

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

[2026] SGHC 202

Originating Claim No 11 of 2024

Between

Stamford Land Corporation
Ltd

... Claimant

And

United Overseas Bank Limited

... Defendant

JUDGMENT

[Contract — Breach]

[Contract — Contractual terms — Express terms]

[Contract — Contractual terms — Implied terms]

[Contract — Contractual terms — Exclusion clauses]

[Contract — Contractual terms — Unfair Contract Terms Act]

TABLE OF CONTENTS

BACKGROUND	2
THE PARTIES	2
THE RIGHTS ISSUE	3
UOB’S PROPOSALS REGARDING THE EXCESS RIGHTS SHARES.....	9
SGX’S PROCEEDINGS AGAINST SLC	14
THE PARTIES’ CASES.....	21
SLC’S CASE	21
UOB’S DEFENCE	25
ISSUES TO BE DETERMINED	26
UOB’S CONTRACTUAL DUTIES	27
CONTRACTUAL DUTY TO ADVISE	27
CONTRACTUAL DUTY OF SKILL AND CARE.....	31
WHETHER THERE WAS A BREACH OF UOB’S CONTRACTUAL DUTIES.....	31
CONTRACTUAL DUTY TO ADVISE	31
<i>Interpretation of “rank last in priority” under r 877(10).....</i>	<i>32</i>
<i>UOB’s “success rate” methodology was not compliant with r 877(10).....</i>	<i>35</i>
<i>UOB’s other arguments</i>	<i>37</i>
CONTRACTUAL DUTY OF SKILL AND CARE	40
CONCLUSION.....	46

WHETHER SLC’S CLAIM IS BARRED BY THE EXCLUSION CLAUSE.....	47
WHETHER THE EXCLUSION CLAUSE IS UNENFORCEABLE PURSUANT TO THE UCTA.....	47
WHETHER UOB’S CONDUCT AMOUNTS TO “GROSS NEGLIGENCE”	52
<i>Applicable principles</i>	52
<i>My decision</i>	55
DAMAGES	60
CONCLUSION.....	63

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Stamford Land Corp Ltd
v
United Overseas Bank Ltd

[2026] SGHC 202

General Division of the High Court — Originating Claim No 11 of 2024
Dedar Singh Gill J
20, 21 January, 18 March 2026

29 September 2026

Judgment reserved.

Dedar Singh Gill J:

1 The claimant (“SLC”) engaged the defendant (“UOB”) as the manager for SLC’s rights issue exercise (“Rights Issue”). During the Rights Issue, there were excess rights shares that were not allocated in full. Subsequently, when these excess rights shares were allocated, preference was afforded to the minority shareholders, over the directors and controlling shareholders. However, not all of the applications by the minority shareholders were fully satisfied. Excess rights shares were also allocated to the directors and controlling shareholders. This was despite sufficient excess rights shares being available to satisfy the minority shareholders’ applications in full. According to the Singapore Exchange Regulation Pte Ltd (“SGX”), the allotment of the excess rights shares was potentially in breach of r 877(10) of the Mainboard Rules under the Singapore Exchange Securities Trading Limited Listing Manual (“r 877(10)”, “Mainboard Rules” and “SGX-ST” respectively). SGX

thus commenced investigations into SLC and, thereafter, instituted proceedings against SLC before the Listings Disciplinary Committee (“LDC Proceedings”). The LDC Proceedings against SLC were eventually settled. SLC now claims damages against UOB for the legal costs incurred by SLC in relation to SGX’s investigations and/or the LDC Proceedings. In gist, SLC’s case is that UOB was in breach of its contractual obligations in providing advice on the allotment of the excess rights shares that was not compliant with r 877(10) and failing to exercise reasonable skill and care. For the reasons that follow, I allow the claim.

Background

The parties

2 SLC is a Singapore-incorporated company listed on the Mainboard of SGX-ST since 1989.¹ It is in the business of owning and operating luxury hotels in Australia, and is also a developer.² The following individuals from SLC were key to the Rights Issue, and gave evidence as SLC’s witnesses during the trial:

(a) Mr Ow Chio Kiat (“Mr CK Ow”), the executive chairman and a director of SLC.³

(b) Mr Ow Yew Heng (“Mr YH Ow”), the chief executive officer and a director of SLC.⁴

¹ Statement of Claim (Amendment No 2) dated 2 June 2025 (“SOC”) at para 2; Affidavit of evidence-in-chief of Ow Chio Kiat filed by the claimant dated 30 September 2025 (“OCK”) at para 20.

² SOC at para 2.

³ OCK at para 3.

⁴ Affidavit of evidence-in-chief of Ow Yew Heng filed by the claimant dated 30 September 2025 (“OYH”) at para 3.

(c) Mr Tan T’eng Ta’ (“Mr Tan”), who was the deputy chief executive officer and chief legal officer of SLC at the material time.⁵

3 UOB is a bank based in Singapore.⁶ The following employees from UOB, among others, were involved in the Rights Issue and testified as UOB’s witnesses during the trial:

(a) Mr Tham Fook Thai David (“Mr Tham”) and Mr Andrew Chow Heng Cheong (“Mr Chow”), who are senior directors in UOB’s Equity Capital Markets department.⁷

(b) Mr Kwek Rui Sen Kelvin (“Mr Kwek”), a vice president in UOB’s Equity Capital Markets department.⁸

Mr Tham spearheaded the provision of advice relating to the Rights Issue and was supported by, among others, Mr Kwek.⁹ It is not disputed that the actions by the representatives of UOB involved in the Rights Issue are attributable to UOB.

The Rights Issue

4 During a board meeting on 12 November 2021, SLC’s board of directors unanimously agreed to conduct a rights issue exercise in order to raise funds for

⁵ Affidavit of evidence-in-chief of Tan T’eng Ta’ (Chen Tengda) filed by the claimant dated 30 September 2025 (“TTT”) paras 3–4.

⁶ Affidavit of evidence-in-chief of Tham Fook Thai David filed by the defendant dated 30 September 2025 (“TFTD”) at para 12.

⁷ TFTD at para 1; Affidavit of evidence-in-chief of Andrew Chow Heng Cheong filed by the defendant dated 30 September 2025 (“ACHC”) at para 1.

⁸ Affidavit of evidence-in-chief of Kwek Rui Sen Kelvin filed by the defendant dated 30 September 2025 at para 1.

⁹ TFTD at para 7.

the company.¹⁰ SLC engaged independent professional advisers to advise on and manage the Rights Issue.¹¹ Pursuant to SLC and UOB’s engagement letter dated 15 November 2021 (“Engagement Letter”), UOB was appointed as the manager of the Rights Issue.¹² SLC also engaged M&C Services Private Limited (“M&C”) as the share registrar and Lee & Lee LLP (“Lee & Lee”) as its legal adviser.¹³

5 The salient terms of the Engagement Letter pertaining to the scope of UOB’s engagement are reproduced here:¹⁴

1. SCOPE OF SERVICES

As manager of the Proposed Rights Issue (“Manager”), UOB will perform the following services:

(a) advise [SLC], together with the other professionals, on the structuring and pricing of the [p]roposed Rights Issue;

...

(g) upon the close of the [p]roposed Rights Issue, propose, together with [SLC’s] share registrar, an *appropriate basis of allotment for [r]ights [s]hares* in the balloting of excess [r]ights [s]hares applications.

For the avoidance of doubt, UOB will not be responsible for:

...

(d) advising [SLC] on the commercial risks or merits or suitability of the [p]roposed Rights Issue and whether or not [SLC] should undertake the [p]roposed Rights Issue which shall be decided by [SLC] ...

2. DUTIES, RIGHTS, OBLIGATIONS AND UNDERTAKINGS

¹⁰ OCK at paras 12–14.

¹¹ OCK at para 15.

¹² OCK at para 16.

¹³ OCK at para 15(b)–(c).

¹⁴ Trial Bundle Volume 3 (“3TB”) at pp 27–28.

[SLC] undertakes that *all necessary laws, regulations and rules in connection with the [p]roposed Rights Issue on the SGX-ST have been and will be complied with* and agrees that the [p]roposed Rights Issue is subject to the *satisfaction of UOB that there has been such compliance*. If required (in the reasonable opinion of UOB), due diligence exercises will be conducted by UOB, the solicitors, auditors, reporting accountants, and any other professional parties deemed necessary, whereby the scope and nature of such due diligence is subject to the mutual agreement of the parties. In the event that UOB is not satisfied with the outcome of one or more of the above-mentioned due diligence exercises, UOB reserves the right to terminate its appointment and shall not be liable to the [SLC] for any losses, claims, costs, damages, actions, proceedings, demands, liabilities and expenses whatsoever arising or which may arise, whether joint or several. ...

[emphasis in original omitted; emphasis added]

6 Of note is the exclusion clause in the Engagement Letter (“Exclusion Clause”):¹⁵

9. INDEMNITY

9.1 [SLC] agrees that UOB ... shall not be liable for, and [SLC] shall not claim against UOB ... to recover, any loss, liability, expense or cost incurred by [SLC] arising directly or indirectly out of the [p]roposed Rights Issue or the performance by or on behalf of UOB of its obligations under [the Engagement Letter] except to the extent that any loss, liability, expense or cost is proven by a final judgement of a court of competent jurisdiction to have resulted directly from UOB’s [or, *inter alia*, UOB’s respective directors, officers, agents and employees] *willful [sic] default or gross negligence* ...

[emphasis added]

7 On 1 December 2021, Lee & Lee submitted, on behalf of SLC, an Additional Listing Application (“ALA”) applying for a waiver of r 877(10) in

¹⁵ 3TB at pp 31–32.

respect of several shareholders, including Mr CK Ow and Mr YH Ow.¹⁶ SGX-ST did not approve the waiver application.¹⁷

8 Rule 877(10) provides as follows:

In the allotment of any excess rights shares, a confirmation from the issuer that preference will be given to the rounding of odd lots, and that *directors and substantial shareholders who have control or influence* over the issuer in connection with the day to-day affairs of the issuer or the terms of the rights issue, or have representation (direct or through a nominee) on the board of the issuer *will rank last in priority for the rounding of odd lots and allotment of excess rights shares*.

[emphasis added]

I will hereinafter refer to the “directors and substantial shareholders who have control or influence over the issuer ... or the terms of the rights issue, or have representation ... on the board of the issuer” generally as “restricted individuals”. The remaining shareholders of an issuer will correspondingly be referred to as the “non-restricted individuals”. Where reference is made to the specific restricted individuals and non-restricted individuals involved in SLC’s Rights Issue, I will use “Restricted Individuals” and “Non-Restricted Individuals” respectively. The Restricted Individuals included, *inter alia*, Mr CK Ow and Mr YH Ow.¹⁸

9 On 7 December 2021, SLC announced the proposed rights issue of 703,735,903 new ordinary shares (“Rights Shares” in the collective) in the capital of the company at an issue price of \$0.34 for each share, on the basis of nine new ordinary shares for every ten existing ordinary shares in the capital of

¹⁶ OYH at paras 15–17; TFTD at paras 18–21.

¹⁷ OYH at para 18; TFTD at para 22.

¹⁸ TTT at para 43; TFTD at para 47.

the company.¹⁹ On the same day, SLC sent SGX-ST a letter containing a revised ALA under which SLC confirmed that the allotment of any excess Rights Shares would be pursuant to r 877(10).²⁰

10 Subsequently, SGX-ST granted SLC in-principle approval with regard to SLC's proposed Rights Issue on 28 December 2021, which was conditional on, *inter alia*, SLC's undertaking to comply with r 877(10).²¹

11 In the lead-up to the announcement of the Rights Issue, the following events occurred sometime in January 2022:

(a) A due diligence call was held between SLC's directors and management, UOB, M&C and Lee & Lee to discuss SLC's draft offer information statement relating to the Rights Issue.²²

(b) M&C sent UOB and SLC two sample templates for the allotment of excess rights shares applications undertaken by M&C.²³

(c) UOB wrote to M&C, copying SLC, setting out several broad principles to ensure a fair and reasonable allotment of excess rights applications, including the rounding of odd lots, that priority was to be given to small shareholders and that directors and substantial shareholders will rank last in priority.²⁴

¹⁹ TTT at para 30; TFTD at para 24.

