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Application No. 1 of 2016

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 194 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

QUAM CAPITAL LIMITED

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Tribunal: The Hon Mr. Justice Hartmann, NPJ, Chairman

Date of Ruling: 13 April 2016

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RULING

1. The applicant, Quam Capital Limited, has sought a direction from the Tribunal that all proceedings in respect of the application for review be conducted in private. The application has been opposed by the Securities and Futures Commission (SFC).

2. In support of the application, the applicant’s solicitors, Messrs. Locke Lord, have pointed to the fact that the applicant is a wholly-owned subsidiary of Quam Limited, a publicly listed company. It appears that Quam Limited is in the process of negotiations concerning its acquisition by CMBC International Holdings Limited, a subsidiary of China Minsheng Bank. The concern has been raised that any adverse publicity arising from proceedings before the Tribunal may give rise to “unnecessary or undesirable complications”. More generally, it has also been emphasised that any adverse publicity arising from the proceedings will, for all practical purposes, be so damaging as to render the application nugatory.

3. In determining the issue, the Tribunal starts by recognising that the open administration of justice is a fundamental principle of common law, one that is only to be set aside if the interests of justice require it: see *Moody’s Investors Service Hong Kong Limited v SFC* (SFAT No. 4/2014). The Tribunal is vested with the power to order that proceedings be conducted in private but will only make such an order when the interests of justice require it.

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4. A fundamental principle of the common law is that there should be an open administration of justice, more especially when the parties operate in an industry of singular importance to Hong Kong, an industry that is regulated: see *Asia Television Limited v Communications Authority* [2013] 2 HKLRD 354, 368 (paragraph 53) –

“... the issues raised in these proceedings concern matters of public interest. As Mr. Chow submitted in his written submissions, the applicant operates in an industry of great importance to the public and the society of Hong Kong.”

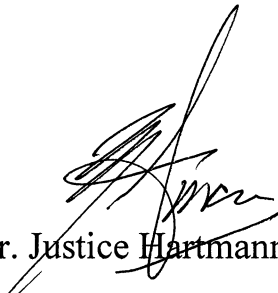
5. The Tribunal accepts that there is no doubt substance in the concerns expressed on behalf of the applicant. That said, however, the concerns that have been expressed do not raise particularly novel issues. The principle is now well set that in the common law unwanted publicity, which includes publicity that may potentially have some effect on the business prospects of an appellant or applicant for review, is a normal incidence of litigation.

6. Having regard to the basis on which the application has been founded, the Tribunal has no hesitation in concluding that, if the application is to proceed, the ordinary principles of open justice must apply. The application for a direction that the proceedings be held in private must therefore be refused.

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(The Hon Mr. Justice Hartmann, NPJ)
Chairman, Securities and Futures Appeals Tribunal

Mr. Wing Cheung of Locke Lord
Solicitors for the Applicant

Ms. Monica To, Associate Director (Enforcement) of SFC,
the Respondent