

The Report of the Market Misconduct Tribunal
As to Whether a Breach of Disclosure Requirements
Within the Meaning of Sections 307B and
307G of Part XIVA of the Securities
and Futures Ordinance Cap 571 has taken place by
AcrossAsia Limited (Stock Code 8061), Albert Saychuan
Cheok and/or Vicente Binalhay Ang

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CHAPTER 1

NOTICE AND STATEMENT FOR THE INSTITUTION OF PROCEEDINGS GIVEN BY THE SECURITIES AND FUTURES COMMISSION

1.

“IN THE MATTER OF THE LISTED SECURITIES OF ACROSSASIA LIMITED (STOCK CODE 8061)

NOTICE TO THE MARKET MISCONDUCT TRIBUNAL PURSUANT TO SECTION 307I(2) OF AND SCHEDULE 9 TO THE SECURITIES AND FUTURES ORDINANCE CAP 571 (“ORDINANCE”)

Whereas it appears to the Securities and Futures Commission (“Commission”) that a breach of disclosure requirement within the meaning of sections 307B and 307G of Part XIVA of the Ordinance has or may have taken place in relation to the securities of AcrossAsia Limited (Stock Code 8061) listed on the Stock Exchange of Hong Kong Limited, the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:

- (a) whether a breach of a disclosure requirement has taken place; and
- (b) the identity of any person who is in breach of the disclosure requirement.

Persons and/or corporate bodies appearing to the Commission to have breached or may have breached a disclosure requirement

- (1) AcrossAsia Limited (“AAL”)
- (2) Albert Saychuan Cheok (“Cheok”)
- (3) Vicente Binalhay Ang (“Ang”)

Statement for institution of proceedings

AAL is a Cayman Islands-incorporated company whose securities have since 13 July 2000 been listed on the Growth Enterprise Market of the Hong Kong Stock Exchange.

At all material times, Cheok was AAL's Chairman and Ang was its Chief Executive Officer.

AAL is an investment holding company. Its major asset at the material times was and still is a 55.1% holding and controlling interest in PT First Media Tbk ("**First Media**"), a company whose securities have been listed on the Stock Exchange of Indonesia since 2007. First Media and its subsidiaries (collectively, "**First Media Group**") are engaged in the provision of digital telecommunication services such as, *inter alia*, broadband internet and cable TV services. AAL's income and profit is derived from the business operations of the First Media Group.

On 30 June 2011, AAL entered into a loan facility agreement with First Media of that date ("**Facility Agreement**") whereby AAL availed itself of a US\$44 million loan from First Media (with an interest rate of 4.75% per annum) for the purpose of providing general working capital and for business development. The facility was for a period of three months which was to be automatically rolled over for duration of up to one year (i.e. by 30 June 2012).

On 30 August 2012, First Media commenced arbitration proceedings against AAL at the Indonesian National Board of Arbitration ("**BANI**") to recover the principal loan of US\$44 million that was due on 30 June 2012 pursuant to the terms of the Facility Agreement but remained unpaid by AAL. At the conclusion of these proceedings, an arbitration award was granted in favour of First Media against AAL on 12 September 2012 ordering AAL to pay First Media the principal amount of the loan together with interest in the total amount of US\$46,774,403 ("**BANI Award**"). The BANI Award was registered in the Central Jakarta District Court ("**CJDC**") on 13 September 2012 and was received by AAL on 14 September 2012 upon which trading in its securities was suspended.

The BANI Award was disclosed to the public via an announcement titled “Price Sensitive Information and Resumption of Trading” on 20 September 2012 wherein the Board of AAL stated that the BANI Award was “*considered to constitute price sensitive information of the Company and is therefore subject to disclosure requirement under Rule 17.10 of the GEM Listing Rules*”.

On 24 September 2012, the CJDC declared that the BANI Award may be enforced. On 27 September 2012, First Media applied to the CJDC to enforce the BANI Award.

An Official Summons was issued by the CJDC on 1 October 2012 and served on AAL on 3 October 2012 requiring AAL to be present in court on 16 October 2012 for an “Official Warning” to settle the BANI Award in favour of First Media.

An “emergency meeting” of the Board of Directors of AAL was held on 3 October 2012 to discuss the ramifications of the Indonesian proceedings, the BANI Award in particular. At this meeting, attended *inter alia* by Cheok and Ang, it was made clear that any breach of the Indonesian court rulings would “*potentially have serious material adverse effects on the company*”; Indonesian counsel had advised that the potential consequence of a failure to comply with the Indonesian Court’s order would include the following:

- “(1) *First Media could seek to take further actions in Indonesia to seize assets of [AAL], which comprised primarily of shares in First Media and such assets are situated in Indonesia;*
- “(2) *First Media could seek to take further actions in Indonesia with a view of winding up [AAL]; and*
- “(3) *Upon occurrence of one or both of the foregoing, this is likely to impact on [AAL]’s ability to carry on its business as a going concern and may also have an effect on [AAL]’s ability to maintain its listing status.*”

On 16 October 2012, the Chief Judge of the CJDC adjourned the Official Warning Summons for further hearing/warning on 30 October 2012, on which date the hearing/warning was further adjourned to 27 November 2012.

On 7 November 2012, AAL published its Third Quarterly Report 2012 in which the Indonesian proceedings were referred to.

On 27 November 2012, the Chief Judge of the CJDC gave a final warning to AAL to pay the BANI Award (which had become an Indonesian judgment debt) within 8 days, namely, by 5 December 2012. AAL did not make the payment.

On 20 December 2012, First Media filed a “Petition for Suspension of Obligation for Payment of Debts (PKPU)” against AAL (“**PKPU Petition**”). It was stated in §8 of the PKPU Petition that the petition was submitted pursuant to “*Article 222 paragraph (3) of Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (PKPU) (hereinafter referred to as ‘the Law on Bankruptcy and Suspension of Obligation for Payment of Debts’)*” on the basis that the Debtor (AAL) could not continue paying its debts that had been due and payable and may present a composition plan that included an offer to pay all or part of their debts to the Creditor. On the face of the petition, First Media sought, *inter alia*:

- (a) The temporary suspension of obligation for payment of debts against AAL for 45 days;
- (b) The appointment of a supervisory judge from the Commercial Court or the CJDC to supervise the process of suspension of obligation for payment of debts;
- (c) The appointment of administrators to manage the assets of AAL; and
- (d) An order that the administrators so appointed summon First Media, AAL and known creditors to appear before the Commercial Court at the CJDC on a date not later than 45 days from the date of the Court’s ruling on the PKPU Petition.

The PKPU Petition was registered with the Indonesian Court on 26 December 2012. A Summons dated 28 December 2012 (“**Summons**”) was issued by the CJDC to AAL summoning AAL to appear in court on 4 January 2013 to give testimony at the hearing of the PKPU Petition.

AAL received a copy of the PKPU Petition and the Summons, in the original Indonesian Bahasa language, by facsimile dated 2 January 2013. English translations of these documents were provided to AAL on 4 January 2013 and circulated amongst its officers, including Cheok and Ang.

The issue of the PKPU Petition and the Summons together with the information contained therein was 'inside information' within the meaning of section 307B of the Ordinance in that those documents contained information which was:

- (e) about AAL; and
- (f) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of AAL but would if generally known to them have been likely to materially affect the price of those securities.

Such inside information came to the knowledge of Cheok and Ang, officers of AAL, on or about 4 January 2013 in the course of their performing functions as officers of AAL; and a reasonable person, acting as an officer of AAL, would have considered that the information was inside information in relation to AAL.

Once such information came to the knowledge of Cheok and Ang AAL was obliged, pursuant to section 307B(1) of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, Cheok and Ang failed to ensure that AAL disclose, and AAL did not disclose, that information to the public in a timely manner until 17 January 2013.

From 8 January 2013 to 15 January 2013, Cheok and Ang were in Jakarta, Indonesia, to attend the hearing of the PKPU Petition before the Indonesian Commercial Court, wherein an order granting the PKPU Petition was made by the Indonesian Commercial Court on 15 January 2013.

In the meantime, the Commission had via the Hong Kong Stock Exchange been demanding that AAL issue a holding announcement relating to the Indonesian proceedings. AAL eventually issued a Holding Announcement at 19:33 on 17 January 2013 in those circumstances.

Accordingly, AAL failed to disclose any information to the public pertaining to the PKPU Petition or the Summons, which constituted inside information, as soon as reasonably practicable after the inside information came to the knowledge of AAL on or about 4 January 2013 and was therefore in breach of a disclosure requirement pursuant to section 307B(1) of the Ordinance.

It was the responsibility of Cheok and Ang, as officers of AAL, to ensure that AAL complied with its disclosure obligation. They failed to so ensure; their reckless or negligent conduct as described in paragraphs 17 and 18 above resulted in AAL's breach of a disclosure requirement, and they were therefore also in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.

By reason of all the matters set out above:

- (g) AAL failed or may have failed to disclose to the public inside information (within the meaning ascribed to it under section 307A of the Ordinance) constituted by the PKPU Petition and the Summons as soon as reasonably practicable after the said inside information had come to its knowledge, contrary to section 307B(1) of the Ordinance;
- (h) Cheok and Ang, both officers of AAL, were or may be guilty of reckless or negligent conduct in failing to ensure AAL's compliance with its disclosure obligation, wherein such conduct resulted in the breach of a disclosure requirement by AAL. Cheok and Ang were accordingly also in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.

