IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHCR 11

Suit No 915 of 2021 (Summons No 1405 of 2023)

Between

Daniel Kroll

… *Plaintiff*

And

(1) Cyberdyne Tech Exchange Pte Ltd
(2) Wong Yoke Qieu, Gabriel
(3) Bai Bo
(4) Lily Hong Yingli

… *Defendants*

JUDGMENT

[Civil Procedure — Pleadings — Further and better particulars]

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Kroll, Daniel
v
Cyberdyne Tech Exchange Pte Ltd and others

[2023] SGHCR 11

General Division of the High Court — Suit No 915 of 2021 (Summons No 1405 of 2023)
AR Perry Peh
10 July 2023

2 August 2023 Judgment reserved.

AR Perry Peh:

Introduction

1 HC/SUM 1405/2023 ("SUM 1405"), which is an application in HC/S 915/2021 ("Suit 915") by the defendants against the plaintiff for further and better particulars, raises the question of what constitutes the "material facts" that must be pleaded in a claim for minority oppression under s 216(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act") in order that the pleadings not be deficient, and whether these "material facts" include the source of the legitimate expectations relied on by the plaintiff, and further, whether the plaintiff is obliged to provide particulars of the legitimate expectation breached in respect of every act alleged of the majority-wrongdoer in its pleadings.

2 Having considered the submissions, I answered the former question in the affirmative but in respect of the latter, I am of the view that particulars need

only be provided in respect of acts or incidents of conduct that are relied on as a ground of relief under s 216(1) of the Companies Act by the plaintiff.

Background

3 Suit 915 is the plaintiff's claim against the second, third and fourth defendants for minority oppression in respect of the affairs of the first defendant, Cyberdyne Tech Exchange Pte Ltd ("CTX"). I refer to the plaintiff, second, third and fourth defendants by their last names, namely, "Kroll", "Wong", "Bai" and "Hong". Given the nominal role played by CTX, I will refer to Wong, Bai and Hong collectively as "the Defendants".

4 CTX was a start-up founded by Wong and Hong. It is in the business of providing corporate finance advisory services,[1] and at the time of the events alleged in Kroll's Statement of Claim (Amendment No 3) ("the SOC"), it was in the process of obtaining a Capital Markets Licence ("CML") from the Monetary Authority of Singapore ("MAS"). Kroll came to invest in CTX after being approached by Wong and Hong.[2] Pursuant to a "Subscription Agreement" dated 31 March 2019, Kroll purchased 81,000 shares in CTX.[3]

5 At all material times, Wong was a shareholder of CTX. He was also a director of CTX up until 8 May 2020. Kroll however says that Wong continued to remain as a shadow director after his resignation as a director on 8 May 2020, which Wong denies.[4] In any case, it does not appear to be in dispute that, despite

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1 Statement of Claim (Amendment No 3) ("SOC") at para 8.

2 SOC at paras 13 and 19–20.

3 SOC at para 21.

4 SOC at para 9; Defence & Counterclaim of the 2nd Defendant (Amendment No 3) ("2D-DCC") at para 16.

Wong ceasing to be a registered director of CTX from 8 May 2020 onwards, he retained control and influence over the operations of CTX. As for Bai, he only became involved in CTX's affairs from the fourth quarter of 2020 after he was approached by Hong to invest in CTX, and he only became a shareholder of CTX from 29 April 2021, and a director of CTX from 5 May 2021.[5] As for Hong, it is not in dispute that she was never a shareholder or director of CTX.[6] However, Kroll's states that Hong had been a shadow director of CTX, and further, that she beneficially owned shares in CTX, which were held on trust by Wong for her.[7]

6 Subsequent to his initial investment, in May 2020, Wong and Kroll entered into a share trust agreement ("the Share Trust Agreement"), under which Kroll would hold around 4.6m of Wong's 4.8m CTX shares on trust for Wong.[8] Wong's 4.8m CTX shares represented a 84.17% shareholding in CTX.[9] The purpose of the Share Trust Agreement was to resolve issues that had arisen as a result of Wong being a controlling shareholder of CTX, because Wong failed to satisfy MAS's "fit and proper" test, which posed an impediment for CTX's CML application.[10]

7 Kroll avers in the SOC that he began to develop suspicions over Wong and Hong's conduct of CTX's affairs sometime in December 2020.

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5 SOC at para 10; Defence of the 3rd Defendant (Amendment No 3) ("3D-D") at para 15.

6 SOC at para 14; Defence of the 4th Defendant (Amendment No 2) ("4D-D") at para 78.

7 SOC at paras 12 and 14.

8 SOC at paras 25–26.

9 SOC at para 26.

10 SOC at para 30.

Notwithstanding that, however, Kroll continued to be a shareholder of CTX and through subsequent events averred to by him in the SOC, his shareholding was increased. Kroll says that in January 2021, Wong and Hong agreed to increase his shareholding percentage upwards to 3.24%. This was because there had been other parties, including Bai and a company controlled by him known as Asia Green Fund Management Limited ("Asia Green Fund"), that had purchased shares in CTX at lower valuations than the valuation at which Kroll purchased his CTX shares under the Subscription Agreement.[11] Then, in February 2021, Wong agreed to give Kroll additional shares "in exchange" for Kroll's contributions to CTX.[12] It appears that this did not take place by way of a fresh issuance of shares. Instead, there was an agreement between Wong and Hong for the termination of the Share Trust Agreement (referred to as the "Share Trust Termination Agreement"), and they also entered into a "Deed for Transfer of Additional Shares", pursuant to which Kroll returned Wong all the shares he previously held on trust for Wong, save for 364,369 shares that Kroll would retain as a legal owner, thereby making Kroll a legal owner of 7.67% of CTX's shares.[13] Kroll avers that he subsequently resigned as a director of CTX on 22 February 2021.[14]

The issuance of shares

8 The SOC contains a general averment at paras 52 and 53, which state that, by virtue of all the facts pleaded in the remaining paragraphs of the SOC, the Defendants have acted in breach of Kroll's legitimate expectations and

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11 SOC at para 38.

12 SOC at para 39.

13 SOC at para 43.

14 SOC at para 45.

conducted the affairs of CTX in a manner that was oppressive and prejudicial to Kroll's interests. In the remaining paragraphs of the SOC referred to by paras 52 and 53, Kroll makes various complaints about the manner in which the affairs of CTX were conducted, but it appears that his main complaint was with respect to events which started in mid-April 2021, that culminated in an extraordinary general meeting of CTX on 30 April 2021 ("the 30 April EGM"), pursuant to which a very significant number of new shares were issued to Bai, making Bai a controlling shareholder,[15] and subsequently, a further issuance of shares to entities controlled by Bai on 12 May 2021.[16] Kroll avers that these events, which severely diluted his shareholding from 7.67% to 0.67%, were commercially unfair.[17]

9 The SOC contains quite a bit of background relating to the issuance of shares. According to Kroll, in mid-April 2021, Wong and Hong had pressured him to exit CTX at a low price. Wong and Hong had told Kroll that CTX was insolvent and faced severe cashflow difficulties. This was exacerbated by the fact that CTX had to buyback all its shares held by another minority investor Xiamen Anne Corporation Limited ("Xiamen Anne"), which were valued at S$10m. The buyback was necessitated by problems that Xiamen Anne faced with China's security regulators. Against this background, Wong and Hong told Kroll that they had found Bai, who was willing to invest and inject cash into CTX. Wong and Hong told Kroll that there was some urgency in Bai's investment, and the injection had to take place before 30 April 2021 because that was the deadline for CTX to re-submit its CML application to the MAS.[18]

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15 SOC at para 79.

16 SOC at para 88.

17 SOC at paras 52 and 96.

18 SOC at para 63.

10 However, all the options which Wong and Hong presented Kroll with involved Kroll exiting CTX, which Kroll refused to accept.[19] Kroll avers that these buyout proposals formed the pretext to Wong and Hong calling for the 30 April EGM, pursuant to which new shares were issued and which severely diluted his shareholding.[20] Kroll avers that Wong and Hong had failed to give him any evidence or any proper explanation as to why CTX had faced such dire financial difficulties.[21] Also, none of the Defendants disclosed to him that: (a) CTX had already entered into an investment agreement with two entities related to Bai pursuant to which those entities were to invest US$15m in CTX by way of a convertible note ("the Investment Agreements");[22] and (b) Wong had personal obligations under an equity investment agreement between CTX and Xiamen Anne to repurchase Xiamen Anne's shareholding in CTX in specified circumstances and on request by Xiamen Anne.[23] The point Kroll appears to make is that CTX was in fact *not* in such dire financial circumstances as Wong and Hong had represented to him. The availability of funding under the Investment Agreements also meant that CTX's financial position remained sound, and so its CML application would not have been jeopardised, and Bai's investment pursuant to the 30 April EGM was neither urgent nor required.[24]

11 Then came the 30 April EGM, which Kroll avers he had only been given one day's notice. Kroll avers that at the 30 April EGM, a resolution was passed pursuant to which some 55m CTX shares were issued to Bai in consideration of

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19 SOC at paras 65–66.

