

MARKET MISCONDUCT TRIBUNAL

IN THE MATTER OF THE LISTED SECURITIES OF MAYER HOLDINGS
LIMITED (STOCK CODE 1116)

FURTHER REVISED STATEMENT OF AGREED FACTS

I. INTRODUCTION AND PARTIES

1. Mayer Holdings Limited (美亞控股有限公司) (“**Mayer**”) (SP1) was incorporated in the Cayman Islands under the Companies Law as an exempted company with limited liability on 9th October 2003. It was registered on 20th January 2004 as an overseas company in Hong Kong under Part XI of the then Companies Ordinance (Cap. 32).
2. Mayer was listed on the Stock Exchange of Hong Kong Limited on 21st June 2004 (Stock code: 1116). Trading in the shares of Mayer was suspended between 22nd November 2011 (Tuesday) and 6th January 2012 (Friday). At the request of Mayer, the trading of its shares was suspended again on 9th January 2012 (Monday). The shares of Mayer resumed trading on 21st November 2018.
3. At all material times, Chan Lai Yin, Tommy (SP2) was the Company Secretary and Financial Controller of Mayer.
4. At all material times, SP3 to SP11 were members of Mayer’s board of directors (the “**Board**”). In particular, Hsiao Ming-chih (SP3) was the chairman of the Board, Lai Yueh-hsing (SP4) was an executive director responsible for the day-to-day management of the business of Mayer and Huang Jui-hsiang (SP5) was the chairman of Mayer’s audit committee (the “**Audit Committee**”).

5. All of the Specified Persons (except Mayer) were at all material times “*officers*” of Mayer as defined in Part 1 of Schedule 1 of the Securities and Futures Ordinance (Cap. 571) (the “**Ordinance**”).

II. THE AUDIT FOR FINANCIAL YEAR ENDED 31ST DECEMBER 2011 AND RESIGNATION OF GRANT THORNTON AS AUDITORS

6. Crowe Horwath (HK) CPA Limited (“**Crowe Horwath**”) was appointed as Mayer’s auditors on 11th June 2010¹. Crowe Horwath resigned as Mayer’s auditors on 16th February 2012. Mayer announced Crowe Horwath’s resignation on 21st February 2012².
7. Mayer appointed Grant Thornton Hong Kong Limited (“**Grant Thornton**”) as auditors on 29th February 2012³.
8. Between April and August 2012, Grant Thornton had communications with Mayer’s management (including email communications⁴) regarding the audit of Mayer and its subsidiaries’ financial statements for the year ended 31st December 2011 (the “**2011 Financial Statements**”).
9. On 23rd August 2012, Grant Thornton sent a list of “*potential qualifications to the audit report*” to Mayer⁵.
10. On 27th December 2012, Calvin Chiu (Partner of Grant Thornton) (“**Chiu**”) verbally informed Chan that Grant Thornton intended to resign as Mayer’s auditors. Later on the same day, Chan received Grant Thornton’s resignation

¹ BE1/1
² BE1/3-6
³ BE1/18-19
⁴ BE1/32-98
⁵ BE1/99-103

letter dated 27th December 2012 (the “**Resignation**”/“**Resignation Letter**”) by email⁶. The Resignation Letter dated, *inter alia*, the following:

“During the course of the audit for the financial statements for the year ended 31 December 2011, we have identified and reported certain significant matters to the Management, the Board of Directors and the Audit Committee including the substance of disposal of an available-for-sale financial asset, ownership and control of the Vietnam project, and the existence and commercial substance of prepayment to suppliers by the Company’s jointly controlled entities...” (the “**Audit Issues**”)

11. The Resignation came to the knowledge of Mayer on 27th December 2012 and:-
 - (a) The Resignation came to the knowledge of Chan (SP2), Lai (SP4) and Lu Wen-yi (SP7) in the course of performing their functions as officers of Mayer, on 27th December 2012 and 28th/29th December 2012 respectively; and
 - (b) The Resignation did, or alternatively, ought reasonably to have come to the knowledge of at least Hsiao (SP3), Huang (SP5), Chiang (SP6), Lin (SP10), and Chiu (SP11), in the course of performing their functions as officers of Mayer.
12. From 27th December 2012 to 14th January 2013, Chan (SP2) had telephone conversations with SEHK’s representative Tracy Lee. On 15th January 2013, SEHK sent a fax to Mayer for Chan (SP2)’s attention, stating *inter alia* that on 27th December 2012, Mayer had informed SEHK that Mayer’s current auditors (i.e. Grant Thornton) have tendered their resignation⁷.