Dated this the 22nd day of July 2015

Securities and Futures Commission”

Service of Synopsis and Hearing

2. Shortly after the issue of the Notice, the SFC served a synopsis dated 29 September 2015, giving a summary of what it considered to be a relevant factual background.
3. The first preliminary conference was held on 13 November 2015.
4. The second preliminary conference was held on 3 December 2015.
5. The third preliminary conference was held on 17 February 2016.
6. The fourth preliminary conference was held on 10 June 2016.
7. The fifth preliminary conference was held on 19 October 2016. At that conference a preliminary point relating to Legal Professional Privilege (“LPP”) was raised for the Tribunal to decide. Mr. Tallentire sat alone for the purpose without the members.
8. The sixth preliminary conference was held on 20 October 2016. Mr. Tallentire ruled on and handed down brief written reasons for so ruling in relation to the LPP point. Basically the ruling was that Mr. Cheok (“SP2”) could not refer to the legal advice given to AcrossAsia Limited as this would breach LPP.

9. The seventh preliminary conference was held on 31 October 2016. This originally was to have been the day for the commencement of the substantive hearings.

10. The substantive hearing of the matter took place on 2, 7 and 11 November 2016.

CHAPTER 2
THE BACKGROUND AND FACTUAL BASIS
FOR THE INQUIRY

The Synopsis

(A) Introduction

11. AcrossAsia Limited (“AAL”), a Cayman Islands-incorporated company was listed on the Growth Enterprise Market of the Hong Kong Stock Exchange (“SEHK”) on 13 July 2000.

12. At all material times for the purpose of this inquiry, Albert Saychuan Cheok (“Cheok”) an Independent Non-Executive Director was the Chairman of AAL and Vicente Binalhay Ang (“Ang”) was the Chief Executive Officer.

13. AAL, an investment holding company had and still has its major asset at the material time a 55.1% holding and controlling interest in PT First Media Tbk (“First Media”), a company whose securities have been listed on the Stock Exchange of Indonesia since 2007. First Media and its subsidiaries (collectively, “First Media Group”) are engaged in the provision of digital telecommunication services such as broadband internet and cable TV services. AAL’s income and profits are derived from the business operations of the First Media Group.

(B) Litigation between the First Media Group and the Astro Group

14. In 2008 a legal dispute arose between First Media and a Malaysian based company, Astro All Asia Networks PLC (“Astro”). This arose from a shareholders’ agreement of 2005 between the relevant parties for the establishment of a pay television joint venture in Indonesia.

15. Astro commenced arbitration proceedings in Singapore against the First Media Group and obtained a series of awards granted by the Singapore International Arbitration Centre (“SIAC”) between May 2009 and August 2010. By an interim final award and a final award granted by SIAC on respectively 18 February 2010 and 3 August 2010, First Media was ordered to pay Astro a total sum equivalent to approximately \$744,415,294 plus costs. On Astro’s applications judgment was entered in terms of the awards made by the SIAC in Hong Kong on 9 December 2010 (“Hong Kong Judgment”) and in Singapore on 24 March 2011.

(C) Loan Facility Agreement between First Media and AAL

16. On 30 June 2011, AAL entered into a loan facility agreement with First Media (“Facility Agreement”) whereby AAL received a US\$44 million loan, with interest of 4.75% per annum, for the purposes of providing general working capital and for business development. The facility was for three months which was to be automatically rolled over for a duration of up to one year (that is, by 30 June 2012). On 5 July 2011,

AAL issued an Overseas Regulatory Announcement (“ORA”) containing an announcement issued by First Media relating to the Facility Agreement.

(D) Astro’s Injunction against First Media and Garnishee Proceedings against AAL

17. Three days after AAL issued the ORA referred to above, on 8 July 2011 Astro obtained an *ex parte* worldwide Mareva Injunction (“Injunction”) against First Media from the High Court of Singapore restraining it from disposing of its assets. First Media then applied to set aside the SIAC Awards in Singapore on 19 July 2011.

18. On 14 July 2011, Astro also applied *ex parte* to the High Court of Hong Kong for a garnishee order against AAL and on 22 July 2011, a Garnishee Order to Show Cause (“Garnishee Order Nisi”) was granted.

19. On 22 July 2011, AAL applied for a suspension of trading in its securities pending release of an announcement by First Media which was “considered to be price sensitive in nature”. First Media’s announcement was issued on 25 July 2011, referring to the Injunction obtained against it by Astro. On 26 July 2011, AAL issued a Price Sensitive Announcement referring to the granting of the Garnishee Order Nisi against it.

20. Proceedings relating to the Injunction in Singapore and the Garnishee Order Nisi were the subject of many AAL announcements – 1,

17, 18, 23 August 2011 and in its third quarterly report of 8 November 2011 AAL announced therein that it would make further announcements in due course of any material developments relating to the litigation.

21. On 18 January 2012, First Media applied to set aside the Hong Kong Judgment and to discharge the Garnishee Order Nisi in Hong Kong.

22. On 21 March 2012 the High Court ordered AAL to pay all sums due to First Media into Court pending the outcome of proceedings commenced by First Media in Singapore to set aside the awards and judgments granted in Singapore in favour of Astro. AAL's appeal against the order was dismissed by the Court of Appeal on 3 August 2012.

23. In AAL's half yearly report issued on 10 August 2012, they continued to update shareholders on the progress of the garnishee proceedings, saying however that the directors remained of the view that there was a good prospect of resisting such proceedings.

(E) The BANI Award and related Legal Proceedings in Indonesia

24. On 30 August 2012, First Media commenced arbitration proceedings against AAL at the Indonesian National Board of Arbitration ("BANI") to recover the principal loan of US\$44 million that was due on 30 June 2012 which was unpaid. On 12 September 2012 an arbitration award was granted in favour of First Media against AAL. AAL was

ordered to pay First Media the amount of the loan plus interest, a total of US\$46,774,403 (“the BANI Award”).

25. The BANI Award was registered in the Central Jakarta District Court (“CJDC”) on 13 September 2012 and received by AAL on 14 September 2012 upon which trading in its securities was suspended.

26. The BANI Award was disclosed by AAL to the public via an announcement entitled “Price Sensitive Information and Resumption of Trading” on 20 September 2012 wherein the Board stated that the BANI Award was considered to constitute price sensitive information of the Company and is therefore subject to disclosure requirements under Rule 17.10 of the GEM Listing Rules.

27. On 24 September 2012, the CJDC declared that the BANI Award may be enforced. On 27 September 2012, pursuant to First Media’s application for enforcement proceedings, the CJDC granted an Order that an Official Warning Summons be issued against AAL in respect of the Indonesian judgment debt.

28. An official summons was issued by the CJDC on 1 October 2012 and served on AAL on 3 October 2012 requiring AAL to be present in court on 16 October 2012 for an “Official Warning” to settle the BANI Award in favour of First Media.

29. On 3 October 2012 an “emergency meeting” of the board of directors of AAL was held to discuss the Indonesian proceedings. All directors including Cheok and Ang took part. It was recorded in the minutes the following:

“... in view of the Indonesian Court Rulings and given that the potential consequences of breach of the Indonesian Court Rulings are grave and any breach will potentially have serious material adverse effects on the Company.”

30. It was noted that AAL had been advised by Indonesian counsel about the potential consequences of non-compliance with the Indonesian Court’s order. This could include First Media seizing AAL’s shares in First Media, seeking a winding up of AAL and that either of these would impact on AAL’s ability to carry on as a going concern.

31. It was concluded at the meeting that the Indonesian Court Rulings were “absolute” and that First Media was AAL’s “primary and genuine creditor” whereas the legitimacy of the Garnishee Order Nisi could be questionable. It was agreed that the directors should avoid putting AAL into insolvency. Cheok agreed with this.

32. Cheok also stated that if AAL failed to pay First Media by 27 October 2012, it would cause AAL under the GEM Listing Rules to declare that it is in default and require AAL to suspend trading except this

time with the risk of delisting as a declaration of a major default carries the consequences of insolvency as it would allow First Media to apply to wind up AAL.

33. It was agreed to appeal to First Media to grant an extension of time for payment whilst vigorously contesting the proceedings on 16 October 2012.

34. Two days after the board meeting on 5 October 2012, AAL issued a Voluntary Announcement on the progress of the Garnishee Proceedings but made no mention of the Indonesian Proceedings.

35. On 16 October 2012 the CJDC adjourned the Official Warning Summons to 30 October 2012 and then again to 27 November 2012.

36. On 7 November 2012, AAL published the third quarterly report in which both the Garnishee Proceedings and the Indonesian Proceedings were referred to. In relation to the Indonesian Proceedings the report said:

“As at the date of this report, the official court minutes in respect of the hearing/warning held at the Central Jakarta District Court on 30th October 2012 is still pending. It is likely that [AAL] will be summoned to attend the Central Jakarta District Court again for further hearing/warning.”

37. This was AAL's last announcement referring to the Indonesian Proceedings prior to the 'Holding Announcement' of 17 January 2013 relating to the PKPU Petition and the Summons.

(F) Commencement of Bankruptcy Proceedings – the PKPU Petition and the Summons

38. On 27 November 2012 the Chief Judge of the CJDC gave AAL a final warning to pay the BANI Award (which had become an Indonesian Judgment Debt) by 5 December 2012, AAL did not pay.

39. On 20 December 2012, First Media filed a Petition for Suspension of Obligation for Payment of Debts (PKPU) against AAL ("PKPU Petition").