²⁰ OYH at para 20; TFTD at para 26.

²¹ TTT at para 31.

²² TFTD at para 34.

²³ TFTD at paras 35–37.

²⁴ TFTD at para 41.

12 SLC announced the results of the Rights Issue on 9 February 2022.²⁵

(a) The Rights Issue was oversubscribed. The total applications received were for 1,010,773,641 Rights Shares, in excess of the 703,735,903 Rights Shares available under the Rights Issue. However, not all of the applications were valid. The total applications received comprised: (i) valid acceptances for 597,669,640 Rights Shares; and (ii) excess applications for 413,104,001 Rights Shares.

(b) In other words, 106,066,263 Rights Shares were not validly accepted or subscribed for by the eligible shareholders (“Excess Rights Shares”) (*ie*, 703,735,903 available Rights Shares less 597,669,640 validly accepted Rights Shares). The Excess Rights Shares would be allotted to satisfy the valid excess applications for the Rights Shares and, in the said allotment, SLC had taken into consideration r 877(10).

13 The Excess Rights Shares were likewise oversubscribed on the whole, with applications for 413,104,001 shares (*contra*, 106,066,263 available Excess Rights Shares) comprising of:²⁶

(a) applications for 91,413,731 Excess Rights Shares by the Non-Restricted Individuals; and

(b) applications for 321,690,270 Excess Rights Shares by the Restricted Individuals.

²⁵ 3TB at pp 477–480.

²⁶ Trial Bundle Volume 8 (“8TB”) at p 177.

UOB's proposals regarding the Excess Rights Shares

14 On 10 February 2022, M&C sent a preliminary proposal to SLC and UOB:²⁷

Round 1 – Rounding [Excess Rights Shares] applicants to the nearest 1,000 shares based on their total holdings after acceptance

Round 2 – Fully allotting all remaining [Excess Rights Shares] applied (excluding [the Restricted Individuals]) to [Excess Rights Shares] applicants

There is a balance of 14,652,532 remaining after full allocation which is available for allocation to [the Restricted Individuals].

Under M&C's preliminary proposal, the Non-Restricted Individuals' applications for the Excess Rights Shares were to be satisfied in full, with the remaining Excess Rights Shares allotted to the Restricted Individuals.

15 Thereafter, UOB provided four rounds of proposals to SLC on 11 February 2022 in relation to the allotment of the Excess Rights Shares, which I set out in turn.

16 First, UOB originally proposed three allotment scenarios by way of email, at or around 1.00am (collectively, "Original Proposals" and "Original Proposal 1–3" respectively).²⁸ The outcomes generated by the Original Proposals were as follows:

²⁷ Trial Bundle Volume 4 ("4TB") at p 12.

²⁸ 4TB at pp 241–244.

UOB’s proposal	Percentage of Excess Rights Shares applications to be satisfied (ie, the “Success Rate” at [18(b)] below)	Percentage of Excess Rights Shares to be allotted
Original Proposal 1	Non-Restricted Individuals: 100% Restricted Individuals: 4.6%	Non-Restricted Individuals: 86.2% Restricted Individuals: 13.8%
Original Proposal 2	Non-Restricted Individuals: 50.4% Restricted Individuals: 18.6%	Non-Restricted Individuals: 43.4% Restricted Individuals: 56.6%
Original Proposal 3	Non-Restricted Individuals: 50.3% Restricted Individuals: 18.7%	Non-Restricted Individuals: 43.4% Restricted Individuals: 56.6%

17 As may be seen from the table above, under Original Proposal 1, akin to M&C’s preliminary proposal, applications for the Excess Rights Shares by the Non-Restricted Individuals had to be fully satisfied before any Excess Rights Shares were to be allotted to the Restricted Individuals.²⁹ The other two proposals (“Original Proposals 2 and 3”) did not contain such a requirement.

18 Instead, Original Proposals 2 and 3 were premised on the following principles:³⁰

²⁹ SOC at para 24(a).

³⁰ SOC at para 24(a); 8TB at p 612; TTT at para 67; TFTD at para 57.

(a) Priority was to be given to the rounding of odd lots held by the Non-Restricted Individuals.

(b) Preference was to be given to the Non-Restricted Individuals. The total number of the Excess Rights Shares allotted to them as a percentage of the total number of their applications (“Success Rate”), was significantly higher than the corresponding Success Rate of applications by the Restricted Individuals. Examples of the Success Rate can be seen in the “Percentage of Excess Rights Shares applications to be satisfied” column in the table at [16] above. The Success Rate could be varied by adjusting the banding implemented (see [25(b)–(c)] below).

(c) The Restricted Individuals were to rank last in the distribution of the Excess Rights Shares.

19 What will become apparent is that in the rounds of revised proposals subsequent to the Original Proposals, UOB advanced permutations of Original Proposals 2 and 3. Original Proposal 1 (see [17] above) was not taken up by UOB.

20 At or around 9.00am, a call was held between SLC’s management and UOB (attended by, among others, Mr Tan, Mr Tham and Mr Kwek). According to Mr Tan, he requested that UOB reconsider the banding implemented in Original Proposals 2 and 3 to improve the Success Rate for the Non-Restricted Individuals and provide a more equitable allotment of the Excess Rights Shares.³¹

³¹ TTT at para 71; TFTD at paras 59–60.

21 Second, at 2.32pm, UOB put forth revised proposals by way of email (“Revised Proposals”):³²

(a) “Revised Proposal 1”, which was based on the Original Proposal 2, save for amendments to the banding to allocate more Excess Rights Shares to the Non-Restricted Individuals.³³

(b) “Revised Proposal 2”, which was identical to Original Proposal 3.³⁴

22 SLC thereafter requested UOB and M&C to further revise the Revised Proposals.³⁵

23 Third, in an email at 4.25pm, UOB suggested the following (“Further Revised Proposals”):³⁶

(a) “Further Revised Proposal 1A”, which was identical to Revised Proposal 1.

(b) “Further Revised Proposal 1B” and “Further Revised Proposal 1C” which were variations of Further Revised Proposal 1A.

(c) “Further Revised Proposal 2”, which was identical to the Original Proposal 3 and the Revised Proposal 2.

³² 4TB at pp 332–335; TTT at para 79; TFTD at paras 61–63.

³³ TFTD at para 62; TTT at para 79(a).

³⁴ TFTD at para 63; TTT at para 79(b).

³⁵ TFTD at para 64.

³⁶ 4TB at pp 378–382; TTT at para 84; TFTD at paras 65–69.

24 At 9.13pm, UOB sent SLC an updated version of Further Revised Proposal 2, which was eventually approved by SLC (“Final Proposal”).³⁷ In essence, the Final Proposal included an additional round to provide for the rounding of the odd lots for the Restricted Individuals.³⁸ This was contrasted to Further Revised Proposal 2 where the Restricted Individuals were grouped together with the Non-Restricted Individuals in the rounding of the odd lots in the first round.³⁹

25 I summarise the steps undertaken pursuant to the Final Proposal that are relevant for present purposes:⁴⁰

(a) After the rounding of the Non-Restricted Individuals’ odd lots, the Non-Restricted Individuals were allotted Excess Rights Shares. The allotment was based on the rights entitlement they had accepted. To illustrate, a non-restricted individual who previously accepted his entitlement of 1,000 Rights Shares and applied for more than 1,000 Excess Rights Shares will only be allotted 1,000 Excess Rights Shares during this round.

(b) Additional Excess Rights Shares were next allotted to the Non-Restricted Individuals based on their total shareholdings after acceptance of their rights entitlements, under different bandings determined by UOB.

³⁷ 4TB at pp 407–412; TTT at para 105; TFTD at paras 76–78.

³⁸ TTT at para 102; TFTD at para 76.

³⁹ TTT at para 102.

⁴⁰ TTT at para 103; TFTD at para 79 and p 370.

(c) The outcome was that the Non-Restricted Individuals' Excess Rights Shares applications were not satisfied in full. Nonetheless, UOB's banding methodology resulted in the Non-Restricted Individuals' applications being met with a higher Success Rate as compared to the Restricted Individuals.

(d) The balance Excess Rights Shares were then allotted to the Restricted Individuals on a *pro rata* basis of the number of Excess Rights Shares applied for. After this round, the remaining balance Excess Rights Shares (which were negligible) were then allotted to the Restricted Individuals to round up their odd lots and to the largest shareholder (*ie*, Mr CK Ow).

26 After implementing the Final Proposal, the excess applications for 106,066,263 Rights Shares were allotted on 16 February 2022, as such:⁴¹

(a) 46,022,551 of the Excess Rights Shares were allotted to the Non-Restricted Individuals; and

(b) 60,043,712 of the Excess Rights Shares were allotted to the Restricted Individuals.

SGX's proceedings against SLC

27 Stemming from a shareholder's complaint concerning the Rights Issue, SGX wrote to SLC on 1 April 2022.⁴² In response, SLC wrote to inform SGX

⁴¹ 8TB at p 611.

⁴² OCK at para 32.

on 5 April 2022 of its position that the Rights Issue did not contravene r 877(10).⁴³

28 A call was held on 8 April 2022 between SLC, UOB and SGX.⁴⁴ SGX enquired on, *inter alia*, the operationalisation of the allotment of excess rights shares.⁴⁵

29 On 16 August 2022, SGX sent a letter to SLC alleging that SLC had potentially breached r 877(10) and invited them to make representations (“Show Cause Letter”).⁴⁶ In the Show Cause Letter, SGX’s position was that only Original Proposal 1 was compliant with r 877(10). To reiterate, under Original Proposal 1, the Non-Restricted Individuals’ applications for the Excess Rights Shares were to be fully satisfied before any Excess Rights Shares were to be allotted to Restricted Individuals (see [17] above).

30 To assist with SGX’s investigations, SLC engaged counsel from Drew & Napier LLC (“D&N”) and Eng & Co (“E&C”) on or around 18 August 2022.⁴⁷ D&N and E&C were to work jointly to advise SLC in respect of the investigations by SGX, with D&N representing SLC during any tribunal proceedings.⁴⁸

⁴³ OYH at para 103.

⁴⁴ TFTD at para 89.

⁴⁵ TFTD at para 90.

⁴⁶ Trial Bundle Volume 5 at pp 520–538.

⁴⁷ OCK at paras 44 and 46.

⁴⁸ OCK at paras 45 and 47.

31 Mr Tham met Mr CK Ow to discuss the Show Cause Letter on 26 August 2022.⁴⁹ Subsequently, Mr Tham sent an email on 27 August 2022 to SLC setting out the bases and justifications for UOB maintaining its view that the Final Proposal complied with r 877(10).⁵⁰

32 SGX interviewed Mr Tham and Mr Kwek together on 29 August 2022, although Mr Tham was later interviewed alone on 28 October 2022 and 17 November 2022.⁵¹

33 Sometime in September 2022, SGX wrote to UOB with several queries. In particular, SGX requested samples of the allotment of excess rights shares in other rights issues in which UOB had previously been the issue manager.⁵² UOB provided four samples of rights issues it was previously engaged for (“Internal Precedents”).⁵³ In the Internal Precedents provided, none of the excess rights shares were allocated to the restricted individuals. For three of the samples, this was because the respective restricted individuals of each issuer did not apply for excess rights shares (as I will explain further at [40] below, such a situation is akin to “Scenario 1” of SGX’s regulator’s column).⁵⁴ However, this was not the case for the remaining sample, *ie*, the second sample provided by UOB (“Internal Precedent 2”). In Internal Precedent 2, the rights issue was

⁴⁹ TFTD at para 94; OCK at para 50.

