, in response to Mr. Shieh’s enquiry, the
E Chairman confirmed that to be the case, “I have left the matter open and I will receive
F arguments in the course of this hearing.”⁵⁴

E *The Applicant’s Closing Submissions*

F 57. In his Written Closing Submissions, relying on the submissions made in the
G application for expungement, Mr. Shieh renewed his challenge to the relevance of evidence of
H Mr. Choi’s family connections and his alleged failure to disclose them:⁵⁵

H “Jurisdictionally, for the reasons explained in Mr. Choi’s Expungement
I Submissions, the Tribunal must only focus on whether Mr. Choi did involve
J himself in the business of LR Capital and whether, if so, that gave rise to a
K material interest for him in Project Frontier and Project Oasis. It is outwith the
L Tribunal’s jurisdiction to discipline Mr. Choi on the basis of a separate
M allegation, tantamount to a new ‘charge’, of the alleged family connections (or
N alleged non-disclosure thereof) as a self-standing basis.”

O 58. In the Ruling, Mr. Shieh’s submissions in respect of the approach to be taken by
P the Tribunal to the application of its powers was summarised.

P *“Relevant statutory provisions*

N 22. Of the relevant statutory provisions, Mr. Shieh invited the Tribunal to note,
O that section 216(1) provided that the Tribunal had jurisdiction to review
P “specified decisions” and submitted that the powers of the Tribunal under
Q section 218(2) and (3) were incidental to a review of a specified decision. The
R broad powers of the Tribunal under section 219 may only be exercised “for the
S purposes of a review”.

P 23. Section 215 provided that a “specified decision” included decisions of the
Q Commission, as set out in Part 2 of Schedule 8 of the Ordinance. For current
R purposes, the relevant specified decisions were the decisions of the Commission,
S pursuant to section 194 and section 196 of the Ordinance, namely its
T determination that Mr. Choi was not a “fit and proper person” and the order that
U Mr. Choi be prohibited from applying to be licensed or approved of in various
V capacities or to have his name entered in a Monetary Authority register.

S 24. Section 198 (1) provided that the Commission shall not exercise its powers,
T *inter-alia*, under section 194 and section 196 without first giving the person, in
U respect of whom the power is to be exercised, the reasonable opportunity of
V

U ⁵⁴ Ruling, paragraph 14. Transcript, 12 December 2022, pages 215 P-216 E.

U ⁵⁵ The Applicant's Closing Submissions, paragraph 3.2.

A being heard. In compliance with that provision, the Commission had provided
B the NPDA to Mr. Choi.

C 25. Section 198(3) required that when the Commission exercised its powers,
D *inter-alia*, under section 194 and section 196 it was required to give notice in
E writing to the person in respect of whom the power was exercised, including,
F *inter-alia*, "...a statement of the reasons for which the decision is made". In
G compliance with that provision, the Commission had provided the Decision
H Notice to Mr. Choi.

E 26. Mr. Shieh submitted that necessarily encompassed in that requirement was
F a requirement that the Commission state the factual basis for the decision. He
G contended that it followed that a review by the Tribunal:

F "...ought not to venture into an enquiry beyond the factual basis upon
G which the SFC made the specified decision, or to seek to uphold the
H decision on a basis that was not relied upon (let alone expressly
I disavowed) by the SFC in its decision. Otherwise, the SFC⁵⁶ would be
J going beyond its function of reviewing the specified decision."

H 27. In support of that submission, he cited the statements made by the Tribunal
I in its Reasons for Determination in *Moody's Investors Service Hong Kong
J Limited v Securities and Futures Commission*⁵⁷, of which Mr. Michael
K Hartmann NPJ was Chairman. There, having acknowledged that the Tribunal
L was required to make a full merits review, conducting it as if it is the original
M decision-maker, it was stated that:⁵⁸

K "...this does not mean, of course, that the Tribunal has the jurisdiction to
L commence a new general enquiry if it so wishes, striking out into
M uncharted territory. The full merits review is limited to matters relevant
N to the SFC's findings".

M 28. Subsequently, the Tribunal acknowledged of its powers, "...it does not
N follow that it has the power to broaden the matters into which it is obliged to
O enquire."⁵⁹

O 59. In his oral closing submissions Mr. Shieh invited the Tribunal to note that:⁶⁰

O "...there is nothing in the NPDA, nothing in the Decision Notice, which says
P they are pursuing, as a separate charge, the familial connection or non-disclosure
Q of familial connection allegation."

Q 60. Of the position of the applicant, in considering whether to apply to review the
R specified decisions, Mr. Shieh said:⁶¹

S ⁵⁶ The reference to SFC was made in error and should be a reference to the SFAT (see Applicant's Reply
T Submissions on the Expungement Application, at paragraph 25.8).

T ⁵⁷ *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission* (SFAT No. 4 of 2014;
U unreported, 31 March 2016.)

U ⁵⁸ *Ibid*, at paragraph 121.

V ⁵⁹ *Ibid*, at paragraph 154.

⁶⁰ Transcript, 16 December 2022, page 477 I-J.

⁶¹ Transcript, 16 December 2022, page 478 O-R.

A “(he) cannot be expected... to think, ‘Well, there could be tonnes of other things
B which the SFC have consider which potentially, could have formed separate 10
C counts, which could piggyback against me’ which never even found their way
D into the original NPDA.

E And then, this really speaks to the inherent unfairness of the process of allowing
F the SFC to tag along entirely new allegations or allegations which were
G expressly disavowed during a review process.”
H

E *A consideration of the submissions*

F (i) *What are the specified decisions being reviewed?*

G 61. The first issue that arises is what are the specified decisions that are being
H reviewed? Clearly, they are the two decisions made by the Commission, pursuant to section
I 194 and section 196, namely:

- H (i) to determine that Mr. Choi was not fit and proper to be a licensed person; and
I (ii) to make the orders of prohibition, pursuant to section 194(1)(iv) A-D and section
J 196(1)(iii) A-D, in consequence of that determination.

K 62. Under the rubric ‘**The SFC’s final decision**’, the Decision Notice stated:⁶²

L “...it remains the SFC’s view that you are not fit and proper to be a licensed
M person.”

M As noted earlier, the Decision Notice went on to state that the “...SFC has decided to prohibit
N you for 2 years under sections 194 and 196 of the SFO from doing all or any of the following
O in relation to any regulated activities”. Thereafter, in sub-paragraphs (a)-(d), it set out the
P specific prohibitions.

P 63. Items 51 and 56 of Schedule 8 - Part 2 of the Ordinance specifically stipulate
Q section 194(1)(iv) and section 196(1)(iii) as specified decisions made by the Commission which,
R pursuant to section 215 together with section 216(1), may be the subject of a review to this
S Tribunal.

U ⁶² Core Bundle, page 90, at paragraph 49.

A (ii) *What was the basis of those decisions?* A

B 64. In the Decision Notice, the Commission adverted to the allegation that it had B
C made in the NPDA as to Mr. Choi’s conduct, in particular that it was of the preliminary view C
D that Mr. Choi was:⁶³

E “...guilty of misconduct and not fit and proper to be a licensed person, in that E
F you: F

G (a) were involved in the business of LR Capital Management Company G
H (Cayman) Ltd (LR Capital) and/or its group of companies (together, LR H
I Capital Group) between around November 2014 and December 2015 during I
J your employment at UBS AG; such involvement exceeded the scope of a J
K typical coverage banker, potentially placing you in a position of conflict of K
L interest with UBS AG and/or its clients; and L

M (b) failed to disclose to UBS AG the actual or potential conflicts of interest.” M
N

O 65. The Commission said that the exchange of emails between Mr. Choi and Devon, O
P Fu which had been set out in paragraphs 20 to 39 of the NPDA (“E-mails”), “...formed the P
Q basis of our preliminary view”.⁶⁴ In the NPDA, the Commission had asserted that:⁶⁵ Q
R

S “In both project Frontier and Project Oasis, a subsidiary of LR Capital was the S
T counterparty to UBS AG’s clients...the available evidence suggests that the T
U assistance you provided to LR Capital in connection with each of the projects U
V exceeded that of a typical coverage banker, posing a potential conflict of interest V
with UBS AG and/or its clients”

66. In respect of Project Frontier, the NPDA asserted that a number of the emails W
X show that:⁶⁶ X
Y

Z “...you directed the decision making of LR Capital Financial in connection with Z
AA Project Frontier, principally through private email conversations not involving AA
AB any other UBS AG project Frontier deal team members.” AB

67. Of Project Oasis, the NPDA asserted that a number of the emails show that AC
AD Mr. Choi was:⁶⁷ AD
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⁶³ Core Bundle, page 79, at paragraph 2.

⁶⁴ Decision Notice, paragraph 14.

⁶⁵ Core Bundle, page 31, at paragraph 19.

⁶⁶ Core Bundle, page 31, at paragraph 20.

⁶⁷ Core Bundle, page 35, at paragraph 34.

“... providing assistance to LR Capital in connection with Project Oasis, through private email conversations with Devon Fu not involving any other UBS AG Project Oasis deal team members.”

68. Having addressed the Representations made on behalf of Mr. Choi, the Commission asserted in the Decision Notice that he had failed to explain why.⁶⁸

“...in Project Frontier, you provided information and documents in relation to the investment opportunity to Devon Yu [Fu] ahead of the official communication to LR Capital, and why you provided input and offered comments on the transaction documents from the perspective of LR Capital, the buyer, when you were advising the sellers...

you provided assistance and information in relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client, in Project Oasis.”

69. The Commission went on to conclude:⁶⁹

“The Emails show that you acted improperly, in a manner beyond and inconsistent with the scope of your responsibilities both as a deal team member advising UBS’ clients in Project Frontier and Project Oasis as well as a coverage banker for the LR Capital Group. You fail to explain why no question of likely or actual conflict arose out of your conduct.”

70. The Commission went on to identify what had been stipulated in the NPDA as the suggested consequences of those failures, namely that Mr. Choi had breached various provisions of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “Code of Conduct”) and the Corporate Finance Adviser Code of Conduct (the “CFA Code of Conduct”).

71. It follows that the nub of the allegation made against Mr. Choi was that:

- he was guilty of misconduct, which arose from his involvement in the business of LR Capital at a time when he was employed by UBS AG;
- that involvement allegedly placed him in a position of conflict of interest with (i) UBS AG and/or (ii) its clients; further,
- he had failed to disclose the actual or potential conflict of interest to his employers, UBS AG.

⁶⁸ Core Bundle, page 85, at paragraph 14 (a) and (b).

⁶⁹ Core Bundle, page 85, at paragraph 15.

A In consequence, he was in breach of his various obligations under the two Codes of Conduct
B and, in the view of the Commission, not fit and proper to be a licensed person.

C *The evidence on which the Commission seeks to rely before the Tribunal*

D 72. Before the Tribunal, the Commission seeks to rely on evidence of Mr. Choi's
E involvement in the business of LR Capital Group on which it did not rely, in addition to the
F evidence relied on in the Decision Notice. That evidence is of Mr. Choi's familial and personal
G connections with the LR Capital Group. It is not suggested that the evidence is fresh and newly
H available. On the contrary, there is no dispute that the evidence was available to the parties in
I the lengthy proceedings that led to the making of the Decision Notice. What is new, is that the
J Commission now wishes to rely on that evidence in support of the two determinations identified
K earlier.

I *Mr. Choi's familial and personal connections with the LR Capital Group*

J 73. The Commission said that evidence of emails established a link between
K Mr. Choi and LR Capital and its related entities.⁷⁰

- L • Mr. Choi was on exceedingly close terms with Devon Fu.
- M • Initially, there was a link through Amy Wong and Bernard Choi. The latter was
N Mr. Choi's brother and the former his fiancée.
- O • Later, the link was through Christine Kwok, Danny Choi and Madam Chan Mei
P Ching.⁷¹ Christine Kwok was Mr. Choi's wife, although a divorce petition had
Q been filed in 2012. Danny Choi was Mr. Choi's father and Madam Chan Mei
R Ching his mother.

P *LR Capital: familial and personal involvement*

Q 74. On its incorporation on 5 December 2014, Amy Wong was one of four directors
R of LR Capital and, through a wholly-owned company, its sole shareholder.⁷² Bernard Choi was
S an authorised signature of the wealth management accounts with UBS of various LR Capital
T Group entities opened in December 2014.⁷³ At the time that LR Capital engaged with Morgan

T ⁷⁰ The SFC's Opening Written Submission, paragraphs 41 and 136 to 140 and Appendices I-VI.

T ⁷¹ The SFC's Closing Written Submissions, paragraph 107.

T ⁷² The SFC's Opening Written Submissions, paragraph 50.

U ⁷³ The SFC's Opening Written Submissions, paragraph 51.

Stanley Private Equity, Amy Wong held 35% of the shares of LR Capital.⁷⁴ At the time of the Share Subscription Amy Wong held 9% of LR Capital shares.⁷⁵

75. Danny Choi (28.86%) and Bernard Choi (6%) subscribed for LR Capital shares prior to the completion of the IPO.⁷⁶ On 12 August 2016, Mr. Choi confirmed to Austin Mok that he was the beneficial owner of the shares held by Danny Choi.⁷⁷ Madam Chan Mei Ching owned 47% of Strategic Global Investment Corporation, a cornerstone investor in Xinte in the period leading up to its IPO.⁷⁸ In November 2015, Christine Kwok was appointed Chief Operating Officer of AMTD, which by then was controlled by LR Capital.⁷⁹

76. Although the Commission acknowledged that there was no evidence of any direct personal gain on Mr. Choi's part, nevertheless it was submitted that the surrounding circumstances, including his father, Danny Choi's, subsequent acquisition of a 28.86% shareholding in LR Capital, which he held on Mr. Choi's behalf, and Mr. Choi's subsequent role as Chairman of AMTD, "...gave rise to grave suspicions" as to why Mr. Choi had acted as he did.⁸⁰

77. The Commission sought to rely on that evidence as having established that Choi's personal and family connections generated actual or potential conflicts in breach of UBS's policies and guidelines, of which he was aware and in respect of which he failed to notify UBS.⁸¹ The Commission contended that:⁸²

"By reason of his personal connections with LR Capital (including his father's acquisition of shares and LR Capital which were held on behalf of Choi) Choi had a personal interest or a relationship which gave rise to an actual or potential conflict of interest in Project Oasis."

78. Mr. Choi did not disclose that to Xinte or report the conflict to UBS. In consequence, it was asserted of Mr. Choi's conduct:⁸³

⁷⁴ The SFC's Closing Written Submissions, paragraph 128.3.

⁷⁵ The SFC's Opening Written Submissions, paragraph 57.4.

⁷⁶ The SFC's Closing Written Submissions, paragraph 109.

⁷⁷ The SFC's Opening Written Submissions, paragraph 57.2.

⁷⁸ The SFC's Opening Written Submissions, paragraph 56.

⁷⁹ The SFC's Opening Written Submissions, paragraph 55.

⁸⁰ The SFC's Closing Written Submissions, paragraph 170.5.

⁸¹ The SFC's Closing Written Submissions, paragraph 162.

⁸² The SFC's Opening Written Submissions, paragraph 154.

⁸³ The SFC's Opening Written Submissions, paragraph 154.3.

“...in addition to being yet another breach of General Principle 6 and paragraphs 4 and 4.1(a) of the SFC Code of Conduct, it also amounted to breaches of paragraph 10.1 of the SFC Code of Conduct and paragraph 4.1 (b) of the CFA Code of Conduct.”

79. In the result, the Commission submitted in respect of Mr. Choi that having “...continued to act in both projects notwithstanding the existence of actual or potential conflicts between his own personal relationships and MSPE and Xinte’s interest”, which conflicts he had failed to disclose to UBS in breach of its internal rules, Mr. Choi was “ ...not a fit and proper person to be licensed”.⁸⁴

Is the evidence on which the Commission now seeks to rely relevant and related to the allegations made against Mr. Choi in the NPDA and the findings in the Decision Notice?

80. The specified decision in respect of which Mr. Choi seeks a review in this Tribunal is that he was not fit and proper to be a licensed person. Relevant to that consideration is the person’s ability to carry on the regulated activity competently, honestly and fairly, and the reputation, character, reliability and financial integrity of the person.⁸⁵ Clearly, the evidence described above is relevant and related to the issue of Mr. Choi’s involvement in the business of LR Capital and the allegation that it gave rise to a potential conflict of interest with UBS AG and/or UBS AG’s clients.

81. On the Commission’s case, not only does it give context to the impugned circumstances in which Mr. Choi provided information and/or gave assistance to LR Capital whilst employed by UBS AG but also it constituted separate and discrete breaches of Mr. Choi’s obligations.

82. The Commission has given no explanation at all as to why it had stated in the NPDA⁸⁶ that it did not consider that disciplinary action was warranted in relation to the allegation that Mr. Choi had failed “...to declare connections of your family members in certain transactions in which the LR Capital Group was involved as investor (actual or potential) of UBS AG’s clients”, which position it re-asserted in the Decision Notice.⁸⁷

⁸⁴ The SFC’s Opening Written Submissions, paragraph 157.

⁸⁵ s.129 of the Ordinance.

⁸⁶ NPDA, paragraphs 13 and 9(a).

⁸⁷ Core Bundle, page 89, at paragraph 43.

A
B *Is it permissible for the Commission to rely on evidence before the Tribunal upon which it did not rely in making the specified decision under review?*

C 83. The review before the Tribunal is an hearing *de novo*, at which it is permissible
D to adduce evidence not relied upon by the original decision-maker. However, that, is subject to
E the evidence being relevant and related to the allegation the subject to the review. With respect,
F that is the context in which this Tribunal, of which Mr. Michael Hartmann NPJ was chairman,
G made its observations, cited earlier in *Moody's Investors Service Hong Kong Limited*, that the
H Tribunal did not have:⁸⁸

F "...jurisdiction to commence a new general enquiry if it so wishes, striking out
G into uncharted territory. The full merits review is limited to matters *relevant* to
H the SFC's findings." [Italics added.]

H *Conclusion*

I 84. I am satisfied that the evidence upon which the Commission now invites the
J Tribunal to rely, which was not relied on by the decision-maker, is relevant and intimately
K related to the allegation under review, in particular, because of conflicts of interest arising from
L Mr. Choi's involvement with the business of LR Capital, arguably, he is not fit and proper to
M be a licensed person.

L *Is it fair to do so?*

M 85. Notwithstanding, my findings that it is permissible for the Commission to rely
N on the evidence it now invites the Tribunal to take into account, in my judgement there remains
O the question: would it be fair to Mr. Choi to do so?

O *Mr. Choi's submissions*

P (i) *Fairness*

Q 86. On behalf of Mr. Choi, in his written Reply Submissions in support of the
R 'expungement' application, Mr. Shieh contended that it would not be fair to permit the
S Commission to rely on the evidence of Mr. Choi's personal and familial connections to LR
T Capital. The Commission had made it clear, in both the NPDA and the Decision Notice, that it
U did not intend to rely on allegations regarding non-disclosure of family connections in
V exercising its power to discipline Mr. Choi. Although, the material filed with the Tribunal by

⁸⁸ *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission* (SFAT No, 4 of 2014; unreported, 31 March 2016, at paragraph 121).

A the Commission on 25 May 2022 included the material now relied on, given that the
B Commission had specifically disavowed reliance on Mr. Choi’s familial connections on those
C earlier occasions, there was no reason for Mr. Choi to assume that reliance would now be placed
D on the material.⁸⁹

D 87. Mr. Shieh suggested that the first occasion which gave rise to any suggestion to
E the contrary was the witness statement of Andy Lee filed on 19 October 2022. It followed that
F the evidence filed on behalf of Mr. Choi on 29 June 2022, namely the witness statements of
G Mr. Kingsley Chan, Mr. Gao Yu and Mr. Cong Lin were filed before it became known that the
H Commission now relied on that evidence.

H 88. Mr. Shieh contended that it was only in correspondence dated 3 November 2022,
I which correspondence had been initiated earlier by Mr. Choi’s solicitors, that the Commission
J “...first hinted at its fundamental change of stance.”⁹⁰ That had led to the application by
K Mr. Choi’s solicitors, Messrs Jingtian & Gongcheng, to the Tribunal in correspondence, dated
L 8 November 2022, that passages in Andy Lee’s witness statement and the exhibits to which he
M referred be expunged to exclude matters related to Mr. Choi’s alleged “...failure to disclose his
N family connections or relationships” with LR Capital to his former employers UBS AG.⁹¹ In
O that letter it was asserted that Mr. Choi had been: ⁹²

M “...unfairly deprived of the opportunity to properly address those allegations in
N the evidence filed.”

N (ii) *Prejudice*

O 89. Mr. Shieh contended that there “...would be obvious prejudice in terms of
P preparation for the substantive hearing.” It would be necessary “...to devote significant
Q resources to preparing for a significantly expanded scope of the Substantive Hearing.”⁹³
R Confronting Mr. Choi with the choice of applying to adjourn the substantive hearing, which
S had been fixed many months earlier, or proceeding in haste and under pressure was itself
T prejudicial.

T ⁸⁹ Applicant’s Written Reply Submissions on the Expungement Application, paragraphs 45-47.

U ⁹⁰ *Ibid*, paragraph 50.

V ⁹¹ Letter of Jingtian & Gongcheng, dated 8 November 2022, at paragraphs 3 and 4.

⁹² Letter of Jingtian & Gongcheng, dated 8 November 2022, at paragraph 11.

⁹³ Applicant’s Written Reply Submissions on the Expungement Application, paragraph 53.

A *Factual background* A

B (i) *Disclosure* B

C 90. Of relevance to the consideration of fairness, it is to be noted that all the C
D documentary evidence now sought to be relied on by the Tribunal of Mr. Choi's personal and D
E familial connections to LR Capital was disclosed to Mr. Choi in the 'List of Documents' E
F attached to the NPDA on 16 December 2020. That material included the Report commissioned F
by UBS of Davis Polk Wardell ("Davis Polk"), dated 3 August 2018, entitled 'Independent
Report regarding Calvin Choi's Conflict of Interest Matters'.

G 91. The holdings in and activities in respect of LR Capital Group of various persons, G
H including Ms. Amy Wong, Mr. Bernard Choi, Ms. Christine Kwok, Madam Chan Mei Ching H
I and Mr. Danny Choi, with whom Mr. Choi enjoyed a family or personal relationship, together I
in this Tribunal, were made the subject of detailed analysis in the Davis Polk Report.

J 92. The 'Executive Summary' of the Davis Polk Report asserted:⁹⁴ J

K "Choi had undisclosed relationships with the LR Capital Group prior to his K
L resignation from UBS in January 2016". L

M It went on to describe succinctly various factual findings in respect of the conduct and activities M
N of Amy Wong, Christine Kwok, Chan Mei Ching, Danny Choi and Bernard Choi in respect of N
the LR Capital Group, noting that Mr. Choi did not disclose those relationships to UBS.

O (ii) *The Commission's case - 25 May 2022* O

P 93. Next, it is to be noted that this same material was filed by the Commission with P
Q the Tribunal on 25 May 2022, pursuant to the directions of the Tribunal, dated 10 March 2022, Q
as material relied upon in the Commission's case.

R (iii) *Andy Lee's witness statement - 19 October 2022* R

S 94. Mr. Andy Lee's witness statement, filed with the Tribunal by the Commission S
T on 19 October 2022, made it abundantly clear that the Commission now sought to rely on T
evidence of alleged breaches by Mr. Choi of UBS's internal Guidelines and Codes by his failure

U ⁹⁴ Bundle 8, pages 2695-2764, at paragraph 11. U

A to avoid conflicts of interests arising from his familial and personal relationship with LR Capital
B Group and his failure to disclose the same.⁹⁵ B

C (iv) *The Commission's Written Opening Submissions* C

D 95. The Commission's Written Opening Submissions, filed with the Tribunal on D
E 14 November 2022, stipulated in terms that reliance was placed on Mr. Choi's failure to avoid E
F conflicts of interest arising from his familial and personal relationship with LR Capital and his F
G failure to disclose the same. G

G *A consideration of the submissions* G

H 96. There is force in Mr. Shieh's submission that it was not until the Commission H
I filed Mr. Andy Lee's witness statement on 19 October 2022, it became apparent that the I
J Commission now relied on Mr. Choi's conduct in respect of his familial and personal J
K relationship with LR Capital in support of its decision that he was not fit and proper to be a K
L licensed person. L

M 97. In filing with the Tribunal, on 25 May 2022, the evidence on which it relied, the M
N Commission filed more than 28,000 pages of documents. Not one of the pages was a witness N
O statement. Nothing drew attention in any way to the reliance now placed by the Commission O
P on Mr. Choi's conduct arising from his familial and personal relationship with LR Capital. P

M *Mr. Choi's knowledge of the relevance of his personal and family relationship with LR*
N *Capital* N

O (i) *Mr. Choi's interview by the Commission: 7 December 2017* O

P 98. The fact that the Commission considered Mr. Choi's personal and family P
Q relationship with LR Capital relevant to the specific question of whether he had any conflict of Q
R interest, which he was required to declare, had been made clear to Mr. Choi when he had been R
S interviewed by the Commission on 7 December 2017, pursuant to a Notice under section 183(1) S
T of the Ordinance.⁹⁶ T

S 99. By a letter, dated 24 November 2017, Mr. Choi had been informed by the S
T Commission that he was a "person under investigation", that he was required to attend the T

U ⁹⁵ Bundle 33, pages 11158-11175.

U ⁹⁶ Bundle 1, pages 101-190 (Transcript and translation of the interview).

A interview and answer questions posed of him relating to the matter under investigation.⁹⁷ At
B the interview, he was informed that the subject of the enquiry was whether UBS AG Hong Kong
C Limited and/or any persons connected with it was guilty of misconduct and/or is not fit and
D proper person for the purpose of considering whether to exercise any power under section 194
and section 196 of the Ordinance.

E 100. At an early stage in the interview, Mr. Choi was informed that the Commission
F had information that he had taken part in Project Frontier, described as “advisory work” for
G AMTD, and Project Oasis, described as the “IPO project of Xinte”. Mr. Choi declined to answer
H what his duties and role had been in the two projects,⁹⁸ notwithstanding that, pursuant to section
183(1)(c) of the Ordinance, he was required to answer the questions. He simply asserted that
he did so on legal advice.

I *Project Oasis*

J 101. Having been reminded that, in respect of Project Oasis, he had not made a
K declaration of a conflict of interest to UBS, he was asked if, whilst working on the project, he
L thought that he had conflicts of interest that was required to be declared. Again, he declined to
M answer. Similarly, having been told that the company was a “pre-IPO investor” in Project Oasis,
N he declined to answer whether he was aware of a company called L.R. Capital China Growth I
Company Limited. Having been told that LRC. Belt and Road Investment Limited was a
“cornerstone investor” in Project Oasis, he declined to answer whether he was aware of that
O company.⁹⁹ Having been told that Xinte’s Prospectus identified Chan Mei Ching as a
shareholder of that company, he declined to answer whether she was his mother.¹⁰⁰

P *Project Frontier*

Q 102. Having been told that the Commission had information that Christine Kwok was
R the Chief Operating Officer of AMTD in 2015, he declined to answer if she was his wife.
S Similarly, he declined to answer if he thought, whilst working on Project Frontier, that he had
a conflict of interest.¹⁰¹ Mr. Choi declined to provide a range of information in respect of his
elder brother: his name; to confirm that the English name was Bernard Choi; to answer whether

T ⁹⁷ Bundle 1, pages 191-203.

U ⁹⁸ Bundle 1, page 175, counter #s 114-115.

V ⁹⁹ Bundle 1, pages 176-177, counter #s 118-123.

¹⁰⁰ Bundle 1, pages 180-181, counter #s 136-144.

¹⁰¹ Bundle 1, pages 178-179; counter #s128-133.

A his elder brother was married; and to provide the name of his wife. He declined to answer
B whether he knew a woman called Wong Yuen Ping.¹⁰² B

C *Devon Fu* C

D 103. Mr. Choi declined to answer when it was that he was first acquainted with D
E Mr. Devon Fu or what, if any, role Mr. Devon Fu played in Project Oasis. Having been told that E
F the Commission had information of “lots of emails” exchanged between Mr. Choi and F
G Mr. Devon Fu, and that in some of them Mr. Devon Fu raised questions with him about the G
Capital whilst he worked at UBS.¹⁰³ G

H 104. In an apparent change of heart, although it was still asserted that the H
I Commission’s investigation was *ultra vires*, in a letter to the Commission, dated 8 December I
J 2017 but not received by the Commission until 12 December 2017, Mr. Choi’s then solicitors, J
K SSW & Associates, said that Mr. Choi:¹⁰⁴ K

“...voluntarily provides the following information sought by the Commission
during the Interview”.

L The letter included a bare acknowledgement that Mr. Choi’s father, mother and brother were L
M respectively Mr. Choi Kwok Kei, Ms. Chan Mei Ching and Mr. Choi Chi Sing. It was asserted M
N that Mr, Choi had not been “...directly informed” as to whether his brother was married, but it N
O was accepted that Mr. Choi “...understands and assumes” that his brother was in a relationship O
and living with Ms. Wong Yuen Ping. P

O 105. Although it was acknowledged that Mr. Choi was “indeed acquainted with O
P Mr. Devon Fu”, the question asked by the Commission of when they had first become P
Q acquainted was not addressed. It was asserted that to the best of Mr. Choi’s knowledge, Q
R Mr. Devon Fu was an assistant to Mr. Howard Cong, the person in charge and managing Partner R
of LR Capital. S

S 106. Although it was acknowledged that Mr. Choi was aware that, in Project Oasis, S
T LR Capital participated as a pre-IPO investor and LRC. Belt & Road was a cornerstone investor, T

¹⁰² Bundle 1, pages 181-183, counter #s 145-154.

¹⁰³ Bundle 1, pages 178-180; counter #s124-127 and 134-135.

¹⁰⁴ Bundle 7, pages 2671-2673.

A the question asked by the Commission of Mr. Choi's relationship with LR Capital was not
B addressed.¹⁰⁵ B

C 107. Of the question of whether Ms. Christine Kwok was his wife, it was merely
D contended that, "...they have been separated since 2012 and a petition for divorce was filed in
E the same year." It was asserted that she had become Chief Operating Officer of the AMTD
Group "in late-2015 after the completion of Project Frontier". E

F 108. Finally, it was acknowledged that Mr. Choi was "...aware of and participated in"
G Project Frontier and Project Oasis, but asserted that, to the best of Mr. Choi's knowledge, he
did not have any conflict of interest in relation to those projects.¹⁰⁶ G

H *(ii) Mr. Choi's Representations to the Commission: 16 April 2021* H

I 109. Notwithstanding the Commission's statement in the NPDA that it did not
J consider that disciplinary action was warranted in relation to the alleged failure by Mr. Choi
K "... to declare connections of his family in certain transactions in which the LR Capital Group
L was involved as investor (actual or potential) of UBS AG's clients", Mr. Choi's then solicitors
M Tang Lai & Leung, addressed the issue of his familial connections at some length in their
N written Representations, dated 16 April 2021.¹⁰⁷ In doing so, submissions were made in respect
O of Mr. Choi's mother, father, brother and Ms. Amy Wong, of whom it was noted that she was
"said to be his brother's fiancée". Again, that was apparently a recognition of the relevance of
Mr. Choi's familial relationships and that the circumstances called for some explanation. As
Mr. Li submitted in the SFC's Submissions on Choi's Expungement Application, the family
relationship and their interests were not denied, rather it was contended that those
circumstances did not give rise to any conflict of interest.¹⁰⁸ O

P *Mr. Choi's opportunity to address the allegations* P

Q 110. Although Mr. Choi's solicitors had asserted in their letter, dated 8 November
R 2022, that the consequence of the belated reliance of the Commission on Mr. Choi's conduct
in respect of his familial and personal relationships with LR Capital was that he had been
S

¹⁰⁵ Bundle 7, page 2694. In subsequent correspondence between Mr. Choi's solicitors and the SFC, by a letter dated 25 May 2018, an answer to the question was provided:

"L.R. Capital was a client of UBS AG and one of the many clients which Mr. Choi came across in his capacity as one of the client coverage and relationship bankers of UBS AG."

¹⁰⁶ Bundle 7, page 2672 at paragraphs 5-9 of 8 December 2017 letter.

¹⁰⁷ Core Bundle, pages 69-77, at paragraphs 25-26 and 31.

¹⁰⁸ SFC's Submissions on Choi's Expungement Application; 14 November 2022, paragraph 28.4.

A “...unfairly deprived of the opportunity to properly address those allegations in the evidence
B filed”, no application was made to file any such additional evidence nor did Mr. Shieh identify
C even the broad scope of such intended evidence, let alone identify such potential witnesses or
D the nub of their possible evidence. In that context, it is to be noted that by a letter, dated
E 28 November 2022, Mr. Choi’s solicitors did apply to the Tribunal to file supplemental witness
statements of Mr. Kingsley Chan and Mr. Gao Yu and, without objection from the Commission,
having been granted leave to do so, filed supplemental statements of those witnesses.

F 111. With respect, I do not accept that there has been unfairness nor that that Mr. Choi
G has suffered prejudice. Certainly, no such specific prejudice has been identified.

H 112. On the other hand, it is to be acknowledged that a consequence of the filing of
I Mr. Choi’s Notice of review of the specified decisions has been that the Commission has been
J afforded “two bites at the cherry”. The Commission now contends that evidence, which earlier
K it had disavowed as warranting disciplinary action, is relevant to a determination of whether
L Mr. Choi’s fit and proper to be a licensed person. However, that is only permissible to the extent
M that the evidence is relevant and related to the specific allegation made in the NPDA and the
N findings in the Decision Notice, namely that his involvement in the business of LR Capital
O Group whilst employed by UBS AG, gave rise to conflicts of interest which led to Mr. Choi
P being in breach of his obligations.

Q 113. Of course, the general procedural safeguards that led up to the Decision Notice,
R in which Mr. Choi was given notice of the allegations made against him, set out in the NPDA,
S and afforded the opportunity to make representations are, in effect, replicated in proceedings
T before the Tribunal. Mr. Choi has had notice of the evidence on which the Commission now
U relies. That much was made readily apparent by the service of Mr. Andy Lee’s witness
statement by the Commission on 19 October 2022. In context, it is to be remembered that the
hearing was fixed to commence on 12 December 2022. As was noted of the witness statement
in the letter of Jingtian & Gongcheng to the Commission, dated 1 November 2022, “Mr. Lee
alleged repeatedly that our client, Mr. Calvin Choi, had failed to disclose his family
relationships to UBS (e.g. paragraphs 20-22, 44-48, 58-60, 64-67, 89-90).” The Commission’s
reply to that letter, dated 3 November 2022, made it conclusively clear that the Commission
intended to rely on that evidence at this hearing. So, Mr. Choi had the opportunity to seek to
adduce evidence, if he wished to do so. He did not do so. He did not even seek to identify even
general areas in which he wished to adduce evidence nor did he particularise any difficulties

A that lay in the way of doing so. He has had the opportunity to make submissions and has done
B so.

C *Conclusion*

D 114. In the result, having regard to all the circumstances, I am satisfied that it is
E permissible and fair for the Commission to invite the Tribunal to have regard to the evidence
F of Mr. Choi's conduct in the context of his familial and personal relationship with LR Capital
G Group in its review of the specified decisions that he is not fit and proper to be a licensed person
H and the prohibitions imposed on him in consequence.

G ***Part 4 - Project Oasis - an overview***

H 115. UBS acted as a Joint Sponsor in the initial public offering ("IPO") of Xinte in
I Hong Kong. Xinte was a subsidiary of Tebian Electric Apparatus Stock Company Limited.

J 116. Xinte was listed on the Stock Exchange of Hong Kong ("SEHK") on
K 30 December 2015. LR Capital China Growth I Company Limited ("LR Capital Growth"), CM
L International ("CMI") and LRC. Belt and Road Investment Limited ("LRC. Belt and Road")
were pre-IPO investors in Xinte. LRC. Belt and Road was a cornerstone investor.

M *UBS's involvement with Tebian Electric Apparatus Company*

N (i) *Initial steps:*

O 117. On 7 August 2014, approval was sought of UBS's Business Review Group by
P Mr. James Pu for a project, of which Mr. Choi was described as the Project Sponsor, concerning
Q Tebian Electric Apparatus Company. The description provided of the project stated:¹⁰⁹

R "UBS is pitching Tebian Electric Apparatus to spin off its solar business and list
S in HK. The expected timetable is listing by 1H 2015.
T UBS is also pitching for the pre-IPO opportunity for the company."

R 118. As noted above, Xinte was the company that was listed in due course. Project
S Oasis was the title given to the enterprise, although there is a dispute between the parties as to

U ¹⁰⁹ Bundle 33, pages 11215-11217.

A what was encompassed in the work undertaken by UBS, namely the IPO or the IPO, together
B with the pre-IPO investment.

C 119. An email, dated 13 September 2014, sent by the GF Group to UBS, including
D Mr. Choi, contained an attachment “TBEA_Kickoff book v5”¹¹⁰. It addressed the spin-off and
E listing in Hong Kong of a subsidiary of TBEA.

E *UBS internal approval: 21 and 22 September 2014*

F 120. An email sent by Jay Li, of UBS, at 10:32 pm on 21 September 2014, to
G Matthew Bennett and circulated internally within UBS, of which Mr. Choi was a recipient,
H addressed the Subject heading:¹¹¹

H “Ad Hoc BRG Approval Request-Project TB (TEBI-00100)”

I Attached was a very lengthy document, entitled: “*Project Proposal for TBEA Photovoltaic*
J *Business Spin-Off and Listing in Hong Kong*”.¹¹² [Italics added.]

J Of the transaction background, it was stated:

K “TBEA Renewable Energy (TEBA Energy/the “Company”) is a subsidiary of
L A-share Listco-TBEA Group (600089)...TEBA Group is a world leading
M manufacturer and service provider of electric transmission products”.

M It is to be noted that both acronyms, TBEA and TEBA, were used as Subject headings and in
N text in subsequent email communications between various parties.

N (a) IPO

O 121. Of the background of the project, the email stated that TBEA Group planned to
P spin-off its subsidiary, TBEA Renewable Energy, which focused on solar products, and, through
Q an IPO, list it in Hong Kong, with a target date of May/June 2015.¹¹³

Q (b) Pre-IPO Investors

R 122. Also, the email noted that it was proposed to introduce pre-IPO investors in the
S range of RMB 1 billion to RMB 1.5 billion.¹¹⁴ It was asserted that the client had approved the

T ¹¹⁰ Bundle 5, pages 1776 – 1836.

T ¹¹¹ Bundle 6, pages 1837-1839, page 1922.

T ¹¹² Bundle 6, pages 1840 - 2061.

U ¹¹³ Bundle 6, page 1837.

U ¹¹⁴ Bundle 6, page 1837.

A role of UBS in the IPO mandate for which it had been pitching. It was noted that China
B Minsheng Investment was "...exploring pre-IPO investment by CMI before its HK IPO."¹¹⁵ B

C 123. Under the heading, Expected Fees it was claimed:¹¹⁶ [Italics added.] C

D "*Pre-ipo introduction of strategic investors (M&A): 1.5% of deal size expected D*
E to be approximately RMB 1 billion to 1.5 billion to split equally between us and E
F GF securities, our expected fee from the potential M & A is USD 1.2-1.8 million F
IPO: *sponsor fee* of HKD 3 million each for each sponsor (not offsetting) plus
2.5% fee to split between us and GF Assuming a deal size of usd400m to 500m,
our expected fee from the IPO is USD 5.4-6.6 million."

G 22 September 2014 G

H 124. In an exchange of multiple internal emails within UBS, dated H
I 22 September 2014, the application was addressed.¹¹⁷ In an email in reply, sent to Jay Li at I
J 10:22 am on 22 September 2014 and copied to Mr. Choi and others, Matthew Bennett queried, J
K "Why is this an ad-hoc BRG? based on email traffic, this has been discussed for greater than a K
L month?" Following further exchanges by email, in an email sent to Jay Li 2:30 pm, Matthew L
Bennett asked, "What is the opp code for the Pre-IPO? Is the team seeking BRG approval on
this piece also?" By an email to Bennett, copied to the others, sent at 2:32 pm Mr. Choi
responded, "Yes. Pre-IPO piece included." In an email, sent to Mr. Choi at 2:34 pm, Matthew
Bennett replied:

M "For pre-IPO, we need a new opportunity code set up/approval started." M

N 125. In an email sent by Liu Xinyu to Matthew Bennett and Mr. Choi, at 2:40 pm Liu N
O Xinyu wrote: O

P "We've verbally agreed with the client and made a joint proposal with GF P
Q securities on IPO +pre-IPO as joint advisors in the same EL given so (,) can we Q
combine the two opportunities together (,) given it would be formally mandated
together with IPO to the same banks."

R In an email in reply to Liu Xinyu, sent at 2:42 pm Matthew Barrett wrote:¹¹⁸ R

S "No, each product requires its own approvals process. We need a new form S
submitted for the pre-IPO and pre- BRG approvals on this part."

T

 ¹¹⁵ Bundle 6, page1839. T

¹¹⁶ Bundle 6, page 1839.

¹¹⁷ Bundle 33, pages 11218-11220.

¹¹⁸ Bundle 33, page 11218.

A In an email of acknowledgement, sent by Liu Xinyu to Matthew Bennett at 2:46 pm, the former
B wrote:

C “Noted on separate BRG for pre-IPO. But can we get through the BRG process
D for the IPO first ASAP?”

E 126. In an email sent at 3:17 pm by Elizabeth Siu to various members of UBS’s CCS
F team, including Matthew Bennett, under the Subject heading: A BRG request has been received
G for-Tebian Electric Apparatus Stock Co Ltd, PR China, Elizabeth Siu wrote:¹¹⁹

H “This is a pre-IPO sell-side opportunity associated with the company’s
I contemplated Hong Kong H-share spin-off IPO (TEBI-00100).”

J 127. In an email sent by Elizabeth Siu at 4:46 pm and circulated internally within
K UBS under the Subject heading: BRG Status Change-Tebian Electric Apparatus stock Co Ltd,
L PR China-Approved it was stated:¹²⁰

M “Comments: Approved by an ad-hoc Asia BRG committee on 22 September
N 2014.”

O The text went on to state:

P “TEBA Group is planning to spin-off the Company and float it through a H-
Q share IPO with a target listing date of May/June next year (2015)... Before the
R IPO, the company will introduce pre-IPO investors in an approximate amount
S of rmb 1 billion to rmb 1.5 billion. *Deal team to BRG the pre-IPO opportunity
T separately.*” [Italics added.]

U 128. Finally, in an email sent at 6:56 pm to Liu Xinyu and Mr. Choi amongst others,
V copied to Elizabeth Siu, under the Subject heading: “Ad Hoc BRG Approval Request-Project
TB (TEBI-00100)”, Matthew Bennett wrote:¹²¹

“We can do the IPO first now, but the pre-IPO will not be approved and we
should not have agreed fee here. Per BRG procedures, you cannot agree a fee or
start working on the project without first getting BRG approval...”

[The issue of UBS internal approval is addressed subsequently in the context of emails internal
to UBS sent on 25 and 26 February 2015.]

¹¹⁹ Bundle 6, page 2064.

¹²⁰ Bundle 6, page 2062.

¹²¹ Bundle 33, page 11218.

A (ii) Mr. Choi's conduct A

B Pre-IPO investment: contact with potential investors B

C (a) 30 September - 20 October 2014: preparation and circulation of a 'teaser' C

D 129. By an internal email within UBS, dated 30 September 2014, Mr. Choi asked Lin D
E Xinyu that preparations be made to produce a 'teaser' and a Non-Disclosure Agreement.¹²² By E
an email, dated 3 October 2014, Mr. Choi instructed Lin Xinyu:¹²³

F "Pls hit out the nda and teaser to each investor I copied you and follow up." F

G 130. In emails, dated 6 October 2014 and 10 October 2014, sent to GF Capital, copied G
H to Mr. Choi, with the Subject heading: TEBA-Pre-IPO Investor Count List, UBS informed the H
I recipients of the "investors that we have reached out to so far... and their respective I
J progress".¹²⁴ The latter issue related to whether the recipients had executed an NDA or turned J
K down the invitation. The list of investors included China Minsheng Investment Group, but not K
L LR Capital. On 10 October 2014, a total of eleven investors were identified as having been L
M contacted, five of whom were described as having executed the NDAs. M

K 131. In response to an email from Mr. Choi, dated 20 October 2014, by an email of K
L the same date GF Capital provided Mr. Choi with a list of the three investors to whom they had L
M "...reached out" and described their respective responses.¹²⁵ Again, LR Capital was not on the M
list. But, contact was initiated with Mr. Devon Fu and Mr. Howard Cong Lin soon afterwards.

N (b) Contact by Mr. Choi with LR Capital N

O 27 October meeting O

P 132. A meeting was held between Mr. Choi, Mr. Devon Fu and Mr. James Wong on P
Q 27 October 2014, after which, by an email of that date, from Mr. Devon Fu Q
R @asiainvestcapital.com to Mr. Wong, copied to Mr. Choi, the recipients were informed:¹²⁶ R

S
T ¹²² Bundle 2, page 638

T ¹²³ Bundle 2, page 639.

U ¹²⁴ Bundle 2, pages 640-645.

U ¹²⁵ Bundle 2, page 646.

V ¹²⁶ Bundle 2, page 650.

A “We are quite interested in the potential opportunities you mentioned today but
B we do need more details so we can further evaluate the opportunities...please
C kindly send across the NDA first. I will get our partner’s signature asap...”

D 133. In an email, dated 28 October 2014, from Mr. Choi to Mr. Devon Fu and James
E Wong of CCS, Mr. Choi wrote: ¹²⁷

F “Devon: thanks for your interest in these opportunities. On teba, pls out-reach to
G james (pu) and kindly execute a nda so that we can provide all info today.”

H *NDA*

I 134. By an email, dated 28 October 2014, Mr. Devon Fu provided Mr. Wong with a
J signed NDA “for Leasing and TEBA”. Mr. Howard Cong Lin was the signatory for LR Asia
K Capital Management (HK) Limited.¹²⁸ The Confidentiality Agreement was between the latter,
L Xinte, GF Capital and UBS and related to making available to LR Asia Capital, “Relevant
M information” in connection with the “Transaction”, which was defined as meaning “potential
N pre-IPO investment”.¹²⁹

O *1st batch of information provided by Mr. Choi to Mr. Howard Cong Lin - 30 October 2014*

P 135. Mr. Choi replied to Mr. Cong Lin in an email, dated 30 October 2014, under the
Q Subject heading: TEBA, to which was attached various files, including an ‘Information
R Memorandum_v4.pdf’:¹³⁰

S “Thanks for your interest in this pre-iPO opportunity and prompt execution of
T nda. Please kindly find attached a 1st batch of information for your evaluation
U of the opportunity”.

V 136. The voluminous information concerned Xinte Energy Co. Ltd and was dated
September 2014.¹³¹ It stated that TBEA sought pre-IPO investment in the range of RMB 1-1.5
billion and that it was planned that an IPO take place in 2015 on the SEHK.¹³² The company
was described as, “China’s only vertically integrated photovoltaic industry chain.”¹³³

¹²⁷ Bundle 2, page 650.

¹²⁸ Bundle 2, pages 652 and 659-664.

¹²⁹ Bundle 2, page 659.

¹³⁰ Bundle 2, page 665.

¹³¹ Bundle 2, pages 666-965.

¹³² Bundle 2, page 795.

¹³³ Bundle 2, page 729.

A
B *Mr. Choi forwarded to LR Capital information received from the GF Group of key terms for TBEA pre-IPO investment - 6 November 2014*

C 137. In an exchange of emails between Mr. Devon Fu and Mr. Choi on 6 November
D 2014, without any comment, at 10:18 am Mr. Devon Fu provided Mr. Choi with the forward of
E an email that he had received from Vincent Lee at GF Investments at 10:12 AM, under the
Subject heading: FW: discussion draft of key terms for TBEA pre-IPO investment. The latter
email stated:¹³⁴

F “This is Vincent. I am with Jarret’s team. Please find the attached the key terms
G for TBEA pre-IPO investment for negotiation with the target company. Please
feel free to let us know and discuss with us if you have any questions.”

H 138. In his email in reply, sent at 10:38 AM, Mr. Choi posed the question:¹³⁵

I “Any special things to warrant our attention”

J In his response, at 10:58 AM, Mr. Devon Fu said:¹³⁶

K “I just take a quick look at the terms and have a few comments on the key
L commercial terms below. Will think about it but obviously they didn’t
understand the valuation and structure clearly.”

M (i) Of Clause 3, Mr. Devon Fu commented:

N “We cannot have any employee stock ownership plan in the written terms.”

O (ii) Of Clause 5, which provided for a calculation of Xinte’s valuation after the
investment, Mr. Devon Fu commented:

P “It means 7.0x P/E post-money rather than pre-money. Need to clarify the
valuation.”

Q (iii) Of Clause 7, namely ‘Redemption at IRR 10%’, Mr. Devon Fu commented:

R “Would be great if company can agree and it is also market practice. But
S not sure if 10% acceptable by Company.”

T 139. In the NPDA, the Commission drew attention to this exchange of emails, and
U others, in particular that Mr. Choi had replied to Mr. Devon Fu saying “our attention” as
V evidencing:¹³⁷

¹³⁴ Bundle 11, page 4000.

¹³⁵ Bundle 11, page 4000.

¹³⁶ Bundle 11, pages 4001 and 4003.

¹³⁷ Core Bundle, page 35, at paragraphs 34 and 35.

“...assistance to LR Capital in connection with Project Oasis, through private email conversations with Devon Fu not involving any other UBS AG Project Oasis deal team members.”

140. In its Decision Notice, having regard to the Written Representations made on behalf of Mr. Choi, the Commission said that Mr. Choi had failed:¹³⁸

“...to explain why you provided assistance and information in relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client, in Project Oasis.”