40. *Inter alia* the Petition by First Media sought:

- (a) the temporary suspension of obligation for payment of debts against AAL for 45 days;
- (b) the appointment of a supervisory judge from the Commercial Court or the CJDC to supervise the process of suspension of obligation for the payment of debts;

- (c) the appointment of administrators to manage the assets of AAL; and
- (d) an order that the administrators so appointed summon First Media, AAL and known creditors to appear before the Commercial Court at the CJDC on a date not later than 45 days from the date of the Court's ruling on the PKPU Petition.

41. The PKPU Petition was registered with the Indonesian Court on 26 December 2012. A Summons dated 28 December 2012 was issued by the CJDC to AAL to appear on 4 January 2013 at the hearing of the PKPU Petition.

(G) AAL's response to the PKPU Petition and the Summons

42. The PKPU Petition and the Summons were received by AAL on 2 January 2013. These were in Bahasa.

43. Ang instructed Chan Yuk Hung, Clive ("Chan"), the Chief Financial Officer by email to have the documents translated to English with the assistance of Susan Sha ("Sha"), a legal consultant of AAL based in Malaysia.

44. On 3 January 2013 in the morning Chan sent the documents to Sha and another employee asking what they should do.

45. By a further email that day from Chan to Sha copied to Cheok, Ang and Kelsch Woon Kun Wong (“Wong”) the Company Secretary, Chan proposed seeking legal advice due to an implementation of new rules of “inside information” from the SFC on 1 January 2013.

46. Wong had previously emailed materials to Cheok and Ang, *inter alia*, concerning the new rules on disclosure coming into effect on 1 January 2013. The new rules had been discussed by the Board of AAL.

47. At 1:29 a.m. on 4 January 2013, Sha enclosed the English translation of the PKPU Petition to, among others, Chan.

48. At 9:21 a.m. on 4 January 2013, Chan circulated the English translation of the PKPU Petition to Cheok and Ang, with copy to Wong and Sha. He suggested seeking legal advice on “*any disclosure implications for AAL as a listed company in Hong Kong.*”

49. Chan sent another email to, *inter alia*, Cheok and Ang saying:

“After going through the attached English translation and with reference to the new inside information provisions ... I note that our case may be fallen into the situation ... we’d better to seek a

legal opinion from Chris Williams [a solicitor from Howse Williams & Bowers] to assure compliance with such newly adopted requirements.”

50. At 11:56 a.m. on 4 January 2013, Chan circulated the English translation of the Summons to Cheok and Ang with copy to Wong and Sha.

51. The issue of the PKPU Petition and the Summons together with the information contained therein was “inside information” within the meaning of section 307B of the Securities and Futures Ordinance (“Ordinance”) in that those documents contained information which was:

(a) about AAL; and

(b) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of AAL but would if generally known to them have been likely to materially affect the price of those securities.

52. Such inside information came to the knowledge of Cheok and Ang on or about 4 January 2013 in the course of their performing functions as officers of AAL. The SFC contended that a reasonable person acting as an officer of AAL would have considered that this was inside information. This was not contested.

53. Once such information came to the attention of Cheok and Ang, AAL was obliged pursuant to section 307B(1) of the Ordinance to disclose that information to the public as soon as reasonably practicable. However, this was not done until 17 January 2013.

54. On 8 January 2013 Cheok and Ang arrived in Jakarta and instructed lawyers for the hearing scheduled for the next day. They obtained verbal legal advice on the PKPU Petition from the Indonesian lawyers.

55. They, with Sha attended the hearing before the Indonesian Commercial Court on 9, 10 and 14 of January 2013.

56. On 14 January 2013, SEHK made verbal enquiries with Wong regarding these proceedings instituted by First Media. As a result, AAL applied for suspension of trading with effect from 9 a.m. on 15 January 2013. In AAL's "Trading Suspension Announcement" it was stated that trading was suspended "*pending the release of an announcement of possible inside information of [AAL]*".

57. On 15 January 2013 the Indonesian Commercial Court granted the PKPU Petition ordering, *inter alia* –

- (a) temporary suspension of obligation of payment to enable AAL to make proposal to settle the debt owed to First Media;
- (b) appointment of a supervisory judge to supervise the PKPU process; and
- (c) appointment of three administrators of AAL for the PKPU process.

58. At 3:28 p.m. on 15 January 2013, Wong sent an email urging the immediate issue of a holding announcement concerning the Indonesian Proceedings.

59. In the meantime the SFC had via the SEHK been demanding that AAL issue a holding announcement. This AAL did at 7:33 p.m. on 17 January 2013.

60. Trading of AAL shares resumed on 22 February 2013. The share price upon resumption fell 22.5% from its pre-suspension price of \$0.08 to \$0.062.

(H) Breaches or Possible Breaches of AAL, Cheok and Ang

61. AAL failed to disclose information to the public about the PKPU Petition and the Summons, which constituted inside information, as soon as reasonably practicable after the inside information came to the knowledge of AAL on or about 4 January 2013. It was therefore in breach of the disclosure requirement imposed by section 307B(1) of the Ordinance.

62. It was the responsibility of Cheok and Ang as officers of AAL to ensure compliance with the Ordinance. They failed to so ensure their negligent conduct previously described resulted in AAL's breach of the disclosure requirement. Therefore they both were in breach of the requirement pursuant to section 307G(2)(a) of the Ordinance.

CHAPTER 3

THE FIRST ADMITTED FACTS OF ACROSSASIA LIMITED (SP1) AND VINCENTE BINALHAY ANG (SP3)

(A) Introduction

63. AAL is a Cayman Islands-incorporated company whose securities have since 13 July 2000 been listed on the Growth Enterprise Market of the SEHK.

64. At all material times, Cheok was AAL's Independent, Non-Executive Chairman. Ang was its Chief Executive Officer.

65. AAL is an investment holding company. Its major asset at the material times was and still is a 55.1% interest in First Media, a company whose securities have been listed on the Stock Exchange of Indonesia since 2007. The 55.1% holding in First Media is a passive holding as AAL is merely an investment holding company. AAL does not take any part in the operations of First Media and does not have any representation to the Board of First Media. First Media and its subsidiaries are engaged in the provision of digital telecommunication services such as, *inter alia*, broadband internet and cable TV services. AAL's income and profit are derived from the business operations of the First Media Group.

(B) Litigation between the First Media Group and the Astro Group

66. In 2008, a legal dispute arose between the First Media Group and companies under the umbrella of a Malaysian-based company, Astro, arising from a shareholders' agreement entered into between the relevant parties in 2005 for the setting up of a pay television joint venture in Indonesia.

67. Astro commenced arbitration proceedings in Singapore against companies in the First Media Group and obtained a series of awards granted by SIAC from May 2009 to August 2010. By an Interim Final Award and a Final Award granted by SIAC on 18 February 2010 and 3 August 2010 respectively, the First Media Group was ordered to pay Astro a total sum equivalent to approximately \$744,415,294 together with litigation costs. On Astro's applications, judgment was entered in terms of the awards made by the SIAC in Hong Kong on 9 December 2010 and in Singapore on 24 March 2011.

68. Since February 2010, the Singapore arbitration proceedings between Astro and the First Media Group were the subject of public announcements issued by AAL in Hong Kong and referred to by AAL as containing "Price Sensitive Information". In that regard, AAL's announcements dated 9 March 2010 and 13 May 2010 are headed with wording which includes "Price Sensitive Information".

(C) Loan Facility Agreement between First Media and AAL

69. On 30 June 2011, AAL entered into a loan facility agreement with First Media whereby AAL availed itself of a US\$44 million loan from First Media (with an interest rate of 4.75% per annum) stated to be for the purpose of providing general working capital and for business development. The facility was for a period of three months which was to be automatically rolled over for a duration of up to one year (i.e. by 30 June 2012). On 5 July 2011, AAL issued an ORA, in compliance with the GEM Listing Rules, containing an announcement issued by First Media relating to the Facility Agreement.

(D) Astro's Injunction against First Media and Garnishee Proceedings against AAL

70. Three days after AAL issued the ORA referred to above, on 8 July 2011, Astro obtained an *ex parte* world-wide Mareva Injunction against First Media from the High Court of Singapore restraining it from disposing of its assets. First Media then applied to set aside the SIAC awards in Singapore on 19 July 2011.

71. On 14 July 2011, Astro also applied *ex parte* to the High Court of Hong Kong for a garnishee order against AAL and on 22 July 2011 a Garnishee Order Nisi was granted against AAL.

72. On 22 July 2011, AAL applied for a suspension of trading in its securities pending release of an announcement of First Media which was “considered to be price sensitive in nature.” First Media’s announcement was issued on 25 July 2011, referring to the Injunction obtained by Astro against it. On 26 July 2011, AAL issued a “Price Sensitive Information Announcement” referring to the granting of the Garnishee Order Nisi against it.

73. Proceedings relating to the Injunction in Singapore and the Garnishee Order Nisi were repeatedly the subject of AAL announcements, e.g. dated respectively 1, 17, 18, 23 August 2011 and in its Third Quarterly Report 2011 published on 8 November 2011. In the announcement made on 17 August 2011, it was stated by AAL that it would make further announcements in due course as to any material development in connection with the Garnishee proceedings, which it did in its 2011 Annual Results announcement dated 22 March 2012 and on 5 October 2012.

74. On 18 January 2012, First Media applied to set aside the Hong Kong Judgement and to discharge the Garnishee Order Nisi in Hong Kong.

