

# **REPORT OF THE MARKET MISCONDUCT TRIBUNAL OF HONG KONG**

on whether a breach of the disclosure requirements has taken place  
in relation to the listed securities of

**China Medical & HealthCare Group Limited**  
**(formerly known as COL Capital Limited)**

**(Stock Code 383)**

and other related questions

The Report of the Market Misconduct Tribunal on whether a breach of the disclosure requirements has taken place in relation to the listed securities of

China Medical & HealthCare Group Limited  
(formerly known as COL Capital Limited)

**A report pursuant to section 307(J)1 of the Securities and Futures Ordinance,  
Cap 571**

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## CHAPTER 1

### OVERVIEW

#### *The SFC Notice*

1. On 24 October 2019, the Market Misconduct Tribunal (“the Tribunal”) received a notice from the Securities and Futures Commission (“the SFC”). The notice required the Tribunal to conduct proceedings in order to determine whether there had been a breach of the disclosure requirements within the meaning of sections 307B and 307G of Part XIVA of the Securities and Futures Ordinance, Cap 571 (“the Ordinance”) in respect of a company listed on the Main Board of the Stock Exchange (under stock code 383). That company was China Medical & HealthCare Group Limited (“the Company”), formerly known as COL Capital Limited. The Notice issued by the SFC is attached to this report marked Annexure “A”.

#### *The Specified Persons*

2. As to whether there had been a breach of the disclosure requirements, one limited company and six individuals were specified by the SFC in the Notice as being subject to inquiry. The specified individuals were -

- (a) The Company itself, the principal business of the Company and its subsidiaries (“the Group”) being securities trading and investment, financial services, property development and hospital operations. Central to this report, however, was the Company's dealing in securities and similar investments: the ‘securities investment segment’.

- (b) Chong Sok Un (“Shirley Chong”), the Chairman and an executive director of the Company (the 2<sup>nd</sup> Specified Person).
- (c) Wong Peng Chong (“John Wong”), an executive director of the Company, having responsibility for overseeing the Company’s securities investment segment (the 3<sup>rd</sup> Specified Person).
- (d) Kong Muk Yin (“Kong”), an executive director of the Company (the 4<sup>th</sup> Specified Person).
- (e) Lau Siu Ki (“Kevin Lau”), Ma Wah Yan (“Billy Ma”) and Zhang Jian (“Zhang”), each of the three being independent non-executive directors of the Company (the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Specified Persons).

3. It was never disputed that at all material times the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons were ‘officers’ of the Company as defined in section 1, Part 1 of Schedule 1 to the Ordinance.

*Relevant provisions of the Ordinance*

4. Section 307B of the Ordinance lays down a listed corporation’s disclosure requirements, namely, as soon as reasonably practicable after any ‘inside information’ has come to its knowledge, to disclose that information to the market. The subsection reads:

“(1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.

(2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—

(a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.”

5. The concept of ‘inside information’ is well established. In the present context, it is specific information about a listed corporation that is not generally known to the persons accustomed to, or likely to, deal in the listed securities of the corporation but would, if generally known to them, be likely to materially affect the price of those securities. Section 307A(1) defines ‘inside information’ as follows:

“Inside information, in relation to a listed corporation, means specific information that—

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the

corporation but would if generally known to them be likely to materially affect the price of the listed securities”.

6. Section 307C prescribes the manner in which inside information must be disclosed, namely, that it must be made in a manner that enables the market to have equal, timely and effective access to that inside information. The subsection reads:

- “(1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.
- (2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public.”

7. Section 307G lays down the circumstances in which an officer of a listed corporation – an officer including a director or manager – will be held to be in breach of the disclosure requirements. This includes a failure generally to take reasonable measures to ensure that effective safeguards exist. The subsection reads:

- “(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.
- (2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation—

- (a) whose intentional, reckless or negligent conduct has resulted in the breach; or
- (b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement.”

