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26.	2000								
	2000	11	6		2001	3	30		
	136,008,000			8.24%					
27.								Chung Hsin & Company	
28.					2000	11	7		4 5
								L	n
				27%					
	Diamond Leaf Limited				13.6%			163,500,000	
								12.3%	
29.		2000	12	5		6			
	(i)	Solution Bridge Limited							
		1.40			408,757,642			24.77%	
	(ii)			205,884,503		12.48%			
	(iii)								

34.

Accuvantage Limited			Owens Assets Limited			Accuvantage Limited			Throphill Enterprises		
L Accuvantage n			Owens Assets Limited			L Owens n			Throphill Enterprises		
Limited	L Throphill n					Limited	L Cathnor n				
2001	5	2				2001	7				
Merrill Lynch						2001	8	2			

41.

2004 3 15

42. 2005 1

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Limited L Tycoon n Assets Island Limited L Assets n
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Capital Tycoon
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TAKEOVERS AND MERGERS PANEL

Paper prepared by the Executive

Re: ENM Holdings Limited

The Proceedings

1. The Executive institutes disciplinary proceedings before the Takeovers Panel under section 12.1 of the Introduction to the Code on Takeovers and Mergers ("**Takeovers Code**")¹ against Dr Chow Yei Ching ("**Dr Chow**"), his son, Mr Chow Vee Tsung Oscar ("**Oscar Chow**") and Mr Joseph Leung Wing Kong ("**Mr Leung**").

The Executive's Case

2. The Executive's case is that at the instigation of and together with the late Nina Kung, also known as Nina T H Wang ("**Ms Kung**"), Dr Chow, Mr Leung and Oscar Chow, acted in concert in relation to ENM Holdings Limited ("**ENM**") in order to avoid the triggering of a mandatory general offer under the Takeovers Code. Such a failure constituted a breach of Rule 26.1 of the Takeovers Code.

The Takeovers Code

3. The Takeovers Code regards two or more persons as acting in concert in respect of a company if pursuant to an agreement or understanding they actively cooperate, through the acquisition of shares by any of them, to obtain or consolidate control² of that company.
4. The Takeovers Code requires a mandatory general offer to be made for all the shares in the company if a person or group of persons acting in concert acquired shares resulting in either:
 - (i) the person or concert group collectively holding 35% or more of the voting rights (known as the "**trigger**"); or

- (ii) the person or concert group collectively holding between 35% and 50% of the shares and then going on to acquire, either individually or as a group, more than 5% in any 12 month period (known as the “**creeper**”)³.

Relevant provisions of the Takeovers Code are set out in **Annex 1** to this Paper.

ENM

- 5. ENM, formerly known as e-New Media Company Limited⁴, has at all material times been principally engaged in wholesale and retail fashion wear and accessories, resort and recreational club operations, investment holding and securities trading. Its shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (“**Exchange**”).

The Personalities advised the Board of Directors of ENM that the proposed acquisition of ENM by the Group is a strategic move to expand the Group's business in the fashion and retail sector.

principal contractors for the Chinachem Group⁷. Dr Chow and Ms Kung shared a high level of mutual trust and confidence⁸.

10. Oscar Chow joined the Chevalier Group in 2000⁹. On 29 March 2004, he was appointed an executive director of Chevalier.

Chronology of events

11. A chronology of events is set out in **Annex 2** to this Paper.

The Relevant Events: 2000-2002

12. On 7 November 2000, ENM announced that its then substantial shareholder Mr Chee Ying Cheung () (**“Mr Chee”**) (C)3tTw 1.19(.33t)-ad 2000etaneP <</MCID 13>BD0.0

representing an approximately 34.64% interest in ENM. The announcement also stated that Solution Bridge Limited had received the Executive's written confirmation that no general offer obligation would arise in connection with the share acquisition from Mr Chee¹².

15. In late 2000, Ms Kung asked Dr Chow to acquire ENM shares and hold them on her behalf¹³.

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

- 40,000,000 shares to Accuvantage (approximately 2.42% of ENM's issued share capital)
- 30,000,000 shares to Owens Assets (approximately 1.82% of ENM's issued share capital)
- 30,348,000 shares to Throphill Enterprises (approximately 1.84% of ENM's issued share capital)
- 35,660,000 shares to Cathnor Holdings (approximately 2.16% of ENM's issued share capital)

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22.

