Telemedia Pacific Group Ltd *v* Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party) [2014] SGHC 235

Case Number	: Suit No 379 of 2012
Decision Date	: 18 November 2014
Tribunal/Court	: High Court
Coram	: George Wei JC
Counsel Name(s)	: N Sreenivasan SC and Ramesh Bharani (Straits Law Practice LLC) for the plaintiff; Gary Leonard Low, Benedict Teo Chun-Wei, Ng Sook Zhen and Terence Tan (Drew & Napier LLC) for the defendant; Hee Theng Fong, Toh Wei Yi and Ong Po-Qin (Harry Elias Partnership LLP) for the third party.
Parties	: Telemedia Pacific Group Ltd — Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)

Banking – Accounts – Negligence

Banking – Accounts – Conclusive evidence clauses

Evidence – Documentary evidence – Electronic records

18 November 2014 Judgment reserved.

George Wei JC:

Introduction

1 This action concerns claims made by a plaintiff-customer against a defendant-bank for a loss of shares placed in the plaintiff's account with the defendant. The writ in this action was filed on 9 May 2012. The claims are made on the basis of an alleged breach of the defendant's mandate with the plaintiff, and for the defendant's alleged breach of its duty to take reasonable care. The defendant has also brought proceedings against the third party for an indemnity or contribution on the basis that any breach of duty owed to the plaintiff was caused by the misrepresentation of the third party.

2 The plaintiff, Telemedia Pacific Group Limited ("Telemedia"), is a company incorporated in the British Virgin Islands ("BVI"). Telemedia is wholly-owned by Hardy Hartanto ("Mr Hartanto"), a citizen of the Hong Kong Special Administrative Region ("Hong Kong SAR"). Mr Hartanto is also the sole director of Telemedia. Telemedia was an account holder with the Singapore branch of the defendant, Crédit Agricole (Suisse) SA ("Crédit Agricole"), a Swiss bank. The account was opened on 2 December 2010. I shall refer to it as "the Telemedia Account".

3 Telemedia held 225m Next Generation Satellite Communications Ltd ("NexGen") shares in the Telemedia Account. NexGen is a company listed on the Singapore Exchange ("SGX"). (NexGen was previously known as Ban Joo & Company Limited, and there was some reference to a company by that name in the evidence. For convenience, I will only use the name NexGen to refer to that company or its shares.) At the material time, about 60% of NexGen's issued share capital was held by Telemedia.

4 In October 2011, Crédit Agricole transferred the NexGen shares out of the Telemedia Account on the instructions of the third party, Yeh Mao-Yuan, also known as Jack Yeh ("Mr Yeh"). Mr Yeh is a

citizen of the Republic of China (Taiwan) who travels on a Dominica passport. He was also a business associate of Mr Hartanto. The Telemedia Account was in fact opened pursuant to a joint-investment arrangement between Mr Yeh and Mr Hartanto. Mr Yeh was the person who instructed that the 225m NexGen shares be transferred out of the Telemedia Account into an account maintained by Fullerton Capital Enterprises Limited ("Fullerton"). Fullerton was a subsidiary of Yuanta Asset Management International Limited ("Yuanta"), which was in turn owned by Mr Yeh.

5 Telemedia claims that Crédit Agricole was not authorised to act on the instructions of Mr Yeh. It submits that Crédit Agricole had, by effecting the transfers of the 225m NexGen shares pursuant to Mr Yeh's instructions, acted in breach of its mandate, or alternatively, its duty of care owed to Telemedia.

6 Crédit Agricole's position is that Mr Yeh was singly authorised to operate the Telemedia Account. Crédit Agricole points to the account-opening forms and supporting documents which were submitted pursuant to the opening of the Telemedia Account. These forms constitute the contractual documents establishing the banker-customer relationship between Crédit Agricole and Telemedia. The forms show *both* the names and signatures of Mr Yeh and Mr Hartanto and reflect both of them as being singly authorised to provide instructions to Crédit Agricole in respect of the Telemedia Account.

7 Telemedia challenges the circumstances under which Mr Yeh's name and signature came to appear on the account-opening forms. Telemedia's position is that Mr Hartanto was the sole authorised signatory in respect of the Telemedia Account. Telemedia alleges that a Crédit Agricole banker, Brian Goh ("Mr Goh"), handed the account-opening forms to Mr Yeh after Mr Hartanto had signed and returned the forms to Crédit Agricole. Mr Goh purportedly handed the forms to Mr Yeh without Mr Hartanto's knowledge or consent. Telemedia claims that Mr Goh's handing over of the account-opening forms to Mr Yeh allowed Mr Yeh to affix his signature on the forms. At the material time, Mr Goh was a director at the Singapore branch of Crédit Agricole's private banking arm. He was the private banker responsible for managing Telemedia's banking relationship with Crédit Agricole.

8 Crédit Agricole disputes Telemedia's version of events. Crédit Agricole's position is that the agreement or understanding between Mr Hartanto, Mr Yeh and Mr Goh had been that both Mr Hartanto and Mr Yeh would be singly authorised to operate the Telemedia Account. Crédit Agricole's position is that when the completed account-opening forms were handed to Mr Goh, the forms bore the names and signatures of both Mr Hartanto and Mr Yeh, consistent with the understanding between the three of them.

9 Crédit Agricole also commenced third-party proceedings against Mr Yeh, seeking an indemnity from him in the event that Crédit Agricole is found liable. Crédit Agricole's claim against Mr Yeh, which is predicated on the success of Telemedia's claim against it, is that Mr Yeh had fraudulently misrepresented to Crédit Agricole that he was singly authorised to operate the Telemedia Account. Crédit Agricole alleges that it had been induced by those misrepresentations to transfer the 225m NexGen shares out of the Telemedia Account on Mr Yeh's instructions.

10 It is important to bear in mind two features of the present proceedings. First, Telemedia's claim is against Crédit Agricole and *not* Mr Yeh. No claim was brought by Telemedia against Mr Yeh in respect of his alleged unauthorised instruction to Crédit Agricole to transfer 225m shares out of the Telemedia Account. This is, at least on the face it, bizarre. Based on Telemedia's version of events given in these proceedings, Mr Yeh would have been the main antagonist—he would have been the fraudster who covertly inserted his name into the account-opening forms without Telemedia's knowledge or consent. But Mr Yeh is party to these proceedings only because *Crédit Agricole* took out third-party proceedings against him.

11 To date, neither Telemedia nor Mr Hartanto has instituted legal proceedings against Mr Yeh. Neither does it appear that any police report has been lodged against Mr Yeh. [note: 1] In cross-examination, Mr Hartanto appeared to agree that it was his case that Mr Yeh had defrauded him in respect of the transfer of the 225m NexGen shares (at the very least to have instructed the transfer of shares without authority). Accordingly, his complaint in this suit against Crédit Agricole was made on the basis that Mr Goh and Mr Yeh had ganged up against him. [note: 2] Mr Hartanto's evidence was, however, peculiar, as he appeared to hold the view that the fault lay entirely on Crédit Agricole, and that Telemedia *might not even have a cause of action against Mr Yeh*. While I accept that it is Telemedia's (or Mr Hartanto's) sole prerogative as to who to bring proceedings against, and for what, it is still surprising, given the nature of the allegations made by Telemedia in this suit, that neither Telemedia nor Mr Hartanto has initiated an action against Mr Yeh. [note: 3]

12 Second, Telemedia's claim against Crédit Agricole is premised entirely on the fact that Crédit Agricole's transfer of the 225m NexGen shares out of the Telemedia Account was effected either without authority or in breach of its duty of care. There is no allegation of fraud, notice of fraud or conspiracy made against Crédit Agricole or Mr Goh.

13 The nub of the dispute is whether Mr Yeh was singly authorised to give instructions in relation to the Telemedia Account. This requires a determination of how Mr Yeh's name and signature found its way onto the Telemedia account-opening forms. If Mr Yeh was authorised to give instructions in relation to the Telemedia Account, the further question that arises is whether Telemedia validly revoked Mr Yeh's authority prior to the transfer of the 225m NexGen shares out of the Telemedia Account in October 2011. Before addressing these factual and legal disputes, I will begin by tracing the largely undisputed facts.

The facts

The introduction of Mr Hartanto to Mr Yeh and preliminary talks

14 The origins of the dispute date back to 2005. That was the first time Mr Hartanto was introduced to Mr Yeh in Shenzhen, the People's Republic of China. They then met again in July or August 2010 at Marina Bay Sands ("MBS") in Singapore. At this meeting, Mr Hartanto and Mr Yeh discussed the possibility of both of them entering into a joint investment.

The joint investment: the non-recourse loan agreements and securities co-operation agreement

15 After subsequent meetings and discussions, the skeleton of the joint investment took shape. The plan was for Mr Hartanto and Mr Yeh to invest through the vehicle of a BVI company. The company eventually selected was Asia Energy Management Ltd ("Asia Energy"). Mr Hartanto claims that the entity Asia Energy was not selected till a much more advanced stage in the finalisation of the joint-investment arrangement. I will come back to this point later. Both Mr Hartanto and Mr Yeh also acted through their respective companies, Telemedia and Yuanta, in respect of the joint investment.

16 The joint-investment arrangement required both Telemedia and Asia Energy to open individual accounts with Crédit Agricole. The arrangement was structured in two stages. The first stage concerned the procurement of financing for Asia Energy. The second stage concerned the actual joint investments made by Asia Energy.

17 Under the first stage, Yuanta was to advance loans to Asia Energy on the collateral of NexGen shares. These NexGen shares were to be provided by Telemedia. Under the precise mechanics of the arrangement, the NexGen shares would be held in the Telemedia Account. Yuanta would disburse loan monies (which it procured from third-party lenders) to Asia Energy's account with Crédit Agricole ("the Asia Energy Account") against the transfer of NexGen shares from the Telemedia Account into Yuanta's account with Crédit Agricole ("the Yuanta Account"). The loan amount to be disbursed to Asia Energy was to be 50–55% of the value of the collateralised NexGen shares. On top of that, Yuanta would also charge a 10% service fee for the provision of the loans to Asia Energy.

18 Yuanta was given broad powers to deal with the NexGen shares pledged as security for the loans to Asia Energy. Yuanta was entitled to sell, trade or pledge the collateralised NexGen shares at its discretion. It was entitled to hold or deposit the shares with any local or overseas depository institution or liquidation company, issuers of securities without certificates and custodians at any local or overseas bank or custodian centre.

19 In the event that the value of the pledged NexGen shares fell below 55% of the loan amount that they secured (this was referred to as a "valuation event"), Telemedia would be required to repay the loan immediately, or to restore the value of the collateral pledged to Yuanta by transferring additional NexGen shares from the Telemedia Account into the Yuanta Account. This provision was important because NexGen was on the SGX watch list at the time of the transaction.

20 The second stage of the joint-investment arrangement concerned the actual investments that were made through Asia Energy. The loans from Yuanta to Asia Energy would be applied to investments. The profits and losses from these investments were to be shared equally between Telemedia and Yuanta.

21 The two-part joint-investment arrangement described above was encapsulated in three written agreements: the first and second non-recourse loan agreements ("the NRLs"), both dated 14 November 2010; and the supplementary securities cooperation agreement ("the SCA"), dated 15 November 2010. These three agreements were in Mandarin, but translations were provided for the purposes of the trial. There was a dispute as to when (14 or 15 November 2010) and where (Hong Kong SAR or Shenzhen) these agreements were signed.

The opening of the Telemedia Account and Asia Energy Account

22 It will be recalled that the joint-investment arrangement required Telemedia and Asia Energy to open accounts at Crédit Agricole. The circumstances surrounding and leading up to the opening of the Telemedia Account and Asia Energy Account are the subject of sharp disagreement between Telemedia and Crédit Agricole/Mr Yeh. Both their competing version of events will be addressed in detail below.

23 It suffices to say at this point that Mr Hartanto and Mr Yeh met with Mr Goh at the premises of the Crédit Agricole Singapore branch in early October 2010. This meeting related broadly to the joint-investment arrangement, although the specifics of what transpired are hotly disputed.

24 It is undisputed that Mr Goh handed over the account-opening forms for the Telemedia Account and Asia Energy Account to Mr Hartanto either at or after this first meeting at the Crédit Agricole premises. It is also undisputed that the account-opening forms were eventually completed and returned to Crédit Agricole. When and how each of these events occurred, however, is the subject of considerable controversy, and forms the nub of the factual dispute between the parties.

The account-opening forms

The account-opening forms

25 I will now give a brief description of the Telemedia account-opening forms, which are central to this dispute. These forms make up the terms of the banker-customer relationship between Crédit Agricole and Telemedia. The forms comprised a few sets of loose documents. Three sets of these documents are of relevance: (a) the "Application to Establish Relations" form; (b) the "Certified Extract of Board Resolution" form; and (c) the "Acknowledgement Crédit Agricole's General Conditions" form.

26 Each of these documents was dated 30 November 2010. The dates on each of these forms were filled in by Joanne Teo ("Ms Teo"). Ms Teo was Mr Goh's assistant. She prepared the account-opening forms by filling up the main portions of the forms, such as the details of Telemedia, the names, nationalities and dates of birth of the persons authorised to act as directors, *etc*. She drew a small cross or used "sign here" stickers to indicate the blanks which Mr Hartanto and/or Mr Yeh were required to sign on.

27 In the Application to Establish Relations form, both Mr Hartanto's and Mr Yeh's names were listed under the "Initial Authorised Signatures". The "Initial Authorised Signatures" are: [note: 4]

> [t]he persons ... duly authorised to execute and deliver any documents on behalf of and to bind the Client, to commit the Client in all its present and future dealings, transactions and correspondence with the Bank, to provide instructions to the Bank in respect of any matter relating to the above account(s) ... with no restrictions or conditions other than those, if any, set below.

No restrictions and conditions were set out. Both persons were stated to be singly authorised to operate the Telemedia Account. The names of Mr Hartanto and Mr Yeh, as well as the "singly" designation were written in the hand of Ms Teo. Mr Hartanto's and Mr Yeh's signatures appeared next to their names. No person signed off as a witness to this document.

28 The next document is the Certified Extract of Board Resolution form. This document sets forth a Telemedia board resolution which states that Telemedia is authorised to enter into business relations with Crédit Agricole. Under the section of the board resolution titled "Authorised Person(s)", the names of Mr Hartanto and Mr Yeh are filled in; both are stipulated to be singly authorised to instruct Crédit Agricole on behalf of Telemedia. The names of Mr Hartanto and Mr Yeh, as well as the "singly" designation, were written in the hand of Ms Teo. The document states that it constitutes Telemedia's mandate to Crédit Agricole and that the mandate will remain in force and effect until an amending resolution is passed by the directors of Telemedia. The Certified Extract of Board Resolution form was signed by Mr Hartanto as a director of Telemedia.

29 The final document is the Acknowledgement of Crédit Agricole's General Conditions form. The form acknowledges that the undersigned has received a copy of the Crédit Agricole's General Conditions, which is appended to the back of the form. This document was signed by Mr Hartanto.

30 Telemedia claims that Mr Yeh's name and signature on the Application to Establish Relations and Certified Extract of Board Resolution forms were inserted only *after* the completed forms were handed to Crédit Agricole. Crédit Agricole claims that both Mr Hartanto's and Mr Yeh's names and signatures were present on the completed account-opening forms when they were received.

31 I pause to mention that there is a similar set of account-opening forms in respect of the Asia Energy Account. I need not go into them in detail. It is undisputed that both sets of forms (one for

the Telemedia Account and one for the Asia Energy Account) were handed to Mr Hartanto together, and were returned to Crédit Agricole together. There are, however, two material differences between the Telemedia account-opening forms and the Asia Energy account-opening forms. The first is that the Asia Energy account-opening forms bore the signature of a third person—Mr Supriadi—who was Mr Hartanto's nominee for Asia Energy. The second is that Mr Hartanto and Mr Yeh were authorised to operate the Asia Energy Account jointly (this is undisputed) rather than singly, as appears to be the case on the face of the Telemedia account-opening forms.

The valuation event under the NRLs and the SCA

32 After the Telemedia and the Asia Energy accounts were opened on 2 December 2010, the joint-investment arrangement was set in motion. Yuanta procured financing from a third-party lender between February and June 2011. The total sum of financing procured was approximately S$12,936,852. The monies were transferred from the Yuanta Account to the Asia Energy Account in ten tranches. This took place against the simultaneous transfer of 765m NexGen shares, also in ten tranches, as security from the Telemedia Account to the Yuanta Account.