*The mandate given to the Tribunal*

8. The Tribunal was required by the Notice to conduct proceedings in order to determine the following, namely –

- (a) whether a breach of the disclosure requirements had taken place; and, if so,
- (b) the identity of any person found to be in breach of those requirements.

*Agreement as to facts, culpability and sanctions*

9. In April 2021, the SFC informed the Tribunal that it had reached agreement with all of the Specified Persons in respect of the following; that is, first, the relevant facts, second, the nature of the culpability of the Specified Persons arising out of those facts and, third, what the parties considered to be the appropriate sanctions to be imposed on the Specified Persons.

10. As evidence of this agreement, the SFC filed the following with the Tribunal –

- (a) A Statement of Agreed and Admitted Facts which included admissions of culpability by each of the Specified Persons, the statement being annexed to this report as Annexure “B”.
- (b) An Agreed Proposed Order setting out the nature and level of the sanctions that were agreed should be imposed, the proposed order being annexed to this report as Annexure “C”.

*The response of the Tribunal*

11. In light of this agreement, the Chairman gave relevant directions as to law including the direction that, whatever the parties may have agreed, the final decision as to culpability and sanction lay with the Tribunal itself, that decision being whether to approve each of the matters agreed by the parties or to come to an independent determination.

12. Having considered the evidential material placed before them, the members of the Tribunal were satisfied to the required level that the agreement reached between the SFC and the Specified Persons, both as to culpability and as to penalties and legal costs, was one that they would be prepared to endorse.

13. By letter dated 26 April 2021, the Secretary to the Tribunal informed the parties of this, at the same time, in an exercise of caution, seeking clarification of certain relevant matters. The request for clarification was answered by the SFC to the satisfaction of the Tribunal.

14. Accordingly the Tribunal, having come to the finding that the first Specified Person, that is, the Company, was in breach of the disclosure requirement pursuant to section 307B of Part XIVA of the Ordinance, and that the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons, all of them being officers of the Company, were

in breach of the disclosure requirement pursuant to section 307G(2)(a) of Part XIVA of the Ordinance, ordered that the agreed sanctions be imposed. This was done pursuant to an order signed by the Chairman on 6 May 2021. A copy of that order is annexed to this report as Annexure “D”.

## CHAPTER 2

### A SUMMARY OF THE FACTUAL FINDINGS

15. In coming to its findings that the uncontested evidence did support the admitted culpability of the Specified Persons, the Tribunal relied principally on the contents of the Statement of Agreed and Admitted Facts, Annexure “B”. For the purpose of understanding the broad nature and extent of the factual evidence, the following constitutes a summary<sup>1</sup> –

- (1) On 19 February 2014, the Company published a profit alert announcement, stating that it expected to record a substantial increase in the profit attributable to shareholders for the second half of the previous year, that is, the second half of 2013.
- (2) At that time (and thereafter) a material part of the Company's securities portfolio was held through a wholly-owned subsidiary named Sparkling Summer Limited (‘Sparkling’). Sparkling held 182,420,000 shares worth HK\$74,792,200 in a company then known as ChinaVision Media Group Limited (‘ChinaVision’) but now known as Alibaba Pictures Group Limited. The shares were held in a securities account with Sun Hung Kai Investment Services Limited.
- (3) Within days of this profit alert relating back to 2013, there were to be further material changes in the securities investment segment of the Company's business, these

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<sup>1</sup> This constitutes a summary only and is not intended to replace the evidence set out in the Statement of Agreed and Admitted Facts.

changes relating to dealing in the shares in ChinaVision and to material gains in the value of those shares.