⁵⁰ Trial Bundle Volume 7 at pp 307–318.

⁵¹ TFTD at paras 109–110.

⁵² 8TB at pp 162–163.

⁵³ 8TB at pp 167–170.

⁵⁴ Transcript for the trial of HC/OC 11/2024 held on 21 January 2026 (“21 Jan Transcript”) at p 76:3–76:13.

oversubscribed. There were two restricted individuals who applied for the excess rights shares, but were not allotted any excess rights shares.⁵⁵

34 SLC submitted its representations to SGX on 19 September 2022.⁵⁶ The representations maintained the view that the Final Proposal was compliant with r 877(10), and further stated that SGX’s interpretation of r 877(10) was only made known for the first time in the Show Cause Letter. In addition, Mr Tham sent an email to SLC on 21 September 2022 to clarify certain matters in SLC’s representations.⁵⁷ It was once again emphasised that all the proposals complied with r 877(10).

35 Sometime in January 2023, SGX conducted interviews with Mr Tan and SLC’s chief financial officer, Ms Lee Li Huang.⁵⁸ SGX also requested additional documents from SLC.

36 On 4 May 2023, SGX initiated the LDC proceedings against SLC, Mr CK Ow and Mr YH Ow, alleging a breach of r 877(10).⁵⁹ According to SGX, the Rights Issue was in “clear and deliberate defiance of the prohibition under [r 877(10)]”.⁶⁰

37 Further legal costs were incurred by SLC for D&N to defend SLC during the LDC Proceedings.⁶¹

⁵⁵ 21 Jan Transcript at p 76:18–76:22; 8TB at p 168.

⁵⁶ OCK at para 53; 8TB at pp 183–232.

⁵⁷ TFTD at para 103; Trial Bundle Volume 9 at pp 124–125.

⁵⁸ OCK at paras 67–68.

⁵⁹ Trial Bundle Volume 14 (“14TB”) at pp 4–29; OCK at para 70.

⁶⁰ 14TB at p 27.

⁶¹ OCK at para 72.

38 In the meantime, SLC’s representatives and UOB’s representatives maintained communication. Mr Tham continued to reassure SLC in September 2023 that UOB “will continue to stand by [SLC] on this matter with the SGX and render further assistance to [SLC] where necessary”.⁶² Mr CK Ow therefore reached out to Mr Tham with some queries and he responded accordingly. On 4 October 2023, however, when Mr CK Ow requested Mr Tham to provide a written statement to assist SLC’s defence in the LDC Proceedings, to “just ... say what you have been saying to SGX all along”, he was met with silence.⁶³ It later transpired during trial that Mr Tham was directed by UOB’s legal team not to respond.⁶⁴

39 Eventually, SLC settled the LDC Proceedings with SGX on 12 December 2023.⁶⁵ A joint statement was issued on 15 December 2023 (“Joint Statement”).⁶⁶ I summarise the material parts of the Joint Statement:

(a) SGX and SLC had reached a settlement of the matter without any admission of liability.

(b) SLC had relied on UOB’s “professional advice as the lead manager” to determine the allotment of the Excess Rights Shares. “UOB [had] adopted an interpretation of [r 877(10)]” where preference was afforded to Non-Restricted Individuals but not all their applications were fully satisfied before allotting the Excess Rights Shares to the Restricted Individuals.

⁶² OCK at para 75; Trial Bundle Volume 11 (“11TB”) at pp 420–426.

⁶³ OCK at paras 80–81; 11TB at pp 487–491.

⁶⁴ 21 Jan Transcript at p 62:11–62:24.

⁶⁵ OCK at para 83.

⁶⁶ Trial Bundle Volume 13 (“13TB”) at p 184.

(c) SGX stated that the “clear and obvious” interpretation of r 877(10) is that the excess rights shares applications by non-restricted individuals must be fully satisfied before restricted individuals were entitled to receive any excess rights shares (“SGX’s Interpretation”).

(d) As part of the resolution, SLC’s controlling shareholders donated \$2m to the SGX Investor Education Fund to “promote investor education and financial literacy among market participants”.

40 On the same day of the settlement, SGX issued a regulator’s column titled “What SGX RegCo expects of listed issuers when allotting excess rights shares” (“Regulator’s Column”) where it emphasised SGX’s Interpretation.⁶⁷ The Regulator’s Column further set out illustrations of compliance with r 877(10):

... Scenario 1: [non-restricted individuals] do not subscribe for any excess rights shares

In this scenario, all excess rights shares are available for satisfaction of the applications by the [r]estricted [i]ndividuals, after the rounding of odd lots by [the non-restricted individuals].

Scenario 2: [non-restricted individuals] subscribe for more than the available amount of excess rights shares (“Oversubscription scenario”)

In this scenario, after the rounding of odd lots by [the non-restricted individuals] followed by [r]estricted [i]ndividuals, the listed issuer has the discretion to determine an appropriate allocation methodology for allocation amongst all the [non-restricted individuals].

Scenario 3: [non-restricted individuals] subscribe for less than the full amount of excess rights shares available (“Undersubscription scenario”)

In this scenario, all valid applications of the [non-restricted individuals] must be fully satisfied before excess rights shares

⁶⁷ 13TB at pp 185–187.

can be allocated to the [r]estricted [i]ndividuals to satisfy their valid applications.

While the above scenarios are non-exhaustive, issuers should note that allocation of excess rights shares to [r]estricted [i]ndividuals should, in line with [r 877(10)], occur only after all valid applications by [the non-restricted individuals] have been satisfied. Methodologies for allotting excess rights shares that depart from the above goes against the purpose of [r 877(10)] because they potentially allow issuers or [r]estricted [i]ndividuals to unduly favour themselves to the detriment of [the non-restricted individuals] in the allocation of excess rights shares. ...

[emphasis in original]

It may be appreciated that the present allotment of the Excess Rights Shares (see [13] above) fell within “Scenario 3” or the undersubscription scenario as described in the Regulator’s Column.

41 According to SLC, it incurred the following costs arising from SGX’s investigations and the LDC Proceedings:⁶⁸

(a) \$1,829,669.56 (inclusive of GST and disbursements) payable to D&N for its engagement from 18 August 2022 to 31 December 2023;⁶⁹

(b) \$57,554.55 (inclusive of GST and disbursements) payable to E&C for its engagement from 26 August 2022 until 30 September 2022;⁷⁰ and

⁶⁸ SOC at para 40.

⁶⁹ OCK at para 91.

⁷⁰ OCK at para 92.

(c) \$722.20 (exclusive of GST) arising from a search conducted on the Central Depository relating to the ownership of the Excess Rights Shares.⁷¹

To recover the aforesaid costs, SLC commenced the present action.

The parties' cases

SLC's case

42 The crux of SLC's claim is that UOB is liable for breach of contract. To establish breach, SLC's case rests on three main elements.

43 First, UOB owed SLC contractual obligations in relation to the proposed Rights Issue and allotment of the Excess Rights Shares.⁷² In terms of the scope of these obligations, SLC argues the following:

(a) UOB had a contractual duty under the Engagement Letter to, *inter alia*, advise on the structuring of the Rights Issue and the appropriate basis of allotment of the Excess Rights Shares ("Contractual Duty to Advise").⁷³ Under the Contractual Duty to Advise, UOB was under a "duty to render SLC correct advice", pursuant to: (i) a "contextual interpretation" of, in particular, cl 1(a) and 1(g) of the Engagement Letter (see [5] above); or (ii) an implied term of the Engagement Letter.

⁷¹ OCK at para 93.

⁷² SOC at para 7.

⁷³ SOC at para 7.

(b) Further or in the alternative, UOB owed SLC a contractual duty of skill and care in providing advice on the structuring of the Rights Issue and the appropriate basis of allotment for Rights Shares in the balloting of Excess Rights Shares (“Contractual Duty of Skill and Care”).⁷⁴ This arose as UOB held itself out as a skilled or professional adviser to render specified services for a fee. It was therefore an implied term of the Engagement Letter in law that UOB would exercise reasonable skill and care in rendering the agreed services to SLC.

44 Second, UOB breached its Contractual Duty to Advise because UOB failed to propose an “appropriate” basis of allotment for the Excess Rights Shares as the Original Proposals 2 and 3 and the revised proposals including the Final Proposal were not compliant with r 877(10).⁷⁵ This is the main basis that SLC focuses on in its closing submissions to establish UOB’s alleged breach.⁷⁶ That being said, in SLC’s pleadings, it claims, further and/or in the alternative, that UOB was in breach of the Contractual Duty to Advise because UOB: (a) “gave incorrect advice”; (b) failed to advise SLC about the non-compliance; and/or (c) failed to advise SLC “there was even a risk” of non-compliance.⁷⁷

45 In relation to UOB’s breach of the Contractual Duty of Skill and Care, SLC relies on similar bases summarised at [44] above to support its contention.⁷⁸ According to SLC, UOB’s failure to take reasonable care in putting forward an appropriate basis of allotment was evident in the way that Mr Tham found “no

⁷⁴ SOC at para 8.

⁷⁵ SOC at para 41(a).

⁷⁶ Claimant’s Closing Statement dated 4 March 2026 (“CCS”) at paras 9(a); 43 and 46.

⁷⁷ SOC at para 41(b)–(d).

⁷⁸ SOC at para 41(e).

necessity” to conduct “routine basic checks” on the Internal Precedents to confirm its advice.⁷⁹

46 Third, SLC asserts that the Exclusion Clause does not bar its claim against UOB:

(a) Principally, SLC contends that the Exclusion Clause is unenforceable as it is in violation of s 3 of the Unfair Contract Terms Act 1977 (2020 Rev Ed) (“UCTA”).⁸⁰ In particular:

(i) Section 3 of the UCTA applies as: (A) SLC dealt as a “consumer” within the meaning of s 12 of the UCTA; and/or (B) the Exclusion Clause was a standard term of UOB’s business, which SLC attempted to negotiate but was rejected.

(ii) The Exclusion Clause violates s 3(2)(a) of the UCTA in so far as it restricts UOB’s liability to SLC in respect of breaches of UOB’s contractual duties.

(iii) The Exclusion Clause does not satisfy the requirement of reasonableness as it excludes liability for negligent acts which constitute breaches of its agreed duties under the Engagement Letter.

(b) In any event, UOB’s breaches of its contractual duties amounted to wilful default and/or gross negligence within the meaning of the Exclusion Clause.⁸¹ SLC confines its submissions on the latter ground,

⁷⁹ CCS at paras 48 and 50–51.

⁸⁰ SOC at para 42(a).

⁸¹ SOC at para 42(b).

arguing that UOB was grossly negligent.⁸² In particular, UOB could have avoided the “plain and obvious” risks by checking the Internal Precedents or with SGX.⁸³

47 SLC’s position is that UOB’s said breaches of the Engagement Letter caused SLC to suffer loss and damage.⁸⁴ SLC’s losses were caused by UOB’s breaches as the legal fees accrued during SGX’s investigations and the LDC Proceedings were incurred but for UOB’s “incorrect and negligent advice”.⁸⁵ SLC asserts that these losses were not too remote as they were within parties’ reasonable contemplation.⁸⁶

48 Consequently, SLC claims against UOB, *inter alia*, for:⁸⁷

(a) Damages being the costs incurred by SLC in relation to SGX’s investigations and/or the LDC Proceedings. I note that SLC’s statement of claim quantifies its damages in terms of the fees set out at [41] above, but excludes GST.⁸⁸ SLC’s closing submissions nevertheless clarify that it is claiming \$1,887,946.31, *ie*, the sum of the figures as set out at [41] above.⁸⁹ I adopt the latter figure for ease of reference.

(b) In the alternative, damages to be assessed for UOB’s breach of its contractual obligations.

⁸² CCS at para 80.

⁸³ CCS at para 90.

⁸⁴ SOC at para 43.

⁸⁵ CCS at para 60.

⁸⁶ CCS at para 63.