20 November 2014: access to TEBA Dataroom

141. In an exchange of emails, under the Subject heading: TEBA Dataroom, between LR Capital and UBS on 20 November 2014, Mr. Choi directed his UBS colleague, Mr. James Pu, to provide LR Capital access to the TEBA Dataroom, as requested by LR Capital on the basis that LR Capital were, “...evaluating the opportunity for Project TEBA.”¹³⁹

9 January 2015: meeting - TEBA, Joint Sponsors and pre-IPO investors.

142. On 9 January 2015, a meeting took place of the company, the two Joint Sponsors and potential pre-IPO investors.¹⁴⁰ An email, dated 7 January 2015 sent by Enoch Kang, circulated within UBS, including to Mr. Choi, and sent to GF Capital identified Mr. Choi, together with representatives of CMI and LR Capital, including Mr. Devon Fu, as attending the conference of “investment banks and investor representatives” in Xinjiang.¹⁴¹

16 January 2015: conference call with King & Wood

143. In an email, dated 16 January 2015, sent by Enoch Kang of UBS to various recipients, including Mr. Devon Fu and Mr. Choi, under the Subject heading: Xinjiang Project-investor counsel, an invitation was made to join a conference call that day with a “...our recommended counsel King & Wood to discuss workscope”.¹⁴²

¹³⁸ Core Bundle, page 85, at paragraph 14(b).

¹³⁹ Bundle 11, pages 4008-4009.

¹⁴⁰ Bundle 2, pages 592-596 at page 595. UBS letter to the Commission, dated 17 October 2017, pursuant to section 182(1).

¹⁴¹ Bundle 3, pages 969-972.

¹⁴² Bundle 3, page 973.

A
B *17 February 2015 - Mr. Choi forwarded to Devon Fu and LR Capital information received from King & Wood, Mallesons-CMI's Term Sheet*

C 144. By an email, sent at 12:19 am on 17 February 2015, Mr. Choi forwarded to
D Mr. Devon Fu two term sheets, including one for CMI, that had been sent to him in an email,
E sent at 10:55 am on 16 February 2015 by King & Wood Mallesons marked:
F CONFIDENTIAL.¹⁴³

G 145. Earlier emails circulated within UBS and between UBS, King & Wood
H Mallesons and others, including Mr. Devon Fu at LR Capital, made it readily apparent why the
I email had been marked 'Confidential'. In emails sent by Enoch Kang of UBS on 11 and 13
J February 2015, and by King & Wood Mallesons on 13 February 2015, to a group of recipients,
K including Mr. Devon Fu and Mr. Calvin Choi, the Subject heading was simply: "Xinte
L investment terms".

I *13 February 2015*

J 146. However, in an email from Enoch Kang to King & Wood Mallesons, copied to
K Mr. Choi, at 4:18 pm on 13 February 2015 King & Wood Mallesons were asked to prepare two
L separate term sheets, one for CMI and one for the rest of the potential investors, and instructed:

M "DO NOT CIRCULATE this separate document with CMI to this wide
N group."¹⁴⁴

O 147. In an email, dated 6:28 pm on 13 February 2015,¹⁴⁵ sent by King & Wood
P Mallesons to Mr. Choi, Enoch Kang and others under the Subject heading, "Termsheet update"
Q the recipients were informed that "... the revised term sheet with CMI referenced but not as a
R party" was attached.¹⁴⁶

S 148. In response, in an email, dated 6:31 pm on 13 February 2015, sent to King &
T Wood Mallesons, Mr. Choi wrote, "We will need also the cmi termsheet".

U 149. King & Wood Mallesons responded to Mr. Choi, copied to Enoch Kang,
V immediately.¹⁴⁷

T ¹⁴³ Bundle 12, page 4145.

U ¹⁴⁴ Bundle 12, page 4147.

V ¹⁴⁵ Bundle 12, page 4145.

¹⁴⁶ Bundle 12, page 4147.

¹⁴⁷ Bundle 12, page 4146.

A “Thanks Calvin. Sure will do. Would you like to send us the additional strategic
B cooperation terms for the incorporation into the CMI term sheet or you’d like us
to send you the CMI term sheet as is and you’ll take it forward?”

C 150. In an email to King & Wood Mallesons copied to Mr. Choi, sent at 6:50 PM.,
D Enoch Kang wrote:

E “No need. Please include below change for CMI only, as agreed with Company.
F CMI wishes to adjust the triggering condition for “adjustments of the
subscription price” from the profit after tax in 2015 of less than RMB 600
million to RMB 640 million.”

G *16 February 2015*

H 151. An email, sent at 10:55 am on 16 February 2015, from King & Wood Mallesons
I to Enoch Kang and others, of whom Mr. Choi was one of the recipients, was described as being
“Confidential Communication”. It stated:¹⁴⁸

J “... please find the attached revised term sheet for all investors other than CMI
K and *a separate term sheet for CMI*, blacklined against Fridays version.” [Italics
L added.]

M The draft term sheet contained the same confidentiality clause included in the signed term sheet,
N dated 3 March 2015.¹⁴⁹

O 152. Four key changes to the previous version were identified. Then, it was stated:

P “In the CMI term sheet, in addition to the above changes, the trigger for purchase
Q price adjustment has been revised back to RMB 600 mn from RMB 640 mn.”

R 153. As noted earlier, by an email to Mr. Devon Fu, sent at 12:19 am on 17 February
S 2015, Mr. Choi forwarded the two Term Sheets which had been sent to him, including the CMI
T term sheet. In doing so, the name of the earlier sender of the email and the names of all the
U recipients were removed.¹⁵⁰

V 154. In his evidence, Mr. Howard Cong Lin said:¹⁵¹

¹⁴⁸ Bundle 12, page 4145.

¹⁴⁹ Respondent’s Evidence (May 2022)-Electronic Files; Appendix, item 56.

¹⁵⁰ Bundle 12, page 4145.

¹⁵¹ Transcript, page 441.

A “I don’t know if this sharing of information was agreed by CMI...but I do
B remember that this project regarding Xinte Energy was introduced to LRC by
CMI.”

C *18 February 2015 - Mr. Choi forwarded to Devon Fu and LR Capital information received*
D *from King & Wood-CMI’s Term Sheet*

E 155. In an email, sent at 03:26 pm on 18 February 2015, by King & Wood Mallesons
F to numerous parties at CMI and Mr. Choi, under the Subject heading: Xinte Termsheet, it was
G stated.¹⁵²

H “Hi, kindly please find attached clean and blackline versions of the termsheet in
I connection with the proposed investment in Xinte... Kindly please have the term
J sheet signed and coordinate with UBS on delivery”.

K The draft term sheet contained the same confidentiality clause included in the signed term sheet,
L dated 3 March 2015.¹⁵³

M 156. By an email, sent at 7:03 pm on 18 February 2015, Mr. Choi forwarded the Term
N Sheet to Mr. Devon Fu, adding a message, “Pls call me”.¹⁵⁴ The names of the sender and all the
O names of the recipients were removed.

P *The issue of UBS’s role in the pre-IPO investment: UBS internal emails - 25 and 26 February*
Q *2015*

R 157. The issue of UBS’s role in the pre-IPO in investment in Xinte was raised again
S in an exchange of internal emails within UBS, involving Mr. Choi, on 25 February 2015 under
T the Subject heading: Ad-Hoc Brg: Project Oasis. In an email sent to Mr. David Chin at 3:12 pm
U on 25 February 2015, copied to Mr. Choi, Enoch Kang informed him that:¹⁵⁵

V “...an update on TEBA H-share IPO (Xinte Energy) for your kind notice and
approval:

Pre-IPO investors round: China Minsheng Investment and GF Direct
Investment are the lead investors, on top, TBEA Group and two investors
brought in by the company themselves will also invest, for a total of RMB 1.25
bn. CMI and TBEA also entered into strategic partnerships as part of the
investment in solar space and they interacted with each other directly among the
solar technical teams. Likewise, recall this IPO mandate is a GF Securities
referral, thereby GF direct investment is also handled directly by themselves. In
this regard, it is not feasible and not much ground for UBS to charge any fee in

¹⁵² Bundle 12, page 4167.

¹⁵³ Respondent’s Evidence (May 2022)-Electronic Files; Appendix, item 60.

¹⁵⁴ Bundle 12, page 4167.

¹⁵⁵ Bundle 6, pages 2067-2068.

A terms of *certain coordination and involvement of our team* although our efforts
B and goodwill are clearly registered with TBEA management as well as CMI and
GF sides”. [Italics added.]

C 158. In an email to Enoch Kang and Mr. Choi sent at at 4:46 pm on 25 February
D 2015, Mr. David Chin enquired, “Pre-IPO fee-was there any BRG submission in the past?”¹⁵⁶

E 159. In responding to Mr. Chin’s enquiry, in an email sent at 5:05 pm, copied to
F Enoch Kang, Mr. Choi said:¹⁵⁷

G “Pre-IPO tranche: no brg conducted as there is no role for ubs given that GF
H (they referred us this teba ipo mandate and they served TEBA A-share company
I for many years) and CMI (strategic partner of TEBA) directly handled the
J investment process, and the remaining investors represent the company’s parent
K group itself and its friendly parties. *We have not issued any written work or have
L any formal role. However, given the help by us and GF IBD team in terms of
M overall coordination and support,* the company agreed to upraise our ipo fee by
N giving us and GF an additional 0.5% incentive fee to be paid upon deal
O completion”. [Italics added.]

J 160. Finally, in an email circulated within UBS sent by Cathleen Mack to Matthew
K Bennett and Mr. Choi on 26 February 2015, under the Subject heading: Opportunity
L Abandoned-CC-Tebian Electric Apparatus Stock Co Ltd, PR China, it was stated:¹⁵⁸

M “Opportunity-TEBI-00101 has been marked Abandoned by Matthew Bennett”
N Most Recent Status Comment: Abandoned per Calvin Choi”

O *The continued forwarding of documents by Mr. Choi to Mr. Devon Fu*

P *(i) 3 March 2015-Xinte/CMI signed pre-IPO term sheet*

Q 161. Attached to an email, sent at 2:40 pm on 3 March 2015,¹⁵⁹ by Mr. Choi to
R Mr. Devon Fu was a signed pre-IPO term sheet, between Xinte and CMI and others.¹⁶⁰ The
S document had been attached to an email sent to Mr. Choi at 10:05 am on 3 March 2015 by
T Mr. Wang Jian, who forwarded the document which had been sent earlier by Mr. Wu Nam of
U the General Management Department of CMIG New Energy Investment Co Ltd. In the email
V to Devon Fu, the name of the earlier sender was removed. The text simply stated, “Fyi”.

¹⁵⁶ Bundle 6, page 2067.

¹⁵⁷ Bundle 6, page 2067.

¹⁵⁸ Bundle 6, page 2065.

¹⁵⁹ Bundle 12, page 4203.

¹⁶⁰ Bundle 12, pages 4204-4232.

162. The agreement stated:

“Xinte Energy Co., Ltd. [hereafter referred to as “Xinte Energy”] intends to bolster its capital by offering ordinary shares [“new shares”] in a total amount of no more than US dollar equivalent to RMB 1.25 billion...

Tebian Electric Apparatus Co. Ltd. [“TEBA”], China Minsheng Huaheng Investment Co., Ltd., GF Energy Investment (Hong Kong) Limited and/or its designated investor or related company [“GF”], L. R. Capital China Growth I Company Limited [“L.R. Capital”], (Jinglong Technology Holdings Co., Ltd, [“Jinglong Technology”] intends to subscribe for the aforesaid new shares to be issued by Xinte Energy [hereafter referred to as “this transaction”].

163. Amongst other things the agreement stipulated that CMI would subscribe for Xinte new shares in a total amount of RMB 300 m at a subscription price, the formula for calculating which was stipulated.¹⁶¹ It was agreed that:¹⁶²

“...all parties shall use all reasonable endeavours to procure the listing of Xinte Energy on the HKEx with a market value of not less than HKD 12.5 billion ... and the listing proceeds will be no less than HKD 2.5 billion.”

164. The agreement stipulated 8 March 2015 as the date by which the share subscription agreement between the parties was to be completed and signed.

Confidentiality

165. Under the Subject heading: ‘Confidentiality’, the term sheet provided that:¹⁶³

“All parties shall keep strictly confidential the terms and conditions of this Agreement, this transaction and the confidential information pertaining to the operations and affairs of the other parties obtained based on this transaction [“confidential information”], and unless otherwise stated hereinafter, no party shall use such confidential information or disclose the same to any third party.”

166. The term sheet made provision for exceptions for disclosure based on the “necessity to know”, together with a requirement that the disclosing party take reasonable measures to ensure that the person to whom the confidential information was disclosed knows it to be such and agrees to comply with the confidentiality obligations.

¹⁶¹ Bundle 12, pages 4203-4232.

¹⁶² Bundle 12, page 4222.

¹⁶³ Bundle 12, pages 4228-4229.

167. In his evidence, Mr. Howard Cong Lin said that the term sheet attached to the email sent by Mr. Choi to Mr. Devon Fu on 3 March 2015:¹⁶⁴

“...was sent to LRC (via Mr. Fu) with the knowledge and consent of CM International. I also had a telephone conversation with Mr. Dong Wenbiao, the then-Chairman of CMIG with regard to this co-investment, and we agreed during this telephone call that the information concerning the investment would be shared amongst CMIG and LRC.”

(ii) 16 March 2015 - Xinte and CMI Share Subscription Agreement

168. In an email, sent at 3:58 pm on 16 March 2015, by Mr. Choi to Mr. Devon Fu under the Subject heading: Strategic Investor Agreement, one of the two attachments was a draft Share Subscription Agreement for CMI’s pre-IPO investment.¹⁶⁵ The other document was a draft Share Subscription agreement between Xinte and LR Capital Growth I Co Ltd and GF Energy Investment Limited.¹⁶⁶ Again, Mr. Choi added, “Pls call My office”.¹⁶⁷

169. Earlier that day, the two documents were attachments to an email sent at 2:19 pm by Enoch Kang to Ms. Guo Junxiang of Xinte, copied to Mr. Choi.¹⁶⁸

Confidentiality

170. Article 9, of each of the draft Share Subscription Agreements, addressed the issue of ‘Confidentiality’:¹⁶⁹

“Each party shall keep confidential the proposed transaction and terms of this Agreement as well as the information related to other parties’ business and affairs [“confidential information”] obtained based on this share subscription, and shall not use such information except for the purpose of this Agreement, nor disclose such information to any entity other than the parties to this Agreement.”

Article 9.1 made provision for exceptions for disclosure based on the “necessity to know”.

171. The fact that, in emails dated 3 March 2015 and 16 March 2015, Mr. Choi had forwarded to Mr. Devon Fu respectively:

¹⁶⁴ Bundle 35, page 11850, paragraph 26.

¹⁶⁵ Bundle 13, pages 4382 and 4469; 4562-4652.

¹⁶⁶ Bundle 13, pages 4384-4469; 4475-4561.

¹⁶⁷ Bundle 13, pages 4382-4652.

¹⁶⁸ Bundle 13, pages 4382 and 4469.

¹⁶⁹ Bundle 13, pages 4519-4521 and pages 4611-4613.

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- (i) the pre-IPO term sheet between Xinte, TEBA and CMI; and
- (ii) the draft Share Subscription Agreements between Xinte, TEBA and CMI and LR Capital Growth, and asked Mr. Devon Fu to call him.
- A
- B
- C

D were both cited by the Commission in the NPDA, as evidencing:¹⁷⁰

D

E “...assistance to LR Capital in connection with Project Oasis, through private email conversations with Devon Fu not involving any other UBS AG Project Oasis deal team members.”

E

F 172. Similarly, in the Decision Notice, the Commission asserted that Mr. Choi had failed to provide any explanation as to why he had “... provided assistance and information in relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client, in Project Oasis.”¹⁷¹

F

G

H

I Other events

I

J *19 March 2015: Engagement letter with Xinte for the IPO and listing of its shares on the SEHK*

J

K 173. On 19 March 2015, Mr. Choi signed an Engagement letter on behalf of UBS AG with Xinte, together with GF Hong Kong, as Joint Advisors to act as joint global coordinators; joint book runners; joint lead managers; and joint sponsors in the Global Offering in the listing of shares of Xinte on the SEHK.¹⁷²

K

L

M

N (i) *Effective Date - 24 August 2014*

N

O 174. The agreement provided for an ‘Effective Date’ of 24 August 2014¹⁷³ and was stated to be subject to the parties Standard Terms and Conditions, which were annexed to the agreement.¹⁷⁴ The role of the Joint Advisors was stated to be that:¹⁷⁵

O

P “...the Joint Advisors shall provide the following financial advice and assistance...

P

Q (b) advising on the appropriate corporate structure, timing and method of the Offering, the amount of equity to be offered and any capital raising to be undertaken in connection with the Offering.”

Q

R

S

T ¹⁷⁰ Core Bundle, page 35, at paragraphs 34, 36, 37 and 39.

T

¹⁷¹ Core Bundle, page 85, at paragraph 14(b).

T

¹⁷² Bundle 3, pages 1191-1209.

T

¹⁷³ Bundle 3, page 1191, Clause 1.

T

¹⁷⁴ Bundle 3, page 1195, Clause 4. Schedule 1, pages 1199-1208.

U

¹⁷⁵ Bundle 3, page 1191, Clause 1.

U

175. Mr. Li submitted that this clause of the agreement encompassed the work done at the pre-IPO investment stage to raise capital.

(ii) Confidentiality

176. Clause 2(b) of the Standard Terms and Conditions provided that the terms of the Confidentiality Agreement between the parties, dated 24 August 2014, continued to apply, subject to exemptions provided by Clause 2 (b) in respect of disclosure to the SFC, SEHK and governmental or regulatory bodies having authority over the parties; professional advisers; and members of the Joint Advisors' group.¹⁷⁶

177. Having received submissions by the parties, following objections made on behalf of Mr. Choi, and a Ruling of the Tribunal, the Confidentiality Agreement, dated 24 August 2014, has not been received into evidence by the Tribunal.

13 April 2015: Share Subscription agreement between Xinte, LR Capital Growth I and GF Energy

178. By a Share Subscription agreement, dated 13 April 2015, between Xinte and LR Capital Growth I Co Ltd and GF Energy Investment Limited¹⁷⁷, the latter two parties agreed to subscribe to shares in Xinte, about 73 million shares in the case of the former and about 29 million shares in the case of the latter. The agreement noted that "CMI will subscribe for 43,856,649 shares".¹⁷⁸ Under the heading, 'Qualified listing' Clause 4.4 provided that, after the completion of the share subscription, "...all parties shall make every reasonable effort to promote the listing of Xinte Energy on the Hong Kong Exchanges and Clearing Limited..."

14 December 2015: enquiry of the Stock Exchange about the relationship between LRC. BRI and LR Capital China Growth

179. By an email, dated 14 December 2015, Ms. Winnie Leung, an executive director of UBS, sent an email to AMTD, copied to Ms. Christine Kwok and others at AMTD and to Mr. Choi and many others at UBS, under the Subject heading: Oasis-Stock Exchange questions-AMTD please help reply asap. The email noted that the Stock Exchange had asked, "...about the relationship between the cornerstone investor LRC. Belt and Road Investment

¹⁷⁶ Bundle 3, page 1199.

¹⁷⁷ Bundle 3, pages 1066-1183.

¹⁷⁸ Bundle 3, page 1119, Article 2.1.

Limited and LR Capital China Growth I Company Limited and why LRC. Belt and Road Investment Limited is not an affiliated investor.”¹⁷⁹

180. In an email, dated 14 December 2015, Mr. Devon Fu provided Mr. Choi with the lengthy text of an apparent response to the enquiry.¹⁸⁰ Once again, the Commission noted in the NPDA that the email was not copied to others at UBS and cited it as another example evidencing the “...assistance to LR Capital in connection with Project Oasis, through private email conversations with Devon Fu not involving any other UBS AG Project Oasis deal team members.”¹⁸¹ Again, in the Decision Notice the Commission asserted that Mr. Choi had failed to provide any explanation as to why he had “... provided assistance and information in relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client, in Project Oasis.”

Xinte’s IPO and Listing: 17 and 30 December 2015

181. Xinte’s ‘Global Offering’ Prospectus was issued on 17 December 2015 and closed on 22 December 2015. The fact that, on 13 April 2015, Xinte had entered into pre-IPO share subscription agreements with CMI, GF Energy and LR Capital Growth at a discount to the IPO price was disclosed in the Prospectus. UBS and GF Capital were Joint Sponsors, Joint Global Coordinators, Joint Book Runners and Joint Lead Managers. On 30 December 2015, Xinte was listed on the SEHK.

Part 5 - Project Frontier - an overview

182. In Project Frontier UBS AG acted as financial advisor to a group of sellers¹⁸², led by Morgan Stanley Private Equity Asia, in the sale of some of their shares in AMTD Group Limited to LR Capital Financial Holdings Limited, a wholly owned subsidiary of LR Capital. Mr. Choi acted as the Project Sponsor and was a member of the deal team on the transaction.

¹⁷⁹ Bundle 31, pages 10783-10785.

¹⁸⁰ Bundle 31, pages 10787-10788.

¹⁸¹ Core Bundle; page 35, at paragraphs 34 and 35.

¹⁸² MSPE, Multinet, Far Dream and Blackpine. *Sale and Purchase Agreement*, 19 June 2015-Bundle 5, page 1544 and following at page 1578.

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Letter of Engagement: 10 September 2015

183. The Engagement Letter¹⁸³, dated 10 September 2015, between AMTD Group and UBS AG, stated that UBS had been engaged by AMTD:

“...to act as your exclusive financial adviser in connection with the potential Transaction... with potential purchasers for up to 1 year since 26 May 2015.”

The ‘Transaction’ was defined to include the sale of the controlling stake of the share capital of AMTD. The agreement was stated to be subject to UBS’s Standard Terms and Conditions.

The relationship between UBS and LR Capital Group

12 March 2015

184. In an email, dated 12 March 2015, sent to Mr. Choi, under the Subject heading: AMTD, Mr. Kingsley Chan asked if Choi “...continue to be interested to work on the assignment.” If so, he was invited to:¹⁸⁴

“...send us a draft EL and relevant materials eg likely buyers list with feedback based on your conversations with them.”

185. In his witness statement, Mr. Kingsley Chan said that “The selling shareholders had decided to engage UBS, led by Mr. Calvin Choi, primarily for the reason of his deep knowledge of the potential buyer universe”.¹⁸⁵

186. In his witness statement, Mr. Gao Yu said that, in or around early 2015, MSPE determined that the time was right to divest itself of part of its shareholding in AMTD. He explained that the gradual opening up of Mainland China had created a significant amount of interest to expand into the financial services industry.¹⁸⁶ The board of AMTD had received several unsolicited ‘indicative’ offers to buy a controlling stake of that company, including one from LR Capital, on a valuation of the company of HK \$1.4 billion. MSPE’s interest to divest some of their shares was shared by other shareholders, including Multinet, Far Dream and Blackpine.¹⁸⁷

¹⁸³ Bundle 6, pages 2071-2083.

¹⁸⁴ Bundle 6, page 2085.

¹⁸⁵ Bundle 35, page 11825, paragraph 3.

¹⁸⁶ Bundle 35, pages 11831-11832, at paragraph 5.

¹⁸⁷ Bundle 35, page 11832, at paragraph 6.

187. For his part, Mr. Cong Lin said that, having learnt "... in or around April 2015" from his "long-time friend" Mr. Gao Yu that there could be an opportunity to acquire a controlling stake in AMTD, he had communicated "...a verbal offer to AMTD and expressed LRC's interest to acquire a controlling interest in AMTD."¹⁸⁸ He provided no further details at all.

188. Mr. Choi responded five minutes after having received Mr. Kingsley Chan's email of 12 March 2015. The alacrity of his response was matched by his expressed enthusiasm for the assignment, "I am keen to serve mspe and you on this engagement and committed to deliver a success (sic) transaction." However, he noted, "...we are in the process to go through our internal conflict clearance and new business approval which are required for formal engagement letter (with fee quotes) to be sent." He undertook to send the list "... of buyers today."

Lists of potential buyers

189. In fact, Mr. Choi provided "...the list of suggested and potential buyers" in an email on 13 March 2015. Of the ten stipulated potential buyers, the name China Mingshen, featured twice, once as a bank of that name and the other as "China Mingshen Investment (CMI)."¹⁸⁹ LR Capital was not stipulated. Although lists of potential buyers of the shares were exchanged in emails between Mr. Kingsley Chan and Mr. Choi subsequently, on 31 March 2015¹⁹⁰ and 8 April 2015¹⁹¹, LR Capital was not stipulated as a potential buyer of the shares until Mr. Choi added the name of LR Capital for the first time to the 'revised list' of buyers circulated within UBS in an email that he sent to the UBS deal team on 8 May 2015.¹⁹²

29 May 2015: Binding Offer of LR Capital Group to acquire a controlling interest in AMTD

190. Thereafter, events moved quickly and, at 8:54 pm on 29 May 2015, Mr. Howard Cong Lin of LR Capital sent an email to AMTD, Mr. Kingsley Chan, Mr. Gao Yo and Mr. Choi under the Subject heading:

¹⁸⁸ Bundle 35, page 11842, at paragraph 8.

¹⁸⁹ Bundle 6, page 2085.

¹⁹⁰ Bundle 6, page 2132.

¹⁹¹ Bundle 6, page 2131.

¹⁹² Bundle 6, pages 2167 and 2173 - 2174.

[Confidential] Binding Offer for LR Capital Group to acquire controlling interest in AMTD Group Company Limited.

The terms of offer were described briefly:¹⁹³

“We ... have obtained our investment committee’s approval to proceed with our proposed transaction by concluding all necessary transaction documentations with you all in good faith *within 20 working days* (“exclusive period”). To demonstrate our commitment to the transaction and our financial strengths and capability, we are ready to pay a *usd1m deposit* in exchange of the exclusive period, and include a fund proof letter issued by our brokerage agent and fund custody in HK - GF Holdings(Hong Kong) Corporation Limited. “ [Italics added.]

191. The email stated that, attached to the email, were:

- the Binding Offer;¹⁹⁴
- a Fund Proof letter, which was from GF Securities and stated that LR Capital Group was one of its most important client and long-term partner and, at the close of the market on 29 May 2015, had liquid assets under management of USD 869,000,000;¹⁹⁵ and
- an NDA, which was executed by LR Capital, dated 22 May 2015, and provided undertakings to AMTD Group Company Limited and the six stipulated selling shareholders, in consideration of AMTD agreeing to make available financial and other information relating to AMTD.¹⁹⁶

Of the NDA, the email said that it was “...our fully executed nda with your side without any comments.”

Mr. Choi’s conduct in his role as the sell-side advisor of UBS AG

I. 29 May 2015 - 19 June 2015

192. Mr. Choi’s conduct in his role as the sell-side advisor of UBS AG was the focus of the Commission’s findings in its Decision Notice and is the core issue in these proceedings. The circumstances leading to the sending of the email, dated 29 May 2015 by Mr. Howard Cong Lin to the board of directors of AMTD Group provides a useful starting point to consider the nub of the criticism that is made of Mr. Choi, namely that, contrary to his duties:

¹⁹³ Bundle 20, page 6997.

¹⁹⁴ Bundle 20, pages 6998-7001.

¹⁹⁵ Bundle 20, page 7002.

¹⁹⁶ Bundle 20, pages 7003-7008.

- A
- B
- he provided confidential information to the LR Capital Group; and
 - he assisted in giving advice to and drafting emails for the LR Capital Group.
- C

29 May 2015: Mr. Choi's draft of an email for LR Capital to send to AMTD/MSPE and UBS

D 193. There is no dispute that the provenance of the email, dated 29 May 2015, sent
E by Mr. Howard Cong Lin to AMTD Group at 8:54 pm on 29 May 2015¹⁹⁷, to which was
F attached the Binding Offer letter, NDA and Proof of Funds letter, was a draft sent by email by
Mr. Choi to Mr. Devon Fu at LR Capital Group at 8:05 pm on 29 May 2015.¹⁹⁸

G 194. In an email to Mr. Choi, sent at 4:15 pm on 29 May 2015, under the Subject
H heading: Bidding Letter, Mr. Devon Fu attached a copy of a draft letter to the Board of Directors
I of AMTD and UBS, under the heading "Binding Offer for LR Capital Group ("LRC") to
J acquire controlling interest in AMTD Group Company Limited".¹⁹⁹ In an email to Mr. Choi
and Mr. James Wong, sent at 4:24 pm on 29 May 2015, under the Subject heading: Updated
version, Mr. Devon Fu attached the text of the draft Binding Offer letter.²⁰⁰

K *Comments sought from and provided by Mr. Donald Tang to Mr. Choi*

L 195. In an email to Donald Tang, sent at 4:53 pm on 29 May 2015, Mr. Choi attached
the draft Binding Offer letter under the Subject heading:²⁰¹

M "Urgent and important-pls kindly read and offer comments."

N 196. In an email to Mr. Choi, sent at 5:24 pm Mr. Donald Tang provided various
O comments arising from the text of the draft letter:²⁰²

P "comments: don't offer a put without getting a call. *They* will want the put to be
offered by a creditworthy entity. How will *you* prove you have money on hand
to satisfy the put? *You* need a call otherwise I think the put is unfair.

Q There will be control issues and minority protection issues. Will *they* want a
R bunch of vetoes to control how business is conducted? *You* don't necessarily
want that. Who are the minorities other than MSPE?

S

T ¹⁹⁷ Bundle 20, page 6997.

T ¹⁹⁸ Bundle 20, page 6996.

U ¹⁹⁹ Bundle 20, pages 6971-6972.

U ²⁰⁰ Bundle 20, page 6973.

U ²⁰¹ Bundle 20, page 6975.

V ²⁰² Bundle 20, page 6990.

A Is the acquisition of their shares or of new shares diluting them to 25%? Is this
B assuming their debt? Do *they* get to take all excess cash out of the business or
C do *you* keep it?
twenty days is very short. Is that enough? Ask for 60 days at least I think”
[Italics added.]

D 197. Clearly, Mr. Choi’s request to Mr. Donald Tang that he “offer comments” on the
E draft of the Binding Offer for LR Capital Group to acquire controlling interest in AMTD was
F an invitation for comments to be made from the perspective of LR Capital Group. Certainly,
G not surprisingly, Mr. Donald Tang’s comments were all directed at addressing the interests of
LR Capital. Obviously, his references in his email to “*you*” were to LR Capital’s side, whereas
the references to “*they*” were to the side of the selling shareholders of AMTD.

H 198. Thereafter, having sent Mr. Devon Fu at 5:27 pm, a draft of a template of a Fund
I Proof letter for LR Capital to be provided by GF Securities (Hong Kong),²⁰³ at 6:45 pm, Mr.
J Choi received a Fund proof letter from Mr. Devon Fu provided to the latter by email at 6:39
pm by GF Securities.²⁰⁴

K *2 June 2015:*

L *(i) payment of 1% deposit to AMTD*

M 199. In two emails to Mr. Kingsley Chan sent at 12:26 pm on 2 June 2015, Mr. Choi
N informed him that LR Capital had made payments to AMTD’s bank account of \$16 million,
O being 1% of the HKD 1.6 billion valuation of AMTD for the purposes of LR Capital’s offer to
the selling shareholders and advised that “On top, lrc will send their updated binding bid
shortly.”²⁰⁵

P *(ii) Mr. Kingsley Chan’s instructions to Mr. Choi to negotiate with LR Capital*

Q 200. In his witness statement, Mr. Kingsley Chan explained that, on the previous day,
R he and Mr. Gao Yu had spoken to Mr. Choi and asked him to negotiate with LR Capital
improvements in their offer, including the 1% deposit of HK \$16 million.²⁰⁶

S 201. For his part, Mr. Howard Cong Lin said in his witness statement that prior to the
T payment of HK\$16 million he had been contacted by Mr. Choi who had invited LR Capital to

²⁰³ Bundle 20, page 6993.

²⁰⁴ Bundle 20, page 6994.

²⁰⁵ Bundle 20, page 7059.

²⁰⁶ Bundle 35, page 11827, at paragraph 11.

A agree to a proposal by MSPE to increase the deposit referred to in the Binding Offer from US
B \$1 million to HK \$16 million, that being 1% of the total valuation of AMTD. He agreed and
C the payment was made.

D 202. In an email in reply to Mr. Choi, sent at 1:04 on 2 June 2015, Mr. Kingsley Chan
E said²⁰⁷:

F “Hold on - you shd speak to us first.”
G

H Then, as Mr. Kingsley Chan explained in his witness statement,²⁰⁸ having conducted a
I telephone conference call with representatives of other selling shareholders, he sent Mr. Choi
J a lengthy email at 4:06 pm, informing him:²⁰⁹

K “The shareholders have reconvened, several points for you to follow up:”
L

M 203. The email went on to set out the points for Mr. Choi to follow up under five
N headings, namely:

- O 1) Valuation;
P 2) Irrevocable and non-refundable deposit;
Q 3) Term Sheet;
R 4) Definitive Documentations; and
S 5) Meeting with the LRC.

T *As to (1)*

U The text, under the heading ‘Valuation’, stated:

V “- based on an equity valuation of HKD 1.6 bn for 100% of the company, on
cash and debt free basis as expressed to all potential buyers. Any excess cash
left on the balance sheet will be adjusted up to equity valuation

- based on UBS’s dialogue with potential buyers, if

- (a) LRC’s offer represents the highest valuation received/expressed to date
and
(b) LRC will not accept a HKD 1.7bn valuation,

*we still need you to press LRC for an slight increase in their bid such that the
sellers will be covered for UBS’ advisory fee (which is 1% value of shares) to be*

²⁰⁷ Bundle 20, page 7059.

²⁰⁸ Bundle 35, page 11828, at paragraph 13.

²⁰⁹ Bundle 20, page 7061.

A sold, based on our latest understanding) i.e., net valuation of HKD 1.6bn post-
B fee

C - the shareholders still need UBS to help us *continue gather any written*
D *proposals before the signing of a Term Sheet.*” [Italics added.]

E *As to (2)*

F The text, under the heading ‘Irrevocable and Non-refundable Deposit’, included the
G following:

H “-this deposit amount is non-refundable under any circumstances, but deductible
I against final proceeds upon completion.”

J *As to (3)*

K The text, under the heading ‘Term Sheet’, included the following:
L

M “-Exclusivity period of 10 working days, starting upon the signing of a TS,
N lasting last until the earlier of (a) signing of definitive documentations or (b)
O mutual agreement to termination...”

P The TS needs to include details including, but not limited to:

- Q -LRC is not subject to funding constraints
R -mgmt downside protection of put of at least 6% IRR to LRC on remaining stake
S -tenor of management contracts
T -corp governance (5 BoDs of which LRC 3x, mgmt. 1x, MSPEA 1x).”

U 204. In his witness statement, Mr. Gao Yu explained that those instructions had been
V given to Mr. Choi for him to “...relay the message to LRC, and hopefully to convince LRC to
accept our additional requests.” He went on to note that Mr. Choi “...ultimately achieved,
amongst other matters, a shorter exclusivity period.”²¹⁰

3 June 2015: the engagement of Freshfields by LR Capital - information forwarded to Mr. Choi
by Mr. Devon Fu

205. An email to Mr. Choi, sent at 11:07 pm on 3 June 2015, under the Subject
heading: Fw AMTD-engagement terms, forwarded an attachment of Freshfields’ draft
Engagement Letter with LR Capital and Freshfields’ Terms of Business. The email from
Mr. Devon Fu contained no message and was not copied to anyone other than Mr. Choi.²¹¹

²¹⁰ Bundle 35, pages 11837-11838, paragraph 20.

²¹¹ Bundle 20, page 7085.

A 206. Those documents had been sent in an email at 11:02 on 3 June 2015 to
B Mr. Howard Cong and Mr. Devon Fu by Ms. Teresa Ko of Freshfields. In addressing Mr. Cong
C and Mr. Devon Fu in the email, Ms. Teresa Ko said:²¹²

D “It was good to meet you this morning. As discussed with Howard, I am pleased
E to inform you that we have cleared our conflicts check and are free to act for you
F on this project.”

G 207. On the draft Engagement Letter, Ms. Teresa Ko said:²¹³

H “Thank you for asking us to advise you on the potential (acquisition of?) an
I interest in the AMTD Group. We are happy to advise you on the terms below.”

J Under the heading ‘The Engagement’ the Project was described as the, “...potential acquisition
K of approximately 70% of the shares in AMTD Group from existing shareholders”. The scope
L of Freshfields work was described as “Advice on the commercial merits or advisability of any
M aspects of the project.”

N 208. The fact of the provision to Mr. Choi, in an email sent on 3 June 2015 by
O Mr. Devon Fu, of the draft Engagement Letter between Freshfields and LR Capital was
P adverted to specifically in the Commission’s NPDA,²¹⁴ in the context of the Commission’s
Q allegations that, Mr. Choi “...directed the decision-making of LR Capital Financial in
R connection with Project Frontier.”²¹⁵

S 209. On its face, the provision of information to the team leader of UBS, who were
T engaged to advise the selling shareholders, of the scope and terms on which, as a potential
U buyer of ATMD’s shares, LR Capital was negotiating to engage lawyers to give it advice on the
V commercial merits of the project, was surprising, to say the least. It begged obvious questions
about the relationship between Mr. Choi and Mr. Devon Fu, as well as LR Capital.

4 June 2015:

(i) LR Capital’s updated offer

210. In an email from Mr. Howard Cong, sent at 7:30 am on 4 June 2015, to
Mr. Kingsley Chan and Mr. Choi, amongst others, the Subject heading was: Updated Binding

²¹² Bundle 20, page 7085.

²¹³ Bundle 20, page 7087.

²¹⁴ Core Bundle, page 32, at paragraph 23.

²¹⁵ Core Bundle, page 31, at paragraph 20.

A Offer_LR Capital Group to acquire a controlling interest in AMTD Group Company Limited.²¹⁶
B Mr. Cong informed them that LR Capital had "...retained Freshfields as our legal advisor" and
C confirmed that LR Capital had "...no cash constraints to complete the transaction and settle in
time according to our proposed payment schedules included in the attachment".

D 211. Attached to the email was that Updated Binding Offer. It confirmed, amongst
E other things, that the deposit of HKD 16m was "irrevocable and non-refundable subject to the
following conditions:

- F • the company and shareholders undertake and agree that an exclusive period until
G June 15th inclusive to be given to LRC for all parties to finalise transaction
H documents with good faith...."

I *(ii) List of the interest of other potential buyers*

J 212. In an email dated 4 June 2015, without any Subject heading, sent at 4:32 pm by
K Mr. Choi to Mr. Devon Fu at LR Capital Group, detailed information was provided as to the
interest or otherwise of fifteen potential buyers of the shares of AMTD: five Banks; five
L Securities Companies; three Investment Companies; and two 'Others'.²¹⁷

M 213. For his part, in his evidence Mr. Kingsley Chan agreed that 4 June 2015 was in
N the "...middle of the sell-side negotiating" with LR Capital and that the provenance of the
information detailed by Mr. Choi was the work that he had performed for MSPE, but he balked
O at agreeing that providing that information to LR Capital it was not in the interests of the selling
shareholders:²¹⁸

P Q. 4 June 2015 would be in the middle of the sell-side negotiating with LRC,
correct?

A. Correct....

Q Q. What Calvin Choi was doing was telling LRC the positions of the other
potential buyers; correct?

R A. Seems to be.

S Q. And those positions that Calvin Choi knew about were pursuant to work that
he did for you, for the selling shareholders; correct?

T A. Correct.

U ²¹⁶ Bundle 20, page 7098.

²¹⁷ Bundle 20, page 7110.

²¹⁸ Transcript, page 268 A-U.

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Q. So it was not in the selling shareholders' interest to share this information with LRC; correct?

A. Not in their interest but I don't -- again, it's -- I cannot see the background of the email and on what -- why this email came about on 4 June which was -- was it 4 June or ...

Q. 4 June.

A. 4 June, right, which was what -- which was after we received their first binding offer on 29 May.

....

Q. But, after 29 May, you were trying to get more from LRC; correct?

A. Correct.

5 June 2015 - Mr. Choi's draft email for LR Capital to send to UBS

214. Mr. Howard Cong Lin sent an email at 06:55 am on 5 June 2015²¹⁹ to Mr. Kingsley Chan and others at UBS, including Mr. Choi, under the Subject heading: LRC offer-supplemental items. The email set out additional terms proposed by LR Capital to those proposed in the 'Binding Offer'. The text had its provenance in a draft provided by Mr. Choi in an email to Mr. Devon Fu at 06:51 am on 5 June 2015²²⁰.

6 June 2015 - Mr. Choi's drafts of emails for LR Capital to send to Freshfields

(i) AMTD-follow-ups

215. In an email sent by Freshfields to Mr. Devon Fu and Mr. Howard Cong at 6:37 am on 6 June 2015 under the Subject heading: AMTD-follow-ups, Ms. Teresa Ko said, "Doesn't give you/us much time to review term sheet if it has to be signed by 10 am Sunday but trust you will follow up Devon/Howard-please if possible give us an indication as to when it will arrive - many thanks. Teresa."²²¹

216. Mr. Devon Fu forwarded that email to Mr. Choi at 08:01 am. In response, Mr. Choi sent an email to Mr. Devon Fu at 08:06 am, which provided the text of a letter to Freshfields thanking them for their support, indicating that the term sheet had been received "last night" and requesting, "Can we have a call as early as possible this morning to quickly

²¹⁹ Bundle 21, page 7151.

²²⁰ Bundle 21, page 7128.

²²¹ Bundle 21, page 7159.

A discuss and give some of our initial comment and quick views after reading through it.”. The
B draft concluded²²²:

C “As communicated with *our* Canada HQ overnight *we* still aim to sign tomorrow
D morning at 10 am given the highly competitive nature of the deal and *we* know
E that multiple buyers have been still pushing to get in as of yesterday”. [Italics
F added.]

E 217. The email, sent at 08:11 am on 6 June 2015, by Mr. Howard Cong to Freshfields
F contained the text of Mr. Choi’s draft of the email to be sent to Freshfields that he sent to
G Mr. Fu.²²³

G 218. It may be, although it is not certain because he did not identify the particular
H document, that this is the email that Mr. Howard Cong Lin referred to in his witness statement
I as having been drafted by Mr. Choi, namely “a draft to Ms. Teresa Ko of Freshfields to convene
J a meeting to discuss the term sheet”.²²⁴

J 219. For his part, Mr. Howard Cong Lin said that following the receipt of the first
K draft of the term sheet “...on around 5 June 2015” he and Mr. Devon Fu had spoken to Mr. Choi,
L “on the reasonableness of our comments and suggested amendments to the term sheet”.
M Following their discussions, Mr. Choi agreed “...to summarise our comments as a basis for our
N discussions.” As a result, Mr. Choi had provided a second email to Mr. Devon Fu, which
O reflected those discussions. He did not identify that email either.

N (ii) *Draft Term Sheet - instructions to Freshfields to negotiate with the sell-side*

O 220. In an email sent at 9:32 am on 6 June 2015 by Mr. Howard Cong Lin to
P Freshfields, under the Subject heading: Pj Frontier - Draft Term Sheet, Mr. Howard Cong Lin
Q wrote, “Several initial comments and views my end”. The email gave instructions and sought
R specific advice from the solicitors acting for LR Capital Group and asserted that stipulated
S information had been obtained confidentially.²²⁵

T ²²² Bundle 21, page 7159.

T ²²³ Bundle 21, page 7166.

T ²²⁴ Bundle 35, pages 11847-11848, paragraph 19.

U ²²⁵ Bundle 21, pages 7192-7193.

A 221. The provenance of the text in Mr. Howard Cong Lin's email were two earlier
B emails sent by Mr. Choi to Devon Fu, respectively at 09:08 and 09:11 am on 6 June 2015.²²⁶ B

C 7 June 2015 C

D (i) information obtained from Mr. Kingsley Chan of the sell-side's negotiation position
E on the Term Sheet sent by email by Mr. Choi to Mr. Devon Fu and forwarded to
Freshfields E

F 222. By an email to Mr. Kingsley Chan, sent at 12:26 am on 7 June 2015, Mr. Choi
G wrote, "I just finished a discussion with LR Managing Partner Howard and their in-house Asher,
H please kindly find below their views and feedback"²²⁷. Having confirmed that LR Capital
I agreed to the first and second items in the previous email and that they did not seek to perform
due diligence, Mr. Choi wrote, "... my understanding is that they are looking to collect mainly
key information below in order to fill in their internal board paper/investment committee
requirements." Then, he listed out six items, including: I

J "(5) budgets and business plans;
K (6) key business lines/focuses, management hierarchy/internal approvals/limits
and key operation flows" K

L 223. At 01:13 am on 7 June 2015 Mr. Choi wrote to Mr. Kingsley Chan: ²²⁸ L

M "On top: checked their views softly-they will need v and vi as part of internal IC
requirements especially vi." M

N 224. At 01:34 am Mr. Kingsley Chan replied: N

O "...we'll help facilitate the gathering of (v) and (vi)-ideally after signing but if
P making their lives difficult then we can try before signing (just that let's all be
Q mindful that it won't slow down the process, as nature of these items mean they
need quite some time to digest, esp without advisors)
R Although we can always respond that we understand that IC has already
S approved, we want to be as cooperative as possible too (if otherwise, we should
T know).. Hope they appreciate as well
U We trust you'll help manage this point delicately." R

T ²²⁶ Bundle 21, page 7183.

U ²²⁷ Bundle 21, page 7263

V ²²⁸ Bundle 21, page 7295.

A 225. At 01:37 am, having removed the name of the sender and those of all the
B recipients of Mr. Kingsley Chan’s email, Mr. Choi forwarded the former’s email, together with
C a lengthy email chain of emails, to Mr. Devon Fu.²²⁹

D 226. At 08:45 am, Mr. Devon Fu forwarded Mr. Kingsley Chan’s email, to
E Freshfields observing,²³⁰

F “FYI-pls off-record and keep confidential.” [Italics added.]

G 227. At 08:46 am Mr. Devon Fu forwarded the email, which he had sent to
H Freshfields, to Mr. Choi.²³¹

I (ii) *Term Sheet and Management contract - Mr. Choi’s drafts of an email sent to
J Mr. Devon Fu of comments, instructions to be given to and advice sought from
K Freshfields for LR Capital to send to Freshfields*

L 228. By three emails sent respectively at 07:20 am, 07:23 am and 07:25 am on 7 June
M 2015²³², Mr. Choi sent Mr. Devon Fu what he described in the first email as “Comments below”.
N In addition to such comments, instructions were given and advice was sought on specific topics.

O 229. The existing provision in respect of the Binding effect of the term sheet was
P described as “not acceptable”. Of the provision in respect of Management incentives, the
Q question was posed, “are we agreeing/leaving open end too much to be given away (?)” Also,
R advice was sought and suggestions made. The view was asserted:

S “(we) feel very strange and uncomfortable that they push for the right to ‘declare
T and pay dividends to its shareholders in the period prior to closing’” .

U 230. Mr. Devon Fu forwarded to Freshfields the text provided to him by Mr. Choi in
V three emails, sent respectively at 07:24 am, 07:25 am and 07:26 am.²³³

231. Finally, at 07:29 am Mr. Devon Fu forwarded the email chain to Mr. Choi.

²²⁹ Bundle 21, page 7295.

²³⁰ Bundle 21, page 7307.

²³¹ Bundle 21, page 7307.

²³² Bundle 21, page 7302.

²³³ Bundle 21, page 7303.

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(iii) *Management contract - Mr. Choi's drafts of an email sent to Mr. Devon Fu for LR Capital to send to Freshfields with instructions on negotiations with the sell-side shareholders*

232. In an email from Freshfields to Mr. Howard Cong and Mr. Devon Fu sent at 10:31 on 7 June 2015, under the Subject heading: Frontier-management contract, comments were made on various clauses of the share purchase agreement and an invitation made to the recipients, "If you have any other comments on the service contract, please let us know."²³⁴

233. Mr. Devon Fu forwarded that email at 10:33 to Mr. Choi²³⁵, who responded with an email about 11:04 on 7 June 2015, which was in the form of a response by LR Capital to Freshfields giving instructions in strident terms and seeking advice on stipulated issues in the draft management service contract.²³⁶

234. In an email from Mr. Devon Fu sent to Freshfields at 11:20 am on 7 June 2015, the text provided by Mr. Choi in his earlier email was incorporated in the email.²³⁷

(iv) *Term sheet - Mr. Choi's draft of an email with comments and instructions for LR Capital to send to Freshfields*

235. By an email sent to Freshfields at 11:38 am on 7 June 2015, Mr. Devon Fu provided "comments" on five items under the Subject heading: Frontier - term sheet & management contract. ²³⁸ Although described as 'comments', the text included not only indications of agreement to various proposals by Freshfields but also specific instructions in respect of some of the five headings.

236. The provenance of the text in Mr. Devon Fu's email was an earlier email sent to Mr. Devon Fu by Mr. Choi at 11:34 am on 7 June 2015.²³⁹

237. Earlier, at 10:18 am on 7 June 2015, Freshfields had sent an email to Mr. Devon Fu under the same subject heading, inviting comments on an attached markup of the term sheet, following earlier discussions.²⁴⁰

²³⁴ Bundle 21, pages 7333-7334.

²³⁵ Bundle 21, page 7333.

²³⁶ Bundle 21, page 7337.

²³⁷ Bundle 21, page 7351.

²³⁸ Bundle 21, page 7343.

²³⁹ Bundle 21, page 7342.

²⁴⁰ Bundle 21, page 7344.

(v) *information as to the Sell-side's negotiation position from an email exchange between Mr. Kingsley Chan and Mr. Choi forwarded by Mr. Choi to Mr. Devon Fu*

238. In a similar manner Mr. Choi forwarded another email to Mr. Devon Fu that he had received from Mr. Kingsley Chan in their own exchange of emails on 7 June 2015. At 7:32 pm, Mr. Choi had informed Mr. Kingsley Chan, Mr. Gao Yu and the management of AMTD of the result of discussions with LR Capital in respect of the issue of a guarantee and the binding terms of the term sheet.²⁴¹

239. At 8:43 pm, Mr. Kingsley Chan replied to Mr. Choi, copied to Mr. Gao Yu, and various persons at Linklaters and AMTD:²⁴²

“Suggest we shd still target to exchange signature pages this evening (please try to inform BP too).

1) *Guarantee-we trust Calvin's understanding of their ability/background, my view is not ideal but ok*

2) *Binding-because we don't have the SHA details/mgmt vs bis plan details/funds proof yet, we can agree on valn/structure etc, but that shall remain non-binding.”*

[Italics added.]

240. At 9:44 pm, Mr. Choi forwarded the email messages to Mr. Devon Fu at LR Capital.²⁴³

241. At 9:53 pm, Mr. Devon Fu forwarded Mr. Kingsley Chan's comments, which he had received in the email from Mr. Choi, in an email to Freshfields with the message:²⁴⁴

“FYI, keep confidential.”