33 It is not disputed that the transfer of these ten tranches of NexGen shares out of the Telemedia Account were on the instructions of Mr Hartanto. It is also clear that Mr Yeh did not sign off, singly or otherwise, on these ten tranches of share transfers. With the transfer of the 765m NexGen shares out of the Telemedia Account, a residual 225m NexGen shares was left in the Telemedia Account. This remainder of 225m NexGen shares are those which Telemedia complains were transferred out of the Telemedia Account without authority.

34 The value of the pledged 765m NexGen shares fell subsequent to their transfer. This triggered a valuation event under the NRLs and the SCA. Top-up notices and reminders were issued by Yuanta to Telemedia.

35 While the issues before this court did not concern the earlier transfer of 765m NexGen shares in ten tranches, evidence was nonetheless led on the point. This was for the purpose of illustrating how the agreements and understanding between Telemedia, Mr Hartanto and Mr Yeh operated. There is no doubt that the transfer of the 765m NexGen shares occurred and that they were transferred on the sole instructions of Mr Hartanto.

36 There was also a suggestion in the evidence that the funds raised were used solely by Mr Hartanto, in breach of the agreement in the NRLs and SCA that the funds were to be applied to joint investments. This dispute, however, is not concerned with breaches under those agreements and I will not address it any further.

The attempted transfer of the NexGen shares out of the Telemedia Account in September 2011

37 On 8 September 2011, Mr Yeh instructed Crédit Agricole to transfer the remaining 225m NexGen shares out of the Telemedia Account into the Yuanta Account. Mr Yeh also emailed Mr Hartanto (copying Mr Goh) on the same day, informing him that he had issued instructions for the transfer of the 225m NexGen shares. The email also reminded Mr Hartanto to make the necessary announcement on the SGX. Mr Yeh ended off the email by instructing Mr Goh to transfer the 225m NexGen shares out of the Telemedia Account "immediately". Mr Hartanto did not respond to Mr Yeh's email dated 8 September 2011.

38 On 12 September 2011, Mr Goh asked Ms Teo, his assistant, to contact Mr Hartanto to inform him of the transfer instructions that had been received from Mr Yeh. Mr Goh stated that even though

Mr Yeh was singly authorised to sign for the Telemedia Account, he wanted to inform Mr Hartanto of the transfer as a matter of client relationship management.

39 Ms Teo attempted to telephone Mr Hartanto but was unsuccessful. She then sent an email to Mr Hartanto informing him that Crédit Agricole will be making the transfer and reminding him to make the necessary SGX announcement. An exchange of emails followed. I will examine the correspondence in detail later. In summary, Mr Hartanto's position in his emails to Ms Teo was that Mr Yeh was not a signatory for the Telemedia Account. Mr Hartanto sent a final email on 12 September 2011 stating that he had telephoned Mr Yeh, and agreed that they will transfer the 225m NexGen shares out of the Telemedia Account.

40 Mr Hartanto also claimed in his affidavit of evidence-in-chief ("AEIC") that he had telephoned Ms Teo in the midst of the email exchange. In that telephone conversation, Ms Teo purportedly promised not to make transfers until further instructions were received from Mr Hartanto. Ms Teo claimed that there was no such telephone call.

41 Ms Teo responded to the final email Mr Hartanto sent on 12 September 2011 the next day (13 September 2011). She also emailed Mr Hartanto a draft written instruction to effect the transfer of the 225m NexGen shares from the Telemedia Account to the Asia Energy Account for Mr Hartanto to sign and return (pursuant to Mr Hartanto's final email sent on 12 September 2011). Mr Hartanto did not, however, sign and return the form. The transfer of the NexGen shares was therefore not effected.

The actual transfer of the NexGen shares out of the Telemedia Account in October 2011

42 On 6 October 2011, Mr Yeh issued instructions to Crédit Agricole to transfer 112.5m NexGen shares out of the Telemedia Account into Fullerton's account at Crédit Agricole ("the Fullerton Account"). Mr Goh and Ms Teo claimed that they made attempts to contact Mr Hartanto to inform him of this, and to remind him to make the necessary SGX announcements, but that they were unable to reach him.

43 On 10 October 2011, Ms Teo called Mr Yeh in relation to his transfer instructions that he provided on 6 October 2011. The telephone call was recorded and a transcript was produced in court. Ms Teo told Mr Yeh to remind Mr Hartanto to make the necessary SGX announcements because Mr Yeh was a signatory under the account and because it was Mr Yeh who signed the transfer instruction.

44 On that same day, Mr Yeh issued another written instruction to transfer the remaining 112.5m shares out of the Telemedia Account and into the Fullerton Account. Mr Goh and Ms Teo claimed that they made attempts to contact Mr Hartanto to inform him of this and to remind him to make the necessary SGX announcements, but that they were unable to reach him.

45 On 14 October 2011, Ms Teo called Mr Yeh at about 4.34pm and 4.36pm. She made the calls to confirm Mr Yeh's 10 October 2011 transfer instruction and to remind him that the SGX announcement had to be made. The second telephone conversation also alluded to the fact that Mr Hartanto had not made an announcement in respect of the previous transfer of shares. Mr Yeh responded by saying that he had already informed Mr Hartanto to do so and that it was Mr Hartanto's responsibility to make the announcements.

46 Crédit Agricole purportedly sent transaction advices to Telemedia informing it of each of the above share transfers on 11 and 17 October 2011 respectively. Mr Hartanto denied receiving any

such transaction advices.

The post-transfer confusion

47 The Telemedia Account was left with a zero-balance following the transfer out of the 225m NexGen shares in October 2011. Crédit Agricole issued a letter on 28 October 2011 informing Mr Hartanto of the zero-balance in the Telemedia Account. The letter stated that the account would be closed within 30 days in the absence of instructions to the contrary.

48 Ms Teo followed up with an email to Mr Hartanto on 31 October 2011. The email appended the letter and asked for instructions on the closure of the Telemedia Account. Mr Hartanto responded to Ms Teo's email on the same day, requesting a confirmation that the 225m NexGen shares were still held in the Telemedia Account.

49 An exchange of emails between Mr Hartanto and Mr Goh ensued. On 1 November 2011, Mr Goh emailed Mr Hartanto, reminding him that the 225m NexGen shares had already been transferred out of the Telemedia Account. Mr Hartanto replied, asking for copies of the transfer instructions. Mr Goh responded with copies of the Application to Establish Relations form and the share transfer instructions issued by Mr Yeh on 6 and 10 October 2011.

50 Mr Hartanto emailed Mr Goh on 3 November 2011, stating:

> Dear Brian,
>
> I am very clear that [Telemedia] or me, never gave Jack Yeh as authorize signature at the account.
>
> Especially singly signature?
>
> You need the board resolution for it.
>
> You know for [Asia Energy] the JV with my partner, he is not singly signature, it require joint signature?
>
> Pls clarify, how the paper become like that?
>
> I need the 225m shares back to [the Telemedia Account].
>
> Joanne, your assistant, email us to sign the transfer, which I reject already.
>
> When she said that Jack is the authorized signature, I reply her already that he is not authorize signature. Then no reply.
>
> How come now, the shares transfer to [Yuanta], and he is the authorize signature?
>
> Brian, this is no good.
>
> B Rgds,
>
> HH

51 Mr Goh responded on the same day, stating that the Telemedia account-opening forms made it

clear that Mr Yeh was a singly authorised signatory. Mr Goh also offered to arrange a meeting between Mr Hartanto, Mr Yeh and himself before any disagreement arose. This meeting never materialised.

52 On 15 November 2011, Mr Goh sent an email to Mr Hartanto which stated as follows:

> Dear [Mr Hartanto],
>
> as per our earlier conversation, I am replying your queries via email
>
> 1. Account opening.
>
> We received your account opening forms without proof of beneficial owner and the account opening was delayed by 2 weeks.
>
> Whilst pending the beneficial owner proof from you, all forms were handed over to Mr Jack Yeh, your business partner and introducer to the bank.
>
> When all relevant forms and proof of ownership was furnished to us, the signatory of [Telemedia] included yourself and Mr Jack Yeh.
>
> The account was opened in accordance to the paperwork furnished.
>
> Our bank does not require a separate board meeting or board resolution prior to account opening to have an additional signatory for the account.
>
> ...

53 According to Mr Hartanto, this email came as a shock to him. He claimed that this was the first time he was informed that the account-opening forms had been handed to Mr Yeh. He claimed that he had never been informed that Mr Yeh was included as a singly authorised signatory. He claimed that this was done without his knowledge or authorisation.

54 Mr Hartanto's response came more than a month later, in the form of a letter dated 30 December 2011 written under Telemedia's letterhead. The length of time taken for the response is surprising. The letter stated that:

> 1. I am the Sole director and authorized signer of the Company.
>
> 2. During Sept. 2011, we had already informed you that Mr. Jack, Yeh Mao Yuan was not authorized signer to operate our company account. Therefore, all acceptance of instruction from him after Sept. was both unreasonable and unauthorized.
>
> 3. We are requested your bank remedy these mistakes and give us a satisfactory answer within 7 days from date of the letter. Otherwise, we will take the necessary actions including reporting to the Monetary Authority without further notice.
>
> ...

55 Mr Goh responded by email on 4 January 2012. He stated that he was not going to address Mr Hartanto's concerns point by point. He nonetheless stated that Crédit Agricole has "never been involved in the loan agreements or transactions between yourself and [Mr Yeh]". Mr Goh also

proposed a tripartite meeting between Mr Hartanto, Mr Yeh and himself to resolve the issues.

The termination of Mr Goh from the employment of Crédit Agricole

56 On 30 March 2012, Mr Goh was terminated from the employment of Crédit Agricole. The termination letter from Crédit Agricole stated that the reason for Mr Goh's termination was his failure to "escalate [his] client's complaints to Management despite having been notified and reminded by [his] clients on numerous occasions". He had "breached paragraph 2.4.4 of Directive 05.01 on Clients Complaints, whereby "Any client complaint that is not reported will be considered to be an instance of professional misconduct"." The letter went on to state that Mr Goh's failure to do so was "considered ... a serious breach of internal policy". [note: 5]

The removal of Mr Yeh as an authorised signatory of the Telemedia Account

57 In May 2013, Crédit Agricole wrote to Telemedia informing them that Mr Yeh was still a singly authorised signatory for the Telemedia Account, and that unless he was removed, Crédit Agricole would have to continue taking instructions from him in accordance with their mandate.

58 Telemedia responded on 3 June 2013 by way of a letter appending a Telemedia board resolution to that effect. The letter was nonetheless written on a "without prejudice" basis and asserted that "Jack Yeh was never the authorised signatory" and that there was "absolutely no reason ... to pass a resolution to effect the removal of Jack Yeh". [note: 6]

59 Crédit Agricole effected the removal of Mr Yeh as a signatory of the Telemedia Account on 7 June 2013.

The factual issues

60 At the heart of the dispute lies how Mr Yeh's signature came to appear on the Telemedia account-opening forms. Was his name inserted in accordance with an understanding between Mr Hartanto, Mr Yeh and Mr Goh? Or did Mr Goh forward the account-opening forms to Mr Yeh after they were signed and returned by Mr Hartanto, such that Mr Yeh was able to insert his name and signature without Mr Hartanto's knowledge or consent?

61 The skeleton of events I have set out above was based largely on the undisputed facts and documents. There is a surprising dearth of contemporaneous evidence documenting the events leading up to the opening of the Telemedia Account. The evidence provided by the witnesses at the trial is therefore of particular importance.

The witnesses

62 The only witness for Telemedia was Mr Hartanto. He gave evidence in English at the trial. Mr Hartanto's recollection of events was hazy. He also appeared unfamiliar with the few documents that were placed before the court. Telemedia, in its closing submissions, admits that Mr Hartanto's evidence was given "somewhat awkwardly", that he was "not clear in his recollection of dates" and that there were "lapses in [his] memory". Telemedia nonetheless submits that these factors "should not be used to adversely construe the reliability of [Mr Hartanto] as a credible witness". [note: 7]

63 Five witnesses gave evidence for Crédit Agricole. The first was Mr Goh. At the time of the trial, Mr Goh was no longer an employee of Crédit Agricole nor involved in the wealth management or finance industry. He was managing a business involving backpackers' hostels following his termination

by Crédit Agricole.

64 Ms Teo was Crédit Agricole's second witness. She was Mr Goh's assistant while he was still at Crédit Agricole. Ms Teo was still an employee of Crédit Agricole at the time of the trial.

65 Denis Michon ("Mr Michon") was Crédit Agricole's third witness. Mr Michon was the head of a department within Crédit Agricole known as S2i Mailing for Crédit Agricole (Suisse) SA in Geneva, Switzerland. He gave evidence on Crédit Agricole's internal system which managed customer information and generated statements of account and transaction advices. The S2i Mailing department also mailed all S2i documents worldwide, including Singapore. Mr Michon gave evidence that the transaction advices relating to the transfer of the 225m NexGen shares were sent to Mr Hartanto.

66 Tang Kai Ying, Sharon and Mark Nazzari Di Calabiana Willan were Crédit Agricole's fourth and fifth witnesses. Both were transcribers engaged by Crédit Agricole to transcribe or translate certain documents. Cross-examination for these two witnesses was dispensed with.

67 The sole witness for the third party was Mr Yeh himself. Mr Yeh elected to give his evidence through an interpreter in Mandarin. The positions (in respect of the factual dispute) adopted by Crédit Agricole and Mr Yeh were largely aligned. I will therefore deal with their positions collectively, save for where there are material differences in their positions.

68 The events leading up to the opening of the Telemedia Account is the subject of deep disagreement between Telemedia and Crédit Agricole. There are at least five points of dispute between both sides. First, the number of meetings that Mr Hartanto, Mr Yeh and Mr Goh attended at Crédit Agricole's premises. Second, when the account-opening forms were handed to Mr Hartanto and/or Mr Yeh. Third, when the account-opening forms were filled up and signed, and by whom. Fourth, when Mr Yeh appended his signature to the Telemedia account-opening form, and whether this was done with the consent and in the presence of Mr Hartanto. Fifth, whether the account-opening forms were handed to Mr Yeh without the knowledge and consent of Mr Hartanto. I will begin by describing the two competing sequences of events put forth by Telemedia and Crédit Agricole.

Telemedia's position

The first Crédit Agricole meeting

69 Mr Hartanto claimed that he was first introduced to Mr Goh in October 2010 at the first meeting at Crédit Agricole's premises. Mr Hartanto's position was that at the first meeting, Mr Yeh and himself informed Mr Goh of their intention to enter into a joint investment. Mr Hartanto claimed that the details and structure of the joint investment were yet to be firmed up at the time of the first meeting at Crédit Agricole.

70 Mr Hartanto's evidence was that he and Mr Yeh wanted to know the financing arrangements that Crédit Agricole could provide. Mr Goh purportedly told them that it would be difficult for Asia Energy to secure credit facilities from Crédit Agricole as it was not an existing client. Mr Yeh then suggested that Yuanta raise the loan instead, since Yuanta already had an existing credit facility with Crédit Agricole. Mr Hartanto claimed that he was under the impression that the loans for financing the joint investment would be provided by Crédit Agricole.

71 Mr Hartanto also claimed that there was a discussion as to whether Yuanta had sufficient funds to acquire NexGen shares for the purpose of the joint investment. Also broached was the topic of the

identity of the joint-venture vehicle to be used. Mr Hartanto claimed that the identity of the joint-venture vehicle was still undecided at the time of the first meeting at Crédit Agricole's premises in October 2010.

The second Crédit Agricole meeting

72 Mr Hartanto's evidence was that a second meeting was held at Crédit Agricole's premises in early November 2010. Mr Hartanto claimed that Mr Goh handed him the account-opening forms for the Telemedia Account and Asia Energy Account at this meeting.

73 Mr Hartanto's evidence as to whether he had signed some of the forms at this meeting is unclear. But it is clear that he did not return the account-opening forms to Mr Goh at the close of this meeting. Rather, he held on to them until the third meeting at Crédit Agricole's premises where he returned the completed forms to Mr Goh.