⁸⁷ SOC at p 31.

⁸⁸ SOC at para 40.

⁸⁹ CCS at paras 59 and 93.

UOB's defence

49 UOB denies that it owed SLC the Contractual Duty to Advise.⁹⁰ Its position is that it was under no contractual duty to advise of the risk that certain proposals may be non-compliant with r 877(10).⁹¹ It does not seem to seriously dispute the existence of the Contractual Duty of Skill and Care.

50 Even if UOB was subject to the Contractual Duty to Advise and/or the Contractual Duty of Skill and Care, it asserts that it did not breach such duties as its interpretation of r 877(10) was reasonable.⁹² UOB maintains that all the proposals regarding the Excess Rights Shares were compliant with r 877(10). According to UOB, the interpretation of r 877(10) was not prescriptive.⁹³ UOB emphasises that SGX's Interpretation was not made publicly available during the Rights Issue and it was thus "open to interpretation" at the material time.⁹⁴ As SGX and SLC had reached a resolution without any admission as to liability, there has not been any determination in the LDC Proceedings as to whether SLC's allotment was not in compliance with r 877(10).⁹⁵

51 Further and/or in the alternative, should UOB be found to have breached the Contractual Duty to Advise and/or the Contractual Duty of Skill and Care, UOB pleads that SLC did not suffer any damage.⁹⁶ This contention, however,

⁹⁰ Defence (Amendment No 2) dated 17 June 2025 ("Defence") at p 8, para 7.

⁹¹ Defence's Closing Statement dated 4 March 2026 ("DCS") at para 29.

⁹² Defence at p 45, para 41.

⁹³ Defence at p 28, para 24(c).

⁹⁴ Defence at p 28, para 24(d).

⁹⁵ Defence at p 41, para 37.

⁹⁶ Defence at p 8, para 7 and p 10, para 8.

was not seriously pursued by UOB. Instead, UOB denies that the legal costs incurred by SLC are reasonable.⁹⁷

52 Finally, UOB claims not to be liable for any damages pursuant to the Exclusion Clause.⁹⁸ It makes the following submissions:

(a) The Exclusion Clause was “agreed upon between two commercial entities with equal bargaining power after negotiations and at arm’s length”.⁹⁹

(b) Moreover, the Exclusion Clause satisfies the requirement of reasonableness under s 3(2) of the UCTA.¹⁰⁰

(c) In any event, there was no wilful default or gross negligence on UOB’s part.¹⁰¹

Issues to be determined

53 There are four broad issues that arise for my consideration.

54 First, whether the scope of UOB’s contractual obligations under the Engagement Letter encompasses the Contractual Duty to Advise and/or the Contractual Duty of Skill and Care.

⁹⁷ Defence at p 43, para 40; DCS at paras 148–159.

⁹⁸ Defence at pp 8–9, para 7 and pp 46–48, para 42.

⁹⁹ Defence at p 47, para 42(c).

¹⁰⁰ Defence at p 47, para 42(d).

¹⁰¹ Defence at p 48, para 42.

55 Second, if I find that UOB is subject to the Contractual Duty to Advise and/or the Contractual Duty of Skill and Care, whether UOB breached its contractual obligations.

56 Third, should UOB be in breach of its contractual obligations, whether SLC’s claim is barred by the Exclusion Clause, which depends on whether SLC can rely on s 3 of the UCTA to render the Exclusion Clause unenforceable. In the alternative, whether SLC can show that UOB’s breach (if any) amounts to gross negligence.

57 Fourth, in the event that SLC’s claim succeeds, what is the appropriate quantum of damages. This turns on whether SLC’s legal costs were reasonable.

UOB’s contractual duties

Contractual Duty to Advise

58 In my judgment, UOB was subject to the Contractual Duty to Advise, as advanced by SLC. There is consensus that UOB was under the express duty, pursuant to cll 1(a) and (g), to advise SLC on the “structuring” of the Rights Issue and to propose “an appropriate basis for allotment” of the Excess Rights Shares (see [5] above).¹⁰²

59 What is in dispute is whether this duty extended to ensuring that UOB’s proposed allotment of the Excess Rights Shares was compliant with r 877(10). This appears to me to be a question of contractual interpretation of the express terms of the Engagement Letter, specifically, what it means to propose an “appropriate basis for allotment”.

¹⁰² CCS at paras 12–13; Defence at pp 6–7, para 7(a); DCS at para 24(a).

60 UOB submits that it would contradict the express terms of the Engagement Letter to find that UOB had a “further duty” to advise SLC that the proposals generated by M&C had a risk of non-compliance with r 877(10).¹⁰³ UOB highlights that it was not be responsible for advising SLC “on the commercial risks or merits or suitability of the [p]roposed Rights Issue”.¹⁰⁴ Moreover, it says that it is “illogical” for such a duty to arise given UOB’s belief that all of the proposals were compliant with r 877(10) and thus it would not have advised on the same.¹⁰⁵ I am unable to follow UOB’s contentions. As clarified by SLC, its position is not that there exists a discrete duty on UOB to advise on the *risk* of non-compliance.¹⁰⁶ The question of whether UOB ought to have advised SLC on the risk of non-compliance may be more relevant in relation to UOB’s (separate) duty to take reasonable care when advising.¹⁰⁷

61 For present purposes, I am satisfied that on a proper construction of cl 1(g) of the Engagement Letter, UOB was obliged to provide an “appropriate basis” for allotment of the Excess Rights Shares which had to be compliant with the relevant regulatory rules, such as the SGX’s Mainboard Rules.

62 It is oft-cited that the purpose of contractual interpretation is to give effect to the objectively ascertained intention of the parties: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) at [125]. Central to the exercise in contractual interpretation is the text of the contractual document, and

¹⁰³ DCS at para 26.

¹⁰⁴ DCS at para 24(b); 3TB at p 28.

¹⁰⁵ DCS at para 27.

¹⁰⁶ Claimant’s Reply Closing Submissions dated 18 March 2026 (“Reply CCS”) at paras 3 and 8.

¹⁰⁷ Reply CCS at para 7.

any relevant context: *CIFG Special Assets Capital I Ltd v Ong Puay Koon* [2018] 1 SLR 170 at [19].

63 When interpreting a contract, the court may also be aided by several canons of construction. Of note are the following canons (*Zurich Insurance* at [131]; *Ang Tin Yong v Ang Boon Chye* [2012] 1 SLR 447 at [12]):

- (a) The court undertakes a holistic assessment of the contract as a whole and is not excessively focused on a particular phrase or clause.
- (b) The court generally prefers a commercially sensible construction of a commercial contract that is consistent with its purposes.
- (c) A construction which leads to very unreasonable results is to be avoided unless it is required by clear words.

64 The ordinary meaning of “appropriate”, per the Cambridge dictionary, is something that is “suitable or right for a particular situation or occasion”. The understanding of what an “appropriate basis” requires is further shaped by the other terms of the Engagement Letter. Under cl 2 of the Engagement Letter (see [5] above), SLC undertook that it will comply with “all necessary laws, regulations and rules in connection with the [p]roposed Rights Issue” and the proposed Rights Issue was likewise subject to UOB’s satisfaction that there has been such compliance.¹⁰⁸ This, to me, makes clear that it was common understanding between parties that the proposed Rights Issue had to comply with the Mainboard Rules, which is a key set of regulations promulgated by SGX. Indeed, this is a commercially sensible construction that is consistent with

¹⁰⁸ 3TB at p 28.

its purposes for UOB to be the manager of the Rights Issue responsible for advising on the allotment of the Excess Rights Shares.

65 In the round, I am satisfied that interpreting the requirement of an “appropriate basis” of the allotment under the Rights Issue Exercise, objectively assessed by a reasonable businessperson, meant providing advice to SLC on the allotment under the Rights Issue that would entail compliance with the prevailing listing rules, including r 877(10).

66 As an aside, I am mindful that the goal of contractual interpretation is not to ascertain parties’ actual or subjective intentions, but the objectively expressed intentions of parties: *Zurich Insurance* at [131]. Indeed, the resultant meaning may or may not accord with either party’s subjective intention: *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) (“*The Law of Contract in Singapore*”) at para 06.050. With that caveat, I observe that the evidence during cross-examination by the key individuals from UOB involved in the Rights Issue revealed that as a matter of fact, they understood that UOB’s proposals had to be compliant with r 877(10). Mr Chow agreed that an appropriate basis “must be a basis that is legally compliant”.¹⁰⁹ Mr Tham’s evidence was similarly that it was UOB’s key responsibility as the manager of the Rights Issue to review allotment proposals “for compliance with the listing rules”.¹¹⁰ These concessions by UOB made during trial do not gel well with its present assertions. Indeed, UOB has consistently maintained that it put forth proposals (which were in its view) compliant with r 877(10). As I understand it, it was common ground between parties that advice compliant with, among others, r 877(10) had to be advanced

¹⁰⁹ 21 Jan Transcript at pp 7:10–7:12 and 7:25–8:5.

¹¹⁰ 21 Jan Transcript at pp 11:5–11:11 and 11:22–12:2.

and, in light of an objective assessment of the terms at [64] above, I am unable to see how UOB can now deny that its duty to propose an “appropriate basis” of allotment of the Excess Rights Shares encompassed compliance with r 877(10).

Contractual Duty of Skill and Care

67 In contracts where a skilled or professional person agrees to render certain services to his client in return for a specified or reasonable fee, there is an implied term in law that he will exercise reasonable skill and care in rendering those services: *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 (“*Go Dante Yap*”) at [24]. I therefore accept that UOB was, in addition to the Contractual Duty to Advise, under a contractual duty to exercise reasonable skill and care when rendering its advice *vis-à-vis* the structuring of the Rights Issue. In any event, the existence of the Contractual Duty of Skill and Care was not seriously disputed by UOB in its closing submissions.

Whether there was a breach of UOB’s contractual duties

Contractual Duty to Advise

68 To my mind, UOB was in breach of the Contractual Duty to Advise. This stems from its failure to propose an “appropriate basis” of allotment of the Excess Rights Shares as its proposal was not compliant with r 877(10).

69 The parties are in agreement that the correctness of UOB’s interpretation is one of the key issues for my determination.¹¹¹ Indeed, pursuant to the

¹¹¹ Transcript for the trial of HC/OC 11/2024 held on 20 January 2026 (“20 Jan Transcript”) at pp 3:14–4:3.

Exclusion Clause, SLC may only claim against UOB for, *inter alia*, any loss “proven by a final [judgment] of a court of competent jurisdiction” to have directly resulted from UOB’s gross negligence. It is therefore incumbent on the court to first assess whether UOB’s interpretation fell afoul of r 877(10) such that it did not provide an “appropriate basis” of allotment.

70 In determining whether UOB was in breach of the Contractual Duty to Advise, the material question is whether it provided an “appropriate” basis of the allotment of the Excess Rights Shares which was compliant with, *inter alia*, r 877(10) (see [65] above). UOB attempts to reframe the inquiry by presenting the key question as “whether it was *reasonable* for [UOB] to have interpreted [r 877(10)] in the manner in which it did at the material time” [emphasis added].¹¹² This strikes me as conflating the separate issue of whether UOB was in breach of its duty to exercise reasonable skill and care (*ie*, the Contractual Duty of Skill and Care) and whether UOB’s conduct was grossly negligent, with the present inquiry concerning the breach of the Contractual Duty to Advise. The true inquiry is whether UOB’s interpretation was compliant with r 877(10), and not whether it was reasonable to have adopted such an interpretation.

Interpretation of “rank last in priority” under r 877(10)

71 Much of UOB’s defence centres on its stance that r 877(10) is “not prescriptive” and that it was “open to interpretation” prior to the Regulator’s Column.¹¹³ It is true that r 877(10) is not a blanket prohibition on the participation of restricted individuals in the allotment of excess rights shares, but their participation is conditional on, *inter alia*, the restricted individuals

¹¹² DCS at paras 32 and 43.