242. In response to the suggestion made in cross-examination that Mr. Choi was forwarding confidential information from the Sell-side to the buyers, Mr. Kingsley Chan merely responded, “Yes, he has forwarded the emails.”²⁴⁵

²⁴¹ Bundle 22, page 7561.

²⁴² Bundle 22, page 7561.

²⁴³ Bundle 22, page 7561.

²⁴⁴ Bundle 21, page 7564.

²⁴⁵ Transcript, page 270 R.

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12 June 2015: SPA/SHA - Mr. Choi's draft of an email sent to Mr. Devon Fu for LR Capital to be sent to Freshfields of instructions of its negotiating position on the SPA and seeking advice

243. In an email sent to Mr. Devon Fu, at 8:06 pm on 12 June 2015, Mr. Choi wrote, "mspe propose the wording to be amended as follows". Thereafter, he set out the text of the proposed amendment to a clause of the draft SHA. All of the text of Mr. Choi's email was incorporated in an email Mr. Howard Cong Lin sent to Freshfields at 8:13 pm on 12 June 2015, under the Subject heading: [Confidential] SPA/SHA, to which was added the statement that the proposed amendment had been obtained from "a very confidential channel" and the exhortation "so please keep it off-record".²⁴⁶

13 June 2015: SPA mark-up - Mr. Choi's draft of an email for LR Capital to send to Freshfields

244. In an email to Mr. Howard Cong Lin and Mr. Devon Fu sent at 4:59 pm on 13 June 2015,²⁴⁷ under the Subject heading: Frontier-SPA mark-up, Freshfields wrote, "...here are the key items for your focus on the SPA." The accompanying text referred to multiple provisions and clauses in the agreement, made comments/suggestions and gave advice.

245. Mr. Devon Fu forwarded the email to Mr. Choi in an email sent at 5:04 pm on 13 June 2015.²⁴⁸ At 6:15 pm Mr. Choi sent an email to Mr. Devon Fu addressing the points raised in the email sent by Freshfields, issuing a series of instructions to and seeking advice from LR Capital's lawyers.²⁴⁹ The text of the email was a draft of an email to be sent to Freshfields.

246. In an email to Freshfields from Mr. Howard Cong, sent at 6:32 pm on 13 June 2015, all of the text provided by Mr. Choi was incorporated.²⁵⁰

247. In an email to Mr. Choi, sent at 6:33 pm on 13 June 2015, Mr. Howard Cong forwarded the email he sent to Freshfields.²⁵¹

²⁴⁶ Bundle 23, page 8018.

²⁴⁷ Bundle 23, page 7976.

²⁴⁸ Bundle 23, page 7976.

²⁴⁹ Bundle 23, pages 7974-7976.

²⁵⁰ Bundle 23, page 7980.

²⁵¹ Bundle 23, page 7980.

14 June 2015

(i) *SHA - Mr. Choi's draft of an email sent to Mr. Devon Fu of LR Capital's negotiating position and instructions in respect of the SHA for LR Capital to send to Freshfields*

248. In an email sent at 10:32 on 14 June 2015 by Asher at LR Capital to Freshfields under the Subject heading: Frontier-SPA & SHA, Freshfields, was presented with:²⁵²

“...our comments and views on SHA”.

Those comments were set out as responses by ‘Lrc’, to comments that had been made and instructions sought by Freshfields in an email sent to Mr. Howard Cong and Mr. Devon Fu at 4:39 pm on 12 June 2015 under a series of headings.²⁵³

“We wanted to flag some specific items on the share transfer provisions in the SHA which you will need to review closely and advise on your instructions”

249. In an email sent, at 7:09 pm on 13 June 2015, by Mr. Devon Fu to Mr. Choi, the email received by Mr. Devon Fu from Freshfields was forwarded.²⁵⁴

250. Mr. Choi responded in an email sent at 10:26 am on 14 June 2015 to Mr. Devon Fu. It contained a detailed draft of a letter from “Jennifer and Asher” to Freshfields addressing: “...our comments and views on SHA”.²⁵⁵ The text of the draft sent by Mr. Choi to Devon Fu was used as the text in the email sent by LR Capital at 10:32 am on 14 June 2015.²⁵⁶

(ii) *SPA - Mr. Choi's draft of an email for LR Capital to send to Freshfields*

251. In an email sent to Mr. Devon Fu at 5:20 pm on 14 June 2015, Mr. Choi provided the text of a draft letter to Freshfields with comments on the draft Sale and Purchase Agreement²⁵⁷. The draft letter concluded:

“Please incorporate the above and go back to the sellers and linklaters as soon as possible as time is running quite short.”

²⁵² Bundle 24, pages 8209-8210.

²⁵³ Bundle 24, page 8202.

²⁵⁴ Bundle 24, page 8202.

²⁵⁵ Bundle 24, page 8201.

²⁵⁶ Bundle 24, page 8209.

²⁵⁷ Bundle 24, pages 8277.

15 June 2015: SHA - Mr. Choi's comments in an email to Devon Fu

252. In an email sent to Devon Fu at 12:41 on 15 June 2015 under the Subject heading: Frontier-Revised SHA 14 June, Mr. Choi provided comments on nine of the provisions of the draft Revised Shareholders Agreement under the heading 'Lrc'.²⁵⁸ Agreement was expressed in respect of some of the provisions but, in a number of instances, it was suggested that the time in which certain events were to occur be extended. For example, in respect of the provision that non-transferring shareholders have 10 business days in which to respond to a notice from the transferring shareholders that it intends to transfer shares, it was stated:

"Lrc: we want to extend the time to 30 days".

16 June 2015

(i) SHA -Mr. Choi's comments/draft email for LR Capital to send to Freshfields

253. In an email, sent by Mr. Choi to Mr. Howard Cong and Mr. Devon Fu at 3:43 am on 16 June 2015, Mr. Choi provided detailed comments on the provisions of the draft Shareholders Agreement under sixteen different headings.²⁵⁹

254. In an email to Freshfields, sent at 09:27 am on 16 June 2015, under the Subject heading: Update call on SHA, Mr. Devon Fu incorporated the text of Mr. Choi's earlier email verbatim beneath the statement, "FYI below some SHA items for our discussion".²⁶⁰

(ii) SPA and SHA - Mr. Choi's draft of an email sent to Mr. Devon Fu for LR Capital to send to ATMD

255. In an email, sent by Mr. Choi to Mr. Devon Fu at 9:01 am on 16 June 2015, Mr. Choi provided the text of a letter to be sent by Mr. Howard Cong to Mr. Alan Tsang (of AMTD):²⁶¹

" Dear Alan -

Thank you for your partnership and support

Please find below the key items we discussed as well as *specific clauses/areas of which our IC/head office have strong resistance and pose potential deal breakers.*

Appreciate your coordination with mspe and counsel sides and push forward."

²⁵⁸ Bundle 24, pages 8394-8395.

²⁵⁹ Bundle 24, pages 8450-8451.

²⁶⁰ Bundle 24, pages 8467-8468.

²⁶¹ Bundle 24, pages 8459-8460.

[Italics added.]

256. In the attached text a total of twenty-one issues were addressed at length under the separate headings ‘SPA’ and ‘SHA’. The text of Item 15 evidenced the assertion, in the draft text of the email to be sent to Mr. Tsang, of “potential deal breakers”:

“15. Buyers’ knowledge warranty schedule 4: we resist the addition of buyers knowledge warranty in schedule 4. Extremely wide coverage and our IC simply deleted the whole in this alongside with item 7 and 11 are potential deal breakers.”

257. In an email sent by Mr. Howard Cong to Mr. Alan Tsang at 09:05 am on 16 June 2015, under the Subject heading: Important Matters and Confidential, the text provided by Mr. Choi was incorporated verbatim, save for the addition of exclamation marks after the introductory statement in the letter “Thanks for your partnership and support!!”²⁶² A copy of the email sent to Mr. Alan Tsang was forwarded to Mr. Choi by Mr. Howard Cong at 09:06 am on 16 June 2015.²⁶³

17 June 2015 - Mr. Choi’s draft of an email in respect of the SHA sent to Mr. Devon Fu for LR Capital to send to AMTD

258. In an email sent by Mr. Choi to Mr. Devon Fu at 7:29 am on 17 June 2015, the text of a letter to be sent to Mr. Alan Tsang of AMTD by Mr. Howard Cong Lin was set out. At the outset, it was stated that the text contained, “...a summary of what we discussed and agreed upon”. The text contained a series of headings highlighted by an asterisk:²⁶⁴

- *definition of connected person;
- *permitted transfers;
- *ROFO last look;
- *tag/drag;
- *put;
- *management claims put; and
- *EOD

²⁶² Bundle 24, pages 8461-8462.

²⁶³ Bundle 24, page 8461.

²⁶⁴ Bundle 24, page 8505.

A The text beneath the respective headings described variously matters that had been discussed,
B agreed and accepted. B

C 259. The text provided by Mr. Choi was incorporated verbatim in an email with the
D Subject heading: SHA - Final Key Items sent at 7:32 am by Mr. Howard Cong Lin to Mr. Alan
E Tsang of AMTD.²⁶⁵ Having received an email in reply from Mr. Alan Tsang at 10:52 am,
F “Would you pls give me a call to discuss... I have made some progress”, Mr. Howard Cong Lin
G forwarded that email and his earlier email to Mr. Tsang to Mr. Choi at 10:57 am.²⁶⁶ G

The Sale and Purchase agreement: 19 June 2015

H 260. The Sale and Purchase Agreement between LR Capital Financial Holdings
I Limited (“the Buyer”), the selling shareholders and AMTD Group Company Limited was
J signed on 19 June 2015. The transaction was completed in October 2015.²⁶⁷ H

II. Mr. Choi’s conduct in his role as a sell-side adviser pre-29 May 2015

(i) 20 April 2015 - AMTD’s NDA

K 261. In an email to Mr. Devon Fu, under the Subject heading: EL with UBS, sent at
L 7:38 pm on 20 April 2015, Mr. Choi attached the Non-Disclosure Agreement provided by
M AMTD Group for UBS to sign, together with an entire email chain. The NDA had been
N provided to Mr. Choi in an email from Mr. Alan Tsang of AMTD in an earlier email, under the
O same Subject heading, sent at 6:17 pm.²⁶⁸ The email chain included an email from Mr. Choi to
P Mr. Kingsley Chan in which he had described CMI as “very interested in this deal”, namely to
Q acquire a controlling interest in ATMD. Q

(ii) 13 May 2015 - Briefing material for the preparation of a teaser

R 262. In an email to Mr. Devon Fu, sent at 6:18 pm on 13 May 2015, Mr. Choi attached
S the briefing material to be used for the preparation of a teaser, which had been attached to an
T R

S
T ²⁶⁵ Bundle 24, pages 8506-8507.

T ²⁶⁶ Bundle 24, page 8517.

U ²⁶⁷ Bundle 33, page 11162, paragraph 29(b) [Witness statement of Mr. Andy Lee]; and Bundle 5, pages 1544-1737.

V ²⁶⁸ Bundle 16, page 5417.

A email sent to Mr. Choi from Mr. Kingsley Chan earlier at 10:53 am on 13 May 2015.²⁶⁹ The
B material described AMTD Group as having been .²⁷⁰

- C • founded in 2003 by the founder shareholders, including Cheung Kong (Holdings) C
D Limited, the Commonwealth Bank of Australia and the current management, D
E and has been a subsidiary controlled by Cheung Kong Holdings Limited for E
F many years in the past
- F • The company is now controlled by Morgan Stanley Private Equity Asia and the F
G current management after the management buyout... in 2014.”

G 263. Further, it asserted:

- H “Financial data in 2014 [managerial financial report to be audited] H
I > The income was about HKD 250 million, up 13% over 2013
J > The net profit was about HKD 80 million”.

I (iii) 19 May 2015 - AMTD’s 2012 -2014 audit reports and AMTD’s corporate structure

J 264. In an email sent to Mr. Devon Fu, at 9: 51 am on 19 May 2015, Mr. Choi J
K attached AMTD’s 2012 audit reports and a graphic representation of AMTD’s corporate K
L structure.²⁷¹ Those documents included:

- L • the Report and Consolidated Financial Statements for the year ended 31 L
M December 2012 of the AMTD Group Company Limited (incorporated in the M
N British Virgin Islands); and
- N • the Reports and Consolidated Financial Statements for the year ended 31 N
O December 2012 for its seven wholly-owned subsidiaries incorporated in Hong O
P Kong.²⁷²

P 265. The attachments had been provided to Mr. Choi in an email sent at 9:43 am that P
Q day from Mr. Thomas Chan at AMTD. He informed Mr. Choi that the attachments were Q
R “password protected zip files”.²⁷³ Also, he said that later in the morning he would send Mr. Choi R
S the reports and Consolidated Financial Statements for the years 2013 and 2014.

S
T ²⁶⁹ Bundle 17, page 5862.

T ²⁷⁰ Bundle 18, page 5888.

T ²⁷¹ Bundle 18, page 5961.

T ²⁷² Bundle 18, pages 5965-6170.

U ²⁷³ Bundle 18, page 5961.

A 266. In an email, sent to Mr. Choi at 10:25 am that day Mr. Thomas Chan provided
B him with a, "... password protected zip file containing the full set of 2012 to 2014 AMTD
C Group & subsidiaries audited financial report" .²⁷⁴ In an email to Mr. Devon Fu sent at 10:35
D am that day, Mr. Choi provided him with the attached Zip files.²⁷⁵ In an email to Mr. Choi, sent
E at 10:36 am that day, Mr. Thomas Chan provided him with the password to the 2012-2014
F audited financial reports, informing him that the password was the same as before,
G "amtdfrontier". In an email to Mr. Devon Fu, sent at 10:39 am that day, Mr. Choi forwarded
H Mr. Thomas Chan's email with that information.²⁷⁶

(iv) 20 May 2015 - teaser provided to Mr. Devon Fu

G 267. In an email to Mr. Devon Fu, sent at 9:27 pm on 20 May 2015, Mr. Choi attached
H the Project Frontier teaser document.²⁷⁷ The teaser clearly reflected the briefing material that
I Mr. Choi had forwarded to Mr. Devon Fu on 13 May 2015.

(v) 21 May 2015 - teaser provided to Mr. Howard Cong Lin

J 268. In an email to Mr. Howard Cong, copied to Mr. Devon Fu, sent at 8:08 am on
K 21 May 2015 Mr. Choi attached the same teaser document under the Subject heading: Project
L Frontier-an opportunity to acquire controlling interest in the largest independent wealth
M manager in hk with full sfc licences and big data, stating:²⁷⁸

"Kindly find attached an acquisition opportunity for your consideration.

UBS is the *exclusive sell-side advisor*-we will circulate a nda should you express
N an interest in the opportunity." [Italics added.]

O 269. In an email to Mr. Choi, sent at 8:44 am on 22 May 2015, Mr. Devon Fu attached
P a copy of the Project Frontier Confidentiality Agreement.²⁷⁹

*The evidence of Mr. Kingsley Chan and Mr. Gao Yu - instructions to Mr. Choi to engage in
Q negotiations with LR Capital*

R 270. In his witness statement, Mr. Kingsley Chan said that :²⁸⁰

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²⁷⁴ Bundle 19, page 6172.

²⁷⁵ Bundle 19, page 6172.

²⁷⁶ Bundle 20, page 6840.

²⁷⁷ Bundle 20, page 6869.

²⁷⁸ Bundle 20, page 6893.

²⁷⁹ Bundle 20, page 6912.

²⁸⁰ Bundle 35, pages 11825-11826, at paragraph 6.

A “In or around mid-April 2015, the Selling Shareholders were informed that a
B company known as L.R. Capital (“LRC”) (through a consortium to be formed
C with China Minsheng Investment Group (“CMIG”) were interested in entering
D the Hong Kong financial and capital markets and was particularly interested in
E acquiring an established platform such as AMTD. In fact, LRC had prior to the
kick-off of Project Frontier submitted an unsolicited verbal offer to acquire a
controlling stake in AMTD at a valuation of HKD1.4 billion . In light of LRC’s
reiteration of its interest in acquiring LRC, the Selling Shareholders asked
Calvin (acting on behalf of UBS) *to proactively engage in dialogue with them
and meeting between the management teams was subsequently set up on 20 April
2015.*” [Italics added.]

F 271. Mr. Kingsley Chan went on to refer to his email to Mr. Choi, dated 18 April
G 2015. He claimed that in the email he had told Mr. Choi that the selling shareholders understood
H his “...confidence in LRC and CMIG’s interest”. He went on to assert that in the email he
reminded Mr. Choi that:²⁸¹

I “...it would also be important for UBS, as the sell-side advisor, not to disregard
J interest from other potential parties as we would need to ensure the project could
still progress *in the event that the negotiations with LRC* did not come to fruition.”
[Italics added.]

K He explained that the selling shareholders were:²⁸²

L “...keen to leverage Calvin’s insight and relationship with potential buyers that
M have demonstrated genuine interest to secure a transaction with high degree of
certainty. As stated above, *a meeting with LRC took place on 20 April 2015.*”
[Italics added.]

N 272. Notwithstanding his assertion to the contrary, Mr. Kingsley Chan did not make
O any reference at all to LRC in his email, dated 18 April 2015. Rather, he referred to CMI:²⁸³

P “...we understand your view and confidence *regarding CMI’s interest*, yet it
would be important as sell-side advisor not to disregard interest (and hence value)
from other potential parties...”

Q He did not explain, nor was he asked to do so in his oral testimony, why he referred to only
R CMI in the email, rather than LRC or CMI and LRC.

T ²⁸¹ Bundle 35, page 11826, at paragraph 7(2).

U ²⁸² Bundle 35, page 11826, at paragraph 8.

V ²⁸³ Bundle 16, page 5394.

A 273. It is to be noted that in his witness statement Mr. Gao Yu asserted that, although
B Mr. Kingsley Chan made reference specifically to CMI in the email he sent to Mr. Choi and
C copied to Mr. Gao Yu, dated 18 April 2015, that, “I understood that to mean the interest from
D LRC”.²⁸⁴ For his part, he explained that in the first quarter of 2015 AMTD had received a verbal
E offer from LR Capital on a valuation of AMTD of \$1.4 billion.²⁸⁵ Of subsequent developments,
F he said:²⁸⁶

E “During this stage of identifying suitable buyers, Mr. Choi informed me and
F Kingsley about interest from LRC to acquire AMTD. As mentioned above, prior
G to the engagement of UBS, the board of AMTD had already received an
H unsolicited verbal offer from LRC on the basis of a valuation of HKD 1.4 billion.
Given that LRC had reiterated their interest through Mr. Choi, Kingsley and I
specifically asked Mr. Choi and the team he led at UBS to prioritise LRC, and
to pursue active dialogue with LRC in order to achieve a swift and favourable
deal...”.

I 274. Mr. Gao Yu said that he understood, that in the context of those instructions to
J Mr. Choi, and with his consent, the latter had provided LR Capital with documents by email,
namely:²⁸⁷

- K (i) 20 April 2015, a copy of a non-disclosure agreement;
L (ii) 13 May 2015, briefing material;
M (iii) 19 May 2015, information on the financial structure of AMTD; and
N (iv) 20 May 2015, the teaser.

N *20 April 2015 meeting*

O 275. Although there was a reference in an email sent by Mr. Choi to Mr. Kingsley
P Chan at 10:15 am on 20 April 2015 about a prospective meeting to be held on 21 April 2015
Q between CMI, Mr. Kingsley Chan and AMTD core management, there was no reference at all
to the involvement of LR Capital. In the email, Mr. Choi said:²⁸⁸

R “Among other investors, *cmi is very interested in this deal based on my various*
S *dialogues and tactful positioning of the opportunity with cmi top senior mgt*

S They will especially visit HK tomorrow would like to meet with you all with
the following suggested schedule for tomorrow (21st):

T ²⁸⁴ Bundle 35, page 11835, at paragraph 13 (2).

T ²⁸⁵ Bundle 35, page 11832, at paragraph 6.

T ²⁸⁶ Bundle 35, page 11834, at paragraph 12.

U ²⁸⁷ Bundle 35, pages 11834-11835, at paragraph 12.

U ²⁸⁸ Bundle 16, page 5418.

A *2 pm: meeting with alan and kingsley to discuss deal parameters
B *3 pm to 5 pm: meeting with amt core management (amt mgt to talk about and
C share amtd key business lines and development, strategies and performances)
and Q&A
D Please kindly confirm.”

E 276. Further, although there were repeated references to CMI in the exchange of
F emails that followed between Mr. Kingsley Chan, Mr. Alan Tsang and Mr. Choi as
G arrangements were made for the meeting to take place there was no reference at all to LR
H Capital.²⁸⁹

I *(vi) 22 May 2015 - draft of an email for LR Capital to send to UBS*

J 277. In an email sent to Mr. Choi, at 12:01 on 22 May 2015, under the Subject
K heading: Draft, Mr. Devon Fu provided a draft of a letter to Mr. Choi:²⁹⁰

L “Dear Calvin,

M Thanks for the introduction. We are quite interest in this opportunity and we
N would like to follow up closely with the company and the team to close the
O transaction smoothly. Thanks!”

P 278. In an email to Mr. Choi, copied to Mr. Devon Fu, sent at 3:23 pm on 22 May
Q 2015 and under the Subject heading: Project Frontier NDA_LRC, Mr. Howard Cong replied in
R exactly the terms set out in Mr. Devon Fu’s draft letter to Choi, adding ²⁹¹ :

S “Attached please kindly find our executed NDA from our side for your reference.
T Thanks much!”

U Attached to the email was the Confidentiality Agreement signed by Mr. Cong Lin as Managing
V Partner on behalf of LR Capital Management Company (Cayman) Limited.

III. The negotiation of the Engagement Letter

(i) 31 March 2015

279. In an email, sent on 31 March 2015 to Mr. Choi, under the Subject heading: EL
with UBS, Mr. Kingsley Chan attached what he described as being “collective comments from

²⁸⁹ Bundle 16, pages 5417-5418.

²⁹⁰ Bundle 20, page 6913.

²⁹¹ Bundle 20, page 6916.

A shareholders of AMTD (holding 95.16% of the group) on the engagement letter.”²⁹² Attached
B to the email was a draft of the Engagement Letter, dated 18 March 2015.²⁹³

C *Role of UBS*

D 280. Of the role of UBS, clause 1 provided that UBS was to act for AMTD Group
E Company Limited as “...exclusive financial adviser in connection with the potential
F Transaction... for up to one year” from the date of the engagement letter.” ‘Transaction’ was
G defined as, “...the sale, transfer or other disposition of all or a controlling stake of the share
capital or assets of AMTD Group Company Limited and its subsidiary entities”.²⁹⁴ UBS was
required to provide “financial advice and assistance”, including:

- H (a) in consultation with you, developing, updating and reviewing a list of
potential purchasers and contacting potential purchasers (“Potential
Investor List ”);
- I ...
- J (c) together with your other professional advisers, assisting in the negotiation
of the terms of the Transaction for and on your behalf”.

K *Exclusivity*

L 281. Under the heading ‘Exclusivity’, clause 2 provided that:²⁹⁵

M “UBS shall work exclusively with the Company and shall not serve as an advisor
N in the sale of any other companies in a transaction or series of transactions
substantially similar (sic) the Transaction... Notwithstanding anything to the
contrary in this clause nothing shall preclude UBS from assisting or advising a
buyer requiring financing for the Transaction or arranging such financing.”

O *Fees*

P 282. Clause 3 addressed the topic of fees to be paid to UBS by AMTD and stipulated
Q two fees, namely a “Success fee” and an “Incentive fee”. Both fees were stipulated to be payable
R on the completion of the Sale and Purchase Agreement in respect of the Transaction: the
Success fee was stipulated to be 1.5% of the equity value of the Company, with “a minimum
S fee of US\$2 million” and the Incentive fee, payable at the sole discretion of the Company,

T ²⁹² Bundle 15, page 5136.

U ²⁹³ Bundle 15, pages 5137-5163.

V ²⁹⁴ Bundle 15, page 5137 Clause 1.

²⁹⁵ Bundle 15, pages 5138.

A stipulated to be 4% of the incremental value that exceeds \$1.2 billion for 100% of the equity
B value of the Company.²⁹⁶

C *Standard Terms*

D 283. Clause 4 of the draft agreement provided that UBS's "...standard terms and
E conditions applicable to financial advisory mandates ("**Standard Terms**") are set out in the
F attached Schedule A which is incorporated by reference into this letter. This letter and the
Standard Terms shall be together referred to as the 'Engagement Letter.'²⁹⁷

G *Conflicts of interest*

H 284. Clause 6 of the Standard Terms and Conditions, attached to the Engagement
I Letter, addressed the topic of 'Conflicts of interest' and, notwithstanding that such conduct
J might give rise to conflicts of duties under the Letter of Engagement, permitted other members
K of the UBS Group to provide services to third parties, "...provided that reasonable and industry-
standard information barriers are in place and that persons performing such actions do not have
access to the information provided by the Company."²⁹⁸

L *(ii) 17 April 2015*

M 285. An email, sent by Mr. Choi on 17 April 2015 to Mr. Kingsley Chan, under the
N Subject heading: EL with UBS, provided "feedback from our asia new business committee" on
the Engagement Letter.²⁹⁹ Four topics were addressed: (i) minimum success fee; (ii) incentive
fee; (iii) sell-side process; and (iv) exclusivity.

O *Fees*

P 286. Of the minimum success fee, Mr. Choi said that, having obtained a special
Q exemption and approval internally, UBS had "proposed a usd 2.8m min success fee", but had
R now obtained special approval for a "reduced min success fee of usd 2.5 m". Of the incentive
S fee, Mr. Choi said that UBS had proposed 5%, but was prepared to accept 4% if the minimum
success fee was reduced to usd 2.5m, and the incentive fee had "a component of 0.5% out of
the 4% to be paid in any case" on completion.

T ²⁹⁶ Bundle 15, pages 5138-5139.

U ²⁹⁷ Bundle 15, page 5139.

V ²⁹⁸ Bundle 15, pages 5143-5144.

²⁹⁹ Bundle 16, page 5389.

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Exclusivity

287. Of exclusivity, Mr. Choi said:

“...our committee is of firm view that we do not give exclusivity like the same for equities, debt and other advisory projects we conduct day-to-day in the markets.”

The email concluded by inviting, “...your support and kind understanding of the above feedback from our committee...”.

(iii) 18 April 2015

288. In an email to Mr. Choi sent at 11:04 on 18 April 2015, under the Subject heading: EL with UBS, Mr. Kingsley Chan responded to Mr. Choi’s email, “We have discussed. In principle, we are ok with your counter proposal on the commercial points below. Please send us the revised letter so that we can review soonest.” The text went on to state:³⁰⁰

“-- we understand your view on confidence regarding CMI’s interest, yet it would be important as *sell-side advisor* not to disregard interest (and hence value) from other potential parties (eg GFS etc - who has clearly stated interest in HK WM platform). We trust you will strike a good balance between timing/value/certainty.” [Italics added.]

289. In his witness statement Mr. Gao Yu said that, although the Engagement Letter was not signed until September 2015, “...the terms of the engagement letter were agreed by the parties in or around April 2015.”³⁰¹ However, in his Supplemental Statement, dated 26 November 2022, Mr. Gao Yu clarified that statement. What had been agreed at that date was only “the general terms”. The “precise provisions” had not been finalised by then. There were “changes in subsequent drafts”: “success fee” and/or an “incentive fee” was changed to a “matching fee”.³⁰²

290. In that context, it is to be noted that the name of LR Capital did not appear on any of the lists of potential buyers sent by email on 13 and 31 March 2015 and 8 April 2015

³⁰⁰ Bundle 16, page 5394.

³⁰¹ Bundle 35, page 11833, at paragraph 9.

³⁰² Bundle 35, page 11961, at paragraph 4(I).

between Mr. Choi and Mr. Kingsley Chan.³⁰³ The name of LR Capital first appeared on a list of potential buyers in an email sent by Mr. Choi to other members of UBS on 8 May 2015.³⁰⁴

(iv) 23 April 2015

291. In an exchange of emails, initiated by MSPE on 23 April 2015, under the Subject heading: EI with UBS, contact was established between the in-house lawyers of MSPE and UBS for the purpose of reviewing the Engagement Letter between the parties. An email, sent at 8:25 pm on 23 April 2015, from MSPE to UBS, copied to Mr. Kingsley Chan, stated:³⁰⁵

“Please find attached a revised version of your engagement letter. Could we have a call early tomorrow morning to try settle any pending points?”

The revised version is not available to the Tribunal.

(v) 24 - 27 April 2015

292. In an exchange of emails internally within UBS on and between 24 to 27 April 2015, all of which involved Mr. Choi, discussions took place in respect of the Engagement Letter. In an email, sent at 10:43 am on 24 April 2015 to Mr. Choi, reference was made apparently to the revised version provided by MSPE the previous day, “...please see below”. Attention was drawn to the amendments made by MSPE to an earlier draft circulated by UBS. In an email, sent at 3:05 am on 26 April 2015, Mr. Choi wrote:³⁰⁶

“1. Financing for buyers: I will get mspe to support it and revert
2. EL parties: mspe agree this to be a EL btw ubs and selling shareholders”

293. In an email to Mr. Choi, sent at 11:12 on 27 April 2015, Mr. Choi was asked, “Please also advise if the amendments to the incentive fee are fine”.³⁰⁷

294. In an email from Mr. Choi, sent at 11:20 am on 27 April 2015, to Mr. Kingsley Chan under the same Subject heading, Mr. Choi wrote:³⁰⁸

“For your eyes only

³⁰³ Bundle 6, pages 2085, 2131 and 2132.

³⁰⁴ Bundle 6, pages 2167-2174

³⁰⁵ Bundle 17, page 5590.

³⁰⁶ Bundle 17, page 5589.

³⁰⁷ Bundle 17, page 5588.

³⁰⁸ Bundle 17, page 5588.

Also,pls kindly advise what are the amendments to the incentive clause?"

(vi) 4 May 2015

295. In an email to Mr. Choi, sent on 4 May 2015, under the Subject heading: EL with UBS, Mr. Kingsley Chan wrote:³⁰⁹

“When you have a moment, we can discuss. I have gone back and asked them to tone down comments, so in short

- 1) UBS can act advisor/underwriter for buy side financing - per your request; *but cannot act as an advisor for buyer this same transaction for obvious reasons*
- 2) UBS can act advisor for sell side for similar type of business, per your request
- 3) incentive fee - to make sure we are on the same page, the 0.5% (out of the 4%) automatically kicks is on the portion exceeding HKD 1.2bn equity valn; the same basis as the 4% discretionary incentive fee”

[Italics added.]

296. Attached to the email was a draft Engagement Letter to be signed between UBS and AMTD Group.³¹⁰ Of the date of the letter, it stated, “ ___ May, 2015”. The description of the ‘Role of UBS’ was the same as had been provided in clause 1 of the Engagement Letter attached to the email of 31 March 2015 and the executed Engagement Letter, dated 10 September 2015, namely that of AMTD’s “...exclusive financial adviser in connection with the potential Transaction”. Similarly, the description of the “financial advice and assistance” to be provided by UBS was as described in those two documents, at clause 1 (a) and (c) of the former and clause 1 (a) and (b) of the latter document.

(vii) 7 May 2015

297. In an email to Mr. Kingsley Chan, sent on 7 May 2015, under the Subject heading: EL with UBS, Mr. Choi wrote under the text heading, ‘Engagement letter and fee mechanism’:³¹¹

“I summarised below the final engagement terms I have sent to you earlier.”

³⁰⁹ Bundle 17, page 5588.

³¹⁰ Bundle 17, pages 5592-5627.

³¹¹ Bundle 17, pages 5747-5749.

A The summary was the text of the letter that Mr. Choi had sent to Mr. Chan in the email of 17
B April 2015. In the accompanying text, Mr. Choi said:³¹²

C “We will definitely spend all our efforts to create most value and aim for the
D highest price possible amongst other criterion/factors to evaluate interested
E buyers”.

(viii) 8 May 2015

E 298. In an email to Mr. Choi, sent on 8 May 2015 under the Subject heading: EL with
F UBS, Mr. Kingsley Chan wrote:³¹³

G “See attached.

H On fees and sell side exclusivity:

I -- all based on your committee’s requests

J On conflicts:

K 1) UBS can act advisor/underwriter for buy side financing - per your request;
L *but cannot act as buy-side advisor for this same transaction for obvious
M reasons*

N 2) UBS can act advisor to sell-side for similar type of business... per your
O request”

P [Italics added.]

K The attachment is not available to the Tribunal.

L 299. In his Supplemental Witness Statement, Mr. Kingsley Chan sought to explain
M his statement in the email that it was “for obvious reasons” that he had told Mr. Choi that he
N “cannot act as buy-side advisor for the same transaction”:³¹⁴

O “...if UBS acted as an advisor for a particular purchaser, that would create
P conflict with its role as matcher to look for multiple purchasers. Put another way,
Q if UBS advised one particular purchaser, it might not carry on the task of locating
R other quality prospective purchasers in an appropriate manner. ”

P 300. However, he asserted that the situation changed, after the receipt of LR Capital’s
Q Binding Offer on 29 May 2015:

R “Of course, this was no longer a concern after the Selling Shareholders received
S the Offer from LRC...as the Offer was in principle satisfactory to us, and it was
T thus no longer necessary to look for other potential purchasers.”

T ³¹² Bundle 17, page 5748.

U ³¹³ Bundle 17, page 5747.

V ³¹⁴ Bundle 35, page 11854, at paragraph 4.

A 301. Of the role of UBS following receipt of LR Capital's Binding Offer on 29 May
B 2015, Mr. Kingsley Chan said in his witness statement:³¹⁵ B

C "After 29 May 2015 (and up to the completion of the sale on 19 June 2015),
D UBS was no longer expected to play, no longer played, the role of a matcher or
E introducing agent in the sale. It was no longer necessary for UBS to look for
F multiple potential buyers, because the terms of the offer received from LRC on
G 29 May 2015 were in principle satisfactory to the Selling Shareholders... At
H around this point, UBS and Calvin became responsible primarily for relaying
I information and resolving outstanding details between LRC and the Selling
J Shareholders..."

(ix) 11 May 2015

G 302. In an email to Mr. Kingsley Chan and Mr. Choi, sent by Mr. Kevin Jia at UBS
H on 11 May 2015, it was stated that attached was a "revised EL for your reference."³¹⁶ The
I attachment is not available to the Tribunal.

(x) 13 May 2015

J 303. In an email to Ms. Emily Shi, Mr. Choi and others at UBS, sent at 07:11 on 13
K May 2015, Mr. Kingsley Chan said:³¹⁷ K

L "AMTD group will sign the EL and send to you today. Once received, pls
M discuss with your team to have the process launch."

M 304. Although, further emails were exchanged on 13 May 2015 between Ms. Emily
N Shi and Mr. Kingsley Chan about concluding the drafting process and signing the Engagement
O Letter, that was not done until 10 September 2015.

22 June 2015

P 305. In an internal email within UBS, under the Subject heading: BRG updates, sent
Q on 22 June 2015 to the Heads of CCS, Mr. Choi provided an update of the progress of work
R with MSPE in respect of the sale of shares in AMTD:³¹⁸ R

S "AMTD sellers include MSPE, Management Investors and Blackpine Private
T Equities. Cheung Kong will remain as a shareholder in the company. MSPE
U introduced L.R. Capital, a Canada based global alternate asset manager and
V investment company, to an exclusive process, and dropped the sell-side process."

³¹⁵ Bundle 35, page 11854, at paragraph 5.

³¹⁶ Bundle 17, page 5864.

³¹⁷ Bundle 17, page 5863.

³¹⁸ Bundle 25, page 8633.

A As our work has never formally started and we are still negotiating on the details
B of the EL (including terms of which MSPE is very much against such as how to
C safeguard our receiving of the final payment after the conclusion of the deal
including our ask for MSPE to pay USD1m upon signing of SPA and opening
D an escrow account etc), MSPE suggested to drop UBS sell side role as we have
E not started to perform any work as yet.

D Fortunately, I know L.R. Capital well to ask for the buyer side of support to
E request the sell-side to provide some sort of coordination and support along the
deal by an *intermediary*, and I secured also support from blackpine of which I
F serve as the PCB. MSPE finally agreed to offer us a 1% “*matching fee*” and keep
G our name as “*self-side advisor*”.

F No work is required other than certain project coordination and top-level support
G directly handled by me L.R.C. will sign definitive documents with AMTD in the
coming week.

H Please approve the 1% fee given ...”
[Italics added]

I 306. In cross-examination, Mr. Cong Lin appeared to agree that the acronym “PCB”
J meant ‘primary coverage banker’. He did not provide an answer to any of the repeated questions
K posed by Mr. Li that the tenor of the email made it clear that as on 22 June 2015, Mr. Choi was
L not the primary coverage banker of any companies of the LR Capital Group. However, having
been shown the UBS records that evidenced the commencement of that role of Mr. Choi on 28
M July 2015, Mr. Cong Lin indicated that he had “no problem” with those records.³¹⁹

M *UBS’s letter to the Commission: 3 August 2018*

N 307. In its response, dated 3 August 2018, to the Commission’s earlier Notice that
O UBS provide details of the circumstances in which the LR Capital became a buyer of AMTD’s
shares, UBS referred specifically to the email from Mr. Choi, dated 22 June 2015, of which it
P said:³²⁰

P “UBS has not identified any evidence showing circumstances, in addition to the
Q above, surrounding MSPE’s purported introduction of LR Capital.”

Q *Mr. Kingsley Chan*

R 308. In his Supplemental Witness Statement, dated 25 November 2022, Mr. Kingsley
S Chan referred specifically to the email from Mr. Choi, dated 22 June 2015, to the Heads of CCS.
T Of that, he said:³²¹

U ³¹⁹ Transcript, page 338.

U ³²⁰ Bundle 2, pages 628-629.

V ³²¹ Bundle 35, pages 11855-11856, at paragraph 6(4).

“Calvin’s explanation in this email is consistent with my understanding of what the Selling Shareholders expected of UBS in its role as an intermediary after LRC’s offer was received.”

309. Earlier in that Supplemental Witness Statement, Mr. Kingsley Chan said, “... after the Selling Shareholder’s received LRC’s Offer, a competitive bidding process was no longer necessary so it was no longer necessary to find other potential purchasers, and that the sale proceeded, and was ultimately completed, through principal-to-principal negotiation with LRC thereafter.”³²² The change of title in respect of the fees received by UBS from “success fee” and/or “incentive fee”, in the earlier drafts of the Engagement Letter, to “matching fee” in the executed version of the Engagement Letter, dated 10 September 2015, “...was intended to reflect more accurately the role of UBS as an intermediary or go-between between the Selling Shareholders and LRC”. Similarly, the reduced fees, “...reflected the more limited role played by UBS... after a competitive bidding process was no longer necessary.”³²³

310. However, in cross-examination, the following exchange ensued with Mr. Kingsley Chan:³²⁴

Q. The proposition is, even after LRC indicated an interest and even though Calvin was confident about that interest, you and the other selling shareholders wanted UBS and Calvin Choi to be on the lookout for other potential buyers because the negotiations with LRC might not come to fruition; correct?

A. Correct.

Q. So you regarded it as UBS and Calvin Choi’s job, as sell-side adviser, to be on the lookout for other potential buyers; correct?

Q. Correct.

A. And that would be their job until all the way up to the time when the deal was completed; correct?

A. By signing and closing, yes.

Q. Now, we know negotiations with LRC did go well and a deal was eventually done - to use your words, “signed and closed” - and the shareholders -- and the selling shareholders made substantial profits; correct?

A. Correct.

³²² Bundle 35, page 11855, at paragraph 6(1).

³²³ Bundle 35, page 11855, at paragraph 6(2).

³²⁴ Transcript, page 235 B-G.

A 311. In re-examination, Mr. Kingsley Chan resiled from that evidence. He asserted
B that he had testified in that way in the context of being questioned about:³²⁵

C A. ... an unsigned engagement letter, whether, based on those terms that were
D set out in the engagement letter, that our interest as sellers would be
E protected and the role of the main parties, UBS and Calvin Choi, would be
F carried out. So that was the -- that was what was being asked and that's
G why I said, based on -- that's what I was trying to say: if based on that
H version of the engagement letter, then, correct, then, until signing and
I closing, the financial adviser or however the parties would like to call it,
J that would be the function and that would be the role. But I didn't know,
K at that time, when we would get onto try to discuss about the finalised
L letter as well as this supplementary witness statement. So, based on the
M initial engagement letter, that was what was required to be said."

H 312. In light of that explanation and on the basis that he was being asked about his
I Supplemental Witness Statement he was asked:³²⁶

I Q. ... how does that impact on your answer?

J A. My answer would be the supplemental witness statement is exactly what I
K meant and it clearly describes and hence I explained -- tried to explain
L earlier I was trying to clarify what could have been misinterpreted.

L *10 September 2015: Engagement Letter*

M *The role of UBS*

M 313. As noted earlier, clause 1 of the Engagement Letter dated 10 September 2015
N between UBS and AMTD, which Mr. Choi signed together with Ms. Emily Shi on behalf of
O UBS, described the role of UBS as being:³²⁷

O "...to act as your exclusive financial adviser in connection with the potential
P Transaction... with potential purchasers for up to 1 year, since 26 May 2015 (the
Q "Effective Date").

Q 314. The letter went on to stipulate the financial advice and assistance to be provided
R by UBS as including:³²⁸

R "a)...developing, updating and reviewing a list of potential purchasers and
S contacting potential purchasers";

T ³²⁵ Transcript, page 280 F-L.

U ³²⁶ Transcript, page 280 N-P.

V ³²⁷ Bundle 6, page 2071, clause 1.

³²⁸ Bundle 6, page 2072.

b)... assisting in the negotiation of the terms of the transaction for and on your behalf”.

315. The clause went on to stipulate that AMTD acknowledged and agreed that:

“(i) UBS...may provide... financing for one or more prospective purchaser(s)... in connection with the Transaction”

...

(iii) conflicts of interest (actual or potential)...may arise as a result...

(iv) UBS...will be free to disclose confidential information obtained directly or indirectly from the Company in connection with the Engagement to any division of UBS...who are engaged in the provision or arrangement of Financing services to any Purchaser(s) to the extent that such disclosure is made pursuant to or required by UBS’s risk control procedures relating to the provision or arrangement of such Financing, **provided that**, subject to the foregoing, the provisions of Clause 6 of the Standard Terms shall continue to apply...”

Fees

316. Of the fees to be paid to UBS, it was agreed:³²⁹

“(a) *Matching Fee*

Upon completion...a matching fee... of 1.0% of the total proceeds received by the sellers for the Transaction shall be payable to UBS.”

Standard Terms

317. Clause 3, in exactly the same language as the clause in the draft agreement attached to the email dated 31 March 2015, provided that UBS’s Standard Terms were incorporated into the Engagement Letter.

Standard Terms and Conditions

318. Clause 6, of the Standard Terms and Conditions, under the heading Conflicts of Interest, was drafted in the same language as the original version of that paragraph in the Standard Terms and Conditions attached to the Engagement Letter in the email sent on 31 March 2015, save that (b) now read:³³⁰

³²⁹ Bundle 6, page 2074.

³³⁰ Bundle 6, page 2079.

“...provided that reasonable informational barriers are in place and subject to the terms of the Engagement Letter, UBS and any other member of the UBS group may, at any time”

rather than:³³¹

“...provided that reasonable and industry-standard informational barriers are in place and that the person’s performing such actions do not have access to the information provided by the Company, and subject to section 2 of the Engagement Letter, other members of the UBS group other than UBS may, at any time:...”.

Part 6 - Conflict of interests

The Applicant’s submissions

319. In his written submissions, Mr. Shieh addressed the phrase “conflict of interest” in three contexts, namely: (i) the general law; (ii) the SFC Code of Conduct and the CFA Code of Conduct; and (iii) UBS’s Policies and Guidelines.

(i) General law - conflict of interest

320. Mr. Shieh submitted that under the general law a conflict of interest denotes a conflict between a fiduciary’s duty to his principal and his interest. If there is no duty, there is no conflict.³³² The existence of the conflict was to be determined by the application of an objective test which would lead a reasonable observer to conclude that there is a “real sensible possibility” of conflict.³³³

321. First, it was necessary to delineate the scope of the fiduciary duty. Secondly, to identify the nature of the relevant interest. The latter required the presence of a “personal interest”, namely a “...personal concern of possible significant pecuniary value” in a transaction effected by a fiduciary.³³⁴

322. Mr. Shieh contended that where the fiduciary had no personal interest in the transaction, but there existed a “real risk of conflict between his duty and personal loyalties”,

³³¹ Bundle 15, page 5143.

³³² Snell’s Equity, 34th Ed. At 7-018.

³³³ *Poon Ka Man Jason v Cheng Wai Tao* (2016) 19 HKCFAR 144; Spigelman NPJ at paragraph 76, approving the statement of Lord Upjohn in the House of Lords in *Boardman v Phipps* [1967] 2 AC 46, at page 124 C.

³³⁴ The Applicant’s Written Opening Submissions, paragraph 110: *Grand Field Group Holdings Ltd. v Chu King Fai* [2016] 1 HKLRD 1316; Cheung JA, at paragraph 4.8, citing with approval ‘Fiduciary Duties: Directors and Employees’ 2nd Ed. at 2.124.

A there was a burden on the fiduciary to show that the transaction was demonstrably in the best
B interests of the principal.³³⁵ B

C 323. A fiduciary acts in breach of his fiduciary duty if he acts for two principals, to C
D whom he owes conflicting duties, and the fiduciary puts himself in a position where his duty to D
E one principal is in a conflict with his duty to the other. It is a breach of duty if a fiduciary puts E
F himself in a position where his duty to one principal *may* conflict with his duty to the other F
G principal.³³⁶ G

F (ii) *The SFC Code of Conduct and the CFA Code of Conduct* F

G 324. Mr. Shieh invited the Tribunal to note that the specific provisions upon which G
H the Commission relied in the SFC Code of Conduct were General Principle 6 and Paragraph H
I 10.1 and Paragraphs 4 and 4.1 of the CFA Code of Conduct. I

I (i) General Principle 6 of the SFC Code of Conduct provides that: I

J “A licensed or registered person should try to avoid conflicts of interest, and J
K when they cannot be avoided, should ensure that its clients are fairly treated” K

K (ii) Paragraph 10.1 of the SFC Code of Conduct provides that: K

L “Where a licensed or registered person has a material interest in a transaction L
M with or for a client or a relationship which gives rise to an actual or potential M
N conflict of interest in relation to the transaction, it should neither advise, nor N
O deal in relation to the transaction unless it has disclosed that material interest O
P or conflict to the client and has taken all reasonable steps to ensure fair P
Q treatment of the client.” Q

N (iii) Paragraph 4 of the CFA Code of Conduct provides that: N

O “A Corporate Financial Adviser should avoid engaging in work that is likely O
P to involve conflicts of interest.” P

P (iv) Paragraph 4.1 of the CFA Code of Conduct provides that: P

Q “A Corporate Finance Adviser should: Q

R (a) take all reasonable steps to avoid situations that are likely to involve R
S a conflict of interest; S

R (b) not unfairly place its interests above those of its clients; and R

T ³³⁵ *Ibid*, Cheung JA, at paragraph 4.8, citing with approval ‘Fiduciary Duties: Directors and Employees’ 2nd Ed. T
U at 2.125. U

U ³³⁶ Snell’s Equity, 34th Ed. at 7-036 and 7-037.; citing Millet LJ in *Bristol and West Building Society v Mothew* U
V [1998] Ch 1 at page 18 H. V

(c) withdraw from, or decline to accept, a mandate where a material conflict of interest arises with its client that cannot be resolved through its client giving its informed consent.”

325. Mr. Shieh submitted that, given that the SFC Code of Conduct and the CFA Code of Conduct were instruments which guide³³⁷ the SFC in considering whether a person is fit and proper to be a licensed person the SFC “...must be taken to have enacted” the Codes against the backdrop of the general law and to have adopted the “...established legal meaning” of the phrase “conflict of interest”. Further, given that the phrase “conflict of interest” was not defined in either of the Codes, its meaning should be read, “...consistently with its meaning under the general law.” Support for that submission was to be found in the fact that the two Codes expressly stated that they did not override any provision of the law.³³⁸

(iii) UBS’s Policies and Guidelines

Not part of Mr. Choi’s contract of employment

326. Of the Commission’s reliance on various provisions of UBS’s Policies and Guidelines in the proceedings before the Tribunal, Mr. Shieh invited the Tribunal to note that Clause 19 of Mr. Choi’s employment contract with UBS stipulated that they did not form part of that contract of employment.³³⁹

327. Mr. Shieh submitted that, as such, they were to be interpreted as documents unilaterally published by UBS by application of the same principles relevant to the interpretation of commercial contracts, namely the intention of the parties was to be identified by reference to the facts known or assumed to be known by the parties at the time the document

³³⁷ SFC Code of Conduct, at page vii: **Explanatory Notes:**

“The Commission will be *guided* by this Code of Conduct... in considering whether a licensed or registered person satisfies the requirement that it is fit and proper to remain licensed or registered, and in that context, will have regard to the general principles, as well as the letter, of the Code.” [Italics added.]

CFA Code of Conduct, at paragraph 1.4: **Enforcement**

“The SFC will use this code as a benchmark, along with other SFC’s code and guidelines, against which a Corporate Finance Adviser’s fitness and properness will be measured.”

³³⁸ SFC Code of Conduct, at page viii; Explanatory Notes: and CFA Code of Conduct, at paragraph 1.3; **Status of this Code**

“This Code does not have the force of law and should not be interpreted in a way that it would override the provisions of any law.”

³³⁹ Applicant’s written Opening Submissions, paragraph 119. Bundle 1, page 233:

“Policies and Procedures and Code of Conduct

You shall faithfully perform the duties assigned to you by the Firm and shall fully comply with all of the Firm’s regulations, policies and procedures (including, but not limited to, the Firm’s Employee Handbook) as implemented and/or amended in the Firm’s sole discretion from time to time. However, all such regulations, policies and procedures do not and shall not form part of the terms and conditions of your employment contract with the Firm.”