75. On 21 March 2012, Deputy High Court Judge Lok ordered AAL to pay all sums due and payable to First Media into Court in Hong Kong pending the outcome of proceedings commenced by First Media in Singapore to set aside the awards and judgments granted in Singapore in

favour of Astro. AAL's appeal against the order was dismissed by the Court of Appeal on 3 August 2012.

76. In AAL's Half-Year Report 2012 issued on 10 August 2012 and Third Quarterly Report 2012 issued on 7 November 2012, AAL continued to update shareholders on the progress of the Garnishee proceedings, saying however that the company's directors remained of the view that there was a reasonable prospect of resisting such proceedings.

(E) The BANI Award and related Legal Proceedings in Indonesia

77. On 30 August 2012, First Media commenced arbitration proceedings against AAL at BANI to recover the principal loan of US\$44 million that was due on 30 June 2012 pursuant to the terms of the Facility Agreement but which remained unpaid by AAL. At the conclusion of these proceedings on 12 September 2012, an arbitration award was granted in favour of First Media against AAL ordering AAL to pay First Media in Indonesia the principal amount of the loan together with interest in the total amount of US\$46,774,403 not later than 45 days from the date of the award.

78. The BANI Award was registered in the CJDC on 13 September 2012 and was received by AAL on 14 September 2012 upon which trading in its securities was suspended on the application of AAL.

79. The BANI Award was disclosed by AAL to the public via an announcement titled “Price Sensitive Information and Resumption of Trading” on 20 September 2012 wherein the Board stated that the BANI Award was “*considered to constitute price sensitive information of the Company and is therefore subject to disclosure requirement under Rule 17.10 of the GEM Listing Rules*”. It stated that the credit facility was a foreign debt arising in Indonesia and was payable to First Media in Indonesia within 45 days from the date of the BANI Award.

80. On 24 September 2012, the CJDC declared that the BANI Award may be enforced. On 27 September 2012, pursuant to First Media’s application for enforcement proceedings, the CJDC granted an Order that the Official Warning Summons be issued against AAL in respect of the Indonesian judgment debt. (It is not alleged by the Commission that AAL was aware of these particular procedural orders which were made *ex parte*.)

81. An Official Summons was issued by the CJDC on 1 October 2012 and served on AAL on 3 October 2012 requiring AAL to be present in court on 16 October 2012 for an “Official Warning” to settle the BANI Award in favour of First Media within 8 days. (An announcement had already been made on 20 September 2012 that AAL was required to pay the debt due to First Media in Indonesia within 45 days from the date of the BANI Award, that is by 27 October 2012.)

82. On 3 October 2012, an “emergency meeting” of the board of directors of AAL was held to discuss the debt recovery process potentially open to First Media in the Indonesian proceedings. Present at the meeting were all the directors of AAL, namely, Cheok and Ang, as well as Thomas Yee Man Law (“Law”) and Boh Soon Lim (“Lim”) (both Independent Non-Executive Directors of AAL). The Company Secretary, Kelsch Woon Kun Wong and Chief Financial Officer, Chan Yuk Hung Clive, also attended. It was recorded in the minutes of the meeting that the meeting had been convened *“in view of the Indonesian Court Rulings and given that the potential consequences of breach of the Indonesian Court Rulings are grave and any breach will potentially have serious material adverse effects on the Company”*. It was noted in the minutes of the meeting that AAL had been advised by Indonesian counsel about the potential consequences of non-compliance of the Indonesian Court’s order, which included the following:

“(1) First Media could seek to take further actions in Indonesia to seize assets of [AAL], which comprised primarily of shares in First Media and such assets are situated in Indonesia;

(2) First Media could seek to take further action in Indonesia with a view of winding up [AAL]; and

(3) Upon occurrence of one or both of the foregoing, this is likely to impact on [AAL]’s ability to carry on its business as a

going concern and may also have an effect on [AAL]'s ability to maintain its listing status."

83. It was concluded at the meeting that the Indonesian court rulings were "*absolute*", and First Media was AAL's "*primary and genuine creditor*" whereas the legitimacy of the Garnishee Order Nisi could be "*questionable*". The minutes also noted that First Media could make the Indonesian court rulings "*bite*" right away. Law and Lim stated that the directors should avoid "*putting the Company into insolvency...*" to which Cheok agreed.

84. Cheok in particular further stated that, if AAL failed to pay First Media by 27 October 2012, "*it would cause [AAL] under the GEM Listing Rules to declare that it is in default and requiring [AAL] to suspend trading except this time with the risk of delisting as a declaration of a major default carries the consequence of insolvency as it would allow First Media to apply to wind up [AAL]*".

85. It was therefore resolved by the board that AAL would appeal to First Media to grant an extension of time for payment whilst vigorously contesting the proceedings on 16 October 2012.

86. Two days after the board meeting, on 5 October 2012, AAL issued a "Voluntary Announcement" on the progress of the Garnishee proceedings.

87. On 16 October 2012, the Chief Judge of the CJDC adjourned the Official Warning Summons for further hearing/warning on 30 October 2012, on which date the hearing/warning was further adjourned to 27 November 2012.

88. On 7 November 2012, AAL published its Third Quarterly Report 2012 in which both the Garnishee proceedings in Hong Kong and the Indonesian proceedings were referred to. In relation to the Indonesian proceedings and in particular the hearing on 30 October 2012, it was stated that:

“As at the date of this report, the official court minutes in respect of the hearing/warning held at the Central Jakarta District Court on 30th October 2012 is still pending. It is likely that [AAL] will be summoned to attend the Central Jakarta District Court again for further hearing/warning.”

89. This was AAL’s last announcement referring to the Indonesian proceedings before it issued the “Holding Announcement” on 17 January 2013 in relation to the PKPU Petition and the Summons referred to below.

(F) The PKPU Proceedings in Indonesia

90. On 27 November 2012, the Chief Judge of the CJDC gave a final warning to AAL to pay the BANI Award (which had become an Indonesian judgment debt) within 8 days, namely, by 5 December 2012. AAL did not make the payment. The Garnishee Order Nisi granted by the Hong Kong Court was still in existence.

91. On 20 December 2012, First Media filed a “Petition for Suspension of Obligation for Payment of Debts (PKPU)” against AAL. (It was not received by AAL in Hong Kong by facsimile until 2 January 2013.)

92. It was stated in §8 of the PKPU Petition that the petition was submitted pursuant to “*Article 222 paragraph (3) of Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (PKPU) (hereinafter referred to as ‘Law on Bankruptcy and Suspension of Obligation for Payment of Debts’)*” on the alleged basis that the debtor was not expected to be able to pay its debts that had been due and payable and may present a composition plan that included an offer to pay all or part of their debts to the creditor. On the face of the petition, First Media sought, *inter alia*:

- (a) The temporary suspension of obligation for payment of debts against AAL for 45 days;

- (b) The appointment of a supervisory judge from the Commercial Court or the CJDC to supervise the process of suspension of obligation for payment of debts;
- (c) To nominate and appoint administrators to manage the assets of AAL together with AAL; and
- (d) An order that the administrators so appointed summon First Media, AAL and known creditors to appear before the Commercial Court at the CDJC on a date not later than 45 days from the date of the Court's ruling on the PKPU Petition.

93. The PKPU Petition was registered with the Indonesian Court on 26 December 2012. A Summons dated 28 December 2012 was issued by the CJDC to AAL summoning AAL to appear in court on 4 January 2013 to give testimony at the hearing of the PKPU Petition. Both documents were in Bahasa Indonesia.

(G) AAL's Response to the PKPU Petition and the Summons

94. The PKPU Petition and the Summons were received by AAL by facsimile on 2 January 2013. By an email from Chan to Ang at 10:24 pm on 2 January 2013, with subject "Court Document received by fax on 2 January 2013", Chan informed Ang of AAL's receipt of a copy of the PKPU Petition and the Summons which were in original Indonesian

Bahasa. Chan asked for Ang's instruction as to how to proceed with those documents.

95. Ang sent a reply to Chan by email at 12:05 am on 3 January 2013 (Philippines times) telling him to "*check with Yly [an employee of an associated entity] what is this exactly about*" and have the documents officially translated into English.

96. By an email sent at 9:25 am on 3 January 2013, Chan enclosed the court documents and told Susan Sha, a legal consultant of AAL based in Malaysia, and Yly that AAL needed "*help to understand what the matter is on AAL and what we should do then*".

97. By a further email at 11:47 am on 3 January 2013 from Chan to Sha and copied to *inter alia* Cheok, Ang and Wong, Chan proposed seeking legal advice from Chris Williams of Howse Williams Bowers (Hong Kong solicitors) "*[d]ue to an implementation of new rules of 'inside information' from SFC on 1 January 2013*".

98. Wong had earlier on 21 December 2012 circulated by email materials to, *inter alia*, Cheok and Ang, concerning the disclosure regime under Part XIVA of the Ordinance which was to come into effect on 1 January 2013. The proposed new legislation had also been the subject of discussion by the Board of Directors of AAL.

99. An email sent at 1:29 am on 4 January 2013 to, inter alia, Chan, enclosed an English translation of the PKPU Petition.