¹¹³ DCS at para 30(a).

being ranked last in priority.¹¹⁴ UOB’s main point is that r 877(10) does not “expressly state” that excess rights applications of non-restricted individuals must first be satisfied in full before allotment to the restricted individuals.¹¹⁵ However, in my view, this is a necessary implication which flows from the plain language of r 877(10), in particular, the phrase “[restricted individuals] will rank last in priority”.

72 It is apposite to begin by examining the ordinary dictionary meaning of the phrase “[restricted individuals] will rank last in priority”. According to the Cambridge dictionary:

- (a) To “rank” means “to have a *position higher or lower than others*, or to be considered to have such a position” [emphasis added]. As the verb “rank” is modified by “last”, the meaning of “rank” here must necessarily be “to have a position lower than others”.
- (b) “Last” refers to “(the person or thing) *after everyone or everything else*” [emphasis added].
- (c) “Priority” is defined as “something that is very important and *must be dealt with before other things*” [emphasis added]. As the phrase “last in” likewise modifies “priority”, the meaning is the converse here, *ie*, something that must be dealt with *after* other things.

Drawing these definitions together in context, the plain meaning of the phrase “will rank last in priority” is thus that with regard to the applications for excess rights shares, the restricted individuals shall have a position lower in priority

¹¹⁴ DCS at para 42(b).

¹¹⁵ DCS at paras 42(a) and 63.

than the others and *must be dealt with after everyone else* (ie, the non-restricted individuals).

73 For present purposes, the plain meaning of the relevant part of r 877(10) is, *inter alia*, that in the allotment of excess rights shares, the restricted individuals' applications must be *dealt with after everyone else's* (ie, the non-restricted individuals' applications), such that the *restricted individuals are positioned last* compared to the non-restricted individuals. The necessary implication is thus that any application by the non-restricted individuals must be satisfied before the restricted individuals are allotted excess rights shares. Otherwise, the restricted individuals' applications are not ranked "last in priority" as they are not dealt with after the non-restricted individuals' applications have been allotted in full.

74 I am thus unable to agree with UOB that the phrase "rank last in priority" is ambiguous.¹¹⁶ Even though r 877(10) does not expressly state that the non-restricted individuals' applications for excess rights shares must be satisfied in full before allotting to the restricted individuals, I find that, based on the ordinary meaning of the aforementioned phrase, this is the result which arises.

75 For the avoidance of doubt, I clarify what it means for non-restricted individuals' applications to be satisfied in full before the allotment to restricted individuals. I can envisage a situation where there is an oversubscription of excess rights shares by the non-restricted individuals and thus it is not possible to, as a matter of fact, satisfy their applications in full (ie, "Scenario 2" as described in the Regulator's Column at [40] above). However, as there would not be enough excess rights shares to even fully satisfy the non-restricted

¹¹⁶ DCS at para 64.

individuals' applications, the question of whether the restricted individuals' applications should be satisfied does not even arise. Therefore, the principle that the restricted individuals are considered last after satisfying the non-restricted individuals' applications in full, still applies. It nonetheless remains true that, in the said example, the restricted individuals rank last in priority *vis-à-vis* the non-restricted individuals.

UOB's "success rate" methodology was not compliant with r 877(10)

76 In the circumstances, UOB's contention that the implementation of the Success Rate methodology in its proposals (save for Original Proposal 1) ensured compliance with r 877(10),¹¹⁷ is unconvincing. To recapitulate, the underlying principle of the UOB's Success Rate methodology is that the Success Rate of the Excess Rights Shares applications by the Non-Restricted Individuals is "significantly higher" than that of the Restricted Individuals (see [18(b)] above).¹¹⁸ However, under the Success Rate methodology, not all of the Non-Restricted Individuals' Excess Rights Shares applications were satisfied in full prior to the allotment to the Restricted Individuals. This is contrary to my interpretation of r 877(10) (see [73] above). For instance, in relation to the Final Proposal:¹¹⁹

- (a) notwithstanding that the number of Excess Rights Shares sufficed to satisfy all of the Non-Restricted Individuals' applications, only 86.4% of the Non-Restricted Individuals were allotted their excess rights applications in full; and

¹¹⁷ DCS at para 50

¹¹⁸ DCS at paras 46–47

¹¹⁹ DCS at para 51.

(b) the overall Success Rate of the Non-Restricted Individuals who applied for Excess Rights Shares was 50.3%, compared to the corresponding Success Rate of the Restricted Individuals of 18.7%.

77 UOB's reliance on the fact that the Excess Rights Shares applications by the Non-Restricted Individuals had a significantly higher Success Rate than that of the Restricted Individuals is futile. As this was a situation of undersubscription of the Excess Rights Shares by the Non-Restricted Individuals, all of their Excess Rights Shares applications should have been fulfilled before turning to the Restricted Individuals. In this manner, the Restricted Individuals would have ranked last in priority for the allotment of the Excess Rights Shares, but nonetheless be entitled to some proportion of the remaining Excess Rights Shares. Consequently, I am not persuaded by UOB's argument that its Success Rate methodology complied with r 877(10).

78 During this present action, UOB explains that it adopted the Success Rate methodology for the Rights Issue as this was a methodology used in the initial public offering ("IPO") context.¹²⁰ Yet, Mr Tham confirmed that there is no evidence of any internal discussions that the Success Rate methodology employed in the IPO context was the basis for recommending the same for the allotment of the Excess Rights Shares.¹²¹ Further, I am given to understand by SLC that, in the IPO context, there is no equivalent to r 877(10) or any requirement that restricted individuals are to rank last in priority during allotment.¹²² UOB has also not pointed me to anything to suggest otherwise. Nor, for that matter, has UOB pointed to any evidence that the Success Rate

¹²⁰ DCS at paras 47–48.

¹²¹ 21 Jan Transcript at pp 46:19–47:7.

¹²² CCS at paras 33–35.

methodology has been applied in the general context of an excess rights shares allotment.

79 For these reasons, UOB has not satisfied me that the Success Rate methodology ensured compliance with r 877(10).

UOB's other arguments

80 For completeness, I deal with UOB's remaining arguments in its attempt to resist the finding of a breach of the Contractual Duty to Advise.

81 First, UOB relies on certain comments made by one Mr Nicholas Sim ("Mr Sim") from SGX during a call between SGX, SLC and UOB on 8 April 2022 (see [28] above).¹²³ The purpose of the call was for SGX to understand the operationalisation of the allotment of excess rights shares. Mr Sim had said that there were "no prescriptive steps to be taken", that the "allocation is left to the market and for professionals to advise". UOB is asking the court to put more weight on these words than they can bear. It is true that r 877(10) is not fully prescriptive in that it does not prescribe specific steps on the manner in which the excess rights shares must be allocated *inter se* between the non-restricted individuals (eg, by way of ballot or *pro rata*). It only mandates the outcome that restricted individuals must rank last in priority in relation to non-restricted individuals' applications. What is germane, however, is that the SGX left it to the professionals, such as UOB, to advise their clients. To this end, the onus was on UOB to ensure compliance with r 877(10). I cannot see how the comments highlighted by UOB can detract from this court's role in discerning whether UOB's interpretation of r 877(10) was correct (see [69] above).

¹²³ Trial Bundle Volume 19 ("19TB") at pp 140–143.

82 Second, UOB argues that SGX’s Interpretation contradicts the general principles of the Mainboard Rules, namely:

101

A principal function of the [SGX] is to provide a fair, orderly and transparent market for the trading of securities.

...

103

...

(4) all holders of listed securities shall be treated fairly and equitably ...

83 In gist, UOB’s point is that SGX’s Interpretation would allow non-restricted individuals to apply for excess rights shares disproportionate to their original shareholding and obtain “significantly more shares than their entitlement”, which is not fair or equitable.¹²⁴ However, it can also be argued that to maintain fairness among shareholders and to avoid any conflict of interests, restricted individuals should be ranked last in priority as they may have influence over the issuer. On balance, UOB’s reliance on fairness and equity does not advance its case. I do not agree with UOB’s contention that SGX’s Interpretation contradicts the general principles of the Mainboard Rules, as the converse can also be argued.

84 Third, UOB alleges that given the ambiguity in the phrase “rank last in priority”, should the court find that UOB and SGX’s interpretations were reasonable, the strict construction rule should apply since the matter could result in penal sanctions such that the more lenient construction (*ie*, UOB’s) should be adopted.¹²⁵ The strict construction rule is applied as a tool of last resort to

¹²⁴ DCS at paras 76–78.

¹²⁵ DCS at paras 80–83.

interpret an ambiguous provision attracting penal consequences in an accused person's favour: *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [35] and [38]. The simple answer to this contention is that there is no genuine ambiguity in the interpretation of "rank last in priority", such that there is no room for the strict construction rule to operate.¹²⁶

85 Finally, UOB stresses that there has not been a determination during the LDC Proceedings that the Excess Rights Shares allotment was in breach of r 877(10) since the proceedings were settled on a non-admission of liability basis.¹²⁷ Flowing from this, UOB denies that there could be any breach of its contractual duties.¹²⁸ I agree with SLC that this argument is a *non sequitur* – as parties have accepted that the court should opine on the correctness of UOB's interpretation (see [69] above), that SGX did not make a determination in the LDC Proceedings is not dispositive of the issues before me.¹²⁹ But I bear in mind that the LDC Proceedings were instituted by SGX against SLC because SGX did not agree with the interpretation of r 877(10) put forward by UOB and relied on by SLC.

86 Hence, the grounds raised by UOB to support its interpretation of r 877(10) have no merit. I am satisfied that UOB provided advice that was not compliant with r 877(10), and was consequently in breach of the Contractual Duty to Advise.

¹²⁶ CCS at para 39.

¹²⁷ DCS at paras 18 and 87.

¹²⁸ DCS at paras 88–89.

¹²⁹ Reply CCS at para 22.

Contractual Duty of Skill and Care

87 In my judgment, UOB also failed to exercise reasonable skill and care when rendering its advice *vis-à-vis* the structuring of the Rights Issue, particularly in relation to the allotment of the Excess Rights Shares. This stems from the fact that UOB did not conduct adequate checks to verify its justifications for its advice to SLC. This was despite the circumstances, where UOB was faced with interpreting r 877(10) which it construed to be open to interpretation (see [71] above), and eventually settling on advice which departed from the “norm” (see [96] below).

88 First, neither Mr Tham nor Mr Kwek checked the Internal Precedents before advising SLC on the allotment of the Excess Rights Shares. This is based on the following evidence:

(a) Mr Tham confirmed that he did not check UOB’s precedents and was not aware of Internal Precedent 2 before advising SLC.¹³⁰

(b) Mr Kwek’s evidence is that he was uncertain whether he had checked if UOB had any internal precedents before rendering the advice to SLC. Nevertheless, he claims that he “probably” would have checked.¹³¹ However, as Mr Kwek acknowledged, there is no objective evidence such as documents or email correspondence which confirms that he had carried out checks regarding the Internal Precedents.¹³² Importantly, he accepted that had he found any precedents supporting or

¹³⁰ 21 Jan Transcript at p 58:6–58:12.

¹³¹ 21 Jan Transcript at pp 72:19–72:22 and 73:12–73:14.

¹³² 21 Jan Transcript at pp 72:13–72:25; 73:4–73:10 and 73:24–74:9.

contradicting the advice, he would have mentioned this to his superior, Mr Tham.¹³³

89 A check on the Internal Precedents would have revealed that in Internal Precedent 2, there were restricted individuals who had applied for excess rights shares, akin to SLC’s Rights Issue, but did *not receive any excess rights shares*.