A was executed.³⁴⁰ Accordingly, it followed that it was to be taken that the general law and
B accepted principles were known to the parties and that they were applicable. ³⁴¹ B

C 328. Although Mr. Shieh acknowledged that certain provisions in the Policies and C
D Guidelines did identify interests which were capable of giving rise to a conflict, he contended D
E that those provisions did not define “...the circumstances in which a UBS employee would find E
himself in a position of conflict.”³⁴²

F 329. Having invited the Tribunal to note that, in his witness statement, Mr. Andy Lee F
G had said that the purpose of UBS’s Policies and procedures for managing conflicts was:³⁴³ G

H “...to ensure that (1) UBS’s duties to act in its clients’ best interest would not H
be compromised by actual or apparent conflicts arising from diverging interests
by UBS or any of its employees”

I Mr. Shieh submitted that, in consequence, the concept of “conflict of interest” ought to be read I
J in accordance with the general law, namely that it denoted a conflict between “a person’s duty J
to his principal and his interest”.

K 330. It is to be noted that Mr. Andy Lee went on to add of the purpose: K
L

M “...and (2) UBS’s own legitimate interests, including regulatory compliance M
and reputational interests, would not be compromised .”

N *Fiduciary duties* N

O 331. Of the incidence of fiduciary duties, Mr. Shieh submitted that an employee does O
P not owe fiduciary duties only by reason of his status as such. Contractual provisions as to rights P
and duties may limit or displace any fiduciary duty.³⁴⁴ Mr. Choi/UBS did not owe any fiduciary
duties to Xinte in Project Oasis or to the selling shareholders in Project Frontier. ³⁴⁵

Q (i) UBS was never formally engaged by Xinte for the pre-IPO investment. That Q
R was done through GF Securities. UBS did not owe any duty to Xinte nor did R

S ³⁴⁰ *Marley v Rawlings* [2015] AC 129, Lord Neuberger at page 144, paragraphs 19 and 21.

S ³⁴¹ Applicant’s Written Opening Submissions, paragraph 119-121. *The Interpretation of Contracts* 7th Ed.-
Lewison, at 4.32-4.39.

T ³⁴² The Applicant’s Written Opening Submissions, paragraph 122.

T ³⁴³ Bundle 33, page 11163, at paragraph 37.

T ³⁴⁴ The Applicant’s Written Opening Submissions, paragraph 136, citing the judgment of Lewison LJ in *Ranson*
U *v Computer Systems PLC* [2012] EWCA Civ 841, paragraphs 20-29 at paragraph 22.

U ³⁴⁵ The Applicant’s Written Closing Submissions, paragraph 3.4.

Mr. Choi owe any personal duty.³⁴⁶ Clause 7(f) of the Standard Terms and Conditions incorporated into the Engagement Letters in both Project Oasis and Project Frontier unequivocally negated any fiduciary relationship between UBS and its clients, “The parties agree that it is not their intention to create a fiduciary relationship between themselves.”³⁴⁷

(ii) Mr. Choi’s role in Project Frontier was that of an intermediary only. That role began after the Binding Offer, dated 29 May 2015. Prior to 29 May 2015 he had only “engaged in exploratory matching work”.³⁴⁸ That was the evidence of Mr. Kingsley Chan and Mr. Gao Yu. UBS’s work as a sell side advisor never formally started.³⁴⁹ Mr. Choi was not a party to the Engagement Letter, dated 10 September 2015. He did not assume personal obligations towards the selling shareholders. He merely acted on behalf of UBS.³⁵⁰

Implied authority/consent

332. Where a principal instructs an agent with knowledge that the agent intends to act for other principals, in circumstances which would create a conflict of interest, the agent is impliedly authorised to act for multiple principals.³⁵¹ Similarly, where the principal was aware that the agent would be placed in a situation of conflict between duty and interest, the principal is to be taken as having “...implicitly consented to and authorised the existence of the conflict.”³⁵²

333. Mr. Shieh contended that any conflict between Mr. Choi’s alleged involvement in LR Capital’s business and his duties to UBS, “must have been implicitly authorised by UBS”.³⁵³ It was asserted that any such conflict:³⁵⁴

“...must be deemed to have been authorised by UBS on the basis that:
(1) UBS had designated Mr. Choi to be coverage banker of LR Capital, and

³⁴⁶ The Applicant’s Written Opening Submissions, paragraph 125.

³⁴⁷ The Applicant’s Written Closing Submissions, paragraph 45; Bundle 3, pages 1204 and 1205; Bundle 6, page 2081.

³⁴⁸ The Applicant’s Written Closing Submissions, paragraph 50.2.

³⁴⁹ The Applicant’s Written Closing Submissions, paragraph 3.4.

³⁵⁰ The Applicant’s Written Opening Submissions, paragraph 128.1.3.

³⁵¹ *Kelly v Cooper* [193] AC 205; the Advice of the Privy Council in the judgment of Lord Browne-Wilkinson at page 214.

³⁵² The Applicant’s Written Opening Submissions, paragraphs 139 and 143.4.

³⁵³ The Applicant’s Written Opening Submissions, paragraph 158.

³⁵⁴ The Applicant’s Written Opening Submissions, paragraph 148.

(2) UBS did so knowing that Mr. Choi would in the course of his employment have to render general assistance and support to LR Capital from time to time.”

The role of an intermediary

334. Mr. Shieh submitted that an intermediary, whose role is simply to stand between two parties to facilitate a negotiation, does not owe any duty to avoid conflict of interest. In particular, “The duties of such an intermediary it may therefore be inferred are to communicate messages honestly.”³⁵⁵ An intermediary:³⁵⁶

“...does not have a duty not to put himself in a position of conflict because he is not an agent and has therefore no principal. However even if such an intermediary is subject to some fiduciary duties, the role does not justify the imposition of a fiduciary duty not to put himself in a position of conflict by ‘acting for two principals’, as to impose such a fiduciary duty would result in the commercial absurdity that he would be unable to act and perform the role inherent in that of an intermediary as someone who stands between two parties to facilitate the relationship.”

Authorisation by informed consent

335. Mr. Shieh submitted that fully informed consent of the principal before or after the breach absolves the fiduciary from liability for what would otherwise be a breach of the no conflict rule. The burden of establishing informed consent for conduct which would otherwise constitute a breach of fiduciary duty lies of the fiduciary. There must be clear evidence that it was given after the fiduciary made full and frank disclosure of all material facts.³⁵⁷ Such consent could be inferred in appropriate circumstances.

(i) Project Frontier

336. In respect of Project Frontier, Mr. Shieh invited the Tribunal to note the evidence of Mr. Gao Yu that MSPE had consented to Mr. Choi emailing ‘marketing material’ to LR Capital.³⁵⁸ In cross-examination, Mr. Gao Yu had agreed with the suggestion that the documents that Mr. Choi had sent to LR Capital were the kinds of documents that he would

³⁵⁵ The Applicant’s Written Opening Submissions, paragraph 140, citing the judgment of Moulder J in *CH Offshore Ltd v Internaves Consorico Naviero SA & Others* [2020] EWHC 1710 (Comm) at paragraph 68.

³⁵⁶ *CH Offshore Ltd v Internaves Consorico Naviero SA & Others*, at paragraph 74.

³⁵⁷ The Applicant’s Written Opening Submissions, paragraph 143; Snell’s Equity, 34th Ed. At 7-015 and 7-019; citing *Boardman v Phipps* [1967] 2 AC 46, Lord Hodson at page 109 D.

³⁵⁸ The Applicant’s Written Opening Submissions, paragraph 154.3.

A have expected him to have provided.³⁵⁹ Mr. Shieh suggested that it was clear that Mr. Gao Yu's
B consent was "a general one". The documents were:³⁶⁰

- C • the AMTD Group's NDA for UBS to sign, sent in an email dated 20 April 2015;
- D • the briefing material for use as a base, sent in an email dated 13 May 2015;
- E • the Reports and Financial statements of AMTD for 2012-2014, sent in emails
dated 19 May 2015; and
- F • the 'teaser', sent in an email dated 20 May 2015.

G 337. Of the issue of the forwarding in emails by Mr. Choi to Mr. Devon Fu of
H allegedly 'confidential' information regarding AMTD and MSPE's negotiating positions,
Mr. Shieh said that, "...there is no actual evidence that the Selling Shareholders actually
I objected to such disclosure."³⁶¹

J *(ii) Project Oasis*

K 338. In respect of Project Oasis, reliance was placed on the evidence of Mr. Howard
L Cong Lin³⁶² that the Term Sheet of CM International, dated 3 March 2015,³⁶³ was sent to LR
M Capital by Mr. Choi with the knowledge and consent of CM International.³⁶⁴

N *Mr. Choi's familial and personal connections with LR Capital*

O 339. Mr. Shieh submitted that the alleged familial and personal connections of
P Mr. Choi with LR Capital did not give rise to a legally relevant conflict of interest. Whilst
Q Project Frontier and the pre-IPO investment of LRCGI was still ongoing, none of the family
R members of Mr. Choi had any interest in any of LR Capital, LRGCI, LRC. Belt and Road or
S LRC Group.³⁶⁵ Further, there was no evidence that Mr. Choi knew of those alleged familial
T interests.³⁶⁶

U ³⁵⁹ Transcript, page 288 H-I.

V ³⁶⁰ The Applicant's Written Closing Submissions, paragraph 24.2.

³⁶¹ The Applicant's written Opening Submissions, paragraph 155.

³⁶² Bundle 35, pages 11849-11850, paragraph 26.

³⁶³ Bundle 12, pages 4203-4232.

³⁶⁴ The Applicant's written Opening Submissions, paragraph 146.2.

³⁶⁵ The Applicant's Opening Submissions, paragraph 51.8.

³⁶⁶ The Applicant's Opening Submissions, paragraph 51.1.

Danny Choi and Bernard Choi

340. Danny Choi and Bernard Choi subscribed for shares in LR Capital on 29 December 2015. That was after the completion of Project Frontier and the pre-IPO investment in Xinte and after Mr. Choi had tendered his resignation to UBS in November 2015. There was no evidence that the subscription had completed and they had become shareholders by 30 December 2015. In any event, the pre-IPO investment in Xinte had been completed much earlier without UBS being engaged.³⁶⁷

341. The Commission's reliance on an email, dated 12 August 2016³⁶⁸, sent by Mr. Austin Mok to colleagues within UBS describing a meeting held that afternoon with Mr. Choi and others at which Mr. Choi confirmed that Danny Choi was "holding shares on behalf of Calvin Choi (son)" was misplaced.³⁶⁹ The document was hearsay. The meeting note did not specify when it was that Danny Choi held the shares for Mr. Choi.

342. Mr. Shieh submitted that the evidence that Mr. Bernard Choi became an authorised signatory, together with Amy Wong, of wealth management accounts with UBS of LR Capital was to no effect.³⁷⁰ The Commission had not suggested how evidence of being a signatory only, rather than a shareholder or director, could give rise to any interest on the part of Mr. Bernard Choi or Mr. Choi and LR Capital.³⁷¹

Amy Wong

343. Of the evidence that, through a wholly-owned company, Enjoy Fun Investments Limited,³⁷² Ms. Amy Wong, Mr. Bernard Choi's "so-called fiancée", was the sole shareholder of LR Capital on its incorporation on 5 December 2014³⁷³ and of the evidence of her subsequent interest in LR Capital, Mr. Shieh submitted that it could not give rise to a conflict of interest in Mr. Choi. There was no evidence of the degree of closeness in the relationship between Ms. Amy Wong and Mr. Bernard Choi nor of Mr. Choi's knowledge thereof.³⁷⁴

³⁶⁷ The Applicant's Written Closing Submissions, paragraph 53.1.2.

³⁶⁸ Bundle 8, pages 2811-2812.

³⁶⁹ The Applicant's Written Closing Submissions, paragraph 53.1.3. Bundle 8, page 2812.

³⁷⁰ The Applicant's Written Closing Submissions, paragraph 53.2. Bundle 1, pages 295-339, at page 332; pages 351-395, at page 346. Bundle 11, pages 3915-3926.

³⁷¹ The Applicant's Written Closing Submissions, paragraph 53.2.

³⁷² Bundle 1, page 350-Certificate of Incumbency, dated 4 December 2014.

³⁷³ Bundle 1, page 349-Certificate of Incumbency, dated 16 December 2014.

³⁷⁴ The Applicant's Written Closing Submissions, paragraph 53.3.

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Madam Mei Ching Chan

344. Of the evidence that Madam Mei Ching Chan, Mr. Choi's mother, had an interest in LRC. Belt and Road, through her shareholding in Strategic Global Investment Corporation, a cornerstone investor in Xinte prior to the IPO, Mr. Shieh submitted that it could not give rise to any real sensible possibility of conflict. It was in Xinte's interest to secure a cornerstone investor.³⁷⁵

345. In any event, there was no evidence that LRC. Belt and Road was related to LR Capital.³⁷⁶ It was Mr. Cong Lin's evidence that he did not recall it to be a subsidiary of LR Capital.³⁷⁷ Further, there had been no challenge to the assertion to the SEHK in a draft response from AMTD, dated 14 December 2015, that LRC. Belt and Road was, "completely unrelated" to LR Capital China Growth I Company Limited or LR Capital Management Company (Cayman) Ltd "in terms of both ownership structure or management composition."³⁷⁸ Given that the SEHK had given permission to print the Prospectus, it was to be assumed that the letter had been sent and its contents accepted.

Christine Kwok

346. Mr. Shieh invited the Tribunal to note that Ms. Christine Kwok's appointment as Chief Operating Officer of AMTD was in November 2015, after the completion of the pre-IPO investment in Xinte and the completion of Project Frontier. No possible conflict of interest could have arisen. Further, there was no explanation of how her position could have interfered with Mr. Choi's duty in the relevant transaction. Given that they had been separated since 2012 and a petition for divorce filed, there was no basis on which to equate their interests.

347. Any suggestion that Mr. Choi had paved the way for her appointment as Chief Operating Officer was without an evidential basis.³⁷⁹ The fact that in an email under the Subject heading: Frontier-management contract, dated 7 June 2015, Mr. Choi had sent Mr. Devon Fu a draft of an email to be sent to Freshfields in which he had said, "On top, we would like to sign a COO, can we do so?"³⁸⁰ did not support the drawing of any such inference. Moreover,

³⁷⁵ The Applicant's Written Closing Submissions, paragraph 53.4.1.

³⁷⁶ The Applicant's Written Closing Submissions, paragraph 53.4.2.

³⁷⁷ Transcript, pages 443T-444F.

³⁷⁸ Bundle 31, page 10792.

³⁷⁹ The Applicant's Written Closing Submissions, paragraph 53.5.3.

³⁸⁰ Bundle 21, page 7337.

Mr. Howard Cong Lin denied that Mr. Choi had introduced Ms. Christine Kwok to him.³⁸¹ Rather, he had recruited her because “I had a good feeling about her” and “I don’t feel very secure about the regulation issues.”³⁸² That was after LR Capital had acquired AMTD.

The submissions of the Commission

348. For his part, Mr. Li contended that the phrase “conflict of interest” was not a term of art peculiar to the fiduciary context nor was proof of a “conflict of interest” dependent on proof of some fiduciary relationship.³⁸³ He submitted that Mr. Shieh had conflated and equated Mr. Choi’s fiduciary duties at common law with his regulatory duties and his duties to UBS arising from UBS’s Policies.

Conflict of interest but no fiduciary duty

349. Mr. Li invited the Tribunal to note circumstances in which obligations arising from a conflict of interest occurred in circumstances where there was no fiduciary duty.

(i) *An expert witness*

350. First, he cited the example of an expert witness, who is under an obligation to disclose all actual or potential conflicts of interest. But, such a duty of disclosure does not owe its existence to any fiduciary relationship. In his judgment in *Bux v General Medical Council*³⁸⁴, Mostyn J had observed that:³⁸⁵

“Conflicts of interest come in different forms... First, the situation where the expert has, or may have, a financial interest in the outcome of the litigation. Second, where the expert has, or may have, a conflicting duty. Third, where the expert has, or may have, a personal or other connection with a party which might consciously or subconsciously influence, or bias, his evidence.”

351. Mostyn J went on to note that,³⁸⁶

“The GMC Guidance on Financial and Commercial Arrangements and Conflicts of Interest says “conflict of interest may arise in a range of situations. They are not confined to financial interests, and may also include other personal interests.”

³⁸¹ Transcript, page 341K-P.

³⁸² Transcript, pages 342J and 343D-E.

³⁸³ The SFC’s Written Closing Submissions, paragraph 63.

³⁸⁴ *Bux v General Medical Council* [2021] EWHC 762 (Admin).

³⁸⁵ *Ibid*, at paragraph 30.

³⁸⁶ *Ibid*, at paragraph 31.

A 352. Mr. Li also referred to the judgment of Coulson LJ in *A company v Secretariat*
B *Consulting*³⁸⁷ as an example of the court declining specifically to find that expert witnesses are
C fiduciaries on the basis that the concept, "...is freighted with a good deal of legal baggage
D and... it might be inapt to import all of the baggage into a relationship between a client and an
E expert."

E (ii) *An arbitrator*

F 353. As a second example, Mr. Li referred to the position of an arbitrator who,
F although not a fiduciary, was required to disclose all conflicts of interest. Arbitrators owe no
G allegiance to the party who appointed them but nevertheless are obliged to act independently
G and impartially.³⁸⁸

H 354. Mr. Li submitted that even if Mr. Choi personally did not owe any fiduciary duty
I or contractual obligation to Xinte and MSPE, nevertheless he was subject to the requirements
I of the SFC Code and the CFA Code, together with UBS's Policies, that he act in the best
J interests of the client.³⁸⁹

K *The SFC Codes and UBS's Policies*

L 355. Mr. Li contended that it was fallacious to assume that the concept of a "conflict
L of interest" arises exclusively in the context of a fiduciary relationship, in particular that the
M SFC, in drafting its Codes, and UBS in drafting its employment Policies intended to incorporate
M the concept wholesale. Rather, the SFC Codes and UBS's Policies imposed on Mr. Choi
N "freestanding duties to act in the best interest of clients".³⁹⁰

O 356. Mr. Li suggested that UBS's Policies gave effect to its Standard Terms and
O Conditions, in particular that, notwithstanding the existence of a conflict of interest, UBS might
P provide services to third parties, in circumstances where there were reasonable information
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T ³⁸⁷ *A company v Secretariat Consulting* [2021] 4 WLR 20, at paragraph 65.

T ³⁸⁸ *Halliburton Company v Chubb Bermuda Insurance Limited & Others* [2021] AC 1083, Lord Hodge DPSC at
U paragraph 63.

U ³⁸⁹ The SFC's Written Closing Submissions, paragraph 68.

V ³⁹⁰ The SFC's Written Closing Submissions, paragraphs 67-68.

A barriers in place within UBS.³⁹¹ Clause 6(e) of the Standard Terms and Conditions provided
B that the counterparty to the agreement acknowledged that the UBS Group:³⁹² [Italics added]

C “... operate rules, policies and procedures, including independence policies and
D permanent and ad hoc information barriers between and within divisions of UBS
and other members of the UBS Group, *directed to ensuring that*

- E (i) the individual directors, officers and employees involved in an assignment
F undertaken by a member of the UBS group (including the Engagement)
are not influenced by any such *conflicting interest* or duty;
G (ii) any *confidential information* held by a member of the UBS group is not
disclosed or made available to any other client; and
H (iii) *conflicts of interest* are identified and appropriately managed.”

I 357. There was no reason to conclude that the SFC Code and UBS’s Policies simply
H replicated the common law duties or that the SFC or UBS could not impose broader duties to
I avoid and disclose conflicts than the duty imposed by the general law.³⁹³

J 358. Mr. Li invited the Tribunal to note that was the conclusion that had been reached
K by the Upper Tribunal in its decision in *Bittar v Financial Conduct Authority*³⁹⁴. The Financial
L Conduct Authority (“FCA”) imposed a financial penalty of £226,800,000 on Deutsche Bank
M for serious misconduct, including manipulation of, two benchmark interest rates, namely
LIBOR and EURIBOR. Mr. Bittar complained that he was identifiable and the reasons given
in the Decision Notice were prejudicial to him, but that he had not been given an opportunity
to contest the allegations.

N 359. Mr. Li said that Mr. Bittar challenged the FCA’s case on the basis that, “*inter-*
O *alia*, the alleged manipulation was a purely contractual matter between the bank and the
operators of EURIBOR,” which challenge the Tribunal rejected:³⁹⁵

P “Thirdly, neither is it unusual for a contractual relationship to be overlaid with
Q additional regulatory obligations. For example, a firm may wish to define the
R extent of its duties in a contract and deal with a customer or counterparty purely
on the basis of the terms of that contract. Mr. Bittar contends that is the position
S here; his duties in relation to EURIBOR submissions being solely defined by the
terms of the contract between the Panel Banks and the EURIBOR operating

S ³⁹¹ The SFC’s Written Closing Submissions, paragraph 69.

T ³⁹² Bundle 6, pages 2071-2083 (attached to the Letter of Engagement, dated 10 September 2015, between UBS
AG and AMTD Group); Bundle 3, pages 1191-1209 (attached to the Letter of Engagement, dated 19 March
2015, between Xinte Energy Company Limited, GF Capital (Hong Kong) Limited and UBS AG).

U ³⁹³ The SFC’s Written Closing Submissions, paragraphs 72.

U ³⁹⁴ *Bittar v Financial Conduct Authority* [2017] UKUT 82 (TCC).

V ³⁹⁵ *Ibid*, paragraph 74.

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entities. *However, that does not mean that there cannot be additional regulatory obligations applying to the activities concerned which are imposed as a matter of applicable law.* For example, a duty defining clause in an investment management contract which permits the investment manager to deal for a customer notwithstanding the existence of conflicts of interest cannot prevail over the regulatory duty to take whatever steps are necessary to ensure fair treatment for customers.” [Italics added.]

E 360. In addition, Mr. Li relied on statements of the Upper Tribunal in its decision in *Arch Financial Products LLP & Others v The Financial Conduct Authority*³⁹⁶ as to the limited assistance to be derived from the principles established under the general law³⁹⁷ in determining whether Arch Financial Products (“AFP”) was in breach of its duties under Principle 8 of the FCA’s Principles for Businesses and the associated rules relating to Senior Management Arrangements, Systems and Controls (“SYSC”) and Conduct of Business (“COB”).³⁹⁸ The Tribunal went on to explain why it took that position:³⁹⁹

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“The reason why we agree with Mr. Stanley that the general law will not assist us in deciding whether AFP put appropriate policies and procedure in place to deal with conflicts and whether it managed specific conflicts in accordance with the relevant regulatory provisions is because the general law and the regulatory provisions take different paths when it comes to managing conflicts. Without contractual modification, the general law duties can be extremely harsh. For example,... they have generally been adopted in relation to the duties that lawyers owe to their clients in respect of conflicts with the result that if there is a significant risk of a conflict the lawyer may not act at all. As we have also seen, whether the terms of a transaction are fair or not is an irrelevant factor in considering whether a conflict exists or not. The regulatory rules are not so harsh; they focus on whether the conflict has been managed fairly and the firm may employ a number of different tools to achieve that, including disclosure and Chinese Walls.

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However, where the regulatory rules are stricter than the general law is in relation to the freedom to define the duty that is owed. A number of cases have established that a duty defining clause in a contract will be effective so as to modify the extent of a fiduciary duty or even remove it where it would otherwise exist.”

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R 361. Mr. Li submitted that the text of the Codes made it clear that they are not intended to replicate the common law but rather go beyond it.⁴⁰⁰ The rigour of the duty arising

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³⁹⁶ *Arch Financial Products LLP & Others v The Financial Conduct Authority* [2015]UKUT 0013 (TCC).

³⁹⁷ *Ibid*, paragraph 105.

³⁹⁸ Principle of 8 of the FCA’s Principles for Businesses:

“A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.”

³⁹⁹ *Arch Financial Products LLP & Others v The Financial Conduct Authority*, paragraph 117.

⁴⁰⁰ SFC’s Written Closing Submissions, paragraph 72.4.

A in a fiduciary relationship could be overridden by operation of the Code. The duty of a fiduciary
B to cease to act for a principal, where there is an actual conflict of duty with his duty to another
C principal, was subject to the operation of General Principle 6 of the SFC Code , namely that a
licensed or registered person:

D “... should try to avoid conflicts of interest, and when they cannot be avoided,
E should ensure that its clients are fairly treated”.

F 362. Paragraph 10.1 of the Code provided for a test of “an actual or potential conflict
G of interest”, rather than the common law test of, “real sensible possibility of conflict”.⁴⁰¹ It also
H provided that, even in those circumstances, having disclosed the conflict to the client, the
licensed person could advise or deal in relation to the transaction if he had “taken all reasonable
steps to ensure fair treatment of the client.

I 363. Paragraph 4.1 of the Corporate Finance Adviser Code of Conduct provided that
in addressing conflicts of interest the adviser should:

J “(a) take all reasonable steps to avoid situations that are likely to involve a
K conflict of interest;

L (b) not unfairly place its interests above those of its clients”

M 364. Mr. Li submitted that there was no evidence that Mr. Choi tried to avoid the
N conflicts of interest, let alone took all reasonable steps to do so. Nor did he ensure that his
clients were fairly treated. On the contrary:

- O (i) in Project Oasis he actively created the conflict of interest by involving himself
P in LR Capital’s affairs, providing it with confidential information in respect of
Q the pre-IPO investment in Xinte,⁴⁰²
- R (ii) in Project Frontier, he failed to comply with the requirements of the Codes, first
S by forwarding by email to Mr. Devon Fu marketing material in April and May
T 2015, secondly, by drafting emails for LR Capital; and thirdly, by providing
U advice and comments in relation to draft transaction documents.⁴⁰³

T ⁴⁰¹ The SFC’s Written Closing Submissions, paragraphs 72.4.

U ⁴⁰² The SFC’s Written Opening Submissions, paragraph 153.

V ⁴⁰³ The SFC’s Written Opening Submissions, paragraphs 124-131.

365. The fact that the two Codes stipulated that they did not have the force of law and should not be interpreted in a way that would override the provisions of any law did not necessarily have the consequence of incorporating the meaning of conflict of interest from the general law.⁴⁰⁴

UBS's Policies

366. Similar considerations applied in respect of UBS's Policies. In contrast to the duties of fiduciaries to disclose the conflict to their principal and obtain informed consent before continuing to act, UBS Policies required internal disclosure of the actual, potential or perceived conflicts for internal escalation within the management of UBS.⁴⁰⁵

367. *UBS's Global Corporate Client Solutions ("CCS") Handbook* stipulated that:⁴⁰⁶

"2.1.2 Identification of Potential Conflicts

...If a CCS employee becomes aware of a conflict or potential conflict at any stage prior to or during a transaction, Legal and Compliance and/or the Regional CCU should be immediately advised. The BRG is primarily responsible for, among other things, assessing and resolving the potential conflict. The transaction should not be taken further, nor should it be the subject of any further discussion, until the BRG has considered the matter and reached a conclusion as to if, and how, to proceed."

CCU and BRG were the acronyms for Conflict Clearance Unit and Business Review Group respectively.

368. UBS's Policy entitled *Employment of Staff Within UBS* stipulated that:⁴⁰⁷

"4. Relatives and Relationships

Where business relationships overlap with family or personal relationships, this can give rise to actual or perceived conflict of interest or to the perception of bias or abuse of authority and as such may affect our reputation and ability to operate effectively.

Conflicts are not only limited to family relationships (relatives), but also to other personal relationships (e.g. non-work -related relationships) between employees within a management reporting line, or between employees and UBS's vendors or clients.

4.1 Notifications

⁴⁰⁴ The SFC's Written Closing Submissions, paragraph 72.4(d).

⁴⁰⁵ The SFC's Written Closing Submissions, paragraph 72.5.

⁴⁰⁶ Bundle 33, pages 11179-11212, at page 11195.

⁴⁰⁷ Bundle 33, pages 11294-11307, at page 11305.

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All UBS employees... must notify their line manager or HR representative if they determine that in the spirit of this policy a family or personal relationship with another employee, UBS client or vendor is in breach of this policy, giving rise to an actual or perceived conflict of interest, breach of confidentiality or unfair advantage.

4.2 Actions

Employees with a family or personal relationship must not work together in any circumstances where management determines that a conflict of interest, breach of confidentiality or unfair advantage may be perceived to be gained.”

369. UBS’s *CCS Compliance Manual* addressed the management of conflicts of interest by UBS.⁴⁰⁸

“6.3. How do we manage conflicts of interest?

Conflicts of interest can be managed in a number of ways.

In some cases it is sufficient that the existence of the conflict was disclosed... or if client consent is obtained where permitted by applicable law. However, disclosure of the conflict will not always be a sufficient way of managing serious conflicts.”

370. Of the conduct required of UBS’s employees, the manual went on to state:⁴⁰⁹

“6.6. What do you need to do?

It is the responsibility of every member of staff to be alert to potential conflicts of interest and to **seek advice from Compliance** if there is any uncertainty. A potential conflict cannot be managed if it is not identified.”

UBS Policy: requirements greater than the common law

371. In inviting the Tribunal to reject Mr. Shieh’s submission that Mr. Choi could not be disciplined for infractions of UBS’s Policies which went beyond that required of him by the common law, Mr. Li asserted that, in having regard to the requirement that a person be fit and proper to be or to remain a regulated person, the Commission was entitled to have regard to the person’s conduct in respect of UBS’s Policies to avoid and escalate conflicts of interest.⁴¹⁰ Relevant to that consideration were the Notes to paragraph 5.1.1 of the “Fit and Proper Guidelines”, published by the SFC in October 2013, which stated that regulated persons were:⁴¹¹

⁴⁰⁸ Bundle 33, page 11413.

⁴⁰⁹ Bundle 33, page 11414.

⁴¹⁰ The SFC’s Written Closing Submissions, paragraph 74.

⁴¹¹ The SFC’s Written Opening Submissions, paragraph 101.

“...generally expected to be able to display an understanding of:

- the fiduciary obligations owed to clients and the general obligations owed to their principals or employers.”

372. Mr. Li suggested that the reliance placed by Mr. Shieh on the judgments at First Instance in *DBS Bank (Hong Kong) Limited v San-Hot HK Industrial Co Ltd & Another*⁴¹² and *Luk Wing Yan v CMB Wing Lung Bank Ltd*⁴¹³ to support the proposition that internal guidelines do not establish or define the scope of any legal or regulatory duties owed to external parties was misplaced. Those cases concerned actions brought by the clients of banks for breach of the common law duty of care, in circumstances in which bank employees had not complied with internal guidelines. That, was an altogether different issue. Here, the issue was the relevance of the failure of Mr. Choi to comply with UBS’s Policies, in the context of the Commission’s consideration of whether he was a person fit and proper to be or to remain a regulated person.

Deemed Authorisation: Mr. Choi’s role as coverage banker for LR Capital

373. In response to Mr. Shieh’s submissions, Mr. Li contended that it was readily apparent that UBS’s Policies did not provide for a so-called deemed authorisation/consent on the basis that UBS had designated Mr. Choi to be coverage banker of LR Capital, knowing thereby that he would be required to render general assistance to them from time to time in the course of his employment. What was required by UBS’s Policies, was that the employee report the issue, which was then escalated internally for a management decision and documented in that process. Moreover, there was no evidence that UBS was aware that Mr. Choi would be placed in a position of conflict.⁴¹⁴

Mr. Choi: not a coverage banker for LR Capital at the relevant time

374. In any event, Mr. Choi was not coverage banker for LR Capital at the relevant time. He became coverage banker for LR Capital Financial Holdings Limited and LR Capital China Growth I Company Limited “Effective From” 28 July 2015.

Consent of the client - CMI Term Sheet

375. Mr. Li submitted that the contention made on behalf Mr. Choi, that CMI had consented to the disclosure of the Term Sheet to LR Capital, was not an answer to the allegation

⁴¹² *DBS Bank (Hong Kong) Limited v San-Hot HK Industrial Co Ltd & Another* [2013] 4 HKC 1.

⁴¹³ *Luk Wing Yan v CMB Wing Lung Bank Ltd* [2021] HKCFI 279.

⁴¹⁴ The SFC’s Written Closing Submissions, paragraphs 143-150.

A that Mr. Choi had failed to avoid/disclose conflicts arising between LR Capital and Xinte. It
B could not have been informed consent. The issue was whether Xinte consented to disclosure,
C not whether CMI consented. Of whether Xinte had consented, Mr. Howard Cong Lin said in
D evidence, “I don’t think (I) know this matter at all and I don’t remember.”⁴¹⁵

E 376. In any event, Mr. Cong Lin’s evidence in cross-examination in respect of the
F forwarding by Mr. Choi to Mr. Devon Fu by email on 17 February 2015 of documents including
G the CMI Term Sheet was that, “I don’t know if this sharing of information was agreed by
H CMI.”⁴¹⁶ That completely undermined his evidence in his witness statement that the CMI term
I sheet had been sent on 3 March 2015 by email by Mr. Choi to Mr. Fu with, “... the knowledge
J and consent of CM International”, it having been agreed in a telephone conversation he had
K with Mr. Dong Wenbiao, chairman of CMI, that information would be shared between CMI
L and LR Capital.⁴¹⁷

M 377. Further, even if CMI had consented, that did not excuse Mr. Choi’s failure to
N make the relevant disclosure to UBS as required by its Policies. Moreover, the Engagement
O Letter between UBS and Xinte required UBS not to disclose Xinte’s confidential information
P to Third Parties. Information as to the Term Sheet between Xinte and CMI was clearly
Q confidential.⁴¹⁸

R *Mr. Choi: Intermediary role only in the sale of shares in AMTD?*

S 378. Mr. Li invited the Tribunal to reject Mr. Shieh’s submission that Mr. Choi’s role
T in the sale of shares in AMTD did not involve any fiduciary relationship or any duty, rather he
U was an intermediary, matcher or introducing agent only. This characterisation of Mr. Choi’s
V role had emerged for the first time in Mr. Shieh’s written Opening Submissions, dated 22
November 2022. Prior to that, it had been accepted that the role of UBS and Mr. Choi was that
of “sell side advisor”.⁴¹⁹ In the Re-Amended Notice of Review, dated 12 April 2022 and
received by the Tribunal on 4 May 2022, it was contended that the Commission had erred in

⁴¹⁵ Transcript, page 441 G-K.

⁴¹⁶ Transcript, page 441 A-F.

⁴¹⁷ Bundle 35, page 11850.

⁴¹⁸ The SFC’s Written Closing Submissions, paragraphs 135-140.

⁴¹⁹ The SFC’s Written Closing Submissions, paragraphs 75-77.

A “(e) failing to consider that, given the Applicant was acting both as a *sell side advisor* and a
B coverage banker...”⁴²⁰ [Italics added.]

C 379. Moreover, it was contrary to the provisions of the Engagement Letter, dated 10
D September 2015,⁴²¹ which stipulated that UBS agreed to act as AMTD’s: ⁴²²

E “...exclusive financial advisor in connection with the potential Transaction (as
F defined below) with potential purchasers for up to 1 year, since 26 May, 2015
G (the “Effective Date”).”

H 380. Further, UBS agreed to, “... provide the following financial advice and
I assistance ...:

- J (a) In consultation with you, developing, updating and reviewing a list of potential
K purchasers and contacting potential purchasers...;
- L (b) Together with your other professional advisers, assisting in the negotiation of the
M terms of the Transaction for and on your behalf.”

N The Engagement Letter was “heavily negotiated” between the parties and was reviewed by
O their respective legal advisers.⁴²³

P 381. Mr. Li submitted that the fact that the selling shareholders of AMTD chose not
Q to pursue a competitive bidding process did not mean that UBS did not serve as their advisor
R throughout. Had the selling shareholders requested advice UBS would have been obliged to
S provide it.

T *Services provide by UBS as financial advisor*

U 382. In any event, UBS did in fact provide the services required of it under the
V Engagement Letter, in particular:⁴²⁴

- Mr. Choi developed and continuously updated a list of potential buyers,
provided to MSPE in a series of emails from March to May 2015;⁴²⁵

⁴²⁰ Core Bundle, page 96, paragraph (2A) (e).

⁴²¹ Bundle 6, pages 2071-2083.

⁴²² Bundle 6, page 2071.

⁴²³ The SFC’s Written Closing Submissions, paragraph 83.3.

⁴²⁴ The SFC’s Written Closing Submissions, paragraph 84.

⁴²⁵ Bundle 6, pages 2085 (13 March 2015); pages 2131-2134 (31 March and 8 April 2015); and pages 2167 and 2172 (8 May 2015).

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- Mr. Choi had assisted MSPE and Linklaters in drafting and negotiating the term sheet , as required under the Letter of Engagement, in the exchange of emails with Mr. Kingsley Chan and others from 20 to 28 May 2015 under the Subject heading: ‘Project Frontier-Sell-side counsel mandate’;⁴²⁶ Mr. Kingsley Chan agreed that that was the case;⁴²⁷
 - even after the Binding Offer Mr. Choi was required to assist MSPE in negotiating more favourable terms from LR Capital as set out in an email to Mr. Choi, dated 2 June 2015, from Mr. Kingsley Chan in which the latter detailed several points for Mr. Choi to follow up, including⁴²⁸

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“...we still need you to press LRC for an slight increase in their bid such that the sellers will be covered for UBS’ advisory fee (which is 1% value of shares to be sold, based on our latest understanding) i.e., net valuation of HKD 1.6 bn post-fee.

I

-the shareholders still need UBS to help us continue gather any written proposals before the signing of a term sheet.”

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383. In his witness statement, Mr. Gao Yu said that the purpose of that email was “for Mr. Choi to relay the message to LRC, and hopefully to convince LRC to accept our additional requests.”⁴²⁹

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384. Mr. Li pointed out that there was no dispute that Mr. Choi had played a role in relaying requests for information that led to the making of the Sale and Purchase Agreement, dated 19 June 2015, between the selling shareholders, LR Capital and AMTD.⁴³⁰ By emails, dated 11 and 12 June 2015,⁴³¹ Mr. Kingsley Chan had asked Mr. Choi to obtain a range of corporate information from LR Capital, which in due course found its place in the S&P Agreement. By an email to Mr. Kingsley Chan, dated 19 June 2015, Mr. Choi provided LR Capital’s response to an issue, which the former had asked him to raise with LR Capital, as to a provision in a side letter to the S&P agreement.⁴³²

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⁴²⁶ Bundle 20, pages 6965-6968.

⁴²⁷ Transcript, pages 251-252.

⁴²⁸ Bundle 20, page 7061.

⁴²⁹ Bundle 35, pages 11837-11838, at paragraph 20.

⁴³⁰ The SFC’s Written Closing Submissions, paragraph 84.4.

⁴³¹ Bundle 23, page 7911.

⁴³² Bundle 25, pages 8550:

T

“Calvin:-best if you call Howard, we won't accept to this EOD idea, if they want, they can buy the loan from us at closing. And if they have comments on the side letter, pls send now.”

U

And at page 8564:

“Just finished to call with howard. Here is the position of lrc...”

V

A 385. Mr. Li submitted that the contention now made, that Mr. Choi acted as an
B intermediary between the parties in the sale of AMTD’s shares, was at odds with the
C contemporaneous documentation.⁴³³ Mr. Choi was copied in emails to and from UBS and
D MSPE with Linklaters. By contrast he was not copied in emails to and from LR Capital and
E Freshfields other than those forwarded to him by Mr. Devon Fu. Consistently, in emails from
F the respective legal advisers of the parties, Mr. Choi was grouped with the selling shareholders
G and Linklaters, not LRC and Freshfields.⁴³⁴

F *Mr. Choi’s familial and personal connections with LR Capital*

G *Inferences*

H 386. Mr. Li invited the Tribunal to have regard to the statement of Stone J, as
H Chairman, giving the Determination of this Tribunal in *Ng Chiu Mui v SFC*:⁴³⁵

I “When a person pointedly refused to go into this witness box to explain his
J position, he is in no position to complain if the Tribunal declines to afford him
K the advantage of regarding his case in the most favourable light.”

K 387. Of Mr. Choi’s choice not to give evidence in the Tribunal, Mr. Li invited the
L Tribunal to have regard to the voluminous email records evidencing Mr. Choi’s extensive
M assistance to LR Capital in both Project Oasis and Project Frontier, notwithstanding that he was
N the advisor to Xinte in the former project and MSPE and the selling shareholders in the latter
O project. There was a complete absence of documentary support for the contention that his
P assistance to LR Capital had the consent of CMI in Project Oasis and MSPE in Project Frontier.
Q No explanation had been offered for Mr. Choi’s failure to testify. The Tribunal was invited to
R draw all available adverse inferences against Mr. Choi.⁴³⁶

P 388. Of the drawing of inferences in respect of Mr. Choi’s familial and personal
Q connections with LR Capital, Mr. Li invited the Tribunal to note that when interviewed by the
R Commission on 7 December 2017 under its statutory powers Mr. Choi had declined to answer

R ⁴³³ The SFC’s Written Closing Submissions, paragraph 85.

S ⁴³⁴ Bundle 21, page 7208: an email, dated 6 June 2015, from Freshfields to multiple parties at Linklaters and
T Mr. Choi, under the Subject heading: Frontier-term sheet comments.

T And Bundle 23, page 7890-7891: an email, dated 11 June 2015, from Linklaters to Richard Johnson and Teresa
U Ko at Freshfields and various persons at LR capital, copied to AMTD and UBS, including Mr. Choi, under the
V Subject heading: Frontier-SPS and SHA.

⁴³⁵ *Ng Chiu Mui v SFC* [SFAT 7/2007] (15 May 2009), citing his statement the Tribunal’s Determination in *Tse
Shiu Hoi v SFC* [SFAT 10/2007] (20 March 2009).

⁴³⁶ The SFC’s Written Closing Submissions, paragraphs 32-34.

A questions about his knowledge of Mr. Devon Fu, Ms. Amy Wong, Ms. Christine Kwok, his
B mother, father and brother. The issue of his conflict of interest in Project Oasis and Project
C Frontier was raised specifically. Mr. Choi was fully aware of the area of enquiry by the SFC.⁴³⁷
D The Tribunal was invited to draw all the available adverse inferences in respect of his familial
E and personal connections with LR Capital.⁴³⁸ The Tribunal was invited to place “no weight” on
the unsworn assertions made in the letter of his solicitors to the Commission, dated
8 December 2017.⁴³⁹

F *Devon Fu*

G 389. Mr. Li submitted that the available evidence clearly demonstrated that Mr. Choi
H was on “exceedingly close terms” with Mr. Devon Fu, who was a former colleague at UBS,
I despite nominally being Mr. Choi’s client and assistant to Mr. Howard Cong Lin, the Managing
J Partner of LR Capital. The evidence established that Mr. Devon Fu took directions from him at
every turn and essentially acted as his personal assistant.⁴⁴⁰ Significantly, Mr. Howard Cong Lin
said of their relationship at UBS that Mr. Choi was already a Partner, Mr. Devon Fu was just
an Associate.⁴⁴¹

K *Ms. Amy Wong - fiancée of Mr. Bernard Choi*

L 390. Of the issue of the status of the relationship of Ms. Amy Wong and Mr. Bernard
M Choi, Mr. Li invited the Tribunal to note⁴⁴² the assertions made in the Applicant’s Written
N Opening Submissions, in which reference was made to a letter sent to the Commission from
O Mr. Choi’s then solicitors, dated 8 December 2017, in which Mr. Choi’s knowledge of the
P status/relationship of Mr. Bernard Choi and Ms. Amy Wong was addressed.⁴⁴³ It was asserted
that in the letter it was acknowledged that Mr. Choi was aware only that they were “cohabiting
in a relationship”, but not “whether they were engaged.” In fact, the letter did not address the
issue of engagement at all. Rather, it stated:

S ⁴³⁷ The SFC’s Written Closing Submissions, paragraph 35.

T ⁴³⁸ The SFC’s Written Closing Submissions, paragraph 34.

U ⁴³⁹ The SFC’s Written Closing Submissions, paragraphs 108-109.

V ⁴⁴⁰ The SFC’s Written Closing Submissions, paragraph 107.

⁴⁴¹ The SFC’s Written Closing Submissions, paragraph 103. Transcript page 332 J-L.

⁴⁴² The SFC’s Closing Submissions, paragraph 109.3.

⁴⁴³ Applicant’s Written Opening Submissions, paragraph 51.3.

A “Mr. Choi has not been directly informed as to whether his brother, Mr. Choi
B Chi Sing, is married, but Mr. Choi understands and assumes that Mr. Choi Chi
C Sing is currently in a relationship and living with Ms. Wong Yuen Ping.”⁴⁴⁴

D 391. In inviting the Tribunal to determine that Mr. Choi knew of their relationship as
E a fiancée of each other, Mr. Li invited the Tribunal to have regard to the evidence in emails
F between them of their relationship, evidenced by Ms. Amy Wong’s assistance to Mr. Choi in
G arranging airline tickets⁴⁴⁵ and Rugby Sevens tickets⁴⁴⁶ in March 2015, in which mail
H exchanges she was copied, and hotel bookings in October 2015.⁴⁴⁷ Having been forwarded an
I email exchange between Mr. Devon Fu and Mr. Choi, Ms. Amy Wong sent Mr. Choi an email
J informing him that she would arrange this requested change of his hotel booking in Dubai.⁴⁴⁸

K 392. Further, in the context of arranging a joint medical examination for Mr. Choi,
L Mr. Bernard Choi and Ms. Amy Wong in October 2014, having said that he had met
M Mr. Bernard Choi and having thanked Mr. Choi for the "referral", Mr. Austin Mok
N acknowledged that Mr. Choi had introduced him to Ms. Amy Wong.⁴⁴⁹

O *Christine Kwok*

K 393. Of the relationship between Mr. Choi and Ms. Christine Kwok, Mr. Li said that
L the emails exchanged between them suggested that they remained close at the material time.
M For example, in July 2014 Mr. Choi arranged for Ms. Christine Kwok to be greeted at the airport
N and arranged transportation. In November and December 2015, after she became COO of
O AMTD she was copied into emails Mr. Choi circulated.⁴⁵⁰

P *Madam Chan Mei Ching*

Q 394. Mr. Li submitted that Mr. Choi must have been aware of LRC. Belt and Road
R was a cornerstone investor in Xinte. Mr. Choi was copied in the email exchanges resulting from
S the enquiries of the SEHK, as to whether or not LRC. Belt and Road was related to LR Capital
T in respect of Xinte’s IPO. Mr. Choi had been copied in the email, dated 14 December 2015,
U sent by Ms. Winnie Leung of UBS to AMTD inviting their assistance to respond to the enquiry

S ⁴⁴⁴ Bundle 7, page 2672, paragraph 9.

T ⁴⁴⁵ Bundle 1, page 476.

U ⁴⁴⁶ Bundle 15, pages 5053-5055.

V ⁴⁴⁷ Bundle 30, page 10205.

⁴⁴⁸ The SFC’s Written Closing Submissions, paragraph 109.4.

⁴⁴⁹ Bundle 11, pages 3862-3865.

⁴⁵⁰ The SFC’s Written Closing Submissions, paragraph 109.2.

A of the SEHK as to the relationship between LRC. Belt and Road and LR Capital China Growth
B I Company Limited, in particular as to why the former was not to be regarded as “an affiliated
C investor”⁴⁵¹ Also, Mr. Devon Fu had sent Mr. Choi an email, dated 14 December 2015,
D containing a draft of the proposed reply to the SEHK. Of Strategic Global, the draft said that it
E is: “...owned by 3 high net worth individuals: Chan Mei Ching, Chan Min Chi and
F Kasuyantinah Kasin.”⁴⁵²

E 395. Mr. Andy Lee said in his witness statement that Xinte's Prospectus identified
F LRC. Belt and Road as a cornerstone investor. The Prospectus, published on 17 December 2015,
G said that LRC. Belt and Road was a joint venture of Strategic Global Investment Corporation
H Ltd ("Strategic Global") and Mr. Soul Htite.⁴⁵³ Madam Chan Mei Ching was identified as a 47%
I shareholder in Strategic Global as at 17 December 2015, and Strategic Global described as
J holding a 99% equity interest in LRC. Belt and Road at that date. In a reply letter to the
K Commission, dated 21 August 2017, UBS said that information was stated in the Prospectus at
L page 235.⁴⁵⁴

J *Danny Choi: beneficial ownership of shares in LR Capital*

K 396. Mr. Li submitted that there was no reason to doubt the accuracy or authenticity
L of Mr. Austin Mok’s attendance note of the meeting with Mr. Choi on 12 August 2016, at which
M Mr. Choi said that Danny Choi was “holding shares” on his behalf.⁴⁵⁵ The ‘Client Attendees’
N were described as being: Calvin Choi (AMTD Chairman, representing the largest single
O shareholder of the LRC, Danny), Marcellus Wong (board member) and Raymond Yung (CEO).
P The note stated:

- O “1. LRC is a family office set up for the existing 16 shareholders who are all
P close family, friends and partners. There is no third party money other than the
Q 16.
R
S 3. The 3 of them represent the core investment and shareholder group of LRC
T (Danny Choi Kwok Kei holding shares on behalf of Calvin Choi (son), and Yung
U Hing Keung holding shares on behalf of Raymond Yung.)”

T ⁴⁵¹ The SFC’s Written Closing Submissions, paragraph 109.5. Bundle 31, pages 10783-10786.

T ⁴⁵² Bundle 31, pages 10787-10788.

T ⁴⁵³ The SFC’s Written Opening Submissions, paragraph 56. Bundle 33; page 11362, paragraph 34(b).

T ⁴⁵⁴ Bundle 2, page 573, paragraph 2.

T ⁴⁵⁵ The SFC’s Written Closing Submissions, paragraph 109.8. Bundle 8, page 2812.

397. Mr. Li suggested Mr. Choi's beneficial ownership of those shares explained how Mr. Danny Choi came to acquire a 28.86% shareholding in LR Capital, which had US \$869 million in liquid assets under management in May 2015⁴⁵⁶, given that Mr. Danny Choi's estimated wealth, as at April 2016, as stipulated in a UBS Client Profile and Acceptance Checklist compiled by Mr. Austin Mok was only US \$7,293,512.⁴⁵⁷

Kingsley Chan: the importance of information of Mr. Choi's familial and personal connections with LR Capital to the selling shareholders

398. Of the relevance of Mr. Choi's familial and personal connections with LR Capital, Mr. Li invited the Tribunal to note the evidence of Mr. Kingsley Chan in cross-examination. He said that he did not know that:

- Ms. Amy Wong Yuen Ping was the fiancée and cohabitee of Mr. Bernard Choi, Mr. Choi's brother;
- on incorporation of LR Capital, in December 2014, Ms. Amy Wong was the sole owner of LR Capital ;
- in March 2015, when MSPE began to engage with Mr. Choi and UBS, Ms. Amy Wong owned 35% of the shares of LR Capital;⁴⁵⁸
- Mr. Bernard Choi was an authorised signatory of LR Capital's wealth management accounts with UBS.