- (4) On 25 February 2014, ChinaVision announced the suspension of trading in its shares pending the release of an announcement concerning inside information. The closing price of the shares in ChinaVision that day was HK\$0.64.
- (5) By the time of this suspension, Sparkling had increased its shareholding in ChinaVision to 302,250,000 shares valued at HK\$193,444,000.
- (6) Two days later, on 27 February 2014, the Company announced its interim results for the second half of 2013. In respect of that six-month period, the Company recorded the following; first, a profit in its securities investment segment of HK\$374,815,000, and, second, an increase in the Company's profit before taxation from HK\$62,615,000 to HK\$390,506,000.
- (7) On 11 March 2014, ChinaVision announced that it had conditionally agreed to allot and issue 12,488,058,846 new shares to Alibaba Investment Limited at an issue price of HK\$0.50 per share, this being subject to conditions of subscription.
- (8) The following day, that is on 12 March 2014, trading in ChinaVision shares resumed and on that day the share price closed at HK\$1.83, this being a 186% increase compared with the closing price on the day of suspension. There was at

the same time a massive increase in trading volume, some 685%. That same day, that is on 12 March, the share price of the company rose by about 2%.

(9) From 12 March 2014 through until the 18th of that month, the Company traded in ChinaVision and other shares. The Group's financial performance for that month, that is, for March 2014, was summarised in its own internal financial report – the 'March Financial Report' - and included the following –

- (a) cumulative profit for the nine months ended 31 March 2014 amounted to HK\$893,600,000, this contrasting with a loss of HK\$32,600,000 for the corresponding period ended 31 March 2013. This improvement was largely attributable to net unrealised gains made by the securities investment segment of the business.
- (b) Looking at the year to date, the net unrealised gain for the securities investment segment of the business was HK\$506,132,000.
- (c) The Group as a whole had made a profit of HK\$360,017,000 in the month of March 2014 compared to a loss of HK\$45,900,000 for the month of March 2013.
- (d) Of central significance was the fact that the Company's investment in the shares of ChinaVision had been responsible for more than 90% of its gains made<sup>2</sup>. In respect of the advantage gained in dealing in

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<sup>2</sup> As to more specific details, see paragraphs 16 to 18 of the Statement of Agreed and Admitted Facts.

ChinaVision equities - to give a broad overview - the Company's financial performance (recorded in its monthly financial reports) showed –

- (i) That in January and February 2014, the Company had made a net profit of HK\$115,296,000, the securities investment segment of the business making net (realised and unrealised) gains of HK\$117,550,000. In the result, the year-to-date profit was HK\$533,622,000.
  - (ii) By contrast, in March 2014, the Company had made a net profit of HK\$360,017,000, the securities investment segment of the business making net (realised and unrealised) gains of HK\$337,647,000. In the result, the year-to-date profit had increased to HK\$893,639,000.
- (10) On 17 April 2014, copies of the March Financial Report were made available to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Specified Persons. A few days later, on 23 April 2014, an email was sent to all members of the Board of Directors (including the 2<sup>nd</sup> to 6<sup>th</sup> Specified Persons and the representative of the 7<sup>th</sup> Specified Person). The March Financial Report was attached to this email.
- (11) Accordingly, before the end of April 2014, the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons should have received, and have had an opportunity to consider, the March Financial Report showing the marked impact that trading in the shares of ChinaVision had had on the financial performance of the Company.

(12) It is to be noted that the performance of the Company's holdings in ChinaVision shares continued to have an impact on the Company's financial performance in April and May 2014. In this regard, on two days in April 2014, shares in ChinaVision dropped to HK\$1.31, an approximate decrease of 28% from the closing price on 12th of March 2014.

(13) Some two months after the March Financial Report had been made available to the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons, there was a board meeting of the Company - held on 26 June 2014 - at which the issue of the publication of a profit alert was subject to discussion. However, the decision was made not to publish a profit alert.

(14) It was only on 10 September 2014 – some four and a half months after the March Financial Report had been made available - that the Company issued a profit alert. In that report, in part, the following was said:

“... based on its preliminary review on the relevant unaudited consolidated management accounts of the Group for the year ended 30 June 2014, it is expected to record a substantial profit attributable to shareholders for the year ended 30 June 2014 of between approximately HK\$840 million and approximately HK\$980 million as compared with a loss in 2013.”

