Annex

Reports of the Market Misconduct Tribunal on the dealings in the shares of ABC Communications (Holdings) Limited

The following is a summary of the reports of the Market Misconduct Tribunal on the dealings in the shares of ABC Communications (Holdings) Limited ("ABC") –

Introduction

By notice under section 252(2) of the Securities and Futures Ordinance (Cap 571) ("SFO") dated 9 April 2010, the Financial Secretary ("FS") required the Tribunal to conduct proceedings and determine -

(a) whether any market misconduct in the nature of insider dealing or otherwise has taken place;

(b) the identity of every person who has engaged in the market misconduct found to have been perpetrated; and

(c) the amount of profit gained or loss avoided, if any, as a result of the market misconduct found to have been perpetrated

arising out of dealings in the listed securities of ABC. Persons suspected to have engaged in market misconduct activities are:

(a) Mr. Vincent SZE Chun Ning ("Vincent Sze"), the Executive Director and Deputy Managing Director of China Water Industry Group Limited ("China Water") at the material time;

(b) Mr. WANG Chao ("Wang Chao"), a director and the General Manager of Jinan Hong Quan Water Supply Limited ("Jinan Hong Quan Water") at the material time; and

(c) Mr. GUO Ai Wen ("Guo"), the Chairman of Jinan Hong Quan Water at the material time.

2. The Tribunal, under the Chairmanship of the Honourable Mr. Justice Lunn, completed its proceedings and submitted a report of its findings in relation to questions (a), (b) and (c) of the FS's Notice on 20 October 2011. The Tribunal submitted a report in relation to consequential orders to the FS on 2 November 2011.

<u>Background</u>

3. In September or October 2007, Mr. Andy Cheung Wai Shing ("Andy Cheung") was told by Vincent Sze that he was seeking to buy a listed company. In January 2008, Andy Cheung found out from a solicitor, Mr. Lawrence Chan Chun Kau ("Lawrence Chan") of Messrs Stephenson, Harwood and Lo, Solicitors, that there was a listed company for sale. On 25 January 2008, Lawrence Chan was provided with a 'proof of funds' on behalf of the potential buyer issued by DBS Bank (Hong Kong) Limited ("DBS"), but in which the account holders name was redacted, asserting a balance as at 8 November 2007 of over $200 million. On 29 January 2008, Lawrence Chan was informed that the potential buyer was Wang Chao.

4. On 19 February 2008, Lawrence Chan met Vincent Sze and Andy Cheung at the office of Stephenson Harwood & Lo. Lawrence Chan was given copies of the 'Confidentiality Undertaking' signed by each of them before he disclosed the identity of the company, namely ABC, and was also given a 'Confidentiality Undertaking' apparently signed in the name of Wang Chao. However, at the request of Vincent Sze and Andy Cheung the document was returned to them. Lawrence Chan was told that the buyer was a consortium led by Vincent Sze and Mr. Lin Qun ("Lin Qun") and that Virtue Dragon Investments Limited ("Virtue Dragon") was to be used as the corporate vehicle to purchase the shares. On the same day, a cheque drawn on the account Easygold Investments Limited ("Easygold"), a company owned by Wang Chao, in the sum $500,000 was given by Vincent Sze to Stephenson Harwood & Lo as a forfeitable deposit.

5. In March and April 2008, Andy Cheung continued to negotiate the sale price and structure with Lawrence Chan and informed Vincent Sze of the details and status of the negotiations. Throughout the negotiations, the premium placed on the status of ABC as a listed company remained close to $180 million and the overall quantum of the special dividend did not vary much. A BVI company called Asian Gold Dragon Ltd (“AGD”), which replaced Virtue Dragon as the purchaser, was acquired from an accounting firm by Andy Cheung on behalf of Vincent Sze in March 2008.

Dealing in the shares of ABC

6. The price of ABC shares on the Stock Exchange of Hong Kong rose 32.3% from the closing price of $0.62 on 25 April 2008 to a closing price of $0.82 on 30 April 2008 with a significant increase in turnover. The total turnover rose from 326 000 shares on 25 April 2008 to 24 490 000 shares on 29 April 2008.

