REPORT OF THE
INSIDER DEALING TRIBUNAL
OF HONG KONG

on whether insider dealing took place
in relation to the listed securities of

PUBLIC INTERNATIONAL INVESTMENTS LTD

during

November and December 1992

and on related questions

財政司辦公廳

FINANCIAL SECRETARY'S OFFICE.
THE SECRETARIAT.
HONG KONG.

The Chairman of the
Insider Dealing Tribunal
established under
Section 15 of the
Securities (Insider Dealing) Ordinance,
Cap 395 of the Laws of Hong Kong

Dear Sir,

Notice under Section 16(2) of the
Securities (Insider Dealing) Ordinance

Whereas it appears to me that insider dealing (as that term is defined in the Securities (Insider Dealing) Ordinance) in relation to the listed securities of a corporation, namely Public International Investments Limited, has taken place or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and determine -

(a) whether insider dealing has taken place in relation to the listed securities of Public International Investments Limited during December 1992;

(b) the identity of every insider dealer, if any, in the above-mentioned securities; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated: 7th February 1994

Yours faithfully,

H. Macleod

(Hamish Macleod)
Financial Secretary

財 政 司 辦 公 廳

FINANCIAL SECRETARY'S OFFICE.
THE SECRETARIAT.
HONG KONG.

The Chairman of the
Insider Dealing Tribunal
established under section 15 of the
Securities (Insider Dealing) Ordinance,
Cap. 395 of the Laws of Hong Kong

Dear Sir,

Amendment of Notice issued under Section 16(2) of the Securities (Insider Dealing) Ordinance

Whereas it appears to me that insider dealing (as that term is defined in the Securities (Insider Dealing) Ordinance, Cap. 395) in relation to the listed securities of a corporation, namely Public International Investments Limited, has taken place or may have taken place during the months of November and December 1992, the terms of reference contained in the Notice given by me to you on 7 February 1994, a copy of which is attached hereto, are amended, so that the Insider Dealing Tribunal is hereby required to inquire into and determine -

(a) whether insider dealing has taken place in relation to the listed securities of Public International Investments Limited during November and December 1992;

(b) the identity of every insider dealer, if any, in the above-mentioned securities; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated 1st September 1994

Yours faithfully,

H. Macleod

(Hamish Macleod)
Financial Secretary

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(Cap 395)

INSIDER DEALING TRIBUNAL

To The Honourable Sir Hamish Macleod, KBE, JP
Financial Secretary
Hong Kong

Whereas by notice in writing dated 7th February 1994, made and issued in the exercise of your powers under section 16(2) of the Securities (Insider Dealing) Ordinance, you required the Insider Dealing Tribunal "to inquire into and determine -

(a) whether insider dealing has taken place in relation to the listed securities of Public International Investments Limited during December 1992;

(b) the identity of every insider dealer, if any, in the above-mentioned securities; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing."

And whereas by a notice in writing dated 1st September 1994, you amended the terms of reference contained in the notice dated 7th February 1994, and thereby required the Tribunal aforesaid "to inquire into and determine -

(a) whether insider dealing has taken place in relation to the listed securities of Public International Investments Limited during November and December 1992;

(b) the identity of every insider dealer, if any, in the above-mentioned securities; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing."

We, the undersigned members of the Tribunal aforesaid have duly conducted such inquiry in accordance with the provisions of the Ordinance aforesaid, and hereby furnish to you this report pursuant to the provisions of section 22 thereof.

CHAPTER 1

BACKGROUND: COMPANIES AND INDIVIDUALS

COMPANIES

(1) THE TARGET COMPANY AND ITS ASSOCIATES

1.1 In July 1964 there was incorporated in Hong Kong a private limited company under the name Wai Woo Company Limited. It changed its name in August 1972 to Wai Woo Estates & Investments Limited, and in the same month, it became a listed company. In 1973, it changed its name to Public International Investments Limited ("PIIL").

1.2 From the late 1970s onwards, PIIL engaged primarily in sharemarket investments and, by itself or its subsidiaries, in the provision of stockbroking, insurance, deposit taking and other financial services. In July 1993, it changed its name to First Shanghai Investments Limited ("First Shanghai").

1.3 In and before 1992, the controlling shareholder of PIIL was Tan Sri Dato' Dr Teh Hong Piow ("Dr Teh"), an eminent Malaysian businessman, who is and was President of Public Bank, one of Malaysia's largest commercial banks. He first acquired an interest in PIIL in the 1970s. In 1992 he was beneficially interested in about 62 per cent of the issued share capital of PIIL. Public Bank did not have a stake in PIIL, although it was beneficially owned to the extent of 38 per cent of its share capital by Dr Teh.

1.4 PIIL was an investment holding company which owned a number of subsidiaries in Hong Kong, including an insurance company known as London and Pacific Insurance Company (Hong Kong) Limited; a licensed stockbroking company called London and Pacific Securities Limited, which was renamed in 1993 as First Shanghai Brokerage Limited ("First Shanghai"); a deposit taking company known as Public Finance (Hong Kong) Limited ("Public Finance"); and Pacific Holdings (Australia) Limited, a public company listed in Australia.

1.5 There features in this case, from time to time, the JCG group of companies. JCG Holdings Limited ("JCG Holdings") is an investment holding company incorporated in Bermuda. In 1992, Public Bank held 75% of the issued share capital of JCG Holdings. JCG Holdings is the holding company of JCG Finance Company Limited ("JCG Finance"), which is a deposit taking company incorporated in Hong Kong in October 1977. JCG Securities Limited ("JCG Securities"), a wholly-owned subsidiary of JCG Finance, commenced operation in Hong Kong in March 1992, and has since then been engaged in the share brokerage business.

1.6 In 1991, there was a disposal by PIIL of its entire shareholding in Public Finance to Lippo (Asia) Limited ("Lippo"). This followed the acquisition of JCG Finance by Public Bank in 1990, and a consequential understanding with the Hong Kong regulatory authorities that Public Finance should relinquish its deposit-taking company licence.

1.7 In due course, JCG Finance established a wide network of branches in Hong Kong, providing deposit and loan facilities to individual customers. JCG Finance was also responsible for the provision of accounting, personnel and management support services to Public Bank, Hong Kong branch, and also had business transactions with it by placing deposits with and borrowing from it in the ordinary course of its business. In September 1991, there was an Initial Public Offer of shares and warrants in JCG Holdings, with an over-subscription of 1.55 times for the shares and warrants.

(2) THE BIDDING COMPANIES, ADVISERS AND OTHERS

1.8 In the course of 1992, PIIL was the subject of a number of takeover approaches. Save for the approach upon which this report concentrates, namely, the approach in the first week of December 1992, none came to fruition. We touch upon these other approaches in Chapter 2 (paragraphs 2.4 to 2.6) and in Chapter 6 (paragraphs 6.8) of this report.

1.9 On or by 23rd November 1992, CEF Capital Limited ("CEF Capital"), a wholly owned subsidiary of CEF Holdings Limited ("CEF Holdings"), had been nominated to acquire, on behalf of a consortium, a securities company listed on the Hong Kong Stock Exchange ("the Stock Exchange"). CEF Capital is an investment banking company involved in corporate finance, capital markets and securities sales and trading. CEF

Holdings is a holding company of the CEF group, and is a financial institution engaged in investment and financial services. It is, and was at all material times, owned as to 50 per cent by Cheung Kong (Holdings) Limited ("Cheung Kong"), Hong Kong's largest property developer under the chairmanship of Mr Li Ka-shing, and 50% by the Canadian Imperial Bank of Commerce. No allegations of impropriety have been made against CEF, or Cheung Kong, or Mr Li, or the Canadian Bank.

1.10 The evidence put before us was that on 30th November 1992, a mandate letter was executed by that consortium by which CEF Capital was instructed to search for a listed Hong Kong securities company. The companies on whose behalf CEF Capital was acting were:

(1) China Venturetech Investment Corporation ("China Venturetech"), which is an investment company based in the PRC, with the Ministry of Finance, and the State Science and Technology Commission as its major shareholders;

(2) Shanghai International Securities Company Limited ("Shanghai International"), which was the first and one of the largest securities company in China engaged in securities dealing and brokerage activities;

(3) Shenzhen Concord Enterprises Company Limited ("Shenzhen Concord"), which is an investment company based in Shenzhen, and is owned by Cheung Kong, CEF Holdings, and some PRC state organizations;

(4) Cheung Kong; and

(5) CEF Holdings.

In due course, there were established two corporate vehicles for the acquisition of PIIL by these, the original, offerors. They were Gower Investment Limited ("Gower") and Artrel Limited ("Artrel"). Gower was owned as to 50 per cent by China Venturetech, and 50 per cent by Shanghai International. Artrel was owned as to 60 per cent by Cheung Kong, 30 per cent by Shenzhen Concord, and 10 per cent by CEF Holdings.

1.11 In the course of December 1992, PIIL appointed Nikko Securities Company (Asia) Limited ("Nikko") to act as adviser to PIIL's minority shareholders in relation to the takeover proposals. The nature of Nikko's appointment is in issue in this Inquiry, at least in so far as its initial role is concerned, but it is common ground that the time came when Nikko accepted an appointment to advise PIIL's minority shareholders in respect of the offer by the consortium. No adverse allegation has been made against Nikko.

INDIVIDUALS

1.12 The individuals on the purchasers' side who play a prominent role in the history of this matter (and against whom no adverse allegations have been made) are:

(1) Mr Joseph Yu Lup-fat ("Mr Yu"), who was and is the Group Managing Director of CEF Holdings, Vice Chairman and Managing Director of Shenzhen Concord, and a director of Artrel and of First Shanghai;

(2) Mr Francis Chang Chu-fai ("Mr Chang"), who was and is the Managing Director of CEF Capital;

(3) Mr David Wong Tze-kin ("Mr Wong"), who was in 1992 an Associate Director, Corporate Finance, CEF Capital.

1.13 The individuals who in the course of negotiations acted on behalf of Dr Teh were:

(1) Mr Lai Kim-leong ("Mr Lai") - He was the General Manager, and a director, of PIIL and of all its subsidiaries, from 1979 to 1992. He is and has been the Chief Executive Officer of Public Bank for the Hong Kong Region; a director of JCG Holdings; and the Managing Director of JCG Finance since 1990. He was at all material times a dealing director of London and Pacific Securities Limited. He came to Hong Kong in 1979, and was the senior PIIL man here.

(2) Mr Leong Kwok-nyem ("Mr Leong") - He was at all material times a director of JCG Holdings, and JCG Securities, and the

General Manager of JCG Finance, but also played a direct role in the affairs of PIIL, assisting Mr Lai where necessary. He is a chartered accountant. He came to Hong Kong in August 1990.

1.14 Mr Leong's wife is Madam Amy Foong Swee-heng ("Amy Foong"). She is an associate member of the Chartered Association of Certified Accountants, and in 1992 and 1993 was employed by Dragoco (Far East) Limited ("Dragoco"), a company which deals in essence and spice, as an accountant. Working as a clerk in her office was one Miss Chan Kwan-hop ("Miss Chan"). There is no suggestion of any wrongdoing by Dragoco.

1.15 Chapter 6 of this report is devoted to transactions by Mr Lai, and a close friend and business associate, Mr Goh Chak-Wong ("Mr Goh"). Mr Goh is not, nor ever was, employed by PIIL, or Public Bank, or (save for a very short stint in 1972 with a company called London and Pacific (Kuala Lumpur) Ltd) any company associated with them, nor did he take part in the acquisition of PIIL. He did, however, in 1992, acquire and dispose of substantial quantities of PIIL shares.

1.16 In December 1992, Mr Don Lau Yuen-leung ("Mr Don Lau") was Managing Director, Corporate Finance, Nikko. He had been employed by CEF Capital from December 1986 to November 1987, and again from May 1990 to October 1991 and, during the latter period, was Mr David Wong's boss. He also knew Mr Lai, and when working with Schroders Asia Limited ("Schroders") in the early 1980s, had assisted in a project concerning PIIL. It was Mr Don Lau who represented Nikko in the tasks which Nikko was invited to perform in relation to the proposed acquisition of PIIL.

1.17 Three individuals associated with Mr Don Lau warrant mention at this stage. They are:

(1) Madam Pamela Wong Kin-yu - She is Mr Don Lau's sister-in-law, and is a qualified nurse.

(2) Mr Lau Wai-man - He is Madam Wong's husband, and is a bonesetter.

(3) Mr Wallace Yuen Moon-chung - Mr Yuen is a director of sales of G K Goh Securities (Hong Kong) Limited ("G K Goh"). Mr

Yuen acted as Mr Don Lau's broker in respect of Mr Don Lau's trading account with G K Goh. No adverse allegations of any kind have been made against G K Goh.

CHAPTER 2

1992: THE KEY EVENTS

2.1 Save where it is express or implicit that our narrative refers to contentions, or assertions, or states or reports a version of events put forward by a witness, what follows in this report constitutes our findings.

PIIL ITSELF

2.2 In 1992, PIIL was a relatively simple or clean company. After its sale of Public Finance, the bulk of its assets were in cash and listed securities, whilst the rest was its office properties, an insurance company, and a securities company.

2.3 In 1992, it had a small staff force in Hong Kong, with Mr Lai in charge of the day to day management, although that was only part of his work in Hong Kong, and not the major part. Dr Teh's evidence was that he, Dr Teh, visited Hong Kong infrequently, perhaps five or six times each year in 1991 and 1992. Mr Lai was Dr Teh's man in Hong Kong. Before Mr Leong came to Hong Kong, he had worked for Public Bank in Malaysia and was transferred to Hong Kong to be Assistant General Manager of JCG Finance, of which company he later became a director.

APPROACHES

2.4 In the course of 1992, there were several approaches by third parties interested in acquiring a controlling stake in PIIL. Certain approaches were entertained for a while; others were rejected at the outset. In April 1992, there was an approach by Goodwill Capital Limited on behalf of the Goodwill Group of Companies ("Goodwill"). In the same month there was an approach on behalf of Mas Marine Limited ("MAS") by which MAS inquired whether PIIL was for sale. Neither approach bore fruit. There was, however, an announcement by PIIL, on 6th April 1992 and published on 7th April, that the directors of PIIL had been approached by a third party who had expressed interest through a merchant bank in acquiring the controlling shareholding interests in PIIL. None of the witnesses has been able to say which of the two

April approaches the announcement had in mind, although Mr Lai suggested that it was Goodwill.

2.5 June 1992 witnessed three further approaches, one directly to Dr Teh by a company called A1 Solutions; comprising an offer made directly to Dr Teh; the second by Capella Capital Limited ("Capella"); and the third by Lippo. The Lippo approach was the only one of the three that survived for an appreciable time - on one version of events, until early October 1992.

2.6 In September 1992, there was yet another approach, this time by a company called Butler Capital (Panama) Inc ("Butler Capital") through South China Corporate Advisers Limited. However, Butler Capital was told in a letter from Mr Lai that it was Dr Teh's "..... present intention not to sell his holdings in PIIL". That does not appear to have been quite so, for we are satisfied that Dr Teh was interested in selling, and that some offers were entertained. One matter, however, is clear, and that is that these bursts of interest in acquiring a controlling stake in PIIL were unusual, in that nothing of the kind had happened to PIIL during the previous year. Dr Teh told us that in 1992, he wanted to sell PIIL provided, of course, that the offer was a reasonable one.

THE TUNG WING TAKEOVER

2.7 October 1992 brought with it a degree of uncertainty about Hong Kong's future, following the announcement by the Governor of Hong Kong, Mr Patten, of certain political reform proposals.

2.8 Against that backdrop came news in October which was noteworthy for its impact on the market. On 24th October 1992, there was announced an agreement by which Shougang Corporation ("Shougang"), a substantial state owned enterprise based in the People's Republic of China ("the PRC"), Cheung Kong, and CEF Holdings, agreed to acquire from Allied Industries International Limited about 76% of the issued shares, and about 63% of the outstanding warrants, of Tung Wing Steel Holdings Limited ("Tung Wing"). When trading resumed after the announcement, the price of Tung Wing shares shot up in one day by 63%, and after that day, the price continued to forge ahead (by about 390% by end November 1992). This movement did not match the trend of the Hang Seng Index ("HSI") which, generally, was moving sideways. The relevance of the Tung Wing deal to this

Inquiry will become apparent later in this report. Suffice it to say at this stage that it appears to be common ground that the Tung Wing takeover gave birth to what has been called "China fever", meaning that "rumours abounded in the market that other PRC companies, with excess funds, would follow suit and attempt to buy 'shell companies'".[1] Also noteworthy is the fact that for the Tung Wing acquisition, CEF Capital was appointed to advise the purchasers, and Nikko was appointed by the board of Tung Wing to advise the minority shareholders and warrantholders of Tung Wing.

THE CEF APPROACH

2.9 Evidence has been adduced[2] (and there is no reason to doubt it), that in about July 1992, Mr Yu of CEF Holdings attended a luncheon in Hong Kong at which were present Mr Li Ka-shing as well as the Vice-Presidents of China Venturetech. This was a precursor to subsequent discussions which focused on the possibility of business cooperation between China Venturetech, Shanghai International and Cheung Kong, and on the acquisition of a listed securities vehicle in Hong Kong. Given the success of the Tung Wing takeover, Mr Yu suggested that a similar approach might be adopted for the acquisition of a Hong Kong securities company. Interest gathered momentum, and on or after about 23rd November 1992, a mandate letter was circulated, and its terms agreed by China Venturetech, Shanghai International and Cheung Kong, by which CEF Capital was appointed to act as financial adviser to the purchasers, and to identify suitable targets. The executed mandate was returned to CEF Capital on about 30th November 1992.

2.10 There is exhibited to this report, as Appendix I, a table which illustrates the daily movements in the price of PIIL shares and of the HSI from September 1991 to June 1993 inclusive, daily turnover of the shares, and from March 1992, the number of deals each day. Between 1st and 25th November 1992 the share price of PIIL ranged between $0.42 to $0.50. On 26th November, there was a significant increase in the daily turnover of PIIL shares. On 27th November, the price closed over 19% higher than the previous day's closing, and on the next trading day, which was Monday 30th November, although price increased by only 3.77%, volume increased substantially to 3.208 million shares - for most of that month daily turnover had ranged from nil to about four or five hundred thousand.

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[1] See the evidence of Mdm Diana Foong, a licensed broker, at page 808 of the transcript.
[2] See the evidence of Mr Joseph Yu at page 1009 of the transcript.

2.11 Prompted by inquiries from the Stock Exchange, the board of PIIL, which comprised Dr Teh, Mr Lai, Mr Khoo Ah-chai and Mr Ching Ah-chye, issued an announcement, on 30th November, which said that the board had noted the recent increases in the price of PIIL shares, that it was not aware of any reasons for the increases, and that there were then no negotiations or agreements relating to intended acquisitions or realisations.

2.12 Mr Francis Chang and Mr David Wong were tasked by CEF to identify suitable targets for the proposed acquisition, and on about 1st December, Mr Wong suggested that consideration be given to PIIL. Mr David Wong was acquainted with Mr Lai of PIIL, because he (Mr Wong) had assisted in the sale of JCG Finance to Public Bank, and on the afternoon of 1st December, he telephoned Mr Lai and asked whether Dr Teh was interested in selling his controlling stake in PIIL.

2.13 The following day, 2nd December, Mr Lai informed Dr Teh about the approach, and a meeting was arranged for that afternoon which was attended by Mr Yu, Mr Chang and Mr Wong, on the one side, and by Mr Lai and Mr Leong, who represented Dr Teh, on the other. At this meeting, Mr Lai said that if Dr Teh were to sell his controlling interest, a premium of (at least) $60 million above net asset value ("NAV") would be required. It is said by all witnesses to this meeting that the CEF representatives did not baulk at this figure. It was a figure substantially in excess of the premiums offered by those who had already approached PIIL earlier in the year.

2.14 The men from CEF were due to fly to Singapore later that week on related business, in the sense that there were one or two other potential targets, one of which was Ong Holdings (HK) Limited, and arrangements had been made to meet Mr Ong Ka-thai, a director of Ong Holdings, in Singapore. By prior arrangement, the opportunity was taken to fly first to Kuala Lumpur to see Dr Teh, a meeting which took place on 3rd December. It is apparent that PIIL quickly became the favoured target, because it was such a clean and simple company. Discussions internal to CEF and at least one of the prospective bidders took place on 4th December, and a decision was taken, on behalf of the Mainland parties at least, that an offer should be made. Instructions were given to CEF's solicitors to draft a sale and purchase agreement, and the CEF team flew back to Hong Kong on 5th December.