(15) Following the publication of the profit alert, the share price of the Company on 11 September 2014 traded between HK\$2.40 and HK\$2.75 per share, closing at HK\$2.63. The

closing price represented an increase of about 12% from the previous trading day. Trading volume increased from just 64,220 shares on 10 September 2014 to 2,372,000 shares on 11 September 2014.

(16) On 26 September 2014, the Company published its announcement of audited results for the year ended 30 June 2014. The Company reported a profit of HK\$906,834,000 in its securities investment segment and an overall profit of HK\$857,830,000 for the year ended 30 June 2014.

16. As to knowledge of the inside information by the Specified Persons, the Statement of Agreed and Admitted Facts confirmed that the information came to the knowledge of the Company through the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons immediately following the distribution of the March Financial Report on 23 April 2014.

17. In this regard, the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons made specific admissions as to their knowledge of matters and as to their lack of action in respect of that knowledge. These admissions confirmed that, as officers of the Company, each bore culpability for failing to take all reasonable measures to ensure that proper safeguards existed to prevent a breach of the disclosure requirements. The admissions made are listed in the Statement of Agreed and Admitted Facts<sup>3</sup> and, for ease of reference, are summarised as follows -

*(a) Shirley Chong (the 2<sup>nd</sup> Specified Person)*

At all material times, Shirley Chong was the Chairman and Executive Director of the Company and, as such, was tasked

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<sup>3</sup> See Section D, paragraphs 29 to 35 inclusive of the Statement of Agreed and Admitted Facts.

with overall supervision of the business of the Company. In respect of the monthly financial reports, if she was in the office, she admitted that she would generally read the summary on the first page. She accepted that she had received the March Financial Report.

*(b) John Wong (the 3<sup>rd</sup> Specified Person)*

At all material times, John Wong was an executive director given charge of the Company's operations and in particular given charge of the investment arm. This was a position that he had held since 2002. In respect of trading in equities, daily records were made available to him and, of particular relevance, these included the Number 1 Account and the Number 2 Account of Sparkling held with Sun Hung Kai Investment Services. It was John Wong who made the decision to buy and sell ChinaVision shares in the Number 2 Account in the months of February and March 2014. Another employee was given charge of the Number 1 Account. John Wong accepted that he had received the March Financial Report.

*(c) Kong (the 4<sup>th</sup> Specified Person)*

Kong accepted that he was responsible for the operation of the finance and accounts department as well as the company secretarial and administration department. He accepted that he had seen the March 2014 account statements for both the Number 1 Account and the Number 2 Account held with Sparkling. He said that the finance and accounts departments

would review these documents. He further accepted that, as he was in charge of the finance and accounts departments, the monthly financial reports, including the March Financial Report, would first be handed to him for approval before being circulated to other directors.

*(d) Kevin Lau (the 5<sup>th</sup> Specified Person)*

Kevin Lau said that it was his practice, after receiving the monthly financial reports, to take a quick look through them, looking in particular to ascertain whether the Company was making a profit. He admitted that he had received the March Financial Report.

*(e) Billy Ma (the 6<sup>th</sup> Specified Person)*

Billy Ma said that it was his practice, after receiving the monthly financial reports, to look briefly through them, checking in particular on total profits or losses. He said that he would rely on his colleagues to manage the securities investment segment of the Company's business. He admitted receiving the March Financial Report.

*(f) Zhang (the 7<sup>th</sup> Specified Person)*

Zhang accepted that he had received, or ought to have received, the March Financial Report.

### *The liability of the Company*

18. Section 307B(1) directs that, as soon as reasonably practicable after any inside information has come to its knowledge, a listed corporation *must* disclose that information to the public.