⁶ BE1/114-116

⁷ BE1/130-131

13. On 28th December 2012, Chan (SP2) verbally informed Lai (SP4) of the receipt and contents of the Resignation Letter.
14. On 15th January 2013, SEHK sent a fax to Mayer for Chan (SP2)'s attention, raising three matters for Mayer to address. One of the matters related to the Resignation, in which the SEHK reminded Mayer of its obligation under the Listing Rules to, as soon as practicable, announce the Resignation and state clearly the reasons for the Resignation as set out in the Resignation Letter.
15. On 16th January 2013, Chiu and Chan (SP2) exchanged several emails over a 33-minute time frame. In the first email, Chiu stated that "*further to our resignation letter dated 27 December 2012, we note that the Company has not yet make (sic) announcement about the change in auditors*" and reminded Mayer (SP1) again to issue an announcement concerning "*any change in auditors, the reason(s) for the change and any other matters that need to be brought to the attention of the holders of securities of Mayer (SP1)*", pursuant to the Listing Rules as soon as practicable⁸, to which Chan (SP2) replied that "*it is our understanding that you will give us more time to look for a new auditors as replacement. Until then, we will publish an announcement as soon as practicable.*"⁹. Chiu then replied in a further email stating that "*to clarify, our resignation letter dated 27th December 2012 is effective*"¹⁰
- ~~16. On 18th January 2013, Mayer responded to the SEHK's fax and queries, and stated *inter alia* that it is aware of its disclosure obligation under Rule 13.51(4) of the Listing Rules, and that "*it is in our best endeavour to comply with the Rule and published the Announcement as soon as practicable*" (sic)¹¹.~~

⁸ BE1/139

⁹ BE1/138

¹⁰ BE1/138

~~¹¹ BE1/146-147~~

- ~~17~~.16. On 18th January 2013, Chan (SP2) sent an email to Hsiao (SP3), Lai (SP4), Huang (SP5), Chiang (SP6), Lu (SP7), Xue (SP8), Li (SP9) Lin (SP10) and Alvin Chiu (SP11) enclosing *inter alia* SEHK's fax of 15th January 2013 which represented the first time any information/notice of Grant Thornton's resignation was sent/passed in writing to the directors of Mayer.^{~~12~~11}
- ~~18~~.17. On 22nd January 2013, Mayer called a Board meeting, to discuss *inter alia* Grant Thornton's letter of resignation.^{~~13~~12}
- ~~19~~.18. A Board meeting was held on 23rd January 2013 to discuss the Resignation Letter.¹³
19. An announcement concerning Grant Thornton's resignation was published on the same day (the "**Resignation Announcement**")¹⁴. A letter dated 23rd January 2013 signed by Chan (SP2) on behalf of Mayer (SP1) was sent to SEHK, in which it stated *inter alia* that it is aware of its disclosure obligation under Rule 13.51(4) of the Listing Rules, and that "*it is in our best endeavour to comply with the Rule and published the Announcement as soon as practicable*".¹⁵
20. Chan (SP2) has given an explanation for the timing in making the Resignation Announcement. It is the position of Chan (SP2), as well as Hsiao (SP3), Lai (SP4), Huang (SP5), Chiang (SP6), Lin (SP10) and Alvin Chiu (SP11), that they do not rely on the explanation Chan (SP2) has given for the timing in making the Resignation Announcement as a defence to a potential breach of sections 307B or 307G of the Ordinance in these proceedings. For the avoidance of doubt, such

¹¹ BE1/142-148

¹² BE1/162-175

¹³ **BE1/187-190**

¹⁴ BE1/193-196. Although the Resignation Announcement referred to Grant Thornton Hong Kong Limited, the engagement letter dated 28th February 2012 was between the Company and Grant Thornton Jingdu Tianhua [BE1/7-13].

¹⁵ **BE1/191-192**

SPs would not rely on Chan's (SP2) explanation, or any other explanation, as a defence to a potential breach of ss 307B or 307G of the Ordinance. Such admission, however, is made only on the basis that the Market Misconduct Tribunal finds the information (as identified by the SFC¹⁶) amounts to "*inside information*" as defined under s 307A of the Ordinance.

III. PARTICULARS OF AUDIT ISSUES

(A) Issue (1) – Disposal of Advance Century

21. Advance Century was a wholly-owned subsidiary of Mayer. Mayer wrote off its investment in Advance Century in 2010. By a board resolution dated 28th January 2011¹⁷, the Board resolved to dispose of Advance Century for a consideration of no less than US\$2,000,000.
22. By a sale and purchase agreement dated 28th April 2011¹⁸, Mayer agreed to sell the entire issued share capital of Advance Century to Golden Tex Limited ("**Golden Tex**") for a consideration of HK\$15,500,000 (the "**Advance Century Agreement**"). Lai (SP4) was the signatory to the Advance Century Agreement on behalf of Mayer, while a Wang Shu Mei ("**Wang**") signed the Advance Century Agreement on behalf of Golden Tex.
23. On 28th June 2011:-
 - (a) Two cheques of HK\$10,000,000 and HK\$5,500,000 respectively (the "**Cheques**"), totalling HK\$15,500,000, were cleared in favour of Mayer

¹⁶ See, specifically, [RTB4/1/1]

¹⁷ BE1/198-200

¹⁸ BE1/231-253

and credited to Mayer's HSBC savings account (account number: 640-115994-838)¹⁹; and

- (b) A notice was given by Wang on behalf of Golden Tex to Mayer²⁰, stating that, regarding the sale and purchase of Advance Century:-

“full consideration of HK\$15,500,000.00 (US\$2,000,000) has been fully settled to your HSBC saving account (A/C no: 640-115994-001) today”.