20 SOC at para 67B.

21 SOC at para 64.

22 SOC at para 64A(a) and para 11.

23 SOC at para 64A(b).

24 SOC at para 67A.

him exercising his rights under *three* convertible loan agreements (respectively dated 29 December 2020, 28 January 2021 and 28 February 2021) to convert the outstanding loan into equity (collectively, "the CLAs").[25] Kroll avers that the conversion of the CLAs to shares did not take place based on applicable contractual valuations, and had taken place at a questionably low valuation of CTX.[26] Kroll therefore complains that the resolutions passed at the 30 April EGM were invalid and had to be set aside.[27] Subsequent to the 30 April EGM, on 12 May 2021, around 5m shares were issued to entities related to Bai, which further diluted Kroll's shareholding to 0.67%.[28] Kroll says that these shares were issued without the requisite authorisation by resolutions passed at general meetings of CTX, as required under the Companies Act.[29]

12 The Defendants have each filed a separate defence to the SOC as they were involved in the affairs of CTX in different capacities (see [4] above). Notwithstanding that, the Defendants, who were undisputedly all involved in the share issuance at the 30 April EGM, offer a consistent narrative about the share issuance, refuting that put forward by Kroll. The Defendants all aver that the share issuance at the 30 April EGM was in the best interests of CTX because of the financial difficulties CTX faced, and it had not been commercially unfair because it affected every other CTX shareholder to an equal extent as Kroll.[30]

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25 SOC at paras 73–75.

26 SOC at para 80(b).

27 SOC at para 86.

28 SOC at para 87.

29 SOC at paras 88–89.

30 2D-DCC at paras 7 and 197; 3D-DCC at paras 6–7; 4D-D at para 147.

13 According to the Defendants, CTX had faced cashflow problems since the fourth quarter of 2020. It remained in financial difficulty in March 2021 and was relying on loans and investment from Bai to sustain its operations.[31] The financial difficulties posed a problem for CTX with respect to its attempt to obtain the CML. This is because CTX had obtained in-principle approval from the MAS for the CML in December 2020, but it was required under the terms of the in-principle approval granted by MAS to maintain a sound financial position and ensure that financial requirements are met at all times ("the IPA Conditions").[32] The deadline to meet the IPA Conditions was 10 March 2021, in respect of which CTX was granted an extension of time until 30 April 2021, and if CTX failed to satisfy the IPA Conditions by the latter date, it would have to re-submit its application for the CML.[33] Coupled with that, CTX faced further financial difficulties when it committed in late-March 2021 to repurchase all of Xiamen Anne's shareholding in CTX, which increased its debts and liabilities by approximately S$10m.[34] The buyback had been necessary because Xiamen Anne was involved with regulatory breaches with China's security regulators, and these issues would pose an impediment in CTX obtaining its CML from the MAS.[35]

14 Against these financial difficulties, CTX turned to Bai and its related entities for financial support. First, CTX entered into investment agreements with two entities related to Bai. These appear to be the same investment agreements that have been identified by Kroll in the SOC, *ie*, the Investment

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31 2D-DCC at para 96.

32 2D-DCC at para 49; 3D-D at paras 33–34.

33 2D-DCC at para 101; 3D-D at para 51; 4D-D at para 116.

34 2D-DCC at paras 105 and 108; 3D-D at paras 56–58; 4D-D at paras 27.1–27.2.

35 2D-DCC at para 108.

Agreements (see [10] above). The Defendants aver that under the terms of the Investment Agreements, those entities were to invest up to US$15m with CTX,[36] and further, between 26 March and 31 March 2021, those entities remitted a total of US$1.3m to CTX.[37] Later in April 2021, Asia Green Fund (another of Bai's entities) extended an interest-free loan of US$1.2m to CTX, as part of the US$15m investment to be provided under the Investment Agreements.[38] By this time, CTX had nearly exhausted all available sources of funding, but it still had significant amounts of debts that would prevent it from satisfying the IPA Conditions by 30 April 2021.[39] In these circumstances, CTX also turned to Kroll for funding, but nothing materialised.[40] Bai subsequently stated that he was willing to provide the necessary financial support to CTX, but only if he could acquire full control and ownership of CTX. This arrangement necessarily required existing shareholders to sell their stake to Bai or be diluted to afford Bai a substantial controlling majority shareholding.[41] Kroll was then informed that that it was necessary for CTX to crystalise an option acceptable to Bai so that CTX could continue its operations.[42]

15 By the time of the 30 April EGM, a fresh injection of capital for CTX was necessary to ensure that it could continue to operate as a going concern and satisfy the IPA Conditions by the due date of 30 April 2021.[43] It was in this

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36 2D-DCC at para 102; 3D-D at para 52; 4D-D at para 110A(1).

37 2D-DCC at para 109; 3D-D at para 59.

38 2D-DCC at para 111; 3D-D at para 60.

39 2D-DCC at para 112; 3D-D at para 61.

40 2D-DCC at para 113.

41 2D-DCC at para 114; 3D-D at para 69.

42 2D-DCC at paras 116–118.

43 2D-DCC at para 126.

context that the 30 April EGM had been called for, and at which a majority of CTX's shareholders (save for Kroll, Bai and his related entity Asia Green Fund, which abstained from voting) voted in favour of a rescue proposal which involved Bai providing immediate funding, in exchange for substantial shareholding and control of CTX ("the Rescue Proposal").[44] Under the terms of the Rescue Proposal, all of the debt under the CLAs was converted into equity and some 55m shares were issued to Bai, among other things.[45] The Defendants aver that the Rescue Proposal was in the best interests of CTX, notwithstanding the dilution of CTX's existing shareholders, because it provided CTX with the required funding and ensured that all the IPA Conditions would be met, removing any further impediment that CTX faced in securing the CML.[46] Subsequent to Bai becoming a controlling shareholder, further funds were remitted to CTX that were used to settle significant debts that CTX owed, and CTX was eventually obtained the CML on 17 May 2021.[47] As for the subsequent issuance of shares on 12 May 2021, it had been provided for under the terms of the Investment Agreements,[48] and like the issuance of shares at the 30 April EGM, it also resulted in an equal dilution of the shareholding of other CTX shareholders.[49]

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44 2D-DCC at para 131; 3D-D at para 79; 4D-D at para 121.

45 2D-DCC at para 132.

46 2D-DCC at para 140; 3D-D at para 28.

47 2D-DCC at paras 145–146.

48 3D-D at paras 90–93 and 143–144.

49 2D-DCC at para 216.

The various allegations of omissions and non-disclosure of information

16 While Kroll's key complaint in Suit 916 appears to be the two series of share issuances that resulted in his shareholding being diluted to 0.67%,[50] he also makes several other complaints pertaining to the Defendants' conduct of the affairs of CTX. Specifically, Kroll says that the Defendants (whether Wong and/or Hong only, and/or together with Bai) had been guilty of various omissions and/or failed to disclose to him information relating to CTX's affairs. Paragraph 97 of the SOC contains a summary or concluding section that cites these omissions and/or non-disclosure of material information, alongside with the dilution of Kroll's shareholding, as the grounds relied on by Kroll for relief under s 216(1) of the Companies Act.[51] These allegations of omissions and non-disclosure, which I will elaborate on in detail below, form the subject of the Defendants' request for particulars in SUM 1405.

17 First, in the SOC, Kroll states that Wong and Hong, who were the "directing minds and wills behind CTX",[52] had caused CTX to enter into questionable contracts with two companies, Zeepson Technology Co Ltd ("Zeepson") and Saibotan Beijing Co Ltd ("Saibotan"), which involved large sums of payment amounting to about 35% of CTX's paid-up capital at the material time, which contributed to the depletion of CTX's funds.[53] These contracts eventually only benefitted Zeepson and Saibotan, which were related to Hong, as well as another minority shareholder, Yang. Kroll complains that, because of the opaque manner in which Wong and Hong had conducted CTX's

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50 SOC at para 96.

51 SOC at para 97.

52 SOC at para 13.

53 SOC at paras 57–58.

affairs, none of the transactions with Zeepson and Saibotan were disclosed to Kroll at the material time.[54] In Wong's Defence & Counterclaim (Amendment No 3) ("Wong's D&CC"), he stated that the contracts with Zeepson and Saibotan were for legitimate software development work, and further, that there was no obligation to disclose these transactions to Kroll, who was only a shareholder of CTX at the time those contracts were executed. [55] In Hong's Defence (Amendment No 2) ("Hong's Defence"), she reiterated that the contracts were legitimate, but her defence is that she owed no duties to Kroll, as she was never a director or shareholder of CTX.[56] In both the Reply to Wong's D&CC (Amendment No 4) ("the R2DCC") and the Reply to Bai's Defence (Amendment No 3) ("the R3D"), Kroll avers that the significant liabilities arising from the payments to Zeepson and Saibton "should have been (but were not)" brought to his attention by Wong and Hong when he subsequently became a director of CTX in June 2020.[57]

18 Second, in the SOC, Kroll avers that, while he had been informed by Wong and Hong of the financial difficulties that CTX had faced in the lead up to the 30 April EGM, the Defendants failed to disclose to him: (a) the existence of the Investment Agreements; and (b) that Wong had a personal obligation under an equity investment agreement entered into between CTX and Xiamen Anne in 2019 to repurchase all of Xiamen Anne's shares if stipulated conditions in the investment agreement were not met and on Xiamen Anne's request (see

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54 SOC at para 59.