399. If he had known that information, and known of the connection of Mr. Marcellus Wong and Mr. James Wong, those are matters that he would have wished to discuss with his fellow selling shareholders. He agreed that the reason for that, was to make each of the other shareholders aware of the fact that "the sell side adviser Calvin Choi had family connections with the front-running bidder for AMTD." The objective of such discussion was so that the selling shareholders were informed and agreed on any proposed solution. Also, the matter would have to be "raised and discussed" within Morgan Stanley.⁴⁵⁹

400. Mr. Li submitted that Mr. Choi's familial and personal connections with LR Capital were to be viewed in the context of his acquisition of a beneficial interest in the shares

⁴⁵⁶ Bundle 20, page 7002 - GF Securities' Fund Proof Letter for Project Frontier, dated 29 May 2015.

⁴⁵⁷ Bundle 2, page 526. UBS Client Profile and Acceptance Checklist - 06.04.2016.

⁴⁵⁸ Bundle 8, pages 2782-2783; email from UBS to Mr. Devon Fu, dated 27 March 2015, attaching an organisation chart of L.R. Capital Principal Investment Limited.

⁴⁵⁹ The SFC's Written Closing Submissions, paragraph 113.2. Transcript pages 254 A-255P.

A of LR Capital, through his father Mr. Danny Choi, and his subsequent role as Chairman of
B AMTD.⁴⁶⁰ A B

C *A consideration of the submissions* C

D 401. In determining whether a conflict of interest arose for Mr. Choi in his dealings
E with UBS's clients, the starting point of the analysis must be that he was a licensed person
F under the Ordinance. He had volunteered to obtain that status. In doing so, he made himself
G subject to the regulatory regime imposed under the Ordinance. Under the regime, the undoubted
H rights, privileges and benefits of being a licensed person are balanced by correlative duties. D E F

G 402. In my judgement, there is considerable merit in Mr. Li's submission that the
H SFC's Code of Conduct and the CFA Code imposed freestanding duties on Mr. Choi to take
I reasonable steps to avoid conflicts of interest and to act in the best interests of UBS's clients,
J affording them fair treatment. Clearly, in those circumstances a conflict of interest does not
K arise exclusively in the context of a fiduciary relationship, nor does it require that Mr. Choi
L have personal contractual duties to a client of UBS. G H I J

K 403. I am satisfied that there is no reason why the Codes made under the Ordinance
L or the UBS Guidelines and Policies could not impose broader duties, than those imposed by the
M general law, to (i) avoid conflicts of interest and (ii) require disclosure of such conflicts, actual
N or potential, that might arise. K L M

N 404. UBS's Policies and Guidelines requiring disclosure to UBS of conflicts of
O interest with clients, including those arising in consequence of relevant personal relationships,
P were entirely consistent with the requirements of the SFC Code and the CFA Code requiring
Q that clients be treated fairly. Following appropriate disclosure, internal escalation within UBS
R afforded UBS the opportunity to consider its own interests and that of the client and to
S determine whether it was proper to continue with the relationship and, if so, with what
T disclosure to the client and with what precautions. Obviously, the failure to make appropriate
U disclosure to UBS of a conflict of interest rendered nugatory the policy of escalation and
V considered determination of the issue of fair treatment of a client. N O P Q R S T U

U ⁴⁶⁰ The SFC's Written Closing Submissions, paragraph 113.3. U

A 405. In all those circumstances, compliance by Mr. Choi with UBS's Policies and
B Guidelines was a relevant consideration to which regard is to be had in determining whether
C Mr. Choi is fit and proper to be a licensed person.

D 406. Ultimately, the question that arises is whether conflicts of interest arose in
E respect of Mr. Choi's dealings with the clients of UBS, namely Xinte and the consortium of
F selling shareholders of AMTD's shares. That issue is to be addressed, as the parties have done,
G by having regard to all the evidence of the role of Mr. Choi and UBS in relation to the clients
H of UBS having regard to the contemporaneous documentation, primarily emails to and from
I Mr. Choi, in particular:

- H (a) advice given by Mr. Choi to the counterparties of UBS's client;
- I (b) the disclosure of confidential information by Mr. Choi to the counterparties of
J UBS's clients; and
- K (c) the drafting of emails by Mr. Choi for LR Capital to be sent to their legal
L representatives.

M 407. Further, regard is to be had to the evidence of the personal and familial
N relationship of Mr. Choi with the LR Capital Group, in particular:

- M (i) Mr. Devon Fu;
- N (ii) Ms. Amy Wong and Mr. Bernard Choi;
- O (iii) Ms. Christine Kwok;
- P (iv) Madam Chan Mei Ching; and
- Q (v) Mr. Danny Choi

R ***Part 7 - Did UBS's and Mr. Choi's role and conduct with respect to the pre-IPO
S sale of shares by Xinte Energy constitute regulated activity?***

T *Misconduct-regulatory regime*

U 408. Although Mr. Choi was not licensed by the Commission or registered with the
V Hong Kong Monetary Authority at the time that he was notified of proposed disciplinary action,
by service of the NPDA dated 16 December 2020, nevertheless he was a "regulated person",

A being a licensed person, at the “relevant time”, namely the time of the alleged misconduct in
B issue.⁴⁶¹.

C 409. The determinations of the Commission under review by Mr. Choi are that he
D was guilty of misconduct and not fit and proper to be a regulated person, pursuant to section
E 194(1) and 196(1) of the Ordinance.

E *Misconduct*

F 410. As the Commission noted in its Decision Notice, section 193(1) of the
G Ordinance provides that “misconduct” means, amongst other things:

H “(d) an act or omission *relating to* the carrying on of any regulated activity for
I which a person is licensed or registered which, in the opinion of the Commission,
is or is likely to be prejudicial to the interest of the investing public or to the
public interest”.
[Italics added.]

J *Codes*

K 411. Section 193(3) provides that the Commission shall not form any such opinion,
L “unless it has had regard to any code or guideline... as are in force at the time of occurrence of,
M and applicable in relation to, the act or omission”, as published under various provisions of the
N Ordinance. The Code of Conduct for Persons Licensed by or Registered with the Securities and
Futures Commission and the Corporate Finance Adviser Code of Conduct are two such relevant
codes.

O *Fit and proper*

P 412. Section 194(3) and section 196(3) provide that, in determining whether a
Q regulated person is “a fit and proper person”, the Commission may take into account various
matters, including those specified in section 129 of the Ordinance.

R 413. Section 129 (1) of the Ordinance provides that, in considering whether a person
S is “fit and proper”, the Commission “shall, in addition to any other matter ” that the
Commission may consider relevant,... have regard to:

T “(c) the ability to carry on the regulated activity competently, honestly and fairly;
and

U ⁴⁶¹ ss.194(7) and 196(8) of the Ordinance.

- (d) the reputation, character, reliability and financial integrity ...
(i) ...the person himself.”

The Applicant’s submissions: the misconduct limb

414. In the Re-Amended Notice of Application for Review of Decision, challenge was made to the jurisdiction of the Commission to act as it had done in respect of Mr. Choi. In particular, it was contended that:⁴⁶²

“In respect of Project Oasis...the Applicant’s role and conduct was concerned with a pre-IPO sale of shares by the Xinte Energy to various investors. At the material time, Xinte Energy was a private company and its shares accordingly did not fall within the definition of ‘securities’ as defined under section 1 of Schedule 1 of the Ordinance. The Applicant’s role and conduct with respect to Project Oasis did not constitute regulated activity under any of the activities under Schedule 5 of the Ordinance, including Type 6 (advising on corporate finance) regulated activity as alleged...”

Illegal/unlawful

415. In his written Closing Submissions, relying on the submissions he made in his written Opening Submissions, Mr. Shieh submitted that the Commission’s exercise of its disciplinary power under the “misconduct limb” was “illegal/unlawful”.⁴⁶³ It had purported to exercise that power in respect of Mr. Choi’s conduct in Project Oasis.

416. In his written Opening Submissions he invited the Tribunal to note that “misconduct” as defined in section 193 (1) means, “...an act or omission relating to the carrying on of any *regulated activity* for which a person is licensed or registered which, in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.”⁴⁶⁴ [Italics added.]

417. Mr. Shieh submitted that a pre-IPO investment is not a regulated activity in itself. It is a sale and purchase of shares of a private company in contemplation that the shares will be subject to an IPO. The IPO may or may not materialise. It is plainly not an offer to sell or purchase securities to or from the public. It cannot constitute a regulated activity.⁴⁶⁵

⁴⁶² Core Bundle, page 95, paragraph 1(3).

⁴⁶³ The Applicant’s Written Closing Submissions, paragraph 34.

⁴⁶⁴ The Applicant’s Written Opening Submissions, paragraph 67.

⁴⁶⁵ The Applicant’s Written Opening Submissions, paragraph 73.

418. He invited the Tribunal to note that Part 2 of Schedule 5 of the Ordinance provides that:

“advising on corporate finance means

giving advice-

- (a) concerning compliance with or in respect of rules made under section 23 or 36 of this Ordinance governing the listing of *securities* and the code published under section 399(2)(a) or (b) of this Ordinance;
- (b) concerning-
 - (i) any offer to dispose of *securities* to the public;
 - (ii) any offer to acquire *securities* from the public; or
 - (iii) acceptance of any offer referred to in subparagraph (i) or (ii), but only in so far as the advice is given generally to holders of *securities* or a class of securities; or
- (c) to a listed corporation or public company...”

419. Mr. Shieh submitted that, pursuant to Schedule 1, the definition of “securities” does not include shares of a private company.⁴⁶⁶

“relating to”

420. Mr. Shieh submitted that, in construing the definition of “misconduct” as provided for by section 193(1)(d) of the Ordinance, in particular the provision that it means, “...an act or omission relating to the carrying on of any regulated activity”, Mr. Choi’s involvement in the pre-IPO investment project in respect of Xinte did not “relate to” UBS’s work in the IPO of Xinte. He invited the Tribunal to note that:⁴⁶⁷

- (i) UBS treated the pre-investment project as a transaction separate from the IPO itself; and
- (ii) UBS had abandoned the pre-IPO investment project and “had no role”.

Prejudicial to the interest of the investing public or to the public interest

421. He contended that, even if the Tribunal was satisfied that the pre-IPO investment project in Xinte related to the regulated activity of advising on corporate finance, Mr. Choi’s

⁴⁶⁶ The Applicant’s Written Opening Submissions, paragraph 72.

⁴⁶⁷ The Applicant’s Written Opening Submissions, paragraph 74.

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conduct in the pre-IPO investment project was not, "... prejudicial to the interest of the investing public or to the public interest." At most, it might have been prejudicial to the interests of Xinte. Such prejudice was denied.⁴⁶⁸

Regard to the Commission's Code of Conduct or other codes

422. Mr. Shieh acknowledged that section 193(3) of the Ordinance required that, in forming an opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, the Commission was required to have had regard to the code (s) of conduct published by the Commission. However, he submitted that proof of breach of the Code of Conduct was not itself a sufficient condition in establishing the element of "...likely to be prejudicial to the interest of the investing public or to the public interest". He contended that it did not alter the fact that dealing in the private shares in Xinte between private parties, "...cannot be prejudicial to the interest of the investing public." In any event, the Commission's Code of Conduct and the Corporate Finance Adviser Code of Conduct only applied to regulated activities. They had no application to Mr. Choi's conduct in relation to pre-IPO investment in Xinte.⁴⁶⁹

423. For his part, Mr. Shieh submitted that the observations in respect of the construction of the phrase "relating to" in section 193(1)(d) of the Ordinance in the judgment of Lord Neuberger in the Court of Final Appeal in *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission*⁴⁷⁰, with which judgment all the other judges agreed, did not assist the Commission. Lord Neuberger noted that the section was in a Part of the Ordinance which was concerned with regulating and sanctioning "regulated activity" and was to be "...interpreted bearing in mind that it was enacted as part of a scheme introduced to protect members of the public and the financial markets..."⁴⁷¹. The pre-IPO investment in Xinte was the sale and purchase of shares of a private company between private parties and did not involve the investing public at large.⁴⁷²

⁴⁶⁸ The Applicant's Written Opening Submissions, paragraph 75-76.

⁴⁶⁹ The Applicant's Written Opening Submissions, paragraphs 78-80.

⁴⁷⁰ *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission* (2018) 21 HKCFAR 456.

⁴⁷¹ *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission*; page 470, paragraph 40.

⁴⁷² The Applicant's Written Closing Submissions, paragraph 38.

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The Commission's Submissions

424. Mr. Li acknowledged that the key issue was whether pre-IPO investment in Xinte was *related* to Xinte's IPO, within the meaning of sections 194(1)(a) and 196(1)(b) of the Ordinance. Having regard to the purpose of the statute was to protect "members of the public and financial markets against inappropriate or substandard behaviour", it was to be interpreted broadly.⁴⁷³

425. He suggested that two arguments were advanced on behalf Mr. Choi. First, that within UBS the two transactions were advanced separately to BRG. Secondly, that UBS played no formal role in the pre-IPO investment, it being formally marked 'Abandoned'.

426. As to the first issue, Mr. Li acknowledged that the two transactions were split-up for the purposes of approval within UBS. However, he contended that was not determinative of the issue.⁴⁷⁴

427. As to the second issue, he submitted that the evidence reinforced the connection between the two transactions. Mr. Choi's work on the pre-IPO investment opportunity was "...part and parcel of UBS's engagement to advise Xinte on its listing on the Main Board of the SEHK" and therefore related to the carrying on of a regulated activity.⁴⁷⁵ Of the connection between the two transactions, the Tribunal was invited to note that at the outset the application for approval made within UBS on 7 August 2014 to the BRG was not only for TEBA's IPO but also for "...the pre-IPO opportunity for the company."⁴⁷⁶ In addressing the application for approval of the transactions in an email internal to UBS sent on 22 September 2014, Ms. Elizabeth Siu had described the "pre-IPO opportunity" as *associated* with the IPO.⁴⁷⁷ In his email to Mr. David Chin, sent on 25 February 2015, Mr. Choi had, in effect, acknowledged the connection between the two transactions in explaining why UBS was to receive an increased fee for the IPO of an "0.5% incentive fee to be paid upon deal completion", in consequence of,

⁴⁷³ *Moody's Investors Service Hong Kong Limited v Securities and Futures Commission*; page 470, paragraph 40.

⁴⁷⁴ The SFC's Written Closing Submissions, paragraph 41.

⁴⁷⁵ The SFC's Written Opening Submissions, paragraph 112. The SFC's Written Closing Submissions, paragraph 42.

⁴⁷⁶ Bundle 33, pages 11215-11217.

⁴⁷⁷ Bundle 6, page 2064.

“...help by us and GF IBD teams in terms of overall coordination and support”.⁴⁷⁸ Effect was given to that agreement by the Engagement Letter, dated 19 March 2015.⁴⁷⁹

428. The work performed by UBS and Mr. Choi in respect of the pre-IPO investment fell within the provisions in clause 1(b) of the Engagement Letter namely, “...any capital raising to be undertaken in connection with the Offering”. Given that the Effective Date of the Engagement Letter was stipulated to be 24 August 2014, it encompassed all of the work of UBS and Mr. Choi in respect of the pre-IPO investment.⁴⁸⁰

Prejudicial to the interests of the investing public or to the public interest

429. Of the requirement that the Commission be satisfied that the conduct, “...is or is likely to be prejudicial to the interests of the investing public or to the public interest”, Mr. Li submitted that it was clearly in the public interest that finance professionals acted with integrity throughout the entire listing process. This was not a case where UBS and Mr. Choi were only ever involved in the IPO. On the contrary, from the outset they were involved in both the pre-IPO investment and the IPO.

430. As a sponsor of Xinte’s IPO, UBS was required by the Listing Rules to perform its duties with impartiality⁴⁸¹ and each sponsor was required to give an undertaking of independence from all other parties and to make declarations in that respect to the SEHK.⁴⁸² The issue of conflicts of interest in Mr. Choi raised questions as to the integrity of Xinte’s IPO. That was a matter of serious public interest.⁴⁸³

431. Further, the fact that the terms on which pre-IPO investors make investments are often different from the terms on which investors make investments in the IPO has given rise to regulation under the Listing Rules, aimed at ensuring that the issue of marketing of securities is conducted in a “fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer” and that “all holders of the listed securities are treated fairly and equally”.⁴⁸⁴ Misconduct in relation

⁴⁷⁸ Bundle 6, page 2067.

⁴⁷⁹ Bundle 3, pages 1191-1195, at page 1195- clause 3(b.)

⁴⁸⁰ Bundle 3, page 1191.

⁴⁸¹ SEHK: Main Board Listing Rules 3A.06.

⁴⁸² SEHK: Main Board Listing Rules 3A.03.

⁴⁸³ The SFC’s Written Closing Submissions, paragraph 44.4.

⁴⁸⁴ SEHK: Main Board Listing Rules 2.03 (2) and 2.03 (4).

A to pre-IPO investment is plainly capable of being likely to be prejudicial to the interest of the
B investing public or to the public interest.⁴⁸⁵ B

C *A consideration of the submissions* C

D *The construction of “relating to” in section 193(1)(d)* D

E 432. On 1 June 2011, *Moody’s Investor Services Hong Kong Limited* (“*Moody’s*”) E
F became licensed under the Ordinance to carry on Type 10 regulated activity, namely providing F
G credit rating services. On 11 July 2011, *Moody’s* published a ‘Special Comment Report’ G
H entitled: “Red Flags for Emerging-Market Companies: A Focus on China”. The Report received H
I extensive local and international media attention and had a material impact on the market, in I
J that the price, at which the shares of many of the companies the subject of the report traded, J
K fell substantially following the publication of the Report. K

L 433. The Commission initiated proceedings, alleging and then finding that *Moody’s* L
M had failed to ensure the integrity of the Report. In the Court of Appeal, the Tribunal’s finding M
N that the Report “...constituted a credit rating and was therefore a regulated activity” was N
O rejected, although the Court of Appeal agreed with the alternative finding of the Tribunal that O
P publication of the Report was “...an act or omission *relating to* the carrying on of a regulated P
Q activity within the ambit of s. 193(1)(d) of the Ordinance”. It was against that finding that Q
R *Moody’s* appealed to the Court of Final Appeal. R

S 434. In the Court of Final Appeal, Mr. Shieh submitted on behalf of *Moody’s* that:⁴⁸⁶ S
T “...in the context of s. 193(1)(d), the preparation and publication of a document T
U such as the Report, which did not itself involve the provision of credit rating U
V services , could only be said to “relat[e] to” the provision of such services if it V
O had been (or was understood, or would reasonably have been understood to have O
P been) involved in the preparation of credit ratings. Unless such a clear and P
Q limited meaning is given to the phrase, he contended, the law would be uncertain, Q
R which is particularly inappropriate in the context of Pt. IX of the Ordinance, R
S given that it creates an offence and involves curtailing freedom of expression.” S

T 435. The Court rejected that submission. Lord Neuberger said:⁴⁸⁷ T
U “35. This interpretation of the section involves giving the phrase “relating to” an U
V inappropriately narrow and specific effect. At any rate as a general proposition, V

⁴⁸⁵ The SFC’s Written Closing Submissions, paragraph 44.5.

⁴⁸⁶ *Moody’s Investors Service Hong Kong Limited v Securities and Futures Commission*; page 469, paragraph 34.

⁴⁸⁷ *Moody’s Investors Service Hong Kong Limited v Securities and Futures Commission*; page 469, paragraph 35.

A it is a phrase with a wide and broad import. Like the words “in respect of”, the
B phrase could be said to be “colourless” and to have “the widest possible meaning
C of any expression intended to convey some connection... between the two
D subject-matters to which the words refer” see the authorities cited by Fok PJ in
E *Securities and Futures Commission v Pacific Sun Advisors Ltd* (2015) 18
F HKCFAR 138 at [23].

436. Lord Neuberger went on to consider the issue of statutory construction, having
E regard to the purpose of section 193(1)(d) of the Ordinance.⁴⁸⁸

F “Further, when one considers the purpose of s. 193(1)(d), it appears, if anything,
G to point away from giving its provisions a narrow meaning. The section is in a
H part of the Ordinance which is concerned with regulating and sanctioning
I “regulated activity” in financial markets, by licensed persons. It therefore should
J be interpreted bearing in mind that it was enacted as a part of a scheme
K introduced to protect members of the public and financial markets against
L inappropriate or substandard behaviour, and which is directed to sophisticated
M people, expert and experienced in financial markets, who will, as Mr. Shieh
N acknowledged, be in a privileged position as a result of being licensed, and who
O will often have ready access to legal advice, and some of whom will be (in many
P cases perfectly properly) keen to find ways of avoiding or minimising any
Q control over their activities.”

K *The factual context*

L *The involvement of UBS and Mr. Choi with Xinte*

M 437. There is no doubt that, as a matter of fact, UBS and Mr. Choi were involved in
N and worked for both aspects of the fundraising for Xinte, namely the pre-IPO investment project
O and the IPO project. In the event, months after that work had commenced in August/September
P 2014, a formal Letter of Engagement agreement was entered into between Xinte and UBS,
Q together with GF Securities, dated 19 March 2015.⁴⁸⁹ No doubt, appropriately reflecting the
R time at which the parties had begun to work together, the ‘Effective Date of the agreement was
S stipulated to be 24 August 2014. The agreement stated that UBS, together with GF Securities
T Hong Kong:⁴⁹⁰

R “...have been engaged to... act as the joint global co-ordinators, joint
S bookrunners, joint lead managers and the joint sponsors in relation to a global
T offering... of shares in the capital of the Company and the listing of such shares
U on the Stock Exchange of Hong Kong since 24 August 2014...”

T ⁴⁸⁸ *Moody’s Investors Service Hong Kong Limited v Securities and Futures Commission*; page 470, paragraph 40.

U ⁴⁸⁹ Bundle 3, pages 1191-1209.

V ⁴⁹⁰ Bundle 3, page 1191.

A 438. Also, it was stipulated that the Joint Advisors "...shall provide the following
B financial advice and assistance", including, "... any capital raising to be undertaken in
C connection with the offering."⁴⁹¹

D *The genesis of the involvement*

E 439. The genesis of UBS's Engagement agreement with Xinte appears to have been
F about 7 August 2014. On that date, in an email circulated within UBS, the two aspects of
G fundraising for Xinte were addressed together and the process of seeking approval from the
H Business Review Group was initiated, namely the pre-IPO investment project and the IPO
I itself.⁴⁹²

J 440. However, it is clear that by 22 September 2014 there was a formal distinction
K between the two parts of the fundraising. On that date, the approval of the Business Review
L Group was given in respect of the IPO project.⁴⁹³ Mr. Choi and others were advised that it was
M necessary to submit a separate application in respect of the pre-IPO investment project.⁴⁹⁴ It
N appears that that was never done.

O 441. In an email, dated 25 February 2015, Mr. Choi responded to Mr. David Chin's
P enquiry as to whether there was "any BRG submission" in respect of the pre-IPO project by
Q saying:

R "...no BRG conducted as there is no role for UBS".⁴⁹⁵

S *Mr. Choi/UBS's work in Xinte pre-IPO investment project*

T 442. Nevertheless, on the other hand, it is clear that Mr. Choi and his colleagues at
U UBS became and continued to be actively involved in the pre-IPO investment project. On
V Mr. Choi's instructions, potential investors had been contacted by UBS in early October 2014,
presented with the 'teaser' and invited to enter into a Confidentiality Agreement. Eleven such
potential investors were contacted. CMI was one of the potential investors contacted by UBS.
That information was shared with their Joint Advisor, GF Capital.⁴⁹⁶ Mr. Choi, himself sent and

⁴⁹¹ Bundle 3, page 1191, Clause 1.

⁴⁹² Bundle 33, pages 11215-11217.

⁴⁹³ Bundle 6, page 2062 and Bundle 33, page 11218.

⁴⁹⁴ Bundle 33, page 11218.

⁴⁹⁵ Bundle 6, page 2067.

⁴⁹⁶ Bundle 2, pages 641 and 643.

A received information from GF Capital as to the progress of their joint endeavours in the pre-
B IPO investment project.

C 443. On 27 October 2014, Mr. Choi met Mr. Devon Fu, following which meeting on
D 28 October 2014 Mr. Devon Fu provided UBS by email with a Confidentiality Agreement
E between Xinte, GF Capital and UBS, signed by Mr. Cong Lin, for LR Asia Capital Management
F Ltd., in respect of the “Transaction”, namely a “potential pre-IPO investment” in Xinte Energy
G Co., Ltd.⁴⁹⁷

H 444. On 9 January 2015 a conference of pre-IPO investors, including representatives
I of CMI and LR Capital, and representatives of the investment banks, including UBS and GF
J Capital, was held in Xinjiang. Mr. Choi was described in the related emails and attachments as
K being one of those representatives.⁴⁹⁸

L 445. In the event, Xinte entered into a Share Subscription agreement, dated 13 April
M 2015, with LR Capital Growth I Co Ltd and GF Energy Investments Limited to subscribe for
N about 73 million and 29 million Xinte shares respectively. Separately, on the same date, Xinte
O entered into a share subscription agreement with CMI for the latter to subscribe for about 43
P million Xinte shares.

Q 446. The exchange of emails internally within UBS on 25 and 26 February 2015
R evidence the fact that, although UBS and Mr. Choi had been involved in working on the pre-
S IPO investment for Xinte, no formal agreement had been reached between UBS and Xinte to
T reflect those endeavours. In the result, that aspect of the project was described as “Abandoned”
U in an email dated 26 February 2015.⁴⁹⁹ Although, that was the formal position, it is clear from
V the emails sent by Mr. Choi that not only had work been performed on the pre-IPO investment
project but also that was acknowledged by Xinte and was to be rewarded. That was to reflect
what Mr. Choi described as “...the help by us and GF IBD team in terms of overall coordination
and support”. Reward was to be achieved by providing GF Capital and UBS with what Mr. Choi
described as an “upraise” of IPO fees, namely “...an additional 0.5% incentive fee to be paid
upon deal completion.”⁵⁰⁰

⁴⁹⁷ Bundle 2, pages 652, 659-664.

⁴⁹⁸ Bundle 2, pages 592-596, at page 595 paragraph 3 and Bundle 3, pages 969-972.

⁴⁹⁹ Bundle 6, page 2065.

⁵⁰⁰ Bundle 6, page 2067.

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Xinte's IPO

447. The Prospectus for Xinte's IPO was issued on 17 December 2015 and closed on 22 December 2015. Xinte was listed on the SEHK on 30 December 2015.

"Related to"

448. As is readily apparent, both Mr. Choi and UBS had an active role in both aspects of Xinte's fundraising, namely the pre-IPO investment project and the IPO itself. There is no dispute that, in acting as Joint Sponsor in the IPO for Xinte, UBS and Mr. Choi were carrying on a regulated activity, namely advising on securities. Two questions arise: first, whether that conduct in relation to the pre-IPO investment project was "...an act or omission relating to the carrying on" of that regulated activity; and secondly, whether the Codes of Conduct, made pursuant to the provisions of the Ordinance, are applicable to conduct in the pre-IPO investment project.

449. Unsurprisingly, indeed as was to be expected, the pre-IPO investment was connected to the proposed IPO. That link was apparent from the outset and reflected in the various agreements that were reached between the parties. It is to be noted that in its reply to the Commission, dated 3 August 2018, UBS said:⁵⁰¹

"...the pre-IPO investment took place after project kick-off and UBS mandate review of the IPO, and UBS undertook a coordination role and reached out to pre-IPO investors initially as a potential standalone engagement, but eventually as additional services in the IPO."

'Use of Proceeds' of the pre-IPO investment

(i) Xinte's Prospectus

450. It is to be noted that in the 'Hearing Proof' of the Prospectus to be issued by Xinte Energy, attached to the email sent by Mr. Choi to Mr. Devon Fu, dated 29 November 2015, the issue of pre-IPO Investments was addressed at some length. Having detailed the investments made by CMI, GF Energy and LR Capital Growth I and having noted that 8 May 2015 was the "Payment Date of the Consideration", the use of the monies raised was addressed under the heading "Use of Proceeds".⁵⁰² Of that, it was stated:⁵⁰³

⁵⁰¹ Bundle 2, pages 623-629 at page 628, paragraph A.) 3) c.)

⁵⁰² Respondent's Evidence; Bundle A, item 1190-attachment in an electronic format only.

⁵⁰³ Item 1190, page 106 of internal pagination.

A “The proceeds of the pre-IPO investment have been fully used (i) towards our
B general working capital and capital expenditure for the construction and
C operation of solar and wind power stations; and (ii) for the improvement of our
Company’s asset-liability structure (including the repayment of some of the
shareholders’ loans).”

D (ii) *Suggested Basic Terms: 6 November 2014* D

E 451. The description of the use of the pre-IPO investment set out above resonates
F with the brief description set out under the same heading, ‘Use of Proceeds’, in the attachment
G to an email, dated 6 November 2014, sent to Mr. Devon Fu by the GF Group, which in turn he
H forwarded to Mr. Choi.⁵⁰⁴ The attachment was entitled:

H “Xinte Energy Co., Ltd. [“Xinte Energy”] Pre-IPO Financing Investment Plan
Discussion Paper” H

I 452. Under the general rubric “Suggested Basic Terms”, it was stated that it was
J proposed that Xinte Energy place ordinary shares to a US dollar equivalent of RMB 1.5 billion.
Under the heading ‘Use of Proceeds’, it was stated:

K “Use for supporting the capital expenditure and working capital of Xinte Energy,
L including:
...[To be determined]” L

M 453. Under the heading ‘Qualified Initial Public Offering [IPO]’, it was stated that:

N “Xinte Energy will offer and list new shares at the Hong Kong Exchanges and
O Clearing Limited or any other international securities exchange agreed by the
investors, and the market capitalization after the IPO will be no less than HK\$10
P billion [excluding new shares issued to the public] and the IPO proceeds will be
no less than HK \$2.5 billion or any market capitalization agreed by the investors
in writing.” P

Q 454. Under the heading ‘Mandatory Share Repurchase’, it was stated that:

R “When any of the following events occurs, the investors shall be entitled to
S require Xinte Energy to repurchase part or all of their shares of Xinte Energy:
-Xinte Energy fails to complete the qualified IPO prior to 31 December 2016....
The repurchase price will be paid in cash and be equivalent to the investment
amount plus a compound annual rate of returns at 10%. ” S

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⁵⁰⁴ Bundle 11, page 4000. U

(iii) *The CMI/Xinte Term Sheet: 3 March 2015*

455. The signed CMI/Xinte Term Sheet for subscription for new Xinte shares (“this transaction”) , which Mr. Choi forwarded to Mr. Devon Fu by email on 3 March 2015⁵⁰⁵, stipulated the ‘Use of Proceeds’ of the monies raised by Xinte Energy thereby as being:⁵⁰⁶

“...to bolster its capital expenditures and working capital, including covering the capital expenditure on building proprietary solar and wind power stations and improving its balance sheet [including repaying part of the loans from the shareholders].”

456. 452. Under the heading “Qualified Listing”, it was stated:⁵⁰⁷

“All parties agree that after the completion of this transaction, all parties shall use all reasonable endeavours to procure the listing of Xinte Energy on the HKEx with a market value of not less than HKD 12.5 billion [or a market value of any other amount agreed by all investors in writing] and the listing proceeds will be no less than HKD2.5 billion. The listing that meets all the aforesaid conditions is called a “qualified listing”.”

457. Under the heading “Mandatory Share Repurchase”, provision was made for the repurchase of “for part of the shares of Xinte Energy” in multiple circumstances, including:⁵⁰⁸

“1. Xinte Energy fails to complete the qualified listing prior to 31 March 2017;
2. Xinte Energy uses the proceeds from this transaction in violation of the aforesaid purposes;”

(iv) *The draft Share Subscription Agreements: Xinte/Xingjiang TEBA/TEBA and (i) GF Energy and LR Capital Growth I; (ii) CMI - 16 March 2015*

458. The two draft Share Subscription Agreements between Xinte and GF Energy and LR Capital Growth I, on the one hand, and Xinte and CMI, on the other hand, which Mr. Choi forwarded in an email, dated 16 March 2015, to Mr. Devon Fu, he having received them as attachments to an email from Xinte, reflected all the material parts of the provisions quoted above in the Term Sheet under the headings: Use of Proceeds; Qualified Listing; and Mandatory Share Repurchase. The phrase “this transaction” had been replaced in the text by the phrase “this share subscription”.⁵⁰⁹

⁵⁰⁵ Bundle 12, pages 4203-4232.

⁵⁰⁶ Bundle 12, pages 4214-4216.

⁵⁰⁷ Bundle 12, page 4222.

⁵⁰⁸ Bundle 12, page 4222.

⁵⁰⁹ Bundle 13, pages 4382-4652.

A
B *The Share Subscription Agreement: Xinte/Xingjiang TEBA/TEBA and GF Energy and LR Capital Growth I - 13 April 2015* A
B

C 459. The Share Subscription Agreement executed between Xinte/Xingjiang C
D TEBA/TEBA and GF Energy and LR Capital Growth I on 13 April 2015 once again reflected D
E all the material parts of the provisions quoted above in the draft Share Subscription Agreement E
under the headings: Use of Proceeds; Qualified Listing; and Mandatory Share Repurchase.

F *Conclusion* F

G 460. I have no hesitation whatsoever in being satisfied that the conduct of Mr. Choi G
H and UBS in respect of the pre-IPO investment in Xinte related to the carrying on of the regulated H
I activity, namely advising Xinte on securities in respect of its IPO. The contemporaneous I
J documentation cited earlier speak eloquently to the fact that the funds raised in the pre-IPO J
K investment were to be used for the benefit of the company in advance of the IPO. Clearly, that K
L was intimately connected with and related to the latter project. L

M *The applicability of the Codes of Conduct* M

N 461. The second question that arises is whether the Codes of Conduct, made pursuant N
O to the provisions of the Ordinance, are applicable to conduct in the pre-IPO investment project. O
P In his submissions, Mr. Shieh contended that they are not applicable. P

Q 462. In the judgment of the Court of Appeal in *Moody's*,⁵¹⁰ Lam VP, as Lam PJ was Q
R then, noted that it was contended on behalf of Moody's that the Code of Conduct published by R
S the Commission, pursuant to section 169 (1) of the Ordinance "...could only apply to the S
T carrying on of the regulated activities. Hence, there could not be a breach of the Code in respect T
U of non-regulated activities." That had been the Determination of the Securities and Futures U
V Appeals Tribunal.⁵¹¹ V

Q 463. Of that submission, Lam VP said:

R "This is not a ground in the Notice of Appeal. In any event, once we reject the R
S narrow construction of s. 193 as to the scope of the business of credit rating, S
T there is no merit in the argument." T

U ⁵¹⁰ *Moody's Investors Services Hong Kong Limited v Securities and Futures Commission* [2017] 3 HKLRD 565; U
V at page 577, paragraph 34-35. V

U ⁵¹¹ *Moody's Investors Services Hong Kong Limited v Securities and Futures Commission* SFAT No. 4 of 2014; U
V Reasons for Determination, paragraphs 76 and 77. V

A The issue was not addressed in the Court of Final Appeal. B

C 464. Although Lam VP’s observations were clearly *obiter dicta*, they clearly resonate
D with a broad interpretation of section 193 of the Ordinance. There is considerable force in
E Mr. Li’s submission that, given that section 193(3) of the Ordinance expressly requires the
F Commission to have regard to Codes of Conduct, published under section 169 of the Ordinance,
G before forming an opinion that an act is prejudicial to the interest of the investing public or the
public interest”, it would make little sense to construe the provision as being limited only to
regulating conduct constituting the carrying on of the regulated activity, and not to conduct
related to it.⁵¹²

H 465. In the result, I am satisfied that, in determining whether Mr. Choi’s conduct in
I the pre-IPO investment project was prejudicial to the interest of the investing public or the
public interest, regard is to be had to whether it was in breach of the Codes of Conduct
promulgated by the Commission. J

K *Irrationality: the prohibition imposed on Mr. Choi in the Decision Notice*

L 466. In support of the submission that it was irrational for the Commission to
M determine in the Decision Notice to impose prohibitions on Mr. Choi, Mr. Shieh invited the
N Tribunal to note that at that time Mr. Choi was no longer a licensed person and had not been
O licensed for several years. Further, in the written Representations made on his behalf by his
P then solicitors Messrs Tang Lai & Leung, dated 16 April 2021, the Commission had been
Q informed that Mr. Choi had no “intention of applying for such regulatory approval.” Moreover,
a voluntary undertaking had been made on his behalf “not to apply for a licence, registration or
other approval or consent for a period of up to three years from the date of any agreement to
this effect with the SFC, subject to the imposition of appropriate and necessary confidentiality
provisions.”⁵¹³

R 467. Mr. Shieh invited the Tribunal to note that the Commission did not even engage
S with Mr. Choi as to the scope of the “confidentiality provisions”. He submitted that, in those
circumstances, the decision to prohibit him from applying for the grant of a licence was made
irrationally. T

U ⁵¹² The SFC’s Written Closing Submissions, paragraph 55.3.

V ⁵¹³ The Applicant’s Written Opening Submissions, paragraphs 89-93.

A 468. For his part, Mr. Li submitted that the disciplinary process served a very
B important purpose, which was not answered by a voluntary undertaking to withdraw from the
C process. Further, he submitted that the offer had been entered with the caveat that it be subject
D to “appropriate and necessary confidentiality provisions”. Nothing had been advanced as to
why Mr. Choi should be entitled to any confidentiality. Certainly, he had no such entitlement.

E 469. Mr. Li submitted that the Commission was entitled to reject Mr. Choi’s offer.
F There was nothing irrational in doing so. Having regard to the Commission’s regulatory
G objectives, it was entitled to do so. The deterrent effect of the disciplinary prohibition was an
H appropriate consideration.

A consideration of the submissions

I 470. I have no hesitation whatsoever in rejecting the submission that the Commission
J had acted irrationally in determining to proceed as it did, namely to reject the offer and proceed
K to make the prohibition orders as part of the orders made under the Decision Notice. I accept
L as correct, the response of the Commission in its Decision Notice to that suggestion, namely
M that the proposed prohibition “...is a formal disciplinary sanction” imposed pursuant to the
N provisions of the Ordinance. As the Commission went on to note, “The threat of sanctions being
O imposed by the SFC also serves to deter non-compliance with regulatory requirements. This
P latter objective is achieved through publication of the SFC’s disciplinary sanctions”.⁵¹⁴

Part 8 - A consideration of Mr. Choi’s conduct in Xinte’s pre-IPO investment

Q 471. In considering the submissions in respect of Mr. Choi’s impugned conduct in
R respect of Xinte’s pre-IPO investment project, I have considered the alleged personal and
S familial connections between Mr. Choi and the LR Capital Group separately and subsequently.

The provision of information and assistance to LR Capital

T 472. The nub of the Commission’s allegation of misconduct against Mr. Choi in this
U respect was that this conduct showed that he had “...provided assistance and information in
V relation to another pre-IPO investor’s investment to LR Capital, a counterparty to your client,
in Project Oasis.”

⁵¹⁴ Core Bundle; page 87, at paragraphs 26- 27

A 473. Factually, the alleged misconduct stipulated and found by the Commission
B against Mr. Choi in respect of the pre-IPO investment project for Xinte is of relatively narrow
C compass:

- D (i) the exchange of emails between Mr. Devon Fu and Mr. Choi on 6 November
E 2014, in which Mr. Devon Fu forwarded an attachment he had received from
F GF Investments under the Subject heading: FW: discussion draft of key terms
G for TBEA pre-IPO investment;⁵¹⁵
- H (ii) the email, dated 3 March 2015, which Mr. Choi sent to Mr. Devon Fu, to which
I was attached the Term Sheet of CM International's pre-IPO investment in
J Xinte;⁵¹⁶
- K (iii) the email, dated 16 March 2015,⁵¹⁷ which Mr. Choi sent to Mr. Devon Fu, to
L which was attached the draft Subscription Agreements for CM International⁵¹⁸
M and LR Capital Growth.⁵¹⁹
- N (iv) The email, dated 14 December 2015, which Mr. Devon Fu sent to Mr. Choi⁵²⁰,
O to which was attached a response to the SEHK's enquiry as to the relationship
P between LRC. Belt and Road and LR Capital Growth.⁵²¹

L 474. The nub of the Commission's allegation of misconduct against Mr. Choi in this
M respect was that this conduct showed that he had "...provided assistance and information in
N relation to another pre-IPO investor's investment to LR Capital, a counterparty to your client,
O in Project Oasis."

O *6 November 2014*

P 475. On their own, the exchange of emails between Mr. Devon Fu and Mr. Choi on
Q 6 November 2014 did nothing to establish the provision of assistance by Mr. Choi to LR Capital.
R Rather, it suggested a request for assistance by Mr. Devon Fu of Mr. Choi. There is no evidence
S that any assistance was forthcoming on that occasion. On the other hand, the emails suggest a

S ⁵¹⁵ Bundle 11, pages 4000-4003.

T ⁵¹⁶ Bundle 12, pages 4203-4232.

T ⁵¹⁷ Bundle 13, page 4382.

T ⁵¹⁸ Bundle 13, pages 4562-4652.

U ⁵¹⁹ Bundle 13, pages 4384-4469.

U ⁵²⁰ Bundle 31, pages 10787-10788.

V ⁵²¹ Bundle 31, pages 10783-10785.

A close relationship between the two men in which Mr. Choi identified a common interest, “Any
B special things to warrant *our* attention.” [Italics added.] B

C *3 March and 16 March 2015* C

D 476. In the emails, dated 3 March and 16 March 2015, Mr. Choi forwarded to D
E Mr. Devon Fu material in respect of CMI, namely a signed pre-IPO Term Sheet and a draft E
F Share Subscription agreement. The former document had been provided to him in an email F
G from Wang Jiang of CMI and the latter document sent internally within UBS. On each occasion, G
H in forwarding the information to Mr. Devon Fu, the names of the original sender and recipients H
I were removed. On 3 March 2015, Mr. Choi wrote simply, “FYI.” On 16 March 2015, he invited I
J Mr. Fu to “...call my office.” J
K K

H 477. At the time that Mr. Choi provided Devon Fu with this information, CMI was H
I negotiating with Xinte the terms on which it might make a pre-IPO investment in Xinte. LR I
J Capital were engaged in similar negotiations. On its face, the information was confidential to J
K CMI and Xinte. Without some explanation, it was confidential information that it would not be K
L in the interests of CMI and Xinte to disclose to other negotiating parties. L

L *CMI’s informed consent* L

M 478. In his evidence, Mr. Cong Lin sought to provide some explanation. In his M
N witness statement he asserted that information exchanged in emails with Mr. Choi at that N
O time:⁵²² O

O “...were exchanged openly and with the consent and knowledge of all the parties O
P involved, including Xinte Energy, GF Securities and CM International.” P

P 479. Of the email sent on 3 March 2015, attaching the term sheet of CM P
Q International’s pre-IPO investment in Xinte Energy, he invited the Tribunal to note that Q
R reference was made specifically to LR Capital’s subsidiary, LR Capital China Growth I R
S Company Limited, which was also described as subscribing for new shares to be issued by S
T Xinte Energy. Of that, he said that: T

S “...pre-IPO investments in Xinte Energy were conducted openly vis-a-vis CM S
T International and LRC”. T

U ⁵²² Bundle 35, pages 11849-11850, at paragraph 26. U

A 480. As noted earlier, he asserted specifically, that the term sheet was sent with the
B "...knowledge and consent of CM International." He had a telephone conversation with the
C then Chairman, Mr. Dong Wenbaio, in which it was agreed that information concerning the
investment would be shared between CMI and LR Capital.⁵²³

D 481. In cross-examination, Mr. Cong Lin was taken to a chain of emails which
E culminated in Mr. Choi sending an email, at 12:19 am on 17 February 2015⁵²⁴, to Mr. Devon
F Fu, to which was attached two term sheets for the pre-IPO investment in Xinte, one in respect
G of CMI and the other in respect of all other investors. Earlier, on 16 February 2015, the two
H term sheets had been provided to Mr. Choi as attachments to an email from King & Wood
Mallesons under the Subject heading: Term sheet update, with the text marked "Confidential
Communication".

I 482. Mr. Cong Lin acknowledged that earlier emails evidenced the fact that a single
J term sheet had been circulated between the parties, including LR Capital and CMI, up and until
K 13 February 2015.⁵²⁵ However, in an email sent at 4:18 pm on 13 February 2015, Enoch Kang
of UBS asked King & Wood Mallesons to prepare a separate term sheet for CMI:⁵²⁶

L "Separate CM Huaheng investment into a separate document. In the current
M document, keep the necessary referral to CM Huaheng (including investment
amount) and explains that it will sign a separate document due to additional
strategic cooperation considerations. DO NOT CIRCULATE this separate
document with CMI to the wide group."

N Thereafter, separate term sheets were prepared and circulated separately to the respective
parties.

O 483. Then, the following exchange ensued in cross-examination of Mr. Cong Lin:⁵²⁷

P "Q. And, from this point onwards, the email chain no longer included CMI or
Q LRC; you agree?"

R A. Yes, it seems to me that's the case.

S Q. It became internal to the sell-side; correct?"

A. I don't know the other recipient of this email.

T ⁵²³ Bundle 35, pages 11849-11850, at paragraph 26.

⁵²⁴ Bundle 12, page 4145.

⁵²⁵ Transcript, page 432 M-V.

⁵²⁶ Bundle 12, pages 4147 and 4153.

⁵²⁷ Transcript, page 433 F-N.

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Q. But you can see that it no longer included CMI and LRC; correct?

A. Yes, I understand.”

484. Having been taken to examples of emails in which the separate term sheets were then circulated to the parties separately, the following exchange in cross-examination of Mr. Cong Lin ensued:⁵²⁸

Q. Mr. Cong, these and the subsequent emails in this chain concerned the two separate term sheets and the different terms in the separate term sheets; correct?

A. Yes, it seems to be the case.

CHAIRMAN: ... one term sheet involves CMI and the other term sheet?

MR. LI: Involves everyone else but CMI... and the everyone-else includes LRC.

CHAIRMAN: Do you understand that to be the case, Mr. Cong?

A. Yes, I understand.

485. Of the email to Mr. Devon Fu sent by Mr. Choi had 12:19 am on 17 February 2015, Mr. Cong Lin said, “I don’t really have a deep impression about this email.”⁵²⁹ Of the suggestion that he would not have known, at that time that Mr. Choi had shared a CMI Term Sheet with Mr. Devon Fu, Mr. Cong Lin said, “Because there were many discussions regarding each deal and I’m not sure if I had participated in such discussions.”⁵³⁰ Of the suggestion that he had “...assumed the sharing was pursuant to CMI’s consent”, Mr. Cong Lin said:⁵³¹

“I don’t know if this sharing of information was agreed by CMI but I do remember that this project regarding Xinte Energy was introduced to LRC by CMI.”

486. Of the final suggestion, that he did not know whether the sharing of information was with the consent of Xinte, Mr. Cong Lin said, “I don’t think (I) know this matter at all and I don’t remember.”⁵³²

487. Mr. Shieh did not re-examine Mr. Cong Lin.

⁵²⁸ Transcript, page 438 A-N.
⁵²⁹ Transcript, page 440 C.
⁵³⁰ Transcript, page 440 Q.
⁵³¹ Transcript, page 441 A-F.
⁵³² Transcript, page 441 K.

A 488. Although the cross-examination of Mr. Cong Lin was in respect of the draft CMI
B Term Sheet attached to Mr. Choi's email to Mr. Devon Fu on 17 February 2015, clearly the
C same point arose in respect of the term sheet attached to the email he sent on 3 March 2015.
D Moreover, significantly Mr. Cong Lin made it clear that he had no knowledge at all of what the
position was in respect of Xinte itself.

E 489. Obviously, the tenor of Mr. Cong Lin's evidence in cross-examination was at
F odds with the general assertions made in his written statement, first that "...information and
G emails exchanged with Mr. Choi at the time... were exchanged openly and with the consent
H and knowledge of all the parties involved, including Xinte Energy, GF Securities and CM
I International"⁵³³ and secondly, "the negotiations of CM International's and LRC's (through
J L.R. Capital China Growth I Company Limited) pre-IPO investments in Xinte Energy were
K conducted openly vis-a-vis CM International and LRC." Similarly, it was at odds with the
L specific, particular assertion that the CMI term sheet, attached to the email sent by Mr. Choi to
M Mr. Devon Fu on 3 March 2015, was sent with the knowledge and consent of CMI. The fact
N that CMI had attached the signed term sheet, in an email to Mr. Choi, dated 3 March 2015,
O simply resonated with the instructions given by King & Wood Mallesons to CMI in respect of
P the draft term sheet in an email sent on 18 February 2015, namely, "...please have the term
Q sheet signed and coordinate with UBS on delivery."⁵³⁴ The Chinese text of the draft term sheet
R sent on 18 February 2015 is identical to the text in the signed document sent on 3 March 2015.

S 490. If there was an agreement that negotiations with Xinte Energy were conducted
T openly as far as CMI and LR Capital were concerned, why had CMI signed the Agreement with
N Xinte Energy containing the confidentiality clause, which required the parties to keep the terms
O and conditions of the agreement strictly confidential and which restricted disclosure to third
P parties? Moreover, it is to be noted that there was no reference in any of the emails in which
Q confidential information in relation to CMI was forwarded to Mr. Devon Fu of that being done
R pursuant to any such agreement with LR Capital. On the contrary, the emails were stripped of
S information as to their provenance and contained bare, cryptic messages. Further, no evidence
T at all, such as contemporaneous emails, has been identified to support Mr. Cong Lin's bare
assertion. In all the circumstances, I do not accept Mr. Cong Lin's bare assertion that the term
sheet sent on 3 March 2015 was sent with the knowledge and consent of CMI.

U ⁵³³ Bundle 35, page 11849, paragraph 26.

V ⁵³⁴ Bundle 12, page 4167.