- (b) Ms Kung's shareholdings were disclosed in each of the announcements dated 7 November 2000, 5 and 21 December 2000 issued by ENM relating to Ms Kung's acquisition of 24.77% of ENM from Mr Chee³³. Further details of Ms Kung's shareholdings were regularly disclosed in interim and annual reports subsequently issued by ENM³⁴;
- (c) ENM's announcement dated 5 December 2000 contained clear reference to the placing down of shares by Ms Kung in order to keep her shareholding below the 35% trigger threshold and the fact that the sale and purchase agreement was conditional on the Executive's confirmation that no general offer would arise³⁵; and
- (d) Ms Kung became a substantial shareholder holding more than 10% of ENM in August 2000 and details of her shareholdings were publicly disclosed in compliance with the now repealed Securities (Disclosure of Interests) Ordinance³⁶.

Bearer Shares

- 26. When the four BVI companies were first set-up, one bearer share was issued for each company. Dr Chow kept the four bearer shares in his personal office³⁷. Under BVI law at the relevant time the share register did not need to record the names and addresses of the persons who held bearer shares. A bearer share was transferable by delivery of the certificate relating to the share. Thus, bearer shares could be held by persons the identity of whom was not recorded in the share register of the company and hence the beneficial owner could not be ascertained or traced by means of a review of the company's statutory records.

Events Subsequent to 2002

- 27. Oscar Chow resigned as director of the four BVI companies with effect from 15 March 2004. Since that resignation, Violet Chow has been the sole director of these companies³⁸.

³³ See Tab 7, Tab 8, and Tab 9 of the Bundles

³⁴ See the extracts from ENM's annual reports for 2000, 2001 and 2002 disclosing Ms Kung's shareholdings at Tab 21

³⁵ See Tab 8 of the Bundles

³⁶ See Tab 19 of the Bundles

³⁷ Paragraph 10, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

³⁸ Paragraph 10, Dr Chow's submission dated 30 October 2012 at Tab 15 of the Bundles

28.

Relevant provisions under the Takeovers Code

- (a) Since 1984 Dr Chow has been chairman/director of a number of companies listed on the Hong Kong Stock Exchange⁴⁹. Each of these companies was subject to the requirements of the Takeovers Code.
- (b) Dr Chow played a key role in the restructuring of the Chevalier Group. Between 1997 and 2011, he was involved in a number of Takeovers Code transactions including the following⁵⁰:
 - (i) In 1997, Dr Chow, jointly with Chevalier International Holdings Limited (“**CIHL**”), Chevalier Development International Limited (“**CDIL**”), and Chevalier Construction Holdings Limited (“**CCHL**”) applied to the Executive for a waiver of the mandatory offer obligation which might have arisen as a result of the implementation of the proposed reorganisation. Dr Chow, CIHL, CDIL and CCHL were presumed to be parties acting in concert under the Takeovers Code and relied on Note 6 to Rule 26.1 of the Takeovers Code (acquisition of voting rights by members of a group acting in concert) in support of their application⁵¹.
 - (ii) In 1999, Chevalier Development International Limited was privatised by Chevalier International Holdings Limited. Dr Chow was the controlling shareholder of Chevalier International Holdings Limited⁵². Chevalier International Holdings Limited and Dr Chow together held approximately 45.4%⁵³ in Chevalier Development International Limited. Dr Chow was the chairman of both companies. This transaction was subject to the requirements of the Takeovers Code. In this transaction, Dr Chow took responsibility under Rule 9.3 of the Takeovers Code for all eight of the related announcements, and the privatisation document⁵⁴.
 - (iii) In 2000, Dr Chow, jointly with Chevalier International Holdings Limited (“**CIHL**”), sought the Executive’s ruling as to (i) whether an

⁴⁹ See Tab 24 of the Bundles for a list of Dr Chow’s directorships

⁵⁰ In each of these transactions, Dr Chow took responsibility for the accuracy and completeness of the information disclosed in the application and/or documents. See Tab 25 – 29 of the Bundles

⁵¹ See Tab 25 of the Bundles

⁵² Dr Chow held approximately 48.7% in Chevalier International Holdings Limited (see the extract of the privatisation document dated 22 October 1999 at Tab 26)

⁵³ Chevalier International Holdings Limited (38.2%) and Dr Chow (7.2%) based on the information contained in the privatisation document dated 22 October 1999. See Tab 26 of the Bundles

⁵⁴ See Tab 26 of the Bundles

investor and its associates in a proposed subscription for the shares in Chevalier Construction Holdings Limited (“**CCHL**”) would be regarded as parties acting in concert with Dr Chow and CIHL, and (ii) whether Dr Chow and/or CIHL would be required to make a general offer for the shares in CCHL as a result of the acquisition of additional voting rights in CCHL by CIHL⁵⁵.