55 2D-DCC at paras 178 and 180;

56 4D-DCC at paras 78 and 90.

57 Reply to the Defence & Counterclaim of the 2nd Defendant (Amendment No 4) ("R2DCC") at para 138(a); Reply to Defence & Counterclaim of the 3rd Defendant (Amendment No 3) ("R3D") at para 111(a).

also [10] above).[58] This equity investment agreement appears to refer to the agreement pursuant to which Xiamen Anne came to invest in CTX. These complaints of non-disclosure are reiterated by Kroll in the R2DCC.[59] The Defendants' response to this allegation of non-disclosure is that they were under no obligation to disclose to Kroll the information identified by Kroll, and that they are not able to provide a fuller response absent further particulars from Kroll as to why they were obliged to disclose this information to Kroll in the first place.[60]

19 On the related topic of Xiamen Anne's investment in CTX, Kroll also makes various other related complaints:

(a) First, he states in the R2DCC and the R3D that he had neither been consulted nor was he privy to the "investment or subscription agreement between Xiamen Anne and CTX".[61] This appears to also be a reference to the agreement pursuant to which Xiamen Anne subscribed to shares in CTX. For completeness, I note that while Kroll takes the position that Xiamen Anne invested in CTX *after* his investment under the Subscription Agreement,[62] Wong's position is that Xiamen Anne had first invested, and Kroll only agreed to invest in CTX after learning of Xiamen Anne's investment.[63]

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58 SOC at para 64A.

59 R2DCC at para 141A.

60 2D-DCC at para 193; 3D-D at para 123B; 4D-D at para 106C.

61 R2DCC at para 30(e), para 96(a); R3D at para 60(b).

62 R2DCC at para 30(b).

63 2D-DCC at para 40.

(b) Second, he states in the R2DCC that he was neither consulted on nor made privy to the buyout and/or exit deal agreement between Xiamen Anne and CTX and was not made aware of its terms.[64] This appears to be a reference to the agreement averred to by the Defendants in their defence, under which CTX committed to repurchase all of Xiamen Anne's shares, as a result of Xiamen Anne's regulatory issues and to avoid those issues jeopardising CTX's prospects of securing the CML (see also [13] above).[65]

(c) Third, Kroll states in the R2DCC, the R3D and R4D that he had not been provided with evidence showing the regulatory breaches that Xiamen Anne allegedly faced with its Chinese security regulators and which necessitated a buyback of all of Xiamen Anne's shares, and further, that Wong and Hong had failed to demonstrate that their claims about Xiamen Anne's regulatory breaches were true.[66] According to the SOC, matters pertaining to Xiamen Anne's regulatory breaches were part of the information that Wong and Hong represented to Kroll in informing Kroll that CTX faced severe financial difficulties (see also [9] above).

20 Returning to the other complaints made by Kroll, Kroll avers in the R2DCC and R4D that, from the time he became a shareholder of CTX, he was not provided adequate details by Wong or Hong on the investors or sources of funding explored by CTX, save for Bai, whom Wong and Hong insisted was the

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64 R2DCC at para 96(b).

65 2D-DCC at paras 105–106.

66 R2DCC at para 96(c); R3D at para 60(c); Reply to Defence of 4th Defendant (Amendment No 4) ("R4D") at para 22.

only option.[67] This appears to be a response to Wong and Hong's defence that the Rescue Proposal extended by Bai was the only available option for CTX at the material time, and that the adoption of the Rescue Proposal was in the best interests of CTX (see [12] above).

21 Finally, Kroll also avers in the SOC that Wong failed to disclose to him that CTX was already valued at US$200m pursuant to the Investment Agreements.[68] The point which Kroll appears to make by this averment is that the share issuance at the 30 April EGM to Bai had taken place at an extremely low valuation of CTX, and was meant to facilitate Bai's takeover of control of CTX.[69]

The particulars sought in SUM 1405

22 SUM 1405 is the Defendants' application for particulars in respect of various paragraphs in the SOC, the R2DCC, the R3D and the R4D. The paragraphs in respect of which particulars are sought largely relate to the various allegations of omissions and non-disclosure that I have elaborated on above. Briefly, they are:

(a) Paragraphs in the SOC, the R2DCC and the R4D relating to Wong and Hong's failure to disclose CTX's contracts with Zeepson and Saibotan, which form the subject of the requests for particulars in Categories 1, 10 and 14 of Annex A to SUM 1405.

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67 R2DCC at para 29(c); R4D at para 25(a).

68 SOC at para 92.

69 SOC at paras 92–93.

(b) Paragraphs in the SOC and the R2DCC relating to the Defendants' failure to disclose to him the existence of the Investment Agreements and that Wong had a personal obligation under an equity investment agreement between CTX and Xiamen Anne entered into in 2019 to repurchase all of Xiamen Anne's shares if stipulated conditions in the investment agreement were not met. These form the subject of the requests in Categories 2 and 11 of Annex A.

(c) Paragraphs in the R2DCC and the R4D relating to how he had never been consulted on, or made privy to, the investment subscription agreement between CTX and Xiamen Anne, which form the subject of the requests in Categories 6, 7 and 12 of Annex A.

(d) A paragraph in the R2DCC relating to how he had never been consulted on, or made privy to, the buyout or exit deal between Xiamen Anne and CTX, which form the subject of the requests in Category 8 of Annex A.

(e) Paragraphs in the R2DCC, the R3D and the R4D relating to how he had not been provided with evidence of the regulatory breaches that Xiamen Anne allegedly faced with its Chinese security regulators, which form the subject of the requests in Categories 9, 13 and 15 of Annex A.

(f) Paragraphs in the R2DCC and the R4D relating to how he had not been provided adequate details by Wong or Hong on the investors or sources of funding explored by CTX, which form the subject of the requests in Categories 5 and 16 of Annex A.

(g) A paragraph in the SOC relating to Wong's failure to disclose to him that CTX had been valued at US$200m pursuant to the Investment Agreements, which form the subject of the requests in Category 3 of Annex A.

23 Finally, the Defendants also seek particulars in respect of para 97 of the SOC in which Kroll provides a "Summary of Grounds of Relief". This forms the subject of the requests in Category 4 of Annex A.

24 The particulars sought by the Defendants in respect of each of these paragraphs come under two categories:

(a) The first category asks Kroll to identify, with reference to the "rights", "understandings" or "provisions" identified at paras 47 to 57 of the SOC, the "right", "understanding" or "provision" that had been breached by the act, omission or non-disclosure of information identified in the relevant paragraph of the pleading.[70] Paragraphs 47 to 57 of the SOC is a section titled "Mr Kroll's Legitimate Expectations as a Minority Shareholder". In particular, para 48 of the SOC sets out the legitimate expectations and understandings that Kroll held at all material times as a minority shareholder, and para 47 of the SOC sets out the documents and agreements relating to Mr Kroll's rights and obligations as a shareholder of CTX (see also [46]–[47] below). The remaining paragraphs of that section cite a few provisions from the Companies Act, CTX's Constitution and the Subscription Agreement which appear relevant to the allegations made by Mr Kroll in Suit 915. Although the

[70] Categories 1(a), 1(b), 1(c), 2(a), 3(a), 4(a), 5(a), 5(c), 6(a), 7(a), 8(a), 9(a), 9(c), 9(e), 10(a), 10(c), 11(a), 11(c), 11(e), 11(g), 11(i), 11(k), 12(a), 13(a), 13(c), 13(e), 14(a), 14(c), 15(a), 15(c), 15(e) and 16(a) of Annex A to HC/SUM 1405/2023.

first category of requests is framed as involving an *identification* exercise, as counsel for the Defendants explained at the hearing before me, what they effectively seek is the particulars of the legitimate expectation that Kroll relies on in respect of the allegation contained in the identified paragraph of the pleading and which is said to have been breached by that allegation.

(b) The second category asks Kroll to "specifically identify and particularise the specific source" of the "right", "understanding" or "provision" that has been identified.[71] This, as counsel explained, seeks particulars relating to the *source* of the legitimate expectation, in the sense of how it had been derived.

25 As the pleadings stand, it is undisputed that the SOC, while setting out the legitimate expectations relied on by Kroll, does not state the *source* of these legitimate expectations, in terms of how they had been derived. It is also not in dispute that the pleadings as they stand do not disclose any discernible relationship between the allegations identified in the various paragraphs of Kroll's pleadings for which particulars are sought in SUM 1405, and the legitimate expectations identified between paras 47 and 57 of the SOC.