24. On 29th March 2012, two writs (High Court Action Nos. 522 and 524 of 2012)²¹ were issued against Mayer by Capital Wealth Corporation Limited (“**Capital Wealth**”) and Capital Wealth Finance Company Limited (“**Capital Finance**”) respectively, alleging that:

- (a) Mayer drew a loan of HK\$10,000,000 from Capital Wealth on 28th June 2011;
- (b) Mayer drew a loan of HK\$5,500,000 from Capital Finance on 28th June 2011; and
- (c) Mayer agreed to repay the loans to Capital Wealth and Capital Finance respectively by 28th December 2011.

25. Mayer denied that it entered into any loan agreements with Capital Wealth and Capital Finance.

¹⁹ BE1/263

²⁰ BE1/261

²¹ BE1/266-283

26. The proceedings commenced by Capital Wealth and Capital Finance were announced by two separate announcements on 23rd April 2012 (the “**23rd April 2012 Announcements**”)²². The market was informed by the 23rd April 2012 Announcements that:-
- (a) On 29th March 2012, Capital Wealth issued legal proceedings against Mayer claiming a sum of HK\$10,000,000 being the outstanding principal of a loan to Mayer together with interest and costs;
 - (b) On 29th March 2012, Capital Finance issued legal proceedings against Mayer claiming a sum of HK\$5,500,000 being the outstanding principal of a loan to Mayer together with interest and costs; and
 - (c) Mayer was seeking legal advice in respect of the proceedings and would make further announcement in due course as to any material development in connection with the proceedings.
27. By an announcement dated 30th May 2013²³ Mayer announced that the High Court had ordered the proceedings in HCA 522 and 524 of 2012 to be consolidated into a single set of proceedings against the Company and that on 20th May 2013 Capital Wealth and Capital Finance had been granted leave to amend their Writ and Statement of Claim.
28. Capital Wealth and Capital Finance applied for summary judgment against Mayer in HCA 522 and 524 of 2012. By a decision dated 12th October 2012, the Court granted Mayer unconditional leave to defend. The Court’s said decision was reported in the Oriental Daily News on 13th October 2012²⁴.

²² BE1/284-291

²³ BE1/292-293-2

²⁴ RTB1/559, RTB4/64

(B) Issue (2) – Vietnam Project

(i) Background to the Vietnam Project

29. Dan Tien Development Joint Venture Company Limited (“**Dan Tien JV**”) was at all material times and is principally engaged in the development of property, port and relevant logistic business, and licensed to carry out two separate projects in Vietnam, namely²⁵:-

(a) The Dan Tien Port Project which involved investment and construction of a 4.7 km access road, a total of five piers and related infrastructure in Mong Cai Town, Vietnam (“**Dan Tien Port**”); and

(b) The Phoenix Trade and Tourism Urban Area Project which involved investment and construction of real estates in Mong Cai Town (“**Phoenix Project**”).

(Collectively, the “**Vietnam Project**”)

30. On 8th November 2010, Mayer entered into a sale and purchase agreement (the “**Yield Rise Agreement**”)²⁶ to purchase the entire issued share capital of Yield Rise Limited (“**Yield Rise**”), a company indirectly owning a 70% equity interest in the Dan Tien JV, from Make Success Limited (“**Make Success**”) (the “**Yield Rise Acquisition**”) at a consideration of HK\$620,000,000. Mayer made an announcement regarding the Yield Rise Acquisition on 12th November 2010²⁷.

²⁵ BE1/463-464

²⁶ BE1/368-561

²⁷ BE1/562-615

31. The deadline to comply with the conditions precedent to the Yield Rise Agreement was extended by a supplemental sale and purchase agreement dated 31st March 2011²⁸.
32. On 13th April 2011, Mayer issued a circular announcing a “*Very Substantial Acquisition – Acquisition of Equity Interest in Yield Rise Limited*” (the “**Yield Rise Circular**”)²⁹.
33. On 30th April 2011, Mayer announced that the Yield Rise Acquisition was approved at the extraordinary general meeting held on the same date³⁰. On 9th May 2011, Mayer announced that the Yield Rise Acquisition was completed on the same date³¹.

(ii) The valuation issue

34. According to the Yield Rise Circular, Grant Sherman Appraisal Limited (“**Grant Sherman**”) was engaged by Mayer and conducted a valuation exercise of the Vietnam Project, with the following results:-
- (a) The fair value of Dan Tien Port, as at 31st October 2010, was HK\$809,140,000³²; and
- (b) The market value of the Phoenix Project, as at 28th February 2011, was HK\$215,000,000³³.

