

**SINGAPORE POST LIMITED**  
(Incorporated in the Republic of Singapore)  
(Company Registration Number: 199201623M)

**RELEASE OF THE SPECIAL AUDIT REPORT**

*Words and expressions used in this announcement shall bear the meanings set out in the Company's announcements dated 19 January 2016 and 5 February 2016. For ease of reference, a summary of key terms used is found in the Glossary of Terms at the end of this announcement.*

**Background**

The Board of Directors (the "**Board**") of Singapore Post Limited ("**SingPost**" or the "**Company**") refers to the Company's various announcements relating to the Special Audit <sup>1</sup>.

The decision to conduct the Special Audit was first announced by the Company on 23 December 2015 in response to two (2) articles published in the Business Times. The appointment was voluntarily commissioned by the Company and was not undertaken at the request of the SGX-ST or any other regulator.

Drew & Napier LLC and PricewaterhouseCoopers LLP (collectively, the "**Auditors**") have been tasked to review whether the Company's constitution, internal policies and procedures (including those related to evaluation and approval of M&A transactions and conflicts of interest), and legal obligations were complied with in connection with the three (3) Famous Acquisitions. A summary of the detailed terms of reference of the Special Audit can be found in the Company's announcement of 19 January 2016.

**Release of the Special Audit Report and Executive Summary**

The Auditors have completed the Special Audit, and have submitted the full report on their findings (the "**Special Audit Report**") to the SGX-ST, the Audit Committee of the Company and the Board. The SGX-ST had been provided with drafts of the full report.

The Auditors have prepared an Executive Summary of the Special Audit Report (the "**Executive Summary**"), which is attached as Annexure A to this announcement. The Auditors have set out in the Executive Summary a detailed summary of all of the facts, key findings and recommendations of the Auditors which are discussed in the full report.

**Recommendations of the Auditors and Next Steps**

The Board has reviewed and accepts the recommendations of the Auditors set out at paragraph E of the Executive Summary. The Board will implement them together with, and as part of, the broader Corporate Governance Review presently underway, as announced by the Company on 31 March 2016. As stated in that announcement, the Corporate Governance Review is expected to be completed before the Company's annual general meeting scheduled in July 2016.

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<sup>1</sup> The Company's announcements were released on 23 December 2015, 19 January 2016, 29 January 2016, 5 February 2016 and 31 March 2016.

Commenting on the Special Audit Report, the Directors of the Company said: "Upholding corporate governance is a part of the fabric of SingPost's culture and values. The Board is fully committed to implementing what we have learned from the Special Audit to improve SingPost's corporate governance policies, processes and procedures and prevent recurrence of the lapses identified.

As Directors of SingPost, we hold ourselves to the highest standards befitting the quality of SingPost, in the best long-term interests of SingPost and its shareholders.

The investments into FHPL, FSM and FPSNZ are strategic to SingPost as they are part of our internationalisation strategy to build an industry leading end-to-end eCommerce logistics network, across geographies. They have proven to be sound decisions, grounded in competitive and value adding advantage to advance SingPost's goal to become world class."

Following the completion of the Special Audit, Mr Keith Tay sees no further need to remain on the Board and will relinquish his position as Lead Independent Director of the Company with immediate effect. Mr Keith Tay will also step down from the board of directors of FHPL, and from the Company's Audit Committee, Nominations Committee and Executive Committee. He will do so by 9 May 2016, when the Audit Committee meets to review the Company's unaudited consolidated full-year results for the financial year ended 31 March 2016. The Nominations Committee and the Board will review the composition of the Company's Board Committees, and will announce changes to be made to them. In addition, although the Company has previously announced on 8 April 2016 that Mr Keith Tay will not be seeking re-appointment at the coming annual general meeting of the Company to be held in July 2016, Mr Keith Tay has indicated his intention to step down from the Board by the end of May 2016 to facilitate an orderly transition.

The Board would like to take the opportunity to thank the Auditors and others involved in the process, for their cooperation, views and recommendations.

Issued by Singapore Post Limited on 3 May 2016.

## GLOSSARY OF TERMS

<b>"Famous Acquisitions"</b>	(a) the acquisition by the Company of FH in 2013; and  (b) the acquisitions by FHPL (then a subsidiary of the Company) of FSM in 2014 and of FPSNZ in 2015
<b>"FHPL"</b>	Famous Holdings Pte Ltd
<b>"FSM"</b>	F.S. Mackenzie Limited
<b>"FPSNZ"</b>	Famous Pacific Shipping (NZ) Limited
<b>"M&amp;A"</b>	Mergers and acquisitions
<b>"SCCL"</b>	Stirling Coleman Capital Limited

**ANNEXURE A**

**THE EXECUTIVE SUMMARY OF THE SPECIAL AUDIT REPORT (48 pages)**

***SINGAPORE POST LIMITED***

**3 May 2016**

**JOINT SPECIAL AUDIT REPORT**

by

**Drew & Napier LLC and  
PricewaterhouseCoopers LLP**

**Joint Special Auditors Appointed by the  
Audit Committee of Singapore Post Limited**

I. DRAMATIS PERSONAE<sup>1</sup>

No.	Name	Designation	Appointment Date	Cessation Date
<i>SingPost Board of Directors ("SingPost Board") (2012 – 2015)</i>				
1.	Lim Ho Kee  ("Mr Lim")	Chairman of SingPost  Board	25 April 1998	Current member
2.	Wolfgang Baier  ("Dr Baier")	SingPost Group Chief  Executive Officer  Member of SingPost  Board	5 October 2011	Current member
3.	Keith Tay Ah Kee  ("Mr Tay")	Member of SingPost  Board	25 April 1998	Current member
4.	Tan Yam Pin	Member of SingPost  Board	25 February  2005	Current member
5.	Bill Chang  York Chye	Member of SingPost  Board	15 November  2010	Current member

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<sup>1</sup> The details set out in this table are accurate as of 28 April 2016.

<b>No.</b>	<b>Name</b>	<b>Designation</b>	<b>Appointment Date</b>	<b>Cessation Date</b>
6.	Professor Low Teck Seng	Member of SingPost Board	8 October 2010	Current member
7.	Michael James Murphy	Member of SingPost Board	7 August 2009	Current member
8.	Kenneth Michael Tan	Member of SingPost Board	20 March 2003	28 June 2013
9.	Zulkifli Bin Baharudin	Member of SingPost Board	11 November 2009	Current member
10.	Aliza Knox	Member of SingPost Board	30 August 2013	Current member
11.	Goh Yeow Tin	Member of SingPost Board	7 July 2014	Current member
12.	Chen Jun	Member of SingPost Board	31 July 2014	Current member
13.	Soo Nam Chow	Member of SingPost Board	20 December 2013	Current member

No.	Name	Designation	Appointment Date	Cessation Date
<b><i>SingPost Executive Committee (“SingPost Exco”) (2012 – 2015)</i></b>				
14.	Lim Ho Kee	Chairman of SingPost Exco	5 August 2003	Current member
15.	Wolfgang Baier	Member of SingPost Exco	14 November 2011	Current member
16.	Keith Tay Ah Kee	Member of SingPost Exco	23 February 2006	Current member
17.	Tan Yam Pin	Member of SingPost Exco	8 November 2010	Current member
18.	Michael James Murphy	Member of SingPost Exco	16 November 2015	Current member
19.	Goh Yeow Tin	Member of SingPost Exco	14 January 2015	Current member
20.	Kenneth Michael Tan	Member of SingPost Exco	8 November 2010	28 June 2013



No.	Name	Designation	Appointment Date	Cessation Date
<i>Famous Holdings Pte Ltd Board of Directors ("FHPL Board") (2013 to 2015)</i>				
21.	Keith Tay Ah Kee	Chairman of FHPL Board	20 February 2013	Current member
22.	Wolfgang Baier	Member of FHPL Board	20 February 2013	10 December 2015
23.	Quincy Tan ("Mr Quincy")	Member of FHPL Board	Before 2013	Current member
24.	Woo Keng Leong ("Mr Woo")	Member of FHPL Board	4 November 2013	7 December 2015
			Re-appointed: 28 December 2015	Current member
25.	Kiat Chan ("Mr Chan")	Member of FHPL Board	20 February 2013	10 December 2015
26.	Nobuhiro Nagashima	Member of FHPL Board	20 February 2013	Current member

No.	Name	Designation	Appointment Date	Cessation Date
27.	Alvin Tan Hoe Chuan	Member of FHPL Board	12 November 2013	Current member
28.	Mervyn Lim Sing Hok	Member of FHPL Board	12 November 2015	Current member
29.	Thijs Sommen  ("Mr Sommen")	Member of FHPL Board	16 February 2015	31 August 2015

<i>Senior Management of SingPost<sup>2</sup></i>		
30.	Kiat Chan	Executive Vice President, SingPost Investments team  Executive Vice President, SingPost Group Strategy & Business Development team
31.	Dominic Heng ("Mr Heng")	Vice President, SingPost Group Strategy & Business Development team
32.	Jacqueline Low ("Ms Low")	Former SingPost Group Company Secretary and Chief Legal Officer

<sup>2</sup> This list only sets out the Senior Management and other personnel insofar as they are relevant to this Report.