100. At 9:21 am on 4 January 2013, Chan by email circulated the English translation of the PKPU Petition to Cheok and Ang with copy to Wong and Sha. He suggested seeking legal advice from Chris Williams on “*any disclosure implications for AAL as a listed company in Hong Kong.*”

101. About half an hour later (4 January 2013), Chan sent another email to, inter alia, Cheok and Ang saying:

“After going through the attached English translation and with reference to the new inside information provisions...I note that our case may be fallen into the situation...Since these are new provisions I believe we’d better to seek a legal opinion from Chris Williams to assure compliance with such newly adopted requirements.”

102. By an email at 11:56 am on 4 January 2013, Chan circulated the English translation of the Summons to Cheok and Ang with copy to Wong and Sha.

103. The PKPU Petition and the Summons together with the information contained therein was “inside information” within the meaning

of section 307B of the Ordinance in that those documents contained information which was:

(a) about AAL; and

(b) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of AAL but would if generally known to them have been likely to materially affect the price of those securities.

104. The Summons and the PKPU Petition came to the knowledge of Cheok and Ang, as officers of AAL, on or about 4 January 2013.

105. Once such information came to the knowledge of Cheok and Ang, AAL was obliged, pursuant to section 307B(1) of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, AAL did not disclose that information to the public in a timely manner.

106. On 7 January 2013, Ang arrived in Jakarta and when Cheok arrived on 8 January 2013 they instructed legal representatives for AAL.

107. Cheok and Ang thereafter attended the hearings before the Indonesian Commercial Court on 9, 10 and 14 January 2013 and Cheok

attended the hearing on 15 January 2013 at which the Court made its orders in relation to the PKPU Petition.

108. On 14 January 2013, SEHK made verbal enquiries with Wong regarding the proceedings instituted by First Media. AAL applied for suspension of trading and trading of AAL shares was accordingly suspended effective from 9 am on 15 January 2013. In AAL's "Trading Suspension Announcement", it was stated that trading was suspended "*pending the release of an announcement of possible inside information of [AAL].*"

109. At 3:28 pm on 15 January 2013, Wong sent an email to Cheok and Ang urging that Chris Williams be instructed to draft as soon as possible a holding announcement concerning the Indonesian proceedings.

110. On 15 January 2013, the Indonesian Commercial Court delivered its judgment granting the PKPU Petition and order, *inter alia*:

- (a) Temporary suspension of obligation of payment to enable AAL to make proposal to settle the debt owed to First Media;
- (b) Appointment of a supervisory judge to supervise the PKPU process;

- (c) Appointment of 3 administrators of AAL for the PKPU process.

111. On 16 January 2013, Cheok circulated a draft long-form Announcement regarding the Indonesian Commercial Court proceedings and ruling for the comments of all AAL directors and Wong and Chan and Chris Williams.

112. Around midday on 17 January 2013, the Commission via SEHK demanded that AAL issue a holding announcement relating to the Indonesian proceedings that day, and said that the holding announcement could state that AAL was seeking legal advice which could be the subject of a further announcement. AAL issued a “Holding Announcement” at around 7:33 pm on 17 January 2013.

113. Trading of AAL shares resumed on 22 February 2013. Upon resumption of trading (five weeks after suspension), the share price fell 22.5% from \$0.08 – its pre-suspension price on 14 January 2013 – to \$0.062.

114. AAL failed to disclose to the public inside information (within the meaning ascribed to it under section 307A of the Ordinance) constituted by the PKPU Petition and the Summons as soon as reasonably practicable after the said information had come to its knowledge, contrary to section 307B(1) of the Ordinance.

CHAPTER 4

THE SECOND ADMITTED FACTS OF ALBERT SAYCHUAN CHEOK (SP2) AND VINCENTE BINALHAY ANG (SP3)

Preamble

115. The second set of Admitted Facts was largely the same as the first in fact only paragraphs 157 to 160, 165 and 169 to 172 were added. For convenience the whole of the facts are repeated here.

The Admitted Facts

(A) Introduction

116. AAL is a Cayman Islands-incorporated company whose securities have since 13 July 2000 been listed on the Growth Enterprise Market of the SEHK.

117. At all material times, Cheok was AAL's independent, non-executive Chairman. Ang was its Chief Executive Officer.

118. AAL is an investment holding company. Its major asset at the material times was and still is a 55.1% interest in First Media, a company whose securities have been listed on the Stock Exchange of Indonesia since 2007. The 55.1% holding in First Media is a passive holding as

AAL is merely an investment holding company. AAL does not take any part in the operations of First Media and does not have any representation to the Board of First Media. First Media and its subsidiaries are engaged in the provision of digital telecommunication services such as, *inter alia*, broadband internet and cable TV services. AAL's income and profit are derived from the business operations of the First Media Group.

(B) Litigation between the First Media Group and the Astro Group

119. In 2008, a legal dispute arose between the First Media Group and companies under the umbrella of a Malaysian-based company, Astro, arising from a shareholders' agreement entered into between the relevant parties in 2005 for the setting up of a pay television joint venture in Indonesia.

120. Astro commenced arbitration proceedings in Singapore against companies in the First Media Group and obtained a series of awards granted by SIAC from May 2009 to August 2010. By an Interim Final Award and a Final Award granted by SIAC on 18 February 2010 and 3 August 2010 respectively, the First Media Group was ordered to pay Astro a total sum equivalent to approximately \$744,415,294 together with litigation costs. On Astro's applications, judgment was entered in terms of the awards made by the SIAC in Hong Kong on 9 December 2010 and in Singapore on 24 March 2011.

121. Since February 2010, the Singapore arbitration proceedings between Astro and the First Media Group were the subject of public announcements issued by AAL in Hong Kong and referred to by AAL as containing “Price Sensitive Information”. In that regard, AAL’s announcements dated 9 March 2010 and 13 May 2010 are headed with wording which includes “Price Sensitive Information”.

(C) Loan Facility Agreement between First Media and AAL

122. On 30 June 2011, AAL entered into a loan facility agreement with First Media whereby AAL availed itself of a US\$44 million loan from First Media (with an interest rate of 4.75% per annum) stated to be for the purpose of providing general working capital and for business development. The facility was for a period of three months which was to be automatically rolled over for a duration of up to one year (i.e. by 30 June 2012). On 5 July 2011, AAL issued an ORA, in compliance with the GEM Listing Rules, containing an announcement issued by First Media relating to the Facility Agreement.

(D) Astro’s Injunction against First Media and Garnishee Proceedings against AAL

123. Three days after AAL issued the ORA referred to above, on 8 July 2011, Astro obtained an *ex parte* world-wide Mareva Injunction against First Media from the High Court of Singapore restraining it from

disposing of its assets. First Media then applied to set aside the SIAC awards in Singapore on 19 July 2011.

124. On 14 July 2011, Astro also applied *ex parte* to the High Court of Hong Kong for a garnishee order against AAL and on 22 July 2011 a Garnishee Order Nisi was granted against AAL.

125. On 22 July 2011, AAL applied for a suspension of trading in its securities pending release of an announcement of First Media which was “considered to be price sensitive in nature.” First Media’s announcement was issued on 25 July 2011, referring to the Injunction obtained by Astro against it. On 26 July 2011, AAL issued a “Price Sensitive Information Announcement” referring to the granting of the Garnishee Order Nisi against it.

126. Proceedings relating to the Injunction in Singapore and the Garnishee Order Nisi were repeatedly the subject of AAL announcements, e.g. dated respectively 1, 17, 18, 23 August 2011 and in its Third Quarterly Report 2011 published on 8 November 2011. In the announcement made on 17 August 2011, it was stated by AAL that it would make further announcements in due course as to any material development in connection with the Garnishee proceedings, which it did in its 2011 Annual Results announcement dated 22 March 2012 and on 5 October 2012.

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128. On 21 March 2012, Deputy High Court Judge Lok ordered AAL to pay all sums due and payable to First Media into Court in Hong Kong pending the outcome of proceedings commenced by First Media in Singapore to set aside the awards and judgments granted in Singapore in favour of Astro. AAL's appeal against the order was dismissed by the Court of Appeal on 3 August 2012.

129. In AAL's Half-Year Report 2012 issued on 10 August 2012 and Third Quarterly Report 2012 issued on 7 November 2012, AAL continued to update shareholders on the progress of the Garnishee proceedings, saying however that the company's directors remained of the view that there was a reasonable prospect of resisting such proceedings.

(E) The BANI Award and related Legal Proceedings in Indonesia

130. On 30 August 2012, First Media commenced arbitration proceedings against AAL at BANI to recover the principal loan of US\$44 million that was due on 30 June 2012 pursuant to the terms of the Facility Agreement but which remained unpaid by AAL. At the conclusion of these proceedings on 12 September 2012, an arbitration award was granted in favour of First Media against AAL ordering AAL to pay First Media in Indonesia the principal amount of the loan together with

interest in the total amount of US\$46,774,403 not later than 45 days from the date of the award.

131. The BANI Award was registered in the CJDC on 13 September 2012 and was received by AAL on 14 September 2012 upon which trading in its securities was suspended on the application of AAL.

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134. An Official Summons was issued by the CJDC on 1 October 2012 and served on AAL on 3 October 2012 requiring AAL to be present in court on 16 October 2012 for an “Official Warning” to settle the BANI Award in favour of First Media within 8 days. (An announcement had already been made on 20 September 2012 that AAL was required to pay the debt due to First Media in Indonesia within 45 days from the date of the BANI Award, that is by 27 October 2012.)