The meetings in Shenzhen/Hong Kong SAR

74 Mr Hartanto's evidence was that there was a meeting between himself and Mr Yeh in Shenzhen on 14 November 2010. Mr Goh was not present. The next day, there was another meeting in Hong Kong SAR between Mr Hartanto and Mr Yeh, where they signed the NRLs and the SCA. [note: 8]

The third Crédit Agricole meeting

75 Mr Hartanto claimed that there was a third meeting at Crédit Agricole's premises on or around 30 November 2010 (Mr Hartanto's evidence as to the precise date of this meeting was inconsistent). At this meeting, Mr Hartanto claimed that he signed the account-opening forms and returned them to Mr Goh (subject to the qualification above that Mr Hartanto may have already signed some of the forms at the second Crédit Agricole meeting).

76 Telemedia's case is that the Telemedia account-opening forms only bore the name and signature of Mr Hartanto as being singly authorised to operate the Telemedia Account when they were returned to Mr Goh at the third Crédit Agricole meeting. Telemedia's case is that Mr Goh must have subsequently handed the forms to Mr Yeh, thereby allowing Mr Yeh to affix his name and signature such that it would appear that he was also singly authorised to operate the Telemedia Account.

Crédit Agricole's position

77 The positions of Mr Yeh and Mr Goh were largely similar. According to Mr Yeh and Mr Goh, there were only two meetings held at Crédit Agricole's premises (as opposed to Mr Hartanto's position that there were three).

The first Crédit Agricole meeting

78 The first took place in October 2010. At that meeting, Mr Hartanto and Mr Yeh had already largely agreed on the structure of the joint investment, including the rights of signing for the Telemedia Account and Asia Energy Account. The structure of the joint investment and the rights of signing were agreed on in previous meetings between Mr Hartanto, Mr Yeh and Mr Goh at MBS and Fullerton Hotel.

79 The Asia Energy Account was to be operated jointly by Mr Hartanto and Mr Yeh while the

Telemedia Account was to be operated singly by either of them. At the end of the first meeting, Mr Goh handed the account-opening forms for both the Telemedia Account and Asia Energy Account to Mr Hartanto and Mr Yeh.

80 According to Mr Yeh, immediately after this meeting, Mr Hartanto and he proceeded to MBS, where Mr Hartanto signed the Telemedia account-opening forms, while Mr Yeh signed the Asia Energy account-opening forms. Mr Hartanto then took the forms away for the purpose of collating the remaining documents and obtaining Mr Supriadi's signature on the Asia Energy account-opening forms.

The second Crédit Agricole meeting

81 Mr Yeh and Mr Goh claimed that there was a second meeting held at Crédit Agricole's premises in early November 2010. The meeting was for the purpose of opening the accounts. However, Mr Hartanto had been unable to obtain all the requisite supporting documents by that meeting. As a result, the meeting was a short one.

82 According to Mr Goh, at that meeting, Mr Hartanto had placed all the account-opening forms and documents into an envelope. Mr Hartanto informed Mr Goh that the documentation was incomplete. Mr Yeh then volunteered to consolidate the documents and return them. Mr Goh therefore handed the envelope over to Mr Yeh in the presence of Mr Hartanto.

83 Mr Yeh's evidence was that after Mr Hartanto and himself had left Crédit Agricole's premises, both of them returned to Mr Yeh's hotel. Mr Yeh Yeh examined the documents and discovered that Mr Supriadi had yet to sign on the account-opening forms for Asia Energy. Mr Yeh therefore handed the forms back to Mr Hartanto for him to obtain Mr Supriadi's signature and to consolidate the remaining documents.

The meetings in Shenzhen/Hong Kong SAR

84 Mr Yeh's evidence was that he met Mr Hartanto in Shenzhen on 14 and 15 November 2010. At those meetings, they signed the NRLs as well as the SCA. Further, both of them finalised the account-opening forms for both the Telemedia Account and Asia Energy Account. According to Mr Yeh, Mr Hartanto again reiterated that Mr Yeh was to be a singly authorised signatory for the Telemedia Account.

85 Mr Yeh claimed that once they resolved the outstanding issues in Shenzhen, he kept the account-opening forms and documents and couriered them to Mr Goh in Singapore on 15 November 2010.

86 Mr Goh's evidence was that he received the forms by courier on 16 November 2010. He then passed the completed forms to Ms Teo for review. Mr Goh noticed that Mr Yeh was a singly authorised signatory on the Telemedia Account—this was consistent with the impression or understanding that he had from the first Crédit Agricole meeting, that both Mr Hartanto and Mr Yeh were to be able to operate the Telemedia Account singly.

My decision on the factual issues

87 The versions of events provided by both sides are diametrically opposed. Their divergence is so sharp that either has to be accepted or rejected in its entirety. There is no defensible middle ground between both positions. It is my judgment that the version of events put forth by Crédit Agricole and Mr Yeh is the correct one. I accept the evidence of Mr Yeh and Mr Goh, and prefer it over

Mr Hartanto's. I make this finding for three reasons.

88 First, Mr Hartanto's evidence is unsatisfactory. There were numerous and significant departures in Mr Hartanto's oral evidence from the position taken in Telemedia's pleadings and Mr Hartanto's AEIC. Second, Mr Hartanto's position (or any of the few iterations of it) did not cohere with the contemporaneous documentary evidence, in particular, Ms Teo's email to Mr Yeh dated 16 November 2010. Third, Mr Hartanto's half-hearted response when he discovered that Mr Yeh was singly authorised to transfer shares out of the Telemedia Account is consistent with the version of events given by Crédit Agricole and Mr Yeh. I will address each in turn.

89 As a preface to the discussion of these reasons, I would point out that the upshot of Telemedia's case and Mr Hartanto's evidence is that Mr Yeh had a small role, if any at all, to play in the account-opening process. From the moment Mr Goh handed the account-opening forms to Mr Hartanto, to the moment Mr Hartanto returned the signed and completed forms back to Mr Goh, Mr Yeh had little to do with the forms. Mr Yeh was not involved in the collation of the various documents required for the opening of the Telemedia Account and Asia Energy Account. He was also not involved in the completion of the forms. All he did was pen his signature on the account-opening forms for the Asia Energy Account in the presence of Mr Hartanto and Mr Goh. It will be seen that this position is untenable.

Telemedia's position is compromised because of Mr Hartanto's unsatisfactory evidence

90 Mr Hartanto's eventual evidence was that there were three meetings at Crédit Agricole's premises. At the first meeting in early October 2010, there were preliminary discussions between himself, Mr Yeh and Mr Goh as to the structure of the joint investment. At the second meeting in early November 2010, he was issued the account-opening forms by Mr Goh. At the third meeting on or around 30 November 2010, he returned the account-opening forms to Mr Goh. This position was reached, however, only after making a few significant shifts in the course of his oral evidence.

91 Telemedia's pleaded position is that there were only two meetings at Crédit Agricole's premises. The first was in October 2010 [note: 9] and the second on 30 November 2010. At the first meeting, preliminary discussions took place. There was no talk of opening accounts or the handing over of any forms. At the second meeting, Mr Goh handed two sets of account-opening forms to Mr Hartanto. [note: 10] Mr Hartanto signed these forms in the presence of Mr Goh and returned the forms to him at that meeting. [note: 11]

92 Telemedia's pleaded position is consistent with a letter dated 26 April 2012 sent from Telemedia's solicitors to Crédit Agricole's solicitors. The letter stated that the "... [account-opening forms] which were handed to [Mr Hartanto] on 30 November 2010 were signed and returned to [Mr Goh] on the very day itself". Telemedia's pleaded position is also in line with the position taken in Mr Hartanto's AEIC. [note: 12]

93 This initial position, however, was an impossible one to take. The account-opening forms for the Asia Energy Account bore the signatures of not just Mr Hartanto and Mr Yeh. The forms also bore the signature of Mr Hartanto's nominee, Mr Supriadi. Nowhere was it alleged that Mr Supriadi, who was based in Indonesia at that time, was present at the meeting at Crédit Agricole's premises in Singapore on 30 November 2010. Mr Supriadi's signature on the Asia Energy account-opening form meant either that (a) Mr Supriadi was present at the meeting on 30 November 2010; or (b) Mr Hartanto had to bring the account-opening forms back in order to obtain Mr Supriadi's signature. Neither of these possibilities is consistent with Telemedia's initial position.

94 When Mr Hartanto gave evidence in cross-examination on the first day of the trial, he departed from the initial position stated in Telemedia's pleadings and his AEIC. This was the first time Mr Hartanto gave his version of events that there were three meetings at Crédit Agricole's premises instead of two. His oral evidence was that Mr Goh gave him the account-opening forms at a meeting on 14 November 2010 *before* the completed forms were returned at the meeting on 30 November 2010. This meeting of 14 November 2010 had gone hitherto unmentioned by Telemedia and Mr Hartanto their pleadings and AEIC respectively.

95 On the first day of trial, Mr Hartanto went on to state that he did not sign any of the account-opening forms which were given to him at the meeting on 14 November 2010. [note: 13] He merely collected the forms and brought them back to Hong Kong to prepare the supporting documents needed for opening the accounts. [note: 14] This included obtaining Mr Supriadi's signature on the documents Mr Supriadi was required to sign on. [note: 15] After all the documents had been prepared, Mr Hartanto met up with Mr Yeh and Mr Goh at Crédit Agricole's premises a third time on 25 or 26 November 2010 (as opposed to the initial position that this meeting occurred on 30 November 2010). At this final meeting, Mr Yeh and Mr Hartanto signed *all* the account-opening forms in the presence of Mr Goh. The forms were then returned to Mr Goh immediately after they were signed. [note: 16]

96 On the second day of the trial, Mr Hartanto's evidence (given the previous day) that he signed *all* the account-opening forms on 25 or 26 November 2010 was subject to intense forensic cross-examination. An examination of Mr Hartanto's signatures on the two sets of account-opening forms reveal that he had used *three different pens* to sign both sets of forms. Mr Hartanto accepted as much under cross-examination. [note: 17] Most of the Telemedia account-opening forms were signed with a black pen. A blue pen was used to sign the "General Conditions for the Grant of Collateralised Credits" form for the Telemedia Account. Another blue pen was used to sign the "Application to Establish Relations" form and the "Security Agreement" form for the Asia Energy Account.

97 Counsel for Crédit Agricole, Mr Gary Low, put to Mr Hartanto that all the account-opening forms could not have been signed at the same meeting on the same day. If that were the case, there would be no reason for Mr Hartanto to have used three different pens. [note: 18] Even more so since Mr Hartanto had admitted that he signed the documents without looking through them. To his mind, they were standard form documents, and the spaces where he was required to sign on were already previously marked out with crosses/stickers by Ms Teo. [note: 19]

98 Mr Hartanto was unable to provide a convincing explanation for his use of three different pens. He evaded Mr Low's questions and made the excuse that the original documents had only been placed before him on that day of trial. [note: 20] When pressed by Mr Low, Mr Hartanto stated that he could not recall how many pens he used or how many times he had met Mr Goh to sign the account-opening forms. When he was asked if there was more than one meeting at which he signed the account-opening forms, Mr Hartanto said that he could only remember one meeting at the end of November. [note: 21]

99 Mr Hartanto's evolving evidence compromised both the reliability and integrity of Telemedia's position. The departures from Telemedia's pleadings and his AEIC are significant ones. Central to this dispute is the movement of the account-opening forms and when they were signed. Yet, Mr Hartanto's evidence on these very events wavered and shifted.

100 In his evidence on the first day of trial, he introduced a meeting on 14 November 2010, which

went previously unmentioned. He claimed that he brought the account-opening forms to Hong Kong SAR after collecting them at Crédit Agricole's premises on 14 November 2010, whereas it was previously maintained that the receipt, signing and return of the account-opening forms happened within the span of one meeting on 30 November 2010. He was also unable to explain why he used three different pens to sign the account-opening forms in the light of his own evidence that they were signed on the same occasion and without perusal.

101 In contrast, the evidence of Mr Yeh and Mr Goh on the number of meetings, the movement of the forms, and where they were signed was reliable and unshaken in cross-examination. Both their versions of events were coherent and largely compatible with the other.

Telemedia's position is inconsistent with the documentary evidence leading up to the opening of the Telemedia Account and Asia Energy Account

102 The period leading up to the opening of the Telemedia Account and Asia Energy Account—October 2010 to 2 December 2010—was characterised by a near complete absence of contemporaneous documentation. The only documentary evidence placed before the court was:

(a) the NRLs and SCA dated 14 and 15 November 2010;

(b) two emails from Ms Teo to Mr Yeh, both dated 16 November 2010, requesting for documents required for Asia Energy and other BVI companies; [note: 22]

(c) an email from Ms Teo to Patty Chan ("Ms Chan"), Mr Hartanto's personal assistant, dated 16 November 2010, enclosing blank Security Agreement forms (one of the forms that were required for opening an account at Crédit Agricole), requesting that Mr Hartanto sign and affix the Telemedia corporate seal to the blank Security Agreement form, and to courier the completed form to Crédit Agricole; [note: 23]

(d) an email from Ms Teo to Ms Chan dated 26 November 2010 requesting that Ms Chan obtain relevant signatures for certain declarations of trust; [note: 24] and

(e) the two sets of completed and signed account-opening forms dated 30 November 2010.

Of particular interest are the emails from Ms Teo to Mr Yeh and Ms Chan dated 16 November 2010 at (b) and (c). In my view, the emails sent that day undermine Mr Hartanto's evidence and support the evidence of Mr Yeh and Mr Goh.

103 It will be recalled that Mr Yeh's evidence is that on 15 November 2010, he couriered the completed account-opening forms from Shenzhen to Mr Goh in Singapore. Mr Goh's evidence was that he received the completed account-opening forms by courier on 16 November 2010. After he received the forms, Mr Goh asked Ms Teo to review the completed forms and ensure that everything was in order. The emails Ms Teo sent to Mr Yeh and Ms Chan on 16 November 2010 are consistent with this sequence of events.

104 Further, these emails undermine Mr Hartanto's version of events in two ways. First, they cast doubt on Mr Hartanto's position that Mr Yeh was not involved in the collation and preparation of the supporting documents for the opening of both accounts (see [89] above). It would be out of the ordinary for Ms Teo to send an email to Mr Yeh requesting for supporting documents for no apparent reason if he did not assist with the collation of the supporting documents or the account-opening

process. The email suggests that Mr Yeh played a more active role than Mr Hartanto was letting on. Indeed, it bears repeating that Mr Hartanto and Mr Yeh were engaged in a process to set up their joint-venture investment plan that was embodied in the NRLs and SCA.

105 Second, Ms Teo's email to Ms Chan suggests that the completed account-opening forms had been returned to Crédit Agricole by 16 November 2010. It suggests that Mr Hartanto had missed out the Security Agreement form, and that his signature was required. If Mr Hartanto's version is true, and the account-opening forms were only returned to Crédit Agricole on 25 or 26 November 2010, it is inexplicable that Ms Teo would arbitrarily select one out of a number of account-opening forms to send to Ms Chan for Mr Hartanto to sign and affix Telemedia's corporate seal on 16 November 2010, before the entire set of completed and signed documents were returned to Crédit Agricole.

Telemedia's position is inconsistent with Mr Hartanto's reaction when he discovered that Mr Yeh was singly authorised to transfer shares out of the Telemedia Account

106 Mr Hartanto's reaction when he purportedly discovered that Mr Yeh was singly authorised to transfer shares out of the Telemedia Account is inconsistent with his version of events. I say this based on his response to two critical emails: (a) Mr Yeh's email of 8 September 2011 to Mr Hartanto (copying Mr Goh) instructing that the 225m NexGen shares be transferred out of the Telemedia Account and into the Yuanta Account; and (b) Ms Teo's email on 12 September 2011 informing Mr Hartanto that Mr Yeh had given instructions to transfer the 225m NexGen shares, and reminding Mr Hartanto to make an SGX announcement on the transfer.

(1) Mr Hartanto's response to Mr Yeh's email dated 8 September 2011

107 A valuation event occurred in 2011 and top-up notices were apparently issued by Yuanta to Telemedia after this had occurred. On 8 September 2011, Mr Yeh sent an email to Mr Hartanto copying Mr Goh. The email was written in Mandarin, but translated for the purposes of the trial. I reproduce the translation in full for convenience: [note: 25]

> Dear Hady,
>
> With regard to our three Email[s] dated 10 August, 25 August and 2 September, our company's resolution is as follows:
>
> 1. Because the share price has fallen to 0.022;
>
> 2. The yearly interest and fees in respect of the three-year loan agreement;
>
> 3. The Scorpio East investigations report in which you were involved on 8 September 2010.
>
> Due to the above three reasons, first transfer on a temporary basis the 225 million shares from the warrant we jointly hold in the [Telemedia Account] to Yuanta Asset Management International Limited's account. We will liaise with each other again in respect of matters that follow. You must get the announcement which ought to be made on the share transfer out!
>
> ***MR BRIAN, please transfer the shares immediately and notify MR HADY. Thank you!***
>
> Best Regards!
>
> Yuanta Asset Management Limited

MR. JACK YEH

[emphasis added in bold italics; original emphasis omitted]

I should also mention that despite its importance, this email was not disclosed by Telemedia in discovery, nor was any mention of it made in Mr Hartanto's AEIC. [note: 26]

108 Mr Hartanto did not respond to this email nor did he dispute Mr Yeh's authority to instruct Mr Goh to transfer the 225m NexGen shares out of the Telemedia Account.