19. The Specified Persons conceded that the information concerning the material gains that had been achieved in dealing in the shares of ChinaVision constituted inside information.

20. The Tribunal had no difficulty, on a consideration of the factual evidence, from coming to the same conclusion.

21. Section 307B then provides that inside information will be held to have come to the knowledge of a listed corporation if that information has, or ought reasonably to have, come to the knowledge of an officer of the corporation while carrying out his duties as an officer provided that on an objective assessment it is evident that the information does constitute inside information<sup>4</sup>.

22. It was not in any way disputed by the Specified Persons that, once the inside information had come to their knowledge, then, pursuant to the provisions of section 307B(1) of the Ordinance, the Company was obliged to disclose that information to the public as soon as reasonably practicable.

23. However, there was a failure in this regard as no disclosure of this information was made to the public until the publication of the profit alert on 10 September 2014. As it was put in paragraph 39 of the Statement of Agreed and Admitted Facts –

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<sup>4</sup> In this regard, the section states that a reasonable person, acting as an officer of the corporation, would consider the information to constitute inside information.

“... the inside information relating to the ChinaVision Gain and/or the March 2014 Profit Figures [the March 2014 Financial Report] came to the knowledge of the Company through the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons as its officers on 23 April 2014 [or in the days following]. Once such information came to the Company's knowledge, under section 307B(1) of the Ordinance, *the Company was obliged to disclose that information to the public as soon as reasonably practicable.* However, no disclosure of the same was made until the publication of the Profit Alert on 10 September 2014.” [italics added]

24. Pursuant to the provisions of section 307B, the Tribunal was satisfied that the Company itself was therefore in breach of the disclosure requirements.

*The liability of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons*

25. Section 307G of the Ordinance provides that every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to a listed corporation. As to liability, the section provides that if a listed corporation is in breach of a disclosure requirement then an officer of the corporation will also be held to be in breach if it is shown that the officer's intentional, reckless or negligent conduct has resulted in the breach or if it is shown that he has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach.

26. In this regard, it was accepted that on 23 April 2014, or in the days immediately thereafter, each of the 2<sup>nd</sup> to 7<sup>th</sup> Specified Persons was aware of, or alternatively ought reasonably to have become aware of, the inside information pertaining to the ChinaVision gain and/or the 2014 March profit figures. Their failure, it was agreed, amounted to negligent conduct on their part (as opposed to

intentional or reckless conduct). That negligent conduct was set out in paragraph 45 of the Statement of Agreed and Admitted Facts as follows –

- (a) Having received the March Financial Report, each of them should have recognised that the ChinaVision gain and/or the March 2014 profit figures were price sensitive, notwithstanding any views that each of them might have held regarding the fluctuating nature of the ChinaVision gain; or, alternatively, each of them failed to pay due regard to the price sensitive nature of that information.
- (b) There is no evidence that they had (by themselves or through the Board) sought external professional advice from financial advisers or lawyers as to whether disclosure was required (and if so, what and when) in view of the ChinaVision gain and/or the March 2014 profit figures.
- (c) They had failed to exercise reasonable care and skill in ensuring that the Company disclosed inside information pertaining to the ChinaVision gain and/or the March 2014 profit figures to the public as soon as reasonably practicable. They failed to properly understand the statutory disclosure obligations and/or seek timely professional advice where or if they were in any doubt.

27. Concerning the 3<sup>rd</sup> Specified Person, John Wong, in paragraph 46 it was agreed that –

“... as an executive director and the officer responsible for overseeing the Company's investment in securities, [he] failed

to ensure timely disclosure of the inside information pertaining to the ChinaVision Gain and/or the March 2014 Profit Figures to the public after it had, or ought reasonably to have, come to his knowledge. Such failure amounted to negligent conduct on his part. In particular, being the person in charge of the Company's investment in securities and the decisions in relation to the trading in the Number 2 Account, he should have regularly reviewed the Company's financial position in relation to its investment in securities and should have realised at least a risk that the substantial nature of the profits of the Company resulting from the ChinaVision Gain was price sensitive. He failed, however, to specifically draw the Board's attention to the ChinaVision Gain.”