135. On 3 October 2012, an “emergency meeting” of the board of directors of AAL was held to discuss the debt recovery process potentially open to First Media in the Indonesian proceedings. Present at the meeting were all the directors of AAL, namely, Cheok and Ang, as well as Law and Lim (both Independent Non-Executive Directors of AAL). The Company Secretary, Wong and Chief Financial Officer, Chan, also attended. It was recorded in the minutes of the meeting that the meeting had been convened *“in view of the Indonesian Court Rulings and given that the potential consequences of breach of the Indonesian Court Rulings are grave and any breach will potentially have serious material adverse effects on the Company”*. It was noted in the minutes of the meeting that AAL had been advised by Indonesian counsel about the potential consequences of non-compliance of the Indonesian Court’s order, which included the following:

“(1) First Media could seek to take further actions in Indonesia to seize assets of [AAL], which comprised primarily of shares in First Media and such assets are situated in Indonesia;

(2) First Media could seek to take further actions in Indonesia with a view of winding up [AAL]; and

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136. It was concluded at the meeting that the Indonesian court rulings were “*absolute*”, and First Media was AAL’s “*primary and genuine creditor*” whereas the legitimacy of the Garnishee Order Nisi could be “*questionable*”. The minutes also noted that First Media could make the Indonesian court rulings “*bite*” right away. Law and Lim stated that the directors should avoid “*putting the Company into insolvency...*” to which Cheok agreed.

137. Cheok in particular further summarized the discussions and deliberations that, if AAL failed to pay First Media by 27 October 2012, “*it would cause [AAL] under the GEM Listing Rules to declare that it is in default and requiring [AAL] to suspend trading except this time with the risk of delisting as a declaration of a major default carries the*

consequence of insolvency as it would allow First Media to apply to wind up [AAL]”.

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“As at the date of this report, the official court minutes in respect of the hearing/warning held at the Central Jakarta District Court on 30th October 2012 is still pending. It is likely that [AAL] will

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- (b) The appointment of a supervisory judge from the Commercial Court or the CJDC to supervise the process of suspension of obligation for payment of debts;
- (c) To nominate and appoint administrators in the PKPU process to manage the assets of AAL together with AAL; and
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“After going through the attached English translation and with reference to the new inside information provisions...I note that our case may be fallen into the situation...Since these are new

provisions I believe we'd better to seek a legal opinion from Chris Williams to assure compliance with such newly adopted requirements."

155. By an email at 11:56 am on 4 January 2013, Chan circulated the English translation of the Summons to Cheok and Ang with copy to Wong and Sha.

156. The PKPU Petition and the Summons together with the information contained therein was "inside information" within the meaning of section 307B of the Ordinance in that those documents contained information which was:

(a) about AAL; and

(b) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of AAL but would if generally known to them have been likely to materially affect the price of those securities.

157. The Summons and the PKPU Petition came to the knowledge of Cheok and Ang, in the course of performing functions as officers of AAL, on or about 4 January 2013.

158. On 4 January 2013, Ang forwarded to Cheok (among others) an email from AAL's representative in Jakarta summarizing court directions given that day and suggesting that Chris Williams be consulted.

159. On 6 January 2013, Cheok sent an email to Chris Williams to seek legal advice. Chris Williams replied. On 7 January 2013, Cheok and Chris Williams spoke by telephone. Subsequently Chris Williams also sent an email.

160. On 7 January 2013, Ang arrived in Jakarta and when Cheok arrived on 8 January 2013 they met with Indonesian legal advisers and instructed legal representatives for AAL to contest the PKPU proceedings.

161. Cheok and Ang thereafter attended the hearings before the Indonesian Commercial Court on 9, 10 and 14 January 2013 and Cheok attended the hearing on 15 January 2013 at which the Court made its orders in relation to the PKPU Petition.

162. On 14 January 2013, SEHK made verbal enquiries with Wong regarding the proceedings instituted by First Media. AAL applied for suspension of trading and trading of AAL shares was accordingly suspended effective from 9 am on 15 January 2013. In AAL's "Trading Suspension Announcement", it was stated that trading was suspended "*pending the release of an announcement of possible inside information of [AAL].*"

163. At 3:28 pm on 15 January 2013, Wong sent an email to Cheok and Ang urging that Chris Williams be instructed to draft as soon as possible a holding announcement concerning the Indonesian proceedings.

164. On 15 January 2013, the Indonesian Commercial Court delivered its judgment granting the PKPU Petition and order, *inter alia*:

- (a) Temporary suspension of obligation of payment to enable AAL to make proposal to settle the debt owed to First Media;
- (b) Appointment of a supervisory judge to supervise the PKPU process;
- (c) Appointment of 3 administrators of AAL for the PKPU process.

165. On the same day, Cheok sent an email to AAL's other directors and Chan and Wong saying, "*We lost. So have to public announcement. Problem what we heard is the oral decision and details of judgment have yet to be given but we still need to make announcement on simple fact ...*"

166. On 16 January 2013, Cheok circulated a draft long-form Announcement regarding the Indonesian Commercial Court proceedings

and ruling for the comments of all AAL directors and Wong and Chan and Chris Williams.

167. Around midday on 17 January 2013, the Commission via SEHK demanded that AAL issue a holding announcement relating to the Indonesian proceedings that day, and said that the holding announcement could state that AAL was seeking legal advice which could be the subject of a further announcement. AAL issued a “Holding Announcement” at around 7:33 pm on 17 January 2013.

168. Trading of AAL shares resumed on 22 February 2013. Upon resumption of trading (five weeks after suspension), the share price fell 22.5% from \$0.08 – its pre-suspension price on 14 January 2013 – to \$0.062.

(H) Admission of Liability

169. A reasonable person, acting as an officer of AAL, would have considered that the information in the PKPU Petition and the Summons was inside information in relation to AAL.

170. Inside information had thus, pursuant to section 307B(2) of the Ordinance, come to the knowledge of AAL; pursuant to section 307B(1), AAL was obliged, as soon as reasonably practicable, to disclose the information to the public. This it failed to do.

171. Cheok and Ang were negligent in that they failed to ensure AAL disclosed the information to the public as soon as reasonably practicable following the PKPU Petition and the Summons coming to their knowledge. There should have been disclosure that First Media had commenced PKPU proceedings against AAL. Such negligent conduct resulted in AAL's breach of its section 307B(1) disclosure obligation.

172. Cheok and Ang were therefore in breach of a disclosure requirement by virtue of section 307G(2) of the Ordinance.

CHAPTER 5

THE BASIC ALLEGATIONS AGAINST THE THREE SPECIFIED PERSONS AND ADMISSIONS MADE

The Basis

173. The basic allegation against AAL (SP1) was that as a listed corporation, the company had failed to disclose inside information to the public as soon as reasonably practicable contrary to section 307B(1) of the Ordinance and that Cheok (SP2) and Ang (SP3) being respectively the Chairman and an Independent Non-Executive Director and the Chief Executive Officer and Executive Director failed to ensure AAL's compliance. This resulted in a breach of disclosure by AAL rendering both guilty of a breach of the requirement of section 307G(2)(a) of the Ordinance. As far as officers of the company are concerned, the breach may be intentional, reckless or negligent. In this case the SFC commenced proceedings on the basis of either recklessness or negligence against Cheok and Ang. From the outset AAL was prepared to admit breach on the basis that both Cheok and Ang had been negligent. Ang was prepared to admit on this basis too but Cheok denied any such a breach until recently.

Resolution of Legal Professional Privilege

174. Over the course of 19 and 20 October 2016, the Chairman of the Tribunal sat alone to resolve a point relating to LPP raised by Mr Li on behalf of Cheok and opposed by Mr Huggins on behalf of AAL and Mr

Duncan to a lesser degree on behalf of the SFC. Ms Chow on behalf of Ang chose not to appear having no interest in this particular matter. After hearing submissions from the three interested parties the Chairman ruled in favour of AAL to the extent that Cheok was not allowed to refer to or introduce evidence of the legal advice the company had received in respect of this matter. Short written reasons were supplied to all parties. See Appendix.

Admissions Made by all the Three Specified Persons

175. On 2 November 2016 the matter resolved itself to the extent that AAL and Ang had admitted and signed the first set of agreed facts previously and Cheok and Ang now signed the second set. AAL confirmed the admission of breach of section 307B(1) of the Ordinance on the basis of Cheok and Ang being negligent and Cheok and Ang admitted, as officers of the company, being in breach of the disclosure requirements pursuant to section 307G(2)(a) of the Ordinance on the basis that each accepted he was negligent. The SFC indicated that they were prepared to accept these admissions on the basis of negligence.

Legal and Procedural Matters

176. This being an Inquiry, the Tribunal, notwithstanding the admissions made and the basis upon which they were made, was of the

opinion that its duty was to consider the evidence contained in the two sets of admitted facts and come to its own conclusion based on that evidence.

177. The Tribunal had no difficulty finding that AAL was a listed company, its securities having been listed on the Growth Enterprise Market of the SEHK since 13 July 2000.

178. The Tribunal had no difficulty in finding that Cheok as Chairman of AAL and Ang as the Chief Executive Officer of AAL were officers of the company as required by section 307G of the Ordinance.

179. The Chairman advised the Tribunal on the above and the following as to matters of law in accordance with section 24(c) of Schedule 9 of the Ordinance.

The Standard of Proof

180. In particular with regard to the standard of proof for determining any question or issue before the Tribunal it is “the standard of proof applicable to civil proceedings in a court of law”. That is on a balance of probabilities. In *A Solicitor v The Law Society* (2008) 11 HKCFAR 117 Bokhary PJ held –

“... only two standards of proof are known to our law. One is proof beyond reasonable doubt and the other is proof on a preponderance of probability.”