THE SERIOUS PROPOSAL AND THE OFFER

2.15 On the morning of Monday 7th December 1992, trading in PIIL shares increased apace, and the price rose sharply. The CEF representatives thought that if an offer was intended, PIIL should swiftly be informed. Mr Yu spoke to Mr Li Ka-shing who agreed on behalf of Cheung Kong to participate in the proposed acquisition. Mr Yu also obtained approval from CEF Holdings to proceed with the offer. At about 12 noon or 12:30 pm that day, Mr David Wong telephoned Mr Lai and told him that a serious proposal would be forthcoming, and that the CEF representatives would, to that end, be going to Mr Lai's offices.

2.16 The events of the afternoon of 7th December are important to this Inquiry, and there is much in issue about them. For the purpose of this introduction, it is sufficient to say that at about 2:15 pm there was a meeting at JCG's offices, at Gloucester Tower in the Landmark, attended by Mr Chang and Mr Wong, who, on behalf of CEF's clients put forward to Mr Lai and Mr Leong the proposal to acquire 51% of PIIL at a premium of $60 million plus NAV. What was said at this meeting is an issue we have to decide, in particular to what extent there was revealed information about the background or actual identity of the bidders. In any event, CEF's solicitor (who was also at the meeting) suggested that trading in the shares of PIIL should be suspended. Dr Teh was consulted and, at the request of PIIL, trading in PIIL shares was suspended from 2:51 pm on 7th December, pending an announcement. Prior to its suspension, the price had jumped 32.76% that day. The HSI had dropped 1.45%.

2.17 The afternoon of 7th December was a hive of activity at the JCG offices, for there was much to be done - in particular, an announcement (about the takeover approach) to go in the press the following morning had to be drafted, and the estimated offer price had to be discussed and agreed.

2.18 In the course of the afternoon, others were called to the JCG offices. Mr Lai telephoned Mr Don Lau of Nikko, and asked him to come to JCG. Mr Lau duly arrived, and it is common ground that Mr Lai briefed him in Mr Leong's presence. We see later in this report how important was that briefing. Others arrived that afternoon to attend the meeting or meetings at the JCG offices. They included Ms Judith Lee, an employee of CEF Capital in the

Corporate Finance Division, as well as Mr Moses Cheng and Mr Tommy Lo of P C Woo & Co, solicitors for PIIL.

2.19 Agreement was reached on a formula by which to estimate the sale price, and there were drafts and redrafts of the proposed announcement. In the late afternoon, or early evening, the estimated sale price was agreed and those at the meeting went their separate ways. Mr Don Lau went back to his office, tasked to obtain clearance for the draft announcement from the SFC and the Stock Exchange. To this end, he liaised with Mr Alan Mercer, then Senior Manager, Corporate Finance Division, SFC; with Ms Mary Lam of the Stock Exchange; and with Mr Lai. He also contacted Mr Herman Hui of Knight Frank Kan & Baillieu with a request for a valuation of PIIL properties.

2.20 On the evening of 7th December, there was delivered to Mr Lai a letter addressed to Dr Teh from CEF Capital, which letter constituted a formal offer on behalf of their clients. The offer was for the acquisition of 51% of the issued share capital of PIIL. Implicit in this offer was a proposal that Dr Teh would retain an 11% stake in the company. The letter also recorded an agreement, reached earlier in the day, that Dr Teh would remain on the board of PIIL as a non-executive director.

ANNOUNCEMENTS AND MARKET REACTION

2.21 The following morning, 8th December 1992, saw the publication of the first of two announcements that month concerning this takeover. By it, the board of PIIL announced that Dr Teh had been approached "by an independent third party with a serious proposal which, if implemented, would result in a change in control of [PIIL]". It emphasised that discussions were continuing, and that no firm agreement had been reached. It set out the formula for the price per share, namely, NAV plus HK$60 million, divided by the number of issued shares. NAV was to be the net asset value as shown by PIIL's audited accounts as at 31st December 1991 "adjusted to reflect the realized profits of [PIIL] and any surplus arising from an independent valuation of the assets owned by [PIIL] and its subsidiaries ..... in each case as at 30th November 1992". Based on the unaudited NAV as at 30th June 1992, it was estimated that the sale price would be approximately HK$0.84 per share.

2.22 Trading in PIIL shares resumed that morning. Turnover that day rose dramatically to 8.479 million, and price increased by 6.49%.

2.23 Nothing of further particular significance happened until 14th and 15th December 1992. On 14th December, the market price of PIIL shares rose by over 21%; and on 15th December by about 22%, and that morning (15th December) PIIL announced publicly that discussions were still continuing, that no agreement had been finalised, and that a further announcement would be made as soon as possible. At 2:28 pm, the Stock Exchange announced that trading in PIIL shares would be suspended with effect from 2:30 pm, pending an announcement.

2.24 That announcement was published on 16th December. It was a joint announcement by Gower, Artrel and PIIL. The identities of those who owned Gower and Artrel were revealed, and the backgrounds of those owners fully described. Completion was said to be set for a date on or before 31st January 1993. It was stated that following completion a cash offer in the sum of HK$0.82 per share would be made. It was further stated that CEF Capital had been appointed to advise the purchasers; that, since no independent board of PIIL could be formed, Nikko had been appointed to advise the minority shareholders; that the purchasers intended the listing of the shares on the Stock Exchange to be maintained; that the purchasers intended that PIIL would continue its existing business activities; and that existing directors would, save for Dr Teh, be replaced.

2.25 Share trading resumed on 16th December. The volume of trading soared that day to over 11 million, and the price of the share rocketted by 82% to $2.15 per share at the close. On 17th December, turnover was 12.6 million, and the price increased by 25.5%.

COMPLETION

2.26 The completion of the acquisition took place on 17th February 1993. An unconditional cash offer was made on 22nd February 1993 for all the issued shares of PIIL, other than those already acquired.

CHAPTER 3

THE ALLEGATIONS

THE INVESTIGATION

3.1 In December 1992, the SFC wrote letters to a number of companies and individuals who had played a role in the negotiations for the takeover of PIIL. A first batch of letters went out from the SFC on or about 10th December 1992, seeking from the addressees the date when first approached with a take-over proposal, or first engaged in connection with it, and the names of those privy to such approaches or proposals. About three weeks later, the SFC sent out further letters, which showed particular interest about the date at which parties became aware of the identity of the purchasers. Subsequent inquiries were conducted in 1993, and a number of key individuals were interviewed. The result of the SFC investigation was presented to the Financial Secretary in a report, and it was on the basis of that report that the Financial Secretary ordered this Inquiry.

3.2 The SFC allegations were directed at two groups of individuals which we shall call the Leong Group, and the Don Lau Group.

THE LEONG GROUP

3.3 The allegations are directed against Mr Leong, his wife Amy Foong, and her office colleague, Miss Chan.

3.4 In the early afternoon of 2nd December 1992, Amy Foong purchased 120,000 PIIL shares. No transactions had passed through her trading account with her broker for about six months. Payment for this purchase originated with a cheque drawn by Mr Leong and deposited in Miss Chan's bank account. Miss Chan drew a cheque payable to the brokers in a sum equivalent to the purchase price of the shares.

3.5 On 7th December, the day of the serious proposal and formal offer by CEF to Dr Teh, Miss Chan opened a trading account with Amy Foong's brokers, and there was placed, ostensibly for Miss Chan, an order or orders for the purchase of 120,000 PIIL shares. More PIIL shares were

purchased through this trading account on 9th December and 10th December. Miss Chan said that she funded the purchases on 7th and 9th December with loans from Amy Foong. An examination of bank accounts revealed that the cost of all these purchases, save perhaps the last, was funded by monies emanating from Mr Leong.

3.6 It was, and is, alleged that Mr Leong whilst in possession of price sensitive information not yet available to investors, passed that information to his wife knowing that she would deal, or that he advised or encouraged her to do so; that the purchases by Miss Chan were in reality purchases by Amy Foong; and that all three were party to insider dealing in respect of each occasion upon which Amy Foong and Miss Chan ordered or acquired PIIL shares in December 1992. The price sensitive information which, at the various stages, Mr Leong and the two ladies are said to have possessed, is knowledge of the initial approach by CEF (1st and 2nd December); knowledge of the impending serious proposal, and the identities (either general or specific) of the offerors (7th, 9th and 10th December).

THE DON LAU GROUP

3.7 On the morning of 8th December 1992, Mr Don Lau placed an order with Mr Yuen of G K Goh for the purchase of 240,000 PIIL shares. The order was placed by Mr Don Lau through a trading account in the name of Mr Lau Wai-man, who is the husband of Mdm Pamela Wong, Mr Don Lau's sister-in-law. They were sold on 16th and 17th December 1992, and proceeds of sale representing about 220,000 shares went to Mr Don Lau, the remainder to Mdm Pamela Wong. It was alleged by the SFC in its report that Mr Don Lau dealt in PIIL shares on the morning of 8th December, or procured Mr Lau Wai-man and/or Mdm Pamela Wong to deal when he, Mr Don Lau, was in possession of price sensitive information not known by the market investor, namely, that the offerors included PRC enterprises. As will become apparent, we examined further possible items of price sensitive information, and also the conduct of Mdm Pamela Wong, Mr Lau Wai-man and Mr Wallace Yuen to ascertain whether they were party to insider dealing, if any, by Mr Don Lau.

WIDENING THE TERMS OF REFERENCE

3.8 The SFC conducted its investigation pursuant to a direction issued under section 33(1) of the Securities and Futures Commission

Ordinance by an Executive Director of the SFC. That direction recited the fact that the SFC had "reason to believe that insider dealing ..... may have taken place in the shares of [PIIL] during and around the period 27th November 1992 to 15th December 1992 ....." (Emphasis added). Given the history of the matter, and the very significant surge in trading on 27th November 1992, that was a readily understandable date at which to start. However, the original terms of reference, dated 7th February 1994, presented us with a remit by which we were enjoined to "inquire and determine whether insider dealing has taken place in relation to the listed securities of [PIIL] during December 1992; ....." (Emphasis added). So, the terms of reference were narrower than the section 33 direction, in that the terms of reference did not include the last week of November as a period during which insider dealing may have taken place.

3.9 In the course of examination of the papers in this case, this Tribunal, as originally constituted[1], came to the view that the cut off or starting date of 1st December was artificial, and might also preclude the Tribunal from examining certain transactions in November 1992 which, the Tribunal thought, clearly warranted examination. On 12th August 1994, the Chairman of the Tribunal wrote to the Acting Financial Secretary, and pointed out that although the SFC report concentrated on trading in December 1992, the Tribunal's focus had, in the course of its preparatory work, been drawn increasingly to events, including transactions, in November as well. The mandate was given to CEF Capital on 23rd November, and the information then before us was that it was "on or around 1st" December 1992 that PIIL was identified as a potential target. We noticed that in the last week of November there was a very significant surge in PIIL share transactions, for which the Board of PIIL said that it was unable to give an explanation. We noticed also that already in the last week of November, there was a flow of funds from Amy Foong to Mr Leong through Miss Chan; and we also noticed the purchase of substantial quantities of PIIL by one individual in the last few days of November 1992. There was also a suggestion by a stockbroker that there had appeared to him to have been an attempt in October and November 1992 to force down the price with a view to a bid for PIIL, and we could see that the price of PIIL shares had indeed dropped significantly in the two months preceding the last week of November. These matters raised various questions, notably, whether the substantial purchases in late November were suspect; whether in November there was trading with a takeover in mind; and whether

[1] This is a reference to the fact that in the early stages of the Tribunal's work, two members resigned, for reasons given at paragraph 5.1.2 below.

in November there existed price sensitive information which prompted trading by the Leong Group in December. The Tribunal therefore suggested that the original terms of reference were, in the circumstances described, artificial and inhibiting, and on 1st September 1994 the terms of reference were widened to enable the Tribunal to examine also whether insider dealing had taken place in November 1992.

Mr LAI AND Mr GOH

3.10 The widening of the terms of reference also enabled us to examine transactions by Mr Goh in PIIL shares in November 1992. Mr Goh was (and is) a close friend and a business associate of Mr Lai. No allegation of any kind had been made in the SFC report against Mr Lai, or Mr Goh. But the Tribunal discovered that in October and most of November 1992 the price of PIIL shares had been dropping, and that Mr Goh had sold substantial quantities of PIIL shares in those months. In particular, on 30th November 1992, one day before Mr Lai was approached by CEF, and on the same day as the board of PIIL announced that it knew of no reason for the increases in the price of PIIL shares, Mr Goh sold more than one million PIIL shares. In his interview with the SFC, Mr Lai appeared to have denied any prior knowledge that Mr Goh intended to trade in PIIL shares in November; denied knowing why Mr Goh had sold; and denied any interest in PIIL shares traded by Mr Goh.

3.11 The Tribunal's investigations, however, uncovered the fact that Mr Lai and Mr Goh had, before November 1992, acquired something in the order of 5 million PIIL shares, and that at the beginning of November 1992, they together held approximately 4.4 million PIIL shares, all in the name of Mr Goh. Substantial funds had also passed between them, and Mr Lai had not disclosed the true extent of his beneficial interest or trading in these shares to the regulatory authorities, or in annual reports.

3.12 Mr Lai's interest in, or co-ownership of, PIIL shares acquired by Mr Goh had not been revealed by the SFC investigation. The discovery of this direct interest, and his apparent lack of candour when interviewed, was significant, for it was bound, on its face, to change Mr Lai's status at the start from a central and apparently reliable witness to one whose evidence might have to be approached with caution, not least because that evidence encompassed facts and issues of importance to the cases of those within the Leong Group, and to the case of Mr Don Lau. There was evidence, for

example, of purchases earlier in the year (that is, earlier than October and November) of PIIL shares by Mr Leong and Amy Foong; of sudden surges in trading; of approaches by third parties; and of sizeable payments to and from Mr Leong (from and to Mr Lai) in 1991 and in 1993. Mr Lai was better placed than most to know whether earlier events explained decisions taken in November and December; the true financial relationship between the central characters; whether funds credited to him, say, in early 1993, were connected with PIIL acquisitions at the end of 1992; whether there was unpublished price sensitive information before or in November 1992 which prompted or may have prompted transactions in November and December; whether there was a scheme to which Mr Goh (and Mr Lai) were party to suppress the price of PIIL shares in late 1992; whether at the time of Mr Goh's sale of $1.152 million shares on 30th November he, Mr Goh, and/or Mr Lai were in possession of unpublished price sensitive information; whether he, Mr Goh, was then acting on his own behalf or on behalf of Mr Lai or another; and whether Mr Goh's shareholdings were connected in some way with those of Mr Leong, Amy Foong, and Miss Chan.

CHAPTER 4

THE LAW

4.1 This is the second inquiry launched pursuant to the provisions of the Securities (Insider Dealing) Ordinance ("the Ordinance"). The first was an inquiry, into suggested insider dealing in relation to the listed securities of Success Holdings Limited ("SHL"). The Tribunal's report in that case is dated 24th June 1994. The background to the enactment of the Ordinance was there explained, and there is no need to repeat it here. It is, however, convenient to refer in this report to the central provisions of the Ordinance, in so far as they are relevant to this Inquiry.

INSIDER DEALING DEFINED

4.2 Section 9(1) of the Ordinance specifies the six circumstances which by law constitute insider dealing in Hong Kong. Each category in turn envisages a number of circumstances of insider dealing. Some amendments to the Ordinance, including amendments to section 9, have come into effect in May 1994. None is of any consequence to the issues we have to decide and, in any event, we are concerned with the law as at November and December 1992.[1] Section 9(1) is recited below in its unamended form, as are all other sections:[2]

> "(1) Insider dealing in relation to the listed securities of a corporation takes place -
>
> (a) when a person connected with a corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;
>
> (b) when a person who is contemplating or has contemplated making (whether with or without another person) a take-over offer for a corporation and who

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[1] Certain further amendments to the Ordinance have come into effect on 14th July 1995, that is after completion, and (initial) distribution to the parties, of Chapters 1 to 21 hereof: see paragraph 5.5 below. They do not affect the issues which we are required to determine by the terms of reference.

[2] Save for certain references to sections 23 and 27, which have been amended in July 1995. See Securities (Insider Dealing) (Amendment) Ordinance (No 61 of 1995), and paragraphs 22.1.1 and 23.6.3 below.

knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to that corporation, deals in the listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in those listed securities, otherwise than for the purpose of such take-over;

(c) when relevant information in relation to a corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and the first-mentioned person knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or counselling or procuring another to deal, in the listed securities of that corporation (or in the listed securities of a related corporation);

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

(e) when a person who has information which he knows is relevant information in relation to a corporation which he received (directly or indirectly) from a person -

(i) whom he knows is connected with that corporation; and

(ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,

deals in the listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in those listed securities;

(f) when a person who has received (directly or indirectly) from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating a take-over offer for a corporation, information to that effect and knows that such information is relevant information in relation to that corporation, deals in the listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in those listed securities."

RELEVANT INFORMATION

4.3 Of great significance to this case is the term "relevant information" which we see in every clause of section 9(1), the possession of which information is a condition precedent to any finding of insider dealing. It is defined by section 8 of the Ordinance:

> "In this Ordinance 'relevant information' in relation to a corporation means specific information about that corporation which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities."

4.4 We say that the definition is of great significance in this case, because not only were we called upon to determine who possessed what piece of information at given times, we were also asked to conclude that a number of items of information allegedly in the hands of this individual or that did not, in any event, constitute relevant information as defined by section 8. Although the argument was advanced on behalf of Mr Don Lau, the proper test must be applied across the board - in other words, in so far as the facts and arguments avail him, they were likely to assist the other affected individuals as well.

4.5 There were a number of items of information which presented themselves as candidates for the description "relevant information". They included:

(1) the fact of the initial approaches by a third party on 1st and 2nd December. It has not been suggested that this did not constitute relevant information. So, too, the later information that a serious proposal was about to be made; that such a proposal was put forward; and that a formal or conditional offer was made. These approaches, the serious proposal, and the offer, were for a controlling interest in PIIL.

(2) the fact that the offerors included Mainland enterprises; or the fact that one of the bidders was Cheung Kong. It was contended that these failed the test posed by section 8 for one or more of the following reasons:

(i) the information was information about the bidders, and was not information about PIIL;

(ii) that broad information about the background of the bidders (such as PRC related, or Mainland) was general and not specific information;

(iii) that market conditions, perceptions, and information at the material time were such that information about the identity or background of the bidders was "information ..... generally known to those persons who were accustomed or would be likely to deal in the listed securities" of PIIL (Emphasis added); and

(iv) that it was not shown that each such piece of information was in itself "likely materially to affect the price".

By their nature, these submissions can more usefully be addressed in the factual context in which they arise. We therefore recite in Chapter 19 below the directions of law which we have received about them, and our findings of fact in relation to them.

CONNECTED PERSONS

4.6 In so far as is relevant to this Inquiry, a person is "connected with a corporation" if:

"(1)... (a) he is a director or employee of that corporation or a related corporation; or

(b) he is a substantial shareholder in the corporation or a related corporation; or

(c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of -

(i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or

(ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporations; or

(d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or to the fact that such transaction is no longer contemplated;

(e) ...

(2) ...

(3) In subsection (1), 'substantial shareholder' in relation to a corporation means a person who has an interest in the relevant share capital of that corporation which has a nominal value equal to or more than 10% of the nominal value of the relevant share capital of that corporation."

(see section 4 of the Ordinance)

4.7 A related corporation is defined as :

"(a) any corporation that is that corporation's subsidiary or holding company or a subsidiary of that corporation's holding company;

(b) any corporation a controller of which is also a controller of that corporation".

(see section 2 of the Ordinance)

THE STANDARD OF PROOF: INSIDER DEALING

4.8 In the SHL case, there was delivered a ruling[1] that tribunals tasked under the provisions of the Ordinance to determine whether insider dealing has taken place and, if so, the identity of every insider dealer, should not find against any individual or corporation unless the allegation had been proved to a high degree of probability. The degree of probability has to be "commensurate with the occasion" or "proportionate to the subject matter", and although the requisite degree was not as high as that applied in criminal proceedings, it was nevertheless to be significantly higher than a mere balance of probabilities.