33.	Genevieve Tan McCully ( <b>“Ms Tan”</b> )	SingPost Group Company Secretary
34.	Ng Hin Lee	Former SingPost Group Chief Financial Officer
35.	Daniel Phua Meng Kuan	Former SingPost Group Chief Financial Officer
36.	Thijs Sommen	Former Executive Vice President, SingPost Corporate Office  Former Executive Vice President, SingPost Group Logistics
37.	Tam Loong Sang ( <b>“Mr Tam”</b> )	Assistant Vice President, SingPost Corporate Secretarial
38.	Winston Wong	Former Group Company Secretary and Chief Legal Officer
39.	Woo Keng Leong	Senior Executive Vice President, Head of SingPost Postal Services
<b>Others</b>		
40.	Ang Kay Tiong ( <b>“Mr Ang”</b> )	Chief Executive Officer of Stirling Coleman Capital Limited
41.	Quincy Tan	Owner and director of Famous Holdings Private Limited
42.	David Wong	Consultant, Famous Holdings Private Limited  Senior Adviser to Stirling Coleman Capital Limited

## II. LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Description</b>
D&N	Drew & Napier LLC
FHPL	Famous Holdings Pte Ltd
FHPL Acquisition	SingPost's purchase of a 62.5% equity stake in FHPL
FHPL Board	FHPL Board of Directors
FHPL SPA	Share Purchase Agreement in relation to the FHPL Acquisition
FPSNZ	Famous Pacific Shipping (New Zealand) Limited
FPSNZ Acquisition	SingPost's purchase of a 90% equity stake in FPSNZ
FSM	F.S. Mackenzie Limited
FSM Acquisition	SingPost's purchase of a 100% equity stake in FSM
Group CEO	Group Chief Executive Officer
Group CFO	Group Chief Financial Officer
M&A	Mergers and acquisitions
NVOCC	Non-Vessel Operating Common Carrier
PwC	PricewaterhouseCoopers LLP
SCCL	Stirling Coleman Capital Limited
SFA	Securities and Futures Act (Cap 289, Rev Ed 2006)

<b>Abbreviation</b>	<b>Description</b>
SGX	Singapore Exchange Securities Trading Limited
SingPost Board	SingPost Board of Directors
SingPost Exco	SingPost Executive Committee

### III. EXECUTIVE SUMMARY

#### A. INTRODUCTION

1. On 19 January 2016 and 5 February 2016 respectively, PricewaterhouseCoopers LLP and Drew & Napier LLC were appointed by the Audit Committee of Singapore Post Limited (“**SingPost**”) to review and report on various issues arising from the Famous Acquisitions (defined at [2] below) as set out in the Terms of Reference dated 5 February 2016 (as defined at Section IV(B) of this Report).

2. Between January 2013 to January 2015, SingPost acquired, among others, equity stakes in three freight forwarding companies:

(a) in January 2013, SingPost purchased a 62.5% equity stake in Famous Holdings Pte Ltd (“**FHPL**”) (the “**FHPL Acquisition**”). FHPL became a subsidiary of SingPost;

(b) in July 2014, SingPost, through FHPL, purchased a 100% equity stake in F.S. Mackenzie Limited (“**FSM**”) (the “**FSM Acquisition**”); and

(c) in January 2015, SingPost, through FHPL, purchased a 90% equity stake in Famous Pacific Shipping (New Zealand) Limited (“**FPSNZ**”) (the “**FPSNZ Acquisition**”).

(collectively, the “**Famous Acquisitions**”)

3. Stirling Coleman Capital Limited (“**SCCL**”) was appointed by the vendor of FHPL as financial arranger, and by the vendors of FSM and FPSNZ as financial advisor in

relation to the Famous Acquisitions. We understand from our interview with Mr Ang Kay Tiong (“**Mr Ang**”), Chief Executive Officer (“**CEO**”) of SCCL, that the terms “arranger” and “advisor” are used interchangeably and do not reflect any substantive difference in SCCL’s role, which was essentially to advise and assist the vendors of FHPL, FSM, and FPSNZ in the sale of their respective businesses. Mr Keith Tay (“**Mr Tay**”), who is a member of the SingPost Board of Directors (“**SingPost Board**”), is also the non-executive Chairman of the SCCL Board of Directors and a 34.5% shareholder of SCCL (“**Mr Tay’s Interest in SCCL**”). We understand from Mr Ang and Mr Tay that Mr Tay was not involved in the daily operations of SCCL. SingPost did not engage or appoint SCCL in any of the Famous Acquisitions. SCCL was engaged by the vendors in the Famous Acquisitions.

4. From our interviews conducted, we understand that Mr Tay did not represent SingPost or FHPL in any negotiations with SCCL or the vendors of FHPL, FSM or FPSNZ in the Famous Acquisitions.

5. This special audit was, in the main, the result of an erroneous statement in the Singapore Exchange Securities Trading Limited (“**SGX**”) announcement released by SingPost on 18 July 2014 that none of its directors had an interest in the FSM Acquisition (“**18 July 2014 SGX Announcement**”). On 22 December 2015, SingPost released an announcement to clarify the error and highlight Mr Tay’s Interest in SCCL.

6. We will address the following in this Executive Summary:

- (a) a list of key findings;
- (b) the factual circumstances surrounding the Famous Acquisitions;
- (c) our conclusions based on our Terms of Reference; and

- (d) our recommendations for SingPost.

## **B. KEY FINDINGS**

- 7. In brief, our key findings are as follows:

- (a) in respect of the evaluation and approval process of SingPost's mergers and acquisitions ("**M&A**") transactions:

- (i) SingPost has no prescribed policy, process or procedure for the evaluation and approval of M&A transactions;

- (ii) however, in practice, the M&A team adopts a process based on broad internal guidelines as well as the work experience of its members. There were no deviations from this practice in respect of the Famous Acquisitions, save for the FPSNZ Acquisition, where no express approval to conduct due diligence was documented, even though due diligence was conducted;

- (b) in respect of Mr Tay's disclosure obligations in relation to the Famous Acquisitions:

- (i) Mr Tay had a personal interest in the Famous Acquisitions and was obliged to disclose his interests to SingPost and FHPL as soon as practicable after he was aware of the same;



- (ii) Mr Tay's interests in the FHPL and FSM Acquisitions were disclosed (or known) to the SingPost Board, the FHPL Board of Directors ("**FHPL Board**") and/or SingPost Executive Committee ("**SingPost Exco**") (as the case may be) before the FHPL and FSM Acquisitions were finally approved;
- (iii) however, with respect to the FPSNZ Acquisition, while Mr Tay disclosed his interest to the FHPL Board, he did not disclose his interest to the SingPost Exco, which was the financial approving authority. Nonetheless, such an omission does not appear to have been deliberate or intended to conceal Mr Tay's interest;
- (iv) insofar as some of Mr Tay's disclosures may not have been made as soon as practicable, our interviews suggest that the lack of timeliness in the disclosures would have made no difference to the decisions to enter into the Famous Acquisitions;
- (v) Mr Tay was obliged to, and did abstain from voting to grant *final* approval for each of the Famous Acquisitions. However, Mr Tay ought to have, but did not refrain from voting to approve the commencement of due diligence in respect of the FHPL Acquisition on 14 August 2012. Further, insofar as the SingPost Exco resolved to approve the FPSNZ Acquisition on 5 November 2014, Mr Tay ought to, but appears not to have abstained from the decision. Nonetheless, there is no suggestion that Mr Tay's vote influenced or otherwise affected the eventual approval of the FHPL and FPSNZ Acquisitions;

(c) in respect of the SGX announcements made by SingPost in relation to the Famous Acquisitions:

- (i) SingPost was obliged to, and did announce each of the Famous Acquisitions and complied with the disclosure requirements under the SGX Listing Manual–Mainboard Rules (“**Listing Rules**”);
- (ii) the Listing Rules did not require SingPost to disclose Mr Tay’s interest in the Famous Acquisitions in its announcements;
- (iii) however, SingPost’s 18 July 2014 SGX Announcement in respect of the FSM Acquisition was erroneous in that it declared that none of SingPost’s directors had an interest in the same. The error appears to have been a result of carelessness in its preparation and review by certain SingPost staff. There was no deliberate intention to conceal Mr Tay’s interest in the FSM Acquisition. Indeed, it was Mr Tay himself who drew SingPost’s attention to the error after the 18 July 2014 SGX Announcement was released; and
- (iv) SingPost sought external legal advice in respect of the incorrect announcement as soon as the error was discovered, and based its decision not to issue any correction on that legal advice.