90 Indeed, during Mr Tham’s interview with SGX, he was asked why, if the Success Rate methodology had been applied in Internal Precedent 2, the said restricted individuals were not allotted some excess rights shares.¹³⁴ In Mr Tham’s follow-up response by way of email, he explained that the basis of allotment in Internal Precedent 2 was “not inconsistent” with the Success Rate methodology applied in SLC’s Excess Right Shares allotment.¹³⁵

Further, if we were to apply the same success rate of 18.7% applied to the [Restricted Individuals] in the case of SLC’s [R]ights [I]ssue to the [restricted individuals] in the case of [Internal Precedent 2], the [restricted individuals] *would only be allotted 0.2% of the total number of excess rights shares* available for allotment which may not be meaningful having regard to the oversubscription of the excess rights shares by the [non-restricted individuals]. Moreover, [r 877(10)] *does not expressly prescribe what the success rate ought to be ...*

[emphasis added]

When cross-examined on this point, Mr Tham disagreed that even if the Success Rate methodology had applied in Internal Precedent 2, the restricted individuals should have been allotted some, even minuscule, number of shares since there was no fixed success rate to be applied.¹³⁶

¹³³ 21 Jan Transcript at p 73:20–73:23.

¹³⁴ Trial Bundle Volume 20 at pp 144–145.

¹³⁵ 11TB at pp 124–125.

¹³⁶ 21 Jan Transcript at p 42:6–42:16.

91 I fail to understand Mr Tham's explanations. In my view, Internal Precedent 2 clearly stands as an example where the non-restricted individuals were allotted excess rights shares in full, to the exclusion of the restricted individuals. It begs the question why, had the Success Rate methodology been applied in Internal Precedent 2, no shares were allotted to the restricted individuals instead of some nominal amount – for example, as Mr Tham identified, had the same success rate as SLC's Excess Right Shares allotment of 18.7% been applied, the restricted individuals in Internal Precedent 2 should have been allotted 0.2% of the shares. It follows that in Internal Precedent 2, the success rate of the restricted individuals was 0% because the non-restricted individuals were allotted the excess rights shares in full. In my view, Internal Precedent 2 therefore lends support to SGX's Interpretation, and contrary to UOB's position, it is inconsistent with the Success Rate methodology employed in SLC's Excess Right Shares allotment.

92 Mr Tham's insistence that r 877(10) does not prescribe a fixed success rate misses the forest for the trees. There is nothing in r 877(10) which even alludes to the concept of a "success rate". Rule 877(10) simply mandates the outcome that restricted individuals rank last in priority in relation to non-restricted individuals' applications. The point to be made here is that Internal Precedent 2 stands for a real-life example by UOB of the operationalisation of SGX's Interpretation where the non-restricted individuals' applications had to be fulfilled before the restricted individuals' applications. In that case, the restricted individuals' applications were not fulfilled at all and the outcome mandated by r 877(10) was adhered to. This was a material precedent that UOB should have consulted, but failed to do so before dispensing its advice to SLC.

93 Additionally, Mr Tham's reliance on the hypothetical 0.2% shares that would have been allotted in Internal Precedent 2 if the same success rate as

SLC’s Excess Right Shares allotment had applied, has no merit. As I have alluded to at [92] above, r 877(10) does not even make reference to a “success rate”, and there is nothing to prevent the use of a higher success rate to accord more excess rights shares to the restricted individuals if that was truly the intention in Internal Precedent 2. What is material is that two restricted individuals had applied for excess rights shares, and they received nil excess rights shares as the excess rights shares were oversubscribed by the non-restricted individuals. Internal Precedent 2 is hence irreconcilable with the Success Rate methodology.

94 Second, UOB “did not perform any research” prior to advising on the allotment of the Excess Rights Shares because it was of the view that there was “no publicly available information on any market precedents”.¹³⁷ It was only sometime in October 2023 (*ie*, some months after the LDC Proceedings were initiated) that UOB conducted research into market precedents concerning the allotment of excess rights shares to restricted individuals as compared to the other shareholders.¹³⁸

95 Third, UOB acknowledged that it was open for it to confirm its interpretation with SGX, but omitted to do so because there was no “necessity” to do so:¹³⁹

[SLC’s counsel]:	Back in February 2022, UOB was actually already in contact with SGX compliance but on other issues.
[Mr Tham]:	Yes.
[SLC’s counsel]:	So it could have been -- <i>it would have been open to UOB to check this</i>

¹³⁷ 21 Jan Transcript at p 35:2–35:4.

¹³⁸ Trial Bundle Volume 12 at pp 17 and 65–70; 21 Jan Transcript at p 36:18–36:20.

¹³⁹ 21 Jan Transcript at p 37:5–37:14.

unprecedented situation, to use your words, with SGX compliance; correct? It is open to UOB to have done that?

[Mr Tham]: *Yes, but we do not see a necessity to do it because we have a reasonable basis and justification for our interpretation.*

[emphasis added]

96 In fact, when Mr Tham’s superior sought clarification, by way of email, whether the proposals which did not fully satisfy the Non-Restricted Individuals in full were based on precedents, Mr Tham replied after three minutes to say that there are “generally no hard and fast rules” and that “[e]very transaction [was] different”.¹⁴⁰ In the same email, Mr Tham also acknowledged that Original Proposal 1 (*ie*, where the Non-Restricted Individuals’ applications were first satisfied in full) was the “norm”, but did not address the question on whether the other proposals were based on prior precedents.

97 Mr Kwek similarly maintained that there was a range of potential ways of allotment.¹⁴¹ When confronted in cross-examination on how he came to the view that it was permissible to not fully satisfy the Non-Restricted Individuals’ applications, he explained that this was parroted from Mr Tham and not from any independent analysis or checks:¹⁴²

[SLC’s counsel]: In coming to this view that there is no need to fully satisfy [Non-Restricted Individuals] first, before moving on to [the Restricted Individuals], did you independently come to this view or did you take it from Mr David Tham?

[Mr Kwek]: I took it from Mr David Tham.

¹⁴⁰ 4TB at p 318.

¹⁴¹ 21 Jan Transcript at p 72:13–72:17.

¹⁴² 21 Jan Transcript at pp 69:23–70:4.

[SLC's counsel]: So you did not do any independent analysis or checks?

[Mr Kwek]: No, I did not.

98 From the above, it can thus be gleaned that UOB made no checks with independent sources, whether by way of its Internal Precedents, market precedents or an enquiry with SGX, at the material time when it dispensed advice to SLC.

99 A skilled professional in UOB's position, exercising reasonable skill and care, should have done more to discharge its contractual duty to take reasonable skill and care. For example, by consulting UOB's own precedents, conducting research on market precedents or enquiring with SGX. Indeed, as Mr Kwek conceded, this is the practice that a responsible advisor should have adopted:¹⁴³

[SLC's counsel]: ... My question is that the UOB team as a whole, regardless of who does it ... someone has to check whether or not there are any supporting precedents, before you recommend the basis of allotment to the client; agree or disagree?

...

[Mr Kwek]: I think that in an ideal world, yes, that is a very good practice to have.

[SLC's counsel]: And in fact that is the *practice that a responsible advisor should adopt*; agree or disagree?

[Mr Kwek]: To check precedents before making a judgment call?

[SLC's counsel]: Before giving advice to the client?

[Mr Kwek]: Yes, in general.

[emphasis added]

¹⁴³ 21 Jan Transcript at pp 92:16–93:7.

100 In addition, the omission to conduct independent checks deprived SLC of the opportunity to make a considered decision on whether to adopt an approach which was not supported by independent sources. This much was conceded by Mr Kwek:¹⁴⁴

[SLC’s counsel]: ... My question is this: a responsible advisor would have presented these findings to the client so that *the client can decide for itself if it wants to follow the methodology with a precedent* or if the client is okay with *following the methodology without the precedent*; agree or disagree?

[Mr Kwek]: Agree.

[emphasis added]

101 For these reasons, I find that UOB was in breach of its Contractual Duty of Skill and Care.

Conclusion

102 In view of the above, I conclude that UOB was in breach of its contractual obligations. It did not propose an “appropriate basis” of allotment of the Excess Rights Shares as it was not compliant with r 877(10) and it also failed to exercise reasonable skill and care in the allotment of the Excess Rights Shares.

103 SLC’s position is that the legal fees after the Show Cause Letter and during the LDC Proceedings were losses suffered due to UOB’s breaches.¹⁴⁵ As SLC points out, UOB does not seriously dispute the requirements that there was causation and that the losses were not remote but instead takes issue with

¹⁴⁴ 21 Jan Transcript at p 82:3–82:9.

¹⁴⁵ CCS at para 59.

whether the legal costs incurred were reasonable,¹⁴⁶ which I address at [134]–[140] below. I thus find that UOB is *prima facie* liable for the losses sustained by SLC.

Whether SLC’s claim is barred by the Exclusion Clause

104 Having found that UOB was in breach of both the Contractual Duty to Advise and the Contractual Duty of Skill and Care, I turn to consider UOB’s argument that SLC’s claim is barred by the Exclusion Clause.

Whether the Exclusion Clause is unenforceable pursuant to the UCTA

105 The preliminary question is whether the Exclusion Clause should be given effect to. SLC submits that it should not by virtue of s 3 of the UCTA, which reads as follows:

Liability arising in contract

3.—(1) This section applies as between contracting parties where one of them *deals as consumer* or *on the other’s written standard terms of business*.

(2) As against that party, the other cannot by reference to any contract term —

(a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or

(b) claim to be entitled —

(i) to render a contractual performance substantially different from that which was reasonably expected of him; or

(ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

except in so far as (in any of the cases mentioned in this subsection) the contract term *satisfies the requirement of reasonableness*.

¹⁴⁶ CCS at para 64.

[emphasis added]

106 Section 3(1) of the UCTA prescribes alternative threshold requirements before s 3(2) of the UCTA can operate. It must be shown that either one of the contracting parties dealt as a consumer, or that one contracting party dealt on the other party’s written standard terms of business. I am not satisfied that either of the threshold requirements under s 3(1) of the UCTA is fulfilled, contrary to SLC’s position.¹⁴⁷ To my mind, SLC did not deal as a consumer or on UOB’s standard terms of business.

107 Per s 12(1) of the UCTA, a party to a contract “deals as a consumer” if, *inter alia*, he neither makes the contract in the course of a business nor holds himself out as doing so and the other party does make the contract in the course of a business. In situations where a contracting party is a company, the test is whether the transaction in question was integral to the company’s business and not merely incidental to such business: *Holland Leedon Pte Ltd v C & P Transport Pte Ltd* [2013] SGHC 281 at [229] (“*Holland Leedon*”), citing *R & B Customs Brokers Co Ltd v United Dominions Trust Ltd* [1988] 1 WLR 321 at 330–331.

108 SLC’s submission is that the Rights Issue was only the second rights issue exercise conducted by SLC and, thus, it does not enter into such engagements in the course of business.¹⁴⁸ I, however, agree with UOB that SLC’s raising of funds, whether by way of rights issue or otherwise, is integral to SLC’s business as a publicly listed company in the business of owning and operating luxury hotels.¹⁴⁹ Therefore, the contract between UOB and SLC

¹⁴⁷ CCS at para 72.

¹⁴⁸ CCS at para 72(a).

¹⁴⁹ DCS at paras 102–103.

regarding the Rights Issue, from both UOB and SLC's perspective, was a contract in their respective courses of business.

109 Next, for a party to deal on the standard terms of business envisages the situation where a written set of terms is “adopted more or less automatically by all transactions of a particular type without any significant opportunity for negotiations”: *Holland Leedon* at [230]. Not all of the terms in a contract have to be standard for a party to deal on standard terms: *The Law of Contract in Singapore* at para 07.118, citing *Pegler Ltd v Wang (UK) Ltd* [2000] All ER (D) 260 at [73]. Where, however, the terms of a contract have been individually considered, negotiated and agreed by the parties as being appropriate for the particular transaction, this indicates that that party did not deal on the counterparty's standard terms: *The Law of Contract in Singapore* at para 07.120, citing *The Salvage Association Ltd v CAP Financial Services Ltd* [1995] FSR 654 at 672.