109 In cross-examination, Mr Hartanto claimed that he was unaware of what was stated in this email, for reasons that I shall come to in a moment. Instead, Mr Hartanto claimed that he was only aware that Mr Yeh had instructed Crédit Agricole to transfer the shares on 12 September 2011, when Ms Teo sent him the SGX announcement reminder (see [38] above).

110 If Mr Hartanto had read the 8 September 2011 email, his failure to respond to dispute Mr Yeh's authority to give instructions for the transfer of the NexGen shares would be telling. If Mr Yeh was not authorised to instruct the transfer, one would have expected a robust response from Mr Hartanto denying Mr Yeh's authority to do so. Instead, nothing was heard from Mr Hartanto.

111 Mr Hartanto's excuse in cross-examination for failing to respond to the email was that it was written in Mandarin and not English. Mr Hartanto added that he could not read Mandarin proficiently and that he could not fully understand the language. [note: 27] In cross-examination, Mr Hartanto testified that his proficiency in reading and understanding Mandarin was about fifty percent. That said, it bears repeating that Mr Yeh does not speak English and that while Mr Hartanto is not a hundred percent proficient in Mandarin, he very likely possesses sufficient understanding of spoken Mandarin to conduct business discussions with Mr Yeh.

112 Counsel for Crédit Agricole, Mr Low, suggested to Mr Hartanto that *all previous communications* between Mr Hartanto and Mr Yeh had been in Mandarin. Further, the NRLs and SCA, which Mr Hartanto signed, were both in Mandarin as well. Mr Hartanto therefore must have had a sufficient degree of proficiency in reading Mandarin. [note: 28] Mr Hartanto's response was that in those cases, he would have his assistant translate the documents translated. When asked why he did not ask his assistant to translate the 8 September 2011 email, Mr Hartanto responded that he was "not in office that day". [note: 29]

113 When Mr Hartanto was pressed on the excuse of his language deficiency, he provided a different explanation for his failure to respond to the email. He stated that he understood Mr Yeh's 8 September 2011 email to mean that Mr Yeh was merely making a request for the shares to be transferred as he did not have the power to give such an instruction. [note: 30]

114 Mr Low then suggested to Mr Hartanto that the last line of the 8 September 2011 email was a *direction* to Mr Goh to effect the transfer. Mr Yeh was clearly not waiting for Mr Hartanto to effect the transfer, as Mr Hartanto appeared to be suggesting. [note: 31] To this, Mr Hartanto's response was: "[s]orry ... I don't read this email on the 8th September ... 8th September is in Chinese and I don't read this ...". [note: 32] Mr Hartanto's position had shifted yet again. He claimed that he had not read the email at all because it was in Mandarin. Mr Hartanto accepted after he had read the English translation of the email in court that Mr Yeh was giving instructions for the shares to be transferred immediately. [note: 33]

115 Mr Hartanto subsequently went on to accept that he was aware that Mr Yeh had given instructions for the transfer of the 225m NexGen shares as early as 8 September 2011. [note: 34] When asked why he did not then reply to Mr Yeh's email dated 8 September 2011 to deny Mr Yeh's authority to instruct the transfer of the shares, Mr Hartanto responded that he did not think that it was necessary for him to reply. To his mind, Mr Yeh did not have the authority to instruct the transfer and there was therefore no need to respond to assert that. [note: 35]

116 From only understanding the email partially, to misinterpreting the email, to not reading the email at all, to understanding the effect of the email but not believing that it was necessary to deny Mr Yeh's authority, I find Mr Hartanto's evidence on why he did not respond to the 8 September 2011 email unpersuasive. I am of the view that Mr Hartanto read and understood the email, or at least had the email explained to him by his assistant. He thereafter chose not to respond and deny Mr Yeh's authority.

117 In assessing the evidence on this point, I note that the main body of the email appears to request, albeit in strong terms, that Mr Hartanto "please transfer on a temporary basis the 225 million shares" to Yuanta. The final section of the email which is addressed to Mr Goh, however, directs Mr Goh to transfer the shares *immediately* and notify Mr Hartanto once it is done. In my view, the reasonable interpretation is that there was a clear instruction from Mr Yeh to Mr Goh to effect the transfer of the shares.

(2) Mr Hartanto's response to Ms Teo's reminder email dated 12 September 2011

118 I next turn to Mr Hartanto's response to Ms Teo's reminder email sent on 12 September 2011. This email is crucial because it was the first time Crédit Agricole made it unequivocally clear to Mr Hartanto that it was about to transfer the 225m NexGen shares out of the Telemedia Account on Mr Yeh's sole instructions.

119 This time, Mr Hartanto did respond. He replied to Ms Teo's email notification, denying Mr Yeh's authority. But he only went so far, and no further. Mr Hartanto made no further attempt to investigate how Mr Yeh came to be singly authorised to operate the Telemedia Account. He did not try to find out how Crédit Agricole came to be of the view that Mr Yeh was singly authorised to operate the Telemedia Account. He did not instruct Crédit Agricole not to effect any transfers on the instructions of Mr Yeh because he was not a singly authorised signatory. He took no steps to remove Mr Yeh as a signatory to the Telemedia Account.

120 I will review the correspondence between Mr Hartanto and Ms Teo on 12 September 2011 and 13 September 2011 in detail, before turning to Mr Hartanto's and Ms Teo's evidence on the purported telephone calls that took place on 12 September 2011. I will then proceed to elaborate on why Mr Hartanto's response was inconsistent with Telemedia's position.

121 On 12 September 2011, and on the back of Mr Yeh's request and email dated 8 September 2011 (just discussed above), Mr Goh asked Ms Teo to contact Mr Hartanto and inform him of the transfer instructions that had been received from Mr Yeh. Mr Goh stated that even though Mr Yeh was singly authorised to operate the Telemedia Account, he wanted to inform Mr Hartanto of the transfer as a matter of client relationship management.

122 Ms Teo attempted to telephone Mr Hartanto but was unsuccessful. She then sent an email to Mr Hartanto at 3.41pm informing him that Crédit Agricole will be making the transfer pursuant to Mr Yeh's instructions. The email also reminded Mr Hartanto to make the necessary SGX

announcement.

123 Mr Hartanto responded at 3.52pm stating tersely that "[Telemedia's] signature is not [Mr Yeh] [*sic*]. Please understand."

124 Ms Teo responded by email at 6.11pm stating that Mr Yeh had been singly authorised to operate the Telemedia Account since its opening, and that Crédit Agricole was required to accept Mr Yeh's instructions. Ms Teo requested that Mr Hartanto liaise with Mr Yeh on the transfer of the NexGen shares. She copied both Mr Yeh and Mr Goh in this email.

125 Mr Hartanto responded with four emails:

(a) At 6.18pm, he wrote: "I think you are wrong as [Mr Yeh] is not the director of [Telemedia] and I think it is wrong [that] he is the signer [*sic*] of [Telemedia]???".

(b) At 6.21pm, he sent another email stating: "[Ms Teo], I ask to [*sic*] [Mr Goh] about the deal with [Mr Yeh] for the lease agreement for the 825 millions [*sic*] shares of [NexGen] from [Telemedia] to [Asia Energy] through [Yuanta]".

(c) At 6.53pm, his third email stated that he "had just talked to [Mr Yeh]" and that "Telemedia will transfer 225 million shares to [Asia Energy]".

(d) At 6.54pm, Mr Hartanto asked for confirmation that the signature requirement for the Asia Energy Account was the joint signatures of Mr Yeh and Mr Supriadi and not "single signatory".

Ms Teo did not respond to any of these emails on 12 September 2011. Her email response came only the next day, on 13 September 2011.

126 Mr Hartanto also claimed in his AEIC that he had made a telephone call to Ms Teo before he sent the 6.53pm email on 12 September 2011. Whether this telephone call occurred, and if so, what was said in the conversation is important. I will return to it in a moment.

127 In Ms Teo's reply to the slew of emails from Mr Hartanto on 13 September 2011, she stated that the Asia Energy Account required the joint signatures of Mr Hartanto *and* Mr Yeh. While Mr Supriadi was a director of Asia Energy, he was not operating the account. It appears that Mr Hartanto had either forgotten, or was unsure, as to who were the authorised signatories of the Asia Energy Account, which was the joint-venture account. Ms Teo subsequently emailed Mr Hartanto a draft written instruction to effect the transfer of the 225m NexGen shares from the Telemedia Account to the Asia Energy Account for Mr Hartanto to sign and return.

128 Mr Hartanto did not, however, sign and return the form. The transfer of the 225m NexGen shares was therefore not effected in September 2011. It was only subsequently in October 2011 that the shares were actually transferred out of the Telemedia Account on Mr Yeh's instructions.

129 Having laid out the email communication between Mr Hartanto and Ms Teo, I return to Mr Hartanto's evidence on the purported telephone call to Ms Teo on 12 September 2011. Mr Hartanto claimed that he had called Ms Teo before he sent her the 6.53pm email. [note: 36] This would presumably have been after he sent the 6.21pm email to Ms Teo on the same day.

130 In that telephone conversation, he purportedly told Ms Teo repeatedly that no transfer of the NexGen shares should be effected until he gave further instructions. He reiterated that Mr Yeh was

not a singly authorised signatory of the Telemedia Account. Ms Teo purportedly promised him that no transfer would be made until Crédit Agricole received further instructions from Mr Hartanto.

131 In cross-examination, however, when Mr Hartanto was asked by Crédit Agricole's counsel, Mr Low, whether there had been any other communication between himself and Ms Teo or Mr Yeh apart from the emails and telephone conversation with Mr Yeh (referred to in the 6.53pm email at [125(c)] above), Mr Hartanto said he could not remember. When asked by the court whether there was just one telephone conversation (*ie*, the telephone conversation with Mr Yeh), Mr Hartanto said there was "[o]nly one ...". [note: 37]

132 Mr Hartanto was then asked numerous times by Mr Low whether there were any other communications apart from the emails and the telephone call to Mr Yeh. Mr Hartanto stated that he could not remember. It was only when Mr Low referred Mr Hartanto to his AEIC that Mr Hartanto recalled the telephone call that he purportedly made to Ms Teo before he sent the 6.53pm email. [note: 38] He admitted that "just now I forgotten". [note: 39]

133 In my view, this slip in Mr Hartanto's oral evidence is a significant one. It shows that Mr Hartanto *did not* have a telephone conversation with Ms Teo. I am aware of the recent observations of the Court of Appeal in *Sandz Solutions (Singapore) Pte Ltd v Strategic Worldwide Assets Ltd* [2014] 3 SLR 562 at [56] that the mere fact that there are gaps in the witness's memory does not compel the conclusion that the evidence is less credible. Especially so in cases where a long period of time has elapsed between the events as they occurred and the witness's oral testimony in court. I am aware that Mr Hartanto may have been frazzled or unsettled in the heat of cross-examination. But the point still remains that the telephone call to Ms Teo was crucial. It was Mr Hartanto's *only instruction to Crédit Agricole not to transfer shares on the instructions of Mr Yeh*. I do not accept that Mr Hartanto would have "forgotten" such a telephone call if it had occurred.

134 My finding that Mr Hartanto did not telephone Ms Teo that day is reinforced by two further points. First, there is no mention of the telephone call in any of Mr Hartanto's subsequent emails to Ms Teo. It would be surprising if such an important telephone call had been made but the contents of it were not set out or at least alluded to in Mr Hartanto's subsequent email to Ms Teo.

135 Second, Ms Teo's evidence was that she left the Crédit Agricole office shortly after receiving Mr Hartanto's 6.18pm email. [note: 40] While it was implicit in Ms Teo's evidence in cross-examination that she did *not* speak to Mr Hartanto over the telephone on 12 or 13 September 2011, she was not cross-examined specifically on the point. Counsel for Telemedia, Mr N Sreenivasan SC ("Mr Sreenivasan"), did not put to Ms Teo that such a telephone call had occurred, in contravention of the rule in *Browne v Dunn* (1893) 6 R 67. The court therefore did not have a direct explanation from Ms Teo about what had happened. Her evidence nonetheless is consistent with the fact that there had been no telephone call from Mr Hartanto to her.

136 I accordingly find that Telemedia has not proven that Mr Hartanto telephoned Ms Teo on 12 September 2011. The extent of his communication with Crédit Agricole is contained in his email responses to Ms Teo described above.

137 I have mentioned that the upshot of Telemedia's position is that Mr Yeh had fraudulently inserted his name as a singly-authorised signatory for the Telemedia Account. This was done without Mr Hartanto's knowledge or consent. Being held in that account was 225m NexGen shares apparently belonging to Telemedia. On Telemedia's version of events, an unauthorised third party, Mr Yeh, who had obtained access to the Telemedia Account through fraudulent means, was now purporting to

transfer the NexGen shares out of the account against Mr Hartanto's wishes. Further, the bank, Crédit Agricole, appeared to be taking the position that it was authorised to take instructions from the fraudster. If this was true, I doubt Mr Hartanto's response would have been as tepid as it was. He did not instruct Crédit Agricole not to act on the instructions of Mr Yeh. He did not attempt to remove Mr Yeh as a signatory. He did not even attempt to find out why Crédit Agricole was of the view that Mr Yeh was a singly authorised signatory.

138 For the reasons stated above, I prefer the evidence of Mr Yeh and Mr Goh over that of Mr Hartanto. I accordingly accept Crédit Agricole's version of the events leading up to the opening of the Telemedia Account and Asia Energy Account on 2 December 2011.

Other factual findings and observations

139 Having decided the main factual contention between the parties, there remain a few peripheral factual disputes and other observations which I will address in brief. In my view, the points that follow are consistent with and reinforce the findings I have made above.

(1) The number of meetings at Crédit Agricole's premises

140 As I have accepted Crédit Agricole's position that only two meetings took place at Crédit Agricole's premises, I will touch on some other evidential points that reinforce this finding.

141 Mr Hartanto justified his position that there were three meetings at Crédit Agricole's premises by asserting that the first meeting was a preliminary one where some discussions were afoot, but nothing concrete was established. The account-opening forms were therefore not handed to him at the first meeting in October 2011. He relied on two points to show that the first meeting involved merely preliminary discussions. In my view, both those points were weak ones.

142 First, Mr Hartanto's position was that he and Mr Yeh had yet to agree on Asia Energy as the joint-venture vehicle at the first Crédit Agricole meeting. Therefore, much time at the first meeting was spent discussing (inconclusively) which entity would be used as the joint-venture vehicle. This was used to contradict Mr Yeh's and Mr Goh's evidence that Asia Energy had been decided as the joint-venture vehicle prior to the first meeting, which would have allowed the account-opening forms for both the Telemedia Account and Asia Energy Account to be handed over to Mr Hartanto. In support of his position, Mr Hartanto claimed in cross-examination that Asia Energy had not even been incorporated in early October 2010. He further stated that they had only decided on Asia Energy as the joint-venture vehicle on 14 November 2010.

143 Contrary to Mr Hartanto's assertion, however, Asia Energy was incorporated on 28 November 2006. This was proved with a Certificate of Incumbency for Asia Energy that was introduced into evidence the day after Mr Hartanto made his assertion. Mr Hartanto then altered his position and explained that although the company had been incorporated at the time of the first meeting, he had initially intended to use a new joint-venture vehicle. It was only when his accountant reminded him on 16 November 2010 that he had an existing unused BVI company, Asia Energy, that they decided to use Asia Energy rather than create a new one.

144 The second point Mr Hartanto relied on to establish the preliminary nature of the first meeting was the role that Crédit Agricole was to play in the joint investment between himself and Mr Yeh. I shall deal with this in the next sub-section.