**C. FACTUAL CIRCUMSTANCES SURROUNDING THE FAMOUS ACQUISITIONS**

8. Based on SingPost’s internal approval mandates, approval limits of the respective financial approving authorities are as follows:

<u>Financial approving authority</u>	<u>Approval Limit</u>
<b>1. SingPost Board</b>	
In-principle approval of proposed investment/divestment project (“ <b>In-principle approval</b> ”)	More than S\$50 million
Approval to invest, subject to detailed due diligence work to be carried out (“ <b>Approval to invest</b> ”)	More than S\$25 million
<b>2. SingPost Exco</b>	
In-principle approval	Less than or equal to S\$50 million
Approval to invest	Less than or equal to S\$25 million
<b>3. SingPost subsidiary board (i.e. FHPL Board)</b>	
In-principle approval	Less than or equal to S\$10 million
Approval to invest	Less than or equal to S\$5 million

9. Accordingly, the relevant financial approving authorities for each of the Famous Acquisitions should be as follows:

<b>Famous Acquisition</b>	<b>Financial Approving Authority</b>	
	<b>In-principle approval</b>	<b>Approval to invest</b>
The FHPL Acquisition	SingPost Board	SingPost Board
The FSM Acquisition	SingPost Exco	SingPost Exco
The FPSNZ Acquisition	FHPL Board	SingPost Exco

10. The above information and language were taken from SingPost’s internal documents. However, we understand from Chairman of the SingPost Board, Mr Lim Ho Kee (“**Mr Lim**”) that the term “In-principle approval” was used loosely (and perhaps, incorrectly) and intended to refer to approval for, *inter alia*, due diligence to be conducted

on a potential acquisition. On the other hand, “Approval to invest, subject to detailed due diligence work to be carried out” refers to approval for actual investment in the proposed acquisition. Mr Lim maintained that in practice, there is no “in-principle approval” stage, a position Group CEO, Dr Wolfgang Baier (“**Dr Baier**”) and Mr Tan Yam Pin confirmed. We note however, that some Board resolutions, Board papers and Exco papers contain the term “in-principle approval” without qualification. Nonetheless, this distinction is not material with respect to our findings in respect of the Famous Acquisitions.

11. We now set out briefly the relevant factual context leading to the Famous Acquisitions.

**i. The FHPL Acquisition**

12. We understand that SingPost, under the leadership of Dr Baier, decided sometime in 2011 to expand its business beyond its traditional postal services to incorporate other services including freight, warehousing, and electronic transactions. This transformation required a growth strategy of acquiring suitable companies to expand SingPost’s repertoire of services and geographical footprint.

13. One of these companies was FHPL, which was formerly owned by Mr Quincy Tan (“**Mr Quincy**”). In May 2012, SCCL was appointed as arranger by Mr Quincy to assist him in the proposed sale of Mr Quincy’s 100% equity share in FHPL.

14. According to Mr Ang, he had read SingPost’s annual reports as well as news reports which stated that SingPost was looking at making acquisitions, and thought that SingPost might be interested in acquiring FHPL. Mr Ang therefore sent a teaser memorandum containing a summary of the financial position and operations of FHPL to Mr Tay.

Approval of the FHPL Acquisition

15. By way of email exchanges in May to June 2012 amongst Mr Ang (on behalf of the vendor), Mr Tay, as well as members of the SingPost M&A team, in particular, Mr Thijs Sommen (“**Mr Sommen**”) and Dr Baier, SCCL and SingPost engaged in discussions regarding the potential acquisition of FHPL by SingPost. The emails make clear, and Mr Tay confirmed, that he merely played the role of a messenger between SingPost and SCCL and had no input in the negotiations. There was no attempt by Mr Tay to hide his connection with or interest in SCCL. However, it is also clear that Mr Tay must have known from these emails that SCCL was advising the vendor of FHPL.

16. On 14 August 2012, by way of Directors’ Resolution In-Writing (No. 11/2012), the SingPost Board gave in-principle approval to conduct, among other things, due diligence on three proposed M&A targets, including FHPL. We understand that no physical SingPost Board meeting was convened. The members of the SingPost Board who signed the said Directors’ Resolution included Mr Lim, Dr Baier, and Mr Tay.<sup>3</sup> Mr Lim wrote the following words below his signature, “*on basis of approval for due diligence expenditure only, NOT investment*”. The Directors’ Resolution In-Writing made no mention of SCCL, and recorded no disclosure by Mr Tay of his interest in the potential acquisition of FHPL.

17. Due diligence was subsequently conducted on FHPL, and the findings were presented to the SingPost Board at the SingPost Board meeting held on 8 January 2013 (“**8 Jan 2013 SingPost Board Meeting**”), where approval to invest in FHPL was sought from the SingPost Board. Based on the meeting minutes, Mr Tay declared his interest in the acquisition of FHPL before management made its presentation on the acquisition and

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<sup>3</sup> The other members of the SingPost Board who signed the Directors’ Resolution In-Writing are, namely, Mr Bill Chang, Professor Low Teck Seng, Mr Michael James Murphy, Mr Kenneth Michael Tan Wee Kheng, Mr Tan Yam Pin, and Mr Zulkifli Bin Baharudin.

the SingPost Board began its deliberations<sup>4</sup>. The minutes of the 8 Jan 2013 SingPost Board Meeting record Mr Tay's declaration as follows:

*"3.2.1 Mr. Keith Tay informed that Famous Holdings Pte. Ltd. ("Famous Holdings") was a client of Stirling Coleman. However, he was neither aware of Famous Holdings nor was he acquainted with its directors and shareholder, Mr Quincy Tan until after SingPost was involved. Nevertheless, Mr. Keith Tay informed that he will abstain from voting on this resolution in view of his interest in Stirling Coleman."*

18. Mr Tay did not step out of the meeting when the deal was discussed, but neither Mr Tay nor the other interviewees recalled that he actively participated in it. The minutes of the 8 Jan 2013 SingPost Board Meeting recorded that Mr Tay made the following comment:

*"Mr Keith Tay informed that he had the opportunity to meet Mr. Quincy Tan after the Chairman had met with Mr. Quincy Tan. His impression was positive. Mr Keith Tay was particularly impressed with the fact that Mr. Quincy Tan had chosen from the very beginning to appoint Ernst and Young as the accountants for Famous Holdings. This was most unusual."*

19. At the conclusion of the meeting, the SingPost Board<sup>5</sup> (with Mr Tay abstaining) approved, among other things, (a) the acquisition of a 100% stake in FHPL from its owner, Mr Quincy and (b) the nomination of Mr Tay as Chairman of the FHPL Board.

SGX announcement on the FHPL Acquisition

20. On 18 January 2013 at 6:27 PM, the announcement on SGX regarding the FHPL Acquisition was released, which included the following statement:

*"None of the Directors or controlling shareholders of the Company has any interest, direct or indirect, in the above transaction, save for Mr. Keith Tay who is a*

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<sup>4</sup> Mr Tay's declaration was made to the entire SingPost Board (save for Professor Low Teck Seng, who had left the meeting), comprising Mr Lim, Dr Baier, Mr Bill Chang, Mr Michael James Murphy, Mr Kenneth Michael Tan, Mr Tan Yam Pin and Mr Zulkifli Bin Baharudin.

<sup>5</sup> See footnote 4 for list of SingPost Board members present at the 8 Jan 2013 SingPost Board Meeting discussion on the FHPL Acquisition.

*non-executive Chairman and a shareholder of Stirling Coleman Capital Limited. Stirling Coleman Capital Limited is the Arranger for the transaction. Accordingly, Mr. Tay has abstained from all votings by the Board of the Company in relation to this transaction.”*

21. On 31 January 2013 at 8:00 PM, the SingPost Company Secretary Ms Genevieve Tan McCully (“**Ms Tan**”) released a further SGX announcement which disclosed, among other things, details of the consideration to be paid for the acquisition.

## **ii. The FSM Acquisition**

### Approval of the FSM Acquisition

22. Pursuant to the FHPL Acquisition, we understand from Mr Quincy that he identified potential acquisition targets through his network in the freight forwarding industry and presented these targets to the FHPL Board. These included, among others, FSM and FPSNZ. FHPL, FSM, and FPSNZ are part of a worldwide shipping alliance known as the Famous Pacific Shipping Group.

23. Mr Quincy and Mr Ang informed us that between May 2013 and July 2013, Mr Quincy introduced the vendors of FSM and FPSNZ to SCCL, and the vendors subsequently appointed SCCL as their financial advisors. Mr Ang informed us that he told Mr Tay over a casual dinner in July 2013 that SCCL had secured mandates as financial advisor to the vendors of FSM and FPSNZ. Mr Tay accepted that Mr Ang might have informed him but was unable to recall how or when Mr Ang did so.