The submissions

26 The Defendants argue that any finding of commercial unfairness is dependent on the context in which the acts alleged to constitute minority oppression take place, and that context is supplied by the legitimate expectation which prohibits the controlling majority from acting in the manner alleged. The

[71] Categories 1(d), 2(b), 3(b), 4(b), 5(b), 5(d), 6(b), 7(b), 8(b), 9(b), 9(d), 9(f), 10(b), 10(d), 11(b), 11(d), 11(f), 11(h), 11(j), 11(l), 12(b), 13(b), 13(d), 13(f), 14(b), 14(d), 15(b), 15(d), 15(f) and 16(b) of Annex A to HC/SUM 1405/2023.

plaintiff's legitimate expectations therefore provide the yardstick against which the conduct complained of can be assessed as to whether it constitutes commercial unfairness.[72] For the Defendants to properly understand and defend themselves against Kroll's case, it is necessary that Kroll identifies the legitimate expectation to which each of the alleged acts relate, as well as the source of that legitimate expectation.[73] The Defendants emphasised that it is not sufficient for them, in their defence, to merely admit to or deny the pleaded acts in question, because the main issue dealt with in a minority oppression claim is not merely the existence or non-existence of those pleaded acts, but whether the legitimate expectations of the plaintiff have been breached by those acts. A further problem arising from the lack of particulars is that, on the Defendants' case, each of them had played a different role in CTX's affairs at the material time (see also [5] above), and so as Kroll's pleadings stand, it is impossible for the Defendants to discern who had been a party to the legitimate expectation relied on by Kroll, and whose conduct would constitute a departure from those legitimate expectations.

27 The position taken by Kroll in SUM 1405, which can be summarised as the following three main points, is consistent with that which he had previously taken when responding to the Defendants' request for particulars dated 11 April 2023, in respect of the SOC, the R2DCC, the R3D and the R4D.[74] Those requests are worded in substantially similar if not identical terms as the requests in SUM 1405.

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72 Defendants' Written Submissions at para 25.

73 Defendants' Written Submissions at paras 27–28.

74 Bundle of Pleadings ("BP") Vol I at p 123; BP Vol II at pp 671, 821 and 935.

28 First, Kroll's position is that the legitimate expectations which he relies on for his claim in Suit 915 have already been sufficiently pleaded, by: (a) para 48 of the SOC which sets out the four legitimate expectations he held as a minority shareholder of CTX;[75] (b) para 47 of the SOC which identifies the various documents and agreements from which those legitimate expectations are derived (namely, CTX's Constitution, the Subscription Agreement, the Share Trust Agreement, the Share Trust Termination Agreement and the Deed for Transfer of Additional Shares) (see also [46]–[47] below);[76] and (c) the other paragraphs in the SOC which set out the background on how he came to invest in CTX.[77] The Defendants are therefore sufficiently notified of the case they have to meet.[78] Secondly, any requests for particulars on the source of the legitimate expectation relied on are not valid requests for particulars, as these requests seek, not material facts, but evidence as to how material facts relating to the legitimate expectations may be proven.[79]

29 Third, Kroll argues that most of the Defendants' requests for particulars are premised on an incorrect reading of his case in Suit 915, because it is not his case that the various instances of alleged non-disclosure and omissions constitute distinct or standalone allegations of oppression. Instead, they merely form part of the course of conduct that led to the issuance of shares which severely diluted Kroll's shareholding, and it is that which Kroll complains is

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75 SOC at para 48.

76 SOC at para 47.

77 SOC at paras 1–40.

78 Plaintiff's Written Submissions at para 31.

79 Plaintiff's Written Submissions at para 32.

oppressive conduct for the purposes of Suit 915.[80] It is not in dispute that the legitimate expectation relating to that complaint – though not its source – have been particularised at para 48 of the SOC.

The issues

30 SUM 1405 raises three issues for determination:

(a) First, in a claim for minority oppression under s 216(1) of the Companies Act, what are the facts that must be contained in the plaintiff's pleadings in order that the pleadings not be deficient, and do they extend to include the *source* of the legitimate expectations relied on by the plaintiff, as the Defendants argue?

(b) Secondly, in a claim for minority oppression, must *every* act alleged of the defendant-majority by the plaintiff in its pleadings be accompanied by particulars relating to the legitimate expectation that had been breached by that act?

(c) Thirdly, in the light of how the foregoing issues are determined, whether and to what extent the Defendants' requests for particulars in SUM 1405 are to be allowed?

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80 Plaintiff's Written Submissions at paras 35–36; Category 2 (BP p 126); Category 3 (BP p 127); Category 5 (BP p 672); Category 6 (BP p 673); Category 7 (BP p 675); Category 8 (BP p 676); Category 9 (BP p 678); Category 10 (BP p 681); Category 11 (BP p 684); Category 12 (BP p 823); Category 13 (BP p 825); Category 14 (BP p 827); Category 15 (BP p 973); Category 16 (BP p 939).

What must be contained in the pleadings for a claim in minority oppression?

31 Pleadings, which ought to set out the allegations of fact which a party asserting has to prove to the satisfaction of the court and on which it is entitled to relief under the law, is intended to delineate the parameters of a case and define the issues before the court, and also inform the parties of the case that they have to meet (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia")* at [36]). A party must therefore set out in its pleadings the "material facts", which are facts necessary for the purpose of formulating a complete cause of action (see *EA Apartments Pte Ltd v Tan Bek* [2017] 3 SLR 559 at [21]). Exactly what constitutes "material facts" is dependent on the context and the legal character of the claims advanced in each case, but at the minimum, it will necessarily encompass those facts that are necessary to put the defendants on notice of the case that they have to meet when it comes on trial (see *V Nithia* at [35]). "Material facts" are to be distinguished from the evidence by which the pleaded facts are to be proven, which will not be an appropriate subject in a request for particulars (see *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2011] SGHC 196 at [8]).

32 The question of what facts must be set out in a pleading for a claim in minority oppression therefore turns on what constitutes "material facts" for the purposes of such a claim. The starting point of the analysis is to consider its legal character. Section 216(1) of the Companies Act provides for four alternative but non-disjunctive situations in which relief may be invoked by a minority shareholder, the common thread of which is the existence of unfairness, namely, a departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is *entitled* to expect (see *Over*

& Over Ltd v Bonvests Holdings Ltd and another [2010] 2 SLR 776 ("*Over & Over Ltd*") at [70] and [77]; *Thio Syn Kym Wendy and others v Thio Syn Pyn and others* [2017] SGHC 196 ("*Thio Syn Kym*") at [42]).

33 These standards of fair dealing and fair play are derived from the legitimate expectations of the minority shareholder, which arise either from (a) the minority's legal rights enjoyed under the instruments that regulate their intra-corporate relationship with the majority, such as the company's Constitution or any collateral shareholder agreements that might have been entered into or (b) informal understandings or assumptions shared between the minority and the majority and which formed the basis of their association, which can arise either in the context of a quasi-partnership, or independently of whether the company is a quasi-partnership (see *Over & Over Ltd* at [78] and [84]; *Thio Syn Kym* at [43]–[44]; *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 at [106]). These legitimate expectations are not prescriptive *vis-à-vis* the majority, in that they do not *provide* for what the majority is entitled to do in respect of their conduct of the company's affairs. Instead, they impose *limits* on what the majority can do, and as a corollary, delineate what they cannot do. In this regard, it bears mention the majority's conduct can nevertheless come in excess of these limits and call for the court's intervention under s 216(1) of the Companies Act, even if the majority is acting within the fold of its strict legal rights (see *Over & Over Ltd* at [85]).

34 In a claim for minority oppression, the gist of the plaintiff's complaint is that the majority's conduct is in excess of those limits imposed by the standards of fair dealing and fair play that govern the parties' intra-corporate relationship. Obviously, therefore, the plaintiff must set out in its pleadings the legitimate expectations pursuant to which it says it is entitled to the majority *not*

acting in the way they had. However, stating or identifying these legitimate expectations *alone* is insufficient. The plaintiff must also set out in its pleadings the facts relating how the legitimate expectation had been derived or arrived at, or as the Defendants have put it in SUM 1405, the "source" of the legitimate expectation. This is so, for two reasons.

35 First, in the context of the law on minority oppression, the concept of a "legitimate expectation" is a legal construct, just like the concept of a "quasi-partnership". A plaintiff cannot simply *assert* the existence of a legitimate expectation; that a legitimate expectation exists is a fact to be found by the court, by reference to other facts proven at the trial of the action. These other facts will necessarily include, but are not limited to, those relating to *how* the plaintiff had come to enjoy that legitimate expectation. These facts will encompass the terms of the company's Constitution or the relevant shareholders' agreements, as well as the informal agreements or understandings between the minority and majority, pursuant to which the legitimate expectations are said to arise. These are also facts which the plaintiff must prove to the court's satisfaction, in order for the court to find that it indeed held the legitimate expectation which it now claims to have been breached. In other words, these are facts which the plaintiff must *prove* in order to obtain the relief sought (see *V Nithia* at [36]), and it is trite that these facts must be set out in the pleadings.

36 Second, without the plaintiff also pleading *how* the legitimate expectation had been arrived at, the defendant will not be notified of the case it has to meet. A defendant can defend itself in a minority oppression claim, either by saying that the legitimate expectations claimed by the plaintiff do not exist, or that the conduct complained of by the minority does not depart from those legitimate expectations. For the defendant to do the former, it necessarily must be put on notice of *how* the legitimate expectation had been arrived at, without

which the defendant will have no basis to dispute the existence of the legitimate expectation. The plaintiff's pleadings therefore must contain facts relating to the *source* of its legitimate expectations, so that the defendant can identify the defences that it can correspondingly put forward to dispute the existence of the legitimate expectation, for example, by saying that the articles of association relied on by the minority do not have the effect contended for, or that the informal agreement or understanding relied on by the minority in fact never existed or had been misconstrued by the minority.