(2) The role that Crédit Agricole played in the joint-investment arrangement between Mr Hartanto

and Mr Yeh

145 Mr Hartanto took the position that Crédit Agricole was to be approached as a lender and also for advisory services. Mr Hartanto therefore claimed that a good part of the first Crédit Agricole meeting was spent discussing the details of this intended arrangement. This included whether Crédit Agricole could provide large loan facilities on the collateral of a single security. Mr Hartanto's evidence was that both Mr Yeh and himself eventually agreed to use Yuanta to borrow the funds from Crédit Agricole because Yuanta was an existing customer of Crédit Agricole and would have had better access to the contemplated credit facilities.

146 I do not accept Mr Hartanto's suggestion that Crédit Agricole was intended to be approached as a lender and advisor for the joint-investment arrangement, and that much of the first meeting was spent discussing the loan details. First, these purported discussions on Crédit Agricole's role as a lender were not pleaded. Second, and in my view, the role Crédit Agricole had to play in the joint investment was a narrow one. It was merely intended for Crédit Agricole to be a banking vehicle in which the joint-investment accounts were set up, and through which the parties transacted their own private business.

147 Indeed, it is unlikely that Mr Hartanto and Mr Yeh—both seasoned businessmen—would have engaged Crédit Agricole or Mr Goh to provide advice on the relationship between Mr Hartanto and Mr Yeh or Telemedia and Yuanta. While it is undisputed that Mr Goh provided some forms to Mr Hartanto and Mr Yeh in respect of precious metal trading and foreign exchange investments, it is clear that no wealth management products were actually purchased from Crédit Agricole.

148 Third, I do not accept Mr Hartanto's position that Crédit Agricole was intended to fund the joint investment. There is no documentary evidence indicating that this was the case. Further, the subsequent NRLs and SCA stipulated that Mr Yeh could raise loans from *any* financial institution. If Crédit Agricole was intended to be the lender of first resort, one would have expected this to have been found in the documentation. There would have been some supporting evidence of loans or credit facilities offered by Crédit Agricole, but there were none.

149 It is likely that Mr Hartanto and Mr Yeh had already reached an agreement on the general structure of the joint investment by the first Crédit Agricole meeting. They had many prior meetings and discussions. They were seasoned businessmen who would have known how to plan and structure their affairs. At the first Crédit Agricole meeting, they already knew that they wanted to set up the Telemedia Account and Asia Energy Account. They collected the account-opening forms at that meeting.

(3) The meetings in Shenzhen/Hong Kong SAR

150 There was disagreement between Mr Hartanto and Mr Yeh on where the mid-November 2010 meetings took place. Both Mr Hartanto's and Mr Yeh's evidence was that there was a meeting between the two of them in Shenzhen on 14 November 2010. The dispute was as to where the subsequent meeting on 15 November 2010 occurred.

151 Mr Yeh's position was that on 14 November 2010, the NRLs and SCA were signed. Mr Hartanto and Mr Yeh further agreed that the latter was to have signing rights over the Telemedia Account. Mr Yeh stated in his oral evidence that there was a second meeting in Shenzhen on 15 November 2010 where both of them signed the account-opening forms. [note: 41] This is a significant point because the earliest supporting document for the account-opening was the Telemedia "Memorandum and Articles of Association" document dated 15 November 2010. [note: 42] Mr Yeh's evidence was that

after the Telemedia account-opening forms were completed and signed, he couriered them back to Crédit Agricole's Singapore branch.

152 Mr Hartanto's evidence is that while there was a meeting in Shenzhen on 14 November 2010, he did not go back to Shenzhen on 15 November 2010. Mr Hartanto exhibited copies of immigration records from Hong Kong SAR and Shenzhen authorities which show that Mr Hartanto left Shenzhen in the very early hours of 15 November 2010 and that he did not re-enter Shenzhen again that day. [note: 43] On the basis of these immigration documents, Mr Sreenivasan, counsel for Telemedia, asserted that Mr Yeh could not have signed the account-opening forms on 15 November 2010 and therefore could not have sent the forms back to Mr Goh on that day.

153 I am inclined to believe Mr Hartanto's evidence on the mid-November 2010 meetings because it is supported by contemporaneous documentation from the Hong Kong SAR and Shenzhen authorities. But even accepting Mr Hartanto's evidence, it does not nearly go far enough to support Mr Sreenivasan's assertion. Mr Hartanto, in cross-examination, admitted that on 15 November 2010, he had met Mr Yeh *in Hong Kong SAR*, rather than Shenzhen, as Mr Yeh's evidence suggests. [note: 44] In other words, Mr Hartanto was not disputing that there was another meeting on 15 November 2010. Mr Hartanto merely disputed the fact that the meeting occurred in Shenzhen. Mr Hartanto's evidence on this point is therefore not inconsistent with the fact that he and Mr Yeh could have completed and signed the Telemedia account-opening forms on 15 November 2010, albeit in Hong Kong SAR rather than Shenzhen. Mr Yeh could then have sent the account-opening forms back to Mr Goh.

154 For the reasons I have given earlier, I am of the view that Mr Hartanto and Mr Yeh completed the account-opening forms in mid-November 2010, and that Mr Yeh couriered them back to Crédit Agricole in Singapore. Little turns on whether the signing actually took place in Hong Kong SAR or Shenzhen.

(4) The account-opening dates

155 It is undisputed that the Telemedia Account and Asia Energy Account were opened on 2 December 2010. Crédit Agricole's position—that the account-opening forms were submitted on 16 November 2010—is consistent with these account-opening dates.

156 Mr Hartanto's evidence, on the other hand, was that the completed account-opening forms were returned to Crédit Agricole at its premises on or slightly before 30 November 2010. Mr Hartanto's evidence on the precise date was unclear—at times he suggested that the completed account-opening forms were handed over on 25 or 26 November 2010.

157 Mr Goh stated that the time between the completion and return of account-opening forms and the actual opening of the account is ordinarily about two weeks, even on an expedited basis. This is because of the various due diligence checks that are required to be performed prior to the opening of the account.

158 Telemedia's position is inconsistent with this evidence. Even assuming Mr Hartanto returned the completed forms to Crédit Agricole on 25 November 2010, it would have given Crédit Agricole only a week before the actual accounts were opened. Mr Goh's evidence on the time taken between the submission of the account-opening forms and the actual opening of the account is consistent with Crédit Agricole's version of the events.

159 While it is noted that Mr Goh's evidence on this point was given in re-examination, there is no other evidence before the court on the time required for the opening of an account at Crédit Agricole

after receipt of the forms and documents. [note: 45]

(5) The email of 15 November 2011

160 Telemedia relies on the email from Mr Goh to Mr Hartanto dated 15 November 2011. As a matter of convenience, I reproduce the portions of the email that Telemedia relies on:

> We received your account opening forms without proof of beneficial owner and the account opening was delayed by 2 weeks.
>
> Whilst pending the beneficial owner proof from you, all forms were handed over to Mr Jack Yeh, your business partner and introducer to the bank.
>
> When all relevant forms and proof of ownership was furnished to us, the signatory of [Telemedia] included yourself and Mr Jack Yeh.
>
> The account was opened in accordance to the paperwork furnished.

Telemedia's position is that the email sets out an admission that Mr Goh handed the completed account-opening forms to Mr Yeh without Mr Hartanto's knowledge and consent. I reject this argument.

161 First, the email is not inconsistent with Crédit Agricole's position. It will be recalled that Mr Yeh's and Mr Goh's evidence was that there was a second meeting in early November 2010 at Crédit Agricole's premises. Mr Hartanto had kept the forms in an envelope, and told Mr Goh that the documents were incomplete. The envelope was handed to Mr Yeh to complete the collation of the documents. As a result of this, the completed account-opening forms were only returned to Crédit Agricole in mid-November 2010. When the completed forms were received by Crédit Agricole, Mr Yeh was already listed as a singly authorised signatory. That sequence of events is consistent with the thrust of what is suggested by the email.

162 Second, while I recognise that the 15 November 2011 email does appear strangely phrased, the context in which the 15 November 2011 email was sent is unclear. The email was sent by Mr Goh and refers to an earlier conversation between Mr Hartanto and himself ("as per our earlier conversation ..."). Mr Hartanto did not give any evidence as to what transpired in the earlier conversation, or what questions he put to Mr Goh, that the latter sought to address in the email. Mr Goh gave evidence that he could not recall the circumstances in which the email was sent. In cross-examination, Mr Goh stated that he may have sent the email in a hurry and could have made a mistake.

163 I therefore reject Telemedia's submission that the email of 15 November 2011 is an admission that Mr Goh had surreptitiously handed the account-opening forms to Mr Yeh without Mr Hartanto's knowledge or consent.

(6) The commercial context of the joint investment

164 That Mr Yeh was singly authorised to operate the Telemedia Account is also, in my view, consistent with the broader commercial context in which the joint investment took place, as well as the terms of the NRLs and the SCA.

165 Mr Hartanto and Mr Yeh were entering into a complex commercial arrangement. The Telemedia Account played the role of first-stop housing for the NexGen shares that would eventually be used to

securitise loans sourced for and arranged by Mr Yeh through Yuanta. The NexGen shares held in the Telemedia Account were owned by Telemedia.

166 There is no doubt that Mr Yeh would have had a legitimate and substantial interest in the NexGen shares parked in the Telemedia Account, and by extension, in the operation of the Telemedia Account. Mr Yeh, through his vehicle, Yuanta, would be undertaking liability for considerable loans for the purpose of the joint investment with Telemedia. Yuanta was doing so on the security of NexGen shares, which Telemedia was required to provide. There is evidence that at the time of the transaction, NexGen—a publicly listed company—was on the SGX watch list.

167 The NRLs and SCA *required* Telemedia to set up an account at Crédit Agricole. The NexGen shares were to be parked in the Telemedia Account and transferred to the Yuanta Account against the disbursement of the loan monies from Yuanta. If Mr Yeh was not intended to have any signing rights over the Telemedia Account, why was there a need to set up the Telemedia Account at Crédit Agricole? Mr Hartanto could have simply transferred the shares to the Yuanta Account from accounts at other banks or financial institutions where the NexGen shares were held. In making this comment, it is noted that this point was not touched on in the evidence.

168 The point has been made already that the NRLs between Yuanta and Telemedia concerned the NexGen shares owned by Telemedia which were to be used as security for a non-recourse loan from Yuanta. Important provisions in the NRLs included, in brief, the following: [note: 46]

(a) Yuanta had the right to sell, trade or pledge the securities at its discretion.

(b) Yuanta had the right to hold or deposit the securities with any local or overseas depository institution or liquidation company, issuers of securities without certificates and custodians at any local or overseas bank or custodian centres.

(c) Mr Yeh was authorised to act as consultant and representative of the project under the NRLs until they were terminated.

(d) Yuanta was to arrange for Telemedia to open a separate personal account with Crédit Agricole into which Telemedia was to deposit the NexGen shares which were subsequently to be transferred into the Yuanta Account.

169 The SCA also stated that the loans were to be obtained from institutions to be arranged by Mr Yeh and to be used for investments approved by both parties. Further, under the SCA, it was agreed that Mr Yeh would be appointed to the board of directors as an executive director and that Mr Yeh's trust would join the company as a shareholder. While there is considerable dispute as to whether this was a reference to the board of Telemedia or NexGen, there is no doubt that Mr Hartanto and Mr Yeh were entering into a close business relationship.

170 I have found that it was always the intention for Mr Yeh, as a signatory to the Telemedia Account, to be singly authorised to operate it. This finding is, in my view, consistent with the terms of the NRLs and SCA signed by Mr Hartanto and Mr Yeh in mid-November 2010, and the broader context of the joint investment.

(7) Telemedia's failure to call Ms Chan and Mr Supriadi as witnesses

171 Crédit Agricole, in its closing submissions, raises a number of other evidential matters which it says are relevant to assessing the credibility of Mr Hartanto's evidence in support of Telemedia's

case. These include the failure of Telemedia to call Ms Chan and Mr Supriadi as witnesses. Ms Chan is Mr Hartanto's secretary in Hong Kong SAR. She assisted in the collation of relevant supporting documents for the opening of the accounts. She also liaised with Mr Yeh and Crédit Agricole on matters pertaining to the opening of the Telemedia Account. Mr Supriadi signed the account-opening forms for the Asia Energy Account as Mr Hartanto's nominee. He was apparently resident in Indonesia.

172 Crédit Agricole's point is that both the evidence of Ms Chan and Mr Supriadi may have been helpful in determining the sequence of events leading up to the opening of the Telemedia Account. It relies on s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA"). Section 116 provides that:

> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

173 Illustration (g) to s 116 of the EA states that the court may presume "that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it". Crédit Agricole relies on the authority of *Cheong Ghim Fah and another v Murugian s/o Ramasamy* [2004] 1 SLR(R) 628 and asks the court to draw an adverse inference against Telemedia for its failure to call Ms Chan and Mr Supriadi as witnesses.

174 I accept that these two individuals may have been able to shed some light on the sequence of events leading up to the opening of the Telemedia Account and Asia Energy Account. Ms Chan, in particular, may have been able to provide information on whether there had been a second meeting in Hong Kong SAR or Shenzhen on 15 November 2011.

175 I am nonetheless of the view that the failure to call them as witnesses is a neutral factor. It is unlikely that Mr Supriadi would have been able to testify as to what transpired on 14 and 15 November 2011, and whether the documents were sent back to Crédit Agricole on 16 November 2011 by courier. Similarly, there is no evidence which suggests that Ms Chan may have been present at the time when Mr Yeh signed the Telemedia account-opening forms in the presence of Mr Hartanto. In any case, I repeat my finding that based on the overall assessment of the evidence, Mr Yeh signed the Telemedia account-opening forms in the presence and with the consent of Mr Hartanto.

The legal issues

176 I have addressed the factual issues relevant to the case. I now turn to the legal arguments raised by the parties. The following legal issues arise for determination in this case:

(a) whether Crédit Agricole acted in breach of its mandate from Telemedia;

(b) whether Mr Yeh's authority was revoked prior to the transfer of the 225m NexGen shares;

(c) whether Crédit Agricole was in breach of its implied or common law duty of care owed to Telemedia;

(d) whether Telemedia is contractually estopped from claiming against Crédit Agricole; and

(e) whether Telemedia is estopped by representation from claiming against Crédit Agricole.

Whether Crédit Agricole acted in breach of its mandate from Telemedia

177 The first claim brought by Telemedia is that Crédit Agricole acted in breach of its mandate when it transferred the 225m NexGen shares out of the Telemedia Account on Mr Yeh's instructions, on the basis that Mr Yeh was never a singly authorised signatory with the power to operate the Telemedia Account on his own.

178 This claim falls away in the light of my findings of fact set out above. I find that the Telemedia Account was properly opened on 2 December 2010 and that Telemedia was bound by the contractual documents setting out the scope of the banker-customer relationship, including those relating to authorised signatories. As learned counsel for Crédit Agricole, Mr Low, submits, it is trite law that in the absence of fraud or misrepresentation, Telemedia is bound by the terms and effects of the signed contractual documents: *Crédit Industriel et Commercial v Teo Wai Cheong* [2010] 3 SLR 1149. Telemedia has not pleaded fraud or misrepresentation on the part of Crédit Agricole, Mr Goh, or Mr Yeh.

Whether Mr Yeh's authority was revoked prior to the transfer of the NexGen shares

179 Telemedia's second and alternative claim is that even if Mr Yeh was a singly authorised signatory, his authority was revoked as a consequence of the correspondence between Mr Hartanto and Ms Teo on 12 September 2011. The transfer of the 225m NexGen shares in October 2011 was consequently effected by Crédit Agricole without authority. Telemedia argues that the substance of the correspondence had the effect of an implied revocation of Mr Yeh's authority to singly operate the Telemedia Account.

180 Crédit Agricole raises a preliminary objection on the ground that Telemedia's pleadings are inconsistent. Having taken the position that Mr Yeh was never a singly authorised signatory right from the start, it is said to be inconsistent for Telemedia to plead in the alternative that Mr Hartanto's emails on 12 September 2011 amounted to a revocation of authority. This preliminary objection is groundless. Although the wording of Telemedia's pleadings appears somewhat inconsistent, [note: 47] Telemedia is making the point that *even if* Mr Yeh had been properly appointed as a singly authorised signatory, his authority was, in any event, revoked on 12 September 2011. This is a perfectly legitimate alternative position to take.

181 Telemedia's submission raises two subsidiary issues. First, whether the correspondence on 12 September 2011 can be construed as a revocation of Mr Yeh's authority to operate the Telemedia Account singly. If so, then whether such revocation was effective in law.