4.9 In the present case, the Tribunal was not invited to depart from those conclusions, in so far as they were intended to be of general application. That said, submissions were advanced on behalf of Mr Don Lau, and adopted

[1] See SHL Report, Appendix I.

by others, that there were features of this particular case in relation to Mr Don Lau that required an upgrading, as it were, of the standard of proof in determining whether or not he had engaged in insider dealing. The suggestion advanced was that the standard to be applied in his case should be "at the highest end of the civil standard".

4.10 In the SHL ruling, the Chairman in analysing some of the relevant case law, commented that:

> "Thus far, the authorities dictate that serious averments affecting reputation and livelihood, and even liberty, do not in the context of civil proceedings require the application of the criminal standard of proof. What is to be applied is the civil standard, but that standard allows within itself consideration of the gravity of the allegation and of its consequences so that the standard, though short of the criminal standard, is nevertheless 'commensurate with the occasion', 'proportionate to the subject matter'; that where the allegations and consequences are grave, the degree of probability required will be high; that a high standard is appropriate to 'allegations of professional misconduct involving deceit or moral turpitude' ..... but that beyond that it is unrealistic and unnecessary to specify the exact standard and analyze 'the precise degree of conviction'"[1].

4.11 Towards the end of that ruling, recognition was given to the fact that whilst insider dealing was not a criminal offence in Hong Kong:

> "..... that is not to say that it is not viewed as morally reprehensible. It is. Nor is it to say that those branded as insider dealers do not suffer a severe blow to their reputation. And the consequence go beyond that. This piece of legislation sees to that. Disqualification from directorships and managerial positions is no light matter, though not necessarily a mortal blow to livelihood, nor, as in professional disciplinary cases, is there a risk of a lifetime disqualification. Then too there are provisions which go beyond the remedial to the punitive, and that must go into the scales - a telling factor in an assessment of the gravity of the matter."[2]

4.12 The special or additional feature to which Mr Andrew Li QC drew our attention, on behalf of his client, Mr Don Lau, was that the consequences to Mr Don Lau - a professional man in the financial services industry - of a finding that he had engaged in insider dealing would be particularly grave. It was for Mr Don Lau a matter of livelihood, a matter of "practical employability". The consequences were significantly more grave, he suggested, than one who makes his living by investment and speculation. The distinction is, perhaps, well illustrated by a comparison with the SHL case,

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[1] SHL Report, Appendix I, page 14.
[2] SHL Report, Appendix I, page 19.

where the main suspect did not earn his keep as an adviser in the financial services industry, and in respect of whom an order disqualifying him from holding office in a public company would be of no real hardship, for his company had been privatized, and there was no plan to hold office in a public company.

4.13 Mr Harris, counsel for the Tribunal, suggested that it might be unsatisfactory to vary the standard from person to person in the context of the same inquiry. The Chairman held, however, that in deciding the degree of proof to be demanded full cognisance was to be taken of the consequences of an adverse finding. "We shall," he said, "in Mr Don Lau's case apply a high standard of proof, and the proof will have to be that much more cogent because in addition to the Success Holdings case, livelihood is here affected."[1] Whilst precise degrees of cogency of proof cannot be stated scientifically, the Chairman has nevertheless directed the Tribunal that:

> "..... in deciding what degree of probability is 'commensurate with the occasion' or 'proportionate to the subject matter' the [Tribunal is to] take full account of the fact that, in addition to those consequences of an adverse finding to which [reference was made in the] ruling in the Success Holdings case, an added consequence is that Mr Don Lau will almost certainly lose his job and that his livelihood will suffer .....",

and that being a very serious matter, the Tribunal was to require such "high degree of probability as is appropriate to what is at stake", and in determining what is at stake we have assumed, and taken into full account, that not only would Mr Don Lau's reputation in the financial services industry be severely damaged, but that his livelihood would be affected in that he would lose his present employment, and would encounter significant difficulty in finding alternative employment in that industry.

4.14 The relevant part of the ruling is reproduced at Appendix II to this report.

4.15 We note, too, that section 23 of the Ordinance empowers the Tribunal to disqualify an individual from directorships of, or managerial positions or functions in, listed companies or in any specified companies. Such an order could, of course, severely hamper the type of employment that a man in Mr Don Lau's position could even seek.

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[1] This should read: "..... in addition to the factors referred to in the Success Holdings case .....". See Appendix II, page 5. This footnote has been inserted after submission to the Financial Secretary of the complete report.

4.16 We have not heard evidence about the consequences to others in this case were there to be findings against them that they have engaged in, or been party to, insider dealing.[1] Nevertheless, we are prepared to make certain assumptions in relation to them for the purpose of this exercise.

(1) We note that Mr Wallace Yuen is engaged professionally in the securities industry. He is presently a senior executive with G K Goh Securities, and has been working in the financial services industry for about 12 years. We will assume that a finding against him of insider dealing would have as serious an impact on his professional future as in the case of Mr Don Lau.

(2) Mr Leong is a chartered accountant, and employed in a senior position with Public Bank, Malaysia. No submissions have been advanced by him, no evidence led, as to the consequences for him of a finding of insider dealing. We do not know, for example, whether his professional body (of chartered accountants) would in such an event take disciplinary steps[2], and we do not know whether he would remain employed by Public Bank. He was not represented, and these questions were not put to him. In these circumstances, we shall assume that disciplinary steps might be taken, and that his livelihood may be affected. We note the provisions of section 23, and that Mr Leong is a director of a listed company, and is very much someone geared for managerial employment.

(3) Amy Foong has returned with her husband to live in Malaysia. We do not known what occupation she there follows, but we know that she is accustomed to salaried employment, and we note her accountancy qualification. We have no evidence about the impact upon her of a finding that she has engaged upon insider dealing. We will assume that it will affect the scope of employment available to her.

(4) Mr Lai is a university graduate, and Chief Executive Officer of Public Bank Berhad for the Hong Kong region. He has been with Public Bank since 1972. He has been in Hong Kong since 1979.

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[1] This states the position at the stage when we considered whether or not insider dealing had taken place and, if so, by whom. After we determined that Mr Leong and Amy Foong had engaged in insider dealing, we received representations about the alleged likely impact on them of our findings. As for the two stages, see paragraph 5.5 of this report. See also the note immediately above paragraph 13.9 below. This footnote has been added after submission of the complete report to the Financial Secretary.

[2] See section 22(3), which makes provision for furnishing the Tribunal's report to a professional body.

He is also Managing Director of JCG Finance and a director of JCG Holdings. It is difficult to say what might happen to him in the event of a finding of insider dealing. Dr Teh gave evidence that Mr Lai is one of the most trusted employees of Public Bank. Whether he would lose his job, we do not know, nor do we know what impact on his livelihood, if any, would accompany such a finding. No evidence was adduced about this, nor were any submissions made in this regard. However there can be no doubt but that his reputation would be most adversely affected, and that it is possible that the regulatory authorities may preclude him from holding positions with JCG Finance and JCG Securities. We are prepared to assume too that his livelihood may be affected. The same considerations apply to findings other than insider trading, in so far as they constitute findings of other disreputable conduct. Mr Lai, like Mr Leong, is a director of a listed company, and is obviously an experienced manager. We note, thereof, the likely impact of a section 23 order.

(5) Mr Goh is also a university graduate. He has occupied senior positions with money broking companies, and has business interests of his own. There has been no suggestion of loss of livelihood in his case.

(6) Mdm Pamela Wong is a nurse employed by the Hong Kong Government. We have had no evidence as to the attitude that might be taken by her employer in the event of a finding of insider dealing. For reasons provided in Chapter 20 below, that particular question does not, in the event, arise in her case.

(7) There is no suggestion that Mr Lau Wai-man's livelihood would be affected in the event of an adverse finding.

THE STANDARD OF PROOF: PROCURING LIES

4.17 The matter does not however stop at the issue of insider dealing, for there is one factual issue in respect of which we have been invited to apply the standard of proof appropriate to criminal cases.

4.18 There is, as we shall see, an allegation that, in April 1993, Mr Don Lau and Mr Wallace Yuen persuaded Mdm Pamela Wong and Mr Lau Wai-man to provide the SFC with a false account of the circumstances in which trading in PIIL shares through Mr Lau Wai-man's account took place in December 1992. The allegation is also that Mdm Pamela Wong was an active participant in the coaching exercise which consequently took place and, further, that Mr Wallace Yuen, Mdm Pamela Wong and Mr Lau Wai-man carried the plan through to execution. Mr Wallace Yuen also suggests that in December 1992, Mr Don Lau told him to lie to the SFC in answer to a written question from them about the transactions on 8th December 1992.

4.19 It was first argued that the Tribunal should not receive evidence of this allegation for, so ran the argument, it was immaterial and of no probative value to the issues which it was our function to determine. A number of alternative arguments were also advanced for exclusion of the issue.

4.20 The Ordinance enables part of a sitting to be held in private where it considers it to be in the interests of justice so to do. We acceded to an application to hear this particular argument in private, for:

> "To hear the submission in a public sitting would inevitably have meant broadcast of an allegation said to be not only false, but outwith our remit. Were [the Chairman] to find the allegation of no probative value to our task, a public airing of the application will have needlessly caused damage to reputation. So [the Chairman] agreed to hear the submission in private sitting, though not without some misgiving."[1]

4.21 The Chairman of the Tribunal did not accede to the application not to receive the evidence, and the evidence was heard. Whether the allegations are well founded and whether, if true, they are material to the issues before us and, if material, what weight if any should be ascribed to such conduct, are matters better explained in the chapter of this report which is devoted to this issue, namely Chapter 18.

4.22 Mr Li's arguments about these allegations sprouted another, and important, limb in the contention that since this allegation - the allegation of a conspiracy to lie to the regulatory authorities - was an allegation of criminal and very grave conduct, it should not be found established unless proved beyond reasonable doubt, that is, to the degree required in criminal cases. He

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[1] See transcript, page 171.

found some comfort in an aside in the SHL report, that an allegation of certain false representations, were it to arise for determination, would require "a standard approximate to the criminal standard"[1]. The cited phrase was drawn from a judgment of Kempster JA in Attorney General v Tsui Kwok-leung [1991] 1 HKLR 40, 45 where he concluded that:

> "Generally in civil proceedings ..... it remains good law that the civil standard of proof obtains albeit when considering, for example, an allegation of fraud, a higher degree of probability will be required than when considering an allegation of negligence. The degree of probability, falling short of satisfaction beyond all reasonable doubt, must be commensurate with the occasion even when the liberty of the subject is at risk. In cases of great gravity and in the realm of vendor and purchaser of land the civil standard may well approximate to the criminal."

4.23 Distinctions were drawn in argument between a high degree of probability, a degree approximate to the criminal standard, and the criminal standard. There is ample authority, of high standing, that the standard of proof of criminal offences in civil proceedings is that of the balance of probabilities (Hornal v Neuberger Products Ltd [1959] 1 QB 247); and other authority which suggests that if due weight is given to grave allegations in the context of civil proceedings that the choice becomes "largely a matter of words" (see Khawaja v Secretary of State for the Home Department [1948] 1 AC 74, 111). There is some authority (the weight of which was analysed in the SHL ruling) that in professional disciplinary cases, "where what is alleged is tantamount to a criminal offence, the Tribunal should apply the criminal standard of proof" (see In Re A Solicitor [1993] QB 69).

4.24 Whether in reality - for there must come a point when fine tuning becomes artificial - there is a distinction between proof beyond reasonable doubt, on the one hand, and, on the other, proof which gives due weight to the consequences of a finding that a senior member of the financial services industry has been party to coaching others to lie to the regulatory authorities, is doubtful. In the event, and without deciding the point of law, the Tribunal has in fact applied to this issue the test of proof beyond reasonable doubt.

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[1] SHL Report, Appendix I, pages 18 and 21.

THE BURDEN OF PROOF

4.25 Save for the issue covered by section 10(4) of the Ordinance[1], there lies upon none of those who is a party in this Inquiry any onus of proof. When, under section 10(4), the onus does lie on a party, such onus is discharged on a mere balance of probabilities.

COUNSELLING AND PROCURING

4.26 To counsel is to advise or solicit; whereas to procure is to see that something is done, or to take appropriate steps to ensure that it happens.

INFERENCES

4.27 We have been directed that we may draw inferences from primary facts, so long as the inference is based upon probative evidence, is derived logically from primary facts, and the primary facts are proved to the requisite standard. Furthermore, we may only draw inferences of guilt or inferences against the interest of an individual if we are satisfied, again to the requisite degree, that that inference is the only reasonable inference we can draw. The same applies when there is left only a choice between more than one kind of wrongdoing - in the present context, that means that if on the established primary facts it may reasonably be inferred that a suspect has engaged in insider dealing, but it may reasonably be inferred also that that person was engaged upon morally suspect or unlawful conduct of another kind, we would not be entitled to infer insider dealing from those particular primary facts.

LIES

4.28 To the extent that we may decide that lies have been told to the SFC or to this Tribunal, we are conscious of the fact there may be reasons for lies consistent with absence of any wrongdoing, or of the particular wrongdoing alleged, and that it is only if we exclude such reasons that lies may

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[1] Section 10(4) provides that:
"A person who, as agent for another, enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction as agent for another person and he did not select or advise on the selection of the securities to which the transaction relates."
It is a defence advanced in this case by Mr Wallace Yuen - see paragraph 12.12 below.

support the allegation of that particular wrongdoing. We are also conscious of the fact that although a lie of itself proves nothing, save that the lie has been told, "lies can in conjunction with other evidence tend to support an inference of guilt in the sense that they can confirm or tend to support other evidence which of itself is indicative of guilt" (see R v Harris [1991] HKLR 389, 399). In this particular case we have, in addressing lies (and this includes the procurement of lies), borne well in mind the question whether a lie may have been motivated not by a realisation of guilt of insider dealing, but by realisation of guilt of some other wrongdoing, or by a conclusion or fear (whether justified or not) that certain conduct would be viewed by others as improper, or by a feeling that the truth was unlikely to be believed. We have been directed also that before a lie may be used to support a particular allegation, we have first to be satisfied that the lie was deliberate, and that it is material to the issue we have to decide.

PROFIT GAINED

4.29 Sections 23(1)(b) and 23(1)(c) of the Ordinance empower the Tribunal to order a person identified as an insider dealer to disgorge profit "gained ..... by that person as a result of the insider dealing", and to pay a penalty "not exceeding three times the amount of any profit gained ..... as a result of the insider dealing". At Chapter 22 of this report, there are addressed a number of novel points arising from those provisions.

OTHER MATTERS

4.30 (1) We have abided by the requirement of paragraph 13 of the Schedule to the Ordinance that "every question before the Tribunal shall be determined by the majority of the members, except a question of law which shall be determined by the chairman".

(2) We note that it does not necessarily follow from the fact that a witness is not believed or is not reliable as to one matter, that he or she cannot be believed or is necessarily unreliable on another.

CHAPTER 5

PROCEDURE

5.1 APPOINTMENT

5.1.1 The provisions of the Ordinance are such that no two (or more) differently constituted tribunals may function at any one time. That meant that the appointment of members for this Inquiry had to abide conclusion of the SHL Inquiry. We note that there is legislation in the making which, if enacted, will enable two or more inquiries to run in tandem.

5.1.2 There followed further hitches in that two gentlemen appointed as members of the Tribunal for this Inquiry resigned membership when each drew attention to the fact, in one case, that he was well acquainted with someone whose transactions were under scrutiny, and, in the other, with a witness of some importance. The practice in this case, as in the SHL Inquiry, was to provide prospective members of the Tribunal with a list of individuals who featured prominently in the evidence, to ascertain whether they knew any such individual and, if so, whether perceptions of objectivity might be offended by appointment as a member of the Tribunal. It does not, however, follow from the mere fact that a member is acquainted with a witness that disqualification ensues. It depends on the nature of the relationship, and on the importance of the evidence of that witness.

5.1.3 However, the nature of our function is inquisitorial and if, as in this case, the Tribunal's investigation goes beyond the evidence collated by the SFC, new names, some falling under scrutiny, arise, so that unexpected cause for disqualification can materialise. This danger is especially real in Hong Kong where the financial services industry is compact, and those asked to sit on the Tribunal as members are likely to know many who are engaged in that industry, and others who are employed in senior positions in listed companies.

5.2 INITIAL TASKS

The SFC evidence

5.2.1 At the outset, each member of the Tribunal was given a copy of the evidence collated by the SFC in the form of records of interview, statements and exhibits. We also saw the covering report sent to the Financial Secretary by the SFC. That report, although a useful introductory aid, has not been treated by us as evidence.

Orders and authorisations

5.2.2 Before any sittings were held, the Tribunal made a significant number of orders for the production of evidence. These took the form of requiring statutory declarations from witnesses about salient events, as well as authorisations to the SFC to inspect documents. So, for example, we required CEF officers to particularise instructions given to CEF by the consortium to identify suitable acquisition targets, and to reveal who was privy to those instructions, and to the identification of PIIL as a target. We required a statement from Mr Goh, who had not previously been interviewed, seeking from him the reasons for his sale of PIIL shares in late 1992. We sought statements from some individuals who, in late November and early December 1992, acquired significant quantities of PIIL shares. We obtained evidence from Dr Teh, and from Amy Foong's colleagues at Dragoco. We required the production of trading records showing PIIL and other transactions in the names of those under suspicion, and we examined bank accounts to determine the source and destination of relevant funds.

Salmon Letters and the Salmon Report

5.2.3 In Chapter 3 of the SHL report, we refer[1] to the practice in inquiries of sending letters (called "Salmon letters") "to those against whom allegations are levelled, summarising the nature of those allegations and the evidence in support of them". That is what we did in this case. We also notified witnesses of allegations likely to emerge which, although not allegations of insider dealing, would, if established, adversely affect their reputations. The allegation of a plan or agreement to lie to the SFC (see

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[1] See SHL report, paragraph 3.4.

Chapter 18 below) was one such instance. In the case of two witnesses, Mr Lai and Mr Goh, we sent letters which, whilst not containing direct allegations, nevertheless notified them of aspects about their conduct which gave us concern, and into which we intended to investigate.

5.2.4 We sent to all witnesses a copy of the statements they made to the SFC. In the case of those individuals against whom allegations were made, we sent all material - that is, copies of all statements and other documentary evidence touching upon their cases. We also received in evidence such additional material as emerged at the initiative of witnesses. So, for example, there was produced by Mr Don Lau a lengthy statement, and a series of documents, as part of the case he wished to present to the Tribunal. These were not documents the production of which the Tribunal had ordered.

5.2.5 The Salmon Report on Tribunals of Inquiry recognised that "[an] inquiry may take a fresh turn at any moment."[1] So, too, did the Report remark that "..... however thoroughly a case is prepared, fresh evidence may emerge in the course of an inquiry which may give rise to further material allegations."[2] So, in this Inquiry, for example, the discovery of Mr Lai's co-ownership with Mr Goh of PIIL shares drove us to inquire further into their business relationship, and into the true cause of transactions by Mr Goh in PIIL shares in late November 1992. When reasons advanced for those transactions appeared improbable or unsupported by independent evidence, we required still further evidence. So, too, when it became apparent that in late November 1992, before any public announcement about PIIL, one individual had acquired substantial quantities of PIIL shares, we deemed it incumbent on us to examine those transactions.

Preliminary hearings

5.2.6 We held two preliminary hearings. At the first, on 10th August 1994, we announced the terms of reference, gave notice of our proposed procedure and of our powers, received applications from those who wished to be legally represented, to be represented, and we issued directions. We emphasised the inquisitorial nature of our function, and stated that we had already identified a number of areas of investigation to be pursued.

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[1] See Report of the Royal Commission on Tribunals of Inquiry, 1966, Command Paper 3121 (The Salmon Report), paragraph 30.
[2] See Salmon Report, paragraph 51.

5.2.7 The second preliminary hearing, on 27th October 1994, dealt with housekeeping matters, and was the date upon which certain submissions of law were made as to the standard of proof to be applied in this Inquiry, and as to the relevance of the allegations of procuring the telling of lies to the SFC.