On an assessment of the evidential material, the Tribunal was satisfied that the culpability properly fell into the category of negligence.

## CHAPTER 3

### SANCTIONS

#### *The agreed sanctions*

28. The Agreed Proposed Order, Annexure “C” to this report, set out the details of the sanctions that had been agreed by the parties should be imposed upon the Specified Persons and sought an order under section 33 of Schedule 9 to the Ordinance. The section provides as follows –

“At any time after any proceedings have been instituted, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if –

- (a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and
- (b) the parties consent to all of the terms of the order.

29. By way of a summary, excluding references to the particular provisions of the Ordinance pursuant to which the sanctions were imposed, the agreed sanctions were as follows –

- (a) As against the Company, a regulatory fine of HK\$800,000.
- (b) As against Shirley Chong, the 2<sup>nd</sup> Specified Person and the Chairman of the Company, a regulatory fine of HK\$800,000 and, in addition, an order that she undergo a training

programme to be approved by the SFC in respect of the duties of a director.

- (c) As against John Wong, the 3<sup>rd</sup> Specified Person, a regulatory fine of HK\$900,000; disqualification from being a director of or in any way concerned in the management of a listed corporation for a period of eight months<sup>5</sup> and an order that he undergo a training programme to be approved by the SFC in respect of the duties of a director.
- (d) As against Kong, the 4<sup>th</sup> Specified Person, a regulatory fine of HK\$800,000; disqualification from being a director of or in any way concerned in the management of a listed corporation for a period of six months and an order that he undergo a training programme to be approved by the SFC in respect of the duties of a director.
- (e) As against Kevin Lau, the 5<sup>th</sup> Specified Person, a regulatory fine of HK\$300,000 and an order that he undergo a training programme to be approved by the SFC in respect of the duties of a director.
- (f) As against Billy Ma, the 6<sup>th</sup> Specified Person, a regulatory fine of HK\$300,000, and an order that he undergo a training programme to be approved by the SFC in respect of the duties of a director.

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<sup>5</sup> The order of disqualification was made pursuant to section 307N(1)(a) of the Ordinance.

- (g) As against Zhang, the 7<sup>th</sup> Specified Person, a regulatory fine of HK\$300,000 and an order that he undergo a training programme to be approved by the SFC in respect of the duties of a director.

The Tribunal was satisfied that these sanctions fell within the ambit of discretion open to the Tribunal and were appropriate.

*Legal costs*


30. In respect of legal costs, as against the Specified Persons it was agreed that they should meet all legal costs reasonably incurred, more particularly –

- (a) That they should, on a joint and several basis, pay to the Government the costs and expenses reasonably incurred by the Government in relation to or incidental to the proceedings;
- (b) That they should, on a joint and several basis, pay to the SFC the costs and expenses reasonably incurred by the SFC in relation to or incidental to the proceedings, and
- (c) That, in addition, they should, on a joint and several basis, pay to the SFC the costs and expenses reasonably incurred by the SFC in relation to or incidental to the investigations carried out in respect of the matter prior to the institution of the proceedings.

31. The Tribunal was satisfied that these orders as to legal costs were, in all the circumstances, reasonable and appropriate.

*The Order of the Tribunal*

32. As stated in paragraph 14 of this report, in light of the Tribunal's endorsement of the agreements reached between the parties, on 6 May 2021 the Chairman of the Tribunal signed an order (Annexure "D") confirming the culpability of the Specified Persons and the nature and extent of the appropriate sanctions.



Mr. Michael Hartmann, GBS  
(Chairman)



Ms. Anne Anchi Kao  
(Member)



Mr. Choy Chee-yen, Nelson  
(Member)

Dated 6 August 2021