Whether the correspondence on 12 September 2011 can be construed as a revocation of Mr Yeh's authority

182 The difficulty Telemedia faces with the first hurdle is that in the correspondence on 12 September 2011, Mr Hartanto's position has always been to deny that Mr Yeh was granted authority in the first place. In none of his emails to Ms Teo did he intimate that *if* Mr Yeh was a singly authorised signatory, then he wanted Crédit Agricole to revoke such authority.

183 For convenience, I will set out in brief the email correspondence on 12 September 2011 which Telemedia relies on to claim that there was an implied revocation of Mr Yeh's authority.

(a) 3.41pm: Ms Teo emails Mr Hartanto stating that Crédit Agricole will be transferring the NexGen shares out of the Telemedia Account in accordance with Mr Yeh's instructions.

(b) 3.52pm: Mr Hartanto responds, stating that "[Telemedia's] signature is not [Mr Yeh].

Please understand".

(c) 6.11pm: Ms Teo responds, stating that Mr Yeh has been an authorised signatory since account opening and that Crédit Agricole is entitled to accept Mr Yeh's instructions. Ms Teo requests that Mr Hartanto liaise with Mr Yeh on the transfer of NexGen shares. She copies both Mr Yeh and Mr Goh in this email.

(d) 6.18pm: Mr Hartanto replies, stating "I think you are wrong as [Mr Yeh] is not the director of [Telemedia] and I think it is wrong [that] he is the signer of [Telemedia]??".

(e) 6.53pm: Mr Hartanto emails Ms Teo stating that he "[j]ust talked to [Mr Yeh], [Telemedia] will transfer to [Asia Energy] 225m shares".

184 An examination of the email exchange reveals that Mr Hartanto never stated that any authority which Mr Yeh might have been clothed with was revoked. I doubt that it was even implicit that his authority was revoked.

185 Mr Hartanto's 3.52pm email asserted that Mr Yeh was not a signatory. After Ms Teo's 6.11pm response, however, Mr Hartanto appears to have wavered in his position. From a firm assertion that Mr Yeh did not have authority, he subsequently used equivocal statements such as "I think you are wrong" and "I think it is wrong, [that] he is the signer of [Telemedia]??". One might even say that Mr Hartanto was in fact acknowledging the possibility that he was the one who had been mistaken and that Crédit Agricole's position was correct. Mr Hartanto himself accepted in cross-examination that "none of [his] emails of [12 September 2011] purport[ed] to revoke ... Mr Yeh's authority". [note: 48] In my view, the email correspondence on its own cannot be construed as amounting to an implicit revocation of Mr Yeh's authority.

186 On the other hand, I find the explanation provided by Mr Goh and Ms Teo persuasive. Their evidence was that the proper inference to be drawn from the emails is that Mr Hartanto had been mistaken or had forgotten the details of the account mandate. It bears repeating that Mr Hartanto had also forgotten or was confused as to who were the authorised signatories to the Asia Energy Account. That was why he responded to Ms Teo's first email by denying Mr Yeh's authority. But when Ms Teo informed him that Mr Yeh was a singly authorised signatory since the opening of the Telemedia Account, he realised that he may have been mistaken, which explains his subsequent equivocal and uncertain responses. Mr Hartanto had subsequently created the impression that his dispute with Mr Yeh had been resolved by saying that he had "talked to [Mr Yeh]".

187 If I had accepted Mr Hartanto's evidence of the phone call to Ms Teo and what was said in the telephone conversation, I would have been prepared to accept that Mr Hartanto had, in substance, purported to revoke Mr Yeh's authority on 12 September 2011. I have, however, found that Telemedia has failed to establish that such a telephone conversation did in fact occur. I am therefore of the view that the correspondence on 12 September 2011 cannot be construed as an implied revocation of Mr Yeh's authority.

Whether the purported revocation of Mr Yeh's authority is, in any event, effective in law

188 Even if the correspondence on 12 September 2011 can be construed as a revocation of Mr Yeh's authority, Telemedia faces the second hurdle of establishing that such revocation was effective in law. The contractual documents are of particular importance to this issue.

189 The Application to Establish Relations form (described above at [27]) is the document that lists

Mr Hartanto and Mr Yeh as being singly authorised to operate the Telemedia Account. Clause D of the form states:

> [s]ave where other written instruction has been specifically given to the Bank, either below or by separate mail, the Bank may accept any instruction forwarded otherwise than by an original document, regardless of form, at the risk of the Holder. This (these) method(s) of transmission shall likewise apply to all other communications between the parties.

Telemedia submits that pursuant to clause D, any form of written communication would be sufficient to constitute an instruction to Crédit Agricole. In particular, there was no need for a new board resolution to remove Mr Yeh as a singly authorised signatory. The revocation as alleged to be set out in the emails from Mr Hartanto was sufficient to constitute a valid revocation. [note: 49]

190 Crédit Agricole, on the other hand, submits that a revocation by email and/or telephone correspondence will not be sufficient. Crédit Agricole points to clause 12 of the Certified Extract of Board Resolution form (described at [28] above), which states that:

> … these resolutions be communicated to the Bank and shall constitute the Company's mandate to the Bank and remain in force and effect *until an amending resolution shall have been passed by the Directors, and a copy thereof certified by a Director or the Company Secretary, shall have been actually received by the Bank.* [emphasis added]

Crédit Agricole submits that nothing short of a Telemedia board resolution revoking Mr Yeh's authority will be effective.

191 I am unable to accept Telemedia's submission based on clause D. The plain wording of clause D sets out a general provision on the transmission of instructions and communications to Crédit Agricole. The provision allows Crédit Agricole to accept communication otherwise than by an "original document". For example, the sending of a photocopy of an original copy of a document falls within the ambit of clause D. Clause D does not deal with the question as to who the initial authorised signatories of the Telemedia Account are, or how changes can be made to the list of initially authorised signatories.

192 Also relevant are Crédit Agricole's General Conditions, which have been incorporated as part of the contractual documents (see [29] above). Clause 7.4 of the General Conditions is similarly worded to clause D of the Application to Establish Relations form. More details are provided in clause 7.4 which show the true purpose of the provision. Clause 7.4 gives examples of communications which Crédit Agricole may, in its discretion, accept. These include telephone instructions, fax, electronic mail, *etc*. Crédit Agricole also has the right to suspend compliance until more precise indications such as written conformation is received if it considers the communication to be incomplete, confusing or lacking authenticity.

193 In short, it is clear that clause 7.4 of the General Conditions, which is largely similar to clause D of the Application to Establish Relations form, operates to the benefit of Crédit Agricole. It is not a provision that enables Telemedia to revoke the authority of an authorised signatory by email or telephone call when what is required is a board resolution. Instead, it is a provision that entitles Crédit Agricole to accept and rely on copies or non-original documents.

194 Next, I turn to the Certified Extract of Board Resolution form. Clause 2 names Mr Hartanto and Mr Yeh as the authorised persons with full authority to exercise all the powers of the directors of the company and to execute and sign documents. Clause 2 also states that they have the power to

delegate their power and to appoint another as an authorised person. Clause 12, quoted above (at [190]) states that the Certified Extract of Board Resolution form constitutes Crédit Agricole's mandate from Telemedia. Clause 12 also states that the mandate will remain in force and effect until an amending resolution is passed, with a copy that has been certified by a director or the company secretary having been received by Crédit Agricole.

195 While it is clear that a board resolution is not necessary for an authorised person to delegate his powers or to appoint an additional signatory, it is clear that a board resolution is required to alter or change the mandate that was conferred on Crédit Agricole. Clause 12 expressly states that the Certified Extract of Board Resolution constitutes the mandate to Crédit Agricole. This *includes* clause 12 which names Mr Yeh as one of the two authorised persons.

196 In cross-examination, Mr Hartanto agreed that Crédit Agricole was bound to act in accordance with the mandate that had been put in place. [note: 50] Mr Hartanto also agreed that the Certified Copy of Board Resolution form which he signed constituted the mandate to Crédit Agricole. He accepted that, prior to the transfer of the 225m NexGen shares in October 2011, no amending resolution had been passed by Telemedia to revoke Mr Yeh's appointment as a singly authorised signatory. [note: 51] Telemedia only passed a resolution to revoke Mr Yeh's authority in May 2013 (I am aware of the fact that this was done on a without prejudice basis).

197 For the reasons above, I find as a matter of fact and law that Telemedia did not revoke Mr Yeh's authority to instruct Crédit Agricole to effect the transfer of the 225m NexGen shares out of the Telemedia Account in October 2011. The contractual documents as a whole, including the Certified Copy of Board Resolution form, require that an alteration of Crédit Agricole's mandate be done by a further board resolution. That was not done prior to October 2011. I therefore reject Telemedia's submission on the revocation of Mr Yeh's mandate.

Whether Crédit Agricole was in breach of its implied or common law duty of care owed to Telemedia

198 I now turn to Telemedia's claim against Crédit Agricole for the alleged breach of its duty of care owed to Telemedia. Telemedia pleads that Crédit Agricole was in breach of five duties that were implied into the banker-customer relationship: [note: 52]

(a) a duty to act in accordance with Telemedia's instructions and mandate and to act in accordance with any change of such instructions and mandate;

(b) a duty to take reasonable care and diligence to protect Telemedia's interest, wealth and assets;

(c) a duty to act towards Telemedia in good faith;

(d) a duty to exercise reasonable care and diligence to ensure that Telemedia does not suffer losses on account of failure to abide by Telemedia's instructions; and

(e) a duty to ensure that Crédit Agricole and/or its employees do not act negligently and/or recklessly towards Telemedia.

Telemedia also pleads that these duties arose "as common law duties of care owed by [Crédit Agricole] to [Telemedia]." [note: 53]

199 Telemedia's position is that these duties were breached by Crédit Agricole in three ways. [note: 54] First, the forms and mandate executed by Mr Hartanto did not authorise Crédit Agricole to act on the instructions of Mr Yeh. Second, Mr Goh handed the completed account-opening forms to Mr Yeh without Telemedia's instructions, knowledge or authorisation. Third, Crédit Agricole failed to act in accordance with the instructions of Mr Hartanto when it was put on notice that Mr Yeh was not an authorised signatory; and if Mr Yeh had in fact been previously authorised, that Crédit Agricole failed to act in accordance with Telemedia's revocation of such authority.

200 Telemedia's submissions on this point appear to be predicated on the fact that Mr Yeh had no authority to operate the Telemedia Account singly (whether from the outset, or whether because his authority had been revoked on 12 September 2011). [note: 55]

201 In view of my finding that Mr Yeh had the authority to instruct the transfer of the 225m NexGen shares out of the Telemedia Account in October 2011, Telemedia's submissions on the breach of Crédit Agricole's duty of care accordingly fall away. In view of the extensive submissions made by the parties, I will nonetheless go on to consider the position on the assumption that Telemedia's submission on this point is made in the *alternative* (*ie*, that Crédit Agricole may be liable for a breach of duty of care *even if* Mr Yeh was authorised to operate the Telemedia Account).

202 Before turning to the claim based on a common law duty of care, I note that counsel for Crédit Agricole has submitted that the pleadings suggest that Telemedia's case was that the terms could be implied because of the banker-customer relationship which had arisen. [note: 56] In short, the terms were said to have arisen as a matter of law for contracts of this type and not because of business efficacy or the unexpressed intentions of the parties.

203 To this end, I was referred to the legal principle that terms are only to be implied as a matter of law with considerable restraint (see the remarks of the Court of Appeal in *Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 at [69]). Such a term would apply to all future like cases, rather than to the particular contract at hand, as is the case for terms implied in fact.

204 The scope of the pleaded implied terms has not been set out clearly. The implied term that Crédit Agricole was under a duty to take reasonable care and to exercise diligence to protect Telemedia's interest, wealth and assets is very broadly framed. In the absence of evidence on the banker-customer relationship and detailed submissions on terms to be implied as a matter of law, I make no further comment, save that I do not accept that a sufficient basis has been made out to the imply the terms as a matter of law.

205 While Telemedia did not plead specifically that the terms were to be implied as a matter of fact as arising out of the particular circumstances at hand (although it did raise the point in submissions), I note that Crédit Agricole does not, in any case, dispute that it owes Telemedia the duties expected of a reasonable banker. The only question is as to the scope of such a duty of care and whether Crédit Agricole's actions fell short of that duty of care.

206 A convenient starting point is the general principle that implied terms or duties must be viewed in light of the express terms as set out in the contractual documents. Where the parties have entered into an agreement, especially one which contains numerous detailed express terms, the court must be careful not to imply a term which contradicts the express terms. It is not the function of the court to rewrite the terms of the bargain.

207 The observations of the Court of Appeal in *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 ("*Deutsche Bank v Chang Tse Wen*") are apposite. There, Sundaresh Menon CJ, delivering the judgment of the Court of Appeal, stated at [51] that as a matter of the evidence:

> … it would have been highly unusual to find two quite separate types of relationship between the same parties where one, an execution-only contractual relationship, was meticulously recorded in written agreements while the other, a general undertaking to provide investment and wealth management advice, was not only not so recorded but was not even hinted at anywhere in the evidence at all. Moreover, as a matter of law, it would be equally unusual in such circumstances to find that wide obligations were imposed or assumed by DB in tort well beyond those expressly or impliedly undertaken with Dr Chang…

In making the above observation, Menon CJ referred to the judgment of the Privy Council in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd and others* [1986] 1 AC 80 ("*Tai Hing Cotton Mill*").

208 *Tai Hing Cotton Mill* was a case on appeal from the Court of Appeal of Hong Kong. Lord Scarman delivered the judgment of the board. He stated at 107 that it was correct in principle and necessary for the avoidance of confusion in the law to adhere to the contractual analysis because it is the relationship in which the parties have, subject to few exceptions, the right to determine their obligations to each other.

209 Much, of course, will depend on the scope of the duty of care that is said to arise under common law. The thrust of the holding in *Deutsche Bank v Chang Tse Wen* was that great care was needed before finding that wide obligations were imposed or assumed in tort, over and above those provided for in the contract. While the circumstances will have to be very clear and cogent before any common law duty of care will include a duty to advise or protect a client's wealth and assets, the same is not true with a duty to take care in carrying out instructions. In principle, in appropriate cases, applying the test in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, a common law duty of care could arise out of a banker-customer relationship.

210 Crédit Agricole accepts that in the context of the contractual documents and the particular facts, it owed a duty to honour the contractual mandate subject only to circumstances that put it on inquiry. [note: 57] The court has, in the past, recognised that an implied duty to take care in carrying out instructions may arise. For example in *Bank of America National Trust and Savings Association v Herman Iskandar and another* [1998] 1 SLR(R) 848, the Court of Appeal found that the bank in question was under an implied duty to inform account holders on the maturity of their fixed deposits. Similarly, in *Go Dante Yap v Bank of Austria Creditanstalt AG* [2011] 4 SLR 559, it was also held that a bank is subject to an implied contractual and common law duty to exercise skill and care in carrying out instructions.

211 The leading case on the duty to inquire is the decision of the Court of Appeal in *Yogambikai Nagarajah v Indian Overseas Bank and another appeal* [1996] 2 SLR(R) 774. In that case, the Court of Appeal stated at [59] that when a bank was faced with what appeared to be a genuine mandate presented by an agent acting within his authority, the bank's duty of care did not require it to do anything other than to honour the mandate, in the absence of circumstances which put the bank on inquiry. Where the bank was aware of such circumstances, it was not enough to ignore them just because the bank was convinced that any inquiry would be futile or that there was no risk to the customer. On this basis, the correct test was whether the reasonably prudent banker faced with the same circumstances would regard the course of action taken on the facts justifiable.

212 In the same vein, in *Hwang Cheng Tsu Hsu (by her litigation representative Hsu Ann Mei Amy) v Oversea-Chinese Banking Corp Ltd* [2010] 4 SLR 47, the court was faced with the question as to whether the bank breached its duty to take reasonable care in circumstances where the bank refused to follow the customer's instructions to close an account. Although Lai Siu Chiu J dismissed the claim, she held at [74] that the bank's contractual duty to honour payment instructions in accordance with the customer's mandate was not absolute. There was no duty to follow the customer's instructions under any circumstances. The obligation to honour payment instructions was qualified by the bank's contractual duty to take reasonable care in carrying out its operations with its customer.

213 The question before the court was whether a reasonable and prudent banker would have withheld payment because of a real or serious possibility of an irregularity. Lai J, at [77] of the judgment, gave the example that if there were reasonable grounds to believe that the person attempting to make the withdrawal lacked authority to do so, then the bank would be placed on inquiry. A mere suspicion, on the other hand, was not enough.