7. Between 31 March and 30 April 2008, 4 616 000 ABC shares were bought for $3,310,440 for the share trading account of Guo with First Shanghai Securities Limited (“First Shanghai”). In order to fund the purchase of the ABC shares during the period, the Guo account sold shares in China Water. Those shares had been purchased on 2 and 3 August 2007 with the sum of $12,145,000 provided by Wang Chao through Easygold.

8. On 30 April 2008, Vincent Sze and Lin Qun signed an agreement on behalf of AGD to acquire, inter alia, HCBC Communications (International) Limited’s (“HCBC”) holding of ABC shares. On 2 May 2008, trading in ABC shares was suspended pending the release of price sensitive information.

Provenance of the monies used by Vincent Sze to defray the costs and expenses of the acquisition of ABC shareholding in ABC

9. A significant part of the monies paid into the account of Vincent Sze which were used by Vincent Sze to defray the costs and expenses of the

acquisition of ABC shareholding in ABC had its provenance in the proceeds of the sale of an interest in Jinan Hong Quan Water to China Water for $230 million by an agreement dated 26 November 2007. Vincent Sze was Deputy Managing Director of China Water. Originally the interest had been acquired in December 2006 by Chinese Water Industry Group Limited for $47.7 million, in which company Wang Chao had interest. Although that interest was transferred to Blue Mountain Hong Kong Group Limited ("Blue Mountain") in March 2007 for the same price, Wang Chao retained his interest. As a result, in January 2008 a significant part of the payment of the $230 million proceeds of sake was paid at Wang Chao's direction into the account of his brother Mr. Wang Xiaobo ("Wang Xiaobo") and then to Vincent Sze. On 2 May 2008, Lawrence Chan was presented by Vincent Sze with a cashier's cheque in the sum of $20 million, which was provided by Wang Chao through Wang Xiaobo and Easygold. By an agreement dated 7 May 2008, President Securities Hong Kong Limited ("President Securities") agreed to provide a facility of up to $90 million to AGD to fund the anticipated mandatory general offer required of AGD for all ABC shares. The agreement required the provision of security by AGD of a deposit of not less than $20 million, inter alia before the drawdown of the facility, and a pledge of the approximately 245 million ABC shares to be acquired from HCBC upon completion of the Sale and Purchase agreement. Those funds were provided in large part by Wang Chao via Wong Xiaobo and Easygold. Also, AGD provided for an 'arrangement fee' to be paid to President Securities of $4.2 million. Again, those funds were provided in large part by Wang Chao.

10. On 30 May 2008, ABC announced that AGD had entered into a share purchase agreement with HCBC by which AGD had unconditionally agreed to purchase HCBC's 52.59% shareholding in ABC at approximately $0.3992 per share with a special dividend of $0.5866 per share. This meant that ABC shareholders could sell their shares for a guaranteed price of $0.9858 per share.

11. When trading in ABC shares resumed on 2 June 2008, the share price immediately rose to $1.00, an increase of 21.95%.

12. On the instructions of Vincent Sze on 20 August 2008, a cashier's order was issued for the payment to HCBC of the balance of the monies due under the agreement for the acquisition of its holdings in ABC of $78,014,865. Again, the funds were provided in large part by Wang Chao.

13. When the final tranche of ABC shares was sold in September 2009, the accumulated total of monies in Guo's account was transferred to Wang Chao's account with First Shanghai.

<u>Insider Dealing in ABC Shares</u>

<u>Wang Chao</u>

14. Given that Wang Chao stated in terms in his record of interview of 20 July 2010 that he was willing to cooperate with these proceedings, but that he was unable to attend or instruct a lawyer to act on his behalf because of the criminal proceedings brought against him in Hainan, the Tribunal was satisfied that, at least until his release from custody on 12 April 2011 he was not in a position to comply with the notice issued by the Tribunal to return to attend and participate in these proceedings and give oral evidence. In all the circumstances, the Tribunal was satisfied that, from circumstances beyond the control of the Tribunal Wang Chao was not afforded " ... a reasonable opportunity to be heard", as required by section 252(6) of the Ordinance. Accordingly, in consequence the Tribunal was precluded from identifying him, pursuant to section 252(3)(b) of the Ordinance, as a person who has engaged in market misconduct.