37 Therefore, in my view, where a plaintiff relies on certain legitimate expectations in a minority oppression claim under s 216(1) of the Companies Act, the "material facts" that the plaintiff must set out in its pleadings will include facts relating to *how* those legitimate expectations had been arrived at, such as the strict legal rights enjoyed by the minority as contained in the instruments regulating the parties' intra-corporate relationship like the company's Constitution or shareholders' agreements, and/or the informal understandings or assumptions shared between the minority and the majority and how those understandings or assumptions had been arrived at.

Must every act alleged of the majority be accompanied by particulars as to the legitimate expectation breached?

38 Oppression can arise from an isolated or distinct act that is plainly contrary to the minority's legitimate expectations – for example, a dilution of the minority's shareholding despite an expectation to the contrary (see *Over & Over Ltd* at [74]; *Thio Syn Kym* at [42]; see also Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) ("Chew") at para 4.233). Oppression can also arise from the cumulative effect of a course of conduct; in other words when the impugned conduct straddles several categories

or grounds of oppressive conduct and are considered cumulatively to amount to a departure from the standards of fair dealing and fair play (see *Over & Over Ltd* at [128]; Chew at para 4.233).

39 An example of a case in which oppression had been found from a course of conduct was *Over & Over Ltd*. In that case, the plaintiff had relied on three incidents in establishing its claim for minority oppression against the defendants, who were the majority in a hotel joint venture: a set of related party transactions that the majority had procured, which involved entities related to the majority providing services to the hotel; a subsequent sale of shares by the majority to a publicly-listed company; and a rights issuance conducted in haste under the guise of allowing the company to discharge an outstanding loan. The Court of Appeal agreed with the trial judge that the related party transactions had not been oppressive but disagreed with the trial judge's findings in respect of the share sale and rights issue (see *Over & Over Ltd* at [99], [105] and [127]). The Court of Appeal found the share sale and issuance of rights, each of which were commercially unfair on their own, as constituting the "course of conduct" over which oppression of the minority took place (see *Over & Over Ltd* at [128]). The Court of Appeal further held that, while the related party transactions had not been oppressive, it was nevertheless relevant because it was indicative of the proclivity of the majority to abuse its rights at the expense of the minority whenever there was a collision of interests, and so it coloured the context in which the share sale and issuance of rights took place (see *Over & Over Ltd* at [99]–[100]). Hence, while the related party transactions did not form part of the "course of conduct" over which oppression of the minority took place, they nevertheless provided the background against which the two instances of oppression were to be assessed (see *Over & Over Ltd* at [128]).

40 Thus, where the plaintiff's case on minority oppression is founded upon the cumulative effect of a course of conduct, an act or an episode of conduct that is found to *not* constitute oppression can nevertheless form the background against which the other instances of oppressive conduct are to be assessed. Similarly, it must follow that, not every act or instance of conduct alleged of the majority and averred to in the plaintiff's Statement of Claim is necessarily an allegation of oppression, and it could well have been pleaded by the plaintiff to provide the background against which the other oppressive acts are to be assessed. A distinction therefore must be drawn between those acts or incidents of conduct that the plaintiff alleges to constitute oppression and for which it is relying on as a ground of relief under s 216(1) of the Companies Act, and those which are merely intended to form part of the background, against which allegations of oppression are to be assessed. Of course, whether an act or an incident of conduct comes within the former or latter category would be a question of reading the plaintiff's pleadings.

41 In my view, it is only in respect of acts or incidents of conduct relied on by the plaintiff as a ground of relief under s 216(1) of the Companies Act that the plaintiff can be obliged to provide particulars of legitimate expectations. It is only for such acts or incidents of conduct that the plaintiff is complaining that there had been a breach of legitimate expectations. Conversely, where the act or incident of conduct is *not* relied on as a ground of relief, it is not the plaintiff's case that there had been a breach of legitimate expectations, and it would effectively be an attempt at fitting a square peg in a round hole to oblige the plaintiff to provide particulars on legitimate expectations in respect of that act or incident of conduct. After all, the plaintiff's obligation to plead material facts and provide the necessary particular of its claim is coincident with the

complexion of its pleaded case, since these facts and particulars are provided for the defendant to understand what *that* pleaded case is.

42 Before concluding this section, let me make some brief observations on the argument by Kroll's counsel that Kroll is not obliged to provide particulars in respect of the various instances of alleged non-disclosure and/or omissions, because those are relied on by Kroll as forming part of the "course of conduct" culminating in the share issuance which Kroll complains is oppressive. The point which counsel appears to make is, because oppression can be found from a *course of conduct*, there is no requirement that the plaintiff provide particulars of the legitimate expectations that had been breached by the various acts alleged of the majority, so long as those acts form part of the course of conduct that ultimately led to an outcome that was oppressive for the plaintiff. In support of this submission, counsel pointed me to the Court of Appeal's decision in *Over & Over Ltd*, in which oppression was found from a "course of conduct".

43 I reject this submission, as it is, in my view, an incorrect reading of the Court of Appeal's decision *Over & Over Ltd*. As I have mentioned above, the "course of conduct" that the Court of Appeal had found to cumulatively amount to oppression in *Over & Over Ltd* comprised two incidents, each of which the Court of Appeal was satisfied had been oppressive (see [39] above). Thus, even if a plaintiff alleges that oppression took the form of a course of conduct, it must still establish that each of the impugned acts constituting that course of conduct is oppressive or commercially unfair, the only difference being that, because the court would have regard to the *cumulative effect* of the impugned conduct (see *Over & Over Ltd* at [127]), while it might not have been satisfied that the various instances of impugned conduct constitute oppression *individually*, it might well come to a different conclusion when things are viewed *cumulatively* and in respect of their present and future effect (see Chew at para 4.233, citing

Re Norvabron Pty Ltd (No 2) (1986) 11 ACLR 279). That the court considers the cumulative effect of the different instances of impugned conduct in cases where oppression is alleged by the plaintiff to have arisen from a "course of conduct", does not relieve the plaintiff of its burden of having to establish that each of the impugned acts were oppressive individually, only that the requisite threshold for a finding of oppression may be different because the court does not consider each act in isolation but in conjunction with other impugned acts. By parity of reasoning, even when oppression is alleged by plaintiff to take the form of a "course of conduct", each of the acts alleged to constitute part of that course of conduct would still be relied on by the minority as a ground of relief under s 216(1) of the Companies Act, and in respect of which particulars as to the legitimate expectation breached must be provided, as explained above (at [41]).

44 Further, this submission appears to conflate the *conduct* of the majority and the *outcome* of that conduct in the context of minority oppression claims. Section 216(1) of the Companies Act provides relief to the minority in respect of the majority's *conduct*, and not the outcome *per se*. Whether there has been commercial unfairness, *ie*, a departure from legitimate expectations, is also assessed in respect of that *conduct*. What the court is concerned with is whether the way in which the majority had acted constitutes such a departure. It is therefore no answer for Kroll resist a request for particulars in respect of acts alleged of the Defendants, on the basis that those acts form part of the course of conduct that culminated in an unfair outcome. If those acts are relied on by him as a ground of relief in Suit 915, then it remains his burden to prove that each of those acts are commercially unfair, and in turn, he would be obliged to provide particulars on the legitimate expectations breached, in respect of those acts.

Whether and to what extent the Defendants' requests for particulars are to be allowed?

45 With the above, I turn to the facts and consider the merits of the Defendants' requests for particulars in SUM 1405.

46 The starting point of the inquiry is whether the conduct alleged of the Defendants in the paragraphs to which the requests in SUM 1405 relate is relied on by Kroll as a ground of relief in Suit 915. Paragraphs 96 and 97 of the SOC purports to set out a summary of these grounds of relief. I cite these paragraphs in full to provide context for the discussion that follows:

> **VII. SUMMARY OF GROUNDS OF RELIEF**
>
> 96. Mr Kroll avers that Mr Wong, Ms Hong and Mr Bai Bo's actions in conducting the affairs of CTX, have caused his aggregate shareholding in CTX to be wrongfully and severely diluted from 7.67% to 0.67%.
>
> 97. Mr Koll further avers that Mr Wong, Ms Hong and Mr Bai Bo have caused the affairs of CTX to be conducted in a manner that is prejudicial to Mr Kroll and constitutes oppression and/or is in disregard of and/or prejudicial to Mr Kroll's interests as a shareholder of CTX, within the meaning of section 216 of the Companies Act, in that they have:
>
> a. Conducted CTX's affairs in a manner that severely diluted Mr Kroll's shares without any *bona fide* or legitimate purpose, thereby unfairly prejudicing Mr Kroll's interests in CTX as a minority shareholder;
>
> b. Breached the mutual understanding that Mr Kroll's shareholding would remain at or substantially similar to 7.67%;
>
> c. Infringed upon Mr Kroll's legitimate expectations: (i) to have his minority interests considered and shareholding preserved in the conduct of CTX's affairs; and/or (ii) that CTX's affairs and the Investment Sums would not be mismanaged; and/or

> d. Withheld material information from Mr Kroll, including in breach of his statutory rights as a shareholder of CTX.