A *Disclosure in the interests of LR Capital?* A

B 491. Mr. Li submitted that Mr. Choi's repeated disclosure to Mr. Devon Fu of B
C information regarding CMI's pre-IPO investment in Xinte was clearly in the interests of LR C
D Capital, given that it was also a pre-IPO investor. In negotiating with Xinte, it was in its' D
E interests to know the details and terms of CMI's pre-IPO investment.⁵³⁵ Specifically, he E
F contended that "...it could not possibly have been in Xinte's interest for details of its F
G negotiation with one potential investor (CMI) to be shared with another (LRC)."⁵³⁶ Given that F
the separate CMI term sheet had been provided to Mr. Choi on the basis that it was confidential G
and not to be disclosed to the other parties, Mr. Li's suggested that there was no explanation as G
to why it fell to Mr. Choi, as opposed to Xinte or CMI, to provide it to LR Capital.⁵³⁷ G

H 492. For his part, Mr. Shieh submitted that nothing had been identified by the SFC H
I that suggested that LR Capital's pre-IPO investment in Xinte was on terms "...that were in any I
way unfavourable towards Xinte".⁵³⁸ I

J 493. In all the circumstances, I am satisfied that during the course of negotiations J
K between Xinte and LR Capital in respect of a pre-IPO investment by the latter in Xinte, it was K
L manifestly not in the interests of either Xinte or CMI for the details and terms of CMI's pre- L
M IPO investment in Xinte to be disclosed by Mr. Choi to LR Capital. On the other hand, clearly M
it was in the interests of LR Capital to be possessed of that information during its own M
negotiations with Xinte in respect of its pre-IPO investment in Xinte. M

N *Ambit of the Engagement Letter - 19 March 2015* N

O 494. Mr. Shieh took issue with Mr. Li's submission, that the Engagement Letter O
P agreement encompassed the work performed by Mr. Choi and UBS in the pre-IPO investment P
Q project of Xinte.⁵³⁹ Mr. Shieh invited the Tribunal to note that the pre-IPO investment in Xinte Q
R by CMI and LR Capital, through their respective Share Subscription agreements, was R
conducted through GF Securities and not UBS. For its' part, UBS treated the pre-IPO R
investment project as "abandoned". Since UBS was not formally engaged in respect of the pre-

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T ⁵³⁵ The SFC's Written Opening Submissions, paragraph 134.

T ⁵³⁶ The SFC's Written Closing Submissions, paragraph 105.

U ⁵³⁷ The SFC's Written Closing Submissions, paragraph 137.4.

V ⁵³⁸ The Applicant's Written Opening Submissions, paragraph 125.3.

⁵³⁹ The SFC's Written Opening Submissions, paragraph 30.

A IPO investment project the Letter of Engagement agreement could not be construed as
B extending to cover the pre-IPO investment project.⁵⁴⁰ B

C 495. Although the Engagement Letter agreement, dated 19 March 2015, between C
D Xinte, on the one hand, and GF Securities and UBS, on the other hand, specifically identified D
E the provision of “financial advice and assistance” in respect of only the “...global offering in E
F the listing of shares of Xinte on the Stock Exchange of Hong Kong”, I am satisfied that the F
G provision in Clause 1 (b), that the role of the Joint Sponsors included “advising... on any capital G
H raising to be undertaken in connection with the offering”, clearly encompassed the active work H
I performed by Mr. Choi and UBS in the pre-IPO investment project for Xinte over several I
J months, beginning in September 2014 and including the Xinjiang conference of investors. J

H 496. Clearly, in performing the work done in respect of the pre-IPO investment H
I project Mr. Choi was acting on behalf of UBS’s client, Xinte. I

J *Confidentiality* J

K 497. As far as Xinte’s position was concerned, the Engagement Letter with UBS and K
L GF Securities, dated 19 March 2015, made specific provision for confidentiality:⁵⁴¹ L

M “The terms of the confidentiality agreement between UBS AG , Hong Kong M
N Branch, GF Capital (Hong Kong) Limited and the Company dated 24 August N
O 2014 shall continue to apply (to) govern the confidentiality obligations of UBS O
P and GF Capital (Hong Kong) Limited respectively.” P

N However, as noted earlier, the Tribunal has not received the agreement, dated 24 August 2014. N
O

O 498. Although Clause 6(b)(iii) of the Standard Terms and Conditions, in addressing O
P the topic of “**Conflicts of Interest**” permitted the Joint Advisors to provide services, engage in P
Q transactions and act in relation to third parties, that was subject to the requirement that they: ⁵⁴² Q

R “... in providing the services, implementing the transaction or acting for Third R
S Party do not disclose such information which is and which continues to be S
T confidential to the Company to any such Third Party.” T

T
U ⁵⁴⁰ The Applicant’s Written Opening Submissions, paragraph 20.

U ⁵⁴¹ Bundle 3, page 1199 at clause 2(b).

V ⁵⁴² Bundle 3, pages 1202 and 1203 at clause 6(b).

A 499. I am satisfied that the terms of CMI’s pre-IPO investment in Xinte, including
B the signed term sheet and the draft Share Subscription agreement, was confidential information
C belonging to Xinte and that UBS was obliged to maintain confidentiality.

D 500. I am satisfied that Mr. Choi knew that the parties to the signed term sheet,
E attached to the email he received on 3 March 2015, Xinte and CMI, agreed that the terms and
F conditions of the agreement were to be kept “strictly confidential”. That much was stated in
G terms in the term sheet signed on behalf of CMI.⁵⁴³ That clause, simply replicated the clause
H that was found in the two draft term sheets sent to Mr. Choi in the emails sent on 16 and 18
February 2015, which he had forwarded to Mr. Devon Fu on 17 and 18 February 2015. Of
course, of particular importance was the fact that Xinte, UBS’s client, as a party to the
agreement, expressly stated that it required the information to be kept confidential.

I 501. Similarly, I am satisfied that Mr. Choi knew that Xinte wished to keep
J confidential the transaction proposed and the terms of the share subscription agreement
K between Xinte and CMI sent to him by email on 16 March 2015 which document he forwarded
to Mr. Devon Fu. Again, that much was stated in terms in the draft agreement.⁵⁴⁴

L *Conflicts of interest*

M 502. The SFC’s Code of Conduct and the Corporate Finance Adviser Code of
N Conduct address the issues that arise and the steps to be taken when a conflict of interests arises
between a licensed or registered person or a Corporate Finance Adviser and his client.

O General Principle 6 of the SFC Code of Conduct provides that:

P “A licensed or registered person should try to avoid conflicts of interest, and
when they cannot be avoided, should ensure that its clients are fairly treated.”

Q 503. Mr. Choi did nothing to avoid a conflict of interest. The requirement that a
R licensed or registered person should ensure that “clients are fairly treated” is the most basic,
S broad lowest common denominator requirement. The disclosure by Mr. Choi of the confidential
information of Xinte of the pre-IPO investment terms negotiated with CMI to another separate
pre-IPO investor, LR Capital, was not to treat UBS’s client, Xinte, fairly.

U ⁵⁴³ Bundle 12, pages 4228-4229.

V ⁵⁴⁴ Bundle 13, page 4612.

A 504. In disclosing that information to LR Capital, a third party involved in its own
B negotiations with Xinte, in emails to Mr. Devon Fu, sent on 3 and 16 March 2015, Mr. Choi
C and UBS were in clear breach of that obligation. Far from taking all reasonable steps to ensure
D fair treatment of UBS's client Xinte, as required by paragraph 10.1 of the SFC Code of Conduct,
E Mr. Choi had taken no such steps.

F 505. Similarly, Mr. Choi was in breach of those obligations in forwarding to
G Mr. Devon Fu, in emails dated 17 and 18 February 2015, attachments of the draft term sheet.

*14 December 2015 - The SEHK enquiry: relationship between LRC. Belt and Road Investment
Limited and LR Capital China Growth I Company Limited*

H 506. In an email, sent at 10:22 am on 14 December 2015,⁵⁴⁵ by Ms. Winnie Leung,
I Executive Director of UBS, to "IBD" AMTD, under the Subject heading: Oasis-Stock
J Exchange questions-AMTD please help reply asap, the recipient was informed that the SEHK
K had just called to ask about the relationship between the cornerstone investor LRC. Belt and
L Road Investment Limited and LR Capital China Growth I Company Limited and asked why
M the former was not an affiliated investor. Ms. Christine Kwok was one of the recipients of
N copies of the email at AMTD. Mr. Choi was one of multiple recipients at UBS of blind copies
O of the email.

P 507. At 3:55 pm on 14 December 2015,⁵⁴⁶ Mr. Devon Fu sent an email to Mr. Calvin
Q Choi in which at some length, amongst other things, it was asserted that there was a lack of any
R relationship between those companies or LR Capital Management Company (Cayman) Ltd.
S The email had no subject heading or accompanying text.

T 508. At 4:58 pm on 14 December 2015,⁵⁴⁷ IBD AMTD sent an email to Ms. Winnie
U Leung at UBS under the same Subject heading as the earlier email from Ms. Winnie Leung,
V copied to Ms. Christine Kwok and Mr. Devon Fu. The email stated, "Further revised as follows
- and we are fine for this to be submitted to HKEx. Thanks!" With some changes, the text under
the heading Question 1 replicated much of the text of Mr. Devon Fu's earlier email.

⁵⁴⁵ Bundle 31, page 10783.

⁵⁴⁶ Bundle 31, page 10787.

⁵⁴⁷ Bundle 31, page 10792.

509. There is no evidence of any response in any form by Mr. Choi to receipt of Mr. Devon Fu's email.

510. Again, given that Mr. Choi was apparently merely an unresponsive recipient of an email from Mr. Devon Fu, it provides no direct evidence of Mr. Choi providing information or assistance to LR Capital. On the other hand, the fact that the text in Mr. Devon Fu's email to Mr. Choi was replicated in large measure in AMTD's proposed answer to the SEHK about intimate details of the LR Capital Group is relevant to the question of Mr. Choi's relationship with Mr. Devon Fu and LR Capital.

Part 9 - A consideration of Mr. Choi's conduct in the sale of AMTD shares in Project Frontier

511. In considering the submissions in respect of Mr. Choi's impugned conduct in respect of the sale by the selling shareholders of their shares in AMTD, I have considered the alleged personal and familial connections between Mr. Choi and the LR Capital Group separately and subsequently.

Mr. Choi's provision of confidential information to LR Capital

512. As is readily apparent from the description of the selection of emails exchanged between Mr. Choi and Mr. Devon Fu set out earlier, Mr. Choi repeatedly provided information to Mr. Devon Fu and LR Capital that, on its face, on the one hand was material and confidential to the interests of the sell-side shareholders and on the other hand of obvious potential interest and use to LR Capital in negotiating to buy their AMTD shares.

Inferences

513. In choosing not to give evidence in these proceedings, Mr. Choi has not provided the Tribunal with his explanation for his conduct in Project Frontier. On the other hand, evidence was advanced on his behalf by Mr. Kingsley Chan, Mr. Gao Yu and Mr. Howard Cong Lin in respect of various aspects of his conduct in Project Frontier. Nevertheless, there were clearly areas in respect of which they were not in a position to nor did they give evidence as to obviously relevant significant aspects of his conduct. Why did Mr. Choi forward to Mr. Devon Fu on 4 June 2015 the potential buyer's list setting out their respective interest? That was material which had been compiled in the work performed for the sell-side shareholders. Why did he forward other obviously confidential documents to Mr. Devon Fu?

Why did he draft text to be used in emails to be sent by LR Capital to (i) Freshfields; and (ii) the selling shareholders, in which advantage was sought for LR Capital in the negotiations of the terms with UBS's clients the selling shareholders? In his role as a sell-side adviser, how was that conduct justified or explained?

514. In those circumstances, in the absence of evidence from Mr. Choi, in my judgement it is permissible for the Tribunal to draw inferences adverse to Mr. Choi more readily and I do so.

(i) 4 June 2015 - information sent by email by Mr. Choi to Mr. Devon Fu containing a detailed description of the response to UBS of potential buyers of AMTD shares

515. The provision, in an email sent to Mr. Devon Fu by Mr. Choi on 4 June 2015, of a detailed description of the interest or otherwise of no less than fifteen other potential buyers of the AMTD shares available for sale is an egregious example of that conduct.⁵⁴⁸ The email to Mr. Devon Fu had no Subject heading nor any message. It was unexplained, but it spoke for itself:

“Banks –

- * mingsheng international: conflict due to quam deal - as discussed, no teaser was sent;
- * ccb/ccb asia: no interest;
- * chong hing bank - prioritized focus on nanyang bank acquisition;
- * bmo: no interest;
- * harbin bank: only interest in clean licences and team without business;

Securities company –

- * Gf securities: no interest;
- * everbright securities: conflict due to shk deal - as discussed, no teaser was sent;
- * qilu securities - due to shk experience, they need complete exclusivity before taking time to look further into it. Priority is to focus on qilu's a-share flotation before significant move;
- * pacific securities: conflict due to another parallel deal;
- * huatai securities: only interest to buyout management team but not business;

Investment company –

- * cmi: believe 1.5bn and above are not worthwhile price. Believe that sensible price range in the range of hkd1bn to 1.2bn and they want to take only 51 percent and no more than 60percent;
- * hanya: no interest;

⁵⁴⁸ Bundle 20, page 7110.

A *haotian (412): interested but need to do a share plus cash deal with share
B portion of no less than 70percent; B

C Others: C

D * value partners: need 3 years profit guarantee or until the point of ipo time.
E Won't pay expensive pricing; E

F *taiping insurance: priority is nanyang deal” F

G 516. Of the obvious importance to the sell-side shareholders of such information, it
H is to be remembered that in Mr. Kingsley Chan's first contact by email with Mr. Choi, dated
I 12 March 2015, he invited Mr. Choi, if he was interested in the project, to provide: ⁵⁴⁹ I

J "... relevant materials eg likely buyers list with feedback based on your
K conversations with them.” K

L 517. The initial list of ten "suggested and potential buyers" identified by Mr. Choi in
M an email to Mr. Kingsley Chan, dated 13 March 2015⁵⁵⁰ was added to as time went by. The
N developed list was the product of the work of both the selling shareholders, Mr. Choi and UBS.
O By an email sent to Mr. Choi on 31 March 2015, Mr. Kingsley Chan suggested no fewer than
P thirteen new names to be added to the "potential investor list".⁵⁵¹ By an email sent to
Q Mr. Kingsley Chan, dated 8 April 2015, Mr. Choi suggested adding seven names to the list of
R potential buyers.⁵⁵² In fact, only three of the names were new names not on previous lists. Then,
S in an email circulated internally within UBS on 8 May 2015, Mr. Choi stipulated a "revised list"
T of a total of twenty-four entities.⁵⁵³ T

U 518. Although LR Capital had made its 'Binding Offer' to acquire the selling
V shareholders shares in AMTD in an email sent on 29 May 2015 to AMTD, Mr. Kingsley Chan,
Mr. Gao Yu and Mr. Choi, clearly considerable negotiations remained to be conducted between
the parties. That much was made clear by the lengthy email, dated 2 June 2015, sent by
Mr. Kingsley Chan to Mr. Choi under the Subject heading: Pj Frontier-Next Steps.⁵⁵⁴ Mr. Choi
was informed: U

V "The shareholders have reconvened, several points for you to follow-up.” V

⁵⁴⁹ Bundle 6, page 2085.

⁵⁵⁰ Bundle 6, page 2085.

⁵⁵¹ Bundle 6, pages 2131-2134.

⁵⁵² Bundle 6, page 2131.

⁵⁵³ Bundle 6, pages 2167 and 2173-2174.

⁵⁵⁴ Bundle 20, page 7061.

A In particular, Mr. Choi was instructed:

B “...we still need you to press LRC for an (sic) slight increase in their bid such
C that the sellers will be covered for UBS’s advisory fee”.

D Further, Mr. Choi was directed:

E “ -the shareholders still need UBS to help us continue gather any written
F proposals before the signing of a Term Sheet.”

F 519. I am satisfied that, even after the “Binding Offer”, dated 29 May 2015, but whilst
G negotiations were still continuing and before the signing of the Sale and Purchase Agreement
H on 19 June 2015, detailed information as to the strength or otherwise of interest in other
I potential buyers in the acquisition of the shares in AMTD contained in the email dated 4 June
J 2015 was of considerable benefit to LR Capital. The interest of other buyers was a matter
K adverted to specifically in an email, the text of which was provided by Mr. Choi, sent by
L Mr. Howard Cong Lin to Freshfields at 08:11 am on 6 June 2015, “...we still aim to sign
M tomorrow morning at 10 am given the highly competitive nature of the deal and we know that
N multiple buyers have been still pushing to get in as of yesterday.”⁵⁵⁵ It is to be noted that the
O term sheet between AMTD, the selling shareholders and LR Capital was not executed until 8
P June 2015.⁵⁵⁶ Conversely, divulging that information to LR Capital was not in the interests of
Q the sell-side shareholders. There was no justification for Mr. Choi to divulge the information to
R LR Capital. Certainly, none has been offered. In acting as he did, Mr. Choi acted in conflict
S with the interests of UBS’s clients, the selling shareholders.

N 520. It is to be noted that the email sent by Mr. Howard Cong to Mr. Alan Tsang on
O 16 June 2015, under the Subject heading: Important Matters and Confidential, the text of which
P had been provided by Mr. Choi, ⁵⁵⁷identified several matters which even at that date, were
Q described as “potential deal breakers”.

T ⁵⁵⁵ Bundle 21, page 7166.

U ⁵⁵⁶ Respondent’s Evidence (May 2022); Section B-item 147.

V ⁵⁵⁷ Bundle 24, page 8549.

(ii) 7 June 2015 - information obtained from Mr. Kingsley Chan of the sell-side's negotiation position on the Term Sheet sent by email by Mr. Choi to Mr. Devon Fu and forwarded to Freshfields

521. In the ongoing exchange of emails between Mr. Kingsley Chan and Mr. Choi under the Subject heading: Draft Term Sheet, Mr. Choi sent Mr. Kingsley Chan an email at 12:26 am on 7 June 2015, in which Mr. Choi reported the results of his discussions with Mr. Howard Cong Lin of LR Capital. Of the issue of due diligence, Mr. Choi wrote:⁵⁵⁸

“Based on the conversations, my understanding is that they are looking to collect mainly key information below in order to fill in their internal board paper/investment committee requirements: (1) employee/management contracts; (2) financial statements/books and records; (3) material contracts and anything major in terms of business... and legal aspects (4) anything material in terms of regulatory nature and compliance matters; (5) budgets and business plans; (6) key business line/focuses, management hierarchy/internal approvals/limits, and key operation flows...”

522. In an email, sent at 01:13 am on 7 June 2015, Mr. Choi provide an update, adding:⁵⁵⁹

“On top: checked their views softly-they will need v and vi as part of internal IC requirement especially vi”

523. In an email sent to Mr. Choi at 01:34 am Mr. Kingsley Chan set out the different considerations taken into account by the selling shareholders and identified their negotiation position:⁵⁶⁰

“...we'll help facilitate the gathering of (v) and (vi) - ideally after signing but if making their lives difficult then we can try before signing (just that let's all be mindful that it won't slow down the process, as nature of these items mean they need quite some time to digest, esp without advisors)

Although we can always respond that we understand that IC has already approved, we want to be as cooperative as possible too (if otherwise, we should know.). Hope they appreciate as well

We trust you'll help manage this point delicately.”

524. Having removed the name of the sender and those of all the recipients of Mr. Kingsley Chan's email, at 01:37 am Mr. Choi forwarded that email together with a lengthy

⁵⁵⁸ Bundle 21, page 7296.

⁵⁵⁹ Bundle 21, page 7295.

⁵⁶⁰ Bundle 21, page 7295.

A chain of emails to Mr. Devon Fu.⁵⁶¹ For his part, at 08:45 am on 7 June 2015 Mr. Devon Fu
B forwarded the email to Freshfields, adding the message:⁵⁶²

C “FYI - pls off-record and keep confidential.” [Italics added.]

D At 08:46 am, Mr. Devon Fu forwarded that email to Mr. Choi.

E 525. In cross-examination, having been taken through those emails, in response to
F the suggestion that he did not know that Mr. Choi was doing that, Mr. Kingsley Chan said, “Not
G the email specifically but I knew that he was, at that point, working tirelessly to bring the
transaction together, bringing both sides together.”⁵⁶³

H 526. I am satisfied that the information that Mr. Choi forwarded to Mr. Devon Fu in
I the email set out above was clearly confidential to the sell-side shareholders. The caveat that
J Mr. Devon Fu entered in providing information to Freshfields that they were to keep it off
K record and confidential was readily understandable. It was confidential. There was no
L justification for Mr. Choi to divulge the information to Mr. Devon Fu. It was not in the interests
of the sell-site shareholders that the information be shared with the very buyer with whom they
were then negotiating. Conversely, it was in the interests of LR Capital and their advisers
Freshfields to know of the negotiation position taken by the sell-side shareholders.

M *(iii) 7 June 2015 - information as to the sell-side’s negotiation position on the provision of*
N *a guarantee and the binding nature of the term sheet: email exchange between*
Mr. Kingsley Chan and Mr. Choi sent by email by Mr. Choi to Mr. Devon Fu and
forwarded to Freshfields

O 527. In an email sent at 7:32 pm on 7 June 2015, Mr. Choi had informed Mr. Kingsley
P Chan, Mr. Gao Yu and the management of AMTD of the result of negotiations with LR
Capital:⁵⁶⁴

Q “Kindly find below the feedbacks:

R *they are willing to issue a comfort letter to demonstrate irrevocable support
S from lrc to lrc financial holdings at all times to maintain its financial
healthiness and stable conditions in order to fulfil its legal obligations or
commitments under the TS and SPA. Also, they commit that LRC will at all
times maintain controlling position of lrc financial holdings.

T

⁵⁶¹ Bundle 21, page 7295.

U ⁵⁶² Bundle 21, page 7307.

V ⁵⁶³ Transcript, pages 269 O-270 M.

⁵⁶⁴ Bundle 22, page 7561.

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*binding TS: they insisted to frame the key commercial terms at standstill/legally binded without further change in negotiation needed, namely, purchase price and valuation, percent of shareholding of sellers and lrc post deal, ie, transaction structure, conditions to closing, management put option, board of directors/governance, confidentiality”.

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528. At 8:43 pm, Mr. Kingsley Chan replied to Mr. Choi by email, copied to Mr. Gao Yu, and various persons at Linklaters and AMTD.⁵⁶⁵

“Suggest we shd still target to exchange signature pages this evening (please try to inform BP too).

- 1) Guarantee - we trust Calvin’s understanding of their ability/background, *my view is not ideal but ok*
- 2) Binding - because we don’t have the SHA details/mgmt vs bis plan details/funds proof yet, we can agree on valn/structure etc, but that shall remain non-binding.”

[Italics added.]

529. At 9:44 pm, having deleted references to the previous senders and recipients and without copying the email to anyone else, Mr. Choi forwarded the email messages to Mr. Devon Fu at LR Capital.⁵⁶⁶

530. At 9:53 pm, Mr. Devon Fu forwarded Mr. Kingsley Chan’s comments, which he had received in the email from Mr. Choi, in an email to Freshfields with the message.⁵⁶⁷

“FYI, *keep confidential.*” [Italics added.]

531. At 9:56 pm Mr. Devon Fu forwarded the email he had sent to Freshfields to Mr. Choi.⁵⁶⁸

532. Once again, it is clear that the information was confidential to the sell-side shareholders. Once again, it is clear that it was not in their interests that the confidential information should be divulged by Mr. Choi to LR Capital and their advisers, who were the prospective buyers of their AMTD shares. Of course, it was in the interests of LR Capital to

⁵⁶⁵ Bundle 22, page 7561.

⁵⁶⁶ Bundle 22, page 7561.

⁵⁶⁷ Bundle 22, page 7564.

⁵⁶⁸ Bundle 22, page 7564.

A have information about the negotiating position taken by the selling shareholders. There was
B no justification for Mr. Choi divulging that confidential information. B

C 533. On this occasion, in response to the suggestion in cross-examination that C
D Mr. Choi was forwarding confidential information from the Sell-side to the buyers,
E Mr. Kingsley Chan merely responded, “Yes, he has forwarded the emails.”⁵⁶⁹ E

F *(iv) 12 June 2015 - Mr. Choi’s email to Mr. Devon Fu of MSPE’s proposed amendment to
G a clause in the draft SPA forwarded by LR Capital to Freshfields G*

H 534. In an email, sent at 8:06 pm on 12 June 2015 to Mr. Devon Fu, Mr. Choi
I disclosed the proposed amendment by MSPE of a clause in the draft SPA:⁵⁷⁰ I

J “mspe propose the wording to be amended to follow: J

K 6.7 Any resolution put to the Board to approve: K

L 6.7.1 (i) the issue of any Shares...or (ii) the grant of any options...or (iii) any
M other action which would result in a dilution of the shareholding of any
N Shareholder; M

O 6.7.2 the entry into of any related party transaction by the Company, must be
P decided by a simple majority of votes, which shall include at least 1 vote
Q from the MSPE Director and 1 vote from the Management Investment
R Director. Subject to the foregoing, all other resolutions at meetings of the
S directors of the Company must be decided by a simple majority of votes. S

T 6.8 Any matter decided by the Board that requires Regulatory Approval of
U any Governmental Entity of competent jurisdiction, including under the
V BHC Act or any Applicable Law, shall be subject to such Regulatory
Approval.” U

O 535. All of the text of the email sent by Mr. Choi to Mr. Devon Fu was incorporated
P in an email sent to Teresa Ko and Richard Johnson at Freshfields at 8:13 pm on 12 June 2015
Q by Mr. Howard Cong Lin, under the Subject heading:⁵⁷¹ Q

R [Confidential] SPA/SHA. R

S The letter concluded: S

T “Please note we obtain such propose (sic) from a very confidential channel so
U please keep it off-record. Our team Devon and Asher will call you to discuss.
V Thanks!” U

⁵⁶⁹ Transcript, page 270.

⁵⁷⁰ Bundle 23, page 7940.

⁵⁷¹ Bundle 23, page 8018.

[Italics added.]

536. When asked if it was clear that Mr. Choi would not want the Sell-side to know that he was sharing this information with the buyers, Mr. Howard Cong Lin said that he was not certain that was the case. He and Mr. Gao Yu knew that Mr. Choi helped both sides. He did not know if MSPE cared about the matter. That, was a question that ought to be directed towards them. He did not remember the email but, if he did remember correctly, it was Mr. Devon Fu who had asked him to send it and to add the last line.⁵⁷² Mr. Howard Cong Lin denied that he knew that the information was confidential.⁵⁷³

537. It is to be noted that, in an email sent in reply on 12 June 2015 to Mr. Howard Cong Lin, under the same Subject heading, Mr. Richard Johnson wrote:⁵⁷⁴

“Thanks Howard - we have received the same from Linklaters. I am trying to speak to them to drill down on some of the issues that Teresa has already flagged to you on this.”

538. In an email from Mr. Devon Fu to Mr. Choi, sent at 12:18 am on 14 June 2015,⁵⁷⁵ without any message and without copying it to anyone else, Mr. Devon Fu forwarded the email chain to Mr. Choi.

539. In my judgement, the information in Mr. Choi’s email to Mr. Devon Fu at 8:13 pm on 12 June 2015 as to the amendment of the clause proposed by MSPE is in a quite different category from the information in the three other email chains that have been considered in this context. It was what it was stated to be, namely a proposal, not the articulation of a confidential negotiating position or strategy. Of course, a proposal has to be proposed to the other side. As such, it is of a different category from the information contained in the three other email chains. Given that obvious and significant difference it is not surprising, as Mr. Johnson confirmed, that Linklaters had already provided it to Freshfields by the time that they received Mr. Howard Cong Lin’s email. Obviously, in doing so Linklaters made it clear that no issue of confidentiality attached to the proposed amendment of the clause.

⁵⁷² Transcript, pages 395-398.

⁵⁷³ Transcript, page 397 N-Q.

⁵⁷⁴ Bundle 23, page 8018.

⁵⁷⁵ Bundle 23, page 8018

A *Mr. Choi's relationship with Mr. Devon Fu* A

B 540. From the examination of the first three sets of email chains addressed above it B
C is readily apparent that a pattern emerges: first, an email was sent by Mr. Choi to Mr. Devon C
D Fu; secondly, the text was incorporated in an email from LR Capital to Freshfields; thirdly the D
E sequence of emails culminated with an email from Mr. Devon Fu to Mr. Choi reporting what E
had been done. That, begs the question of why Mr. Choi did what he did.

F 541. At face value, Mr. Devon Fu was the assistant to Mr. Howard Cong Lin, LR F
G Capital's Managing Partner. LR Capital was UBS's client. Perhaps, the real relationship G
H between Mr. Choi and Mr. Devon Fu is better explained by having regard, as examples, to the H
I emails on other topics that passed between them in early June 2015.

J 542. In an email from Mr. Choi to Mr. Devon Fu, dated 9 June 2015, the Subject J
I heading stated:⁵⁷⁶ I

J "your attitude has some problem, as always." J

K There was no text in the email. K

L 543. The Subject heading of an email sent by Mr. Choi to Mr. Devon Fu on 10 June L
M 2015 was: "work list 1." In the text, Mr. Choi wrote:⁵⁷⁷ M

N "Things to do today and you must maintain a checklist for each item *I assign* N
to you.

- O 1. Quingtao bank nda and closely follow-up on next steps and obtain O
P more info including investment story deck etc P
Q 2. Lrc website update: (a) advisory board is wrong; (b) news archive Q
R not yet update to reflect all the latest news in both Chinese AND R
S English; (c) take away Raymond qu S
T 3. Geo swifts next steps re jonathan dd? You never follow-up and T
R nail this down R
S 4. I asked u to have kitty to rewrite the thank you card without S
T mentioning "today", status? T
U 5. Iphone ordering and bargaining: status? U
V 6. Catalo: I asked u to contact them to request for more info and nda? V
status?

U ⁵⁷⁶ Bundle 22, page 7608.

U ⁵⁷⁷ Bundle 29, page 9963.

- A
- B
- C
- D
- E
- F
- G
- H
- I
- J
- K
- L
- M
- N
- O
- P
- Q
- R
- S
- T
- U
- V
7. I asked u to check if kevin is going tonight, feedback?
 8. India Alibaba markup?
 9. Tomorrow and thursday flights scheduling and ticket no?"
[Italics added.].

544. Many questions arise from even that short glimpse of the relationship between them. On what basis was Mr. Choi issuing a curt reprimand to Mr. Devon Fu about his attitude being a problem, “as always? Why was Mr. Choi assigning Mr. Devon Fu a “work list”? Why was he instructing him to “...closely follow-up for next steps and obtain more information” in respect of Qingdao bank? Why was Mr. Choi making observations about the accuracy of the LRC website and instructing, “take away Raymond qu”?

545. In cross-examination, when asked if some of the items, “are LRC work”, Mr. Howard Cong Lin conceded the obvious, namely that item 2, “LRC website update” was a matter that related to LRC. In response to being asked whether item 1, “Qingdao bank nda” was a reference to, “a deal of LRC”, Mr. Howard Cong Lin said, “we do have a project regarding Qingdao bank.”⁵⁷⁸

546. I am satisfied that there is compelling force in Mr. Li’s submission that Mr. Choi was on “exceedingly close terms with Fu... who took directions from him at every turn and essentially acted as his personal assistant (despite nominally being Choi’s “client”).”⁵⁷⁹ That evidence and finding is relevant to a consideration of the significance of the voluminous evidence that Mr. Choi drafted text in emails sent by Mr. Choi to Mr. Devon Fu, which was used subsequently in emails sent by LR Capital to the selling shareholders, AMTD, UBS and Freshfields.

Mr. Choi’s conduct in drafting emails to be sent out by LR Capital

547. As is readily apparent from the description of the emails exchanged between Mr. Choi and Mr. Devon Fu described earlier, Mr. Choi was involved in drafting text emailed to LR Capital which was included in documents and emails sent out by LR Capital to a combination of the sell-side shareholders and UBS, even to himself! On many occasions, he set out the terms sought by LR Capital from the selling shareholders.

⁵⁷⁸ Transcript, pages 328-330.

⁵⁷⁹ The SFC’s Written Closing Submission, paragraph 107.

A (i) 29 May 2015: Mr. Choi's draft of the text of an email for LR Capital to send the
B Binding Offer to AMTD/MSPE and UBS

C 548. The provenance of the email, dated 29 May 2015, sent by Mr. Howard Cong Lin
D to Mr. Alan Tsang, AMTD, Mr. Kingsley Chan and Mr. Gao Yu, MSPE, at 8:54 pm on 29 May
E 2015⁵⁸⁰, to which was attached the Binding Offer letter, NDA and Proof of Funds letter, was a
F draft of an email from Mr. Choi to Mr. Devon Fu at 8:05 pm on 29 May 2015.⁵⁸¹ Mr. Choi's
G email was not copied to anyone, certainly not to anyone on Mr. Choi's "Deal team". The draft
H set out the recipients of the email, including Mr. Choi himself! Mr. Howard Cong Lin's email
I was faithful to the draft in all respects. The email highlighted key terms of the offer and
J identified attached related documents:
K

H "...We also attached our fully executed nda with your side without any
I comments.

I We have keen interest in the opportunity and have obtained our investment
J committee's approval to proceed with our proposed transaction by concluding
K all necessary transaction documentations with you all in good faith within 20
L working days ("exclusive period"). To demonstrate our commitment to the
M transaction and our financial strengths and capability, we are ready to pay a
N usd1m deposit in exchange of the exclusive period, and included a fund proof
O letter issued by our brokerage agent and fund custody in HK - GF Holdings
P (Hong Kong) Corporation Limited."
Q

L 549. Earlier that afternoon, at 4:15 pm, Mr. Devon Fu had sent Mr. Choi an email
M containing a draft of the Binding Offer letter.⁵⁸² Then, at 5:27 pm and 6:45 pm Mr. Devon Fu
N sent Mr. Choi two emails he had received from GF Securities, the first a draft of a template of
O a Fund Proof letter⁵⁸³ and, the second a Fund Proof letter provided by GF Securities.⁵⁸⁴
P

O 550. Following receipt of the draft Binding Offer letter attached to Mr. Devon Fu's
P email of 4:15 pm, Mr. Choi sent an email to Mr. Donald Tang at 4:53 pm, attaching the draft
Q Binding Offer letter under the Subject heading:⁵⁸⁵
R

Q Urgent and important - pls kindly read and offer comments.
R

S

⁵⁸⁰ Bundle 20, page 6997.

T ⁵⁸¹ Bundle 20, page 6996.

T ⁵⁸² Bundle 20, pages 6971-6972.

T ⁵⁸³ Bundle 20, page 6993.

U ⁵⁸⁴ Bundle 20, page 6994.

U ⁵⁸⁵ Bundle 20, page 6975.

A 551. In an email, sent to Mr. Choi at 5:24 pm Mr. Donald Tang provided various
B comments arising from the draft of the Binding Offer letter.⁵⁸⁶ Not surprisingly, given that
C Mr. Tang had been asked to comment on a *draft* of a Binding Offer letter, Mr. Tang's comments
D were premised on the basis that Mr. Choi was associated with those making the offer and that
E those receiving the offer were "the other side". Of course, the converse was true. The recipients
F of the offer, namely MSPE, was the client of UBS and Mr. Choi.

G 552. In cross-examination, in answer to the suggestion that he had thought that the
H email, sent by Mr. Howard Cong Lin on 29 May 2015, to which was attached the Binding Offer
I had come from Mr. Howard Cong Lin, Mr. Kingsley Chan said that the email was from Howard
J Cong, "I didn't think too much about where it came from." When asked if he knew at the time
K that it had been drafted by Mr. Choi, he said, "At that time, I did not know the email was drafted
L - who drafted the email."⁵⁸⁷

M 553. It is clear from the interchange in cross-examination, that Mr. Kingsley Chan
N did not know that Mr. Choi was actively involved in drafting the email sent out by Mr. Howard
O Cong Lin attaching the Binding Offer made to MSPE. That is hardly surprising, since MSPE
P was the client of UBS. On what possible basis could it have been imagined that he would be
Q assisting LR Capital and in making the offer in that way?

R (ii) *5 June 2015: LRC offer - supplemental items*

S 554. The email that Mr. Howard Cong Lin sent at 06:55 am on 5 June 2015⁵⁸⁸, to
T Mr. Alan Tsang, at AMTD, Mr. Kingsley Chan and Mr. Gao Yu, at MSPE and Mr. Choi, at UBS,
U under the Subject heading: LRC offer - supplemental items, had its provenance in a draft
V provided by Mr. Choi in an email to Mr. Devon Fu at 06:51 am on 5 June 2015⁵⁸⁹:

"Dear company / shareholders -

Thank you again for your support and kind consideration of our proposal.

After an updated discussion with our Global Investment Committee, on behalf of LRC, I am happy to update you regarding the following:

*in the unfortunate event of disapproval from the HKSF, considering the opportunity cost and time commitment during the process, *we can agree to a commitment payment of 3.8 percent, with the amount to be deducted from a)*

⁵⁸⁶ Bundle 20, page 6990.

⁵⁸⁷ Transcript, page 260 J-T.

⁵⁸⁸ Bundle 21, page 7151.

⁵⁸⁹ Bundle 21, page 7128.

A the HKD 16m deposit we already paid; and b) 10percent of Transaction
B Payment net of deposit upon signing of definitive documentations

C **we are comfortable and okay with an exclusivity period of 10 working days,*
D *starting upon the signing of a Term Sheet, and we would like to schedule a*
E *signing of the TS at Ladies Recreational Club (also “LRC” indeed) 10am on*
F *Sunday in person. Please confirm your availability. We would like all parties*
G *to work closely to target for June 15 signing, in order to start the HKSFC*
H *approval process asap”.*

I [Italics added.]

F 555. Clearly, Mr. Choi drafted text setting out additional terms proposed by LR
G Capital of its “Binding Offer”. He sent the text to LR Capital, who incorporated it in a letter
H sent by LR Capital to the very selling shareholders, MSPE, whom he and UBS represented. In
I fact, LR Capital’s letter was also sent to Mr. Choi himself! Equally clearly, in acting as he did
J Mr. Choi had a conflict of interest.

K 556. In an email sent at 7:02 am on 5 June 2015,⁵⁹⁰Mr. Kingsley Chan replied to
L Mr. Howard Cong Lin, copying the other parties in the email, acknowledging the prompt
M response. Then, at 11:15 pm on 5 June 2015, Mr. Kingsley Chan sent an email to Mr. Choi,
N attaching a “draft of the Term Sheet for LR Capital for review and comment.” He added: ⁵⁹¹

O “Please feel free to forward this email to LR Capital and their counsel
P Freshfields.”

Q 557. In cross-examination, Mr. Kingsley Chan confirmed that that was the first time
R that he had authorised Mr. Choi to share the term sheet with LR Capital. He did not know that
S Mr. Choi had forwarded an earlier version of the term sheet to Mr. Devon Fu in an email sent
T at 9:28 am on 29 May 2015. That version of the term sheet had been provided to Mr. Choi and
U others on the sell-side, including Mr. Kingsley Chan, in an email sent at 7:29 pm on 28 May
V 2015 by Linklaters.⁵⁹²

T ⁵⁹⁰ Bundle 21, page 7150.

U ⁵⁹¹ Bundle 21, page 7150.

V ⁵⁹² Bundle 20, page 6965.

(iii) SPA and SHA - Mr. Choi's draft of an email sent to Mr. Devon Fu for LR Capital to send to ATMD

558. In an email, sent by Mr. Choi to Mr. Devon Fu at 9:01 am on 16 June 2015, Mr. Choi provided the text of a letter to be sent by Mr. Howard Cong to Mr. Alan Tsang (of AMTD):⁵⁹³

“Dear Alan,

Thank you for your partnership and support

Please find below the key items we discussed as well as *specific clauses/areas of which our IC/head office have strong resistance and pose potential deal breakers.*

Appreciate your coordination with mspe and counsel sides and push forward.”

[Italics added.]

559. In the attached text, a total of twenty-one issues were addressed at length under the separate headings ‘SPA’ and ‘SHA’. Whilst the text set out discussions and agreements that had been reached in respect of many of the clauses in both the SPA and SHA it did identify clauses in the SPA in respect of which the LR Capital were “strongly opposed” or which they “disagree and strongly against”. The text evidenced the assertion, in the draft text of the email to be sent to Mr. Tsang, of “potential deal breakers”:

“11. Exclusivity and document provision (clause 7.2.2); buyers knowledge, clause 8.9 “agents”: *our IC strongly opposed to this* as we have not hired agents or due diligence advisors persay (sic) so we do not officially keep count and count every items whether or not we receive or outstanding due to the significant time constraint. If this provision is needed, we need to have a rigorous count of the request list against information we received which are not necessary based on the timing. We insisted to delete this clause, as well as the inclusion of “agents” (was we don’t know who they are and we have not engaged any advisors for due diligence work)

15. Buyer’s knowledge warranty schedule 4: we resist the addition of buyers’ knowledge warranty in schedule 4. Extremely wide coverage and our IC simply deleted the whole in this alongside with item 7 and 11 are *potential deal breakers.*”

[Italics added.]

560. In an email sent by Mr. Howard Cong to Mr. Alan Tsang at 09:05 am on 16 June 2015, under the Subject heading: Important Matters and Confidential, the text provided by

⁵⁹³ Bundle 24, pages 8459-8460.

Mr. Choi was incorporated verbatim, save for the addition of exclamation marks after the introductory statement in the letter “Thanks for your partnership and support!!”⁵⁹⁴ A copy of the email sent to Mr. Alan Tsang was forwarded to Mr. Choi by Mr. Howard Cong at 09:06 am on 16 June 2015.⁵⁹⁵

561. As noted earlier, whilst the text drafted by Mr. Choi was largely concerned with areas of agreement between the parties, following discussions, nevertheless it did stipulate a number of clauses with which LR Capital disagreed and provided powerful reasons for that disagreement. Although the clients of Mr. Choi and UBS were the selling shareholders, clearly that text was drafted from the perspective of LR Capital. Clearly, in acting as he did Mr. Choi had a conflict of interest.

Mr. Choi’s conduct in drafting text for LR Capital to be included in an email sent to Freshfields

562. Multiple emails sent by Mr. Choi to Mr. Devon Fu evidence his provision of text which was included in emails sent by LR Capital to Freshfields. Clearly, Mr. Choi intended the text to be used in that way. Freshfields were provided with a range of material:

- (i) instructions, in particular in respect of negotiations with the selling shareholders;
- (ii) comments on documents; and
- (iii) requests for advice on various issues.

In drafting text to provide instructions or comments to Freshfields, the object of which was to secure an advantage for LR Capital in its negotiations with the selling shareholders, the clients of UBS, clearly Mr. Choi acted in a conflict of interest.

(i) 6 June 2015 - draft Term Sheet - instructions to Freshfields to negotiate with the sell-side

563. In an email sent at 9:32 am on 6 June 2015 by Mr. Howard Cong Lin to Freshfields, under the Subject heading: Draft Term Sheet, Mr. Cong Lin wrote, “Several initial comments and views my end”. In doing so, he also gave instructions and sought specific advice

⁵⁹⁴ Bundle 24, pages 8461-8462.

⁵⁹⁵ Bundle 24, page 8461.

A from Freshfields.⁵⁹⁶ In all, the email addressed no fewer than sixteen separate topics, each
B identified by an asterisk. In particular, it was noted:

C “*information rights during exclusive period: as indicated in our offer letter, we
D shall have the rights to request, collect and obtain complete information on the
E company, even we don’t call this a dd as our transaction price is fixed anyway,
F this is de facto a dd process we need to perform (again, we called it as “collection
G and review of information”) and we have engaged pwc over a loan-staff
H engagement to perform our work and we would like ff to visit company with us
I to perform “dd” review of legal liabilities and contingent exposures on top of
J other typical legal review items starting monday/post we successfully sign the
K term sheet. *Therefore, we must include in the termsheet such rights to give us
L abilities to perform such work and the target will open up any information to us.
M Confidentially, we know that they have an online dataroom but they closed it
N down temporarily but we will need this plus physical visits to company during
O exclusive period.*

H [Italics added.]

I 564. The provenance of the text in Mr. Howard Cong Lin’s email were two earlier
J emails sent by Mr. Choi to Mr. Devon Fu, respectively at 09:08 and 09:11 am on 6 June 2015.⁵⁹⁷

K 565. Attached to an email from Freshfields to AMTD, MSPE, Linklaters and
L Mr. Choi, sent at 9:07 pm on 6 June 2015, was a marked-up version of the term sheet. It
M incorporated the suggested changes to the provisions stipulating ‘Access to Information’, made
N in Mr. Howard Cong Lin’s email sent at 9:32 am on 6 June 2015.⁵⁹⁸

O 566. In an email sent to Mr. Choi, at 11:32 pm on 6 June 2015, Mr. Kingsley Chan
P noted:⁵⁹⁹

O “...a few points in FF’s markup deviate substantially from our previous
P communication - appreciate if you can please follow up with LRC, thanks.”

Q Mr. Kingsley Chan went on to note:

Q “ 3) LRC is effectively asking for due diligence (including access to on-line data
R room etc)”.

T ⁵⁹⁶ Bundle 21, pages 7192-7193.

T ⁵⁹⁷ Bundle 21, page 7183.

T ⁵⁹⁸ Bundle 21, pages 7208-7262 at page 7213.

U ⁵⁹⁹ Bundle 21, pages 7263-7264.

A 567. For his part Mr. Cong Lin acknowledged that his email to Freshfields included
B instructions to them on how to negotiate with the sell-side shareholders.⁶⁰⁰ Of the authorship
C of the text, Mr. Cong Lin said:

D “I would give my comments on the legal issues and Devon and Calvin would
D take notes and prepare the meeting documents.”

E He trusted both Devon Fu and Calvin Choi, the former to understand what he said in Chinese
E and the two of them to translate his views into the English text. Further, he trusted that Calvin
F Choi would not reveal this information to the selling shareholders.⁶⁰¹

G 568. It is clear, that the text drafted by Mr. Choi and forwarded by Mr. Howard Cong
G Lin to the selling shareholders sought to secure a more advantageous position for LR Capital
H in the term sheet. As was to be expected, those instructions were acted on by Freshfields, which
I resulted in them sending an email to the selling shareholders attaching the amended term sheet.
J Mr. Kingsley Chan’s response communicated in his email to Mr. Choi at 11:32 pm on 6 June
J 2015 speaks eloquently of his response to the adverse impact on the interests of the selling
K shareholders. I am satisfied that in acting as he did, Mr. Choi acted directly contrary to MSPE’s
K interests.

L *(ii) 7 June 2015 - Mr. Choi’s text of comments, instructions to be given to and advice*
M *sought from Freshfields*

N 569. By three emails sent respectively at 07:20 am, 07:23 am and 07:25 am on 7 June
N 2015⁶⁰², Mr. Choi sent Mr. Devon Fu what he described in the first email as “Comments below”.
O In addition to such comments, advice was sought and instructions given on specific topics in
O the term sheet. The comments were made beneath subjects headings, including:

- P
- Customary leakage on pre closing covenants;
 - Conditions to closing and shareholders’ rights section;
 - Management Incentives; and
 - Binding effect.
- R

S 570. Of the issue of customary leakage and pre-closing covenants, it was stated:
T

T
U ⁶⁰⁰ Transcript, pages 362-363.

U ⁶⁰¹ Transcript, pages 363-364.

V ⁶⁰² Bundle 21, page 7302.

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“-they added “permitted” in front of leakage and add “and the buyer” will agree which defeat the purpose of the para. *Pls advise your views and reinstate the purpose/power of the sentences*

-feel very strange and uncomfortable that they push for the right to “declare and pay dividends to its shareholders in the period prior to closing”, is it market typical that they take away the retained earning of company post spa signing and before closing?

-guarantee: they use the reason that the fund proof letter pertain to lrc Group but not our acquisition vehicle lr financial holdings. We can offer fund proof letter of lr financial holdings before closing but will not agree to have our topco lr capital group to provide a guarantee when we have paid an irrevocable deposit and then 10percent as an initial payment and also delivered a fund proof letter”.

571. Of the issue of shareholders rights, it was stated:

“...they kept referring to the existing shareholders agreement and the memorandum and articles of association, our IC feel strongly that we need to get a copy of the above docs before signing the termsheet...Can you pls reach out to linklaters and copy their principals to obtain the docs asap.”

572. Of the issue of a “Binding effect”, it was stated:

“they changed it to “only as a basis for further discussion”, *not acceptable and we must put the commercial terms* especially price and commercial terms standstill and legally binding”..
[Italics added.]

573. Having removed the information that the text came in emails from Mr. Choi, Mr. Devon Fu forwarded to Freshfields the text provided to him by Mr. Choi. He did so by three emails, sent respectively at 07:24 am, 07:25 am and 07:26 am under the Subject heading, Fw: Re: Frontier - term sheet and management contract.⁶⁰³ Clearly, the text of each email was forwarded to Freshfields immediately after the email had been received from Mr. Choi. At the beginning of the first email an introductory sentence was added,” Thanks Teresa and Richard for the hard work. Some comments below.” In the second and third emails, simple explanatory text was added, namely: “One more” and “Sorry another point”.

574. Finally, at 07:29 am Mr. Devon Fu forwarded the email chain to Mr. Choi.

575. Clearly, in acting as he did, Mr. Choi had a conflict of interest.

⁶⁰³ Bundle 21, page 7303.

A 576. In his evidence, Mr. Howard Cong Lin accepted that the emails to Freshfields
B contained instructions to them, in particular as to what was not acceptable to the buyers. B
C Mr. Cong Lin said, “I recall that we just worked overnight before that email was sent out.”⁶⁰⁴ C
D In response to the assertion that the sequence of emails between Mr. Choi and Mr. Devon Fu, D
E Mr. Devon Fu and Freshfields and finally Mr. Devon Fu and Mr. Choi showed that “...it was, E
Mr. Cong Lin said.⁶⁰⁵

F “Definitely not. All instructions were issued by me and Freshfield can only take F
G instructions from Devon. Calvin may make some suggestions. But only on some G
H minor issues.”

H 577. He went on to add:⁶⁰⁶

I “The whole deal was done by me and CMI and some partners from China and I
J Gao Yu... Calvin and Devon were on the operational level. That’s why I didn’t J
K really care about whether it was the comments of Calvin or Devon. I don’t think K
L it was important.”