²⁸ BE1/617-626

²⁹ BE1/663-1012

³⁰ BE1/1017-1020

³¹ BE1/1021-1022

³² BE2/800

³³ BE2/716

Based on these valuations, Mayer's 70% interest in the Vietnam Project was therefore worth around HK\$717,000,000.

35. During the course of the audit for the 2011 Financial Statements, Grant Thornton received from Mayer draft valuation reports dated 19th December 2011 prepared by Savills Vietnam Co Ltd ("**Savills**") which was engaged by Mayer Corporation Development International Limited (a major shareholder of Mayer) to reassess the value of Dan Tien Port³⁴ and the Phoenix Project³⁵.

36. The said valuations of Savills are as follows:-

(a) The land of Dan Tien Port was valued at US\$475,000 (approximately HK\$4,000,000) as at 19th December 2011³⁶; and

(b) The Phoenix Project was valued at US\$19,000,000 (approximately HK\$148,000,000) as at 19th December 2011³⁷.

Based on these valuations, Mayer's 70% interest in the Vietnam Project was worth HK\$106,000,000.

37. Grant Thornton received from Mayer a draft report prepared by Deloitte & Touche Financial Advisory Services Limited ("**Deloitte**") dated 9th January 2012³⁸. This report was titled "*Evaluation of the Valuation Analysis of Dan Tien Port*" (the "**Deloitte Report**").

38. Deloitte's opinion on Grant Sherman's valuation was as follows:-

³⁴ BE2/1024-1077

³⁵ BE2/1078-1119

³⁶ BE2/1055

³⁷ BE2/1097

³⁸ BE2/1120-1132

- (a) Based on the construction progress of Dan Tien Port after 31st October 2010, it would be impossible to achieve Grant Sherman's forecast capacity of ten million tonnes in the first year of operations. Dan Tien Port would only enjoy a maximum capacity of 6.2 million tonnes per year³⁹; and
 - (b) The pricing of US\$6.5 per tonne assumed by Grant Sherman appeared to be aggressive, given that in 2010 the comparable ports in the region earned, on average, US\$4.41 per tonne⁴⁰.
39. In short, the Deloitte Report found that material aspects of Grant Sherman's assumptions were too aggressive⁴¹ and unrealistic, leading to an over-valuation of the Vietnam Project.
- (iii) Lack of ownership
40. In auditing the 2011 Financial Statements, Grant Thornton raised *inter alia* the following matters:-
- (a) Construction of the Dan Tien Port was suspended in 2005 and construction for the Phoenix Project ceased in September 2011⁴²;
 - (b) Plots of land for the Phoenix Project had apparently been sold for US\$9,000,000⁴³ but Mayer had no information regarding the date of sale, the terms of sale, and the whereabouts of the sale proceeds⁴⁴;

³⁹ BE2/1122
⁴⁰ BE2/1122
⁴¹ BE2/1129
⁴² BE2/1136
⁴³ BE2/1135
⁴⁴ BE1/49

- (c) Mayer did not have access to the management accounts of Dan Tien JV as at 31st December 2011⁴⁵. Mayer only had available to Grant Thornton management accounts of Yield Rise (and its subsidiaries) for the period ended 30th June 2011⁴⁶; and
- (d) Mayer did not have control over the operations of Dan Tien Port and the Phoenix Project, as all business and management decisions were apparently made by a Hui Yau Tso, a local general manager of Dan Tien JV⁴⁷.

41. Grant Thornton was unable to⁴⁸:-

- (a) obtain appropriate and sufficient audit evidence to verify whether Mayer had control over Yield Rise as at 31st December 2011;
- (b) obtain appropriate and sufficient audit evidence in respect of Mayer's investment in Yield Rise for HK\$620,000,000 as at 31st December 2011; and
- (c) consolidate the financial position of Yield Rise and its subsidiaries into the 2011 Financial Statements.
- (iv) Litigation over the Vietnam Project

⁴⁵ BE2/1136

⁴⁶ BE1/47

⁴⁷ BE1/48

⁴⁸ BE1/101

42. According to a chronology of events prepared by Mayer⁴⁹, its management came to a conclusion that the Vietnam Project was overvalued in around November 2011.
43. On 12th January 2012, Mayer issued proceedings against various defendants in High Court Action HCA 64 of 2012⁵⁰. The defendants included (among others) Make Success.
44. On 16th January 2012, Mayer made an announcement⁵¹ that it had issued a writ on 12th January 2012 seeking, among other things, damages against Make Success for breach of the Yield Rise Agreement and misrepresentation.
45. On 9th March 2012, Mayer made an announcement⁵² that it had amended the writ claiming against Make Success and other defendants (among other things) damages for conspiracy to defraud Mayer and/or to injure Mayer's business and economic interests unlawfully by procuring the Yield Rise Acquisition on an inflated valuation arrived at by the use and supply of false and/or misleading information.
46. On 5th April 2012, Mayer made an announcement⁵³ that it had obtained an interim injunction in relation to the claim against Make Success and others.
47. On 3rd October 2012, Mayer announced⁵⁴ that it had joined an additional party to its claim against Make Success and others.