47 As mentioned earlier, Kroll's position is that paras 47 and 48 of the SOC, which sets out the legitimate expectations that he relies on in Suit 915 and the instruments from which these legitimate expectations are derived, provides sufficient particulars (see [28] above). To provide context, I also cite paras 47 and 48 of the SOC in full:

> **IV. MR KROLL'S LEGITIMATE EXPECTATIONS AS A MINORITY SHAREHOLDER**
>
> 47. In addition to the Constitution of CTX ("**CTX's Constitution**"), the key written agreements and documents relating to Mr Kroll's rights and obligations as a shareholder of CTX include the Subscription Agreement, the Share Trust Agreement, the Share Trust Termination Agreement, and the Deed for Transfer of Additional Shares.
>
> 48. Mr Kroll at all material times held, as a minority shareholder, the legitimate expectation and/or it was understood that:
>
> a. His shareholding would not be diluted in a prejudicial or unfair manner, and that the affairs of CTX would be conducted by Relevant Directors and Majority Shareholders in accordance with the Companies Act, CTX's Constitution, the key written agreements and documents relating to Mr Kroll's rights and obligations as a shareholder of CTX, and the law;
>
> b. The Relevant Directors and Majority Shareholders would ensure that CTX's affairs were properly administered and legally conducted in accordance with their duties and obligations, that CTX's assets, finances, and property were properly accounted for in accordance with their duties and obligations;
>
> c. The Relevant Directors and Majority Shareholders would deal with him fairly as a minority shareholder; and

> d. The Relevant Directors and Majority Shareholders would not mismanage CTX's affairs and the Investment Sums.

48 The remaining paragraphs under this "Section IV" of the SOC go on to cite provisions from the Companies Act, CTX's Constitution and the Subscription Agreement. The provisions from the Companies Act and CTX's Constitution relate to the complaint that the notice provided for the 30 April EGM was insufficient,[81] while the provision from the Subscription Agreement relates to how Kroll was entitled to expect that any subsequent issuance of shares that is "not against investment consideration" within 5 years from the date of the Subscription Agreement would not "dilute in any way" Kroll's shareholding in CTX.[82] These paragraphs appear to deal with Kroll's complaint that he had not been given proper notice of the 30 April EGM and so any resolutions passed thereat were defective,[83] and that the issuance of shares at the 30 April EGM, which severely diluted his minority shareholding, was commercially unfair, though for completeness, I should add that the Defendants' position is that the provision against dilution in the Subscription Agreement is of no relevance to the share issuance at the 30 April 2021 and in May 2021, since those shares were issued to Bai and his related entities against investment consideration. In any case, the complaints to which the remaining paragraphs of Section IV of the SOC appear to relate are not the subject of the requests in SUM 1405.

49 I note that paras 52 and 53 of the SOC contain a general averment that, by reason of the facts pleaded in the remaining paragraphs of the SOC, which

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81 SOC at paras 49 and 50.

82 SOC at para 51(b).

83 SOC at paras 85–86.

will include those paragraphs in the SOC containing the allegations of omissions and non-disclosure and in respect of which particulars are sought in SUM 1405, the Defendants have acted in breach of Kroll's legitimate expectations, and also conducted the affairs of CTX in a manner that was oppressive and prejudicial to Kroll (see also [8] and [17]–[21] above). The question then is whether it might be said that, because of the general averment contained in paras 52 and 53 of the SOC, the allegations of omissions and non-disclosure are therefore *all* relied on by Kroll as grounds of relief in Suit 915, and so it is not possible, as I have attempted, to draw a distinction between conduct relied on as a ground of relief and those merely pleaded by way of background (see [41] above). In my view, this is not an issue.

50 First, this *cannot* be an issue in this case because Kroll has chosen to specifically set out at para 97 a summary of the grounds of relief which he relies on. It is therefore permissible, and correct as a matter of principle, that the court utilises para 97 as the basis for distinguishing between conduct of the majority relied on as a ground of relief and those merely pleaded by way of background. Secondly, in my view, a general averment like that contained in paras 52 and 53 of the SOC, read in the context of the SOC as pleaded, cannot have the effect of rendering every act or incident of conduct referred to in the paragraphs captured thereunder as conduct relied on as grounds of relief. Given how the general averment at paras 52 and 53 are worded, and coupled with the breadth and scope of the allegations contained in the paragraphs of the SOC that follow, the general averment at paras 52 and 53 will not have the effect of defining the issues before the court and informing the parties of the case that they have to meet (see *V Nithia* ([31] above) at [36]). For the avoidance of doubt, let me emphasise that, whether a general averment can have the effect of capturing all acts or incidents of conduct referred to in the paragraphs thereunder as conduct

relied on as grounds of relief is dependent on how exactly the pleading has been worded. The point I make here is therefore limited to the present case, in that, in the context of the SOC as pleaded, paras 52 and 53 cannot be read as having that effect.

51 With the above in mind, I turn to consider each of the requests in SUM 1405.

Categories 1, 10 and 14

52 I begin with the requests in Categories 1, 10 and 14. The paragraphs of the pleadings to which these requests respectively relate are: para 59 of the SOC; para 138(a) of the R2DCC; and para 111(a) of the R3D. The complaint made in these paragraphs is that Wong and/or Hong failed to disclose to Kroll the Zeepson and Saibotan contracts. The payments made under these contracts were described in the relevant paragraphs of the R2DCC and R3D as giving rise to "significant liabilities for CTX". The same point is made in the SOC, albeit at para 58, where it is said that the payments made amounted to approximately 35% of CTX's paid-up capital at the time. On Kroll's pleaded case (whether in the SOC or in the R2DCC and the R3D), the liabilities incurred under the Zeepson and Saibotan contracts were a reason for CTX's subsequent financial difficulties.

53 What these paragraphs complain of is not the fact of CTX's entry into the Zeepson and Saibotan contracts. The allegation here is Wong and/or Hong's failure to provide to Kroll information about these contracts, which Kroll says gave rise to significant liabilities for CTX. Thus, the issue is whether the failure by Wong and/or Hong to provide information in this instance amounted to a

withholding of "material information from Mr Kroll", which is relied on by Kroll at para 97(d) of the SOC as a ground of relief in Suit 916.

54 In particulars served by Kroll pursuant to the Defendants' request dated 1 April 2022, in which the Defendants had requested for particulars as to the "material information" which is said at para 97(d) to have been withheld from Kroll *qua* shareholder, Kroll states that the "material information":[84]

> … includes (i) information relating to CTX's expenditure and/or anticipated expenditure that resulted in CTX's alleged financial difficulties; (ii) the buyout arrangements and/or agreements CTX had entered into with its other shareholders; and (iii) the arrangements and/or agreements CTX had entered into with the 3rd Defendant/his associated companies.

55 On the face of the pleadings, I accept that the Zeepson and Saibotan contracts, which is said by Kroll to have resulted in CTX incurring significant liabilities, would be "information relating CTX's expenditure … that resulted in CTX's alleged financial difficulties". Therefore, I accept that the withholding or non-provision of the information relating to the Zeepson and Saibotan contracts is relied on by Kroll under para 97(d) of the SOC as a ground of relief. Accordingly, for this allegation of non-provision of material information, Kroll must provide particulars of the legitimate expectation relied on, including why Wong and/or Hong were obliged to disclose this information to him, as well as the source of this legitimate expectation. I therefore allow in entirety all the requests coming under Categories 1, 10 and 14.

56 For completeness, I add that:

(a) Kroll, in his response to the Defendants' request for particulars dated 11 April 2023, had provided the particulars relating to the

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84 BP Vol I at p 120.

legitimate expectation (but not its source) in respect of para 59 of the SOC, which is the subject of Category 1(c), by referring to three of the legitimate expectations pleaded at para 48 of the SOC.[85]

(b) The requests in Categories 1(a) and 1(b), which are worded slightly differently from all the other requests in SUM 1405, ask for the "capacity" in which Wong and Hong were obliged to disclose the information relating to the Zeepson and Saibotan contracts to Kroll. I understand this request to be directed at ascertaining whether the legitimate expectation relating to the disclosure of material information is shared between Kroll (on the one hand) and either Wong or Hong or both (on the other). It is on this basis that I allowed the requests in Categories 1(a) and (b).

Categories 2 and 11

57 I now turn to the requests in Categories 2 and 11. The paragraphs of the pleadings to which these requests respectively relate are: para 64A of the SOC; and para 141A of the R2DCC. The complaint made in these paragraphs is that the Defendants failed to disclose to Kroll (a) the existence of the Investment Agreements and (b) that Wong had personal obligations under the equity investment agreement between CTX and Xiamen Anne entered into in 2019 to repurchase all of Xiamen Anne's shares if the stipulated conditions in the agreement were not met and on Xiamen Anne's request.