5.2.8 The Ordinance provides that:

> "A person whose conduct is the subject of an inquiry or who is implicated, or concerned in the subject matter of an inquiry shall be entitled to be present in person at any sitting of the Tribunal relating to that inquiry and to be represented by a barrister or solicitor."[1]

We pointed out at the first preliminary hearing that

> "The phrase 'concerned in the subject matter of the Inquiry' does not, of itself, imply any culpability or suspicion of wrongdoing. Perfectly innocent parties may have a host of reasons for attending, and ensuring by attendance or representation that their interests are protected. So, for example - and it is only an example - an organisation whose name features in the story under investigation, may wish to ensure that its reputation is not tarnished by mere association. That is a perfectly valid reason for appearing before any tribunal of inquiry."[2]

In the event, a number of companies and individuals chose to have the benefit of legal representation, even though they were not at risk of adverse findings.

5.2.9 Mr Lai and Mr Goh were represented by leading counsel and solicitors, as was Mr Don Lau, while Mdm Pamela Wong and Mr Lau Wai-man were represented by counsel and solicitors, and so was Mr Wallace Yuen. Mr Leong, Amy Foong and Miss Chan were unrepresented, although Mr Leong conducted his case and that of Amy Foong with very considerable skill.

5.3 THE SUBSTANTIVE TASKS

5.3.1 This Inquiry spanned 49 days of evidence[3], and the Tribunal has, in addition to sittings, met frequently to decide what avenues of inquiry to pursue, to study and discuss evidence received and, after the hearings, to deliberate upon its findings, and produce this report. This Inquiry has not addressed one case, but at least three quite separate cases. They are the Lai/Goh case; the Leong group case; and the Don Lau case. Each turned upon

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[1] See paragraph 16 of the Schedule to the Ordinance.

[2] See transcript, page 8.

[3] This does not include a hearing dedicated to receiving submissions in mitigation of penalty.

a different set of facts, and in each there was involved more than one individual at risk of a finding of insider dealing. The issues of fact in each case, although especially in the Don Lau case, were many, and most facts were in dispute. We heard evidence from a number of CEF officers about the targeting of PIIL, about market sentiment at the time of Tung Wing and after, and of preliminary and subsequent contacts with PIIL personnel. We received evidence from those who employed Mr Don Lau and Mr Wallace Yuen to test the degree to which, if at all, conduct by either of them which, on its face, appeared suspect, might be attributed to a desire to hide a breach of company rules rather than insider dealing. What was said at meetings or briefings was at issue; and the determination of that issue was very important. So we had to take evidence from those present at those meetings, and from those who were party to relevant telephone conversations. To determine the same issue, we took evidence from the regulatory authorities with whom negotiators and their advisers had been in communication on 7th and 8th December 1992. To ascertain the true beneficiaries of share transactions, we examined bank accounts to trace monies paid or received at the time of, or after, those transactions. In the case of the Leong group, the times at which orders were placed on 2nd and 7th December 1992 were important, so we had to obtain and study transaction reports, and hear brokers' evidence. What witnesses had said to the SFC in 1993 was the subject of scrutiny and analysis. Sometimes their answers to the SFC were damaging to themselves; in other cases they were damaging to others, so that affected parties and the Tribunal spent time trying to find what had been said, what had been meant, and how much had been assumed. What constituted relevant information in this case was a central issue, argued by reference to almost every limb of the statutory definition. To resolve that issue, we received and tested the evidence of a number of experts and professional brokers, as well as that of seasoned and not so seasoned traders. Apart from the three cases which received the substantial bulk of our attention, we looked at the trading of others at the material time, not only to be faithful to our terms of reference, but also to understand what was motivating the market during the weeks in question, and to assess the degree to which rumour was at large before public announcements, and the nature of that rumour. At the stage devoted to determination of penalties in respect of those identified by the Tribunal as insider dealers, evidence was received in mitigation of penalty, and the Tribunal was called upon to determine important issues of law in connection with the provisions which govern the calculation of profit which arises from insider dealing. This summary, which is not exhaustive, is intended to provide some picture of the spread of our task.

5.4 THE INQUISITORIAL PROCESS

5.4.1 In the course of the first preliminary hearing, we emphasised the inquisitorial nature of our function:

> " [The Chairman has] made reference to the inquisitorial role of this Tribunal. [He uses] the word 'inquisitorial' deliberately. [He uses] it to distinguish the procedure from the adversarial procedure which applies to civil or criminal cases.
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> The Tribunal directs the Inquiry; witnesses called are the Tribunal's witnesses; and as the Inquiry progresses, new matters may be raised which require a line of investigation not previously thought necessary.
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> .....
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> [The function of counsel for the Tribunal] is objectively to present to the Tribunal the relevant evidence, regardless of which way that evidence falls, whether in support of, or against, any allegation of insider dealing.
>
> [Their] function is to assist the Tribunal to cause to be carried out such investigation or further investigation which the Tribunal requires; to research and present relevant law; and to liaise with witnesses and their legal representatives. To such ends as these, the Tribunal regularly liaises with [counsel for the Tribunal]."[1]
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> " There is yet a further facet of the inquisitorial procedure, and of this Tribunal's function, which should publicly be stated and in respect of which notice should be taken and care exercised. The Terms of Reference require us to inquire and determine whether insider dealing has taken place in December 1992 in relation to the listed securities of Public International. Those terms do not limit our task to a determination of whether a named individual has engaged in insider dealing. The terms of reference are such that it is, we believe, incumbent on us to look at trading not only by those against whom the SFC has levelled allegations, but also at any substantial or otherwise significant activity by others, which activity appears on its face to warrant a closer look, even if it is likely that a sound explanation will be given."[2]

The investigative function

5.4.2 We highlight the inquisitorial nature of our function for a number of reasons. First, we are conscious of the fact that considerable time was spent by us in seeking and obtaining evidence beyond that collated by the SFC before the appointment of this Tribunal, and which was presented to us at the outset of our work. It is to be emphasised that the quality of the SFC's investigation,

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[1] See transcript, page 5.
[2] See transcript, page 8.

and of the assistance rendered by its staff in the course of this Inquiry, has been uniformly outstanding. Nonetheless, our action in pursuing further investigations, when we felt the need to do so, was the consequence of the task entrusted to us by the Ordinance and by the terms of reference.

5.4.3 The provisions and terms of Part III of the Ordinance (including the Schedule) are the provisions and terminology of the inquisitorial (and investigative) process. The power given to the Financial Secretary, by section 16(1) of the Ordinance, to require the Tribunal to pursue an inquiry does not presuppose that there has necessarily been a representation by the SFC, and even where, as will almost invariably be the case, the Financial Secretary has acted pursuant to action by the SFC, he acts upon a representation, and he requires the Tribunal "to inquire into the matter". There is nothing in section 16 of the Ordinance which limits the Tribunal to evidence presented to the Financial Secretary or to the Tribunal by the SFC. There is no provision for evidence to be presented by counsel representing the SFC, either in a quasi-prosecutorial role or otherwise. There are no opposing parties. The very existence of section 18 demonstrates that the Ordinance envisages inquiry by the Tribunal and, if necessary, inquiry beyond such material as may have been forwarded by the Financial Secretary to the Tribunal.

5.4.4 Whether the present state of the law is desirable is not the present point. There is no question but that religious adherence to the breadth of the terms of reference, and to the investigative role imposed by the Ordinance, can lead to a prolonged investigation. That by-product or danger of the inquisitorial process is nothing new. On the other hand, the exercise of that process can uncover, and in this particular case did uncover, significant relevant evidence.

Perception of bias

5.4.5 The second reason for which we devote space to the inquisitorial nature of this Tribunal's function, is related to complaints made in the course of the hearings that members of this Tribunal so conducted the hearings as to give rise to a perception that they were biased. The complaint manifested itself in a variety of ways. At an early stage it was suggested that a question or questions posed by a member of the Tribunal undermined clear evidence

already adduced[1]. At paragraph 5.4.12 below, we refer to a complaint on behalf of Mr Don Lau that the Tribunal was "revisiting" evidence given by Mr Lai in such a way as to suggest that the Tribunal was seeking answers adverse to Mr Don Lau. These were serious suggestions, and they cannot go unanswered.

5.4.6 We recognise that the complaints are such as might equally be put forward in adversary as in inquisitorial proceedings. Put another way, the duty to be fair is a duty which is to be observed regardless of the nature of the proceedings. But perceptions of unfairness are, we believe, more easily aroused in inquisitorial proceedings, because in such proceedings the Tribunal is, and is expected to be, active in the pursuit of evidence, and tenacious in its testing of that evidence; functions which, in the adversary system, are left to the contesting parties. That the inquisitorial process may create in the minds of those whose conduct is under particular scrutiny a feeling of unfairness is well recognised. So, in a discussion about the procedures of statutory tribunals, upon which the governing legislation has not imposed an inquisitorial function, the benefit of the adversary procedure is emphasised:

> "The tribunal should have both sides of the case presented to it and should judge between them, without itself having to conduct an inquiry of its own motion, enter into the controversy, and call evidence for or against either party. If it allows itself to become involved in the investigation and argument, parties will quickly lose confidence in its impartiality, however fair-minded it may be."[2]

5.4.7 In the course of this Inquiry, the Tribunal itself took a very active role. We opened new avenues of inquiry. We tested evidence originally put before us which appeared to be inadequate or improbable. We ordered the production of bank and trading accounts where it appeared to us that the true or full picture could only be gleaned by inspection of such documents. And members of the Tribunal took part in the oral examination of witnesses. That too is a feature which distinguishes the adversary from the inquisitorial role.[3] No doubt, it was thought by some of those whose conduct was under particular scrutiny that, in pursuing evidence in these ways, the Tribunal was not minded

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[1] See transcript, pages 602, 609 and 610.

[2] See Wade and Forsyth "Administrative Law", Seventh Edition, p 931. See also The Annual Report of the Council on Tribunals for 1965, paragraph 44.

[3] See the Salmon Report, paragraph 113, which recognises or recommends that the Tribunal "will question the witness at any stage of his examination, should they wish to do so."

to accept at face value what it had been told. In that assumption, they would, in many cases, have been correct.

5.4.8 However, the grievance that was aired was directed, not at the evidence gathering exercise, but at the manner in which this Tribunal examined certain witnesses. To understand the nature of the complaint, we must say something about the order in which witnesses were examined.

5.4.9 Save in a few exceptional cases, all witnesses against whom no allegations had been, or were likely to be, made were examined first by counsel for the Tribunal. That examination did not preclude counsel for the Tribunal from testing the evidence of these witnesses, by moving from ordinary examination to cross-examination, if that proved to be necessary. Once these witnesses had been examined by counsel for the Tribunal, Tribunal members asked such questions, whether arising from the evidence already adduced or not, as it deemed necessary for the fulfilment of its function, although we also interposed questions whenever it appeared convenient to deal with a point as it arose. It was thereafter open to counsel for any of the parties whose conduct was under scrutiny to cross examine. The same opportunity was, of course, extended to those who were at risk but were unrepresented.

5.4.10 The problem arose when the Tribunal, as was its invariable practice, asked further, or a second set of questions after everyone had completed cross-examination. Such a need can arise for many different reasons. It may, for example, be that in cross-examination, a case or a contention becomes evident to the Tribunal for the first time. Answers adduced in cross-examination might not sit with other evidence given by the witness; or with evidence from another source; or with common sense. There may be cause for disbelieving an answer, or for believing that a particular witness may be receptive too readily to suggestions made in cross-examination on behalf of a colleague or an acquaintance. So, for example, a witness might, for the first time in cross-examination, purport not to recollect a conversation with the colleague, when other conversations immediately preceding or following it are remembered. Possibilities may be put and accepted, without any exploration of likelihood. In such circumstances, the doubts, the context, earlier answers, and so on, must be put to the witness. They cannot be put by an opponent, because in these proceedings, there is no opponent. As we remarked in the course of these proceedings, in one of the frequent references to this issue:

> " Questions in cross-examination by an affected party are quite properly designed to draw matters favourable to that affected party. It may be the case, indeed with Mr Lau and Mr Lai it has been the case and is the case, that the interests of the witness are not opposed to the interests of the cross-examining party, in which case there will be no cause for re-examination by the witness's counsel as to meaning, or certainty, or inconsistency, or context, or about answers which may have been given to questions containing more than one question.
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> Who then but the Tribunal is to ask those questions? The fact [that] it asks those questions ought not, if its role is properly understood, confer upon it the status of a biased party or [of a party perceived to be biased]."[1]

5.4.11 It may be that the very sequence of examination followed in this case invited comparison with the adversary process, although it was also our invariable practice to afford to counsel the opportunity of further questions, after any second set of questions had been put by the Tribunal. That comparison may also have been encouraged by the latitude afforded to Mr Don Lau by this Tribunal in so far as concerned the production of his case and evidence in support of it, for he gave oral evidence last of all witnesses, and only then, namely, on 12th January 1995, did he produce a 37-page statement, which contained his version of the salient events, and his answers to allegations, although it is right to say that most of the material in that statement had been put to various witnesses as the hearings proceeded. He had previously been questioned about his role in the affair by the SFC in April 1993, and no evidence had been sought from him by the Tribunal, save for some fairly peripheral evidence about the source of certain payments, and the purpose of others. No criticism in this regard is levelled at anyone for the late production of his statement, for it was a procedure which the Tribunal knowingly permitted.

5.4.12 The complaint was launched in relation to the Tribunal's treatment of the evidence of Mr Lai. It was that in the course of the second, or even further, set of questions by the Tribunal, we returned or revisited answers previously given by a witness, in instances where, it was suggested, the answers in cross-examination had been clear. It was contended that to revisit these areas was unfair; and that the perception arose that certain answers had been answers which the Tribunal had not expected, and that they were answers which the Tribunal would like to undermine[2]. The only issue, it was said,

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[1] Chairman, at page 3930 of the transcript.
[2] See transcript, pages 3693/4.

was whether an answer was clear, and that if it was, that ought to be the end of the matter.

5.4.13 In the course of submissions and in the Tribunal's rulings which followed those submissions, there was much fine dissection of Mr Lai's evidence about what he had said to Mr Don Lau on 7th December 1992, and about the content of his interview with the SFC in June 1993. We will not rehearse that detail here.[1] Put very broadly, they concerned evidence which, in both instances, arose in cross-examination of Mr Lai by Mr Li. There came a time when Mr Lai said that he could not now (that is, at the time of his oral evidence) remember what he had said to Mr Don Lau at the briefing on 7th December; and, secondly, that he could not remember now what was his state of mind at the SFC interview, which meant, we believe, that he could not now remember what prompted him to say things which he said at the interview. The suggestion was that those answers before us were clear answers, and that it did not behove the Tribunal to revisit them.

5.4.14 We did not agree. The fact that an answer is clear does not, of itself, render that answer sacrosanct. In this particular instance, for example, Mr Lai gave detailed evidence about other events and conversations on 1st, 2nd, and 7th December 1992, including evidence about what was said, and also what was not said, on those occasions about identity and background of the bidders. He gave detailed evidence of what he was told at the meeting with CEF on 7th December, and of his call to Dr Teh on that day, both of which conversations were very close in time to his briefing of Mr Don Lau. He even provided us with specific reasons for particular recollections of what he was told by CEF.[2] He recalled the timing of his call to Dr Teh. He was definite in his recollection about a discussion with CEF on 7th December that Dr Teh should have a seat on the new board. This was not a matter drawn from any of the letters which he had written to the SFC in December 1992 or January 1993. In addition to all this, Mr Lai's comment to the SFC, as to what he told Mr Don Lau during the briefing, was hardly put in vague terms. It was put as a positive recollection: "I recall that I told Don Lau ..... that the purchasers included China [enterprises]". In the course of his oral evidence before cross examination, he had told us that he "believed" that he told Mr Don Lau

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[1] For rulings or statements of the Tribunal on this issue, see pages 3653 to 3655; 3680 to 3681; 3688 to 3691; 3703 to 3707; and 3920 of the transcript.

[2] See transcript, page 3537.

everything that happened, including the names of the parties[1]. Yet against this background, and this clear recollection of other conversations, here we were with a series of answers in cross-examination to the effect that he could not remember what he told Mr Don Lau during the briefing. It was contended in terms that to ask Mr Lai "..... how come you remember other things now and not that? ..... would be trying to undermine that answer"[2], where "that answer" was his evidence that he could not now remember what he said to Mr Don Lau. In the context which we have described, that was, we believe, a surprising contention. Even though we allowed ourselves to be persuaded not to pursue this particular line of questioning, it is, we think, difficult to see how, in the context described, questions designed to test Mr Lai's true state of recall constituted, or could reasonably be thought to constitute, an attempt to undermine answers.

5.4.15 There were other clear answers. There was one which very well illustrated the need for a second look, despite its clarity. It is not helpful to explain it in this chapter, because it requires some appreciation of the background and facts. We explain it at paragraph 15.3.6(6) below. Put very broadly, however, there was elicited from Mr Lai during cross-examination an answer which clearly suggested that answers which he had given during an interview with the SFC were not answers given from an independent recollection, but were answers which relied on the contents of a letter or letters sent to the SFC some months before the interview. The evidence thus elicited before us in cross-examination of Mr Lai was clear enough. Yet it was abundantly obvious that quite a few answers in the interview could not have been drawn from those letters. As we understood the argument, the clear answer to this Tribunal was what bound us, and any "revisiting" the point constituted unfairness, and gave rise to a perception of bias. The defect with that argument is that it confuses clarity with accuracy, reliability and finality.

5.4.16 The position seems to us to be "..... that if something does not sit with other evidence, or if something is vitally important and is genuinely deserving of confirmation, or better understanding, or definition, or placing in context, in such circumstances a Tribunal is not bound by the latest answers or even the clearest answers, and it is ..... a fundamental misunderstanding to interpret such an exercise as an attempt to undermine the evidence given"[3].

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[1] See the summary of evidence at paragraph 15.3.6 below.
[2] See submissions at page 3696 of transcript.
[3] Chairman, at page 3929 of transcript.

5.5 THE TWO STAGES

5.5.1 We have drafted this report in two stages. Once we had determined the answers to the first two questions set by our terms of reference, namely, whether insider dealing had taken place and, if so, the identity of every insider dealer, we sent to the Financial Secretary, and to all affected parties, Chapters 1 to 21 inclusive of this report. That was intended to enable those who had been identified as insider dealers to study the reasons for our findings before making representations to us as to consequential orders. On 20th July 1995, we received oral representations to that end by those representing Mr Don Lau, and at about the same date, written representations from Mr Leong and Amy Foong who, by then, had returned to live in Malaysia. We have thereafter added Chapters 22 to 24 of this report, and made a few necessary and consequential additions (such as this one) or amendments (e.g. to reflect Mr Don Lau's present employment position, and to mention very recent amendments to the Ordinance) to earlier chapters.

CHAPTER 6

Mr LAI AND Mr GOH

6.1 BACKGROUND

6.1.1 , , No allegations were made in the SFC report against Mr Lai or Mr Goh. There was nothing in that report which suggested that Mr Lai should be treated as anything other than an important witness upon whose evidence we could rely. The fact of the matter, however, is that it emerged in the course of our investigations that he had not been frank with the SFC about his interest in PIIL shares, and that there were transactions in PIIL shares by Mr Goh in 1992, culminating in a sale of over one million shares on 30th November 1992 - a day when others were feverishly buying PIIL shares - in which transactions Mr Lai could well have had a direct interest. The reasons given for those transactions, particularly that of 30th November, appeared worthy of scepticism. Nonetheless, there were contentions that investigations of this conduct was of no relevance to our task. That was the theme of submissions on behalf of Mr Lai and Mr Goh. This chapter addresses the reasons for our investigation of PIIL share transactions by Mr Goh and Mr Lai, its relevance to this Inquiry, and our findings.

6.1.2 Mr Lai is a pivotal figure in the history of events relevant to this case. He was General Manager and a director of PIIL. He was Dr Teh's "right hand man" in Hong Kong. He was the person who, according to the evidence, was first approached by CEF Capital, and led the negotiations on behalf of PIIL; the officer who earlier that year had fielded other such approaches; and the immediate superior in the JCG hierarchy to Mr Leong against whom insider dealing allegations have been made. It was he who signed all PIIL public announcements that year. He knew Mr Don Lau of Nikko and called upon his services, and briefed him about the CEF approach, and he was closely connected with Mr Goh who was trading in substantial quantities of PIIL shares in October and November 1992. He also knew Mr Wong of CEF Capital.