24. The FSM Acquisition was put to the SingPost Exco for consideration at the SingPost Exco Meeting on 7 January 2014. The members of the SingPost Exco present included Mr Lim (who is Chairman of the SingPost Exco), Dr Baier, Mr Tay and Mr Tan Yam Pin. Dr Baier informed the SingPost Exco that he had met the owner of FSM, and

gave an update on the potential acquisition of FSM as well as a Russian company, FS Mackenzie International.

25. It was recorded in the meeting minutes that Mr Tay made the following comment:

*“Mr Keith Tay shared the view that for logistics, SingPost needs to be global. So if the right opportunity arises for SingPost to gain a foothold. SingPost should seize the opportunity. He inquired on the price of the acquisition and was informed by Mr Chan Kiat that the price for [FSM] with earnout potential was S\$11M, and the price for a one-third share in FS Mackenzie International was S\$6m totalling S\$17M.”*

26. Mr Lim recommended that due diligence be conducted on the proposed acquisitions, and the findings be presented to the SingPost Board for discussion. The SingPost Exco endorsed SingPost’s management’s decision to explore the proposed acquisitions by commencing due diligence, and negotiating and executing non-binding agreements.

27. Mr Tay was unable to recall if he was aware of SCCL’s appointment at this point in time, or if there had been any discussion of SCCL at this meeting. The minutes do not record Mr Tay declaring his interest in the proposed acquisition of FSM or participating in any discussion on SCCL. Mr Tay’s recollection is at odds with Mr Ang’s recollection that Mr Ang had, over a casual dinner in July 2013, informed Mr Tay of SCCL’s appointment by the vendors of FSM and FPSNZ.

28. Due diligence on FSM was conducted between February and April 2014, and the findings presented to the FHPL Board at a Board meeting held on 25 April 2014. The meeting minutes recorded an express reference to SCCL, as follows:

*“Mr Quincy Tan expressed the need for M&A deals to be expedited. On the other hand, Dr Wolfgang Baier felt that Famous needed to pursue larger deals with a higher margins [sic] rather than to spend undue amounts on time [sic] on small deals especially since the time spent for due diligence was similar.*



*The recommendation was to propose a lower offer for [FSM]. **Stirling Coleman has been informed to calibrate the seller's expectation.***" (emphasis added)

29. It would therefore have been clear to the members of the FHPL Board at this meeting that SCCL had been engaged by the vendor of FSM in respect of the FSM Acquisition. The minutes show that Mr Tay was present at this meeting but did not declare his interest in the acquisition. However, according to our interviews, all the other directors of FHPL knew or ought to have known of Mr Tay's Interest in SCCL at this point. The minutes also do not record any participation by Mr Tay in the discussions on the FSM Acquisition at this meeting.

30. Approval for the FSM Acquisition was sought from the SingPost Exco at the SingPost Exco meeting held on 23 June 2014. Prior to this meeting, the SingPost Corporate Secretarial team circulated via email to the members of the SingPost Exco, among other things, the agenda of the meeting and a paper on the proposed acquisition of FSM. By way of email exchanges between 21 and 22 June 2014, Mr Tay asked Mr Ang if SCCL was involved in the FSM Acquisition "*for declaration of interest on (his) part*". Mr Ang replied, *inter alia*, that "*Stirling Coleman Capital Limited is the Arranger of the transaction and is engaged by the seller*".

31. By an email dated 23 June 2014 at 12:50 AM from Mr Tay to the SingPost Company Secretaries (Mr Winston Wong and Ms Tan) and copying, among others, the members of the SingPost Exco, Mr Tay declared his interest in the FSM Acquisition:

*"Dear Winston/Genevieve  
I have just received email from KT Ang, CEO of Stirling Capital (SCCL) that SCCL is acting as Arranger for Project Albion and is engaged by FSM in this regard. As a director and shareholder of SCCL, I hereby declare my interest in this transaction for your record. I shall abstain from voting on this transaction. I'll be attending this EXCO meeting via teleconference.  
Thanks.  
K."*

32. On 23 June 2014, the SingPost Exco met to, among other things, approve the FSM Acquisition. Mr Tay attended the meeting via telephone. The minutes record that Mr Tay declared his interest in the FSM Acquisition as non-executive chairman and shareholder of SCCL, as follows:

*“Mr Keith Tay declared his interest in this proposed acquisition as he is the non-executive chairman and shareholder of Sterling Coleman Capital Limited (“Sterling”). Sterling is acting as the financial advisor for the Vendor, Mr Alfred Steinen (the “Vendor”) in this proposed acquisition. Mr Keith Tay declared that he will abstain from voting from this transaction and will not be involved in the discussion on this transaction.”*

33. This declaration was made to the other members of the SingPost Exco, comprising of Dr Baier, Mr Lim and Mr Tan Yam Pin. The meeting minutes do not record any input or participation from Mr Tay during the discussions and deliberations on the proposed FSM Acquisition. Mr Tay also abstained from voting on the approval of the FSM Acquisition.

34. On 18 July 2014, the FHPL Board, by way of a written Directors’ Resolution, resolved to approve the FSM Acquisition. We understand that no physical FHPL Board meeting was convened. The Directors’ Resolution recorded that Mr Tay abstained from voting, and contained the following declaration:

*“It is hereby NOTED THAT each Director confirms that, by signing below, he has disclosed all his interests in the above transaction which are the subject matter of these Resolutions, and further confirms that he does not have any interest, direct or indirect, in the above transaction save for Mr. Keith Tay who is the Non-Executive Chairman and shareholder of Stirling Coleman Capital Limited (“SCCL”). SCCL is acting as financial advisor for the Vendor, Mr Alfred Stienen in relation to the above transaction. Accordingly Mr. Tay has abstained from all votings by the Board of the Company in relation to the above transaction.”*

35. A draft SGX announcement was attached to the resolution, which stated, incorrectly, that *“None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition.”* There is no evidence that anyone on the FHPL Board or the SingPost Corporate Secretarial team noticed this error. Mr Tay

informed us that he only noticed the error after the announcement had been issued. We elaborate below.

SGX announcement on the FSM Acquisition

36. On 8 July 2014, the external law firm engaged by SingPost for the FSM Acquisition, Rodyk & Davidson LLP ("**Rodyk**"), sent SingPost a copy of the draft SGX announcement to be issued by SingPost. Paragraph 6 of the draft announcement stated that "*[None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition.]*". We understand from Mr Ng Eng Leng of Rodyk that the statement was left in parentheses as it was subject to SingPost's instructions. We understand from our interview with Mr Winston Wong that Mr Tay's interest in the FSM Acquisition was not conveyed to Rodyk.

37. On 18 July 2014 at 6:00 PM, Mr Tam Loong Sang of SingPost ("**Mr Tam**") sent an email to Mr Woo Keng Leong ("**Mr Woo**"), seeking Mr Woo's approval to release the draft SGX announcement attached to the email. Mr Woo, a director of FHPL, was authorised to review and approve the draft SGX announcement. This draft stated incorrectly that "*None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition.*" By an email dated 18 July 2014 at 6:28 PM sent by Mr Woo to Mr Tam, Mr Woo approved the draft announcement.

38. On 18 July 2014 at 7:42 PM, the announcement of the FSM Acquisition was released on SGX. Paragraph 6 of the announcement stated, incorrectly, that:

*"None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the Acquisition."*

39. By an email dated 18 July 2014 at 7:52 PM, Mr Tam informed the directors of the SingPost Board that the 18 July 2014 SGX Announcement had been released on SGX. A copy of the announcement was attached to the email.

40. Mr Tay spotted the error. By an email dated 18 July 2014 at 11:10 PM addressed to the Company Secretaries (Mr Winston Wong and Ms Tan), Mr Tay enquired if the announcement should “*include a comment on (his) indirect interest (through) Stirling Coleman which acts for the seller*”, and asked that legal opinion be sought if necessary.

41. By an email dated 18 July 2014 at 11:11 PM, Mr Winston Wong forwarded Mr Tay’s query to Mr Ng Eng Leng of Rodyk, and attached to his email a copy of the 18 July 2014 SGX Announcement. Mr Winston Wong also called Mr Ng Eng Leng to ask for his views on whether it was defensible not to disclose, in the 18 July 2014 SGX Announcement, Mr Tay’s interest in the FSM Acquisition. By way of email exchanges between 11:11 PM and 11:28 PM on 18 July 2014, Mr Ng Eng Leng advised that it was “*defensible*” not to include a statement on Mr Tay’s Interest in SCCL, and that it was not necessary to release another announcement. We understand from Mr Ng Eng Leng that he did not read the final draft of the 18 July 2014 SGX Announcement before it was issued by SingPost, and did not read the 18 July 2014 SGX Announcement attached to Mr Winston Wong’s email to him on 18 July 2014 at 11:11 PM. He was therefore not aware that the 18 July 2014 SGX Announcement contained the inaccurate statement (see [38] above) when he advised SingPost not to issue another announcement. Mr Ng Eng Leng said his advice was based on his understanding that a disclosure was not required under Chapters 7 and 10 of the Listing Rules. Mr Ng Eng Leng also informed us that he would have advised SingPost to issue a clarification announcement if he had been aware of the inaccurate declaration.