58 Reading these paragraphs in context, I understand that the point made by Kroll, when referring to the alleged non-disclosure of the Investment Agreements, is to emphasise that CTX was in fact *not* in such dire financial

[85] BP Vol I at p 124.

straits that Wong and Hong had represented to him, which formed the pretext to the subsequent discussions in which they asked for Kroll to be bought out, and eventually, the issuance of shares at the 30 April EGM pursuant to the adoption of the Rescue Proposal. This is because CTX in fact had ready recourse to financing under the terms of the Investment Agreements. Accordingly, the adoption of the Rescue Proposal would have been unnecessary, and similarly, it would not have been in in the best interests of CTX. The allegation relating to non-disclosure of the Investment Agreements therefore appears to provide the context in which the issuance of shares and dilution of Kroll's shareholding took place.

59 However, "material information", the withholding of which Kroll relies on as a ground of relief at para 97(d) of the SOC, is said to also include "the arrangements and/or agreements that CTX had entered into with the 3rd Defendant/his associated companies". This would include the Investment Agreements which, on Kroll's pleaded case, was entered into between CTX and two companies "connected to and/or controlled by" Bai.[86] The non-provision of information relating to the Investment Agreements is therefore relied by Kroll as a ground of relief. Accordingly, Kroll must provide particulars of the legitimate expectation relied on, and its source, in connection with this alleged non-disclosure.

60 As for Wong's personal obligations under the equity investment agreement between CTX and Xiamen Anne, this does not come within any of the categories of "material information" pleaded at para 97(d) of the SOC. I considered if it might be possible to take the view that the information relating to Wong's personal obligations would constitute "information relating to CTX's

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86 SOC at para 11.

expenditure … that resulted in CTX's financial difficulties". That is a possible reading because there is some relationship between Wong's personal obligations and CTX's expenditure arising from its buyback of Xiamen Anne's shares – if Wong in fact had personal obligations to repurchase Xiamen Anne's CTX shares, then it might be said to have been unnecessary for CTX to repurchase those shares and incur the resulting financial difficulties.

61 However, I rejected that view. This is because CTX's obligation to repurchase Xiamen Anne's shares, which is said to have arisen following issues that Xiamen Anne encountered with its Chinese security regulators, is separate and distinct from Wong's personal obligation to repurchase Xiamen Anne's shares, which existed under the terms of the equity investment agreement between CTX and Xiamen Anne entered into in 2019. Also, on the pleaded facts, Wong's personal obligation appears to have existed prior to the crystallisation of CTX's repurchase obligations. Accordingly, information relating to Wong's personal obligations cannot be said to be relevant or relate to the expenditure that CTX was to incur as a result of its repurchase of Xiamen Anne's shares.

62 For the reasons explained above, the non-disclosure of Wong's personal obligations is not relied on as a ground of relief, and so there is no basis for Kroll to be ordered to provide particulars in respect of this allegation. Further, reading these paragraphs as a whole, I understand Kroll to be suggesting that it had been unnecessary for CTX to repurchase Xiamen Anne's shares, since Wong could have repurchased those shares pursuant to its personal obligations. Therefore, the expenditure arising from CTX's repurchase of Xiamen Anne's shares was unnecessary, and so CTX in fact did not face such significant financial difficulties as Wong and/or Hong claimed it did. Accordingly, it could not be said that the adoption of the Rescue Proposal and the subsequent share

issuance was in the best interests of CTX and its minority shareholders, including Kroll. On this basis, I accept that the reference to the Defendants' non-disclosure of Wong's personal obligations is intended to provide the background against which the subsequent share issuance and dilution of Kroll's shareholding took place.

63 For the above reasons, I allow the requests in Categories 2 and 11, only to the extent that it relates to the Defendants' non-disclosure of the Investment Agreements, but not in respect of Wong's personal obligations under the equity investment agreement between CTX and Xiamen Anne.

Categories 6, 7 and 12

64 I now turn to the requests in Categories 6, 7 and 12. The paragraphs of the pleadings to which each of these requests respectively relate are: para 30(e) of the R2DCC; para 96(a) of the R2DCC; and para 60(b) of the R3D. The complaint made in these paragraphs is that Kroll was "neither consulted on nor privy to" or made "aware of the terms" of the investment or subscription agreement between Xiamen Anne and CTX. It will appear that there are two omissions identified in this complaint, though it is not apparent from the pleadings as to who among the Defendants were involved: (a) that Kroll was not "consulted on" the investment or subscription agreement between Xiamen Anne and CTX; and (b) that the terms of that agreement were not made known to Kroll.

65 However, for all three categories, the Defendants only seek particulars in respect of the first omission, namely, that Kroll had not been consulted on the investment or subscription agreement between Xiamen Anne and CTX. Nowhere in the SOC does Kroll rely on the Defendants' failure to consult him,

whether specifically in connection with that agreement, or more generally, in connection with CTX's affairs, as a ground of relief. It is also not Kroll's pleaded case that the Defendants are obliged, in their conduct and management of CTX's affairs, to consult him on matters like the investment or subscription agreement between Xiamen Anne and CTX. Since this omission to consult Kroll is not relied on by Kroll as a ground of relief, there is no basis for Kroll to be ordered to provide particulars. I therefore do not allow the requests in Categories 6, 7 and 12.

66 For completeness, let me state that, even if particulars had been requested in respect of the second omission, I would not have allowed them. The investment or subscription agreement between Xiamen Anne and CTX does not come within any of the categories of "material information" referred to at para 97(d) of the SOC. The arrangements and/or agreements between CTX and its other shareholders, which Kroll has classified as coming under "material information", are limited to those relating to the buyout of those other shareholders. It does not include arrangements and/or agreements under which those shareholders came to invest in CTX. Accordingly, the non-disclosure of information relating to the investment or subscription agreement between Xiamen Anne and CTX is not relied on by Kroll as a ground of relief, and so there is in any event no basis for Kroll to be ordered to provide particulars in respect of this allegation.

Category 8

67 I now turn to the request in Category 8, which relates to para 96(b) of the R2DCC. The complaint made here is that Kroll was "neither consulted on nor privy to" or made "aware of the terms" of the buyout or exit deal agreement between Xiamen Anne and CTX. This would appear to refer to the arrangement,

pursuant to which CTX undertook to repurchase all of Xiamen Anne's shares, which Kroll states Wong and Hong had informed him of (see [9] above).[87] There are similarly two omissions identified in this complaint, similar to the paragraphs of the pleadings to which the requests in Categories 6, 7 and 12 relate, namely: (a) that Kroll was not "consulted on" the buyout or exit deal; and (b) that Kroll was not made aware of the terms of that buyout or exit deal.

68 Similar to the requests in Categories 6, 7 and 12, for Category 8, the Defendants only seek particulars in respect of the first omission that Kroll had not been consulted on the buyout or exit deal agreement between Xiamen Anne and CTX. However, similar to the analysis above, nowhere in the SOC does Kroll rely on the Defendants' failure to consult him, whether specifically in connection with that agreement, or more generally, in connection with CTX's affairs, as a ground of relief. It is also not Kroll's pleaded case that the Defendants are obliged, in their conduct and management of CTX's affairs, to consult him on matters like the buyout or exit deal agreement between Xiamen Anne and CTX. Since this omission to consult Kroll is not relied on as a ground of relief, there is no basis for Kroll to be ordered to provide particulars in respect of this allegation. I therefore do not allow the requests in Category 8.

69 For completeness, let me state that, if particulars had been requested in respect of the first omission, I would have allowed them. The buyout or exit deal agreement between Xiamen Anne and CTX is an example of "buyout arrangements and/or agreements that CTX had entered into with its other shareholders" and so comes within the category of "material information" referred to at para 97(d) of the SOC. The non-disclosure of the buyout or exit deal agreement between Xiamen Anne and CTX is therefore a ground of relief

87 SOC at para 63(d).

relied on by Kroll, as stated at para 97(d) of the SOC, and in respect of which Kroll can be obliged to provide particulars if the Defendants had sought these particulars.

Categories 9, 13 and 15

70 I now turn to the requests in Categories 9, 13 and 15. The paragraphs of the pleadings to which each of these requests respectively relate are: (a) para 96(c) of the R2DCC; (b) para 60(c) of the R3D; and (c) para 22 of the R4D. The complaint made in these paragraphs is two-fold: (a) first, that Kroll had not been provided with evidence of Xiamen Anne's regulatory breaches that necessitated the buyback of Xiamen Anne's shareholding by CTX; and (b) second, that Wong and/or Hong failed to demonstrate that their "claims" were true. These "claims" appear to be a reference to the claims which Kroll avers in the SOC as having been made by Wong and Hong when they pressured him to exit CTX at a low price, which included a claim about Xiamen Anne having faced issues with its Chinese security regulators (see [9] above).[88]

71 On Kroll's pleaded case in the SOC, Xiamen Anne's regulatory breaches was what had triggered the need for CTX to buyback the entirety of Xiamen Anne's shareholding, which resulted in CTX incurring liabilities of S$10m.[89] On Kroll's pleaded case, this expenditure was one of the reasons that Wong and/or Hong had cited as exacerbating CTX's financial difficulties, and which necessitated Bai's subsequent investment in CTX.[90] Accordingly, evidence of Xiamen Anne's regulatory breaches is an example of "information relating to CTX's … anticipated expenditure that resulted in CTX's alleged financial

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88 SOC at para 63(c).