6.1.3 Mr Goh is Mr Lai's closest friend. Mr Goh had been at school in Malaysia with Mr Lai. They went together to the same university, have regularly been on holidays together, and have joined in business ventures. At some stage, Mr Goh was employed by one of Dr Teh's companies. However,

Mr Goh left Malaysia, went to work in Singapore, and in 1990 came to Hong Kong where he was executive chairman and regional director of a firm of money brokers. In the same year, he established a company here called Summax, in which he, his wife and Mr Lai had an interest.

6.2 REASONS FOR THE INVESTIGATION

6.2.1 During our pre-hearing investigations, we called for a record of the names of those who had acquired and sold PIIL shares between 24th November and 15th December 1992, and the quantities and dates of their acquisitions and sales. That record showed that one particular investor had purchased more PIIL shares than any other individual in the last week of November 1992. We pause here to say that no allegation of impropriety has been levelled against him or against his broker, Mr Murray, both of whom had traded in PIIL shares openly in their own names. Mr Murray's client informed us that he had purchased those shares in November on advice tendered by Mr Murray, who had conducted an analysis, over a period of months, of movement in PIIL shares, which had led Mr Murray to suspect that the price was being suppressed with a view to a bid for the company. Mr Murray also told us that he had noticed that one or two brokers appeared to be consistent sellers of the shares, and that they also had Malaysian connections. But this, according to Mr Murray's evidence, was not the only trigger for the advice he tendered to this investor (and indeed to other clients), for there were pointers earlier in the year, and particularly after the sale of Public Finance in 1991, which had identified PIIL to Mr Murray as a prime target for parties wishing to obtain a backdoor listing.

6.2.2 Given the timing and size of that investor's purchases, we thought it incumbent on us to see whether there was extraneous support for that explanation. We then noticed that through October and most of November 1992, the price of PIIL shares had indeed been dropping to a significant extent, and against the trend of the HSI. It soon became evident that Mr Goh had sold substantial quantities of PIIL shares in October and November. We also saw that Mr Goh had sold over one million PIIL shares on 30th November 1992, that is, only one day before the CEF approach, and the same date upon which PIIL had announced that it did not know why there had recently been such an increase in the price of PIIL shares. Mr Lai had signed that announcement. We wanted to see whether there was any significance in this sale, and whether Mr Goh may have been in possession of price sensitive information when he effected this or earlier sales. We noted as well that Mr Goh then stopped

trading in PIIL shares - the sale on 30th November ended a run which had started on 30th September. There were no more sales or purchases by Mr Goh for several months. There were no purchases in December when the rest of the market was so keen on buying. We were also interested to know from whom Mr Goh had obtained the PIIL shares that he had sold in October and November. There was reference in the record of Mr Lai's interview with the SFC to monies passing between Mr Goh and himself, and we were interested to learn whether funds had flowed between the two before, in, and after November, and in the event that there were such payments, in what regard they had been made. We also wanted to ascertain whether the announcement of 30th November (published on 1st December) was true. We wanted to know whether the PIIL events of early December were self contained, or whether they were but the tail end of events born earlier. Accordingly, we made an order which required Mr Lai to provide details of any dealings on his part, whether direct or indirect, in the shares of PIIL in 1992. We also ordered Mr Goh to provide particulars of any financial transactions between him and Mr Lai in 1992, and the reason for his sale of PIIL shares on 30th November 1992, and to tell us whether he had had any other dealings in PIIL shares in 1992, either on his own behalf or on behalf of another.

6.2.3 It became evident that whether or not there was in fact some plan to suppress the price with a view to a bid for PIIL, or for any other reason, there was a basis for Mr Murray's assessment. The price of PIIL shares did move down from late September, and there were indeed two investors (one of whom was Mr Goh) who sold significant quantities during those two months. From 30th September to 30th November 1992, Mr Goh sold 2,456,000 PIIL shares. In the same period he purchased none. The second investor[1] sold 1,384,000 PIIL shares between 23rd September and 3rd November, and then none until mid-December. PIIL was a thinly traded stock, and it did not take much to cause significant movement in the price of the shares. We heard Mr Murray give evidence, and we are satisfied that Mr Murray tendered advice to his client (to whom we have referred in the preceding paragraph), for the reasons he has given, and that that client (and Mr Murray) purchased PIIL shares in November for the reasons they have provided.

6.2.4 There was much made in an opening statement, and in closing submissions, by leading counsel for Mr Lai and Mr Goh of the fact that no direct allegations of insider dealing had been directed at those two, and that

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[1] See paragraph 6.9.3 below.

the Tribunal had proceeded to dig deeper only on the basis of a speculative suggestion "made by one individual [Mr Murray] that someone had been sitting on the shares". To these suggestions, we answer as follows:

(1) The fact that there had been no direct allegation of insider dealing could not preclude us from seeking to ascertain whether either Mr Lai or Mr Goh or both had in fact engaged in such conduct. Our terms of reference did not confine the Inquiry to particular individuals. Our remit was to identify "every insider dealer", an echo of section 16(3)(b) of the Ordinance. What is more, our task was an ongoing process. It is in the nature of the inquisitorial procedure that as evidence continues to be gathered, new avenues may be opened and others shut. What is, of course, vital is that those who fall under suspicion are notified of that fact, and that they have an opportunity to allay that suspicion. The fact is that as evidence continued to be gathered and questions asked of Mr Lai and Mr Goh, they were fully aware of our areas of concern about their conduct.

(2) Our pursuit for further evidence was predicated on more than Mr Murray's mere speculation. Quite apart from the evidence to which we have so recently referred that provided potential support for Mr Murray's suspicion, there was ample reason to dig deeper. To some of that reason we refer at paragraphs 6.2.1 to 6.2.3 above. Beyond that, the proof of the pudding was in the eating, for we soon discovered that Mr Lai had materially misled the SFC when they had first interviewed him in June 1993. That interview was, as Mr Lai must have known, part of an investigation about suspected insider dealing in the shares of PIIL. The answers which were, so we find, untrue were answers to questions about PIIL share transactions in November, and about Mr Lai's interest in PIIL shares. The degree to which we were driven to dig ever further was in the event attributable to the nature of the evidence uncovered as we went along. Almost each avenue we took in our examination of the affairs of Mr Lai and Mr Goh in so far as PIIL was concerned, suggested that there was a hidden story about transactions in PIIL shares up to and including November 1992, and that we were not being told the truth by Mr Lai or Mr Goh. If they were hiding the true reason for PIIL transactions in November, it followed that there

was a real possibility that those transactions were executed on information which may have been price sensitive. That apart, Mr Lai was a central figure on the PIIL canvas, and we could hardly brush aside evidence which, on its face, cast some doubt upon his behaviour in relation to PIIL so close to the period under scrutiny.

6.2.5 Mr Mitchell, on behalf of Mr Lai and Mr Goh, pointed out that there was no suggestion in the case which concerns his clients that either of them purchased PIIL shares "during the Inquiry months with the intent of selling them later at a profit". It is true that there were no sales by them in November or December. But that, of course, is not the end of the matter, for the prohibition against insider dealing is a prohibition against dealing, or counselling or procuring deals, or passing on information, at a time when the dealer, procurer, or informant is knowingly in possession of relevant information. It matters not whether the dealing is a sale or a purchase, and motive is neither here nor there, unless the dealer, procurer or informant can establish, the burden being on him, that there was no profit motive, whether for himself or another.

6.2.6 For all these reasons, it would have been an abnegation of our remit not to pursue these inquiries, and to have shelved the facts which we uncovered, although there came a time when we had to decide to what extent we should further continue to pursue evidence to which our inquiries took us. Our decision, and the reasons for it, are discussed at paragraphs 6.11.3 and 6.11.4 below.

6.3 THE SFC INTERVIEW

6.3.1 Mr Lai was interviewed by the SFC on 9th June 1993, and the record of this interview was the only evidence from Mr Lai placed before the Tribunal when it first began its work. In the course of that interview, he recounted the events of early December 1992 - the telephone call from Mr David Wong of CEF on the afternoon of 1st December, the meeting with CEF the following day; liaison with Dr Teh after the Kuala Lumpur meeting; some detail about the events of the afternoon of 7th December, stating in particular that the identity of the bidders was revealed to him by CEF; the calling in and briefing of Mr Don Lau; and the suspension of trading on 7th December.

6.3.2 During the interview, the investigating officer asked a number of questions clearly designed to ascertain the time at which Mr Leong was informed about CEF's interest in PIIL, and what he was told about the approach and the identity of the bidders. Since it was suspected that on 2nd December and 7th December 1992 Mr Leong had passed inside information to his wife, Amy Foong, or counselled her to buy PIIL shares when he was in possession of inside information, these were important questions. Mr Lai told the SFC that he could not recall when it was that he had asked Mr Leong to attend the meeting with CEF on 2nd December; and could not recall what he told Mr Leong when he required his attendance at that meeting.

6.3.3 There then followed a series of questions about Mr Goh and his interest in PIIL shares. Given the fact that we pursued with some vigour our inquiries concerning Mr Lai's relationship with Mr Goh's share dealings, and given as well the tenor of submissions on their behalf that suspicions were unfounded, it is as well to rehearse here those questions, and the answers given, so that we can compare the answers with the facts as they later emerged:

"27. Wong[1] : Are you aware that Goh Chak Wong having traded in PIIL shares during 27 November 92 to 15 December 92 ('investigation period')?

Lai : Yes.

28. Wong : Under what circumstances you became aware of his tradings in PIIL shares during the investigation period?

Lai : One day ..... Goh told me that he learned from newspaper PIIL was acquired by a third party. Goh complained that as old friends of mine why I did not tell him something about PIIL at that time so that he would not have sold PIIL shares too early. Not until then did I become aware of his tradings in PIIL shares.

29. Wong : Did he tell you the quantity, price he sell?

Lai : No.

30. Wong : Did he tell you through which brokers he sold the PIIL shares?

Lai : No.

31. Wong : To your knowledge, does Goh often trade in PIIL shares?

Lai : Occasionally.

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[1] Mr Wong is an SFC investigator.

32. Wong : Has he mentioned to you why he trades in PIIL shares?

Lai : No.

33. Wong : Do you know why he trades in PIIL shares?

Lai : I don't know.

34. Wong : Through which brokers does Goh trade in PIIL shares?

Lai : JCG Securities is one of the brokers he used. The other I don't know.

35. Wong : Do you have any interest in the shares of PIIL traded by Goh Chak Wong?

Lai : Absolutely not.

36. .....

37. .....

38. .....

39. Wong : Can you categorically say that you have neither traded in your own names or through nominees names in PIIL shares during our investigation period nor procured, counselled other to trade in PIIL shares?

Lai : I have not done the abovementioned things."[1]

(Emphasis added)

6.4 MR LAI'S INTEREST IN PIIL SHARES

6.4.1 There was no rule within PIIL which precluded an officer of the company from investing in shares of the company. Before Mr Goh came to Hong Kong, and before any PIIL shares were bought by or on behalf of Mr Goh, Mr Lai had his own share trading account, and Mr Lai had purchased PIIL shares in his own name. His trading account was with London and Pacific Securities. We see from their records that in July 1989, there were purchased through that account 24,000 PIIL shares; and that on 6th July 1990, there were sold through that account 280,000 PIIL shares. These were the only transactions in PIIL shares through that trading account between January 1989

[1] These questions and answers are at pages 137 to 139 of the documents bundle.

and July 1993. When and how the 280,000 shares were acquired is not disclosed by the evidence we have, but annual reports produced by PIIL represented that in 1986, Mr Lai held 916 PIIL shares; and in 1987, the number represented was 32,525.

6.4.2 In March 1992, Mr Lai opened a trading account with JCG Securities. It was an account in his own name. Thereafter, from about August 1992, he purchased and sold shares, but none was a share in PIIL.

6.4.3 In response to our orders, Mr Lai told us that in 1989, Mr Goh was based in Singapore, but travelled to Hong Kong frequently, and that in that year he, Mr Goh, opened a trading account with London and Pacific Securities and entrusted Mr Lai to manage his Hong Kong portfolio. Mr Goh came to live in Hong Kong in June 1990. The first purchases of PIIL shares through that account were effected in September 1990. According to Mr Lai, he had advised Mr Goh to purchase these shares. He did not recommend any other shares to Mr Goh and, as we shall see, in the course of 1990 and thereafter, Mr Goh accumulated a substantial quantity of PIIL shares. In 1990 alone, Mr Goh bought 1.984 million PIIL shares through his trading account with London and Pacific. In 1990, Mr Lai did not buy any PIIL shares through his own account with London and Pacific. In fact, he never again bought PIIL shares in his own name, whether through London and Pacific, or any other broker.

6.4.4 Mr Lai told us that he recommended PIIL to Mr Goh because in 1990 the net asset value ("NAV") for PIIL was about 57 cents, but it was trading at around 27 cents, and PIIL had a stake in Public Bank the value of whose shares had soared, so that a purchaser of PIIL shares was in effect buying Public Bank shares at a discount, and a share in the remaining assets of PIIL free. It was viewed, he said, as a long term investment, and he referred to reports prepared by the research department of Morgan Grenfell in and after 1989 which, on much the same basis, recommended PIIL as a good investment.

6.4.5 Contrary to the negative responses by Mr Lai to the SFC questions, it transpired that Mr Lai had in fact a very substantial interest in PIIL shares acquired by Mr Goh, and knew full well that Mr Goh bought them regularly, and why. He told us that he, too, was interested in buying PIIL shares, and that he and Mr Goh agreed to invest in PIIL on a joint basis.[1]

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[1] See transcript, page 3291.

6.4.6 There is now exhibited to this report a table (Appendix III) of transactions in PIIL shares. It is a table compiled by Mr Goh, and exhibited to a statutory declaration, to which table we have added figures for 1990 and 1994 gleaned from other evidence. It is, for a number of reasons, an instructive table. It shows the frequency with which, and quantity in which, Mr Lai and Mr Goh bought PIIL shares. We see that, by the end of 1991, they had acquired 4.112 million PIIL shares, through the brokers there listed, and we have been told that in early October 1991 a further 496,000 PIIL shares had been acquired by Mr Lai from a Malaysian colleague. One notes, too, that transactions were conducted through four different brokers, and that throughout 1990, 1991 and the first half of 1992, the transactions were, with few exceptions, purchases rather than sales.

6.4.7 However, from 30th September 1992 to 30th November 1992 there were no PIIL purchases, but only sales. In that period, 2.456 million PIIL shares were sold by Mr Goh or Mr Lai. It is also noteworthy that the sales stopped on 30th November, and that (save for a small purchase in March 1993) there was then a complete break in transactions until late April 1993.

6.5 THE LOOSE UNDERSTANDING

6.5.1 The accounts given by Mr Lai and Mr Goh about their respective interests in the shares acquired on Mr Goh's trading accounts made us even more suspicious that we were not being told the truth. "The PIIL shares were initially acquired on an equal share basis," said Mr Lai, "but over time, a loose understanding developed with Goh with regard to our respective holdings in PIIL to accommodate our differing views and needs"[1]. The understanding, we were told, was an oral one. There was nothing in writing to authorise one to place orders on behalf of the other. There were no records which were kept by either showing who held what proportion, who had paid for which transactions, who owed money to whom. The suggestion was that there were periodic reckonings at which times each knew what the current holdings and liabilities as between the two were. We were told that either could execute transactions through Mr Goh's trading accounts. The nebulous flavour of their evidence is well demonstrated by Mr Lai's testimony, in response to one of our orders, about his interest in PIIL shares acquired and sold in 1992:

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[1] See Mr Lai's statutory declaration dated 24th September 1994, page 1364 of the bundle.

> "I cannot recall whether the transactions [from 14th February to 10th June inclusive] were shared between Goh and myself or whether they were for the sole account of Goh ..... I have an interest in the transactions [from 30th September to 30th October 1992]. I cannot recall exactly, but I believe it was on an equal share basis." [1]

6.5.2 Mr Goh's evidence was no more precise. He emphasised the nature of their relationship - they were very close friends - to explain the lack of any formality in this business or investment relationship. He said that he had kept contract notes but some could be found, some not, and there were no formal or existing records of his dealings with Mr Lai. He was asked why no formal records were kept. "Partly, he answered, "because I am quite busy too with my work. As long as there is an agreement all the time between Mr Lai and myself there wasn't really a need to maintain a formal set of records where you can have a file and say let's go through it again. There was never an instant that required that."[2] Then he was asked whether he kept the pieces of paper upon which, he had told us, he wrote things down:

> "Sometimes it might be lying around in my brief case. As I say, I do not have a file where I file all these slips of paper. And again with time when it's all settled, sometimes when cleaning up all your rubbish it goes into the wastepaper basket and it's gone."[2]

6.5.3 We asked for particulars of all financial transactions between Mr Lai and Mr Goh from April to December 1992, inclusive. Mr Goh annexed a table drawn from some bank statements, and purported to identify particular figures which "relate to [Mr Lai]". "I cannot remember," he said, "nor identify the exact reasons or purposes for these financial transactions ..... but ..... they have been in the nature of a general and periodic settlement of our respective outstandings which would include share transactions, loan repayments, dividends, other private, social and miscellaneous transactions".[3]

6.5.4 Neither Mr Lai nor Mr Goh were able to point to a single banking entry evidencing a payment from one to the other which tallied with any PIIL share transaction; in other words, which represented the whole or half the cost of purchase, or the proceeds of sale, of PIIL shares. At paragraph 6.7.15 below, we provide an example of a payment which, it is contended, includes a sum for the proceeds of sale of PIIL shares.

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[1] See page 1366 of the bundle of documents.
[2] See transcript, page 3729.
[3] See Mr Goh's statutory declaration, 24th September 1994, page 1410 of the bundle.

6.6 WITHHOLDING INFORMATION

6.6.1 Our disquiet was further fuelled by discovery of the fact that in the annual reports of PIIL for 1990, 1991 and 1992 Mr Lai did not disclose his interest in the very substantial quantity of PIIL shares in which, we now know, he had an interest. So, for example, the annual report for 1990 stated that:

> "At 31st December 1990 the beneficial interests of Directors and Chief Executive ..... in the company ..... are as follows:
>
> .....
>
> Lai Kim Leong Director 8000 [ordinary shares]"

At that date, Mr Lai's beneficial interest, on his own version of events, was in the order of about 900,000 PIIL shares. The explanation given by Mr Lai was extraordinary. He said that given the absence of full records kept by him and Mr Goh, it would have been difficult to explain the situation and to give sufficient papers to the auditors. It is an explanation which we do not accept. We note, too, that the report to the minority shareholders, dated 22nd February 1993, represented that, as at 16th February 1993, Mr Lai's personal interest in the share capital of PIIL was only 8,000 shares.

6.7 THE SALE BY MR GOH ON 30th NOVEMBER 1992

6.7.1 Our prime interest, however, rested in the transactions in October and, more importantly, in November 1992, although events prior to that period were examined to determine the true nature of the transactions of Mr Goh and Mr Lai in late 1992.

6.7.2 The reason originally given to this Tribunal by Mr Goh for the sale of one million PIIL shares on 30th November 1992 was that he sold them because the shares were "at a price which I considered a satisfactory return on my personal investment, and also because I had need for funds for an impending investment in a company called Tak Fook". Tak Fook was a flower business owned by a German company called Artfleur, which was run by a gentleman called Mr Wittpahl, who resides in Germany.

Tak Fook in 1991

6.7.3 To determine whether Mr Goh's sale on 30th November had anything to do with a need for money for Tak Fook, we need to step back in time, because Mr Lai told the SFC in his interview that money was first required for Tak Fook in 1991. The SFC had asked Mr Lai about money which they noticed had passed between him and Mr Goh. Mr Lai told them that in 1991 he had lent Mr Goh $3 million dollars "for use partly as the working capital of Summax[1] and partly as the venture capital to acquire a ribbon flower business which was later aborted", and that since 1991, Mr Goh had made occasional repayments.

6.7.4 If ever the sum of $3 million was intended for investment in Summax and Tak Fook, it was common ground that it was not in fact advanced for those ventures. Neither was that the amount which was lent to Mr Goh in 1991, whether for Tak Fook, Summax or anything else. That sum, it emerged, was used by Mr Goh and Mr Lai for the acquisition of shares in JCG Holdings, pursuant to an initial public offer ("IPO"). Mr Goh subscribed for some of these shares, earmarked for himself and Mr Lai.