42. Ms Tan replied to Mr Tay's query by an email on 19 July 2014 at 1:45 AM stating, among other things, that "[t]here is no strict requirement to disclose" Mr Tay's Interest in SCCL, and "since the statement was omitted in the Mackenzie announcement, the legal advisor is of the view (and [Ms Tan] strongly share[d] the view) that it is best to leave things as it is" .

43. Mr Tay says that he relied on the advice given by Ms Tan and did not make further enquiries. The matter was not brought to the attention of the SingPost Board as Ms Tan and Mr Winston Wong were, in light of Rodyk's advice, of the view that no further action was required.

44. On 22 December 2015 at 5:04 PM, SingPost released an announcement to clarify the earlier 18 July 2014 SGX Announcement regarding the FSM Acquisition. It stated:

*"Due to an administrative oversight, it was stated that none of the directors or controlling shareholders of the Company had any interest, direct or indirect in the Transaction.*

*The Company would like to clarify that none of the directors or controlling shareholders of the Company had any interest, direct or indirect in the Transaction, save for Mr Keith Tay Ah Kee who, as disclosed in the announcement relating to the Company's acquisition of Famous Holdings Pte Ltd on 18 January 2013, is a non-executive Chairman and shareholder of Stirling Coleman Capital Limited. Stirling Coleman Capital Limited was the arranger of the Transaction.*

*Accordingly, Mr Tay, as reflected in Board minutes, had abstained from all votings by the Board of the Company in relation to the Transaction."*

### **iii. The FPSNZ Acquisition**

#### Approval of the FPSNZ Acquisition

45. As mentioned above, the vendors of FPSNZ appointed SCCL as their financial advisor for the FPSNZ Acquisition in June 2013, and Mr Ang informed us that he had informed Mr Tay of this mandate over a casual dinner in July 2013. According to Mr Ang,

he called Mr Tay in July 2014 to remind him that SCCL had secured a mandate as financial advisor to the vendors of FPSNZ. Mr Tay accepted that Mr Ang might have informed him but was unable to recall how or when Mr Ang did so.

46. The FHPL Board was updated on the progress of the FPSNZ Acquisition at the FHPL Board Meeting held on 5 November 2014 at 10:30 AM. Mr Tay, as Chairman of the FHPL Board, was present at the meeting.<sup>6</sup> The meeting minutes record that “[t]he [FHPL] Board resolved to approve the acquisition of FPS (NZ) with Chairman [Mr Tay] abstaining from deliberating and voting on the acquisition as Chairman disclosed that he is the Chairman of Sterling Coleman the financial adviser for the Vendor [of FPSNZ]”. The minutes do not record any participation by Mr Tay in the deliberations on the FPSNZ Acquisition.

47. At the SingPost Exco Meeting held at 12:00 PM that same day, Dr Baier updated the SingPost Exco on FHPL’s proposal to acquire FPSNZ. Although Mr Tay was present at this meeting, there is no recorded disclosure of his interest in the FPSNZ Acquisition. When asked why Mr Tay’s interest in the FPSNZ Acquisition was recorded in the minutes of the 5 November 2014 FHPL Board meeting but not in the minutes of the SingPost Exco meeting on the same day, Mr Tay and Dr Baier (who attended both the FHPL Board and SingPost Exco meetings on 5 November 2014) informed us that they did not know the reason for the discrepancy. Mr Tay also could not recall declaring his interest at the SingPost Exco meeting. The remaining members of the SingPost Exco present at the meeting (who are not members of the FHPL Board), namely, Mr Lim and Mr Tan Yam Pin, informed us that they were not aware that the vendors of FPSNZ had appointed SCCL, and therefore, did not know of Mr Tay’s interest. The minutes do not reflect that the SingPost Exco had resolved to approve the FPSNZ Acquisition at this meeting. However,

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<sup>6</sup> Other members of the FHPL Board present at the 5 November 2014 meeting include Dr Baier, Mr Woo, Mr Quincy, Mr Nobuhiro Nagashima and Mr Alvin Tan Hoe Chuan.

paragraph 2 of the Exco Paper dated 7 January 2015 presented to the SingPost Exco seeking approval of the FPSNZ Acquisition stated that “EXCO gave in-principle approval for this acquisition at the EXCO meeting on 5 November 2014.” On 29 April 2016, SingPost informed us that the Exco Paper dated 7 January 2015 may not be accurate, thereby suggesting that the SingPost Exco may not have granted any approval of the FPSNZ Acquisition at the SingPost Exco meeting on 5 November 2014. However, at the time of this report, SingPost had not taken a definitive position.

48. At a meeting held on 7 January 2015, the SingPost Exco (consisting of Dr Baier, Mr Lim and Mr Tan Yam Pin in attendance at this meeting) gave final approval for FHPL’s acquisition of FPSNZ. Mr Tay was not present at this meeting as he was hospitalised in China. There is no recorded discussion of SCCL’s involvement in the FPSNZ Acquisition or any declaration of Mr Tay’s interest in the FPSNZ Acquisition.

49. By a Directors’ Resolution in writing dated 7 January 2015, the FHPL Board<sup>7</sup> approved, without Mr Tay’s vote, the FPSNZ Acquisition. We understand no physical meeting was convened. The Directors’ Resolution included the following declaration before the signature block:

**“4. DIRECTORS’ DECLARATION OF INTEREST**

*It is hereby **NOTED THAT** each Director confirms that, by signing below, he has disclosed all his interests in the above transaction which are the subject matter of these Resolutions, and further confirms that he does not have any interest, direct or indirect, in the above transaction save for Mr. Keith Tay, who is Non-Executive Chairman and shareholder of Stirling Coleman Capital Limited (“SCCL”). SCCL is acting as financial advisor for the Vendors in relation to the above transaction. Accordingly, Mr. Tay has abstained from all votings by the Board of [FHPL] in relation to the above transaction.”*

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<sup>7</sup> Consisting of Dr Baier, Mr Woo, Mr Quincy, Mr Alvin Tan Hoe Chuan and Mr Nobuhiro Nagashima.

50. The word “*(Abstained)*” was recorded at Mr Tay’s signature block. We understand that Mr Tam had inserted the word “*(Abstained)*” at Mr Tay’s signature block on account of paragraph 4 of the resolution (as cited above), which declared Mr Tay’s interest in the FPSNZ Acquisition.

51. It was also resolved that the draft SGX announcement appended to the said FHPL Directors’ Resolution “*shall be approved for release by SingPost*”. Paragraph 6 of the draft announcement states:

**“6. DIRECTORS’ AND CONTROLLING SHAREHOLDERS’ INTERESTS**

*None of the directors or controlling shareholders of the Company has any interest, direct or indirect, in the above transaction, save for Mr. Keith Tay who is a non-executive Chairman and a shareholder of Stirling Coleman Capital Limited. Stirling Coleman Capital Limited is the arranger of the transaction. Accordingly, Mr. Tay has abstained from all voting by the Board of the Company in relation to this transaction.*

...

**BY ORDER OF THE BOARD**

*Winston Paul Wong Chi Huang  
Joint Company Secretary  
[] January 2015”*

*SGX announcement on the FPSNZ Acquisition*

52. According to Mr Winston Wong, the draft SGX announcement for the FPSNZ Acquisition was prepared by the SingPost in-house legal team as the New Zealand external counsel involved in the acquisition would not have been familiar with the requirements of the Listing Rules.

53. Between 7 and 14 January 2015, there were meetings held between members of SingPost’s legal team (including Mr Winston Wong and Ms Jacqueline Low (“**Ms Low**”), who were both the Company Secretaries at the time) and Mr Sommen relating to the draft announcement. We received diverging accounts of the meetings from our interviews.



54. We understand from Mr Winston Wong that, among other things, he had taken the view that it was necessary to include Mr Tay's Interest in SCCL in the SGX announcement, while Ms Low took the view that there was no need to do so. He told Ms Low to get external legal advice in writing to substantiate her view, but was unsure if she eventually did so.

55. On the other hand, according to Ms Low, there was no disagreement between her and Mr Winston Wong on the said issue. Ms Low informed us that her view that no disclosure of Mr Tay's Interest in SCCL was required was based on her understanding of the Listing Rules. She said that Mr Winston Wong agreed with her position. Eventually, Mr Winston Wong and Mr Sommen left the decision on the content and timing of the announcement to Ms Low.