214 On appeal (which is reported as *Hsu Ann Mei Amy (personal representative of the estate of Hwang Cheng Tsu Hsu, deceased) v Oversea-Chinese Banking Corp Ltd* [2011] 2 SLR 178), the Court of Appeal agreed that it was trite law that a bank was under a duty to comply with the customer's mandate. The Court of Appeal nonetheless recognised that the duty was subject to a duty to take reasonable care in all the circumstances. The Court of Appeal stated (at [24]) that the question as to whether a prudent bank would be put on notice is a fact-specific inquiry. Such a case might arise where the bank had reasonable grounds (not necessarily amounting to proof) for believing that its client was being defrauded or being subjected to improper pressure or influence. It would be enough if a reasonable and honest banker would have considered that there was a serious or real possibility that its customer might be being defrauded. The Court of Appeal continued by observing (at [25]) that where the bank was dealing with an elderly or infirm customer, it could be put on notice of improper pressure or influence exerted over the customer by a third party.

215 Thus framed, the question is whether Crédit Agricole failed to act as a reasonable banker would have, even though it appeared, and rightly so, that Mr Yeh was authorised to operate the Telemedia Account singly. I am of the view that Crédit Agricole had not become aware of any facts that would have put a reasonably prudent banker on inquiry, such that they should have sought express confirmation from Mr Hartanto as to whether Mr Yeh had authority to sign before transferring the 225m NexGen shares on Mr Yeh's instructions in October 2011.

216 It was apparent on 12 September 2011 that a dispute had arisen between Mr Hartanto and Crédit Agricole as to the signing conditions for the Telemedia Account. But in the circumstances, it was reasonable for Mr Goh and Ms Teo to have concluded that Mr Hartanto was mistaken and that he had subsequently clarified the position with Mr Yeh. Perhaps Mr Goh and Ms Teo should have, out of an abundance of caution, emailed Mr Hartanto in October 2011 to inform him of Mr Yeh's instructions, as they had done in September 2011. Perhaps Ms Teo should have gone further than simply asking Mr Yeh to remind Mr Hartanto to make the necessary SGX announcements. But I do not think that in failing to do so, they did not act as a reasonably prudent banker would. They were entitled to rely on Crédit Agricole's mandate from Telemedia, especially since it appeared that Mr Hartanto's mistaken impression of the signing rights over the account was resolved.

217 For these reasons, I hold that Telemedia's claim against Crédit Agricole for breach of its duty of care fails. It is therefore unnecessary to consider the submissions of Crédit Agricole on contributory negligence.

Whether Telemedia is contractually estopped from claiming against Crédit Agricole's breaches

218 Crédit Agricole also relies on the doctrine of contractual estoppel. Assuming Mr Yeh was not authorised to operate the Telemedia Account, or that Crédit Agricole was in breach of its implied or common law duty of care, Crédit Agricole argues that the claim is, in any event, met by the conclusive evidence clause that forms part of the contract between Crédit Agricole and Telemedia.

219 Crédit Agricole relies on clause 7.17 of its General Conditions, which reads as follows:

> COMPLAINTS BY THE CLIENT The client shall verify immediately the contents of documents, excerpts, communications or notifications by the Bank and he shall advise the Bank immediately of any error, including in his favour, that they may contain.
>
> *Any complaint or objection by the client concerning the execution or failure to execute orders or other communications, notifications or measures taken by the Bank must be submitted immediately upon receipt of the appropriate notice or at least within the time frame set by the Bank, failing which the particulars that they contain will be deemed correct and approved by the client, except in the case of obvious material error.*
>
> ...
>
> Complaints concerning periodic statements of accounts and portfolio valuations should be submitted within 30 days and those concerning advices or notices within 5 days from their despatch ...
>
> [emphasis added]

Crédit Agricole's position is that since Telemedia did not complain about the transfer of the 225m NexGen shares out of the Telemedia Account in accordance with the clause listed above, Telemedia is contractually estopped from claiming against Crédit Agricole.

220 Telemedia does not dispute the incorporation of the conclusive evidence clause. It raises two submissions against Crédit Agricole's reliance on contractual estoppel. The first submission is that the operation of a conclusive evidence clause is not a substitute for a customer's mandate. [note: 58] Telemedia relies on the High Court decision of *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 ("*Jiang Ou v EFG Bank*") and argues that the conclusive evidence clause does not create authorisation where none existed.

221 Telemedia's second submission is that Crédit Agricole has not proven that it had dispatched the transaction advices it is relying on to trigger the operation of the conclusive evidence clause. [note: 59] In *Jiang Ou v EFG Bank*, the court held (at [27]) that a bank seeking to rely on a conclusive evidence clause must prove on a balance of probabilities that the transaction advices were effectively dispatched to the customer. This required proof on a balance of probabilities that the transaction documents "were sent by ordinary mail to [the customer]". Failure to prove this fact would be fatal to the bank's reliance on the conclusive evidence clause. Telemedia argues that Crédit Agricole has failed to prove that the transaction advices were effectively dispatched, as the evidence adduced by the latter is hearsay and, in any event, unreliable.

222 I will first review the law on conclusive evidence clauses before addressing the two submissions raised by Telemedia. The leading case is the Court of Appeal decision of *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR(R) 273 ("*Pertamina Energy v Credit Suisse*"). There, a fraudulent employee caused his company substantial losses in what was described as an audacious scam. The

plaintiff company had opened an account with the defendant bank. The account-opening conditions authorised the bank to honour and comply with written instructions from two named individuals. These individuals were given the right to operate the bank account singly. The account-opening conditions contained a conclusive evidence clause and a contractual right of set off.

223 Subsequently, a credit facility was established with the bank secured by a charge over a deposit account which was established in the company's favour by X, one of the two authorised signatories. X had also furnished the bank with a resolution, ostensibly containing the signatures of the company's directors, authorising a drawdown under the credit facility. The bank required an amended signed resolution and the company stamp to be affixed on the charge before the drawdown could be effected. An officer of the bank, L, appended his signature as a witness to the sealing of the charge despite not being present at the sealing. The charge was then registered at the registry of companies in Hong Kong. The bank subsequently allowed a drawdown of US$8m which was transferred by X to a third party whose principal officer had introduced the company to the bank. The bank statements were sent to X's residential address in Singapore pursuant to a mail-redirection letter signed by X. The bank, acting on the company's instructions conveyed through X, eventually set off the US$8m against monies in the deposit account.

224 The Court of Appeal was faced with two main issues. First, whether the documentation initiating the authorisation and drawdown of the credit facility was not authorised or forged. Second, in the event that the documents were not authorised or forged, then whether the bank had a valid defence.

225 V K Rajah J (as he then was), who delivered the judgment of the Court of Appeal, characterised the situation (at [1]) as an unfortunate one where an "eager bank officer [failed] to heed the alarm bells in his zeal to facilitate and sustain a banking relationship with that company". On the facts, the charge document was found to be improperly sealed. None of the company's directors were present at the sealing and no board resolution had been passed authorising the affixation of the seal to the charge document. Given that the subsequent ratification resolution was a forgery that was never signed by the company's directors, the documentation authorising the drawdown of the credit facility was not properly authorised. That being so, the Court of Appeal noted (at [51]) that a bank had no mandate to pay on a forged instrument of the customer. If it did, it would be liable to the customer unless the customer was in breach of its duty to the bank, including by failing to inform the bank of any forgery or unauthorised drawing of a payment order or instruction as soon as the customer became aware of it.

226 Since that was the case, the key question was whether the bank could avail itself of the conclusive evidence clause. The Court of Appeal had no doubt that it was permissible for a bank to modify the customer's common law duty by express terms in the contract such as conclusive evidence clauses. The Court of Appeal went on to explain (at [55]) that the essence of such a clause was to place the onus on the bank's customers to verify their bank statements and to notify the bank of any discrepancy within a certain time period. If the customer failed to do so, then the customer would be precluded from asserting that the statements did not represent the true state of his accounts with the bank. The consequence would be that the customer is unable to make a claim for the loss.

227 After reviewing previous case law from Canada and Singapore, as well as academic criticism of those cases, the Court of Appeal observed (at [63]) that conclusive evidence clauses were not peculiar to banking contracts. They were also found in guarantees and construction contracts. The Court of Appeal found that it was abundantly clear that conclusive evidence clauses were neither uncommon nor alien in a "myriad of commercial matrices". It was rightly stressed that in the end, the

relationship between a bank and its customer was governed by contract and that it was open to the parties to expressly agree on any peculiar arrangement to define and determine their relationship, including the imposition of obligations and responsibilities not usually recognised by common law.

228 This was subject only to circumscription by applicable legislation such as the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("the UCTA") and public policy considerations. One such example would be if the bank was attempting to exclude liability for the fraud of its own employees. The Court of Appeal opined that in such cases, it would have no hesitation in declaring such a clause unreasonable and invalid. The Court of Appeal also noted (at [65]) that a conclusive evidence clause would only come into operation if the statements which the bank was relying on had been effectively dispatched. The onus of proof of dispatch fell on the bank. After consideration of the wording of the conclusive evidence clause and the facts, the Court of Appeal held that the clause operated to exonerate the bank from any liability in respect of acting on the forged documents in the drawdown.

229 Returning to the facts of the case at hand, there is no doubt that the conclusive evidence clause found in clause 7.17 of the General Conditions forms part of the terms of the contract between Telemedia and Crédit Agricole. Mr Hartanto had signed an express acknowledgment of his receipt of the General Conditions, which stated that he had read and approved the provisions. Mr Hartanto accepted in cross-examination that the General Conditions formed part of the contractual documents binding Crédit Agricole and Telemedia. He described the account-opening forms as setting out standard terms. [note: 60]

230 It is also sufficiently clear that the language of clause 7.17 of the General Conditions has the effect of a conclusive evidence clause. The clause provides that, where a timely complaint is not made, Telemedia agrees that the particulars in the communications will be *deemed correct and approved*. Further, entries on a statement or a portfolio valuation *may not be contested* if they correspond to advices following the execution of transactions which have not been contested in due course. *Any loss resulting from a late complaint shall be borne by the client*. The words used make clear the importance of inspection and timely response.

Whether reliance on a conclusive evidence clause is precluded in situations where the transaction in question is unauthorised

231 I turn to Telemedia's first submission that the operation of the conclusive evidence clause is predicated on the receipt of a valid instruction from the customer. The purpose of the conclusive evidence clause is limited to imposing a requirement on the customer to ensure that the instruction had been properly carried out. On this basis, if Telemedia is correct in its primary submission that the transfer instructions from Mr Yeh were invalid, the further submission is that Telemedia was not under a duty to verify the information in the transaction advices.

232 This argument may be disposed of on the basis of my factual findings above that Mr Yeh was in fact authorised to instruct the transfer of the 225m NexGen shares. In any event, I am unable to accept, as a matter of law, Telemedia's submission that as long as the transaction in question is an unauthorised one, the bank is not entitled to rely on a conclusive evidence clause.

233 In *Pertamina Energy v Credit Suisse*, the conclusive evidence clause set out the customer's agreement that "unless the customer objects in writing to any of the matters contained in such a statement within 14 days of the date of such a statement, the customer shall be deemed conclusively to have accepted all the matters contained in such statement as true and accurate in all respects." Even though the transfer instructions were forged—and therefore, the transfer was made without authority—the Court of Appeal found that the ambit of the conclusive evidence clause was

wide enough to exonerate the bank from the consequences of fraud perpetrated on the customer if the customer failed to notify it of the relevant discrepancy within the stipulated time.

234 In *Tjoa Elis v United Overseas Bank Ltd* [2003] 1 SLR(R) 747 ("*Tjoa Elis v UOB*"), the conclusive evidence clause stated that the customer was under a duty to check all entries in the statement of account. If the bank did not receive a written objection from the customer as to the contents of any statement of account within 14 days of the statement date:

> (a) the customer shall be deemed conclusively (i) to have accepted and shall be bound by the validity, correctness and accuracy of the transaction(s)/entries and the balance set out in the statement; and (ii) to have ratified or confirmed each and every one of the transactions represented by the entries set out therein;
>
> (b) the statement shall be deemed conclusive evidence of the customer's authorisation to the bank to effect the transaction(s)/entries set out therein; and
>
> (c) the customer shall have no claim against the bank howsoever arising from, in connection with or as a result of any transaction/entry referred to therein

After examining the clause, Woo Bih Li JC (as he then was), held at [91] that the clause was wide and clear enough to exclude the bank from liability, even if the signatures were forgeries and the bank had allowed the unauthorised withdrawals.

235 In *Jiang Ou v EFG Bank*, Steven Chong J held that whether a particular risk of loss due to error, discrepancy, forgery or an unauthorised transaction is shifted onto the customer is a question of construction of the relevant clause. Following the holding in *Tai Hing Cotton Mill*, Chong J held at [93] that:

> … if a bank seeks to contractually allocate the burden and responsibility of the duty to inform of any forgery or unauthorised drawing or instruction on the customer, no less than *clear and unambiguous* reference will suffice. Sufficiently wide language ascertainable by a reasonable person to include the specific liability borne by the customer would also, in theory, suffice. [emphasis in original]

236 To be clear, the effect of a conclusive evidence clause is not, as Chong J rightly observed at [89], to create authorisation where there was none. The effect of the clause is to place the duty on the customer to verify the statements and advices. Even if the bank is protected by the conclusive evidence clause, the fraudulent instruction remains fraudulent and the customer will have to find his remedy elsewhere.

237 In *Jiang Ou v EFG Bank*, clause 3.1 of the contract between the bank and the customer stated that the bank shall send the customer periodic confirmations or advices of all transactions carried out by the customer and/or its authorised representative. The customer was under a duty to inform the bank promptly and, in any event, within 14 days from the date of such confirmation or advice of any discrepancies, omissions, incorrect or inaccurate entries, failing which the bank may deem the client to have approved the original confirmations, advices or statements of account in which case they shall be conclusive and binding upon the customer. Clause 3.1 was made subject expressly to clause 3.2. Clause 3.2 set out a conclusive evidence clause in respect of transaction confirmations. The difference was that the customer was under a duty to notify the bank within 14 days of any claimed discrepancy between the *instructions* and the transaction confirmation.

238 It was argued before the court that both clauses 3.1 and 3.2 were limited to cases where the bank had acted on the instructions from the customer. The clauses were irrelevant where the bank carried out the transaction in the *absence* of instructions. Chong J agreed, and held at [102] that the clauses did not apply to protect transactions carried out without any instructions from the customer.

239 A close examination of the facts of *Jiang Ou v EFG Bank* reveals that it was a case where the bank's own employee, a client relationship officer, had executed a series of high volume and high risk trades without any instructions from the customer. *Jiang Ou v EFG Bank* was not a case where the bank was led to believe that it had been given instructions from the client or an authorised person. As Chong J pertinently observed at [103], in *Pertamina Energy v Credit Suisse*, the court was concerned with situations where, at the time the transactions were executed, *the banks believed in good faith that they were acting in accordance with the customer's mandate or instructions*. The mandate was subsequently found in some of the cases to have been vitiated by forgery with the effect that the transactions were not authorised. None of those cases concerned the forgery or fraud of the bank's own employee or the bank acting in the absence of any instructions.

240 On the facts of *Jiang Ou v EFG Bank*, the holding of Chong J must be correct. The risk of fraud by the bank's own employee resides with the bank and nothing more than express reference to fraud by an employee would be sufficient to bring such a risk within the conclusive evidence clause. Even if there was express reference to fraud by an employee, I agree with Chong J's observation at [108] that such a clause may well be contrary to public policy and may fall afoul of the reasonableness test under UCTA.

241 In the present dispute, however, there is no evidence or suggestion that Mr Goh or Ms Teo had forged the transfer instructions. Indeed, it is clear that Mr Goh and Ms Teo (and therefore Crédit Agricole) thought that the October 2011 transfer instructions signed by Mr Yeh were legitimate as Mr Yeh was a singly authorised signatory. This is not a case where Crédit Agricole is attempting to protect itself from the fraudulent behaviour of its own employee with the conclusive evidence clause. I therefore dismiss Telemedia's first argument on the conclusive evidence clause.

Whether Crédit Agricole has proven that the transaction advices were properly dispatched

242 Telemedia argues that there is insufficient proof that the transaction advices were actually sent by Crédit Agricole to Telemedia. They dispute the evidence given by Crédit Agricole's witness, Mr Michon.