⁴⁹ BE2/1215

⁵⁰ BE2/1216

⁵¹ BE2/1216-1219

⁵² BE2/1220-1229

⁵³ BE2/1230-1233

⁵⁴ BE2/1234-1235

(C) Issue (3) – Supply Agreements

48. Two subsidiaries of Mayer’s jointly controlled entity entered into two supply agreements in September 2010 (collectively, the “**Supply Agreements**”):

- (a) On 15th September 2010, Elternal, a wholly-owned subsidiary of a jointly controlled entity of Mayer, entered into an exclusive supply agreement⁵⁵ with Vietnam Minerals Holding Corp. (“**VMC**”) for the supply of iron ore, under which Elternal had the sole distribution right of the iron sand and would earn commission of US\$20 per tonne of the iron sand sold; and
- (b) On 27th September 2010, Sinowise, a wholly-owned subsidiary of a jointly controlled entity of Mayer, entered into an exclusive supply agreement⁵⁶ with Dynamic Natural Resources Pte Ltd (“**Dynamic**”) for the supply of thermal coal. Mayer intended to resell the coal to customers in China.

(collectively, VMC and Dynamic are defined as the “**Suppliers**”, and Elternal and Sinowise are defined as the “**Purchasers**”).

49. On 15th October 2010, Elternal made a prepayment of US\$10,000,000 to VMC (or its nominees)⁵⁷. In November and December 2010, Sinowise made a prepayment of US\$4,000,000 to Dynamic⁵⁸.

50. Both Suppliers failed to supply the agreed amount of minerals⁵⁹.

⁵⁵ BE2/1243-1278

⁵⁶ BE2/1288-1325

⁵⁷ BE2/1334-1337

⁵⁸ BE2/1338-1339

⁵⁹ BE1/44-45

51. The Supply Agreements were revised:-

- (a) For Elternal, in 2011, VMC agreed to settle the prepayment of US\$10,000,000 by future supplies⁶⁰. Based on the cash flow projection of VMC, the forecast suggested that Elternal should be able to fully recover the US\$10 million deposit in 2018, subject to certain conditions⁶¹. As at April 2014, VMC still owed Elternal US\$9,137,000⁶²; and
- (b) Sinowise and Dynamic entered into a supplemental agreement on 25th March 2012⁶³, containing terms describing how the exclusive supply agreement would be terminated and Dynamic would repay an amount of US\$6,767,966⁶⁴, in ten monthly instalments by December 2012. Mayer received around US\$1,300,000 between April and August 2012⁶⁵, representing the settlement of only two instalments. As at September 2012, Dynamic owed Sinowise around US\$5,470,000.

52. In auditing the 2011 Financial Statements, Grant Thornton observed that:-

- (a) It was unclear why the Purchasers decided to make substantial prepayments to the Suppliers upfront⁶⁶;
- (b) It was unclear if the Purchasers conducted any evaluation on the recoverability of the prepayments⁶⁷; and

⁶⁰ BE2/1280, 1282

⁶¹ BE2/1348

⁶² BE2/1372

⁶³ BE2/1362-1366

⁶⁴ The supplemental agreement dated 25th March 2012 stated that the total repayment amount was US\$6,980,134 [BE2/1364], which appeared to be a typographical error, and was also inconsistent with breakdown set out in the schedule to the agreement [BE2/1366].

⁶⁵ BE2/1367

⁶⁶ BE1/44-45

⁶⁷ BE1/44-45

- (c) They were unable to satisfy themselves that the value of Mayer's interest in Sinowise and Elternal was fairly stated in Mayer's financial statements⁶⁸.

IV. INTERNAL CONTROL

53. ~~At the material times~~From 1st to 23rd January 2013, Mayer (SP1) had no written guidelines and/or internal control policies in relation to the statutory requirements to disclose inside information.⁶⁹
54. On 20th March 2012, Li (SP9) wrote a letter⁷⁰ addressed to the Board and Chan (SP2), copied to the SEHK.
55. On 23rd March 2012, Li (SP9) wrote a letter⁷¹ addressed to the Board copied to the SEHK.
56. On 30th March 2012, Li (SP9) wrote a letter⁷² addressed to the SEHK copied to *inter alia* the Board.
57. On 12th April 2012, Li (SP9) wrote a letter⁷³ addressed to the Board and Chan (SP2) copied to the SEHK and Taiwan Stock Exchange.
58. On 12th April 2012, Li (SP9) wrote a letter⁷⁴ addressed to the SEHK responding to its reply to his earlier letter.