K 578. It is to be noted that none of Mr. Choi’s emails, in which he sent drafts of what
L were described as “comments below” and in which advice from Freshfields was sought, was L
M there any reference at all to Mr. Choi having acted as a notetaker collating information and M
N instructions received in conferences, either in person or by telephone, with anyone. In such N
O circumstances, it was to have been expected that, on occasions, the note would seek O
P confirmation as to the accuracy of what was presented as representing that process.

O *(iii) 7 June 2015 - Mr. Choi’s draft text of comments and instructions to be given to and O
P advice sought from Freshfields in negotiations on the management services contract*

P 579. In an email from Freshfields to Mr. Howard Cong and Mr. Devon Fu sent at P
Q 10:31 am on 7 June 2015, under the Subject heading: Frontier-management contract, an Q
R invitation was made to the recipients, “If you have any other comments on the service contract, R
S please let us know.”⁶⁰⁷

T ⁶⁰⁴ Transcript, page 368.

T ⁶⁰⁵ Transcript, page 368.

T ⁶⁰⁶ Transcript, pages 369-370.

U ⁶⁰⁷ Bundle 21, pages 7333-7334.

A 580. Mr. Devon Fu forwarded that email at 10:33 am to Mr. Choi⁶⁰⁸, who responded
B with an email at 11:04 am on 7 June 2015, which was in the form of a response by LR Capital
C to Freshfields.⁶⁰⁹

D Under the heading: 1. Re-assigning a senior manager (clause 3.1), the text included:

E "... we would like to sign a coo, can we do so?"

F Under the heading: 2. Termination for breach of the SPA (clause 19.2), the text stated:

G "Agree and pls put forth our case and *get it for us*".

H Under the heading: 3. Termination on change of control (clause 19.5), the text stated:

I "Agree with your assessment and *pls insist.*"

J [Italics added.]

K 581. The text provided by Mr. Choi was incorporated in an email sent to Freshfields
L by Mr. Devon Fu at 11:20 am on 7 June 2015.⁶¹⁰

M 582. For his part, when taken to this exchange of emails in cross-examination,
N Mr. Kingsley Chan agreed with the suggestion that he did not know that Mr. Choi had drafted,
O " these emails for LRC."⁶¹¹

P 583. Clearly, in acting as he did, Mr. Choi had a conflict of interest

Q *(iv) 7 June 2015 - Mr. Choi's draft of text of an email in respect of the term sheet for LR
R Capital to send to Freshfields*

S 584. By an email sent by Mr. Devon Fu to Freshfields at 11:38 am on 7 June 2015,
T the former provided "comments" on five items under the Subject heading: term sheet &
U management contract.⁶¹² The items addressed were:

- V
1. Purchase price;
 2. Exclusivity;
 3. Long-stop date;

⁶⁰⁸ Bundle 21, page 7333.

⁶⁰⁹ Bundle 21, Page 7337.

⁶¹⁰ Bundle 21, page 7351.

⁶¹¹ Transcript, page 265L- O.

⁶¹² Bundle 21, page 7343.

- A
- B
4. Access to information; and
5. Transaction documents.
- B

C 585. The provenance of the text in Mr. Devon Fu's email was an earlier email sent to
D Mr. Devon Fu by Mr. Choi at 11:34 am on 7 June 2015.⁶¹³ Of the issue of "Access to
information", it was stated:

D

E "...we shall include the list of key information items we flagged to the other side
F through ubs but not limiting to those".

E

F Of the issue of "Purchase price", it was stated:

F

G "...dividend - we are fine as you have indicated on the proposed wording as
H long as they do it in lines with regular and/or past actions and they
ensure/procure that the company will have the necessary cash to maintain its
ordinary course of business".

H

I 586. Earlier, at 10:18 am on 7 June 2015, Freshfields had sent an email to Mr. Devon
J Fu under the same Subject heading, stating:⁶¹⁴

I

K "I attach a mark-up of the term sheet, following our various discussions this
L morning. *Please let us have any comments* on the outstanding confirmations
(highlighted yellow) as soon as you can." [Italics added.]

K

L Mr. Devon Fu forwarded the attachment to Mr. Choi by an email sent at 10:33 am on 7 June
M 2015.⁶¹⁵

L

N 587. In his evidence, Mr. Cong Lin said that the five items set out in the emails were
O his ideas originally, "...they were the instructions issued by me in the phone conversation."⁶¹⁶
P In answer to the suggestion that there was not enough time between receipt of the email from
Freshfields at 10:18 am and transmission of the reply to Freshfields from Mr. Devon Fu at 11:38
Q am to have discussed the matter and formulated the written reply, Mr. Cong Lin said:⁶¹⁷

N

R "It is something that happened and, of course, I disagree because we were
S working frantically."

R

S

T ⁶¹³ Bundle 21, page 7342.

T ⁶¹⁴ Bundle 21, page 7344.

U ⁶¹⁵ Bundle 21, page 7333.

V ⁶¹⁶ Transcript, page 372.

⁶¹⁷ Transcript, pages 374-375.

A 588. In answer to questions from the Chairman, Mr. Cong Lin explained that the
B telephone conversations were between Mr. Devon Fu, Mr. Calvin Choi, staff from Freshfields
C and the couple of his colleagues. For his part, he was at Hutchinson House, together with others
D from LR Capital. Sometimes Mr. Choi was there as well. On other occasions Mr. Choi,
participated by telephone. He did not remember this particular occasion.⁶¹⁸

E 589. Once again, it is to be noted that there was no reference in Mr. Choi's email sent
F at 11:34 am on 7 June 2015 to Mr. Devon Fu, to Mr. Choi having acted as a notetaker collating
G information and instructions received in conferences, either in person or by telephone, with
H anyone. There was nothing in the email that there suggested that Mr. Choi sought confirmation
I that his note accurately reflected discussions, if there had been any.

H (v) *13 June 2015 - Mr. Choi's draft text of comments and instructions to Freshfields on
I the draft SPA*

J 590. In an email to Mr. Howard Cong Lin and Mr. Devon Fu sent at 4:59 pm on 13
K June 2015,⁶¹⁹ under the Subject heading: Frontier - SPA mark-up, Freshfields wrote:

K "As discussed with Devon, here are the key items for your focus in the SPA."

L The text referred to multiple provisions and clauses in the agreement, made
M comments/suggestions and gave advice. Under the heading "Definition of 'Cash Amounts' and
N 'Cash Reference Date'", Freshfields stated:

N "As a reminder, anything that falls within this definition will increase the price
O you pay on Closing."

O 591. Mr. Devon Fu forwarded the email to Mr. Choi in an email sent at 5:04 pm on
P 13 June 2015.⁶²⁰ Then, at 6:15 pm Mr. Choi sent an email to Mr. Devon Fu addressing the
Q points raised in the email sent by Freshfields providing a series of instructions to LR Capital's
lawyers and began:⁶²¹

R "Please find below our suggestions and feedback for your further actions".

T ⁶¹⁸ Transcript, pages 375-376.

U ⁶¹⁹ Bundle 23, page 7976.

⁶²⁰ Bundle 23, page 7976.

⁶²¹ Bundle 23, pages 7974-7976.

592. Beneath the headings used by Freshfields in their email, the text responded to the comments and suggestions made by Freshfields under the heading ‘Lrc’. In response to the suggestions made under the heading: Definition of “Cash Amounts’ and “Cash Reference Date”, it was stated:⁶²² [Italics/Bold added.]

“Lrc: ... We agree that this is a transaction that we will pay a price @ a valuation free of cash and debt, in this case, no debt for company but we shall carefully define the “cash”. In our views, only cash that belong to the company and those that can be freely deployed by the company without obligations and duties to others can be counted as “cash”... In addition, the company shall not borrow post definitive agreements signing till closing point such that more cash are recorded in the book to pay dividend or leaving the cash behind to increase the purchase prices (which go to the sellers). Other than this definition/clause and related, we shall have conditions and protections to prevent company from doing borrowings or engage in indebtedness from the date we sign till closing or otherwise commit any new contingencies or off balance types of commitment” .

593. In response to the suggestions made under the heading “ “Clause 5.1.1 (pre-Closing covenants)” it was stated:⁶²³

“Lrc: we agree with your suggestion, pls go back to the other side. In particular, we would like to ensure there won’t be any financing or leverages by company before closing. In addition, all new hires at management level positions shall be pre-vetted and pre-agreed with lrc” .

594. The draft text concluded:⁶²⁴

“These are our feedbacks overall. Pls carefully factor the above into consideration on top of other inputs and suggestions by your team and teresa. We should go back to the sellers and linklaters asap and preferably before 9 pm today or earlier. As mentioned, we aim to sign on monday and pls inform the other side to get them prepared towards the same direction” . [Italics added.]

595. In an email to Freshfields from Mr. Howard Cong sent at 6:32 pm on 13 June 2015, all of the text provided by Mr. Choi was incorporated. ⁶²⁵

⁶²² Bundle 23, page 7974.

⁶²³ Bundle 23, page 7975.

⁶²⁴ Bundle 23, page 7976.

⁶²⁵ Bundle 23, page 7980.

A 596. In an email to Mr. Choi sent at 6:33 pm on 13 June 2015, Mr. Devon Fu
B forwarded the email sent one minute earlier to Freshfields in the name of Mr. Howard Cong
C Lin.⁶²⁶

D 597. In response to the suggestion that the email to Freshfields contained instructions
E to Freshfields in relation to the share purchase agreement, Mr. Howard Cong Lin said, “Yes it
F seems to be.” He acknowledged that within 5 minutes of receipt of the email from Freshfields,
G Mr. Devon Fu had forwarded it to Mr. Choi, who had responded with his long email an hour or
H so later.⁶²⁷

I 598. Clearly, in acting as he did, Mr. Choi had a conflict of interest.

J *(vi) 14 June 2015 - Mr. Choi’s draft of text comments, instructions to and advice sought
K from Freshfields in respect of the SHA*

L 599. In an email sent at 10:32 am on 14 June 2015 by Asher at LR Capital to
M Freshfields under the Subject heading: Frontier-SPA & SHA, Freshfields, was presented with:
N
O
628

“...our comments and views on SHA”.

P 600. The provenance of the text set out thereafter was an email sent by Mr. Choi to
Q Mr. Devon Fu earlier at 10:26 am on 14 June 2015.⁶²⁹ Those comments were set out as
R responses by ‘Lrc’, to comments that had been made and instructions sought by Freshfields in
S an email sent to Mr. Howard Cong and Mr. Devon Fu at 4:39 pm on 13 June 2015 under a series
T of headings:⁶³⁰

- (i) ROFO;
- (ii) Tag-along;
- (iii) Drag-along;
- (iv) Exit (in particular an IPO);
- (v) Put-option; and
- (vi) Dividend policy.

⁶²⁶ Bundle 23, page 7980.

⁶²⁷ Transcript, page 387.

⁶²⁸ Bundle 24, pages 8209-8210.

⁶²⁹ Bundle 24, pages 8201-8202.

⁶³⁰ Bundle 24, pages 8202-8203.

Freshfields wrote:⁶³¹

“we wanted to flag some specific items on the share transfer provisions in the SHA which you will need to review closely and advise on your instructions.”

601. In an email, sent at 7:09 pm on 13 June 2015 by Mr. Devon Fu to Mr. Choi, the email received by him from Freshfields was forwarded, together with the comment, “The email he mentioned.”⁶³²

602. Mr. Choi responded in an email, sent at 10:26 am on 14 June 2015 to Mr. Devon Fu, with a detailed draft of a letter from, “Jennifer and Asher” to Freshfields addressing: “...our comments and views on SHA”.⁶³³

603. Under the heading “Tag-along” it stated:⁶³⁴

“Lrc: we need to be very careful on this point. We have following concerns and plans of which we need your guidance and advice to carefully structure this clause in a way not to pose any conflict or restriction to our intention:

*our acquisition vehicle, lrc financial holding might have other shareholders to join (*we DO not want to reveal them now to the sellers* and we want to have our liberty and flexibility to do so. In any case, lrc will control the board and be the de facto controlling party in terms of governance at the lrc financial holding and amtd level) [Italics added.]

*therefore, let’s say if we have china minsheng investment to participate as a 34.9 percent shareholder in lrc financial holding level, this tag-along right should not be triggered. *Equally, we do not want to result in a conversation by focusing too much on our concerns (we should not spell out the real and underlying concern of ours) to let them be defensive or arouse other concerns* [Italics added.]

*we shall give them tag-along only when we sell shares resulting in a change in control as defined by a change of our control at the board level. We shall not be forced to have them tag-along and give them such right when we are not selling to effect a change in control at the board level.”

[Italics added.]

604. Clearly, in acting as he did, Mr. Choi had a conflict of interest.

⁶³¹ Bundle 24, page 8202.

⁶³² Bundle 24, page 8202.

⁶³³ Bundle 24, page 8201.

⁶³⁴ Bundle 24, page 8209.

(vii) 16 June 2015 - Mr. Choi's text comments on the SHA

605. In an email, sent by Mr. Choi to Mr. Howard Cong and Mr. Devon Fu at 3:43 am on 16 June 2015, Mr. Choi provided detailed comments on the provisions of the draft Shareholders Agreement under sixteen different headings.⁶³⁵ In some instances, the distinction between the rights of LR Capital and others was highlighted. For example:

- “5. Encumbrances - encumbrances over Shares permitted for LRC's borrowing (without any party's consent). Management Investors' borrowings (subject to LRC's and Company's approval) and MSPE's borrowings (subject to notification to LRC and Company.)
- 6. Upstream transfer restrictions - apply only to MSPE and Management Investors, but not LRC.”

606. In an email to Freshfields, sent at 09:27 am on 16 June 2015, under the Subject heading: Update call on SHA, Mr. Devon Fu incorporated the text of Mr. Choi's earlier email verbatim beneath the statement, “FYI below some SHA items for our discussion”.⁶³⁶

The role of Mr. Choi in drafting text for LR Capital which was incorporated in emails sent by LR Capital to others

607. In his witness statement, Mr. Howard Cong Lin addressed the undisputed role of Mr. Choi in drafting text for LR Capital, which was sent by them in multiple emails over a period of many weeks to others, including AMTD, MSPE and Freshfields. Mr. Cong Lin asserted:⁶³⁷

“Mr. Choi was merely LRC's coverage banker at the time, and his purported “involvement” in the business of the LRC was in his capacity as our coverage banker providing general and administrative support. Insofar as the emails identified by the Commission are concerned, the contents of each of those emails represented the product of detailed discussions between Mr. Fu, myself and Mr. Choi (as LRC's coverage banker). At no point in time did Mr. Choi draft any emails on behalf of LRC without discussions with Mr. Fu or I.”

608. As noted earlier, in fact Mr. Choi was not LR Capital's coverage banker for UBS until 28 July 2015. So, the undoubted, sustained assistance Mr. Choi provided to LR Capital in drafting text to be included in LR Capital's emails was not performed in that role. In Mr. Cong's oral evidence, as noted earlier, he described the role of Mr. Choi and Mr. Devon Fu as including

⁶³⁵ Bundle 24, pages 8450-8451.

⁶³⁶ Bundle 24, pages 8467-8468.

⁶³⁷ Bundle 35, pages 11845-11846, paragraph 14.

A taking notes of his legal comments on documents and translating them into English. He believed
B in Devon Fu’s abilities in the Chinese language. He trusted both of them to translate his
C instructions accurately into English. Of instructions to Freshfields, he said, “All instructions
D were issued by me.”

D 609. As has been noted earlier, there is nothing in any of the emails to and from
E Mr. Choi that lends any support for Mr. Cong Lin’s description of Mr. Choi as occupying a
F mere notetaker/translator role in drafting emails that reflected Mr. Howard Cong Lin’s
G directions. No reference was made in any of the multiple emails to any discussions having been
H held between them. No caveat or concern was ever issued by Mr. Choi as to the accuracy of the
I draft email, in particular as representing faithfully Mr. Howard Cong Lin’s instructions. No
J challenge to the accuracy of the draft was ever issued by Mr. Howard Cong Lin.

I 610. There is substance in Mr. Li’s submission that, on occasions, the emails
J evidenced a “stream of consciousness” style from Mr. Choi. That sits ill with the suggestion
K that they were the result of directions given by Mr. Howard Cong Lin in conversations with
L Mr. Choi in the role of notetaker and translator. Further, usually those emails were sent out
M *verbatim* very shortly after receipt. For example, Mr. Choi sent three emails to Mr. Devon Fu
at 07:20 am, 07:23 am and 07:25 am on 7 June 2015, which emails Mr. Devon Fu forwarded
in sequence to Freshfields at 07:24 am, 07:25 am and 07:26. In forwarding the second and third
emails, Mr. Devon Fu simply added, “One more” and “”Sorry, another point”.

N 611. Frequently, there was a relatively short period of time between the receipt by
O Mr. Choi of some of the emails forwarded to him by Mr. Devon Fu and his response, with the
P email containing the text which was then sent out by LR Capital. In those circumstances, that
Q factor rendered it more improbable that there were conversations between the three of them in
R which directions were given by Mr. Howard Cong Lin, notes taken and a translated reply
S prepared and sent by Mr. Choi to Mr. Devon Fu. For example, a markup of the term sheet was
T attached to the email sent by Freshfields to Mr. Devon Fu at 10:18 am on 7 June 2015.
U Mr. Devon Fu replied in an email sent to Freshfields at 10:26 am, “Many thanks Richard. Will
V quick review and revert”.⁶³⁸ The markup of the term sheet was forwarded to Mr. Choi by
Mr. Devon Fu in an email sent at 10:33 am. The document contained 6 pages of closely typed
text, the marked-up version of which contained significant amendments. Yet, Mr. Choi
provided text for the reply to Freshfields in an email sent to Mr. Devon Fu at 11:34 am, the text

⁶³⁸ Bundle 21, pages 7343-7344.

A of which Mr. Devon Fu sent to Freshfields in an email at 11:38 am, merely adding a greeting
B at the beginning and the final sentence, “Please revert our revised mark-up to the other side
C once incorporating the comments above. Many thanks!”

D 612. I do not accept Mr. Howard Cong Lin’s evidence in this respect. I do not accept
E that Mr. Choi acted merely as a notetaker/translator. No doubt, there were discussions on
F occasions between Mr. Choi, Mr. Devon Fu and Mr. Howard Cong Lin. But, I am satisfied that,
G overall, the emails make it clear that Mr. Choi provided significant assistance in drafting text
H to be used in communicating with the selling shareholders and AMTD and in providing
I comments and giving instructions to and seeking advice from Freshfields. In doing so, he
J frequently advanced and articulated the interests of LR Capital, not those of the selling
K shareholders. Clearly, in acting as he did, Mr. Choi had a conflict of interest

I *Engagement letter*

J 613. As noted earlier, the Engagement Letter, dated 10 September 2015 between UBS
K and AMTD provided that the Effective Date was 26 May 2015.

K *Mr. Choi’s conduct pre-29 May 2015 in providing material to LR Capital*

L 614. The impugned conduct alleged against Mr. Choi of providing confidential
M material to LR Capital in conflict of his interest to the selling shareholders pre-29 May 2015 is
N of narrow compass, namely the provision by Mr. Choi in emails sent to Mr. Devon Fu of:

- N • the NDA between AMTD, on 20 April 2015;
- O • the “briefing material“ for the preparation of a teaser, on 13 May 2015;
- P • the AMTD Group 2012 - 2014 audit reports and a chart of the AMTD corporate
Q structure, on 19 May 2015; and
- R • the “teaser”, on 20 May 2015.

Q *The evidence of Mr. Gao Yu and Mr. Kingsley Chan*

R 615. Mr. Gao Yu gave evidence that the material was provided with their general
S consent. Mr. Gao Yu said that Mr. Choi had informed them of the interest of LR Capital to
T acquire AMTD.⁶³⁹ Mr. Kingsley Chan said that, “the Selling Shareholders were informed” of
U that interest in or around mid-April 2015.⁶⁴⁰ Both of them said that they considered that

U ⁶³⁹ Bundle 35, page 11834, paragraph 12.

U ⁶⁴⁰ Bundle 35, page 11825, paragraph 6.

A information in the context of the fact that an earlier, albeit unspecified date, LR Capital had
B made an unsolicited verbal offer on the basis of a valuation of HK\$ 1.4 billion.

C 616. Mr. Gao Yu said that led them to ask Mr. Choi "...to pursue active dialogue with
D the LRC in order to achieve a swift and favourable deal". For his part, Mr. Kingsley Chan said
E that the selling shareholders had been informed that the interest in the acquisition of AMTD
F came from, "LR Capital (through a consortium to be formed with China Minsheng Investment
G Group)". He said that, in light of the reiteration of its interest, the selling shareholders asked
H Mr. Choi, "...to proactively engage in dialogue with them and meeting between the
I management teams was subsequently *set up* on 20 April 2015." He asserted that, "... a meeting
J with LRC *took place* on 20 April 2015." ⁶⁴¹ [Italics added.]

H 617. There is nothing that was contemporaneously documented that supports that
I evidence. As noted above, the first item of that material was provided on 20 April 2015. At that
J date, there existed three iterations of the list of potential purchasers of AMTD shares, namely
K lists dated 13 and 31 March 2015 and 8 April 2015 respectively. However, none of those lists
L contained the name of LR Capital. LR Capital's name first featured on the list circulated
M internally within UBS on 8 May 2015. LR Capital's name was an addition made by Mr. Choi
N in an email sent at 4:09 pm, in what he described as the 'revised list'. It was an addition to the
O list circulated by Mr. Kevin Jia at 4:00 pm, as the 'buyer's list', which contained the names of
P four Banks, ten Securities Companies, five Investment Companies; and four 'Others'. Mr.
Q Choi's revised list contained the addition of not only LR Capital, under Others, but also Harbin
R Bank, under Banks, and the removal of the name of Everbright Securities.

O 618. In an email, dated 18 April 2015, sent to Mr. Choi by Mr. Kingsley Chan it was
P stated, ⁶⁴²

Q "...we understand your view and confidence regarding *CMI's interest*". [Italics
R added.]

R Mr. Gao Yu asserted that he understood that was a mistaken reference by Mr. Kingsley Chan,
S who meant to refer to LR Capital. ⁶⁴³ Mr. Kingsley Chan gave no evidence on the issue of any

T
U ⁶⁴¹ Bundle 35, page 11826, paragraph 8.

⁶⁴² Bundle 16, page 5394.

⁶⁴³ Bundle 35, page 11835, paragraph 13(2).

A mistake. There is no evidence that supports Mr. Gao Yu's assertion. In fact, the weight of the evidence is strongly against that assertion.

619. Mr. Kingsley Chan's bare assertion in his witness statement that "...a meeting with LRC took place on 20 April 2015" is also unsupported. In emails exchanged between Mr. Choi and Mr. Kingsley Chan on 20 April 2015, reference was made to a prospective meeting to be held between Mr. Kingsley Chan, CMI and the management of AMTD on 21 April 2015.⁶⁴⁴ There was no reference to LR Capital's participation in that meeting or, for that matter, to a meeting with LR Capital on 20 April 2015. That email supports the assertion that a meeting was "setup" on 20 April 2015, but not one with LR Capital. Rather, it was one with CMI.

620. In an email to Mr. Kingsley Chan, sent at 10:15 am on 20 April 2015, copied to Mr. Alan Tsang and Mr. Gao Yu, having asserted that, "cmi is very interested in this deal", Mr. Choi invited the recipients to confirm attending two meetings with CMI on the afternoon of 21 April 2015:

- first at 2 pm with Mr. Alan Tsang and Mr. Kingsley Chan; and
- secondly, between 3 pm to 5 pm, with AMTD core management.

621. Following email confirmations that Mr. Alan Tsang could attend both meetings and Mr. Kingsley Chan's confirmation that he could attend the first meeting and stay until 3:30 pm, emails were exchanged between Mr. Alan Tsang, Mr. Kingsley Chan and Mr. Choi as to the need to obtain NDAs before the meetings. Mr. Alan Tsang raised the issue in an email to the others, "Do we have NDA signed? And I presume it's only general discussion only without financials". Although Mr. Choi responded, "They would like to sign nda now so that financials can be discussed", nevertheless agreement was reached, at Mr. Kingsley Chan's suggestion to Mr. Choi, that it would be sufficient to obtain an NDA between UBS and AMTD and that it was not necessary at that stage to obtain an NDA between UBS and CMI.⁶⁴⁵ Again, there was no reference to LR Capital's participation or the need to obtain an NDA from them.

622. In cross-examination, having been taken through some of the email exchanges in relation to the arrangements for the meeting Mr. Kingsley Chan acknowledged that the planned meeting was one with CMI, "We were told it was with CMI professionals."⁶⁴⁶ Earlier

⁶⁴⁴ Bundle 16, page 5418.

⁶⁴⁵ Bundle 16, pages 5417-5418.

⁶⁴⁶ Transcript, page 277 B-E.

A in cross-examination, he said that, “in April or so... there were meetings between the
B management team of Frontier and one of the potential buyer...” Having confirmed that was a
C meeting with CMI, he agreed with the suggestion that at that meeting he had heard that they
could be working with LRC.⁶⁴⁷

D 623. Of the separate treatment of CMI by UBS, it is to be noted that in the email sent
E by Mr. Choi to Mr. Devon Fu on 4 June 2015, in which the interests or otherwise of many of
F the entities listed on the ‘revised list’ dated 8 May 2015 were detailed, the response of CMI was
described separately and distinctly:

G “cmi: believe 1.5bn and above are not worthwhile price. Believe that sensible
H price range in the range of hkd1bn to 1.2bn and they want to take only 51percent
and no more than 60percent.”

I *20 April 2015: AMTD’s NDA with UBS*

J 624. The NDA between UBS and AMTD was attached to an email sent by AMTD to
K Mr. Choi at 6:17 pm on 20 April 2015 with the message: Enclosed is the AMTD Group NDA
for UBS’s signing.” Having removed the names of the sender and multiple recipients, the email
L was forwarded by Mr. Choi to Mr. Devon Fu by at 7:38 pm., without any message.⁶⁴⁸

M 625. The NDA, entitled “Confidentiality Agreement”, was an anodyne document that
N made provision for agreements in respect of confidentiality of information between the
O “Disclosing Party”, stipulated to be AMTD Group Company Limited and an unidentified
P “Receiving Party”. It was stated blandly that the parties, “...propose to enter into discussions
Q regarding potential business cooperation”. The colourless phrase, “business cooperation”,
R resonated with the suggestion of Mr. Alan Tsang in the email exchange as a means of securing
S confidentiality.⁶⁴⁹ No further elucidation of the proposed discussions or the potential business
T was provided. The confidentiality provisions were themselves generic and bland and provided
no clue of the nature of the proposed business cooperation. It was unsigned and undated as to
the date and month, but asserted that the relevant year was 2010!

S 626. I am satisfied that no element of confidentiality attached to the document. On
T the other hand, the fact that Mr. Choi had forwarded the document to Mr. Devon Fu, soon after

U ⁶⁴⁷ Transcript, pages 272 U-273D.

V ⁶⁴⁸ Bundle 16, page 5417.

⁶⁴⁹ Bundle 16, page 5418.

A having received it from AMTD, without any message and in the circumstances in which he did
B so is relevant to a consideration of his relationship with Mr. Devon Fu and LR Capital. B

C *The 'briefing material' - 13 May 2015* C

D 627. Of course, by the time that Mr. Choi provided Mr. Devon Fu with the 'briefing
E material', in an email sent to him on 13 May 2015⁶⁵⁰, the name of LR Capital had been added
F to the "revised list" of buyers on 8 May 2015. In attaching the briefing material to an email, he
G sent to Mr. Choi on 13 May 2015, Mr. Kingsley Chan stated specifically that the material could
H be used as the "base for teaser"⁶⁵¹. Clearly, it was intended that the teaser be sent to potential
I buyers and that it contain a succinct distillation of the relevant information in the briefing
J material. Whilst, perhaps, it would have been unusual to provide the briefing material to a
K potential buyer, clearly it would have been the usual and normal practice to provide that
L information to such a buyer in a succinct, distilled form in the 'teaser.'

I *AMTDs 2012-2014 audited reports and corporate structure chart - 19 May 2015; and the*
J *teaser - 20 May 2015* J

K 628. The provision of the 2012-2014 audited reports of the AMTD Group of
L companies, and the Chart of the Group corporate structure in emails sent by Mr. Choi to Mr.
M Devon Fu, on 19 May 2015⁶⁵², by itself was consistent with the provision of relevant
N confidential information to a potential buyer of AMTD shares. The irregularity was that Mr.
O Choi had not secured an NDA from LR Capital prior to the provision of that material. However,
P a signed NDA from LR Capital was secured by UBS on 22 May 2015.

O 629. The provision of the 'teaser' on 20 May 2015 to a potential buyer was a normal
P practice and to be expected.⁶⁵³

Q 630. Mr. Gao Yu acknowledged in cross-examination that "...in most circumstances",
R this information should be disclosed only after a non-disclosure agreement was in place, but he
S went on to assert that "...as long as the NDA was finally or eventually signed, they are subject
T to those NDA."⁶⁵⁴ As noted earlier, Mr. Gao Yu was mistaken in asserting that a non-disclosure

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T ⁶⁵⁰ Bundle 17, page 5862.

T ⁶⁵¹ Bundle 17, page 5862.

T ⁶⁵² Bundle 19, pages 6172-6839; and Bundle 20, page 6840.

U ⁶⁵³ Bundle 20, page 6893.

U ⁶⁵⁴ Transcript, page 297P-U.

A agreement with LR Capital was executed on 20 April 2015.⁶⁵⁵ The signed NDA was provided
B in an email sent to Mr. Choi by Mr. Howard Cong Lin at 3:23 pm on 22 May 2015, which he
C had signed on behalf of LR Capital Management Company (Cayman) Limited.⁶⁵⁶

D 631. The fact that Mr. Choi provided the 2012-2014 audited reports of the AMTD
E Group, a chart of its group structure to Mr. Devon Fu before taking any steps towards securing
F an NDA is relevant to a consideration of his relationship with Mr. Devon Fu and LR Capital. It
G begged the question of why LR Capital received such special treatment?

H 632. Also relevant to that consideration, is the fact that, notwithstanding that he had
I provided the ‘teaser’ to Mr. Devon Fu at 9:27 pm on 20 May 2015,⁶⁵⁷ Mr. Choi went through
J the charade of apparently purporting to do so for the first time in an email to Mr. Howard Cong,
K copied to Mr. Devon Fu, at 8:08 am on 21 May 2015, informing him of an “...acquisition
L opportunity for your consideration” and advising him that “...we will circulate a NDA should
M you express an interest in the opportunity.”⁶⁵⁸

N 633. Mr. Choi had already provided Mr. Devon Fu with a copy of a version of an
O NDA in an email he had sent to him at 10:31 pm on 20 May 2015, only minutes after he had
P received a copy of the document from Linklaters.⁶⁵⁹ That NDA described MSPE as being one
Q of the two parties. In an email to Mr. Devon Fu sent at 8:44 am on 22 May 2015, Mr. Choi
R attached a copy of another version of the NDA, in which the other party was described as the
S ‘target company’.⁶⁶⁰

T 634. Next, in an email sent to Mr. Choi at 12:01 pm on 22 May 2015 Mr. Devon Fu
U provided a draft of the text of the letter to be sent by Mr. Howard Cong Lin to Mr. Choi, in
V which the former said that LR Capital was:⁶⁶¹

“...quite interest in this opportunity and would like to follow up closely with the
company and the team to close the transaction smoothly”.

S ⁶⁵⁵ Transcript, page 297H-N.

T ⁶⁵⁶ Bundle 20, pages 6916-6922

U ⁶⁵⁷ Bundle 20, page 6869.

V ⁶⁵⁸ Bundle 20, page 6893.

⁶⁵⁹ Bundle 20, page 6880.

⁶⁶⁰ Bundle 20, page 6912.

⁶⁶¹ Bundle 20, page 6913.

A 635. In an email to Mr. Choi, copied to Mr. Devon Fu, sent at 3:23 pm and 22 May
B 2015 Mr. Howard Cong Lin adopted the draft text provided by Mr. Devon Fu. Attached to the
C email was what was described as “our executed the NDA from our side”.⁶⁶² The AMTD Group
D Company was stipulated to be the other party to the agreement.

Mr. Choi’s role in Project Frontier: that of an intermediary only?

E 636. As noted earlier, Mr. Shieh submitted that Mr. Choi’s role in Project Frontier
F was:

- G • prior to 29 May 2015 - engagement in “exploratory matching work”; and
- H • from 29 May 2015 that of an intermediary only.

I UBS was not the sell-side adviser of the selling shareholders. Mr. Shieh relied on the evidence
J of Mr. Kingsley Chan and Mr. Gao Yu in support of his submissions.

A consideration of the submissions

K 637. With respect, I have no hesitation in rejecting that submission. There is
L compelling evidence to the contrary.

M 638. The Engagement Letter between the AMTD Group and UBS, dated 10
N September 2015, provided under the heading, Role of UBS, that UBS:

O “...act as your exclusive financial adviser in connection with the potential
P Transaction (as defined below) with potential purchasers for up to 1 year since
Q 26 May, 2015.”

R The “Transaction” was the sale or other disposition of all or a controlling stake of AMTD Group.

S 639. Amongst the requirements made of UBS was that they provide financial advice
T and assistance including:⁶⁶³

U “(a) In consultation with you, developing, updating and reviewing a list of
V potential purchasers and contacting potential purchasers (“ **Potential Investor List**”);

⁶⁶² Bundle 20, page 6916.

⁶⁶³ Bundle 6, page 2072, clause 2.

(b) Together with your other professional advisers, assisting in the negotiation of the terms of the Transaction for and on your behalf”.

640. As Mr. Li submitted, that is exactly what UBS and Mr. Choi did for the selling shareholders. As noted earlier, Mr. Choi worked with Mr. Kingsley Chan in developing, updating and reviewing a list of buyers, as evidenced by the lists exchanged between them in emails on 13 and 31 March 2015, and 8 April 2015. The lists of buyers identified in emails exchanged within UBS with Mr. Choi on 8 May 2015 evidenced ongoing work of that kind.

641. Although, it is to be noted that the ‘Effective Date’ provided for in the Engagement Letter, dated 10 September 2015, was stipulated to be 26 May 2015, it is to be noted that the requirements of UBS to act as the exclusive financial adviser in the Transaction and to provide the services described above remained the same in the various drafts that were exchanged between the parties from the draft attached to the email to Mr. Choi from Mr. Kingsley Chan, dated 31 March 2015.⁶⁶⁴ That was the role of UBS throughout.

642. That Mr. Choi and UBS had contacted potential purchasers to determine their interest in the sale of the shares of AMTD was evidenced by the email, dated 4 June 2015, that Mr. Choi sent to Mr. Devon Fu.⁶⁶⁵

643. Clearly, Mr. Choi was fulfilling UBS’s obligations to act as a financial advisor. That conduct was not merely that of “exploratory matching work”.

644. It is clear that, after the receipt by AMTD and the selling shareholders of the ‘Binding Offer’ made by LR Capital by email on 29 May 2015, Mr. Choi and UBS were involved, as the Engagement Letter provided, with the “negotiation of the terms of the Transaction”. That was required of Mr. Choi in the lengthy, detailed instructions he was given by Mr. Kingsley Chan in an email sent on 2 June 2015.⁶⁶⁶ As noted earlier, Mr. Choi was directed to “...press LRC” to increase their offer Bid. In his witness statement, dated 29 June 2022, Mr. Gao Yu acknowledged that Mr. Choi had been instructed, “to convince LRC to accept our additional requests.”⁶⁶⁷ Further, he was instructed to continue to gather “...any written

⁶⁶⁴ Bundle 15, pages 5136-5163.

⁶⁶⁵ Bundle 20, page 7110.

⁶⁶⁶ Bundle 20, page 7061.

⁶⁶⁷ Bundle 35, pages 11837-11838, paragraph 20.

A proposal before the signing of a Term sheet.” The term sheet was not executed until 8 June
B 2015.

C 645. I accept the validity of Mr. Li’s submission, that as financial adviser, UBS were
D obliged, if asked to do so, to resume their duties to identify and contact potential purchasers. In
E that context, it is to be noted, that an email drafted by Mr. Choi and sent by Mr. Howard Cong
F Lin to Mr. Alan Tsang on 17 June 2015 asserted that there were terms in the negotiations
G between the parties that represented “potential deal breakers”.⁶⁶⁸

H 646. I accept as true, the acknowledgement made by Mr. Kingsley Chan in cross-
I examination that, even after the Binding Offer made by LR Capital on 29 May 2015,
J nevertheless it was the job of UBS and Mr. Choi, as sell side adviser, to be on the lookout for
K other potential buyers and that would be their job until, as Mr. Kingsley Chan put it in answering
L that suggestion in the affirmative, “signing and closing”.⁶⁶⁹ I reject the explanation that he gave,
M for resiling from that simple, perfectly clear exchange of questions and answers, in his evidence
N in re-examination.

O 647. In making these findings, I have taken into account the reference by Mr. Choi in
P an email, dated 22 June 2015,⁶⁷⁰ he sent to the Heads of CCS within UBS providing an update
Q on the progress of the sale of AMTD for the selling shareholders, to the term ‘intermediary’ and
R the explanation provided. There, he said that MSPE had “...introduced LR Capital... to an
S exclusive process, and dropped the sell side process”. He asserted, “...our work has never
T formally started and we are still negotiating on the details of the EL”. In that context, he said,
U “Fortunately I know LR Capital well to ask for the buyer side of support to request the sell-side
V to provide some sort of coordination and support along the deal by an intermediary, and I
secured also support from blackpine of which I serve as the PCB, MSPE finally agreed to offer
us a “1% matching fee” and keep our name as “sell-side adviser”.

648. Given that, as at 22 June 2015 there was no Engagement Letter between the
parties, Mr. Choi was correct in saying that work had not started, “formally”. But, work had
started. In fact, it had been underway from the first communication on 12 March 2015, when
Mr. Kingsley Chan had asked Mr. Choi to provide a buyers list and their reactions and, on 13
March 2015, had been provided with a buyers list. It continued throughout. Mr. Choi and UBS

⁶⁶⁸ Bundle 24, page 8505.

⁶⁶⁹ Transcript, page 235B-G.

⁶⁷⁰ Bundle 25, page 8633.

A had been working on the project of the sale of the sell-side’s shares for eleven weeks at the time
B of the Binding Offer on 29 May 2015.

C 649. It is to be noted that there is nothing in the voluminous contemporaneous emails
D passing between the parties that directly supports those assertions by Mr. Choi. The evidence
E of Mr. Kingsley Chan and Mr. Gao Yu contradicts the assertion that MSPE had introduced LR
F Capital to an exclusive process. It was their evidence that Mr. Choi introduced LR Capital as a
G potential buyer of the shares. Far from dropping the “sell side process”, even after the Binding
H Offer on 29 May 2015, in his email of 2 June 2015 Mr. Kingsley Chan had directed Mr. Choi
I to continue “...to gather any written proposal before the signing of a Term Sheet.”

J 650. It was the term sheet that provided for exclusivity for LR Capital. It provided
K that, in consideration of their payment of HK \$16 million (the “Exclusivity Fee”), for an
L “Exclusivity Period”, from the execution of the term sheet on 8 June 2015 up and until 19 June
M 2015.⁶⁷¹ During that period, it was agreed that the sell-side would not “...directly or indirectly
N solicit, initiate, encourage or participate in any discussions or negotiations” or respond to such
O activities, with or by “...any other party concerning or enter into any agreement in relation to
P or consummate any sale or transfer of any of the Shares” held by the relevant sell side
Q shareholders. That is what led to the suspension of the sell side process.

R 651. Also, I am mindful of Mr. Kingsley Chan’s evidence that Mr. Choi’s explanation
S in his email, dated 22 June 2015, was consistent with his understanding, “...of what the selling
T shareholders expected of UBS in its role as an intermediary after LRC’s offer was received.”
U Mr. Kingsley Chan was correct to observe that the phrases used in respect of ‘Fees’ in earlier
V drafts of the Engagement Letter, namely “success fee” and/or “incentive fee” were removed in
the Engagement Letter, dated 10 September 2015. In their place the term “matching fee” was
inserted.

652. However, it is to be noted that there is no reference in the Engagement Letter,
dated 10 September 2015 of the role of UBS as an intermediary. Rather, and consistently with
all earlier drafts, the ‘Role of UBS’ was described as being the exclusive financial adviser. That
was the provision found in the executed version of the Engagement Letter which, with some
justification, Mr. Li described as having been, “heavily negotiated”.

⁶⁷¹ Respondent’s Evidence (May 2022); Section B-item 147, internal pagination 5.

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Implied authority or consent

653. With respect there is no merit in Mr. Shieh’s submission that UBS had impliedly authorised Mr. Choi to act in a conflict of interest with AMTD and the selling shareholders, given that he had been designated as the coverage banker of LR Capital. The submission is based on a false premise. At the material time, Mr. Choi was not designated as a coverage banker by UBS of any of the LR Capital Group Companies.

Part 10 – Mr. Choi’s familial and personal connections with LR Capital

A consideration of the submissions

16 August 2016 - UBS meeting note

654. The note of a meeting held between officers of UBS and representatives of LR Capital on 12 August 2016, was compiled by Mr. Austin Mok and contained in an email circulated within UBS subsequently that day.⁶⁷² Although Mr. Shieh complains that it is hearsay and objects to reliance on it, with respect whilst it is documentary hearsay it is clearly a document compiled in the ordinary course of banking business and would be admissible as such in civil and criminal proceedings, subject to compliance with the requisite provisions. No evidence has been identified as undermining its’ reliability. There is no good reason why the Tribunal should not rely on it.

Mr. Choi’s beneficial interest in the shares of LR Capital

655. The note identified those attending on behalf of the client, LR Capital, as being Mr. Choi, Mr. Marcellus Wong and Mr. Raymond Yung. Of the nature of LR Capital, the note stated that the client confirmed that:

“1. LRC is a family office set up for the existing 16 shareholders who are *all close family, friends and partners.*

3. The 3 of them represent the core investment and shareholder group of LRC...”
[Italics added.]

656. Then, as noted earlier, the note stated that, “Danny Choi Kwok Kei holding shares on behalf of Calvin Choi (son)”.

⁶⁷² Bundle 8, pages 2811-2812.

A 657. Mr. Danny Choi had subscribed for LR Capital shares in a Subscription
B Agreement dated 29 December 2015.⁶⁷³ As a result, post the Share Subscription, through MNP
C P Corporation (HK) Limited, of which he was the sole shareholder and sole director⁶⁷⁴, Mr.
D Danny Choi became owner of 28.86% of the shares of LR Capital.⁶⁷⁵ However, there was no
E evidence of when, if it was on a date prior to 16 August 2016, Mr. Choi obtained a beneficial
F interest in the shares held in his father's name. It follows, that there is no evidence that Mr.
G Choi had a beneficial interest in those shares at any material time relevant to a consideration of
H a conflict of interest. With respect, I am satisfied that there is merit in Mr. Shieh's submission
I on that point.

G *Mr. Danny Choi's holding of LR Capital shares*

H 658. Of the question of the date on which shares in LR Capital were issued to Mr.
I Danny Choi in consequence of the Subscription Agreement, dated 29 December 2015, it is to
J be noted that the agreement did not stipulate a particular date for the issue of shares. Rather it
K provided that it was to occur, "...as soon as practicable, but in no event later than five (5)
L Business Days after all closing conditions specified in Article 5 and Article 6" have been
M waived or satisfied or other agreement reached.⁶⁷⁶ Provision was made that at Closing, LR
N Capital shall deliver to the Investor, "duly executed share certificate or share certificates",⁶⁷⁷
O on the Investor making the requisite payment by wire transfer evidenced by irrevocable wire
P instructions.⁶⁷⁸

M 659. Evidence as to the circumstances of the issue of shares to Mr. Danny Choi and
N when that occurred is to be found in UBS's "Client Profile and Acceptance Checklist",
O compiled by Mr. Austin Mok, 6 April 2016, in respect of Mr. Danny Choi Kwok Kei. There,
P the following description was given of the circumstances in which the latter had become a
Q shareholder in LR Capital:⁶⁷⁹

Q "Client was invited by his son, Mr. Calvin Choi Chi Kin, Senior President
R Assistant of CMI Group, CEO of CMI Group (HK) and Chairman of AMTD, to
S become the largest single 28.86% shareholder of LR Capital Management
T Company(Cayman) Limited in 1 Jan 2016."

S ⁶⁷³ Bundle 1, pages 411-436.

T ⁶⁷⁴ Bundle 1, pages 404-410.

T ⁶⁷⁵ Bundle 1, page 436.

T ⁶⁷⁶ Bundle 1, page 417, Article 2(a).

U ⁶⁷⁷ Bundle 1, page 418, Article 2(b).

U ⁶⁷⁸ Bundle 1, page 418, Article 2 (c).

V ⁶⁷⁹ Bundle 2, pages 521-528.

660. No evidence has been drawn to the attention of the Tribunal or submissions made in any way contradicts the statement that the shares were issued on 1 January 2016.

661. In the result, I am satisfied that there is no evidence that Mr. Danny Choi had acquired his interest in LR Capital shares at any time material to a consideration of a conflict of interest in Mr. Choi.

Mr. Bernard Choi's holding of LR Capital shares

662. Although Mr. Bernard Choi subscribed for shares in the Subscription Agreement, dated 29 December 2015, there is no evidence of when those shares were issued.

663. In the result, I am satisfied that there is no evidence that Mr. Bernard Choi had acquired his interest in LR Capital shares at any time material to a consideration of a conflict of interest in Mr. Choi.

Ms. Amy Wong's holding of LR Capital shares

664. There is no dispute that, on the incorporation of LR Capital Management Company (Cayman) Ltd in the Cayman Islands on 5 December 2014, Ms. Amy Wong, through a wholly-owned company, Enjoy Fun Investments Limited, became its sole shareholder. Also, she was one of its four directors. The other directors of LR Capital were Mr. Cong Lin, Mr. Marcellus Wong Yui Keung and Mr. Fu Yangpeng.⁶⁸⁰ The last-named person is Mr. Devon Fu.⁶⁸¹ Enjoy Fun Investments Limited was incorporated in the British Virgin Islands on 4 December 2014. Ms. Amy Wong was its sole shareholder and sole director.⁶⁸²

665. Similarly, there is no dispute that the shareholding of LR Capital Management Company (Cayman) Limited was accurately described in an organisational chart sent in an email within UBS and copied to Mr. Austin Mok on 27 March 2015. There, a total of seven shareholders were described. Six of the shareholders held their shares through their respective wholly-owned company. One shareholder held his shareholding directly. Ms. Amy Wong's shareholding in LR Capital, through Enjoy Fun Investments Limited, was described as 35%,

⁶⁸⁰ Bundle 1, page 349.

⁶⁸¹ Bundle 30, page 10428.

⁶⁸² Bundle 1, page 350.

A that of Mr. Cong Lin, through Great Select Investments Limited, 20.4%, and that of Mr. A
B Marcellus Wong, through Hope Key Investments Limited, 5.4%.⁶⁸³ B

C *6 April 2016 - UBS Client Profile and Acceptance Checklist* C

D 666. The UBS Client Profile and Acceptance Checklist of UBS, compiled by Mr. D
E Austin Mok, 6 April 2016, in respect of Mr. Danny Choi Kwok Kei referred to earlier went on E
to provide brief details of the Choi family and the history of LR Capital:

F “Eldest son, Mr. Bernard Chi Sing Choi now works at a private equity firm F
called DE Shaw as partner.”

G Younger son Mr. Calvin Chi kin Calvin (sic) now works as Senior President G
Assistant, CMI Group, CEO of CMI Group (HK) and Chairman of AMTD
H Group.” H

I 667. Of the original shareholding of the company and subsequent developments, it I
was noted:

J “Note that the original setup of the company, was initially 100% held by Mr. J
K Calvin Choi’s brother-in-law (sic) Ms Wong Yuen Ping PID 000277843, and K
L subsequently the company added new shareholders as investments of the L
M company grew. Currently Ms Wong Yuen Ping still holds 9% of this M
management company and another 6% is held by her husband, Mr. Bernard Choi
Chi Sing (also son of Mr. Choi Kwok Kei the majority shareholder of this
management company and older brother of Mr. Calvin Choi).” [Italics added.]

N 668. Ms. Amy Wong Yuen Ping’s 9% shareholding in LR Capital was held through N
O Avier (HK) Investment Holdings Limited, as described in the Schedule listing the resulting O
P shareholding following the Share Subscription, dated 29 December 2015.⁶⁸⁴ Avier was a P
company incorporated in the British Virgin Islands on 30 October 2014, of which Ms. Amy
Q Wong Yuen Ping was the beneficial owner.⁶⁸⁵ Following an application to Mr. Austin Mok, Q
dated 5 December 2014, an account was opened for Avier with UBS.⁶⁸⁶ R

R *29 December 2014 - UBS Client Profile and Acceptance Checklist* R

S 669. Of the issue, taken by Mr. Shieh as to the closeness of the relationship between S
Ms. Amy Wong Yuen Ping and Mr. Bernard Choi Chi Sing, it is to be noted that the status of

T ⁶⁸³ Bundle 8, pages 2782-2783. T

U ⁶⁸⁴ Bundle 1, page 436. U

U ⁶⁸⁵ Bundle 1, page 284. U

V ⁶⁸⁶ Bundle 1, pages 240-283. V

A their relationship was described by Mr. Austin Mok in the Client Profile and Acceptance
B Checklist of UBS, dated 29 December 2014, which he compiled. He did so, following a meeting
C held by him with Ms. Amy Wong Yuen Ping and Mr. Bernard Choi Chi Sing on 23 December
D 2014, as a result of which accounts were opened with UBS for:

- D • Enjoy Fun Investments Limited;
- E • LR Capital Management Company (Cayman) Limited; and
- F • LR Capital China Growth I Company Limited.

G 670. Mr. Austin Mok noted:⁶⁸⁷

H “BO, Ms Wong already has an existing corporate account with us and would
I like to open 3 more SG book corporate accounts.
Ms Wong is the BO and AS of all these accounts. *Ms Wong’s fiancé, Mr.
Bernard Choi* is also the AS of LR Capital Management Company (Cayman)
Limited.” [Italics added.]