243 Mr Michon is the department head of Crédit Agricole's S2i Mailing department. That department is responsible for maintaining Crédit Agricole's S2i system which processes, generates and dispatches the statements of accounts and transaction advices to customers of Crédit Agricole worldwide, including Singapore. Mr Michon gave evidence that, to the best of his knowledge or understanding, the transaction advices for the 10 and 14 October 2011 transfers of the 225m NexGen shares were dispatched to Telemedia.

244 Telemedia's attack on Mr Michon's evidence is two-pronged. First, Telemedia asserts that his oral evidence is hearsay. Telemedia says that Mr Michon did not directly perceive that the transaction advices were in fact dispatched to Telemedia. At best, Mr Michon was stating his understanding of the electronic records maintained by Crédit Agricole's S2i system. Second, Telemedia says that the basis of Mr Michon's oral evidence—the electronic records generated by the S2i system—is unreliable. Telemedia submits that Crédit Agricole has therefore failed to prove that it effectively dispatched the transaction advices. It is accordingly unable to rely on the conclusive evidence clause.

245 The objection along the lines that Telemedia is taking is not an unfamiliar one. A similar objection was made in *Tjoa Elis v UOB*. There, the customer argued that there was no direct evidence to prove that the statements in issue had been posted. The bank in that case called the operations manager of Datapost Pte Ltd ("Datapost"), a packing company, to explain how monthly statements of account were packed by the bank and then picked up by Datapost. The evidence included information on how Datapost would fold the statements, place them inside envelopes and deliver the same to SingPost for posting. Woo JC unsurprisingly remarked (at [34]) that it could not be seriously contended that someone must be called to testify directly that he or she recalled placing the particular statements in envelopes which were then delivered to SingPost. Indeed, as in the present case, Woo JC noted that the customer had accepted that she had received statements prior to those in issue.

246 The records reviewed by Mr Michon comprised various printed electronic records retained by Crédit Agricole's S2i system. These documents had been disclosed in Crédit Agricole's second supplementary list of documents dated 30 December 2013. Telemedia did not file a notice of non-admission. Neither did Telemedia object to the documents being included in the agreed bundle or their being exhibited in Mr Michon's AEIC.

247 Telemedia, in their closing submissions, object to the reliability of the electronic records on the basis of s 116A(1) of the EA:

> Unless evidence sufficient to raise doubt about the presumption is adduced, where a device or process is one that, or is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record, the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record.

248 The wording of section 116A is admittedly rather clumsy. But there is no doubt that it sets out a presumption in favour of the production or accurate communication of electronic records. If a process, properly used, ordinarily produces or accurately communicates an electronic record, then the court will presume that the electronic record in question was produced or accurately communicated by that process. The presumption of the production or accurate communication of the electronic record stands *unless* sufficient evidence is adduced to raise doubt as to the production or accurate communication of the electronic record.

249 Telemedia's complaint is that Crédit Agricole did not adduce evidence to prove that the devices and processes were properly used in the first place. Mr Michon under cross-examination agreed that he was not a computer programmer or computer engineer. He did not know the technical aspects of the technology used in the system, both hardware and software. His evidence was that of someone who was familiar with how to use the system in practice. Rather much like a law librarian who knows how to use a computer system to access and search legal databases, and to use the computer to generate reports, without understanding the technical mechanics of the underlying hardware and software.

250 I am of the view that Telemedia's submission is flawed. The purpose of s 116A (introduced into the EA by amendment in 2012) was to *facilitate* the use of electronic records in evidence. Speaking in Parliament at the second reading of the Evidence (Amendment) Bill, the Minister for Law, Mr K Shanmugam, explained that the intention was to create a presumption in favour of the admission of electronic records. Mr Shanmugam explained, touching on the then-existing provisions on electronic records, (*Singapore Parliamentary Debates*, Official Report (14 February 2012) vol 88) that:

On computer output evidence ... [t]he current framework for the admission of computer output evidence is found in sections 35 and 36. They were introduced in 1996. Computer technology was then in its infancy. A cautious approach was therefore taken. ...

[That was] a somewhat cumbersome process not consonant with modern realities. With the benefit of experience, we can now say that computer output evidence should not be treated differently from other evidence. Sections 35 and 36 are therefore repealed. In addition, there will be presumptions facilitating the admission of electronic records. For example, where a device is one that, if properly used, accurately communicates an electronic record, it will be presumed that an electronic record communicated by that device was accurately communicated. Sounds a little circular, but it does make sense. Further documents in the form of electronic records will be treated as primary evidence.

251 The following illustration is also set out in s 116A(1) of the EA:

A seeks to adduce evidence in the form of an electronic record or document produced by an electronic device or process. A proves that the electronic device or process in question is one that, or is of a kind that, if properly used, ordinarily produces that electronic record or document. This is a relevant fact for the court to presume that in producing the electronic record or document on the occasion in question, the electronic device or process produced the electronic record or document which A seeks to adduce.

252 Mr Michon explained that transaction advices were automatically generated in the S2i system which captures and records transactions executed in customers' accounts. The S2i system archives the documents, including transaction advices, in a "Print Log". [note: 61] The S2i system also records the number of envelopes necessary for the documents which are generated in a "Control Log".

253 The documents which are automatically generated will be printed within one business day. The printed documents will be transferred to a PFE Automailer which folds and inserts the printed documents into envelopes. [note: 62] The PFE Automailer indicates the number of envelopes processed in each batch. The figure indicated by the PFE Automailer is tallied against the Control Log, and collated into a "Summary Table". The information in the Summary Table therefore corresponds with documents recorded in the Print Log and Control Log of the previous business day.

254 The enveloped documents are subsequently collected and placed in rectangular Swiss Post boxes. The boxes are collected by Swiss Post at 5pm every day. Swiss Post in turn produces a "Postage Report" each month for Crédit Agricole to make payment against. [note: 63]

255 In my view, Mr Michon's evidence establishes first-hand that the S2i system *both* ordinarily produces *and* accurately communicates information of transactions by Crédit Agricole's customers. The S2i system also generates the transaction advices automatically, so there is no question of proper operation. I do not think it is necessary for Mr Michon to have knowledge and understanding of the technicalities of the S2i system in order for his evidence to establish that the S2i system ordinarily produces/accurately communicates information of transactions.

256 This is, in my view, sufficient to trigger the presumption as to production and accurate communication in s 116A(1) of the EA. The Print Logs and Control Logs for 10 and 14 October 2011—the two dates when the NexGen shares were transferred out of the Telemedia Account—generated by the S2i mailing system were placed before the court. Summary Tables and Postage Reports for 11 and 17 October 2011 (the next business days after 10 and 14 October 2011 respectively) were also

placed before the court.

257 The Print Logs and Control Logs establish that transaction advices for the transfers of 112.5m NexGen shares were generated at 10.46pm on 10 October 2011 and 10.25pm on 14 October 2011. The transaction advices were sorted into the 80th of 202 envelopes for the former and the 112th of 238 envelopes for the latter. [note: 64]

258 The Summary Tables for 11 and 17 October 2011 indicated that: [note: 65]

(a) On 11 October 2011 there were 202 envelopes of type "VA03" (the types recorded in the Print and Control Logs listed described above) and 2 envelopes of type "VA11", totalling 204 envelopes.

(b) On 17 October 2011 there were 238 envelopes of type "VA03" and 1 envelope of type "VA11", totalling 239 envelopes.

259 The Postage Reports for the two days also reflect 204 and 239 envelopes posted respectively.

260 In view of the evidence presented before the court, coupled with the presumption in s 116A(1) of the EA, I am satisfied that the transaction advices were in fact dispatched by Crédit Agricole. Further, Mr Michon also gave evidence that if dispatched mail did not get delivered, the undelivered envelopes would be returned to Crédit Agricole. To the best of his knowledge and belief, this did not happen in respect of the transaction advices sent to Telemedia on 11 and 17 October 2011.

261 Telemedia has not produced any evidence to rebut the presumptions of production or accurate communication of the electronic documents in s 116A(1) of the EA. Indeed, Telemedia merely asserts that it did not receive the transaction advices of 11 and 17 October 2011. Mr Hartanto's evidence was that he did not receive those two transaction advices. It should, however, be noted that Mr Hartanto agreed in cross-examination that Telemedia had received all other transaction advices and statements sent by Crédit Agricole, both before and after these two disputed transaction advices. [note: 66]

262 In my view, the evidence as a whole supports Crédit Agricole's position that the disputed transaction advices were sent to Telemedia and were in all likelihood received by Telemedia. Telemedia did not complain about the information stated in the transaction advices. As a consequence of clause 7.17 of Crédit Agricole's General Conditions, Telemedia is contractually estopped from asserting that the transactions were effected without authority. In view of my holding on contractual estoppel, it is unnecessary for me to address Crédit Agricole's submission on estoppel by representation, and I will not do so.

Crédit Agricole's third-party claim against Mr Yeh

263 The claim by Crédit Agricole against Mr Yeh is predicated on Crédit Agricole being found liable to Telemedia. Crédit Agricole's claim is that Mr Yeh had misrepresented his authority to sign on the Telemedia Account, and that Mr Yeh's misrepresentations were relied on to Crédit Agricole's detriment. Crédit Agricole and Mr Yeh presented a united front in their defence against Telemedia's claim. I have found that Telemedia's claim fails. It follows that it is not necessary to consider the alternative claim by Crédit Agricole against Mr Yeh for deceit. But in view of the submissions and evidence, I will set out a brief comment on the claim against Mr Yeh on the basis that Telemedia has succeeded against Crédit Agricole.

264 The claim appears to largely rest on the tort of deceit: that Mr Yeh had deceived Crédit Agricole into thinking that he was a singly authorised signatory with the power to singly operate the Telemedia Account. If I had indeed found that Mr Yeh had somehow managed to insert his name and signature into the account-opening forms without the knowledge and consent of Mr Hartanto and Mr Goh or any other Crédit Agricole bank officer, such as to cause Crédit Agricole to transfer the 225m NexGen shares out of the Telemedia Account on the instructions of Mr Yeh, the question as to whether Mr Yeh is liable in deceit to contribute to and/or indemnify Crédit Agricole against Crédit Agricole's liability might have arisen. In such a case, questions as to the nature and scope of the representations, reliance and causation may arise for consideration.

265 Nonetheless in view of my primary findings above, that Mr Yeh was a singly authorised signatory to the knowledge and consent of Mr Hartanto, the third-party claim is dismissed.

Conclusion

266 I would like, at this juncture, to make an observation on the events leading up to the opening of the Telemedia Account, which formed the substance of this dispute. On the version of the facts that I have preferred, the account-opening forms were signed at different times, and never in front of Mr Goh, Ms Teo, or another Crédit Agricole bank officer. This, in my view, was unfortunate.

267 In *Pertamina Energy v Credit Suisse*, the bank officer had appended his signature as a witness to the sealing of a charge despite being physically absent from the sealing. Further, he indicated that he had seen original passports of the company's directors even though he had only seen faxed copies. The bank officer in that case also failed to contact the company directors directly despite concerns that the proper parties had not signed the documents. The Court of Appeal in that case expressed the view at [86] that:

> ... [L]amentably, the respondent appears to have been somewhat remiss in the conduct of its relationship with the appellant. Due to the lack of proper supervision, Lim took unwarranted liberties. It must be recognised that a bank officer is more than a mere conduit and that he is accountable for each and every responsibility he owes to the bank as well as its customers.

268 Similarly, I am of the view that if either Mr Goh or Ms Teo had witnessed the actual signing of the account-opening forms, the room for dispute as to whether Mr Yeh was a singly authorised signatory would have been reduced. The point I make is that, as in the case of the bank officer in *Pertamina Energy v Credit Suisse* (at [86]), Mr Goh was more "naïve than knave".

269 I repeat, however, my earlier finding that in any event, Mr Yeh was all along a singly authorised signatory to the Telemedia Account with the knowledge and consent of Mr Hartanto.

270 In summary:

(a) The claim by Telemedia against Crédit Agricole is dismissed.

(b) The claim by Crédit Agricole against Mr Yeh is dismissed.

271 I will hear parties on costs unless agreement is reached.

[note: 1] NOE Day 3, at p 88 lines 23–26.

[note: 2] NOE Day 3, at p 86 lines 12–32.

[note: 3] NOE Day 5, at p 136 line 9–p 137 line 17.

[note: 4] 1 AB 14A.

[note: 5] 1 AB 315.

[note: 6] 1 AB 291.

[note: 7] Telemedia's closing submissions, at p 2.

[note: 8] NOE 22 April 2014, at p 130.

[note: 9] Telemedia's reply (Amendment No 1), at para 2(b).

[note: 10] Statement of claim (Amendment No 1), at para 5.

[note: 11] Statement of claim (Amendment No 1), at para 6.

[note: 12] Hady Hartanto's AEIC, at paras 14–18.

[note: 13] NOE 15 April 2014, at p 98 lines 15–20.

[note: 14] NOE 15 April 2014, at p 98 lines 10–12.

[note: 15] NOE 16 April 2014, at p 26 lines 30–32.

[note: 16] NOE 15 April 2014, at p 100 line 32–p 101 line 9.

[note: 17] NOE 16 April 2014, at p 35 lines 7–19; p 36 lines 20–23.

[note: 18] NOE 16 April 2014, at p 36 lines 24–27.

[note: 19] NOE 16 April 2014, at p 45 line 24–p 46 line 2.

[note: 20] NOE 16 April 2014, at p 36 lines 28–31.

[note: 21] NOE 16 April 2014, at p 39 lines 5–14; p 40 lines 6–9.

[note: 22] 1 AB 307–309.

[note: 23] 1 AB 310.

[note: 24] 1 AB 297.

[note: 25] 2 AB 342–343.

[note: 26] Defendant's closing submissions, at para 145.

[note: 27] NOE 16 April 2014, at p 97 lines 21–22 and p 98 lines 1–3.

[note: 28] NOE 16 April 2014, at p 98.

[note: 29] NOE 16 April 2014, at p 99 line 11.

[note: 30] NOE 16 April 2014, at p 103 lines 2–8.

[note: 31] NOE 16 April 2014, at p 104 lines 2–31.

[note: 32] NOE 16 April 2014, at p 104 line 32–p 105 line 3.

[note: 33] NOE 16 April 2014, at p 105 lines 17–24.

[note: 34] NOE 16 April 2014, at p 120 lines 4–9.

[note: 35] NOE 16 April 2014, at p 123 lines 11–25.

[note: 36] Hady Hartanto's AEIC, at para 34.

[note: 37] NOE 17 April 2014, at p 17 lines 12–24.

[note: 38] NOE 17 April 2014, at p 20 lines 18–22.

[note: 39] NOE 17 April 2014, at p 21 line 3.

[note: 40] NOE 29 April 2014, at p 84 lines 17–18; p 85 lines 7–8.

[note: 41] NOE 23 May 2014, at p 63 lines 3–27.

[note: 42] 1 AB 157.

[note: 43] Exhibits P6, P7, P8-1 and P8-2.

[note: 44] NOE 15 April 2014, at p 100.

[note: 45] NOE 20 May 2014, at p 28.

[note: 46] 2 AB 312–322.

[note: 47] Statement of claim, paras 12 and 13.

[note: 48] NOE 17 April 2014, at p 10 lines 27–30.

[note: 49] Telemedia's closing submissions, at paras 182–184.

[note: 50] NOE 17 April 2014, at p 7 lines 14–18.

[note: 51] NOE 17 April 2014, at p 10 lines 4–8.

[note: 52] Statement of claim, at paras 17 and 18.

[note: 53] Statement of claim, at para 18.

[note: 54] Statement of claim, at para 20.

[note: 55] Telemedia's closing submissions, at paras 207 and 209.

[note: 56] Crédit Agricole's closing submissions, at paras 325 and 326.

[note: 57] Crédit Agricole's closing submissions, at para 335.

[note: 58] Telemedia's closing submissions, at para 217.

[note: 59] Telemedia's closing submissions, at para 212.

[note: 60] NOE 16 April 2014, at p 45 lines 21–23.

[note: 61] Denis Michon's AEIC at paras 15 and 16.

[note: 62] Denis Michon's AEIC at para 23.

[note: 63] Denis Michon's AEIC at para 30.

[note: 64] Denis Michon's AEIC, at para 21.

[note: 65] Denis Michon's AEIC, at para 31.

[note: 66] NOE 17 April 2014, at p 82 line 13–p 83 line 2.

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