⁶⁸ BE1/101

⁶⁹ BE3/1660

⁷⁰ BSP9/11-13

⁷¹ BSP9/14-18

⁷² BSP9/106-109

⁷³ BSP9/19-21

⁷⁴ BSP9/110

59. On 19th April 2012, Li (SP9) wrote a letter⁷⁵ addressed to the Board copied to amongst others the SEHK, Crowe Horwath and Grant Thornton.
60. On 24th April 2012, Li (SP9) wrote a letter⁷⁶ addressed to the Board and Chan (SP2) copied to amongst others the SEHK, Baker & McKenzie and Grant Thornton.
61. On 8th May 2012, Li (SP9) wrote a letter⁷⁷ addressed to the Board and Chan (SP2) copied to the SEHK.
62. On 9th May 2012, Li (SP9) wrote a letter⁷⁸ addressed to the Board and Chan (SP2) copied to the SEHK in response over the resignation letter of another non-executive director Lam Chun Yin.
63. On 21st May 2012, Li (SP9) wrote a letter⁷⁹ addressed to the SEHK in response to its “*enquiries on the six issues*” by letter sent to Mayer on 2nd March 2012.
64. On 23rd May 2012, Li (SP9) commenced HCMP1016/2012 and HCMP1017/2012⁸⁰ against Mayer and the Board for discovery of documents including inter alia audit papers for the financial year ended 31 December 2011, all correspondence with auditors, documents relating to the Vietnam Project and Advance Century...etc.
65. On 25th May, 31st May, 6th June, 18th June and 2nd July 2012, Li (SP9) wrote complaint letters⁸¹ addressed to Baker & McKenzie copied to the SEHK.

⁷⁵ BSP9/22-24

⁷⁶ BSP9/25

⁷⁷ BSP9/26-32

⁷⁸ BSP9/33

⁷⁹ BSP9/111-118

⁸⁰ BSP9/189-209

⁸¹ BSP9/165-168, 169, 170-171, 172-178, 179-180

66. On 21st July 2012, Li (SP9) wrote a letter⁸² addressed to the Board and Chan (SP2) copied to Baker & McKenzie.
67. On 17th August 2012, Li (SP9) wrote a letter⁸³ addressed to the Board and Chan (SP2) copied to the SEHK.
68. On 5th September 2012, Li (SP9) wrote a letter⁸⁴ addressed to the General Manager of Dan Tien JV to enquire about Mayer's inability to take control since its acquisition.
69. On 21st December 2012, Li (SP9) wrote a letter⁸⁵ addressed to the Board copied to the SEHK and Baker & McKenzie.
70. On 23rd March 2013, Li (SP9) wrote a letter⁸⁶ addressed to the Board and Chan (SP2) copied to the SEHK.
71. On 20th April 2013, Li (SP9) wrote a letter⁸⁷ addressed to the Board copied to the SEHK in response to a letter from Chan (SP2) that investigation is being carried out by the SFC over the affairs of Mayer.

Dated ~~5th~~ ~~12th~~ 27th July 2022

⁸² BSP9/43-45
⁸³ BSP9/46-62
⁸⁴ BSP9/163
⁸⁵ BSP9/63-65
⁸⁶ BSP9/67-70
⁸⁷ BSP9/71-77

**IN THE MATTER OF THE LISTED SECURITIES OF MAYER HOLDINGS
LIMITED (STOCK CODE 1116)**

**AMENDED 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 the disclosure requirements 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 Mayer Holdings Limited (Stock Code 1116) 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. Mayer Holdings Limited (美亞控股有限公司) (the “**Company**”)
- 2. Chan Lai Yin, Tommy (陳禮賢) (“**Chan**”)
- 3. Hsiao Ming-chih (蕭敏志) (“**Hsiao**”)
- 4. Lai Yueh-hsing (賴粵興) (“**Lai**”)
- 5. Huang Jui-hsiang (黃瑞祥) (“**Huang**”)
- 6. Chiang Jen-chin (蔣仁欽)
- 7. Lu Wen-yi (呂文義)
- 8. Xue Wenge (薛文革)
- 9. Li Deqiang (李德強)
- 10. Lin Sheng-bin (林聖斌)
- 11. Alvin Chiu (趙熾佳)

Statement of Institution of proceedings

I. PARTIES

1. The Company (the 1st Specified Person) is a Cayman Islands incorporated company. At the material times, the Company and its subsidiaries (the “**Group**”) were principally engaged in the processing and manufacturing of different kinds of steel sheets and steel pipes which are used by its customers in the manufacture of 3C products, sports equipment, as well as spare parts of household appliances and motor vehicles.
2. The Company was listed on the Stock Exchange of Hong Kong Limited on 21st June 2004 (Stock code: 1116). At the request of the Company, the trading of its listed securities has been suspended since 9th January 2012.
3. At all material times, Chan (the 2nd Specified Person) was the Company Secretary and Financial Controller of the Company.
4. At all material times, the 3rd to 11th Specified Persons were members of the board of directors of the Company (the “**Board**”). In particular, Hsiao (the 3rd Specified Person) was the chairman of the Board, Lai (the 4th Specified Person) was an executive director responsible for the day to day management of the business of the Company, and Huang (the 5th Specified Person) was the chairman of the audit committee (the “**Audit Committee**”) of the Company.
5. All of the Specified Persons (except the Company) were at all material times “*officers*” of the Company as defined in Part 1 of Schedule 1 of the Ordinance.