56. In a draft SGX announcement dated 9 January 2015 marked "*SP Legal Draft*", the draft was amended to, among other things, delete paragraph 6 (see [51] above) entirely, and substitute Mr Winston Wong's name as author of the draft with Ms Low's name. In another draft announcement dated 14 January 2015 marked "*SP Legal Draft*", further editorial amendments were made to the announcement which did not concern the declaration of interests of controlling shareholders and directors.

57. On 14 January 2015 at 7:37 PM, the announcement of the FPSNZ Acquisition was released on SGX. The announcement did not include any declaration relating to the interests of the FHPL directors and shareholders in the FPSNZ Acquisition.

#### D. CONCLUSIONS BASED ON TERMS OF REFERENCE

58. On the issue of compliance with SingPost's Constitution, internal procedures and processes in relation to acquisitions and the identification of conflicts of directors, we find that:

- (a) while SingPost has no prescribed policy, process or procedure for the evaluation and approval of M&A transactions, the M&A team adopts a process in practice in lieu of a written procedure, based on broad internal guidelines as well as the work experience of members of the M&A team. This practice includes the following steps:
  - (i) acquisition targets ("**Targets**") are identified by SingPost's M&A team via various means and channels including investment banks and contacts provided through SingPost's Board and business unit leaders;
  - (ii) the SingPost M&A team works with the in-house legal team to draft a non-disclosure agreement for execution by the identified Targets;
  - (iii) the M&A team will provide preliminary information through a teaser memorandum for management to decide whether or not to carry on with the intended acquisition;
  - (iv) the head of the M&A team will discuss with the Chairman of the SingPost Board and the Group CEO as to whether the Target is a strategic fit;
  - (v) if the Target is a strategic fit, a memorandum will be presented to the relevant approving body (see [8] above) to obtain approval to conduct due diligence. This approval allows management to: (1) further conduct

investigations to complete a detailed evaluation of the Target; (2) carry out detailed analyses of the Target, not limited to financial and tax due diligence, risk factor analysis, and risk mitigation plans; and (3) prepare and sign a non-binding term sheet;

- (vi) upon obtaining the aforesaid approval, a non-binding term sheet is signed, which initiates the due diligence process. Simultaneously, SingPost will seek government subsidies where possible;
  - (vii) valuation reports will be prepared with the information obtained from the due diligence exercise and submitted to the relevant approving body for consideration and approval to proceed with the deal;
  - (viii) once the deal has been agreed upon and signed, the M&A team will work with corporate secretary, corporate communications, investor relations and legal teams to work out the announcement to SGX; and
  - (ix) post-announcement, SingPost will move into post-integration planning and work with the Target to sort out integration details and iron out alignment issues;
- (b) there were no deviations from this practice in respect of the Famous Acquisitions, save for the FPSNZ Acquisition, where no express approval to conduct due diligence was documented, even though due diligence was conducted;
- (c) there is no prescribed policy, process or procedure to determine whether there are conflicts of interest in relation to SingPost's M&A transactions, or whether relevant

disclosures have been made, and the directors of SingPost are responsible for declaring their interests, if any;

- (d) SingPost's Constitution has no prescribed requirements relating to the evaluation and approval of M&A transactions; and
- (e) the requisite final approvals from the relevant financial approving authorities were obtained in respect of the Famous Acquisitions:
  - (i) in respect of the FHPL Acquisition, approval to invest was granted by the SingPost Board at the 8 Jan 2013 SingPost Board Meeting;
  - (ii) in respect of the FSM Acquisition, approval to invest was granted by the SingPost Exco at the 23 June 2014 SingPost Exco Meeting; and
  - (iii) in respect of the FPSNZ Acquisition, approval to invest was granted by the SingPost Exco at the 7 January 2015 SingPost Exco Meeting.

59. In respect of Mr Tay's disclosure obligations and involvement in relation to the Famous Acquisitions:

- (a) Mr Tay had a personal interest as non-executive Chairman and 34.5% shareholder of SCCL in the Famous Acquisitions by reason of SCCL's appointments as arranger or advisor to the vendors, and was under an obligation under section 156(1) of the Companies Act (Cap 50, Rev Ed 2006) ("**Companies**

**Act**) to disclose the same to SingPost and FHPL as soon as practicable after the relevant facts had come to his knowledge<sup>8</sup>;

- (b) Mr Tay also had a fiduciary duty to disclose his interest in the FSM and FPSNZ Acquisitions to the SingPost Exco, which he was a member of, as it is the financial approving authority for these transactions;
- (c) Mr Tay issued three notices to the SingPost Company Secretary between December 2010 and July 2013 enclosing a list of his directorships in, among other companies, SCCL ("**Mr Tay's Notices**"). There was no mention of Mr Tay's interest as 34.5% shareholder in SCCL in Mr Tay's Notices;
- (d) Mr Tay's interests in the FHPL and FSM Acquisitions were disclosed (or known) to the SingPost Board, the FHPL Board and/or SingPost Exco (as the case may be) before the FHPL and FSM Acquisitions were finally approved. However, with respect to the FPSNZ Acquisition, while Mr Tay disclosed his interest to the FHPL Board, he did not disclose his interest to the SingPost Exco, which was the financial approving authority. While this was not a breach of section 156 of the Companies Act, it would be a breach of the fiduciary duties he owed to the SingPost Exco. Nonetheless, such an omission does not appear to have been deliberate or intended to conceal his interest as he had declared his interest to the FHPL Board at a meeting held just before the relevant SingPost Exco meeting, and the meetings had common attendees<sup>9</sup>. Our interviews suggest that it would have made no difference to the decision to enter into the FPSNZ Acquisition if Mr Tay had declared his interest to the SingPost Exco;

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<sup>8</sup> Section 156 of the Companies Act was recently amended on 3 January 2016. This Report discusses the earlier version of section 156 applicable to the events surrounding the Famous Acquisitions.

<sup>9</sup> The following people attended both the FHPL Board meeting as well as SingPost Exco meeting held on 5 November 2014: (a) Mr Tay; (b) Dr Baier; (c) Mr Woo; (d) Mr Daniel Phua; (e) Mr Winston Wong; and (f) Ms Jacqueline Low.

(e) on the issue of whether Mr Tay had made his disclosures as soon as practicable, it is our view that:

- (i) Mr Tay did not declare his interest in the FHPL Acquisition as soon as practicable, and was arguably in breach of section 156(1) of the Companies Act. His declaration was only made on 8 January 2013, when the SingPost Board gave its final approval, even though Mr Tay was aware of his interest in the proposed transaction by 14 August 2012 (at the latest) (see [16] above and [63(e)] below). Mr Tay could and should have disclosed his interest in the Directors' Resolution In-Writing dated 14 August 2012<sup>10</sup>. In our view, it makes no difference that there was no physical meeting. Indeed, we note that Mr Tay declared his interest in the FHPL Directors' Resolutions in writing dated 18 July 2014 and 7 January 2015 to approve the FSM and FPSNZ Acquisitions. In any event, Mr Tay could have disclosed his interest at the subsequent SingPost Board meetings which we understand were convened on 10 September 2012, 29 October 2012 and 10 December 2012. Nonetheless, Mr Tay's failure to declare on a timely basis did not appear to have affected SingPost's decision to enter into the FHPL Acquisition;
- (ii) whether Mr Tay declared his interest in the FSM Acquisition as soon as practicable depends on the accuracy of the recollection of Mr Ang. Mr Tay disclosed his interest to the SingPost Exco, the financial approving authority for the FSM Acquisition, on 23 June 2014. Mr Ang informed us that he had informed Mr Tay of SCCL's appointment in July 2013 and

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<sup>10</sup> see *Walter Woon on Company Law* (3rd ed, 2009), Sweet & Maxwell at [8.49]

again in June 2014. Mr Tay on the other hand, informed us that he only became aware that SCCL was engaged by the vendor of FSM during his email exchange with Mr Ang on 21 and 22 June 2014. We are unable to conclude whose account is accurate. However, the documents suggest that Mr Tay ought to have been aware of his interest in the FSM Acquisition by the time of the FHPL Board meeting held on 25 April 2014, as SCCL's role in the acquisition was specifically discussed (see [28] above). In any event, according to our interviews, all the other directors of FHPL knew or ought to have known of Mr Tay's Interest in SCCL at that point. Insofar as SCCL's involvement in the FSM Acquisition was made known at this FHPL Board meeting, the other directors of FHPL therefore knew or ought to have known of Mr Tay's interest in the FSM Acquisition. Therefore, if Mr Ang's recollection is incorrect, no express disclosure was necessary to the FHPL Board (and therefore the issue of timeliness does not arise);