CHAPTER 6

FACTUAL CONCLUSIONS REACHED BY THE TRIBUNAL ON THE EVIDENCE OF THE TWO SETS OF ADMITTED FACTS

181. The facts and events of significance are dealt with in earlier chapters very extensively so we do not intend to repeat them in detail. There is little or no dispute as to the factual basis for this Inquiry.

182. Whilst not wishing to over simplify the situation what happened is as follows. AAL was an investment company holding a 55.1% controlling interest in First Media, a telecommunication company. In June 2011 First Media loaned AAL US\$44 million. This was to be for a maximum of one year. In August 2012 First Media began arbitration proceedings in Indonesia to recover the unpaid debt. In September 2012 a BANI Award was made in favour of First Media for recovery of the debt plus interest. On 14 September 2012 trading in AAL's securities were suspended. AAL made an announcement of this entitled "Price Sensitive Information and Resumption of Trading" on 20 September 2012. On 27 September 2012 First Media applied to the CJDC to enforce the BANI Award. This led to the issue of an official Summons on 1 October 2012 for AAL to attend court on 16 October 2012 for an official warning to settle the debt. An emergency meeting of the Board of AAL was held on 3 October 2012 to discuss this. Both Ang and Cheok were present. Indonesian counsel advised the Board of possible serious consequences including seizure of AAL's assets, winding up and loss of listing status.

183. On 16 October 2012 the Official Warning Summons was adjourned and then further adjourned until 27 November 2012. On 7 November 2012 AAL published its Third 2012 Quarterly Report in which there was reference to the Indonesian Proceedings. On 27 November 2012 CJDC gave a final warning to AAL to pay by 5 December 2012. AAL did not do so.

184. On 20 December 2012 First Media filed a “Petition for Suspension of Obligation for Payment of Debts (PKPU)” against AAL. This was on the basis that the debtor (AAL) could not continue paying its debts that had been due and payable and may present a composition plan that included an offer to pay all or part of the debt to the creditor. First Media sought a temporary suspension of the obligation for payment of debts against AAL for 45 days, the appointment of a judge to supervise the process, the appointment of administrators to manage the asset of AAL and an order for the administrators to summon the parties before the CJDC not later than 45 days from the ruling on the PKPU Petition.

185. The Court issued a summons to AAL to appear in court on 4 January 2013. AAL received a copy in Bahasa on 2 January 2013. An English translation was provided and circulated among its officers including Cheok and Ang.

186. The issue of the PKPU Petition and Summons was inside information within the meaning of section 307B of the Ordinance. Once

such information came to the knowledge of Cheok and Ang as officers of AAL they were obliged as soon as reasonably practicable to disclose that information to the public. However this was not done until 17 January 2013.

CHAPTER 7

THE FINDINGS OF THE TRIBUNAL ON THE QUESTION OF MARKET MISCONDUCT AND THE BASIS OF SUCH FINDINGS

187. This being an Inquiry, the Tribunal duly noted the admissions made by the three Specified Persons and the acceptance of those admissions by the SFC. Nonetheless we ourselves had to examine the evidence which was by way of two sets of admitted facts and decide if they provided on a balance of probabilities sufficient evidence to be satisfied that any or all of the specified persons had committed market misconduct. Further, the basis upon which such misconduct had been committed. As stated previously, under section 307G(2)(a) of the Ordinance the officers namely Cheok and Ang could commit such market misconduct intentionally, recklessly or negligently. It was made clear to the Tribunal that AAL admitted market misconduct by failure to disclose the relevant inside information as soon as reasonably practicable because of the negligence of Cheok and Ang. Cheok and Ang also admitted their failure to disclose such inside information as soon as reasonably practicable because they were negligent. The SFC through Mr Duncan accepted negligence as the basis and did not pursue the allegation of recklessness.

188. The admissions were made on 2 November 2016 and accepted by the SFC. Thereafter the Tribunal adjourned the matter to consider the evidence contained in the first and second sets of Admitted Facts. The First Admitted Facts signed on 23 September 2016 were those accepted by

AAL and Ang. The Second Admitted Facts signed on 2 November 2016 were those accepted by Cheok and Ang. Their contents were essentially the same but as indicated earlier in this report at Chapter 4, the second set of facts contained extra paragraphs which AAL did not choose to embrace.

189. The Tribunal did in fact consider the evidence of the accepted admitted facts and without repeating again the factual basis for this case was satisfied to the requisite standard that AAL and the two specified officers were aware of the Summons and PKPU Petition when they came to the knowledge of Cheok and Ang on 4 January 2013. That this was inside information within the meaning of section 307B of the Ordinance in that it was information which (a) was about AAL and (b) was not generally known to the persons who were accustomed to or would be likely to deal in the listed securities of AAL but would of generally known to them have been likely to materially affect the price of those securities. That this failure to issue the holding announcement before 7:33 p.m. on 17 January 2013 amounted to a breach of section 307B(1) in that AAL had failed to disclose the inside information to the public as soon as reasonably practicable. The date when it was reasonably practicable for AAL to disclose the inside information is dealt with in the deliberations on the orders to be made.

The Basis of the Misconduct of Cheok and Ang

190. The failure of AAL to properly and timeously disclose was based on the failure of its officers Cheok and Ang. Under section 307G(2)(a) of the Ordinance their misconduct which resulted in the breach could be intentional, reckless or negligent. Again the Tribunal viewed the evidence against the scenario of Cheok and Ang agreeing they were negligent and the SFC prepared to accept their admissions on that basis. The Tribunal noting this to be an Inquiry was of the opinion that as with the evidence of the failure, it should reappraise the evidence to consider if it be accepted on a balance of probabilities that the evidence from the two sets of agreed facts established negligence as opposed to intentional or reckless misconduct.

191. The conduct of Cheok and that of Ang, again was considered separately. The test applied was that of the English Law Commission –

“A person is negligent if he fails to exercise such care, skills and foresight, as a reasonable man in his situation would exercise.”

192. The Tribunal recognized that both officers were in some difficulty as this was newly introduced legislation, that the original documents received were in Bahasa and that when the English versions were received on 4 January 2013 they related to proceedings in a foreign legal jurisdiction not known to those familiar with Hong Kong Law. The

Tribunal noted that there could be no suggestion of either “burying their heads in the sand” and that proactive steps were taken in a difficult situation. Previous and proper announcements suggested to the Tribunal that in the past there has been no withholding of information. Our findings were in accordance with the admissions on the basis accepted by the SFC and in accordance with the definition above that they were each negligent. The Tribunal found no evidence of intentional misconduct nor recklessness misconduct. Therefore we proceeded on the basis that Cheok and Ang were indeed negligent and ruled accordingly.

CHAPTER 8
THE ORDERS MADE BY THE TRIBUNAL

193. Having found market misconduct on the part of AAL by the failure to disclose inside information as a result of the negligent conduct of two of its officers namely Cheok and Ang as soon as reasonably practicable, the Tribunal considered what if any orders should be made in accordance with section 307N of the Ordinance.

194. The members of the Tribunal were agreed that the market misconduct here was very much towards the bottom of the scale but found nonetheless it was such as to merit formal action in the making of orders against each of the specified persons. It was noted that this was the first breach of section 307B of the Ordinance to be dealt with by the Market Misconduct Tribunal. That as a matter of law and fairness that the misconduct should be dealt with on its actual facts and degree of seriousness. The Tribunal should not and would not impose a deterrent sentence disproportionate to the level of culpability.

195. The Tribunal noted that all three specified persons had no previous record for market misconduct.

196. The Tribunal in reaching its decision on the orders to be made had full regard to all the submissions made by Mr Duncan for the SFC, Mr Huggins for AAL, Mr Li for Cheok and Ms Chow for Ang.

197. The Tribunal was unanimous in accepting the very fair concession of the SFC that this was not a case where the making of disqualification orders or “cold shoulder” orders should be considered. Indeed this was indicated to the counsel for the Specified Persons to assist them in their presentation of mitigation.

198. The Tribunal found on the facts that there was much mitigation in this case thus placing the level of seriousness firmly towards the bottom of the scale. It was noted that as this was the first case under this Section that the Market Misconduct Tribunal had to deal with, that there were no guidelines as to the orders to be made. The Tribunal drew no guidance from the various cases quoted as they were in other jurisdictions and decided on their particular facts.

199. Counsel for the SFC placed the allegation of failure to disclose inside information as being on or about 4 January 2013 whereas counsel for AAL and Cheok placed it on 8 January 2013 by which time legal advice was obtained. Ms Chow did not regard the point as being of particular importance. The Tribunal did however view this as having to some limited relevance. We unanimously agreed that given the wording of the Section “as soon as reasonably practicable” that it was unrealistic to expect the announcement on 4 January 2013 as proper legal advice leading to a rational and comprehensive understanding of the legal position in the foreign jurisdiction had not been received. Clearly you cannot announce

what you do not understand! Clearly, in the opinion of the Tribunal the relevant date was 8 January 2013, once legal advice had been obtained. On either date the delay was short but giving the Specified Persons the benefit of any doubt, 8 January 2013 was obviously an even shorter delay. The holding announcement was issued on 17 January 2013. The Tribunal also noted that trading in shares was suspended on 15 January 2013. Therefore the actual gap from when an announcement became reasonably practicable to the making of that announcement was just over a week.