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

Leung

concert group and assisted Ms Kung in circumventing the requirements of Rule 26.1 of the Takeovers Code.

56. Oscar Chow handled the reimbursement of the costs Dr Chow had incurred through acquiring ENM shares in accordance with Dr Chow's instructions. Each time Dr Chow purchased ENM shares for Ms Kung, he would give Oscar Chow the relevant broker statements and ask him to work out the total number of ENM shares he had bought and the consideration involved. Oscar would then prepare detailed spread sheets of the amounts of ENM shares acquired and the costs incurred. In accordance with his father's request, Oscar Chow personally handed the spread sheets to Mr Leung who then arranged for reimbursement to be made to Dr Chow. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements⁷¹. Oscar Chow assumed that the funds for the reimbursement came from Ms Kung⁷².

57. In 2001 Oscar Chow arranged, at the request of Dr Chow, for the purchase of the four BVI companies which subsequently held the ENM shares and opened accounts for these four companies with Merrill Lynch. He was a director of each of these companies until 15 March 2004. All the Merrill Lynch statements concerning the four BVI companies were sent to him even after his resignation as director.

58. To comply with the changes to BVI law, the bearer shares of the four BVI companies were exchanged for registered shares. Capital Tycoon became the registered owner of Owen Assets and Throphill Enterprises in 2009. Thereupon, Oscar Chow (being the sole registered owner of Capi T.gishe four f Capi T.gisor58.In 2001 en aTng -11ggeg -11ner11(7

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their shares. Under Rule 26.3 of the Takeovers Code, the offer should have been made at the highest price paid by Ms Kung or the concert parties in the six months preceding 21 December 2000 namely, at HK\$1.40 per share. The failure to make the offer was a breach of Rule 26.1 of the Takeovers Code.

20 November 2013

Annex 1

Relevant Code provisions

1. Acting in concert is defined in the Definitions section of the Takeovers Code as follows:

“Persons acting in concert comprise persons who, pursuant to an agreement or understanding, actively cooperate to obtain or consolidate “control” ... of a company through the acquisition by any of them of voting rights of the company.”

2. The definition of “acting in concert” also states that:

“Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established –

...

(8) an individual with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts.”

[#] Control: The normal test for whether a person is controlled by, controls or is under the same control as another person, will be by reference to the definition of control, that is by reference to holding 35% or more of the voting rights of a company. In cases of doubt, the Executive should be consulted.¹

¹ The relevant percentage was lowered to 30% on 19 October 2001

3. Rule 26.1 of the Takeovers Code² (“When mandatory offer required”) provides that:

“Subject to the granting of a waiver by the Executive, when

- (a) any person acquires, whether by a series of transactions over a period of time or not, 35% or more of the voting rights of a company;*
- (b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to 35% or more of the voting rights of the company;*
- (c) any person holds not less than 35%, but not more than 50%, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person’s holding of voting rights of the company by more than 5% from the lowest percentage holding of that person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or*
- (d) two or more persons are acting in concert, and they collectively hold not less than 35%, but not more than 50%, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than 5% from the lowest collective percentage holding of such persons in the 12 month period ending on*

Annex 2
ENM Holdings Limited

Chronology of events

Date	Event	Related document(s)	Ref. Bundle
7 November 2000	Announcement of the preliminary discussions between Mr Chee (the then substantial shareholder of ENM) and several parties, including Ms Kung, regarding the disposal of ENM shares by Mr Chee.	Copy of ENM's announcement dated 7 November 2000	Tab 7
5 December 2000	Announcement of (i) the conditional sale and purchase agreement in relation to the acquisition of 24.77% interest in ENM by Ms Kung from Mr Chee, and (ii) placing of shares by Ms Kung to independent third parties to keep her shareholding below the then 35% trigger threshold upon completion of the share acquisition.	Copy of ENM's announcement dated 5 December 2000	Tab 8
Sometime in late 2000	Ms Kung felt insecure about her shareholding in ENM and asked Mr Leung to explain her position to Dr Chow and seek his views. Mr Leung approached Dr Chow to discuss the matter.	Copy of Mr Leung's interview transcript	Tab 2
Sometime in late 2000	Ms Kung asked Dr Chow to acquire ENM shares and hold them on her behalf.	Copy of Dr Chow's submission dated 30 October 2012	Tab 15