- (iii) whether Mr Tay declared his interest in the FPSNZ Acquisition as soon as practicable also depends on the accuracy of Mr Ang's recollection. Mr Tay disclosed his interest in the acquisition to the FHPL Board on 5 November 2014. Mr Tay informed us that he was first aware of SCCL's appointment by the vendor of FPSNZ around this time. However, Mr Ang informed us that he had informed Mr Tay of SCCL's appointment in July 2013 and again in July 2014. We are unable to conclude whose account is accurate;
- (iv) in any event, our interviews suggest that the lack of timeliness in the disclosures (if any) would have made no difference to the decisions to enter into the Famous Acquisitions;

- (f) Mr Tay ought to have, but did not abstain from voting in favour of the SingPost Directors' Resolution In-Writing dated 14 August 2012 to grant in-principle approval for, *inter alia*, due diligence for the FHPL Acquisition on account of his personal interest. We are of the view that this is not in compliance with Article 102 of SingPost's Constitution, which states that "*A Director shall not vote in respect of any contract or arrangement or any other proposal whatsoever in which he has any personal material interest, directly or indirectly. A Director shall not be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting*". We are of the view that this was also in breach of his fiduciary duty to SingPost not to engage in any decision given his potential conflict. We are also of the view that insofar as the SingPost Exco resolved to approve the FPSNZ Acquisition on 5 November 2014, Mr Tay ought to, but appears not to have abstained from the decision, in breach of his fiduciary duty. We however note the SingPost Board's position that there may have been no approval given at this meeting and that the Exco Paper dated 7 January 2015 may have been inaccurate (see [47] above). In any event, there is no suggestion that Mr Tay's vote influenced or otherwise affected the eventual approval of the FHPL or FPSNZ Acquisitions;
- (g) Mr Tay did abstain from voting in the grant of *final* approval for each of the Famous Acquisitions in compliance with SingPost's Constitution; and
- (h) we note that the SingPost and FHPL Constitutions do not contain provisions requiring a director to recuse himself from participating in discussions regarding a matter which he has or may have an interest in. Furthermore, while a director has a duty to refrain from acting in relation to a matter in which he has a conflict of interest, he is not prohibited by law from attending and participating in meetings



and discussions regarding matters which he has or may have an interest in (assuming he has declared his interests). While this is ultimately an issue of judgment, we are of the view that it is consistent with good practice for a director to recuse himself from, or not participate in, such meetings, in order to facilitate full and frank deliberations as well as avoid any perceived risk of influencing the decision. Thus, Mr Tay should have refrained from participating in all SingPost or FHPL discussions regarding the Famous Acquisitions. Nonetheless, our interviews and the minutes of the relevant meetings suggest that Mr Tay's participation was minimal and does not appear to have influenced the decisions to enter into the Famous Acquisitions in any way.

60. On the issue of compliance with SingPost's internal approvals and the requirements of the SGX Listing Rules in relation to SingPost's SGX announcements on the Famous Acquisitions:

- (a) there is no prescribed policy, process, or procedure in SingPost in relation to the approval of SGX announcements for M&A transactions. However, SingPost adopts the following practice: (i) external counsel involved in the acquisition prepares an initial draft of the SGX announcement, for input from the SingPost legal, corporate secretarial and M&A teams where necessary; (ii) the Company Secretary obtains final approval from the Group CEO; and (iii) the Company Secretary issues the announcement on the SGX platform. We understand from our interviews with the SingPost Company Secretaries and Directors that no Board approval is required for the release of SGX announcements. Insofar as the draft SGX Announcements for the FSM and FPSNZ Acquisitions were circulated to the FHPL Board for approval, this is an additional step to, and not a deviation from, the practice adopted by SingPost;

- (b) there is no evidence of any significant or unusual deviations from this practice in relation to the FHPL and FSM Acquisitions. In relation to the FPSNZ Acquisition, it appears from our interviews that there were two deviations, neither of which was significant or unusual: (i) the initial draft was prepared by in-house counsel instead of external counsel because the external counsel, a New Zealand law firm, was not familiar with the Listing Rules; and (ii) final approval of the Group CEO was not obtained because the SingPost Board had delegated the ultimate responsibility for approval of such announcements to the Company Secretary. The announcement also complied with the relevant provisions of the Listing Rules;
- (c) SingPost was obliged to, and did announce each of the Famous Acquisitions and comply with the disclosure requirements under Rule 704(17)(c) read with Rules 1010(3) and 1010(5) of the Listing Rules, as the Famous Acquisitions were acquisitions of shares resulting in a company becoming a subsidiary of SingPost;
- (d) SingPost was not obliged to disclose Mr Tay's interest in the Famous Acquisitions in the announcements for the following reasons:
- (i) the Relative Figures<sup>11</sup> for each of the Famous Acquisitions did not exceed 5%; and
  - (ii) Mr Tay's interest in the Famous Acquisitions was not material information that would be likely to effect a significant change in the price or value of SingPost's shares or influence persons who commonly invest in shares in deciding whether or not to trade in the shares under Rules 703(1)(a) or

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<sup>11</sup> Net profits of the asset acquired (as compared to the listed group's net profits) and value of consideration given (as compared to the listed company's market capitalisation) as defined under Rule 1006 of the Listing Rules.

703(1)(b) of the Listing Rules. This is because, among other things, Mr Tay's interest was indirect, and there is no evidence to suggest that the disclosure of Mr Tay's interest in the Famous Acquisitions would have influenced the trading decisions of a common investor or effect a significant change in the share price of SingPost. In fact, when Mr Tay's interest in the FSM Acquisition was clarified on 22 December 2015, the price impact on the share price of SingPost was minimal;

- (e) the 18 July 2014 SGX Announcement incorrectly stated that no director had any interest, direct or indirect, in the FSM Acquisition. The error appears to have been on account of carelessness in its preparation and review by certain SingPost staff. There is no evidence that there was any intention to deliberately mislead the public as to Mr Tay's interest in the FSM Acquisition. We note that it was Mr Tay who spotted the error and alerted SingPost's management after the 18 July 2014 SGX Announcement was released;
- (f) we also note that SingPost was careful to seek external legal advice in respect of the incorrect announcement as soon as the error was discovered, and based its decision not to issue any correction on that legal advice;
- (g) nonetheless, we are of the view that SingPost should have issued an announcement to correct or clarify the error on a timely basis. While we are not suggesting that every error however trivial should be corrected, we are of the view that it would have been consistent with good practice for SingPost to have issued an announcement correcting the error on a timely basis. The failure to do so was not consistent with the principle underlying the Listing Rules requiring timely and accurate disclosure of information. In the event, we note that SingPost acted on

legal advice at the time, and did eventually issue a corrective announcement on 22 December 2015; and

- (h) in any event, based on our review of documents and our interviews, the error in the 18 July 2014 SGX Announcement and the decision not to issue a timely correction were not borne out of any bad faith or deliberate intention to conceal Mr Tay's interest in the FSM Acquisition.

Maxwellisation process

61. We showed extracts of earlier drafts of this Report to, among others, Mr Tay for their comment. Insofar as we have accepted Mr Tay's further comments, we have made the necessary amendments to this Report. Insofar as we did not agree with Mr Tay's further comments or have already dealt with them, we have left the relevant parts of this Report intact. We have set out Mr Tay's comments and our responses in detail in this Report (see Part XI(B)) and annexed Mr Tay's emails containing his comments at Annexes C and D of the Report. We provide a summary of Mr Tay's comments below.

62. Mr Tay raised the following broad points:

- (a) his position of conflict between SingPost and SCCL was "*completely theoretical*" as he was not involved in the Famous Acquisitions on behalf of SCCL, SingPost or FHPL, and there was no evidence of him having influenced SingPost, FHPL or SCCL regarding the same;
- (b) by Mr Tay's Notices, he had provided the necessary disclosures under section 156(4) of the Companies Act of his interest as a director of SCCL;

- (c) his interest and involvement in SCCL were known by all the directors of SingPost and was public knowledge because it was disclosed in SingPost's annual reports;
- (d) there was no attempt to conceal the fact that SCCL was involved in each of the Famous Acquisitions, and that it was "*not unreasonable*" for him to expect and rely on the senior management of SingPost to inform the rest of the SingPost Board of SCCL's involvement in the Famous Acquisitions;
- (e) that it cannot be concluded that he had actual knowledge of a proposed transaction between SingPost and FHPL in May and June 2012 as the transaction was "*virtually shelved at that point in time*";
- (f) there were no meetings at which the FHPL Acquisition was discussed, prior to his actual disclosure of interest on 8 January 2013. In the premises, any alleged delay in disclosing his interest did not cause any prejudice; and
- (g) he was not prohibited from discussions concerning the Famous Acquisitions simply because he had an interest in SCCL. There was no reason why SingPost could not benefit from the input of the conflicted director. His involvement was limited to high level and generic comments.