200. Further the Tribunal took account of the fact that during the relevant period leading up to these events it is accepted and recorded that apart from this announcement AAL regularly and properly made public announcements of inside information regarding the various court proceedings affecting it. These included announcements and information contained in quarterly reports.

201. AAL shares were a thinly traded stock. Mr Li pointed out that in the period to which the Tribunal ultimately attached relevance that is 8 to 15 January 2013 (when AAL requested a temporary trading suspension) only 381,000 shares worth \$30,480 were traded. Even if the earlier period put forward by the SFC of 4 to 7 January 2013 had been accepted, only an additional 1.6 million shares worth \$116,800 were traded. The loss to investors would only have been \$549 for 8 to 15 January 2013 even if the whole loss could be attributed to the failure to disclose properly. This shows that the market was little affected or threatened by the misconduct.

202. The Tribunal also considered the actions of Cheok and Ang in the wake of the receipt of the Summons and the PKPU Petition. The conclusion reached was that both had behaved responsibly and diligently by attending the hearing, arranging the legal advice and obtaining translations. As has already been said it was not a situation where they just sat back and hoped it would go away. They took positive steps to address the situation. The only fault lay in their failure to share this information with the public in a more timely fashion.

203. The Tribunal noted that Cheok had no connection now with AAL but Ang still maintained his position in the company. However little or nothing turns on that.

204. The Tribunal also noted that the market misconduct had not led to any monetary or other advantage for any of the three specified parties.

205. The Tribunal accepted that on 17 February 2016 AAL and Ang had indicated that they admitted market misconduct based on the negligent conduct of Cheok and Ang. However Cheok only agreed to this course on 2 November 2016. This led to increased costs of the SFC and the Government.

206. The Tribunal considered the making of cease and desist orders in respect of Cheok and Ang. However each was a person of good

character, each had admitted fault albeit at different times and each benefited from the mitigation found by the Tribunal. The Tribunal noted the words of Lam J in *Television Broadcasts Ltd v Communications Authority* [2016] 2 HKLRD 41 that such an order may be appropriate if future harm is “sufficiently anticipated and legitimately feared”. The Tribunal had absolutely no reason to fear future harm by either of the two specified persons. Therefore we rejected imposing such an order.

207. The Tribunal then considered the imposition of regulatory fines. Mr Huggins had submitted that fines would not be appropriate for AAL as it had only committed market misconduct because of the negligence and failure of its officers, Cheok and Ang. Also its compliance structure was demonstratively in place and operated efficiently. In short the company had done no wrong and any fine would simply punish the shareholders. The Tribunal rejected this argument finding that the fault for the breach did lie with Cheok and Ang but they were senior officers of the company and they acted on behalf of the company with full authority to so act. Therefore the company was equally culpable. The Tribunal was of the opinion that the misconduct in each case should attract a fine of \$800,000 but that AAL and Ang should receive a discount to acknowledge their early admissions and saving of expense. They would each be fined \$600,000. Cheok was entitled to no discount and would be fined the full \$800,000.

208. Further in respect of Cheok and Ang, the Tribunal imposed an order that they each undergo a training programme approved by the SFC on

compliance with this part, directors' duties and corporate governance, in accordance with section 307N(1)(i) of the Ordinance.

Costs

209. In respect of costs the Tribunal found that after 17 February 2016 Cheok's initial decision to contest the proceedings did indeed lead to the SFC and the Government incurring higher costs than would otherwise have been the case if like AAL and Ang he had admitted his part in the misconduct. Of course that is partly based on an assumption that the SFC would have proceeded on the basis of negligence rather than pursuing recklessness. However the Tribunal did not agree that all costs after 17 February 2016 should be borne by Cheok. There would still have had to be hearings as the SFC still had to establish market misconduct and the basis for such misconduct. Also there would still have been a further hearing to decide the orders. Therefore the costs including those in the investigation of the SFC and the Government up to and including 17 February 2016 would be awarded against all three specified persons jointly and severally. The costs of the SFC and the Government after 17 February 2016 are to be apportioned as 50% by Cheok and 25% by each of the other two parties namely AAL and Ang. Such costs to be taxed if not agreed. The order is an Order Nisi to be become absolute after 14 days.

Summary of Orders and Costs

210. In summary the Tribunal made the following orders against the Specified Persons:

- (a) AAL was ordered to pay a regulatory fine of \$600,000, in accordance with section 307N(1)(d) of the Ordinance;
- (b) Cheok was ordered to pay a regulatory fine of \$800,000 in accordance with section 307N(1)(d) of the Ordinance and undergo a training programme approved by the SFC in accordance with section 307N(1)(i) of the Ordinance; and
- (c) Ang was ordered to pay a regulatory fine of \$600,000 in accordance with section 307N(1)(d) and undergo a training programme approved by the SFC in accordance with section 307N(1)(i) of the Ordinance.

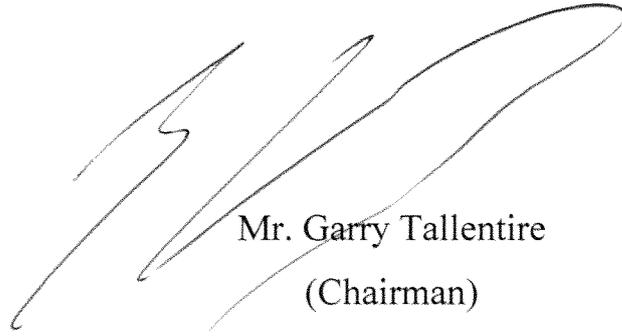
211. The following orders for costs were made:

- (a) The costs of the Government in accordance with section 307N(1)(e) of the Ordinance which are assessed at \$74,234 and the costs of SFC in accordance with section 307N(1)(f) of the Ordinance which are assessed at

\$1,472,500 up to and including 17 February 2016, the Specified Persons were to be jointly and severally liable for these costs. These costs include the costs of the investigation by the SFC; and

- (b) The Government costs assessed at \$957,846 and the SFC costs assessed at \$2,791,799 for the period after 17 February 2016. Those costs to be paid 50% by Cheok and 25% each by AAL and Ang.

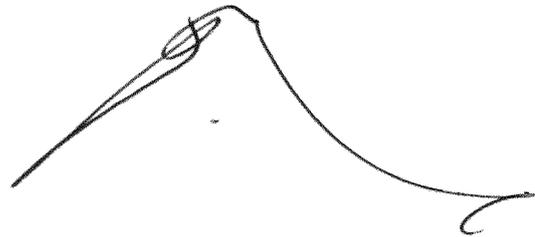
The above costs to be taxed if not agreed. Therefore this is an Order Nisi for costs to become absolute after 14 days if not challenged.



Mr. Garry Tallentire
(Chairman)



Dr Ho Sui Kwong, Alan
(Member)



Mr Fong Ho Yin
(Member)

Dated 29 November 2016

MARKET MISCONDUCT TRIBUNAL

**IN THE MATTER OF DEALINGS IN THE LISTED SECURITIES OF
ACROSS ASIA LIMITED**

Date of Delivery of Ruling: 20 October 2016

RULING ON LEGAL PROFESSION PRIVILEGE

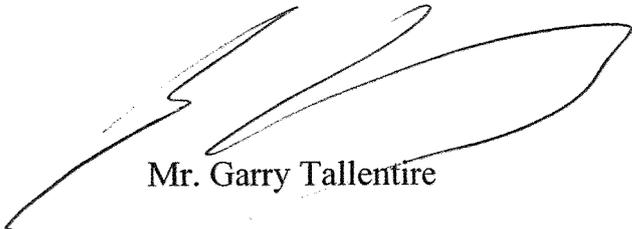
1. The application was made by Mr. Li on behalf of the 2nd Specified Person to allow the said 2nd Specified Person to give evidence in his defence of the legal advice obtained by Across Asia Limited (“AAL”). It is not contended nor in the opinion of this Tribunal could it be so contended that the Legal Profession Privilege (“LPP”) belonged to anyone other than AAL. AAL, as we know refuses to waive the LPP and that is its unquestionable and inalienable right. This Tribunal fully accepts also that AAL has the right to assert its LPP and cannot and should not be called upon to justify or explain such assertion. The right to LPP is absolute and unquestionable.

2. Mr. Li led this Tribunal through various authorities in his application and suggested that there are, albeit somewhat obscure, bases for allowing his application. He concedes, quite rightly, that there is no direct and binding precedent to support his contentions, merely suggestion of possible paths this Tribunal could

take to help him reach his destination. I do not intend to rehearse all Mr. Li's arguments persuasive and seductive though they may be. The finding of this Tribunal after carefully considering his submissions and his authorities, is that all they amount to is a plea to allow Mr. Cheok to break with well-established legal principles so that he could fairly and fully explain his position to the full Tribunal.

3. Mr. Huggins, albeit at length, asserts that LPP was solely possessed by AAL. It did not and would not waive LPP so as to allow Mr. Cheok to present his full case. That LPP is absolute and unbreachable. That the authorities he referred to were clear and unambiguous on this point. For example he referred inter alia to the case of Carter where the High Court of Australia held that even in a criminal case LPP prevails over the right of the accused to present a full defence.

4. In short after full consideration this Tribunal is of the opinion that Mr. Huggins is entirely correct in his submissions and that Mr. Li has failed to establish any basis for this Tribunal to allow the 2nd Specified Person to breach the LPP of AAL. Therefore this application is dismissed.



Mr. Garry Tallentire
(Chairman)