110 In my view, it cannot be said that SLC dealt on UOB's standard terms as the Engagement Letter was the outcome of extensive negotiations between parties. Parties exchanged three rounds of drafts of the Engagement Letter and multiple rounds of email correspondence.¹⁵⁰ UOB had accepted several amendments proposed by SLC.¹⁵¹ These amendments related to matters pertaining to, for example, the removal of a fee payable upon the abortion of the Rights Issue, and UOB's engagement of external solicitors.¹⁵²

¹⁵⁰ Trial Bundle Volume 2 (“2TB”) at pp 9–431.

¹⁵¹ DCS at para 107.

¹⁵² 2TB at pp 365 and 385.

111 To reiterate, pursuant to the Exclusion Clause, SLC may not claim, *inter alia*, against UOB for any loss save for a judicial determination that it directly resulted from UOB’s “willful default [*sic*] or gross negligence” (see [6] above). Although SLC had initially suggested to replace the phrase “wilful default or gross negligence” with “default or negligence”, this was rejected by UOB. Despite this rejection, SLC’s proposed amendment *vis-à-vis* the Exclusion Clause was not insisted upon in the subsequent drafts or in the internal correspondence between SLC’s legal team.¹⁵³ Mr Tan, SLC’s chief legal officer, acknowledged during cross-examination that it was SLC’s own decision “not to push back” on UOB’s rejection of the proposed amendment to the Exclusion Clause.¹⁵⁴ This was because SLC made a “commercial decision” to agree with the unamended Exclusion Clause because it wanted the “lowest cost”, which UOB provided.¹⁵⁵ Mr Tan conceded during cross-examination that while he might not have agreed with the Exclusion Clause, he knew “what it entailed” and was “prepared to go along with it” so that the Engagement Letter could be signed.¹⁵⁶ The bottom line remained that, after negotiations and discussions between UOB and SLC, SLC accepted the phrasing of “wilful default and gross negligence”.¹⁵⁷

112 Hence, it is apparent to me that the Exclusion Clause was, in fact, negotiated by parties. The unamended version of the Exclusion Clause prevailed post-negotiations because, as part of the commercial bargain between parties, SLC relented in the adoption of the Exclusion Clause on the terms as initially

¹⁵³ 2TB at p 365.

¹⁵⁴ 20 Jan Transcript at pp 26:24–27:3.

¹⁵⁵ 20 Jan Transcript at pp 27:11–28:6.

¹⁵⁶ 20 Jan Transcript at pp 27:23–28:9.

¹⁵⁷ 20 Jan Transcript at p 25:11–25:16.

put forward by UOB. This was the outcome of a deliberate decision to accept the risk allocation provided for in the Exclusion Clause, in light of, *inter alia*, the lower costs of engagement. The terms of the Engagement Letter, including the Exclusion Clause, had been considered and negotiated by parties as being appropriate for the circumstances, especially in light of SLC's concern about the costs of the engagement.

113 As the preconditions under s 3(1) of the UCTA are not satisfied, this suffices to dispose of SLC's reliance on the UCTA to resist the applicability of the Exclusion Clause. In any event, I do not think that the Exclusion Clause was unreasonable. The statutory guidelines provided for in the Second Schedule of the UCTA in assessing reasonableness, *inter alia*, include: (a) the relative strength of the parties' bargaining positions; and (b) whether the customer knew or ought reasonably to have known of the existence and extent of the term. The availability of alternative contracting parties or similar contracts (but without a similar term) to the customer is also a relevant consideration under some of the factors listed in Second Schedule of the UCTA: *The Law of Contract in Singapore* at para 07.146. That said, a particular clause that is normal and commonly found in the trade may indicate reasonableness, although this by itself is inconclusive: *The Law of Contract in Singapore* at para 07.147.

114 I consider that the Exclusion Clause satisfies the requirement of reasonableness. The parity in bargaining power between UOB and SLC is evident in the manner in which parties could negotiate the terms of the Engagement Letter in detail (see [110] above). SLC suggests that it had no bargaining power as it could not have simply engaged another issue manager to avoid the imposition of the "gross negligence" standard.¹⁵⁸ Indeed, Mr Tan and

¹⁵⁸ CCS at paras 76–77.

Mr Chow’s views are that an exclusion clause set at the “gross negligence” threshold was a clause found in most engagement letters from other banks.¹⁵⁹ This is, however, not a dispositive factor as, *ex hypothesi*, the prevalence of such a term could also indicate reasonableness (see [113] above). What is clear is that SLC was ultimately motivated by costs considerations in selecting UOB as its rights issue manager.¹⁶⁰ Further, as previously discussed at [110]–[111] above, SLC was patently aware of the Exclusion Clause which was discussed by its legal counsel but it accepted the risk allocation provided for in the Exclusion Clause without significant pushback. In the circumstances, the Exclusion Clause appears to be reasonable.

Whether UOB’s conduct amounts to “gross negligence”

115 I now turn to SLC’s alternative case should the Exclusion Clause be found to have effect. As mentioned at [46(b)] above, SLC asserts that the Exclusion Clause does not bar its claim as UOB was grossly negligent.

Applicable principles

116 In *Go Dante Yap*, the Court of Appeal reserved the question of construing the term “gross negligence”: at [50]. The term has nonetheless been considered in the High Court cases of *Sie Choon Poh v Amara Hotel Properties Pte Ltd* [2005] 3 SLR(R) 576 (“*Sie Choon Poh*”) and *Creative Technology v Huawei International Pte Ltd* [2017] SGHC 201 (“*Creative Technology*”).

117 It has been observed that the term “gross negligence” is not susceptible of a precise definition or standard as it is a heavily fact-sensitive inquiry: *Sie*

¹⁵⁹ 20 Jan Transcript at p 26:17–26:23; 21 Jan Transcript at p 6:3–6:10.

¹⁶⁰ 20 Jan Transcript at pp 18:20–19:2.

Choon Poh at [6]. That said, in *Sie Choon Poh*, Lai Kew Chai J set out several relevant factors in determining whether “gross negligence” has been occasioned (at [8]):

... Obviously, the particular circumstances at play in each case have to be examined and evaluated. Cases have shown that factors, such as *notice or awareness of the existence of the risk*, the *extent of the risk*, the *character of the neglect*, the *duration of the neglect* and, not least, the *ease or difficulty of fulfilling the duty* ... are important, and in some cases vital, in determining whether the fault (if any) of a defendant is ‘so much more than merely ordinary neglect that it should be held to be very great, or gross negligence’: see *Belanger v Michipicoten (Township)* 31 MPLR (2d) 198 and *Holland v Toronto (City)* [1927] 1 DLR 99 discussed therein.

[emphasis added]

The abovementioned factors were cited and applied in *Creative Technology* (at [303] and [306]).

118 It stands to reason that “gross” negligence represents something more fundamental than a mere failure to exercise proper skill and/or care constituting negligence: *Sie Choon Poh* at [9] and *Creative Technology* at [303], citing *Red Sea Tankers Ltd v Papachristidis, The Hellespont Ardent* [1997] Lloyd’s Rep 547 (“*The Hellespont Ardent*”) at 586. It was observed in *Go Dante Yap* that one possible effect of such a clause would be to drastically reduce the standard of care owed by the defendant, such that the defendant would only be liable if it had been “extremely careless”: *Go Dante Yap* at [50]. Whether negligence is “gross” is a function of the nature of the error and the seriousness of the risk which results from it: *Sie Poh Choon* at [10] and *Creative Technology* at [304], citing *Great Scottish & Western Railway Company Limited v British Railways Board* (2000) WL 389473.

119 The concept of gross negligence also encompasses a “serious disregard of or indifference to an obvious risk” and not only conduct undertaken with an actual appreciation of the risks involved: *The Hellespont Ardent* at 586, which was cited in *Sie Choon Poh* at [9] and applied in *Creative Technology* at [303] and [330].

120 Given the dearth of local published cases regarding the “gross negligence” standard in the context of a breach of contract, I consider it useful to first set out the findings by Chan Seng Onn J (as he then was) in *Creative Technology*. There, the plaintiffs (“Creative”) claimed against the defendant (“Huawei”) for, *inter alia*, a breach of contract in which Huawei was to build, design and operate a broadband network in Singapore: at [1]. The contract between parties limited the quantum of damages payable to Creative save for the event of, *inter alia*, gross negligence or wilful default: at [290]. Chan J found that Huawei was grossly negligent because of the nature of two key errors in the radio planning exercise undertaken which entailed serious consequences: at [329].

121 First, there were multiple errors in the morphology classification: at [317]. Huawei had made an “obvious” mistake of classifying the density of majority of Housing Development Board estates in Singapore as the lowest category of “Suburban” instead of the highest category of “Dense Urban”: at [309]–[311]. This significantly impacted the site count computed by Huawei for the radio planning process. Huawei had also engaged a planner with no prior experience in Singapore radio planning and who was not based in Singapore: at [312]. Huawei was highly careless as satellite images, Google maps and morphology maps (including street directories) of Singapore with detailed morphologies were readily available: at [311]. Such errors could have been “avoided with minimum effort on Huawei’s part” had the planner bothered to

make a second more careful check or engage another planner to verify the classification: at [311] and [316]. The consequence of the erroneous morphology mapping was “very serious” as the network would not function properly and there would be “huge sunk costs”: at [316].

122 Second, Huawei had wrongly excluded certain parameters from its radio network planning calculations which resulted in threshold values that were too low to ensure network coverage as required under the contract: at [318]. There was “a substantial deviation from the normal internal practices of Huawei” as it had used much lower minimum thresholds compared to its other projects: at [322]. It was “inexplicable” that the radio planner did not take the “elementary step” of checking Huawei’s internal records or conferring with his more experienced colleagues on the minimum thresholds previously used by Huawei in designing its networks elsewhere: at [323].

123 Chan J was of the view that Huawei had serious disregard and indifference to the “obvious high risks” when carrying out the radio planning exercise: at [330]. As “gross negligence” was proven, the limitation clause did not operate to limit Huawei’s liability: at [333].

My decision

124 As I have found at [102]–[103] above, UOB is *prima facie* liable for breaches of its contractual obligations. The key issue for my consideration now is, thus, whether UOB’s liability arises directly from its gross negligence. In my view, the answer to this is in the affirmative. I find that UOB’s conduct entailed a serious disregard of or indifference to an obvious risk.

125 At the outset, I observe that there is much overlap between the present inquiry of whether UOB was grossly negligent, and my earlier findings at [87]–

[101] above that UOB did not exercise reasonable skill and care. This is because both fundamentally concern the question of whether UOB failed to exercise skill and care, although the critical difference is one of *degree* (see [118] above).

126 In my judgment, further to the conduct I have already highlighted above at [87]–[101] above, there are certain features of UOB’s conduct which elevate the failure to exercise proper skill and care to that of gross negligence.

127 As I previously held at [87]–[98] above, UOB failed to conduct checks with independent sources, whether by way of its own precedents, market precedents or an enquiry with SGX. UOB should have exercised reasonable skill and care by conducting adequate checks to justify its advice. It was not difficult to fulfil such a duty given that, at the very least, there were internal precedents available in UOB’s domain and Internal Precedent 2 was of relevance to the situation at hand. I agree with SLC that had UOB done basic checks on its own internal precedents, *ie*, Internal Precedent 2, it would have realised that UOB had successfully advised its client in the past to satisfy the non-restricted individuals’ applications in full before allotting any excess rights shares to the restricted individuals.¹⁶¹ This could have alerted UOB and SLC to an interpretation of r 877(10) akin to SGX’s Interpretation or, if anything, called into question UOB’s Success Rate methodology (see [91] above).

128 What renders the character of UOB’s neglect particularly egregious, further still, is UOB’s state of mind at the material time when the advice was rendered:

- (a) First, as I alluded to at [71] above, UOB’s position has firmly been that, at the material time, r 877(10) was not prescriptive and was

¹⁶¹ CCS at para 87.

open to interpretation.¹⁶² In other words, UOB's view was that there was no clear interpretation of r 877(10).