<u>Guo</u>

15. The Tribunal was sure that, whether or not Wang Chao did so online directly or indirectly through Guo, the orders to sell the China Water shares in the account in the name of Guo and to buy ABC shares came from Wang Chao. Throughout, Wang Chao controlled that account. The Tribunal was satisfied that Guo's role was merely that of a nominee, concealing the fact that the beneficial owner of the shares was Wang Chao. In those circumstances, even if the ABC shares were bought as a result of orders placed by Guo, albeit at the direction of Wang Chao, there was no need for the latter to give him the relevant information in relation to ABC. There was no evidence that Wang Chao did so.

Vincent Sze

16. Pursuant to section 252(3)(a) and (b) of the Ordinance the Tribunal determined that market misconduct had taken place, in that Vincent Sze engaged in insider dealing, he being a person contemplating a takeover offer of ABC, knowing that the information as to the offer price and special dividend per share of about that ultimately agreed and stipulated in the Joint Announcement of 30 May 2008, namely of $0.3992 and $0.5866 respectively, in the context of a consequent mandatory general offer was relevant information in relation to ABC, disclosed that information to Wang Chao having reasonable cause to believe that he would make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the shares of ABC, contrary to section 270(1)(d) of the Ordinance. Pursuant to section 252(3)(c) of the Ordinance the Tribunal determined that the profit gained as a result of the market misconduct was $1,669,955.

Orders

17. The Tribunal determined that Vincent Sze was complicit in providing the 'proof of funds' issued by DBS to Lawrence Chan. That proof of funds was in respect of an account in the name of Super Sino Investment Limited, a wholly-owned subsidiary of China Water, and had been obtained by Vincent Sze for the use of China Water only. The supply of that 'proof of funds' to the representatives of those who controlled ABC misrepresented that those funds were available to potential buyers in the acquisition of a controlling interest in ABC. They were not. In addition, the Tribunal determined that Vincent Sze played an active part in the attempts that were made to effect premature payment of the $230 million payable by China Water for the acquisition of Blue Mountain's interest in Jinan Hong Quan Water, when the conditions for payment under the contract were not met and when such payment was not in the interests of China Water. When those monies were paid, a substantial part was used by Vincent Sze to defray the costs and expenses of the acquisition of a controlling interest in ABC. Finally, the Tribunal determined that Vincent Sze played an active part in the advances of significant sums of money, without security or payment of interest, by China Water to Mr. Vico Hui Ho Luek ("Vico Hui") shortly before the agreement by China Water to acquire the interest in

Jinan Hong Quan Water. Those payments were of no benefit to China Water. Subsequently, it was Vico Hui directed that the $230 million paid by China Water be paid into an account, from which indirectly a significant part was made available ultimately to Vincent Sze.

18. Pursuant to Section 257 of the Ordinance the Tribunal made the following orders in respect of Vincent Sze :

(i) pursuant to section 257(1)(a), that he shall not, without the leave of the Court of First Instance, be a director of a listed corporation or in any way, directly or indirectly, be concerned or take part in the management of a listed corporation for the period of four years with effect from 3 November 2011;

(ii) pursuant to section 257(1)(e) that he shall pay to the Government the sum of $3,672,581; and

(iii) pursuant to section 257(1)(f) that he shall pay to the Securities and Futures Commission the sum of $507,689.

Pursuant to section 264(1) of the Ordinance the Tribunal directed that notice be given to register the order in the Court of First Instance.

Note

Section 270(1) of the Ordinance provides that :

"Insider dealing in relation to a listed corporation takes place -

…

(d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; ".