89 SOC at para 63(d).

90 SOC at para 63.

difficulties", and so comes within the category of "material information" referred to at para 97(d) of the SOC. The non-disclosure of evidence of Xiamen Anne's regulatory breaches is therefore a ground of relief relied on by Kroll, as stated at para 97(d) of the SOC, and in respect of which Kroll is obliged to provide particulars. I therefore allow the requests in Categories 9(a) and 9(b), 13(a) and 13(b), as well as 15(a) and 15(b).

72 I turn now to the second complaint raised in these paragraphs, which is that Wong and/or Hong failed to demonstrate to Kroll that their claims relating to Xiamen Anne's regulatory breaches were true. The gist of the complaint here is not one of failure to provide information, but rather, that Wong and/or Hong failed to do something in their conduct of CTX's affairs *vis-à-vis* Kroll. Nowhere in the SOC does Kroll rely on this omission as a ground of relief. It is also not Kroll's pleaded case that Wong and/or Hong are obliged, in their conduct and management of CTX's affairs, to provide evidence or proof to substantiate their representations made to Kroll, whether generally or specifically in respect of this representation pertaining to the buyback of Xiamen Anne's shares. Accordingly, there is no basis for Kroll to provide particulars in respect of the second complaint. Thus, save for the requests mentioned above (at [71]), I disallow the remaining requests in Categories 9, 13 and 15.

Categories 5 and 16

73 I now turn to the requests in Categories 5 and 16. The paragraphs of the pleadings to which these requests respectively relate are: (a) para 29(c) of the R2DCC; and (b) para 25(a) of the R4D. The complaint made by Kroll in these paragraphs is that, from the time he became a shareholder of CTX, he had not been provided adequate details on the investors or sources of funding *explored*

by CTX, other than Bai's offer to invest in CTX. The complaint here is that of non-provision of information, and specifically, information relating to other *potential* investors or sources of funding, given the qualification "explored by CTX". Information relating to *potential* investors, however, does not come within the category of "material information" referred to in para 97(d) of the SOC. Therefore, the non-provision of such information is not relied on by Kroll as a ground of relief, whether in para 97(d) of the SOC or anywhere else in the SOC, and accordingly, there is no basis for Kroll to be ordered to provide particulars relating to the legitimate expectation said to be breached by this allegation.

74 For completeness, I also add that Kroll's complaint about not having been provided adequate information about other potential investors or sources of funding, when read in context, is meant to provide the background and context to the share issuance at the 30 April EGM to Bai and his related entities. The point that Kroll appears to make by this averment is that CTX might well have had other options, and so Bai's investment was not as necessary and essential to CTX as Wong and/or Hong had claimed. Therefore, reading this complaint in context, it appears to be intended to provide the background to the share issuance and to support the view that the share issuance was commercially unfair.

Category 3

75 I now turn to the request in Category 3, which relates to a part of para 92 of the SOC. The complaint made here is that Wong never disclosed to Kroll that CTX had been valued at US$200m pursuant to the Investment Agreements, which provided up to US$15m in funding. However, the complaint made here is not simply that Wong failed to disclose to Kroll the Investment Agreements

(see [57]–[59] above), but that Wong had failed to disclose to Kroll the up-to-date valuation of CTX as obtained under the Investment Agreements. The fact that Wong is said to have failed to disclose is therefore not information relating to the "agreements that CTX had entered into with the 3rd defendant/his associated companies", but rather, a specific attribute of CTX, which does not come within the category of "material information" relied on at para 97(d) of the SOC. Nowhere in the SOC does Kroll rely on the non-disclosure of this fact as a ground of relief. It is also not Kroll's pleaded case that Wong is obliged, in his conduct and management of CTX's affairs, to disclose the up-to-date valuation of CTX to Kroll from time to time. Accordingly, there is no basis for Kroll to be ordered to provide particulars in respect of this complaint.

76 For completeness, I also add that, when read in context, the complaint made by Kroll at para 92 of the SOC is to demonstrate that the subsequent issuance of shares to Bai and/or his related entities at the 30 April EGM and on 12 May 2021 had taken place at unjustified valuations. Accordingly, this complaint is meant to provide the background in which the issuance of shares should be assessed, and to demonstrate that the Defendants' conduct in respect of the share issuance had been commercially unfair.

Category 4

77 Finally, I turn to the request in Category 4. This relates to para 97 of the SOC, which I have set out above (at [46]). Paragraph 97 of the SOC summarises the different grounds of relief relied on by Kroll. In Kroll's response to the Defendants' request for particulars dated 11 April 2023, Kroll had provided particulars of the legitimate expectations relied on (but not their source) in respect of para 97 of the SOC, which is the subject of the request in Category

4(a).[91] This would constitute sufficient particulars, in so far as the identification of the relevant legitimate expectations is concerned. However, para 97 of the SOC does not contain particulars on the source of these legitimate expectations that have been identified, and so for the reasons I have explained above (at [37]), it remains deficient. I therefore allow in entirety the request in Category 4, while noting that the requests in Category 4(a) appear to have been answered to the Defendants' satisfaction.

Conclusion

78 For the above reasons, I allow in full the requests for particulars in Categories 1, 4, 10 and 14, allow in part the requests in categories 2, 9, 11, 13 and 15; and disallow the requests in Categories 3, 5–8, 12 and 16. The following table is a summary of my decision on each of the requests in SUM 1405:

Category	Whether allowed and if so, the extent to which it is allowed
Category 1	Allowed in full.
Category 2	Allowed, save for para 64A(b) of the SOC.
Category 3	Not allowed.
Category 4	Allowed in full.
Category 5	Not allowed.
Category 6	Not allowed.
Category 7	Not allowed.
Category 8	Not allowed.

[91] BP Vol I at pp 127–128.

Category 9	Allowed, save for the part of para 96(c) which states "Mr Wong and/or Ms Hong failed to demonstrate that their claims were true".
Category 10	Allowed in full.
Category 11	Allowed, save for the part of para 141A which states "and (ii) Mr Wong Hand personal repurchase obligations under the equity investment agreement".
Category 12	Not allowed.
Category 13	Allowed, save for the part of para 60(c) which states "Mr Wong and/or Ms Hong failed to demonstrate that their claims were true".
Category 14	Allowed in full.
Category 15	Allowed except for the part of para 22 which states "Mr Wong and/or Ms Hong failed to demonstrate that their claims were true".
Category 16	Not allowed.

79 I make one final point for completeness. Given the way the SOC had been drafted, I necessarily had to engage in an exercise of interpreting the pleadings (whether on their own or in conjunction with the particulars that have been furnished previously) in determining whether the allegations contained in the pleadings and in respect of which particulars were sought in SUM 1405 are relied on by Kroll as grounds of relief under s 216(1) of the Companies Act, and in turn, whether the Defendants had a valid basis for their requests in SUM 1405 (see, for example, [60]–[61] above), which I acknowledge is imperfect. A

concern therefore arises as to whether Kroll can subsequently, in the absence of a formal amendment to the SOC or his other pleadings, adopt as his case in Suit 915 an interpretation of the pleadings that is inconsistent with that which I have arrived at above, and on which I have relied in refusing some of the Defendants' requests for particulars in SUM 1405. In my view, this is not an issue.

80 Under the doctrine of approbation and reprobation as applied in the context of litigation, a party is precluded from adopting an inconsistent position against another party in the proceedings, so long as it has received an actual benefit as a result of the earlier position that is inconsistent with that which it now seeks to adopt (see *BWG v BWF* [2020] 1 SLR 1296 at [103] and [118]). Kroll's position in SUM 1405 is that all paragraphs in his pleadings in respect of which particulars were sought were simply pleaded by way of background, as illustrating the course of conduct that led to the issuance of shares, which he complains is commercially unfair (see [29] above). In other words, Kroll's position must be that those paragraphs do not contain allegations that are relied on by him as grounds of relief. Indeed, it was emphasised by Kroll's counsel in argument that those paragraphs in respect of which particulars were sought in SUM 1405 do not represent distinct allegations of oppression. By virtue of that position, Kroll has been relieved of having to provide certain particulars requested in SUM 1405. Having taken that benefit, I do not see how Kroll can subsequently proceed in Suit 915 on a different interpretation of the SOC or his other pleadings that is inconsistent with that which he had taken as his position in SUM 1405, and which would defeat the basis on which some of the requests for particulars in SUM 1405 had *not* been allowed. I should emphasise, however, that the foregoing sentence is limited to the situation where Kroll seeks to adopt a different position in Suit 915 by virtue of an interpretation of the pleadings that is inconsistent with that which I have relied on in refusing

some of the Defendants' requests for particulars. Kroll is obviously free to adopt a different position by way of a formal amendment to the SOC or any other pleading he relies on and if the Defendants deem the amended pleadings deficient, they are free to seek particulars in a fresh request on whatever basis they deem fit, and SUM 1405 can have no relevance since the requests in SUM 1405 were in respect of the SOC and the other pleadings as they stood before me at the time SUM 1405 was heard.

81 I will separately deal with the consequential directions arising from my decision as summarised above (at [78]), as well as the costs of SUM 1405, at a hearing to be fixed by the Registry.

Perry Peh
Assistant Registrar

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