II. THE AUDIT FOR FINANCIAL YEAR ENDED 31ST DECEMBER 2011 AND RESIGNATION OF GRANT THORNTON AS AUDITORS

6. Crowe Horwath (HK) CPA Limited (“**Crowe Horwath**”) was appointed as the Company’s auditors on 11th June 2010. Crowe Horwath resigned as the Company’s auditors on 16th February 2012.
7. Following Crowe Horwath’s resignation, the Company appointed Grant Thornton Hong Kong Limited (“**Grant Thornton**”) as auditors on 29th February 2012.
8. Between April and August 2012, Grant Thornton had repeated communications with the Company’s management regarding issues identified in the course of auditing the Group’s financial statements for the year ended 31st December 2011. The Company failed to give satisfactory answers to those inquiries.
9. The salient issues identified by Grant Thornton include, among other things, the following (collectively, the “**Outstanding Audit Issues**”):
 - (a) The nature of the disposal of a wholly-owned subsidiary of the Company, Advance Century Development Limited, for a consideration of HK\$15,500,000, is questionable;
 - (b) The Company’s projects in Vietnam, including the Dan Tien Port Project and Phoenix Project which were acquired by the Company at a consideration of HK\$620,000,000, were not under the Company’s control and their prospects were far less promising than originally valued and contemplated; and
 - (c) Two subsidiaries of the Company’s jointly controlled entity, namely Elternal Galaxy Limited (“**Elternal**”) and Sinowise Development Limited (“**Sinowise**”), had entered into two supply agreements with two different suppliers and had made substantial prepayments of US\$10,000,000 and

US\$4,000,000 respectively, without security, to those suppliers which appeared to Grant Thornton as irrecoverable.

10. In view of the Outstanding Audit Issues, on 23rd August 2012, Grant Thornton sent a list of “*potential qualifications to the audit report*” to the Company indicating that they would have to qualify their audit opinion if the Outstanding Audit Issues were not resolved. The Outstanding Audit Issues referred to in paragraph 9 above and the indication by Grant Thornton as at 23rd August 2012 that they would issue a qualified audit report did, or alternatively, ought reasonably to have come to the knowledge of the 2nd to 11th Specified Persons, in the course of their performing their functions as officers of the Company. From about September 2012 onwards, no constructive response had been provided by the Company or its directors or Audit Committee to Grant Thornton to address the Outstanding Audit Issues.
11. On 27th December 2012, Calvin Chiu (Partner of Grant Thornton) verbally informed Chan that Grant Thornton intended to resign as the Company’s auditors. Later on the same day, Chan received Grant Thornton’s resignation letter dated 27th December 2012 (the “**Resignation Letter**”) by email.
12. The Resignation Letter was addressed to “*The Audit Committee and the Board of Directors*”. The Resignation Letter expressly stated, among other things, the following:-
 - (a) in unequivocal and unconditional terms, that Grant Thornton gave “*formal notice of [their] resignation as auditors of the Company with immediate effect*” (the “**Resignation**”);
 - (b) that during “*the course of the audit for the financial statements for the year ended 31 December 2011*”, Grant Thornton had “*identified and reported*

certain significant matters to the [Company's] Management, the Board of Directors and the Audit Committee including [the Outstanding Audit Issues]";

- (c) *that despite Grant Thornton's "continuing efforts to take the audit forward and resolve the [Outstanding Audit Issues], the [Company's] Management is unable to provide information [Grant Thornton] requested and update [Grant Thornton] in respect of the developments of these matters on a timely basis"; and*
 - (d) *a reminder that the Company was required under "the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("SEHK")....to inform the SEHK immediately of any decision made, and to publish an announcement as soon as practicable, in regard to any change in auditors, the reason(s) for the change and any other matters that need to be brought to the attention of the holders of securities of the Company".*
13. On 28th December 2012, Chan verbally informed Lai (the 4th Specified Person) of the receipt and contents of the Resignation Letter.
14. As the Resignation Letter was addressed to the Board and the Audit Committee, the Resignation did, or alternatively, ought reasonably to have come to the knowledge of the 2nd to 11th Specified Persons, in the course of performing their functions as officers of the Company.
15. There was substantial delay on the part of the Company and its officers in reacting to and making an announcement regarding the Resignation:
- (a) It was not until 22nd January 2013 that the Company called a Board meeting, more than three weeks after the Resignation Letter was sent to Chan; and

- (b) A Board meeting was held on 23rd January 2013 to discuss the Resignation Letter. An announcement concerning Grant Thornton's resignation was published on the same day (the "**Resignation Announcement**").