63. Our responses to Mr Tay's comments are as follows:

- (a) as a director of SingPost and later also Chairman of the FHPL Board, as well as a director and shareholder of SCCL, Mr Tay was clearly in a position of conflict in respect of the Famous Acquisitions. We are unclear as to what he means by his assertion that he was "*not involved in any of the three acquisitions*". The fact that he was part of the SingPost and FHPL Boards and the SingPost Exco which

approved the acquisitions is clear and sufficient evidence of his involvement. Insofar as Mr Tay is suggesting that he was not in a conflict as he was not involved in negotiating the terms of the deals, that is irrelevant, and would be a surprising assertion;

- (b) Mr Tay's Notices are not sufficient disclosures of Mr Tay's conflict of interest under section 156(4) of the Companies Act. First, the Famous Acquisitions were not transactions between SingPost or FHPL and SCCL and were therefore not "*transactions made with that corporation*" within the meaning of section 156(4) of the Companies Act. Second, Mr Tay's Notices do not disclose Mr Tay's interest as 34.5% shareholder of SCCL, contrary to section 156(4)(a) of the Companies Act which requires the general notice to specify the nature and extent of the director's interest. Likewise, the SingPost annual reports do not mention Mr Tay's interest as 34.5% shareholder of SCCL;
- (c) more importantly, there is a critical difference between disclosing Mr Tay's Interest in SCCL and disclosing his interest in each of the Famous Acquisitions. Even if the other directors of the SingPost Board or FHPL Board were aware of Mr Tay's Interest in SCCL, they would only know of Mr Tay's interest in each of the Famous Acquisitions if they also knew of SCCL's appointment by the vendors in each transaction. Our interviews suggest that not all the directors were aware of Mr Tay's interest in each of the Famous Acquisitions until Mr Tay formally declared his interest at the respective SingPost Board and/or SingPost Exco meetings;
- (d) we agree that there was no attempt to conceal the fact that SCCL was involved in each of the Famous Acquisitions. This Report, and the earlier drafts, do not state otherwise. However, a director's obligation to disclose his interest is his own, and he cannot and should not expect senior management to discharge that obligation

for him. Senior management did not have an obligation or duty to inform the SingPost Board or SingPost Exco of SCCL's involvement in the Famous Acquisitions. Further, just because senior management was aware of SCCL's involvement in the Famous Acquisitions does not mean that all the directors of the SingPost Board or members of the SingPost Exco would likewise have been aware. Indeed, some directors / members were not aware;

- (e) we disagree that Mr Tay did not have actual knowledge of a proposed transaction between SingPost and FHPL in June 2012 as Mr Tay had forwarded correspondence relating to the assessment of the FHPL Acquisition from SCCL to SingPost, and *vice versa*. The emails do not support the assertion that the proposed transaction had been "*virtually shelved*". In any event, Mr Tay's position in his interview with us was that he was not obliged to make any declaration of his interest in the proposed transaction until final approval of the SingPost Board was sought. In the circumstances, it was not his position that he did not make disclosure because he believed that the proposed transaction had been "*virtually shelved*". Further, regardless of Mr Tay's interpretation of the email exchange in June 2012, he must have known by the 14 August 2012 SingPost Directors' Resolution In-Writing (to grant in-principle approval for, among other things, due diligence to be conducted on FHPL) that the acquisition was being seriously considered. Yet, he did not disclose his interest then;

- (f) we agree that Mr Tay's failure to make declarations on a timely basis did not appear to have affected the decisions to enter into the Famous Acquisitions. However, insofar as Mr Tay is suggesting that he had no obligation to declare his interest in the FHPL Acquisition at SingPost Board meetings before 8 January 2013 because it was not discussed at these meetings, we disagree. As discussed at [59(e)(i)] above, Mr Tay could and should have disclosed his interest in the 14

August 2012 SingPost Directors' Resolution In-Writing. In our view, it makes no difference that there was no physical meeting. Indeed, we note that Mr Tay declared his interest in the FHPL Directors' Resolutions in writing dated 18 July 2014 and 7 January 2015 to approve the FSM and FPSNZ Acquisitions. In any event, Mr Tay could have disclosed his interest at the subsequent SingPost Board meetings which we understand were convened on 10 September 2012, 29 October 2012 and 10 December 2012. Regardless, he should have abstained from voting on the 14 August 2012 SingPost Directors' Resolution In-Writing; and

- (g) Mr Tay ought to have refrained from any participation in the discussions on the Famous Acquisitions to avoid the actual or perceived risk of influencing the decision on the acquisitions. This is especially so given Mr Tay's position as a long-standing director of the SingPost Board and Chairman of the FHPL Board. Nonetheless, as we have made clear in this Report, our findings suggest that Mr Tay's participation was minimal and does not appear to have influenced the decisions to enter into the Famous Acquisitions. For the avoidance of doubt, we are not suggesting that Mr Tay had breached his duties in this respect.

## **E. RECOMMENDATIONS**

64. Finally, we have been asked to report on the adequacy of, and recommend areas for improvement on, SingPost's internal procedures, processes and policies and SingPost's corporate governance practices.

### **i. Recommendations on process and procedures regarding the evaluation and approval of M&A transactions**

65. As we have noted above, SingPost does not appear to have any prescribed policy, process or procedure in relation to the evaluation and approval of M&A transactions.



Instead, SingPost adheres to a process in practice based on, among other things, the experience of the M&A team and a document setting out broad guidelines for the procedure adopted in an acquisition, including internal approval mandates and the relevant approving authorities based on the size of the acquisition.

66. We note that although the practice spells out broad requirements for the due diligence process, there are no guidelines requiring the identification of members of the SingPost Board or SingPost employees that may be connected to, or interested in any way in the M&A targets.

67. We strongly recommend that SingPost should review the adequacy of their current guidelines, processes and procedures on M&As to ensure that best practices are incorporated in such guidelines, including but not limited to requiring the M&A team to cross-reference the SingPost repository containing all the SingPost directors' interests against the M&A targets and their advisors to check for potential conflicts of interest, prior to seeking in-principle approval to conduct due diligence on targets and final approval for transactions. As advisors are likely to play a significant role in the negotiation process for M&As, they should be subject to the same checks as any potential acquisition target. This better practice will enhance the rigour and coverage of this process. Such processes and procedures should be properly documented, in order to serve as a guide for all M&A transactions conducted by the SingPost M&A team. This would allow for the identification of and declaration by SingPost directors and employees who may have a connection or interest in target companies, leading to greater clarity, consistency and control over future M&A transactions.

**ii. Recommendations on process and procedures regarding the disclosure of directors' interests**

68. We note that SingPost does not have any prescribed policies and procedures governing the disclosure of directors' interests.

69. Based on our interviews with SingPost directors and SingPost Company Secretaries, we understand that:

- (a) directors are requested to declare their current directorships in other entities upon their appointment to the SingPost Board and to update these declarations on an annual basis thereafter. There is no standard documentation for the updating of directors' external appointments and / or interests; and
- (b) there is no process requiring directors to assess and declare their interests in potential transactions undertaken by SingPost.

70. We strongly recommend that SingPost should define standard procedures and guidelines for the declaration of directors' interests. For example, standard forms should be completed by the SingPost Board (a) in their annual declaration of interest of their directorship in other companies; (b) where there are changes in such directorships throughout the year; and (c) where there are M&A transactions that give rise to potential conflicts of interests. The timing of such declaration and the SingPost personnel to whom these forms are to be submitted to should also be clearly defined.

**iii. Recommendations on process and procedures regarding the preparation and approval of SGX announcements for M&A transactions**

71. We note that there are no written policies and procedures for the preparation and approval of SGX announcements for M&A transactions.

72. As stated above, we understand that the practice was for the external counsel to prepare an initial draft announcement, which would be circulated by the SingPost in-house legal and corporate secretarial team to, among others, the M&A team, for input. Finally, the draft announcement would be approved by the Company Secretary and Group CEO before release on the SGX platform.

73. We observe that SingPost's practice is not documented in any written policy and procedure and does not require the circulation of the draft announcements to the SingPost Board before they are released on the SGX platform.

74. We consider the current practice to be adequate, but would strongly recommend that it and other guidelines for the drafting, reviewing and approving of corporate announcements be properly documented. Further, the M&A team should adopt a standardised checklist of actions as a form of internal controls, allowing them greater assurance over future M&As.

75. Finally, we recommend a standardised checklist be instituted for any public announcements. Such a checklist should specify: (a) the parties who are responsible for drafting the announcements; (b) the relevant parties (including the directors) to whom the draft announcement is to be circulated, and who are each responsible for reviewing a part of the draft announcement to ensure its accuracy; (c) instances where external legal advice is to be sought and the SingPost personnel who are responsible for procuring such legal advice; and (d) dedicated personnel responsible for the final review of the

announcement. This would help ensure that announcements are properly vetted and approved before being released to the public.

76. We understand that SingPost has appointed professionals to carry out a broader scope of corporate governance review. We recommend that our recommendations at [65] to [75] above be part of such review.