6.7.5 The story which Mr Lai advanced in the course of his evidence was that, in 1991, Mr Goh had been in discussion with the German company about a possible investment in Tak Fook and, having told Mr Lai that he was soon off to Germany to pursue discussions, he asked Mr Lai whether he wished to participate; and that Mr Lai agreed to commit himself to the tune of $3 million for Tak Fook and for Summax. Mr Goh returned from Germany, and allegedly told Mr Lai that he was awaiting information from Germany. But there was a long delay in the information coming. In fact, nothing concrete happened with Tak Fook until a year or so later.

6.7.6 It so happened, however, according to the tale we were told, that Mr Lai and Mr Goh were caught unaware by a supervening event, and needed that $3 million. Mr Goh had subscribed for more JCG Holdings shares than he had anticipated he would be allotted, but the offer was oversubscribed to a significantly lower extent than had been expected, and the cost of the shares allotted to him was HK$3,956,947.

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[1] Summax, referred to earlier at paragraph 6.1.3 above, was the commodities trading company established in Hong Kong in 1990 by Mr and Mrs Goh, Mr Lai and two others. Mr Lai had a 25% stake in the company, which he held in Mr Goh's name.

6.7.7 Mr Lai then issued three cheques in Mr Goh's favour, in the total sum of about HK$3 million. This was towards payment of the shares allotted. Mr Lai had not applied for any JCG shares, but Mr Goh had made two applications, and there were therefore two allocations. Although, as between them, 1.8 million shares were treated as Mr Lai's and 1.2 million were treated as Mr Goh's, all the shares were held in an account in Mr Goh's name. Mr Goh also contributed some of the purchase money, and the net result of the division of the allotted shares, and of the contribution by each to their purchase, was that Mr Goh was indebted to Mr Lai in respect of these transactions to the tune of about $985,000.

6.7.8 If these accounts were true, then Mr Lai's story to the SFC that in 1991 he had lent Mr Goh $3 million, and that that was for Summax and Tak Fook, was, in both respects, seriously misleading. So, too, did Mr Goh mislead this Tribunal when in his first statutory declaration he suggested that a loan had been made to him by Mr Lai in 1991 in the sum of over $3 million.

6.7.9 Faced with the suggestion of an untrue answer to the SFC, Mr Lai's explanation was that he had thought that the SFC were concerned only with post take-over events, and that the flow of money in which the SFC was interested was a payment by Mr Goh to him in February 1993 in the sum of $1.95 million. That was indeed, he said, a repayment of money lent to Mr Goh for Tak Fook in August 1992, after interest in Tak Fook had revived. This sum was said to be represented by the proceeds of sale of JCG shares belonging to Mr Lai. We reject that explanation. There was no mention in the interview of the payment of $1.95 million; the question was not limited to post take-over payments, and the answer he gave to the SFC expressly referred to a $3 million loan in 1991, and to repayments since 1991.

6.7.10 In any event, the idea that money was already earmarked in 1991 for Tak Fook did not sit with written evidence from Mr Wittpahl that he only entered upon serious discussions about Tak Fook in June 1992. In the face of that contention, Mr Goh suggested that there had been "minor discussions" in 1991.

6.7.11 We find that the Tak Fook story was first used by Mr Lai to hide the true reason for the payment by Mr Lai to Mr Goh of about $3 million in September 1991. When it became clear that the truth would out in relation to that payment, some reason had to be given for telling the Tak Fook tale in the

first place, so they came up with the story that funding Tak Fook had been the original purpose.

Tak Fook in 1992

6.7.12 But the Tak Fook story did not die. It was to have further use, once again to hide the truth about share dealings by Mr Goh and Mr Lai. The story was revived, we find, to explain the sales by Mr Goh of PIIL shares in November 1992.

6.7.13 Mr Lai's evidence was that in July or early August 1992, and at Mr Goh's request, he estimated that Mr Goh would need something in the order of $4 million to $5 million for his anticipated share of Tak Fook. He said that in about September 1992, Mr Goh received a fax from Germany that Mr Wittpahl was coming to Hong Kong "to discuss the matter further, and he [Mr Goh] felt the urgency to raise more cash for the Tak Fook venture". So, Mr Goh wanted to sell PIIL shares to raise cash and he, Mr Lai, told him to go ahead. But there came a time, namely, end October 1992, when the price had come down in one month from 64 cents a share to 50 cents a share, causing Mr Lai to believe it foolish to sell; and he therefore told Mr Goh that sales thereafter would not be joint, but would be treated as sales from Mr Goh's portion of their joint PIIL holding. That was agreed and, thereafter, according to this account, Mr Lai did not know how many shares and for what price Mr Goh sold, or when. So those were the circumstances in which Mr Goh was said to have sold 2,456,000 PIIL shares in two months.

6.7.14 It is instructive to pause here to examine the share price history of PIIL shares in 1992. We see from Appendix I that from about mid-April 1992 the price of PIIL shares increased to about 64 cents per share, then further in June to 78 cents, and through July, August and September it stood in the high or middle sixties. Thereafter, whilst the HSI went up, the price of PIIL shares dropped. The idea that Mr Lai was content to sell part of his long term investment at such a stage in the share's history, in order to invest in the Tak Fook business, when (as we shall see) the Tak Fook deal was far from finalised - indeed, it never was - is very difficult to believe.

6.7.15 What of the proceeds of sale of the PIIL shares which Mr Goh had to sell? Mr Lai said that he believed that he had an equal share in the PIIL shares sold by Mr Goh from 30th September to 30th October 1992, but for shares sold in 1992 beyond 30th October, the proceeds were Mr Goh's. The

proceeds of the sales of PIIL shares sold between 30th September and 10th November 1992 was $523,059, so that there would be due to Mr Lai something in the order of only $260,000 for his half share. No separate payment in that sum by Mr Goh to Mr Lai was revealed by bank statements, or by any other evidence. What bank statements did show was a payment in the sum of $450,521 by Mr Goh to Mr Lai on 11th November 1992. That, said Mr Lai, comprised in part the money owed to him in respect of the recent sales of PIIL shares. As for the balance, he told us in the course of his oral evidence that he thought it was in repayment of part of the loan referred to in paragraph 6.7.7 above. That was the first time that that particular purpose had been suggested. That specific purpose had been offered neither in a statutory declaration in which Mr Lai addressed that very payment, nor in Mr Lai's examination in chief, nor in Mr Goh's first statutory declaration in answer to an order by the Tribunal to "state the purpose of all payments made" by him to Mr Lai April to December 1992. On each such occasion, the best that could be done was to attribute payments to settlement of "other outstandings". Nowhere was there a record of these outstandings.

Sales in 1993

6.7.16 The table which is at Appendix III shows that in 1993 over two million PIIL shares in Mr Goh's name were sold for over $11.7 million. We were provided by Mr Goh with a list of payments which he, Mr Goh, made to Mr Lai in 1993. These payments were made in March, April, November and December 1993, and totalled $4.832 million. Mr Lai told us that he was unable to say which of the PIIL shares sold in 1993 were his and which were Mr Goh's, but he was satisfied that those sold in 1994 were all his. He said that something in the order of $7.5 million of the 1993 proceeds of sale of PIIL shares was his, but neither he nor Mr Goh could point to any documentation from which this rough figure was drawn. Furthermore, this did not tally with the fact that in 1993 Mr Goh only paid to Mr Lai the sum of $4.832 million. The balance was explained by yet another loan by Mr Lai to Mr Goh, this time in the order of $3 million, ostensibly to enable Mr Goh to discharge a mortgage in respect of a property which he had purchased. The source of that loan was said to be the proceeds of sale of PIIL and JCG shares belonging to Mr Lai[1]. Again, there was no documentation which evidenced this loan. By the time of Mr Lai's testimony (January 1995), the loan had not been repaid. Mr Goh was asked whether he had an interest in the PIIL shares sold in July 1993 -

[1] See transcript, page 3514.

928,000 shares sold for $5,333,744 - and the best response he could offer was: "Possibly".

Ownership in 1994

6.7.17 According to Mr Lai, he was, by 1994, the sole owner of the PIIL shares held in Mr Goh's trading account with JCG Securities. The obvious question which followed was why those shares remained in Mr Goh's name, to which the answer was that it was not necessary to transfer the shares to his own trading account, for he trusted Mr Goh.[1] It was not a convincing answer.

Findings

6.7.18 We find that the sales of PIIL shares by Mr Goh in September, October and November 1992, including the sale of 1.152 million on 30th November, had nothing whatsoever to do with raising money for Tak Fook.

6.7.19 In response to questions we sent to him, Mr Wittpahl provided us with written answers and copies of relevant documents. The following matters emerge from the evidence that he and Mr Goh have produced:

(1) At no stage was any price agreed for Mr Goh's expected share. Indeed, there is no suggestion by either Mr Lai or Mr Goh that Mr Wittpahl ever put forward a price. Mr Wittpahl tells us that there were rough estimates in the region of $1 million. So, if Mr Goh is telling us the truth, his estimate was 400% or 500% higher than Mr Wittpahl's, and he, Mr Goh started to sell PIIL shares before a price was formally proposed, let alone agreed; and he was doing this when he was already possessed of over $2 million on loan from Mr Lai.[2]

(2) Mr Wittpahl came to Hong Kong in about late November, but he had already written to Mr Goh in mid-November telling him about marketing problems. Mr Wittpahl told us that it was in November that he gave up the idea of business with Mr Goh; Mr Goh says that the deal fell through in early December.

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[1] See transcript, pages 3564 and 3565.
[2] See paragraph 6.7.9 above.

(3) No documentation was ever drawn, no letter of intent, no draft shareholders agreement, no statement of estimated cost.

6.7.20 We are wholly convinced that Mr Goh had no need, actual or perceived, for funds for Tak Fook whether in September, October, or November 1992. No credible reason has been advanced by him or by Mr Lai for Mr Goh's PIIL sales in those months, and in particular, for the sales on 30th November. Even if it were shown that money was required for such a venture, there would have been no need to sell, or sense in selling, their PIIL shares for such a purpose at that time. Mr Goh was selling PIIL shares when the price, in October and early November, was falling, and was below the NAV of 57 cents - the factor which had, we were told, motivated them to buy PIIL shares in the first place. In any event, Mr Goh held other shares, and had considerable cash reserves at the Hongkong Bank.

6.7.21 By early December , on any view of the facts, Mr Goh knew that the Tak Fook proposal was a thing of the past. There was nothing therefore to preclude him from repaying to Mr Lai the sum of $2.086 million borrowed in August 1992 for Tak Fook. Instead, he bought 5000 Cheung Kong shares in early December, and it was only in February that the sum, which is said to be the repayment of the loan, was paid to Mr Lai. We were not told why there was that delay.

6.7.22 We are satisfied that that payment in February 1993 had nothing to do with the Tak Fook proposal. We are also satisfied beyond any doubt that the story which has been presented to us by Mr Lai and Mr Goh is an *ex post facto* jig-saw exercise by which Mr Goh and Mr Lai have sought whatever evidence might fit, even uncomfortably, with the picture they wish to present.

6.7.23 Although the investigation was detailed, as was the evidence, the sign posts to something amiss are not obscured by the detail:

(1) PIIL shares were purchased for Mr Goh and Mr Lai in an account which was in Mr Goh's name alone - a strange step given the fact that there was a pre-existing trading account in Mr Lai's name, and that there was, we were told by Dr Teh, no company rule which frowned on acquisition of the company's shares by those occupying senior management posts.

(2) Mr Lai caused or permitted false declarations to be entered in annual reports of PIIL about the extent of his beneficial interest in PIIL shares.

(3) Although Mr Lai and Mr Goh traded in other stocks, the only stocks in which (so they say) they had joint interests were those of companies (PIIL and JCG Holdings) in respect of which Mr Lai held senior managerial positions.

(4) Neither Mr Goh nor Mr Lai kept records which have survived to show their respective input and shareholding.

(5) Neither Mr Goh nor Mr Lai is in a position to identify how many of the PIIL shares sold in 1993 belonged to Mr Lai, and how many to Mr Goh.

(6) Neither Mr Goh nor Mr Lai is able to point to any payment of funds from one to the other which correlates with the proceeds of sale, or the cost, of PIIL shares.

(7) Neither Mr Goh nor Mr Lai can point to any written authority entitling the one to place orders on behalf of the other through any trading account.

(8) The acquisitions of JCG shares in the IPO of 1991 were also acquisitions which did not reveal the fact of Mr Lai's interest in them - a fact which is the more noticeable because Mr Lai dealt openly in other shares in his own name.

(9) There is no documentation which evidences any of the sizeable loans which it is said were made by Mr Lai to Mr Goh.

(10) Even after the date upon which it is said that Mr Goh had sold all his PIIL shares, the balance was not transferred to Mr Lai, but remain in Mr Goh's name.

(11) Given the highly informal nature of record keeping, which Mr Lai and Mr Goh would have us believe they used, one might expect that one trading account would have been used for the sake of

simplicity. In any event, there was no need for more than one trading account. Four were used.

(12) Mr Lai misled the SFC interviewer when asked about his knowledge of Mr Goh's PIIL transactions (see paragraph 6.3.3 above). His retort to this suggestion was that he had assumed that the interviewer was interested only in the November trades and that he, Mr Lai, had by then divorced himself from Mr Goh's sales. Even if that were true - and it is not - Mr Lai knew full well that the SFC was conducting an insider dealing investigation and, if the Tak Fook story was true, he might be expected to have said at once that whatever transactions Mr Goh was engaged upon "during the inquiry period", they were entirely innocent for he, Mr Goh, needed to raise funds for a business venture.

(13) Mr Lai misled the SFC interviewer when asked whether he knew which brokers Mr Goh used to trade in PIIL shares.

(14) Mr Lai misled the SFC interviewer when he said that he had absolutely no interest in the shares of PIIL traded by Mr Goh.

(15) Mr Lai misled the SFC interviewer when he said that in 1991 he had lent $3 million to Mr Goh for Summax and Tak Fook.

We are satisfied so that we are sure that when Mr Lai misled the SFC interviewer in respect of each matter referred to in sub-paragraphs (12) to (15) above, he did so deliberately.

6.7.24 We referred in Chapter 3 (paragraph 3.12) to sizeable payments to and from Mr Leong (from and to Mr Lai) in 1991 and in 1993, and to our interest in ascertaining whether funds thus credited to Mr Lai in 1993 were connected with PIIL transactions at the end of 1992. We address these payments in Chapter 10 below, and although we do not accept the reasons provided by Mr Leong and Mr Lai for the payments, in particular a payment of about $204,000 to Mr Lai in April 1993, we cannot relate these payments to the purchase or sale of PIIL shares, or to the consequences of any insider deal in them.[1]

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[1] See paragraph 10.6.12 below.

6.8 THE OTHER APPROACHES

6.8.1 The analysis thus far takes us to the conclusions that the SFC have been misled by Mr Lai, and that Mr Lai and Mr Goh have also sought to mislead this Tribunal about their interest in PIIL shares, and about the reasons for transactions in those shares in October and November 1992. What that analysis does not do is tell us what the true reasons were. In our search for the answer, we examined trading patterns in 1992 to see whether acquisitions and sales by them (and also by other PIIL connected individuals) appeared connected with price sensitive events; what plans there were for PIIL in 1992; who was privy to such plans, if there were such plans; and whether the late November sales were coincidental with the CEF approach, or whether they were tied to some other approach or anticipated approach, or to the demise of an approach, or to some other event.

April 1992

6.8.2 There were a number of approaches in 1992 with a view to acquisition of a controlling interest in PIIL. The first and second appear to have been in April 1992. On 1st April 1992, a Mr Cheah of Morgan Grenfell Asia Securities (HK) Limited ("Morgan Grenfell") wrote to Mr Lai stating that they had a client who was seriously interested in acquiring a controlling interest, and they wanted to know whether there was an interest in selling that stake. It is not clear to which of the two April approaches that letter was directed, but what is clear from the papers we have is that an approach was made by the Goodwill Group of companies and that it was seriously pursued, and that serious discussions took place. Mr Lai says that the Goodwill approach was rejected or withdrawn after about 8th May 1992.

6.8.3 The other approach in April was, we were told, by Mas Marine Ltd, but there are no papers before us relating to that approach. In that case, the approach was rejected by Dr Teh. Mr Cheah said that he was involved on behalf of Mas Marine Ltd in this approach, but not in the Goodwill approach.

6.8.4 We note:

(1) that on 2nd April 1992 the price of PIIL shares increased by 9.3%, on 3rd April by 8.5% and on 6th April (the next trading day) by 15.68% to close at 59 cents, against 43 cents on 1st April. This trend did not accord with movement of the HSI.

These unusual increases preceded the announcement made on 6th April at the request of the Stock Exchange that PIIL had been approached by a third party "who has expressed interest through a merchant bank in acquiring the controlling interest" in PIIL; and

(2) that although Mr Goh purchased PIIL shares in November and December 1991 and in February and March 1992, he bought none in April and May.

June to October 1992

6.8.5 Then there were three approaches in June 1992:

(1) There is correspondence from a company called A1 Solutions which suggests that their interest was alive, and communicated to Dr Teh , in June. The offer was, according to Mr Lai, rejected by Dr Teh. The premium offered was $43 million.

(2) We have a letter dated 12th June 1992 from Capella Capital Ltd ("Capella") to Morgan Grenfell which on its face suggests that Morgan Grenfell were acting for Dr Teh who was interested in selling his controlling stake in PIIL, and that Capella's client was interested in acquiring that stake. Mr Lai told us that Morgan Grenfell approached him on behalf of Capella. Be that as it may, the Capella interest was rejected.

(3) Lippo

It will be recalled that it was Lippo which had acquired Public Finance in 1991. Quite when they expressed interest in PIIL is not certain, but there is correspondence which shows that research and negotiations were in hand in June 1992. Although there has been some suggestion that the Lippo approach was terminated at the end of July 1992, the documentation which we have shows discussions and related activity on and after 16th June 1992, and there is correspondence in June, July and late August about the proposal. The matter seems to have been on hold in September, and then there is a letter from Mr Lai to PIIL's solicitors dated 9th October 1992 in which he says that "We have been informed by the potential purchasers of Public

International Investments Limited that they will not be proceeding with the purchase. Accordingly we will now treat the matter as closed".

6.8.6 We note that between mid April and mid June 1992 the price of PIIL shares ranged between the middle and low sixties. On 23rd June, however, shortly after the birth of the Lippo approach the price went up to 78 cents per share, at closing, an increase, over the previous day's trading, of 20%. No announcement accompanied the Lippo approach. The only transactions by Mr Goh in PIIL shares from June to September 1992 was a purchase of 64,000 on 10th June, and the sale of 144,000 on 30th September.

6.8.7 There was one further approach before the CEF approach. This was an approach by a company called Butler Capital. It has not been easy to follow from the documentation when this started, and we did not think that we would be justified in pursuing or clarifying the details of this and other approaches any further. There is correspondence which clearly suggests that a proposal had been put or was canvassed before early August 1992, some which hints at even earlier interest, and there is a letter from Mr Lai to Butler Capital dated 22nd September 1992 stating that it was not Dr Teh's present intention to sell.

6.9 SALES IN SEPTEMBER, OCTOBER AND NOVEMBER

6.9.1 It was after the apparent close of the Butler Capital approach, and at about the time that the Lippo proposal ended that Mr Goh recommenced trading in PIIL shares. He sold 144,000 on 30th September; 280,000 on 1st October; 192,000 on 7th October; 104,000 on 9th October; 40,000 on 14th October; 104,000 on 30th October; 80,000 on 10th November; 360,000 on 17th November; and 1,152,000 on 30th November. That is a total of 2.456 million shares. He purchased none in those months. He neither bought nor sold any on or after 1st December until mid March 1993. We note, too, that on 8th October 1992, one day before the letter referred to at paragraph 6.10.5(3) above, Mr Leong sold 104,000 PIIL shares, purportedly on behalf of his mother, the first sale of PIIL shares by him or any member of the Leong family since May 1992.

6.9.2 When Mr Goh started to sell on 30th September 1992, the price of the share was 65 cents. By 30th October it had declined to 49 cents; by 17th November to 42 cents. During the same period, the HSI rose steadily from

5,505 on 30th September to 6,191 on 30th October, 6,422 on 11th November and down to 6,089 on 17th November.