(b) Second, from UOB's perspective, SLC's situation was an "unprecedented" one.¹⁶³ Mr Tham's evidence is that UOB "[had] not observed a situation as in SLC's case where the rights issue [of the Excess Rights Shares] was undersubscribed by the [non-restricted individuals] but oversubscribed only on an overall basis" [emphasis added] due to the restricted individuals.¹⁶⁴

(c) Third, it appears that UOB had limited experience conducting rights issues. During Mr Tham and Mr Kwek's interview with SGX, Mr Tham mentioned that UOB is typically not involved in "that many rights issues", although it is something they do "from time to time".¹⁶⁵ The last rights issue that UOB was involved in prior to SLC's Rights Issue, according to Mr Tham, was "[q]uite some time back" and even then, Mr Tham was not personally involved in that project.¹⁶⁶ Mr Tham further confirmed that UOB has not been involved in a rights issue at least for the past year prior to SLC's Rights Issue.¹⁶⁷

129 Despite the lack of experience and UOB's position that the allotment of the Excess Rights Shares was of an unprecedented nature, with no fixed interpretation of r 877(10), it is remarkable that UOB did not think fit to take

¹⁶² DCS at para 30(a).

¹⁶³ 21 Jan Transcript at p 29:5–29:6.

¹⁶⁴ 21 Jan Transcript at p 28:17–28:22.

¹⁶⁵ 19TB at pp 198 and 204.

¹⁶⁶ 19TB at p 198.

¹⁶⁷ 19TB at p 198.

steps to confirm its interpretation of r 877(10). If, indeed, the situation was truly “unprecedented”, a reasonable advisor would have done more, not fewer, checks to ensure compliance.¹⁶⁸ For example, by consulting UOB’s own internal precedents, conducting research on market precedents or enquiring with SGX.

130 On the contrary, Mr Tham was consumed by his belief that its interpretation was reasonable. He therefore saw no need to conduct further checks to confirm his interpretation. Such an approach, in my view, was unjustifiable in light of the fact that: (a) his own view was that the situation was unprecedented; and (b) my earlier findings regarding the difficulties with UOB’s interpretation (see [74] and [76]–[79] above). Significantly, despite Mr Tham acknowledging that Original Proposal 1 was the norm (see [96] above), UOB proceeded to recommend the Final Proposal that was, in effect, departing from the norm, without taking any additional precautions. I hence agree with SLC that UOB’s “confidence was misplaced” and “unjustified.”¹⁶⁹ It seems to me that this resulted in UOB’s indifference to the obvious risks of non-compliance with r 877(10).

131 In addition, it beggars belief that Mr Tham did not even apprise himself of the precise consequences should the Excess Rights Shares allotment be non-compliant. Mr Tham’s evidence is that he was not even aware, at the time UOB was advising SLC, of the serious potential consequences arising from a breach of the Mainboard Rules:¹⁷⁰

[SLC’s counsel]:	Back in 2022 when you were advising [SLC], were you aware that one of the consequences of the breach of the listing rules would be potentially the resignation
------------------	--

¹⁶⁸ Reply CCS at para 25.

¹⁶⁹ CCS at para 51.

¹⁷⁰ 21 Jan Transcript at pp 13:7–14:4.

of the involved directors; were you aware back then?

[Mr Tham]: I have to confirm that I was not aware.

[SLC’s counsel]: Equally, you would therefore not be aware of the other sanction, which is a prohibition for any issuer to appoint or reappoint that relevant director for a period not exceeding three years; you were also not aware of such a serious consequence?

[Mr Tham]: Yes, I confirm that.

[SLC’s counsel]: Is it accurate to say that *you did not look up the listing rules at the time to understand what might the consequences be* if the UOB got its advice wrong; would you agree with that statement?

[Mr Tham]: It has never occurred to me that we have advised the clients wrongly. ... *There was no necessity to do so.*

[emphasis added]

This was despite the potential sanctions being a matter of public record as set out in r 1417 of the Mainboard Rules, including the suspension of trading of an issuer’s securities and requiring the resignation of its officers.¹⁷¹

132 According to UOB, this is a case “far removed” from *Creative Technology* where the omitted checks related to readily available material that would have avoided the gross errors.¹⁷² UOB also claims that even if it had checked for precedents, it was unlikely to have made a difference to its advice.¹⁷³ However, these submissions do not go to the heart of the issue. UOB was extremely careless to have omitted to check for precedents and present any relevant ones (*eg*, Internal Precedent 2) to SLC, especially when UOB was of

¹⁷¹ CCS at para 84; 14TB at pp 188–189.

¹⁷² Defendant’s Reply Closing Submissions dated 18 March 2026 at para 27.

¹⁷³ DCS at para 56; 21 Jan Transcript at pp 94:21–95:12.

the view that the interpretation of r 877(10) was unsettled and it was departing from the normal method of allotment. The knowledge of Internal Precedent 2 would have allowed SLC to determine whether to adopt a riskier approach unsupported by independent sources or a more conservative one based on a precedent (see [100] above).¹⁷⁴

133 Based on the circumstances, UOB was grossly negligent as it dispensed its advice with a serious disregard of or indifference to an obvious risk. Despite its own uncertainty regarding (what was in its view) an “unprecedented” situation at hand, it did not see fit to conduct independent checks to confirm its interpretation. This indicates a high degree of carelessness, which amounts to gross negligence.

Damages

134 Having found that UOB was grossly negligent, SLC may *prima facie* claim for its costs arising from UOB’s gross negligence. SLC claims for its legal costs of \$1,887,946.31 (see [48(a)] above).

135 In response, UOB asserts that SLC has not adduced “any meaningful evidence”, save for redacted copies of invoices from D&N and E&C, to discharge its burden of proving its alleged losses and/or that its alleged losses were reasonable.¹⁷⁵ UOB relies on the case of *Columbia Asia Healthcare Sdn Bhd v Hong Hin Kit Edward* [2016] 5 SLR 735 (“*Columbia Asia Healthcare*”).

136 In *Columbia Asia Healthcare*, the court held that the burden was on the claimant to establish the reasonableness of the steps taken by the various

¹⁷⁴ CCS at para 85(g).

¹⁷⁵ DCS at para 148.

lawyers and the amount of fees incurred: at [33]. There, the plaintiff sought to claim its legal costs from four law firms for the removal of a charge from a land title certificate. UOB’s submissions focus on the legal fees charged by one of the law firms, “Kusnandar”. The court only awarded 50% of the plaintiff’s claim *vis-à-vis* Kusnandar’s legal fees, *inter alia*, because:

- (a) In relation to the first set of statement of hours adduced, there was no detail about the number of hours spent, the identity or the rate of charge of each of the lawyers: at [36].
- (b) Regarding the second set of statement of hours adduced, there was some breakdown of the hours spent by various lawyers and the amounts charged for each lawyer: at [37].
- (c) The details of the lawyers involved and time spent were not supported by source documents and there was no oral elaboration on why so much work had to be done: at [59]. In the absence of more evidence, the court allowed 50% of the claim of the legal costs incurred: at [59].

137 Turning to the present facts, UOB acknowledges that the redacted invoices adduced by SLC do set out the identity, charge-out rate and the number of hours spent by each lawyer.¹⁷⁶ Despite so, UOB highlights that it is “impossible to glean what work was done by which lawyer and for what purposes”.¹⁷⁷ Without a proper detailed breakdown of the time costs and the

¹⁷⁶ DCS at para 152.

¹⁷⁷ DCS at para 152.

work done by each firm, UOB asserts that the court is unable to assess the reasonableness of the legal fees incurred.¹⁷⁸

138 I agree with SLC that the present case can be distinguished from *Columbia Asia Healthcare* as SLC has adduced the source documents in relation to E&C and D&N’s engagements and elaborated on “why so much work had to be done”.¹⁷⁹ Mr CK Ow has set out a detailed breakdown in his affidavit of evidence-in-chief explaining the scope of work that was done by E&C and D&N.¹⁸⁰ Indeed, Mr CK Ow’s affidavit of evidence-in-chief has adduced all of the invoices demonstrating, *inter alia*, the hours spent and the hourly rates of the lawyers.¹⁸¹ Materially, Mr CK Ow’s evidence on the scope of work and legal costs incurred was unchallenged by UOB during cross-examination.¹⁸² While the invoices were partially redacted, as SLC’s counsel highlighted during the trial, UOB had sought the unredacted invoices during discovery but this was rejected by an assistant registrar and this decision was not appealed by UOB.¹⁸³

139 Further to the above, as D&N’s legal costs form the bulk of the claimed damages, SLC has also adduced a summary table providing more details on the work products produced by D&N, including the citations to the relevant documentary proof of the said work products.¹⁸⁴ In gist, SLC explains that “more than 6,000 pages of documentation [was] prepared by D&N” leading up to and

¹⁷⁸ DCS at para 154.

¹⁷⁹ Reply CCS at para 30.

¹⁸⁰ Reply CCS at para 29(b); OCK at paras 91–93.

¹⁸¹ OCK at Exhibit OCK-1, Tab 32–34.

¹⁸² Reply CCS at para 29(b).

¹⁸³ 20 Jan Transcript at p 4:10–4:21.

¹⁸⁴ Exhibit marked “C1” adduced during the trial for HC/OC 11/2024.

during the LDC Proceedings.¹⁸⁵ This concerned the representations to the Show Cause Letter, UOB's clarifications to the representations, SGX's various requests for documents and interviews, SLC's defence to the LDC Proceedings, various witness statements in the LDC Proceedings and reviewing SGX's submissions.¹⁸⁶

140 I am satisfied that SLC has discharged its burden to prove the reasonableness of the legal costs it seeks.

Conclusion

141 By virtue of the foregoing reasons, I find that on the evidence before me, UOB was in breach of the Contractual Duty to Advise and the Contractual Duty of Skill and Care. Its conduct amounted to gross negligence. Accordingly, I allow SLC's claim against UOB, in the sum of \$1,887,946.31 for the legal costs incurred.

142 SLC relied on UOB to provide professional advice. UOB had limited relevant experience in rights issues. The team from UOB managing the Rights Issue was informed of the normal method of allotment of excess rights shares. They chose not to follow it. They considered the position to be unprecedented. Yet they did not look for precedents within UOB, or beyond it. A creative but legally unsound interpretation of r 877(10) was advanced. This resulted in the Success Rate methodology. Rule 877(10) expressly states that restricted individuals will "rank last in priority for the rounding of odd lots and allotment of excess rights shares". It is difficult to comprehend how the language supports the Success Rate methodology. UOB initially maintained its opinion on the

¹⁸⁵ Reply CCS at para 29(a).

¹⁸⁶ Reply CCS at para 29(a).

interpretation of r 877(10) and reassured SLC that it would stand by SLC. Eventually, SLC was left to defend the LDC Proceedings or, in Mr CK Ow's own words, face the "firing squad" on its own. UOB's conduct, to me, betrays its own conviction of the strength of its interpretation. Ultimately, UOB rendered its advice with serious disregard to the obvious risk of non-compliance with r 877(10). It was grossly negligent.

143 It remains for me to address the consequential orders. I award costs to SLC. Further, interest at the default rate of 5.33% per annum is to apply to the award of damages from the date of this judgment, with the issue of the quantum of pre-judgment interest to be reserved. Parties are to each file submissions addressing costs and the applicable pre-judgment interest, limited to ten pages, within 14 days of the release of this judgment.

Dedar Singh Gill
Judge of the High Court

Jordan Tan, Victor Leong and Lim Jun Heng (Audent Chambers LLC) (instructed), Ammani Mathivanan and Han Guangyuan Keith (Oon & Bazul LLC) for the claimant;
Ng Yeow Khoon, Ho Wei Liang Sherman, Leong Kit Weng and Tham Xue Yi Fiona (Shook Lin & Bok LLP) for the defendant.