J 671. I am satisfied that, from its incorporation in the Cayman Islands on 5 December
K 2014 and at all material times thereafter, Ms. Amy Wong Yuen Ping had a material interest in
L LR Capital Management Company (Cayman) Limited. At the outset, through Enjoy Fun, she
M owned all the shares of LR Capital and was one of the four directors. At some date prior to 27
N March 2015, six other shareholders were brought into the company and her shareholding
reduced to 35% of the company’s shares. Nevertheless, she remained the largest shareholder.
Then, as a result of the Share Subscription agreement, dated 29 December 2015, her
shareholding, now held through Avier, was reduced to 9% of the company’s shares.

O *Did Mr. Choi’s relationship with Ms. Amy Wong give rise to an actual or potential conflict of
P interest in Mr. Choi in acting on behalf of Xinte and/or AMTD and MSPE?*

Q 672. Having regard to Mr. Choi’s dealings with LR Capital on behalf of the clients
R of UBS, in particular Xinte in Project Oasis and the selling shareholders, including MSPE, in
Project Frontier, two questions arise. First, did any actual or potential conflict of interest arise
in Mr. Choi? Secondly, did Mr. Choi know of the factual foundation that gave rise to the conflict?

S 673. Of the conduct of a registered person, General Principle 6 of the SFC Code of
T Conduct provides that the person, “...should try to avoid conflicts of interest, and when they
cannot be avoided, should ensure that its clients are fairly treated.” Paragraph 10.1 of that Code

U ⁶⁸⁷ Bundle 11, pages 3904-3908, at page 3907; pages 3915-3919, at page 3918.

A provides that where the person has "...a material interest in a transaction with or for a client or
B a relationship which gives rise to an actual or potential conflict of interest in relation to the
C transaction" the person should not advise or deal in the transaction, "unless it has disclosed that
D material interest or conflict of the client and has taken all reasonable steps to ensure fair
E treatment of the client." As noted earlier, Paragraph 4 and Paragraph 4.1 of the CFA Code of
F Conduct makes broadly similar provisions.

674. Did the fact that Ms. Amy Wong Yuen Ping owned all of or, later, a very
substantial shareholding in LR Capital give rise to a conflict of interest in Mr. Choi? First, what
was Mr. Choi's relationship with Ms. Amy Wong Yuen Ping? She was not a blood relative, nor
a relative by marriage. A central issue was her relationship with Mr. Bernard Choi, Mr. Choi's
brother. Ultimately, it was conceded on Mr. Choi's behalf by his then solicitors that he knew
them to be cohabiting at the material time. Issue was taken on whether he knew them to be
I fiancées, namely engaged to be married. Mr. Shieh submitted that the closeness of their
J relationship was not known to Mr. Choi.

675. As noted earlier, Mr. Austin Mok met Ms. Amy Wong Yuen Ping and Mr.
K Bernard Choi on 23 December 2014 in the course of dealing with applications to open bank
L accounts with UBS for three companies, including LR Capital. In compiling bank records of
M that meeting he noted several times that Mr. Bernard Choi was Ms. Amy Wong's fiancé. No
N doubt, there was a commercial relevance for UBS to understand their relationship, given that
O Mr. Bernard Choi was also described as an account signatory on the LR Capital account with
P UBS. The fact that they met Mr. Austin Mok together to process the various applications speaks
Q to one aspect of the relationship, whilst the fact that they informed their banker of their status
R as a fiancée of each other speaks to another.

676. It is to be remembered that, in an email to Mr. Choi dated 26 September 2014,
Mr. Austin Mok described having met Mr. Bernard Choi and Ms. Amy Wong and, having
indicated that he would help them, thanked Mr. Choi "for the referral" adding that, "I met Amy
through u before actually".⁶⁸⁸ Shortly afterwards, Mr. Mok made arrangements for, Mr. Bernard
S Choi, Ms. Amy Wong and Mr. Choi to attend a medical appointment together for the purpose
T of obtaining an insurance policy.⁶⁸⁹ An indication of the degree of familiarity that Mr. Austin
U Mok judged to exist between the three of them, is evidenced by his request in his email to Mr.

⁶⁸⁸ Bundle 11, page 3862.

⁶⁸⁹ Bundle 11, pages 3863-3865.

A Bernard Choi and Ms. Amy Wong, that they pass on the details of the medical appointment to
B Mr. Choi.

C *LR Capital: a family office set up for the existing 16 shareholders who are all close family,*
D *friends and partners*

E 677. The description given to Mr. Austin Mok at the meeting of Mr. Choi and other
F shareholders of LR Capital on 12 August 2016, of the relationship of the 16 shareholders is
G highly relevant to the issues under consideration. Through their respective wholly-owned
H companies Ms. Amy Wong Yuen Ping and Mr. Bernard Choi were two of those 16 shareholders.
I Clearly, the reference to “16 shareholders” was a reference to the number of shareholders
stipulated on the list of shareholders after the Share Subscription agreement, dated 29
December 2015, became effective. As noted earlier, LR Capital was described as being, “a
family office set up for the existing 16 shareholders who are *all close family, friends and*
partners.” [Italics added.]

J 678. As far as the “set up” of LR Capital was concerned, Ms. Amy Wong played a
K pivotal part. Initially, through Enjoy Fun, she held 100% of the shares. She was a fellow director
L of LR Capital, together with Mr. Howard Cong Lin and Mr. Devon Fu. Although her
shareholding diminished, as noted above, she remained a significant shareholder throughout
the material period.

M 679. In my judgement, the relationship Mr. Choi had with Ms. Amy Wong Yuen Ping,
N in the context of her relationship with his brother Mr. Bernard Choi, depending on the nature
O and circumstance of the transaction, gave rise in Mr. Choi to an actual or potential conflict of
P interest which, if it could not be avoided, required that it be ensured that UBS’s clients be fairly
Q treated. I have no hesitation whatsoever in being satisfied that Mr. Choi knew of the factual
foundation, including the fact they were fiancées, which gave rise to that actual or potential
conflict of interest.

R *Project Frontier*

S 680. In Project Frontier, AMTD and the selling shareholders were UBS’s clients. The
T prospective transaction was the sale of the selling shareholders’ shares. The leading prospective
U buyer LR Capital, was also a client of UBS, through its wealth management accounts with UBS.
Ms. Amy Wong was a significant shareholder of LR Capital. Importantly, Mr. Choi enjoyed the

A relationship with her described earlier. Clearly, it gave rise to an actual or potential conflict of interest, which required disclosure to UBS and AMTD and the selling shareholders

681. It is to be remembered that, having added the name of LR Capital to the revised list of potential buyers of the selling shareholders shares in AMTD on 8 May 2015, Mr. Choi sent and received multiple emails with various parties, including the selling shareholders, in which he sought to advance the sale of those shares to LR Capital.

682. Clearly, Mr. Choi did nothing “to avoid the actual or potential conflict of interest in relation to the transaction” conducted on behalf of UBS’s clients, the selling shareholders, in the sale of their shares to LR Capital in Project Frontier. He did not disclose the conflict to UBS and the selling shareholders and take all reasonable steps to ensure their fair treatment. I am satisfied that in those circumstances Mr. Choi acted in breach of General Principle 6 and paragraph 10.1 of the SFC Code of Conduct and paragraph 4.1 of the CFA Code of Conduct.

683. Of course, in doing nothing, Mr. Choi did not comply with UBS’s own guidelines and policies which required disclosure within UBS, so that the matter could be escalated and considered within UBS. In my judgement, those policies and guidelines of UBS are to be viewed as an articulation of a body of reasonable steps necessary “to ensure fair treatment of the client.” It is the latter requirement that is important. Clause 4 of UBS’s Employment Policy provided that conflicts of interests were not only limited to family relationships but also applied to “other personal relationships.” Clause 4.1 required notification within UBS of any such potential or actual conflict arising from, amongst other things a personal relationship with a client.⁶⁹⁰

684. I accept Mr. Li’s submission that the relevance and importance of the information to the sell-side shareholders about the familial connection of Mr. Choi with LR Capital was illustrated eloquently in the evidence of Mr. Kingsley Chan⁶⁹¹. He testified that he did not know that in December 2014 Ms. Amy Wong Ping Yuen was the sole owner of the shares of LR Capital and that in late March 2015, when MSPE had engaged with Mr. Choi about the sale of AMTD shares, she was the owner of 35% of LR Capital’s shares. He did not know that she was the fiancée and cohabitee of Mr. Bernard Choi, Mr. Choi’s brother. He accepted that, if that information had been known, the reason that it would have been necessary

⁶⁹⁰ Bundle 33, page 11305.

⁶⁹¹ Transcript, pages 253 J-256 S.

A to bring the matter to the attention of other shareholders and colleagues was that the information
B showed Mr. Choi had family connections with the "...front-running bidder for AMTD."⁶⁹² It
C was necessary to ensure that the other shareholders either accepted the situation or agreed upon
D any proposed solution. Within MSPE, it was necessary to raise and discuss the matter to
determine what to do. That process would be documented.

E *Project Oasis*

F 685. I am satisfied that Ms. Amy Wong's interest in the shares of LR Capital, and its
G wholly-owned subsidiary LR Capital Growth I Company Limited, in the context of her
H relationship with Mr. Choi's brother Bernard, depending on the nature and circumstance of the
transaction, gave rise to a potential or actual conflict of interest in Mr. Choi that he was required
to disclose to UBS and its client, Xinte.

I 686. LR Capital Growth I Company Limited was a client of UBS, through the
J account it held with UBS's Wealth Management. Moreover, it was the wholly-owned
K subsidiary of LR Capital, another client of UBS. It was a potential and actual pre-IPO investor
in Xinte, UBS's client.

L 687. I am satisfied that Mr. Choi had a duty to avoid that conflict of interest and, if it
M could not be avoided to ensure that Xinte was treated fairly. In doing so, he was required to
disclose his actual or potential conflict of interest to UBS and Xinte. He did not do so.

N 688. Mr. Choi was required under the policies and guidelines of UBS to disclose that
O potential or actual conflict of interest to UBS. He did not do so. Those policies provided a
P practical guideline to ensuring compliance with the Codes. In consequence, UBS was deprived
of the opportunity of escalating and considering the circumstances and determining the
appropriate course of action to take.⁶⁹³

Q 689. He did nothing to try to avoid that conflict of interest to ensure that UBS's client
R was fairly treated. I am satisfied that in those circumstances Mr. Choi acted in breach of General
S Principle 6 and paragraph 10.1 of the SFC Code of Conduct and paragraph 4.1 of the CFA Code
of Conduct.

U ⁶⁹² Transcript, page 255 F-J.

V ⁶⁹³ Bundle 33, page 11305; Clause 4 and 4.1 of UBS's Employment Policy (May 2014).

A *Ms. Christine Kwok* A

B 690. There is no dispute that in November 2015, Ms. Christine Kwok was appointed B
C to the Chief Operating Officer of AMTD. The sale of the selling shareholders shares in AMTD C
D to LR Capital had been completed in October 2015. It is those circumstances that gives rise to D
the question of any potential or actual conflict in Mr. Choi in respect of the selling shareholders.

E 691. Of the relationship between Mr. Choi and Ms. Christine Kwok it appears that, E
F having been married in 2001, they had separated and a divorce petition had been filed in 2012. F
G There was no further evidence as to a divorce. Emails drawn to the attention of the Tribunal G
H evidenced a cooperative, cordial personal relationship between them and then, in November H
I 2015, occasional contact in a business context arising out of the fact of the appointment of Ms. I
Christine Kwok as COO of AMTD. H

I 692. In my judgement, there is force in Mr. Shieh's submission that Mr. Li has not I
J identified or given any explanation as to how Ms. Christine Kwok's position in AMTD J
K interfered with Mr. Choi's discharge of his duties. More particularly, the Commission has not K
articulated how it gave rise to a potential or actual conflict in Mr. Choi.

L *Madam Mei Ching Chan* L

M 693. There is no dispute that the LRC. Belt and Road was a cornerstone investor in M
N the Xinte IPO. The Prospectus stated that, following completion of the IPO, LRC. Belt and N
O Road would hold 8.79% of the shares of Xinte, and that Strategic Global Investment O
P Corporation Ltd held 99% of the equity interest in LRC. Belt and Road. Chan Mei Ching and P
Q Chan Min Chi respectively held 47% and 51% of the shares of Strategic Global Investment Q
Corporation Limited. Furthermore, there is no dispute that Madam Chan Mei Ching is Mr. P
Choi's mother. Finally, LR Capital Growth I was a pre-IPO investor in Xinte and prior to the P
IPO held 8.33% of the shares of Xinte.

R 694. In contrast to LR Capital and LR Capital Growth I Co., LRC. Belt and Road was R
S not a client of UBS, nor did UBS play any role in LRC. Belt and Road's cornerstone investment S
in Xinte.

T 695. The question that arises is whether those facts gave rise to an actual or potential T
U conflict of interest in Mr. Choi. U

A 696. Clearly, if he did not know already, Mr. Choi's attention was drawn to the fact
B that his mother, Madam Chan Mei Ching was involved in making an investment in Xinte by
C the email sent to him by Mr. Devon Fu at 3:55 pm on 14 December 2015. It was in the form of
D a draft reply in response to an enquiry made of AMTD by the SEHK about the relationship
E between LRC. Belt and Road and LR Capital Growth I Company Ltd. Earlier that day, reference
was made to the enquiry in an email sent by ATMD to multiple parties, including Mr. Choi, at
10:22 am on 14 January 2015.

F 697. The draft reply asserted that LRC. Belt and Road Investment Limited, " is
G completely unrelated to LR Capital China Growth I Company Limited...or it's 100%
H controlling shareholder LR Capital Management Company (Cayman) Ltd... in terms of both
ownership structure or management composition."

I 698. The draft reply went on to note that LRC. Belt and Road was owned by Strategic
J Global Investment Corporation Limited, which company was owned by 3 high net worth
individuals, including Madam Chan Mei Ching. That statement was repeated in the draft reply.

K 699. As Mr. Shieh noted in his submissions, it is not known if the draft reply was sent
L to the SEHK. It is to be noted that in an email to Ms. Christine Kwok, sent at 7:30 pm on 14
M December 2015, Ms. Tang of Simpson Thatcher & Bartlett LLP, acting on behalf of the joint
N sponsors, requested confirmation in respect of AMTD, LRC. Belt and Road as to their
O independence and that they were not connected or acting in concert with each other, and that
P LRC. Belt and Road was not connected or acting in concert with LR Capital China Growth I
Q Company (Cayman) Limited.⁶⁹⁴

R 700. In an email in reply, sent at 7:51 pm on 14 December 2014, in which Mr. Choi
S was copied, Ms. Christine Kwok gave that undertaking on the part of AMTD.

T 701. The publication of the Prospectus lay ahead. It was published on 17 December
U 2015, the IPO closed on 22 December 2015 and Xinte was listed on the SEHK on 30 December
V 2015.⁶⁹⁵

⁶⁹⁴ Bundle 31, page 10789.

⁶⁹⁵ Bundle 1, pages 208-210 and 215-223, at page 218. UBS's reply to the Commission, dated 2 May 2017, providing the SEHK website for accessing the Xinte Prospectus.

702. Mr. Shieh's submission that the securing of LRC. Belt and Road, by GF Securities, as a cornerstone investor was in the interests of Xinte has not been challenged by Mr. Li.

703. The fact that Mr. Choi's mother was a significant shareholder of a company which owned 99% of the shares of LRC. Belt and Road, which was a significant cornerstone investor in the Xinte IPO was a matter relevant to Mr. Choi's duties. That arose from their close familial relationship. GF Capital, not UBS, acted on behalf of LRC. Belt and Road in making that investment in Xinte. Together with GF Capital (Hong Kong) Limited, UBS were the Joint Sponsors of Xinte's IPO. But, only UBS satisfied the independence criteria applicable to sponsors in the Listing Rules.⁶⁹⁶

704. There is no dispute that Mr. Choi did not inform either UBS or UBS's client, Xinte, of the information that I am satisfied that he now had, namely that, indirectly, his mother, Madam Mei Ching Chan, was an investor in Xinte's IPO.

705. I am satisfied that those circumstances gave rise to a potential conflict of interest in relation to the transaction, namely Xinte's IPO, in Mr. Choi. Pursuant to paragraph 10.1 of the SFC Code of Conduct, he was required to disclose the circumstances to UBS and its client, Xinte and to take all reasonable steps to ensure fair treatment of Xinte. He failed to do so.

706. In consequence, not having received disclosure from Mr. Choi, UBS could not escalate and consider the matter within UBS and determine what, if any, action was required. No doubt, it would have been necessary to disclose the information to Xinte and for consideration to be given to whether it was necessary to make relevant disclosure in the Prospectus.

Part 11 - Disciplinary action

707. There is no dispute that the primary purpose of the sanctions available to the Tribunal is to protect the integrity of the market. The purpose of a prohibition or banning order is, as Tang ACJHC, as Tang NPJ was then, accepted in his judgment in *Tsien Pak Cheong David v Securities and Futures Commission*, "...not to impose a penalty or punishment on the person concerned, but to be preventative in that it removes a perceived threat to the public interest and

⁶⁹⁶ Prospectus, page 303.

A to public confidence in the securities and futures industry by removing that person from
B participation therein.”⁶⁹⁷ He went on to add that the, “function of the SFC includes the
C protection of investors, the maintenance of the integrity of financial services in Hong Kong, as
D well as the reputation of persons who were involved in the financial industries.”

E 708. In the Reasons for Determination of this Tribunal in *Sun Xiao v Securities and
Futures Commission* the Chairman, Hartmann NPJ, said:⁶⁹⁸

F “...while what is fair and appropriate in each individual case must always be the
G touchstone as to the imposition of sanctions for regulatory misconduct, in
H determining appropriate sanctions for such misconduct, a fundamental principle
I to be taken into account is the need to uphold the reputation of the finance and
J securities industry.”

K 709. Obviously, as in all cases, it is necessary to take into account the circumstances
L in which the conduct was committed and the factors of mitigation.

M *The Applicant’s submissions*

N 710. In his submissions, quoting from the determination of this Tribunal, of which
O Stone J was Chairman, in *Wong Ting Choi, Joe v Securities and Futures Commission*.⁶⁹⁹
P Mr. Shieh enumerated factors to which he invited the Tribunal to have regard:

- Q 1. the impact of the conduct in question upon market integrity;
- R 2. the degree of losses caused to clients;
- S 3. the duration and frequency of the conduct;
- T 4. whether such conduct was widespread within the industry;
- U 5. whether there has been a breach of fiduciary duty;
- V 6. the manner of reporting the conduct by the applicant, the degree of
cooperation with the SFC;
7. the applicant’s previous disciplinary record;
8. experience and position; and
9. SFC’s disciplinary action in similar cases

⁶⁹⁷ *Tsien Pak Cheong David v Securities and Futures Commission* [2011] 3 HKLRD 533, at paragraphs 54-55.

⁶⁹⁸ *Sun Xiao v Securities and Futures Commission* SFAT 3/2014 (22 May 2015).

⁶⁹⁹ *Wong Ting Choi, Joe v Securities and Futures Commission* SFAT 5/2007 (8 May 2008).

A 711. In enumerating those factors, Stone J said that he had regard to a SFC pamphlet
B entitled “Disciplinary Proceedings at a Glance”, published in 2004. Similar pamphlets were
C published by the SFC in 2005, 2011 and 2017. The factors enumerated by Stone J and other
D factors were set out under the heading, “Criteria for determining whether to take disciplinary
E action and the level of sanctions.” As Stone J noted, the list was described as being non-
F exhaustive.

G 712. Absent from the list enumerated by Stone J, but present in all the various
H iterations of the pamphlet, was the factor of the nature of the conduct (e.g., whether it is
I intentional, reckless or negligent; whether prior advice was sought from advisors or
J supervisors).

K *Mitigating factors*

L 713. In his submissions, Mr. Shieh invited the Tribunal to accept the following as
M factors of mitigation:

- N (i) there was no allegation of dishonesty against Mr. Choi, at most it could be said
O that he was negligent but only as to the possibility that his conduct would give
P rise to any actual or potential conflict of interest;
- Q (ii) there was no financial loss to UBS or its clients;
- R (iii) there was no financial gain to Mr. Choi;
- S (iv) at most Mr. Choi had committed a technical breach, and that he had negligently
T failed to identify that his conduct gave rise to a potential conflict of interest;
- U (v) the conflict of interest occurred over a relatively short period of time of less than
V one year in both projects;
- (vi) any contended potential harm to UBS was theoretical, given that the SFC did
not consider that UBS’s conduct warranted disciplinary action;
- (vii) the contention that Mr. Choi had not cooperated with the SFC’s investigations
was wrong, he had endeavoured to answer the SFC’s questions in writing on the
day after his interview with the SFC; also, he had volunteered to undertake to
the SFC not to apply for the grant of a licence, registration or other approval or
consent for a period of up to 3 years;

- (viii) he had no intention of applying for such regulatory approval in or outside Hong Kong;
- (ix) there was no victim of Mr. Choi's conduct; UBS was not a victim of that conduct, given that it had allowed Mr. Choi to be unknowingly in a position of conflict; further it had allowed him to work in the pre-IPO work for Xinte without there being an engagement letter and to have completed his work in Project Frontier before an engagement letter was signed between the parties
- (x) the impact of Mr. Choi's conduct on market integrity and the public interest was minimal;
- (xi) there was no evidence that the conduct was widespread in the industry;
- (xii) after the events Mr. Choi had developed his career, his business and the securities and futures industry generally. Of his other contributions, Mr. Choi: (1) had committed substantial time and effort to the development of Hong Kong's capital markets in particular financial technology; (2) had cultivated talent and groomed future leaders in Hong Kong; (3) had supported charities; and (4) was the recipient of awards and honorary titles in recognition of those contributions;
- (xiii) Mr. Choi had a clean disciplinary record;
- (xiv) there had been delay of 5 ½ years in bringing the proceedings against Mr. Choi after he had been first informed of the allegations, in consequence of which he is suffered substantial anxiety and stress;
- (xv) publicity generated by these proceedings had blighted Mr. Choi's personal and professional reputation. That was to be regarded as a form of sanction which he had already suffered.

714. In the result, Mr. Shieh submitted that a prohibition of 24 months was manifestly excessive and disproportionate. Having regard to the various Statements of Disciplinary Action of the SFC and the Determinations of the Tribunal itself, to which he drew the Tribunal's attention, he submitted that, in circumstances where no dishonesty was alleged, the appropriate period of prohibition at most ought to be in the region of 9 to 12 months.

A *The Commission's submissions* A

B 715. In inviting the Tribunal to uphold the sanctions imposed by the Commission, Mr. B
C Li submitted that Mr. Choi's misconduct had been committed over a substantial period of time, C
D during which he occupied a senior position within UBS as a managing director and whilst he D
E fulfilled the role of Project Sponsor and team leader in both projects. His involvement was E
F extensive. The projects were substantial: the pre-IPO investment of LR Capital Growth I F
Company Limited in Xinte involved HK\$500 million; and the sale of the selling shareholder's

G 716. Mr. Li accepted that there was no evidence of any direct personal gain on Mr. G
H Choi's part. On the other hand, he suggested that the "surrounding circumstances" gave rise to H
I "grave suspicions as to Choi's motives for behaving as he did". Of those circumstances, he I
J referred to: the ownership of shares of LR Capital of Ms. Amy Wong and Mr. Danny Choi; Mr. J
K Choi's relationship with Mr. Devon Fu; and that ultimately Mr. Choi became the chairman of K
AMTD. L

L 717. Mr. Choi's conduct occasioned serious potential harm to UBS and put it at L
M regulatory and reputational risk. Although the Commission had not taken disciplinary action M
N against UBS, that did not mean that UBS was not put at regulatory risk. UBS had been the N
O subject of a lengthy investigation by the SFC, in which it was required to respond to numerous O
P Notices of the Commission and, no doubt, required to expend substantial time and resources. P

Q 718. Mr. Li took issue with the submission that there had been unjustified delay in Q
R commencing the disciplinary proceedings against Mr. Choi. Having been informed of the R
S matter by UBS's letter, dated 17 April 2017⁷⁰⁰, the Commission had initiated investigations, S
P issued multiple Notices and had sought to interview Mr. Choi on 8 December 2017. The P
Q Commission had been presented with the Davis Polk Report on 3 August 2018. Given the Q
R volume of documentary material, in particular emails, it was not surprising that it took a R
S considerable time before proceedings were initiated against Mr. Choi, by the issue of the NPDA S
on 16 December 2020. T

T 719. Issue was taken that Mr. Choi had been cooperative with the SFC. Mr. Choi had T
U refused to cooperate throughout. U

V ⁷⁰⁰ Bundle 1, page 204. V

720. Further, although it was accepted that no allegation was made expressly of dishonesty, Mr. Choi's conduct was no technical breach. Rather, his assistance to LR Capital, in particular the forwarding of confidential information to Mr. Devon Fu, and his non-disclosure of his interest to UBS were deliberate decisions. Acting to favour one party over another was an obvious risk of prejudice.

721. Issue was taken with the submission that UBS bore responsibility for allowing Mr. Choi unknowingly to be put into a position of conflict. That was a startling submission. Given Mr. Choi's failure to disclose his actual or potential conflicts of interest to UBS, it was not possible for UBS to consider the matter or put in place any measures to avoid and mitigate the conflict.

722. Of the numerous decisions of the Commission and Determinations of this Tribunal to which reference was made, Mr. Li reminded the Tribunal that all such cases were determined on their own facts. Further, that all the cases relied on by Mr. Shieh involved undisclosed personal securities trading by licensed individuals on public security markets. Such conduct was more readily detected compared to the conduct of Mr. Choi in a consideration of the submissions.

A consideration of the submissions

723. There is no dispute that Mr. Choi has, as it was described, "a clean disciplinary record". Similarly, it is accepted that no financial loss was caused to UBS or its clients and that there was no financial gain to Mr. Choi.

724. Mr. Li did not take issue with Mr. Shieh's submission that the impact of Mr. Choi's conduct upon market integrity or the public interest was minimal nor that there was no evidence that the misconduct of which he was culpable was widespread in the industry. Similarly, no issue was taken with the submissions in respect of Mr. Choi's conduct subsequent to the events the subject of these proceedings.

725. The fact that Mr. Choi was culpable of the misconduct, which the Tribunal has found proved, whilst occupying a senior position in UBS is a factor of aggravation of his culpability. His seniority and the reputation it carried ought to have acted as a barrier to the temptation to act in the duplicitous manner in which he did, in particular passing on obviously

A confidential information to Mr. Devon Fu and, in Project Frontier, also actively assisting LR
B Capital in advancing its interests contrary to those of UBS's client, the selling shareholders.

C 726. Although Mr. Choi was involved in the pre-IPO investment in Xinte from
D August 2014 to April 2015, it is clear that the nub of his misconduct occurred in a shorter period
E of a few weeks from mid-February to mid-March 2015. Similarly, although Mr. Choi was
F involved in respect of the sale of the selling shareholders' shares in AMTD from March 2015
G until September/October 2015, it is clear that the nub of his misconduct again occurred in a
shorter period of several weeks in May and June 2015. Nevertheless, taken together, the
misconduct encompassed multiple, separate and distinct acts.

H 727. I do not accept that in acting in a conflict of interest on the occasions he has
I been found to have so acted, that he did so in a 'technical breach' only. As noted earlier, I am
J aware that Mr. Li acknowledged that the Commission has not alleged dishonesty against Mr.
K Choi. However, it is clear, as Mr. Li has submitted, that on numerous occasions acting in a
L conflict of interest he deliberately determined to pass on confidential information against the
M interests of the clients of UBS. That was not negligence. He intended to do that. Similarly, he
N repeatedly assisted LR Capital in drafting documents the object of which was to secure
O advantage for them in negotiations with the selling shareholders. In doing so, he acted in a
P conflict of interest. Again, that was deliberate. It was intentional. There is no evidence that Mr.
Q Choi sought prior advice from "advisors or supervisors", of whom there were many within
R UBS.

S 728. I am satisfied that there was a risk of potential harm to UBS in consequence of
T Mr. Choi's conduct. One level of that risk was the institution of disciplinary proceedings against
U UBS by the Commission. That did not happen. However, another level of risk was that an
intensive investigation was launched into UBS to determine whether it bore any culpability.
That did happen. In a Notice, dated 20 July 2017, the Commission informed UBS that it was
"a person under investigation" and that, in consequence, it must provide the Commission with
"records or documents and written answers". UBS was informed that there was "reason to
inquire" whether it and/or any persons connected with it "...is or was guilty of misconduct
and/or is not fit and proper person" for the purposes of section 194 of the Ordinance.⁷⁰¹ There
followed numerous other such Notices. As Mr. Li submitted, it is readily apparent that, as a

⁷⁰¹ Bundle 2, pages 529-539.

A consequence, in responding to regulatory demands, UBS were required to expend substantial
B time and resources.

C 729. I do not accept that Mr. Choi cooperated with the Commission's investigation.
D At the interview conducted of him by the SFC on 7 December 2017 he refused to answer
E questions. He was obliged to answer. The information supplied in the letter by his then solicitors
F on 8 December 2017 addressed only some of the matters that had been raised with him in the
G oral interview the previous day. More to the point, in refusing to answer questions at the oral
H interview he had succeeded in avoiding the rigours of an oral interrogation.

G 730. I am satisfied that there was no unjustified delay by the Commission in
H commencing proceedings against Mr. Choi by service on him of the NPDA on 16 December
I 2020. Following the report of the matter by UBS to the Commission on 11 April 2017, it is
J clear that the Commission actively pursued obtaining relevant information from multiple
K sources. That much is readily apparent from the 34 lever-arch files of documents served on the
L Tribunal by the Commission as the Hearing Bundle. It comprises over 11,800 pages. The
M electronic version of the Respondent's Bundles of Evidence, filed in May 2022, also includes
N attachments to emails, which were not made part of the Hearing Bundle, and were not included
O in the hard copy of the Respondent's Bundles of evidence filed in May 2022. The Commission
P said that was done "to save paper". It comprises 28,806 pages of documents. Clearly, obtaining
Q the documentation and then arranging it in a form that was intelligible was a formidable task
R for the Commission. It is to be noted that in the written Representations made by Mr. Choi's
S then solicitors on his behalf to the Commission, dated 16 April 2021, reference was made to
T the "sheer volume of documents available": 33,000 documents in Project Oasis; and 23,000
U documents in Project Frontier.⁷⁰²

P 731. No doubt, Mr. Choi has suffered an element of anxiety and stress, as a result of
Q the proceedings hanging over his head for many years after he was informed of the allegations.
R However, that is an inevitable consequence of the complications of such litigation. In addition,
S there is force in Mr. Li submission, in effect, that not having engaged or cooperated with the
T Commission it ill behoves Mr. Choi to pray that in aid of his mitigation. There is no evidence
U before the Tribunal of publicity adverse to Mr. Choi generated by the investigations into his
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⁷⁰² Core Bundle, page 72, at paragraph 21.

A conduct. In any event, if there was such publicity, and it contributed to his stress and anxiety,
B that is simply a consequence of investigations and litigation in a free society and open justice. B

C 732. For the reasons I gave earlier, in addressing the submissions that it was irrational C
D of the Commission to issue an order of prohibition against Mr. Choi, I do not accept that D
E submission that the voluntary undertaking articulated on behalf of Mr. Choi in his then E
F solicitor's letter, dated 16 April 2021, "...not to apply for a new licence, registration or other F
G approval or consent for a period of up to 3 years" would have achieved the same practical effect, G
H albeit for a longer period, as the prohibition imposed by the Commission. I accepted as correct, H
I the response of the Commission in its Decision Notice to that suggestion: a formal disciplinary I
J sanction serves to deter non-compliance with regulatory requirements. J
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H 733. It is to be noted that in addressing the issue of the level of sanctions to be H
I imposed following disciplinary action in the pamphlet, Disciplinary Proceedings at a Glance, I
J reference was made to other relevant factors including, "SFC's action in previous similar cases J
K (note: usually similar cases would be treated consistently...)" Of course, that is a simple K
L articulation of a fundamental principle applicable to many activities and certainly applicable to L
M these proceedings. However, it is trite that all cases occur in their individual circumstances. M
N Whilst there are similarities with other cases, there are always dissimilarities. N
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M 734. With respect to counsel, in considering the appropriate orders to make by way M
N of disciplinary action, I have not been assisted by being referred to the multiple Statements of N
O Disciplinary Action promulgated by the Commission nor to several Determinations of this O
P Tribunal. Many of those decisions involved trading in undisclosed securities accounts by P
Q employees of securities firm. Profits were made. Trading was concealed. Sometimes false Q
R statements and representations were made by the miscreant employee in aid of the concealment. R
S Sometimes the conduct was determined to be dishonest, or on other occasions deliberate and S
T dishonest. Different lengths of prohibitions from re-entering the industry were ordered. T
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R 735. The factual circumstances of those cases are wholly different from those R
S obtaining in the case of Mr. Choi. S
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Conclusion

736. In all the circumstances, I am satisfied that the Commission's determination that a period of prohibition for 2 years from the activities articulated in its Decision Notice is entirely appropriate.

Part 12 - Orders

737. For the reasons set out above, I reject the submissions made on behalf of Mr. Choi that the following acts of the Commission were *ultra vires* its statutory powers, namely that:

- (i) the Investigation commenced by the Commission, pursuant to section 194(1)(a) and (b) of the Ordinance;
- (ii) the Notice, dated 17 October 2017, issued pursuant to section 183(1) of the Ordinance, requiring Mr. Choi to attend an interview;
- (iii) the NPDA, issued pursuant to sections 194 and 196 of the Ordinance, dated 16 December 2020; and
- (iv) the Decision Notice, issued pursuant to sections 194 and 196 of the Ordinance, dated 14 January 2022.

738. In those circumstances, I decline to grant the related relief sought on behalf of Mr. Choi.

739. Having conducted a review *de novo* I have made various determinations, set out in detail earlier, in respect of Mr. Choi's conduct in both Project Oasis and Project Frontier. In summary, I found that Mr. Choi conducted himself on different occasions in breach of some or all of General Principle 6 and paragraph 10.1 of the SFC Code of Conduct and paragraph 4 and 4.1 of the CFA Code of Conduct.

Sanctions

740. In light of the determinations made earlier, and having had regard to the submissions of the parties, I re-affirm the order that the Commission made in the Decision Notice by way of sanctions, pursuant to sections 194 and 196 of the Ordinance, namely that Mr.

A Choi is prohibited for two years from doing all or any of the following in relation to any
B regulated activities:

- C (a) applying to be licensed or registered; C
D (b) applying to be approved under section 126(1) of the Ordinance, as a responsible D
E officer of a licensed corporation; E
F (c) applying to be given consent to act as an executive officer of a registered F
G institution under section 71C of the Banking Ordinance; and G
H (d) seeking through a registered institution to have his name entered in the register H
I maintained by the Monetary Authority under section 20 of the Banking I
J Ordinance as that of a person engaged by the registered institution in respect of J
K a regulated activity. K

I *Costs* I

J 741. There is no reason why costs should not follow the event. Pursuant to section J
K 223(1)(b) of the Ordinance, I order that Mr. Choi is to pay the costs of the Commission, with a K
L certificate for three counsel, to be taxed if not agreed.⁷⁰³ L

L *Notice to register the orders in the Court of First Instance* L

M 742. Pursuant to section 226 of the Ordinance, I direct that notice be given to the M
N Court of First Instance to register the Tribunal's orders. N

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U ⁷⁰³ Transcript, page 490 N-Q; page 475 Q-S. In addressing the issue of costs, Mr. Shieh informed the Tribunal U
V that, if the Commission was successful in the proceedings, he would not oppose the application by Mr. Li for V
a certificate for three counsel.

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Mr. Michael Lunn, GBS
(Chairman)



Mr. Paul Shieh, SC and Mr. José Maurellet, SC, leading Mr. James Man, Mr. Keith Chan and Mr. Cedric Yeung, instructed by Jingtian & Gongcheng LLP, for the Applicant

Mr. Laurence Li, SC, leading Mr. John Leung and Mr. Jonathan Fung, instructed by the SFC, for the Respondent

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under sections 194 and 196 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

CHOI CHI KIN, CALVIN Applicant

and

SECURITIES AND FUTURES COMMISSION Respondent

Tribunal: Mr. Michael Lunn, GBS, Chairman

Date of Ruling: 29 September 2023

RULING

1. In a letter to the Tribunal, dated 25 April 2023, Mr. Choi's solicitors, Jingtian & Gongcheng, invited the Tribunal to place no weight on a Confidentiality Agreement between Xinte Energy Co., Ltd ("Xinte"), UBS AG ("UBS") and GF Capital (Hong Kong) ("GF Capital") dated 24 August 2014, which had been provided to the Tribunal by Xinte in a letter dated 14 April 2023. Complaint was made that Mr. Choi's

A legal advisers did not have the opportunity to review the Confidentiality Agreement before
B it was produced by Xinte.

C 2. It was contended that the Confidentiality Agreement "...forms no part of
D the SFC's case, whether in the Notice of Proposed Disciplinary Action, or the Decision
E Notice, or indeed in the SFC's submissions." It was stated that if the Tribunal was inclined
F "to place any weight, reference or reliance" on the Confidentiality Agreement, it was
G requested that Mr. Choi be afforded "...a reasonable opportunity to address the Tribunal
H on any suggested line of relevance or reliance, including by making written and/or oral
I submissions and/or submitting further evidence to the Tribunal in respect of the
J Confidentiality Agreement."

H *Background*

I 3. The Confidentiality Agreement had been provided by Xinte in its letter,
J dated 14 April 2023, in response to the Notice of the Tribunal, dated 6 April 2023, pursuant
K to section 219(1)(b) of the Securities and Futures Ordinance, Cap. 571.

L 4. Following the conclusion of the oral hearings on 16 December 2022, it
M became apparent to the Tribunal that the Confidentiality Agreement, dated 24 August 2014,
N to which reference was made specifically in the Engagement Letter, dated 19 March 2015,
O between Xinte Energy, UBS and GF Capital, which was included in the Hearing Bundles,
P was not included. By a letter to the parties, dated 2 March 2023, the Tribunal invited the
Q parties to indicate where, in the material served on the Tribunal, the document could be
R located.

S 5. Throughout, the Tribunal provided copies to the Commission and Jingtian
T & Gongcheng, of all the correspondence, service of Notices and the replies of the recipients
U the Tribunal received.

V 6. By a letter to the Tribunal, dated 3 March 2023, the Commission indicated
that the Confidentiality Agreement was not in the material provided to the Tribunal nor in
the possession of the Commission. The Commission offered to approach UBS to obtain a
copy of the document. By a letter to the Tribunal, dated 3 March 2023, Jingtian &
Gongcheng, informed the Tribunal that the document was not in the Applicant's possession

A and acknowledged having received the letters sent between the Commission and the
B Tribunal that day.

C *Notices pursuant to section 219 (b) of the Ordinance*

D *(i) UBS*

E 7. In a letter to the Commission, dated 3 March 2023, the Tribunal thanked the
F Commission for its offer of assistance and asked that a Notice to UBS to produce the
G document, pursuant to section 219 (b) of the Securities and Futures Ordinance (the
H “Ordinance”) , be drafted for the Chairman’s signature. The Tribunal issued a Notice
I signed by the Chairman, dated 7 March 2023 directed to UBS to produce the document and
invited the Commission to serve the Notice on UBS. In a letter to the Tribunal, dated 31
March 2023, UBS AG informed the Tribunal that it was unable to locate a copy of the
document.

J *(ii) GF Capital and Xinte*

K 8. In a letter to the Commission, dated 4 April 2023, the Tribunal asked for the
L assistance of the Commission to draft Notices to produce the document directed at each of
M GF Capital (Hong Kong) Limited and Xinte Energy Co., Ltd. The Tribunal issued Notices
to each of those parties signed by the Chairman, dated 6 April 2023, directing each of them
to produce the document and invited the Commission to serve the Notice on them.

N 9. In a letter to the Tribunal, dated 14 April 2023, Xinte produced to the
O Tribunal a copy of the Confidentiality Agreement, dated 24 August 2014, pointing out that
P it had been entered into by Xinte’s controlling shareholder, TEBA Co., Ltd. The agreement
Q was in Chinese characters. By an email, dated 19 April 2023, GF Capital (Hong Kong)
Limited informed the Tribunal that they were unable to locate a copy of the Confidentiality
Agreement.

R 10. In a letter, dated 18 April 2023 the Tribunal provided the parties with a copy
S of the Confidentiality Agreement and invited the Commission to provide an English
T translation of the document.

11. In a letter from the Commission, dated 26 April 2023, an English translation of the Confidentiality Agreement was provided to the Tribunal.

Directions

12. In response to the request made in the letter of Jingtian & Gongcheng, dated 25 April 2023, that Mr. Choi be afforded a reasonable opportunity to address the Tribunal, in a letter, dated 27 April 2023, the Tribunal replied:

“Subject to any submissions to the contrary by the respondent, the Chairman is minded to accede to that request and invites you to consult the respondent to arrive at an estimate of the likely time required for an oral hearing and to provide that estimate to the Tribunal, together with any suggested timetable for the provision of written submissions and further evidence.”

13. By a letter to the Tribunal, dated 28 April 2023, the Commission set out its position:

“We have no objection to the Request in that the Applicant be given a reasonable opportunity to address the Tribunal regarding any suggested line of relevance or reliance. If the Applicant applies to adduce further evidence, the Respondent will address any such application when made.”

14. No response having been received by the Tribunal to its letter to Jingtian & Gongcheng, dated 25 April 2023, by a letter, dated 9 June 2023, the Tribunal issued Directions to the Applicant, namely that:

“... if the applicant wishes to make any further submissions to the Tribunal on that issue the applicant is to file such submissions with the Tribunal on or before 5 pm on 15 June 2023.”

The Applicant’s submissions

Relevance

15. In written Supplemental Submissions, dated 15 June 2023, Mr. Shieh submitted that the Confidentiality Agreement “...is wholly irrelevant to the determination of this Application, because it forms no part of the SFC’s charges against Mr. Choi, and

A the SFC does not and cannot now rely on it in an opposition to the Application.” Mr. Shieh
B pointed out that the Confidentiality Agreement was not in the evidence adduced by the
C Commission in the review and formed no part of the Commission’s case in the NPDA,
Decision Notice or submissions made by the Commission to the Tribunal.

D *Jurisdiction*

E 16. In addition to that primary submission, Mr. Shieh submitted that the
F Tribunal did not have jurisdiction to rely on the Confidentiality Agreement. To do so,
G would be to “commence a new general enquiry.” The Tribunal did not have the power,
“...to broaden the matters into which it is obliged to enquire”¹. That was impermissible.

H *Prejudice*

I 17. Mr. Shieh submitted that reliance on the Confidentiality Agreement at this
J stage would cause prejudice to Mr. Choi. He was entitled to have been informed of the
K charges and the allegations against him in good time, so that he could take advice and
consider what evidence to call.

L 18. Notwithstanding the fact that no application had been made to the Tribunal
M for leave to file any evidence, attached to the Supplemental Submissions was a witness
N statement of Madam Guo Junxiang, dated 13 June 2023. For his part, Mr. Shieh informed
O the Tribunal that, if the Tribunal was “inclined to place any weight, reference or reliance”
on the Confidentiality Agreement, Mr. Choi “...seeks leave to file and to rely on the
attached witness statement of Guo Junxiang in respect of the Confidentiality Agreement”.

P *The Commission’s submissions*

Q 19. In written Supplemental Submissions, dated 26 June 2023, Mr. Li opposed
R the application to adduce the witness statement of Madam Guo “...in the strongest terms”.
S He described it as being, “...nothing but a thinly disguised, belated and desperate ploy to
T reopen wholesale his case on Project Oasis.”

U ¹ *Moody’s Investors Service Hong Kong Limited v Securities and Futures Commission* - SFAT 4/2014
V (31 March 2016) at paragraphs 121 and 154.

A 20. Of the Commission's position on the Confidentiality Agreement, Mr. Li
B said that it was straightforward:

C "The SFC has not previously relied on it, does not need to rely on it, and
D also does not propose to rely on it either."

E 21. Perhaps, fearful that there might be a doubt as to the position taken by the
F Commission, described as straightforward and articulated above, throughout the written
G Supplemental Submissions Mr. Li felt it necessary to re-assert the position taken by the
H Commission as to the Confidentiality Agreement, namely that: (i) it does not rely on it;²
I (ii) it does not need to rely on it³; (iii) it does not propose to rely on it.⁴

J 22. Separately, Mr. Li said of the Confidentiality Agreement that the
K Commission, "...does not invite the Tribunal to rely on it either." He went on to submit,
L "...the Tribunal does not need to rely on the Confidentiality Agreement to find against
M Choi."

N *Relevance*

O 23. Of the relevance of the Confidentiality Agreement, Mr. Li said that the
P Commission, "...does not accept Choi's submissions that the Confidentiality Agreement
Q is altogether "irrelevant" to the matters which the Tribunal has to decide." Given that it had
R been, "... expressly incorporated into the Engagement Letter between UBS and Xinte, the
S confidentiality obligations it imposed on UBS would be pertinent to the relationship
T between UBS and Xinte."

U *Jurisdiction*

V 24. Mr. Li invited the Tribunal to reject Mr. Shieh's submission that having
regard to the Confidentiality Agreement was outwith the Tribunal's remit to consider
evidence that was not referred to in the NPDA and Decision Notice. That was too narrow
approach. In an hearing *de novo* the Tribunal had power to receive fresh evidence. The
Tribunal would not be embarking on a "new general enquiry", if it was to consider the

² The Commission's Supplemental Submissions: paragraph 4; paragraph 15; paragraph 21; and paragraph 44.

³ The Commission's Supplemental Submissions: paragraph 5; paragraph 20.

⁴ The Commission's Supplemental Submissions: paragraph 20; paragraph 30.

A Confidentiality Agreement in its determination. The issue of the conflict between Mr. A
B Choi's role as Xinte's advisor and his assistance to LR Capital was always the B
C Commission's case. The Confidentiality Agreement was merely another piece of evidence C
relevant to that issue.

D *Prejudice* D

E 25. Mr. Li submitted that there was no merit in the complaint that Mr. Choi E
F would suffer prejudice if reliance was placed on the Confidentiality Agreement. The F
G confidential nature of the term sheet and the draft SPA was never disputed. The existence G
H of the Confidentiality Agreement was in evidence. The only new development was that the H
provision of the document established the terms of the Confidentiality Agreement .

I *The Tribunal's own initiative* I

J 26. Mr. Li submitted that it lay within the Tribunal's jurisdiction and remit on J
K its own initiative to "consider, refer to, and/or rely on the existence and contents of the K
L Confidential Agreement in its determination." If the Tribunal did so, that would not afford L
M a basis for Mr. Choi to adduce Madam Guo Junxiang's witness statement into evidence. M
N Only one part of the witness statement dealt with the uncontroversial fact that the parties N
had executed the Confidentiality Agreement of 24 August 2014. The rest of the statement
was, "...in reality an application to adduce fresh post-hearing evidence which has nothing
to do with the contents of the Confidentiality Agreement."

O *The Applicant's Reply Submissions* O

P 27. In the Applicant's Reply Submissions, dated 28 June 2023, it was submitted P
Q that, given that the Commission did not rely on the Confidentiality Agreement, "...the Q
review jurisdiction of the Tribunal does not permit it to place weight" on that document.

R *A consideration of the submissions* R

S 28. As is readily apparent from the nature of the objections made on behalf Mr. S
T Choi to the Tribunal placing "any weight, reference or reliance" on the Confidentiality T
U Agreement, and having regard to the chronology of events set out earlier, it is clear that U
V

A objection could have been taken to the process initiated by the Tribunal at the outset on
B 3 March 2023. That was not done. A B

C 29. I am satisfied that the Confidentiality Agreement is relevant to the
D Tribunal's considerations. It is clearly intimately linked to the Engagement Letter, dated
E 19 March 2015. The fact that the Confidentiality Agreement was not amongst the material
F sought and obtained in the responses by UBS to the multiple Notices served on UBS
G appears to have been overlooked by the Commission. The Engagement Letter, dated 19
H March 2015, was provided to the Commission by UBS in a response, dated 3 August 2018.⁵
I That, was in response to a specific request for that document in a Notice, dated 24 July
J 2018. The obvious relevance of the Confidentiality Agreement to the confidentiality clause
K in the Engagement Letter was readily apparent. Of course, UBS was a party to both the
L Confidentiality Agreement and the Engagement Letter. M N O P Q R

I 30. I am satisfied that the Tribunal has jurisdiction to receive and consider the
J document and that the Tribunal has power to do so, and to do so on its own initiative. K L M N O P Q R

K 31. Nevertheless, having regard to the strident objections made in the
L submissions on behalf of Mr. Choi, together with the repeated statements made in
M submissions on behalf of the Commission that the Commission has not relied on and does
N not propose to rely on the Confidentiality Agreement, in conjunction with the
O Commission's specific submission that it does not invite the Tribunal to rely on the
P Confidentiality Agreement, in my judgement it would not be appropriate for the Tribunal
Q to "receive and consider" the Confidentiality Agreement, as provided by sections 219(1)(a)
R of the Ordinance. For the avoidance of any doubt, given that the Tribunal has been provided
S with a copy of the Confidentiality Agreement by Xinte, the Tribunal will not give any
T weight to or place any reliance on that document at all. U V

Q 32. In light of that determination, the contingent application to adduce the
R witness statement of Madam Guo Junxiang falls away. S T U V

U ⁵ Bundle 2, page 626 at A. 1) and Bundle 3; pages 1191-1209, at page 1199 clause 2 (b). V

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Costs

33. Given that no application has been made in fact on behalf of Mr. Choi to adduce the witness statement, there is no merit in Mr. Li's submission that the Tribunal should "dismiss Choi's application to adduce Guo WS with costs."

34. Having regard to the fact that the submissions of the parties resulted from the initiative of the Tribunal itself, in my judgement it is appropriate to make no order as to costs.



Mr. Michael Lunn, GBS
(Chairman)



Mr. Paul Shieh, SC and Mr. José Maurellet, SC, leading Mr. James Man, Mr. Keith Chan and Mr. Cedric Yeung, instructed by Jingtian & Gongcheng LLP,
for the Applicant

Mr. Laurence Li, SC, leading Mr. John Leung and Mr. Jonathan Fung, instructed by the SFC,
for the Respondent.