6.9.3 We have earlier noted that there were fairly substantial sales of PIIL shares by someone other than Mr Goh from late September to early November. He is referred to, at paragraph 6.2.3 above, as the second investor. He was well acquainted with Mr Lai, and was also known to Mr Goh. Those sales also began in late September, following a solid block of substantial acquisitions in July and August; and once those sales began, they continued in significant numbers until early November. During that period, there were no purchases by this individual of any PIIL shares. It would be quite inappropriate to identify him, because, for reasons which we explain at paragraph 6.11.3 below, we have not embarked on further examination of transactions in September, October and November 1992; no allegations have been directed at this individual; and it may well be that his sales have the entirely innocent explanation which he has provided. Nevertheless, the fact of the sales by Mr Goh and another and the impact they had on the price of PIIL shares provide some fibre to Mr Murray's evidence, in that a notion that an attempt to suppress price might be under way would have been an understandable notion, regardless of whether there was in fact such an attempt.

6.10 PATTERNS

6.10.1 If one looks for a pattern, it might be said that (save for one minor sale and one small purchase) the cessation of PIIL transactions by Mr Goh between April and September 1992 coincided with the periods when approaches for a stake in PIIL were alive. There had been steady activity by him in the purchase or sale of PIIL shares since about April 1991. So, too, it is noticed that the sales in October and November coincided almost exactly with the apparent absence of negotiations, or of offers in the air, and the sales came to a halt one day before CEF's initial approach. It may be that there is nothing in these suggested patterns, and it is noted that there were no transactions in January 1992, when there was no offer afoot. The question whether there may be something to this pattern rather than mere coincidence lingers longer than otherwise it might, when we note the concurrent selling referred to at paragraph 6.9.3 above, and when we add the fact that Mr Lai has attempted to hide his interest in the sales by Mr Goh, and that both he and Mr Goh have provided a false reason for those sales. We have also noticed that another individual purchased PIIL shares in 1992 in very large quantities indeed, and did so in two blocks, the first in April and May 1992 and then not again until late August,

through September until early or mid October; but none in November and December. In his case, too, no adverse allegations have been made, and his purchases may of course bear the perfectly proper motives he has described.

6.10.2 Mr Mitchell on the other hand, contends that a more obvious reason for the absence of purchases of PIIL shares by his clients, for a significant part of 1992, was the fact that during those periods, the price of the share was high. For reasons explained at paragraph 6.11.3 below, these are not contentions which we have resolved.

6.10.3 A pattern which clearly reveals itself is the significant increase in PIIL transactions at or shortly before all, or almost all, key PIIL events in 1992. In April 1992, there was a surge in trading in PIIL shares before the announcement of 6th April 1992. In June, too when the Lippo negotiations started, there was a surge in trading. In the last week of November, before the announcement of 30th November and before the CEF approach of 1st December, there was a significant increase in turnover. On the day before the announcement of 8th December 1992, the price of PIIL shares soared by 32%. On 14th and 15th December, two days before the announcement on 16th December of a conditional agreement, prices rose 21.5% and 22.9% respectively.

6.10.4 We therefore asked Mr Lai whether there existed within PIIL any procedure by which it might be ensured that at sensitive times, information was not leaked. There was none. Even after the SFC had started its investigation PIIL conducted no internal investigation to ascertain whether or not there had been any leaks. That, said Mr Lai, was "because I did not think there was any leak from Public International". Mr Lai said that he noticed the decrease in share price in September and October, but it caused him no concern, because the share was thinly traded, and therefore liable to dramatic changes. That explanation would be more acceptable but for the steady price maintained since April. In any event, he knew full well why Mr Goh was engaged upon sustained selling in September, October and November. Nor, he says, did the steep and sudden rise in late November cause him to sit up and ask "why?". We do not believe that he was as detached from the late November price movements as he suggests. These movements were unusual ; such as to make outsiders notice and sit up. Mdm Diana Foong Pui-ling (no relation to Amy Foong), a licensed broker and a dealer's representative, told us that on 27th November, PIIL "became ..... one of the ten stocks which registered the highest increase in stock value on that day ..... The price of the stock

continued to rise on 28th and, after seeing the price of the stock going up by such a large margin, I felt that something was in the air but exactly what I didn't know ..... when the announcement came out on 1st December, saying that the company could not think of any apparent reason to account for the increase in the price of the stock, I was even more convinced that an acquisition was forthcoming".[1] The suggestion that Mr Lai was not acutely interested in the late November price rises is a suggestion which we do not accept. His lack of candour in this regard fortifies our conclusion that the Goh (and Lai) transactions in PIIL shares in the last quarter of 1992 were suspect.

6.11 CONCLUSIONS

6.11.1 (1) We are satisfied that the sales by Mr Goh of PIIL shares in September, October and November 1992 were not effected for the reasons which have been advanced by Mr Goh and Mr Lai.

(2) We are satisfied that the sales by Mr Goh of PIIL shares in September, October and November 1992 were not random transactions isolated one from the other, and that they were effected wholly or in part on Mr Lai's behalf, and with his knowledge.

(3) We are satisfied that both Mr Lai and Mr Goh have sought to mislead this Tribunal, and have withheld information in their possession relevant to the reason for the sale of PIIL shares in November 1992.

6.11.2 We have canvassed amongst ourselves possible reasons for these transactions. These include:

(a) a design to drive down the price to render PIIL more attractive an acquisition; but such a device would be unattractive to those wanting to acquire a controlling stake and no more;

(b) a desire to drive down prices with a view to privatization. There is however no evidence of any privatization plan in this case; and

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[1] See transcript, pages 818 and 819.

(c) sales triggered by a conclusion that there would be no take-over by Lippo or anyone else. There is no real evidence, however, of a loss of intention to sell.

6.11.3 We reached a stage when it became apparent that in order to determine what, if anything, Mr Lai and Mr Goh were up to during those three months in late 1992, we would have to embark upon further and detailed investigation to ascertain the purpose of significant flows of money between Mr Lai and Mr Goh, and we would also have to obtain statements and documents from others with whom Mr Lai and Mr Goh had contact, and who also effected substantial purchases and sales of PIIL shares in 1992, and to delve closer into the earlier approaches and negotiations with other offerors in 1992. There was no evidence to sustain any finding that CEF even contemplated an approach to PIIL or put out feelers in or by September or October 1992, and in respect of which it might be suggested that the sales by Mr Goh in those months were connected, so that if anything was "going on" in September, October and November 1992, it may well have its origins in events some time back, or quite outside those upon which we have concentrated, and might in any event not constitute insider dealing. Accordingly, by letter dated 14th December 1994, we notified those acting for Mr Lai and Mr Goh that since the boundaries of an extended investigation would be uncertain, and substantial additional costs would be incurred by extending the investigation further, and that since concentration, in the case of Mr Lai and Mr Goh, on whether there was unlawful trading by them in November and December 1992

> "may prove artificial in that those months may prove to be of ancillary significance ..... and concentration on the CEF approach [may] prove misplaced, [the] Tribunal has accordingly decided ..... that it does not presently intend further to widen or extend its inquiry by seeking more statements and documents designed to shed light on your clients' conduct between 1991 and 1993 in relation to PIIL shares".

6.11.4 The position, therefore, that we have reached in the case of Mr Lai and Mr Goh is that, on the evidence before us, no case of insider dealing by either Mr Lai or Mr Goh in PIIL shares in November or December 1992, has been established.

CHAPTER 7

THE LEONG GROUP: BACKGROUND

7.1 Reference has been made in Chapter 3 (paragraphs 3.3 to 3.6) to the nature of the allegations made against Mr Leong, Amy Foong and Miss Chan, whom, for the purpose of this report, we have called "The Leong Group".

7.2 THE PARTIES

7.2.1 In 1992, Mr Leong was aged 36 years. He was born and has lived most of his life in Malaysia. It was there that he met Amy Foong. The two of them went to England to study. Mr Leong graduated from the London School of Economics with a Bachelor of Science degree. Then he qualified in England as a Chartered Accountant. He worked in England for about two years after qualifying as an accountant.

7.2.2 Amy Foong took a different accounting course in England. She qualified as an Associate Member of the Chartered Association of Certified Accountants. Mr Leong and Amy Foong married whilst they were in England. They returned to Malaysia in 1985. Mr Leong is registered there as an accountant with the Malaysian Institute of Accountants. Upon his return to Malaysia, he worked for about two and a half years with a well known accounting firm.

7.2.3 In 1988, he joined Public Bank as an assistant manager in the accounts department until he was posted to Hong Kong in about August 1990. He told us that whilst in Malaysia he occasionally invested in shares, but did not have a regular broker.

7.2.4 In Malaysia, Amy Foong was employed by a firm of stockbrokers in their accounts department and she, too, according to her evidence, occasionally invested in shares, through a trading account in her name. She has three brothers and one sister, one of whom lives in Singapore and the others in Malaysia. Together with Mr Leong's mother, Mdm Sin Poh-keng, she came to Hong Kong to join her husband in 1990, after he had already arrived.

7.2.5 Upon arrival in Hong Kong, Mr Leong was assistant general manager of JCG Finance. He told us that his function was the general management of JCG. His boss was Mr Lai with whom he worked closely. In 1991, Mr Leong was promoted to the position of general manager, JCG Finance, and that is the post he occupied in 1992 and 1993. He was also a director of JCG Holdings, JCG Securities and JCG Nominees Limited, and was a registered investment adviser for Public Bank. In the course of the hearings, Mr Leong was relocated to Malaysia. He did not hold, nor has he subsequently held, any office in PIIL.

7.2.6 In November 1990, Amy Foong began work in Hong Kong in the accounts department of Dragoco.

7.2.7 Miss Chan is now aged 24 years. So she was aged 22 years in December 1992. She is not married, and she lives at home with her father, mother and a brother, and she has another brother and a sister who are now, and were in 1992, married and living elsewhere. In December 1992, Miss Chan worked as a clerk with Dragoco. Before that she was a laboratory assistant there, and is now a marketing coordinator with the same company. She told us that, in 1992, she was earning about $7,000 per month, and that her family depended on her financially to the extent that she made contributions to them from her salary.

7.3 TRADING

7.3.1 We have exhibited to this report, as Appendix IV, a table which was used during our hearings. It covers the period from September 1991 to June 1993, and seeks to show, in more digestible form than a narrative, purchases and sales of PIIL shares through the trading accounts of Amy Foong, Miss Chan and Mr Leong in that period, the cost of such purchases, and the proceeds of sales, and certain flows of funds between these three individuals at material times. It shows also some banking entries. It shows, as well, the price of PIIL shares on any given day, and there is also inserted a short description of certain events. (To the extent and for the reasons specified in the Appendix, the table is not exhaustive of all share transactions by these three, or of all entries in their bank statements, during the period covered by the table. Furthermore, Some entries which appeared on the original table have been omitted or amended.)

Mr Leong's trading

7.3.2 In about December 1990, Mr Leong opened a trading account with London and Pacific Securities. He had already purchased 48,000 PIIL shares before he opened this account. He first bought PIIL shares through this account on 21st December 1990, but his purchases were spasmodic: 16,000 in December 1990; 248,000 in May 1991; 104,000 on 3rd September 1991; and 48,000 on 9th December 1991. He also sold some PIIL shares - 64,000 in April 1991 and 248,000 on 1st August 1991.

7.3.3 These do not represent the sum total of Mr Leong's trading activities since he came to Hong Kong, although until 1992 they represented the bulk. In March 1992, Mr Leong opened a trading account in his own name with JCG Securities. This was on or about the date upon which JCG Securities opened for business, and we see that Mr Lai and Mr Goh opened their own trading accounts with JCG Securities during the same week. We know, too, that on 12th March 1992, he acquired through this account 40,000 PIIL shares. In June 1992 he sold some Citic Pacific shares, and bought 6,000 Liu Chong Hing shares. In July he sold Guoco Group stocks, and bought Lee Hing and Summa Proket shares, and ITC Holdings warrants. In August he purchased Chow Sang Sang, Stelux, Hutchison Whampoa and Dairy Farm shares. In September, he acquired Winton Holdings, Hang Lung Development, and Sun Hung Kai shares. In October there were a number of sales through this account, but in November he traded frequently and in large amounts. In December, by contrast, he was quiet, selling some of his holdings. It is noteworthy that March 1992 was the last time that he acquired PIIL shares through any of his trading accounts.

Amy Foong's trading

7.3.4 It is relevant to contrast Amy Foong's trading activity. She did not open a trading account in Hong Kong until 25th March 1992, and when she did so, it was with OCBC Securities (Hong Kong) Limited ("OCBC"). Her first acquisition through her own trading account was the purchase on 28th April of 20,000 Lippo shares. We say "through her own trading account", because her case is that some of the PIIL shares which her husband had purchased before April 1992 through his own trading account were purchased by him for her. Now this allocation was not, according to her, gratuitous on the part of her husband, because, she says, she was in the habit of placing or

depositing her money with him, so that as time passed she was in credit with Mr Leong. So, of the 104,000 PIIL shares which he bought in September 1991, 48,000 PIIL shares were treated by them as belonging to her. Mr Leong also told us that the balance of the 104,000 shares was purchased by him for his mother, Mdm Sin. In March 1992, Mr Leong purchased another 40,000 PIIL shares, and these, we were told, were also earmarked for Amy Foong. So by April 1992 she is said to have held 88,000 PIIL shares. No shares of any other kind were bought for Amy Foong in this way.

7.3.5 Amy Foong said that she felt constrained by this mode of acquiring shares, and that that is why she opened her own trading account. We see from Appendix IV that her new found freedom to trade in her own account did not translate itself into much activity, either in terms of frequency, or choice of stock. During the whole of 1992, she acquired in her own name 20,000 Lippo shares in late April (at a cost of $33,369), and she sold them three days later. In early May, she sold 88,000 PIIL shares (the ones that had allegedly been earmarked for her under the old arrangement). And then nothing happened until December 1992, when she acquired, of all the shares that there were to acquire, 120,000 PIIL shares (or 344,000 if shares bought in Miss Chan's name were purchased on Amy Foong's behalf). It is, as we know, the acquisition of these shares in December that are the subject of the allegation of insider dealing as far as concerns the Leong Group.

7.3.6 There was, according to Amy Foong, no magic in the fact that, the Lippo shares apart, PIIL were the only shares acquired by her that year. They happen to have been recommended by her husband the previous year - although why, she cannot be sure, for she says that she had no idea that he was connected in any way to PIIL; and, as for the December acquisitions, that, she said, was pure chance, in that she bought on the strength of a rumour that she had overheard in a hairdressing salon the day before (1st December). Although she knew none of the ladies who were talking about the shares, and although she had no discussion of any kind with her husband about the matter, she bought.

7.3.7 After 1992, Amy Foong's trading activities took on a life of their own. She and four other ladies at Dragoco began to trade in shares fairly regularly, more often than not in the same shares and warrants as each other, and at about the same times. From the records we have, their trading in shares appears to have come to an end in about September 1993. The banking records

we have also show that, in and after 1993, fairly considerable sums passed between them.

7.3.8 Until March 1993, Amy Foong had no current account in Hong Kong. We were sceptical when this was first suggested, for which reason we caused inquiries to be made, and we find as a fact that until March 1993, there was no current account in her name in Hong Kong. She then opened a current account at the Tai Koo Shing branch of the Hang Seng Bank. The absence of a current account is important, because it is quite clear that, on a number of material occasions, Miss Chan's current account was used by Amy Foong and by Mr Leong as a channel through which to pass funds to each other or to pay for shares, or to receive the proceeds of sale of shares.

Miss Chan's trading

7.3.9 Miss Chan's trading experience was significantly more limited in 1992 than even that of Amy Foong. Given Miss Chan's age, and their respective histories until that time, that is not surprising. Miss Chan was the youngest of the five ladies who were employed by Dragoco and bought and sold shares in 1992 and 1993. The five to whom we refer are Amy Foong, Miss Chan, Ms Chik Po-fong, Ms Ada Ip and Ms Susan Yung. At the time of the IPO of JCG Holdings shares in 1991[1], Ms Chik, Ms Ip and Ms Yung each acquired JCG shares. Miss Chan did not acquire any, because she was then too young to subscribe, and her application was, accordingly, rejected. In July 1992, Ms Chik, Ms Ip and Ms Yung opened trading accounts in their own name with JCG Securities, because they wanted to sell the shares acquired through the IPO. Miss Chan did not open an account with JCG Securities until March 1994.

7.3.10 On 7th December 1992, however, she opened a trading account with OCBC with the benefit of Amy Foong's introduction, and there were acquired, purportedly for her, on the same day, 120,000 PIIL shares. She acquired more PIIL shares in the days that followed - a matter to which we shall shortly return.

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[1] See paragraph 6.7.4 above.

Mdm Sin

7.3.11 Mdm Sin Poh-keng (Mr Leong's mother) also had a trading account with JCG Securities. It was opened on 30th April 1992. According to Mr Leong, it was an account operated exclusively by him, but for his mother's benefit. She knew that that was what was happening, and was content to leave matters to him. The records show that the first acquisition through this account was 24,000 JCG (Holdings) warrants on 1st May 1992. Mr Leong told us that he was grateful to his mother for her past sacrifices to ensure his education, and that he was building for her a nest egg. Another 160,000 JCG warrants were acquired for her later, in May. She already had JCG Holdings shares, which Mr Leong said he had acquired for her in September 1991 at the time of the JCG initial public offer. But, as we see from the ledger reports in our possession, he started, in the course of 1992, to sell those shares, and to buy warrants instead.

7.3.12 One particular sale must be mentioned, namely, that on 8th October 1992 when he effected the sale, purportedly on behalf of his mother, of 104,000 PIIL shares. They were sold for 60 cents per share. In the same month, and in November 1992, there were purchases effected by him on his mother's trading account of 280,000 JCG Holdings warrants in the sum of $340,922. No stocks were purchased or sold in that account in October or November other than these JCG warrants and the 104,000 PIIL shares. By 30th November, the only stocks held in that account were 272,000 JCG Holdings warrants, a marked distinction from the variety held by Mr Leong that month in his own trading account. He was content with the lack of diversification in his mother's account because, he said, he thought the warrants to be a safe investment, for he knew the company, and the warrants were trading at par or even at a slight discount to the share price.

7.4 Mr LEONG AND PIIL

7.4.1 We know that although Mr Leong held no official or permanent office of employment with PIIL, he nevertheless worked with or to Mr Lai in relation to PIIL affairs during 1992. Work on PIIL was not part of Mr Leong's daily diet, but from time to time he was asked by Mr Lai to work on PIIL related matters. In 1991, he told us, when Public Finance was acquired by Lippo, he was involved in the spadework. He was involved in at least the Goodwill and Mas Marine approaches (he told us so), and the Lippo approach

(the documents show it). For these exercises he had to calculate NAV, check documents for accuracy, and so on.

7.4.2 The fact that PIIL was a likely target for an approach or approaches in 1992 was discernible by market watchers. Mr David Wong, for example, seemed to recall rumours from April until November 1992 about possible take-overs of PIIL. Mr Allan Murray, dealing director of Jardine Fleming Broking Limited, had not heard about approaches earlier in 1992, but he said that it was "not difficult to identify PIIL as a prime target for parties wishing to acquire a backdoor listing", and he and one or two of his clients acted upon that assessment. We know, too, that when CEF representatives met Mr Lai on 2nd December to discuss a possible take-over, Mr Leong was present. He was also present at the meetings on 7th December, when the CEF representatives came to JCG's office to put forward their serious proposal; indeed, it was Mr Leong who briefed CEF about the structure of PIIL and its subsidiaries. There is every reason, therefore, to believe, and we so find, that through most of 1992 Mr Leong well knew that Dr Teh was interested in selling his share or a controlling interest in PIIL.

7.5 MARKET GLOOM AND THE MAINLAND FACTOR

7.5.1 The political scene in Hong Kong in October, November and December 1992 was dour. To this we have already referred in paragraph 2.7 above. We have also referred to the dramatic reaction of the market to the announcement, on 24th October 1992, of the agreement by Shougang, Cheung Kong and CEF Holdings to acquire Tung Wing[1]. Tung Wing was the first Mainland acquisition of its type, in that Mainland enterprises were seeking a listing in Hong Kong through the purchase of a shell company. On 17th November 1992, Mr Zhu Rongi remarked that the PRC might not necessarily abide by the Sino-British Declaration. The HSI plunged about 200 points. On 30th November, a suggestion emanated from the Mainland that the validity of contracts, leases or agreements, signed or ratified without the approval of the PRC would not be honoured after 30th June 1997. The HSI crashed further. The mood of the market was, according to one expert witness, "particularly black". In Chapter 19 below, we address an issue raised on behalf of Mr Don Lau, but applicable to the cases of all who are suspected of insider dealing in PIIL shares in December, namely, whether information that the offerors were

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[1] Paragraph 2.8 above.

or included Mainland enterprises constituted price sensitive information of the kind envisaged by section 8 of the Ordinance. We find, for the reasons we there provide, that it did. In the context of a black mood, the fact of an acquisition of a Hong Kong company by a Mainland enterprise (especially, though not only, a state or major enterprise), was a prospect which excited the market. "China fever" was at large, and there was in November an expectation that other such acquisitions were in the air or likely. Any take-over by a Chinese enterprise would, we were told and we accept, give investors confidence in the future of the target company. The involvement of Cheung Kong would reinforce that confidence and would in itself be price sensitive information. Mainland acquisitions of local companies would, in the immediate aftermath of the Tung Wing take-over, suggest the development of a trend.