III. FAILURE TO DISCLOSE INSIDE INFORMATION

~~16. Three categories of "*inside information*" within the meaning of section 307A of the Ordinance have not been adequately disclosed by the Company, namely:~~

~~(a) the Resignation;~~

~~(b) the Outstanding Audit Issues referred to in paragraph 9 above and the indication by Grant Thornton as at 23rd August 2012 that they would issue a qualified audit report as referred to in paragraph 10 above ("**Potential Qualified Audit Report**"); and~~

~~(c) the circumstances surrounding the substantial prepayment made by Elternal ("**Prepayment by Elternal**").~~

16. The SFC's case of non-disclosure against the Company is that, in breach of section 307B(1), the Company failed to disclose as soon as reasonably practicable after 1st January 2013 specific information about the Company (being inside information as defined in section 307A of the Ordinance) which comprised the following:

- (a) The fact of Grant Thornton's resignation on 27th December 2012.
- (b) The fact that Grant Thornton had indicated it would issue a qualified audit report ("**Potential Qualified Audit Report**") if the audit issues which Grant Thornton had identified in respect of three transactions of the Company (the "**Outstanding Issues**") were not resolved. The three

transactions, and the inside information in respect of them that should have been disclosed, were:

- (i) The disposal of Advance Century for HK\$15.5 million which was alleged by the Company to have been a sale of all the issued share capital of Advance Century to Golden Tex Limited. The inside information that should have been disclosed in respect of this transaction was that Grant Thornton regarded this transaction as questionable;
- (ii) Investment by the Company in respect of the Vietnam Project. The inside information that should have been disclosed in respect of this transaction was that Grant Thornton regarded as questionable that the Company had control of it and that it was not as promising as originally valued and contemplated;
- (iii) The supply agreements that two subsidiaries of the Company's jointly controlled entity, namely Elternal and Sinowise had entered into, with 2 suppliers. The inside information that should have been disclosed in respect of these transactions is that Elternal and Sinowise had made prepayments of US\$10 million and US\$4 million, without security, to the suppliers and that these prepayments appeared to Grant Thornton to be irrecoverable.

These outstanding audit issues remained unresolved as at 1st January 2013 and thereafter.

- (c) The fact that Grant Thornton was concerned that Elternal's prepayment of US\$10 million to the supplier may be irrecoverable and/or lacked commercial substance.

17. The ~~three categories of information facts~~ referred to in paragraph 16 above:-
- (a) were specific information about the Company; and
 - (b) were not generally known to the persons who were accustomed to or would be likely to deal in the listed securities of the Company but would if generally known to them have been likely to materially affect the price of those securities.
18. The Resignation came to the knowledge of the Company on 27th December 2012. Once such information came to the knowledge of the Company, it was obliged, under section 307B(1)¹ of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, no disclosure was made until the Resignation Announcement was issued on 23rd January 2013.
19. Grant Thornton alerted the Company on 23rd August 2012 that the Outstanding ~~Audit~~ Issues ~~(including the Prepayment by Elternal)~~ might lead to the Potential Qualified Audit Report. Once such information came to the knowledge of the Company, it was obliged, under section 307B(1)² of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, no disclosure was made.
20. It was the responsibility of the 2nd to 11th Specified Persons, as officers of the Company, to ensure that the Company complied with its disclosure obligations. They failed to so ensure. Their intentional, reckless or negligent conduct resulted in the Company's breach of a disclosure requirement, and they were therefore

¹ Part XIVA (sections 307A-ZA) of the Ordinance came into effect on 1 January 2013. The Company and its officers were obliged to make a disclosure under section 307B(1) as soon as reasonably practicable on or after 1 January 2013.

² Please see footnote 1.

also in breach of a disclosure requirement under section 307G(2)(a) of the Ordinance.

21. By reason of the matters set out above, the Company failed to disclose to the public the information as set out in paragraph 16(a) to 16(c) above, ~~(i) the Resignation, (ii) the Outstanding Audit Issues and the Potential Qualified Audit Report as from 23rd August 2012 and (iii) the Prepayment by Elternal~~, each of which constituted “*inside information*” (within the meaning of section 307A(1) of the Ordinance) as soon as reasonably practicable after the said inside information had come to its knowledge, contrary to section 307B(1)³ of the Ordinance.
22. ~~The 2nd to 11th Specified Persons, as the officers of the Company, were also in breach by virtue of section 307G of the Ordinance by failing to ensure the Company complied with its disclosure obligation.~~ Further or alternatively, SP2-SP11, as officers of the Company, were in breach of section 307G(2)(b) of the Ordinance by failing to take all reasonable measures from time to time to ensure that proper safeguard existed to prevent a breach of the Company’s disclosure requirement.

Dated this ~~4th day of March 2016~~ 30th day of August 2022

Securities and Futures Commission

³ Please see footnote 1.

307N. Orders of Tribunal

- (1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under section 307J(1)(b) as being in breach of a disclosure requirement—
 - (a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—
 - (i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or
 - (ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;
 - (b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;
 - (c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;
 - (d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding \$8,000,000;
 - (e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;
 - (f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—
 - (i) the proceedings;
 - (ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or
 - (iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;
 - (g) an order that any body which may take disciplinary action against the person as one of its members or regulatees be recommended to take disciplinary action against the person; (*Amended L.N. 66 of 2022*)
 - (h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;
 - (i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.