Date	Event	Related document(s)	Ref. Bundle
Between November 2000 and March 2001	(i) Dr Chow bought approximately 136 million ENM shares (approximately 8.24%) through two brokers. (ii) Dr Chow paid for the purchase of the ENM shares and was subsequently reimbursed by Ms Kung. The reimbursement was handled by Oscar Chow and Mr Leung. Oscar Chow, in accordance with Dr Chow's instructions, would prepare excel spread sheets setting out the number of ENM shares bought and the consideration amount based on the broker statements provided by Dr Chow. Oscar Chow personally handed the spread sheets over to Mr Leung who then arranged for payment. Oscar Chow met Mr Leung on approximately five occasions in connection with the reimbursements.	Copies of chronology of events provided by Dr Chow's solicitors in or around May 2012, Oscar Chow's interview transcript, and Robertsons' submission dated 15 June 2012	Tab 13, Tab 3, and Tab 14

Date	Event	Related document(s)	Ref. Bundle
21 December 2000 ¹	(i) Completion of the share acquisition from Mr Chee and the placing down of shares by Ms Kung, and as a result, Ms Kung held 34.64% in ENM. (ii) Mr Leung became a director of ENM. As at 21 December 2000, he was also a director of some 356 companies beneficially owned by Ms Kung.	Copies of ENM's announcement dated 21 December 2000, and submission by Clifford Chance on behalf of Mr Leung dated 17 September 2013	Tab 9, and Tab 18
In early 2001	Ms Kung asked Dr Chow to (i) purchase four BVI companies and transferred the 136 million ENM shares into these companies, and (ii) open accounts in the name of these BVI companies with Merrill Lynch Wealth Management and deposit the ENM shares into these accounts. Dr Chow asked Oscar Chow to carry out these requests.	Copies of	

Date	Event	Related document(s)	Ref. Bundle
Between May and July 2001	Oscar Chow arranged for the purchase of four BVI companies, namely Accuvantage, Cathnor Holdings, Owens Assets, and Throphill Enterprises and opened accounts for these four BVI companies with Merrill Lynch. He was a director of each of these companies until 15 March 2004. All statements issued by Merrill Lynch concerning the four BVI companies were sent to Oscar Chow. The (sse)]TJ 0 Tc to Oed (our)5(t)-7(he f)-7(our)5(-0.004 Tw -1107 Tw 9(A)-1(ry)9(BVI)11(O		

Date

Event

Related document(s)

2. Dr. Chow

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

- (a) Acquiring approximately 160 million ENM shares for Nina Kung at her request and holding them on her behalf;
- (b) Receiving the reimbursements handled by Joseph Leung and Oscar Chow to request; and
- (c) Engaging the help of his children to conceal the true ownership of the ENM shares, via purchase of and transfer of ENM shares to four BVI companies, arranging that his children be the directors of the four BVI companies, and subsequently arranging that his children own the BVI companies.

(2)

17 April 2014

- (d) He knew the reimbursements that he received and which had been handled by Oscar Chow and Joseph Leung were related to the ENM shares that he had purchased at the request of Nina Kung.
- (e) He knew that in engaging the help of his children, he was concealing the fact that the 160 million shares were held on behalf of Nina Kung.

3.

17 April 2014

Extract of relevant provisions under the Takeovers Code as they were in 2000

Rule 26.1

26.1 When mandatory offer required

Subject to the granting of a waiver by the Executive, when

- (b) two or more persons are acting in concert, and they collectively hold less than 35% of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective

that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this Rule, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares. Offers for different classes of equity share capital must be comparable and the Executive should be consulted in advance in such cases. (See Rule 14.)

Definitions

- 2. Acting in concert:** Persons acting in concert comprise persons who, pursuant to an agreement or understanding, (as defined below) of a company through the acquisition by any of them of voting rights of the company.

Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established

- (1) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;
- (2) a company with any of its directors (together with their close relatives, related trusts and companies controlled[#] by any of the directors, their close relatives and related trusts);
- (3) a company with any of its pension funds, provident funds and employee share schemes;
- (4) a fund manager with any investment company, mutual fund, unit trust or other person, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
- (5) a financial or other professional adviser, including a stockbroker*, with its client in respect of the shareholdings of the adviser and persons controlling[#], controlled by or under the same control as the adviser;
- (6) directors of a company (together with their close relatives, related trusts and companies controlled[#] by such directors, their close relatives and related

trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;

- (7) partners; and
- (8) an individual with his close relatives, related trusts and companies controlled[#]