7.5.2 Quite apart from China fever, we readily conclude - and no serious contrary suggestion has been made - that the fact of an approach by a third party, especially by one that is taken seriously by the intended target, was relevant information, as was the making of a serious proposal, and the making of a formal offer.

7.5.3 In the week preceding 1st December, the price of PIIL shares moved up. On 23rd November, it closed at 42 cents, having steadily fallen throughout the preceding two months. On 26th November, volume traded was 688,000, higher than at any time since early July, and on 27th November, turnover was 2.128 million, and the stock closed at 53 cents. On 30th November there were 115 deals. That day, PIIL announced that there had been no third party approach to account for the unusual movement in PIIL shares.

CHAPTER 8

THE LEONG GROUP: 1st TO 6th DECEMBER 1992

1st DECEMBER

8.1 It is agreed by all witnesses to the event that Mr David Wong of CEF telephoned Mr Lai at about 4:30 pm on 1st December 1992, and that he asked Mr Lai whether a sale of Dr Teh's controlling interest was possible. In his statement to the SFC, and in his oral evidence, Mr Lai said that his immediate reaction was negative, to the effect that Dr Teh was not interested in selling; but that Mr Wong pressed him, suggesting the possibility of a joint venture, and that he was persuaded to talk to Dr Teh. There is no suggestion in Mr David Wong's evidence of reluctance by Mr Lai, but it is not necessary for our purposes to determine this difference.

2nd DECEMBER

8.2 The evidence was that at about 12 noon or 12:30 pm, the following day, 2nd December, Mr Lai telephoned Dr Teh, who was in Malaysia, and told Dr Teh about his conversation the previous day with Mr Wong. The name CEF was familiar to Dr Teh, for CEF had been the merchant bank which introduced JCG to Public Bank in 1989. Although Dr Teh had rejected some approaches in 1992, others had been entertained. In the case of CEF, he told Mr Lai to hear what they had to say "..... because the CEF name is known to me"[1]. So Mr Lai called Mr David Wong, and they arranged a meeting for about 4 pm that afternoon. The venue was JCG Finance head office, which was at Gloucester Tower, the Landmark. The meeting was attended by Mr Joseph Yu, Mr Francis Chang and Mr David Wong of CEF, and by Mr Lai and Mr Leong for Dr Teh. There, CEF said, or "confirmed"[2], that their client wanted 51% control of PIIL, and Mr Lai said that in such an event, Dr Teh would require a premium of $60 million. That was a figure repeated by Dr Teh to the men from CEF when he met them the following day in Kuala Lumpur. Whatever mention there may have been of a joint venture, it is clear from the evidence that CEF's proposal was fully within Dr Teh's and

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[1] See transcript, page 339.

[2] See Answer 14, Mr Lai's interview with the SFC, page 132 of the documents bundle.

Mr Lai's contemplation or expectation before the meeting on the afternoon of 2nd December. (Even so, for present purposes, a joint venture in the sense of joint control, still represents a change of control, and there can be no question but that Mr Lai fully expected the proposal to envisage a change in control.)

8.3 THE FIRST AMY FOONG PURCHASE

8.3.1 On 2nd December, and before that meeting took place, Amy Foong purchased 120,000 PIIL shares for the sum of $65,934 through her trading account with OCBC. This was the first time she had purchased shares of any kind since April 1992.

8.3.2 The only PIIL shares purchased by OCBC on 2nd December were the 120,000 for Amy Foong. So, by examining the Stock Exchange's activities report for PIIL on that day, we can glean the times at which bids were entered on Amy Foong's behalf. The Stock Exchange reopened for trading at 2:30 pm. The first bid for PIIL by OCBC was entered at 2:47 pm at 50 cents; then increased to 52 cents at 3:13 pm; and then to 54 cents at 3:19 pm. The record shows that 8,000 PIIL shares were purchased for 54 cents at 3:19 pm; for 40,000 54 cents at 3:22 pm; 32,000, again at 54 cents, at 3:28 pm; and 40,000 for 56 cents at 3:47 pm.

8.3.3 The person at OCBC with whom Amy Foong dealt was Ms Joyce Lean Siew-kheng ("Joyce Lean"), who was employed by OCBC as a marketing executive. Her evidence was that Amy Foong placed a number of orders that day as the price went up, and Ms Lean's practice was to place bids as soon as possible after instructions were given. Amy Foong had not given OCBC discretion to order on her behalf, so that each increased bid was at Amy Foong's express behest. Before any of the orders were placed, Ms Lean checked first with her boss, Mr Gan, to ascertain whether it was in order to effect transactions on Amy Foong's instructions, because she had not previously dealt with Amy Foong. Quite when that call was made, Ms Lean could not say - whether earlier that day or on another day - but Amy Foong's call to place a bid for PIIL was not her first call to Ms Lean. What is also established is that there was a series of bids by Amy Foong before the first transaction was effected - in other words, there were sellers in the queue at an ask price a cent or two above the prices at which Amy Foong bid, and although Amy Foong from time to time increased her bid, she did not buy instantly at whatever price was being asked, and it took something like half an hour

between the first bid and the first purchase. The point which Mr Leong and Amy Foong make in this regard is that Amy Foong did not display an attitude of urgency or of confidence that one might expect from one dealing on inside information. Our attention is also directed to the fact that there is clear evidence that before the call which triggered the first bid, there had been another call from Amy Foong that day, or even before, which prompted Ms Lean to clear matters with Mr Gan. Mr Leong placed a series of questions to Ms Lean the answers to which demonstrated that we should take note of the possibility of some delay between the receipt of the client's instruction, and the entry of the bid, and in particular that the time indicated as the time of the transaction may very well be some time after the transaction was effected, for the time specified on the record would be the time that the transaction was keyed in by the selling broker. There is a grace period of about 15 minutes - and sometimes, for example if the day is very busy, that period is extended. It was also possible that, on occasions, a client's order would not be queued if it was too distanced from the ask price.

8.4 WHAT WAS REVEALED ON 1st AND 2nd DECEMBER

8.4.1 Later that afternoon, at about 4 pm, there was held the exploratory meeting at JCG headquarters. Much investigation was expended in the course of this Inquiry in an attempt to ascertain what was said at that meeting and, in particular, whether CEF revealed the background or identity of those for whom CEF was acting.

8.4.2 Since the words "background" and "identity" have throughout the evidence been used by the parties to connote two separate degrees of particularity, we shall use those words in this report even though they are both directed at shades of identity. "Identity" has been used by witnesses, and in questions put, and in submissions, to connote the names of the offerors, or some of them; such as Shanghai International, or Cheung Kong. "Background" is intended to convey something more general, such as "Mainland enterprises" or "China enterprises".

8.4.3 What, if anything, was revealed at the meeting in the afternoon of 2nd December about the approach, the contemplated offer, or the background or identity of the parties is of no real consequence to the allegation that earlier that day the trading by Amy Foong constituted insider trading. To decide that allegation, all we need to know is whether she, and/or Mr Leong, then knew

about the approach or expression of interest on 1st December, and/or about the earlier PIIL-related events of 2nd December (including the fact of Dr Teh's interest in the approach, and the fact that a meeting was arranged for later that afternoon with a reputable merchant bank, CEF), and, if so, whether those pieces of information constituted relevant information, whether Mr Leong and Amy Foong knew that information to be relevant and, if so, to what use, if any, they put that information. What was said at the meeting on 2nd December and on the days that followed is, however, important to the determination of the later question, namely, whether Miss Chan, Amy Foong and Mr Leong were in possession of relevant information when deals in PIIL shares were effected in Miss Chan's name on 7th, 9th and 10th December.

8.4.4 Mr Leong told the SFC interviewer that he first became aware of the possible acquisition of PIIL on 2nd December at the afternoon meeting, which he had been asked to attend by Mr Lai, who had given no hint of the purpose of the meeting, save that it was a meeting with a merchant bank, and that at the meeting CEF made no mention of the identity or background of their clients; nor did he, Mr Leong, ask. Nor, he said, could he remember whether the price was discussed. A meeting was arranged for the CEF people to see Dr Teh the following day in Kuala Lumpur. In his oral evidence before the Tribunal, Mr Leong said that he could no longer recall conversations or specific details of conversations. He said that he could not recall when he was asked to attend the afternoon meeting - it was probably after lunch. He did not ask Mr Lai what the meeting was to be about. But he was sure that nothing was said about the identity of the offeror. He says that he remembers clearly that the first time the identities were disclosed was on 7th December. He could not, however, recall whether or not anything was said about the "nationality" of the offeror. He added that Mr Lai asked questions at the meeting of 2nd December, but he could not recall what questions.

8.4.5 Mr David Wong's evidence was that he thought it likely that at the 2nd December meeting, CEF was asked about the identity of the purchasers and that background information might have been disclosed. It was possible that something was said about where the purchasers came from, that they were of strong financial background, and Tung Wing might have been cited as an example.

8.4.6 Mr Francis Chang said that it seemed to him logical that the prospective vendor would have wanted to know something about the offeror,

for otherwise it would have been difficult to proceed - it may not otherwise have been sufficiently attractive to the vendor. So, too, did he believe that CEF had "given out some background information about the purchasers at our very first meeting with Mr Lai and [Mr Leong]. Otherwise, logically speaking, Mr Lai would not have arranged a meeting for us to meet with his chairman if he didn't know anything about the purchaser"[1].

8.4.7 Mr Joseph Yu told us that he thought it quite likely that they would have mentioned "the PRC factor". He also said this:

> "We left the meeting with the impression that we could continue the discussion and the possibility of going further was very high and probably that's the reason we asked to pay a courtesy call to the chairman, [who] is the controlling shareholder".[2]

8.4.8 Mr Yu referred in his evidence to the capacity in which he attended the meeting on 2nd December. By an agreement of 23rd November 1992, China Venturetech, Shanghai International, and Cheung Kong agreed jointly to acquire a listed securities company in Hong Kong, and to appoint CEF Capital as their financial consultant. The agreement stated that the "beneficiaries of [Cheung Kong's] shareholding in the [target company] include the subsidiary and associated companies of [Cheung Kong] such as CEF Holdings Limited and Shenzhen Concord Enterprise Ltd". In a statutory declaration Mr Yu said that he attended the meeting representing CEF Holdings. He was asked whether that capacity was made known to the participants in the meeting and he replied that he could not exactly recall, but he thought so. Indeed, he had handed over his business card. This distinguished him from Mr Chang and Mr Wong who represented CEF Capital. It was put to Mr Yu that if Mr Yu's role had been made clear it was likely that it would have carried an implication that Cheung Kong was involved as an investor; to which he answered:

> "..... definitely in my mind, at least, I represent ..... CEF Holdings, and most likely that kind of impression was related to the people in the meeting".[3]

8.4.9 He went further and suggested that if he were asked to make a judgment about his representation on 2nd December (and 3rd December when he met Dr Teh), his answer would be that he represented that "the CEF

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[1] See transcript, page 471.
[2] See transcript, page 1038.
[3] See transcript, page 1058.

Holdings [and] Chinese parties would involve in the consortium. That would be probably the most likely scenario"[1]. He also thought it likely (the word he used is "logical") that a joint venture - meaning that the outgoing majority shareholder would retain some stake - was discussed.

8.4.10 Mr Yu added that there was a strong likelihood that mention was made of the Tung Wing transaction, and the effect of his evidence was that Mr Lai and Mr Leong were told by him that the consortium interested in PIIL had a Chinese background and involved CEF.

8.4.11 Dr Teh's evidence, on the other hand, does not support the suggestion that on 2nd December there was revealed any background information about the prospective purchasers. He told us that when Mr Lai called him on 2nd December after (or during) the meeting with CEF, no names other than CEF were mentioned - he, Dr Teh, had been interested only because CEF was a name known to him - although he thought some indication had been given that they were big or strong parties. As far as the meeting of 3rd December is concerned, he said that nothing was said to him about the background or identity of the purchasers, even though a joint venture was proposed. Since they mentioned a strong and reputable party and since his investment would be reduced to about 10%, he "preferred to leave the management and control to this new group". The question of remaining on the board was raised definitely after 3rd December, and it was likely that it was raised before the 7th December and that at or by the time it was raised the names of the offerors were or had been revealed.

8.4.12 Mr Lai told the SFC that he could not remember whether he told Mr Leong the purpose for which the meeting of 2nd December was arranged. He also said that he could not recall what he told Mr Leong about the meeting, and that it was not necessarily the case that he briefed Mr Leong about its purpose, for he, Mr Lai, knew all there was to know about the company, and that there was nothing to discuss at that stage with Mr Leong.

8.4.13 Mr Lai said that at the meeting the CEF people talked of PIIL carrying on in the same line of business, and said that they did not mind Dr Teh retaining some stake. After the meeting in Kuala Lumpur, he liaised with Dr Teh and "discussed the matter with [Mr Leong]". In his oral evidence,

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[1] See transcript, page 1063.

he said that only "big parties" were mentioned on 1st December. As for 2nd December, he said that "definitely the background or the identity of the parties were not disclosed", nor was anything said to lead them to understand that Mainland interests were involved.

8.5 ANALYSIS

8.5.1 Mr Lai and Mr Leong worked closely together in the same office and had done so for some time. Theirs was not an aloof relationship between an employer and a lowly subordinate. The approach by CEF on 1st December was not an every day occurrence, nor was it an every day occurrence that, with Dr Teh's approval, a meeting with CEF was arranged on 2nd December to explore the possibility of a take-over. Mr Leong had been brought in to PIIL take-over approaches earlier that year and had played an active role in them. Mr Leong was asked to attend the meeting because, no doubt, Mr Lai knew that if matters proceeded further, Mr Leong would play an active role again.

8.5.2 We do not accept that in those circumstances Mr Leong was given no advance notice that Mr David Wong had called on 1st December to ask if a sale of a controlling stake was possible; was not told before the meeting that Dr Teh had given the green light to further discussion; and was not told before the meeting on 2nd December the subject matter of the proposed meeting. Whilst we cannot be satisfied to the requisite degree that on 1st December Mr Leong was informed that Mr David Wong had called that day, we are satisfied that on 2nd December, he was told by Mr Lai, or already knew, that Mr David Wong had called the previous day and for what purpose, was told by Mr Lai that Dr Teh sanctioned a meeting, that a meeting had been arranged for that afternoon, and the purpose of the meeting. The reality of the matter dictates that Mr Leong was aware of these developments at the latest shortly after the call to Dr Teh, and we so find. In connection with this issue, we have in the course of our deliberations noticed that there is no express reference to the time at which Mr Lai telephoned CEF after the call to Dr Teh. That no doubt is because the clear sense of the descriptions of the telephone calls and the meeting of 2nd December was, and the inherent probability of the matter is, that the call to Mr Wong was made directly after the call to Dr Teh.

8.5.3 The issue can, however, be addressed from another perspective. At paragraph 10.7.5 of this report, we illustrate why it is that we conclude that the transaction by Amy Foong on 2nd December was no coincidence, and why

it is that we reject the suggestion that it was prompted by rumour overheard at the hairdressers, or anywhere else. It seems to us that it is as clear as can be that the fact that she traded that day of all days in PIIL shares can only reasonably be attributed to the receipt of information from her husband. What information was that likely to have been? It is highly improbable that he would have counselled her to buy PIIL on the basis that he had heard the same rumour which the public had heard, for rumour had been circulating since about 27th November 1992, and Mr Leong would have been more alert than the average investor to events touching upon PIIL's fortunes. The trading was effected by her in the afternoon of 2nd December. That fact sits more comfortably with the receipt of significant information shortly before or during the lunch hour, than with reliance on rumour or information received at a hairdresser's salon the previous day.

8.5.4 We also think it highly unlikely that the meeting of 2nd December progressed to a call to Dr Teh to arrange a meeting in Kuala Lumpur the following day without revelation of at least some background about the interested parties. Mr Leong told us that Mr Lai asked questions, but that he, Mr Leong, could not recall what questions were asked. If Mr Lai asked questions, as indeed he must have, what questions could he possibly have asked if they did not include some search for the identity or background of the prospective offerors? If a joint venture was canvassed - and all are agreed that it was - on what possible basis could interest be maintained or furthered without knowing something about the composition of the parties to that venture? If the possibility of going further was "very high" after the meeting on 2nd December, how could that stage have been reached without disclosure about the background of the offerors? We know, too, from other evidence, that on 4th December CEF were so convinced that a deal was "in the bag"[1] that Mr David Wong instructed their solicitors to draft a sale and purchase agreement. We are quite satisfied that matters would not have reached such a stage unless the controlling shareholder had some idea about the background of the offerors. We think that Dr Teh's recollection about this particular issue is mistaken; for a man as busy as he, and with interests as extensive as his, that is not surprising.

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[1] Our phrase.

Finding

8.5.5 We find that at the meeting of 2nd December, Mr Lai and Mr Leong discovered that the bidders were or included Mainland interests, and given the timing of the approach (a matter of weeks after the Tung Wing deal), investor reaction to that deal, and the fact that its attraction included the fact of a significant local input, and Mr Yu's evidence, we also find that Tung Wing was referred to not only in the context of explaining that CEF Capital had a recent successful advisory track record, but also as conveying a suggestion that the consortium in the proposed acquisition had a similar background As for CEF Holdings, Mr Yu might well have introduced himself as representing CEF Holdings, but we are not satisfied that he told Mr Lai and Mr Leong that CEF Holdings was one of the purchasing consortium, or that that is what Mr Lai and Mr Leong assumed from what they were told. There is no evidence that express reference was made to Cheung Kong at that meeting, and it would, we think have been odd to omit mention of Cheung Kong, but to include mention of CEF Holdings as a bidder.

8.6 3rd TO 6th DECEMBER 1992

(1) 3rd December

8.6.1 We have discussed the fact of the meeting with Dr Teh on the afternoon of 3rd December and what was revealed by the time of that meeting. Whatever was the precise content of the conversation in Kuala Lumpur, enough was said or conveyed to make the CEF people confident that a deal would go through.

8.6.2 On 3rd December 1992, Mr Leong wrote a cheque in favour of Miss Chan in the sum of $120,000, and himself took it to the bank to pay it in. It is common ground that part of this sum was utilised to pay for the 120,000 PIIL shares that had been purchased on 2nd December. Mr Leong and Amy Foong told us that Amy Foong did not tell him why he was asked to pay that money to her. Miss Chan told us that she did not know on or by 3rd December that her bank account was to be, or had been, credited with that sum.

(2) 4th December

8.6.3 On 4th December 1992, the price of PIIL shares ranged between 51 and 58 cents. It closed the day at 58 cents, namely, two and four cents higher than the two prices at which Amy Foong had acquired PIIL shares on 2nd December. It is on this day that, according to the evidence of Amy Foong and Miss Chan, Miss Chan first expressed interest in buying PIIL shares herself.

8.6.4 4th December is also the date upon which Miss Chan signed a cheque, the details of which had been filled in by Amy Foong, in the sum of $65,934, payable to OCBC for the PIIL shares acquired on 2nd December by Amy Foong.

8.6.5 On the same day, 4th December, the CEF men flew to Singapore and whilst there they telephoned Mr Guan Jin-sheng, the Chairman of Shanghai International, told him what had thus far transpired, and Mr Guan agreed that PIIL was to be preferred over Ong Holdings as a target, said that the $60 million premium was acceptable, and instructed CEF to proceed on behalf of the Chinese side to make an offer. Mr David Wong contacted CEF's solicitors in Hong Kong, and instructed them to draft a sale and purchase agreement.

(3) 5th December

8.6.6 On 5th December 1992 (a Saturday), the CEF representatives returned to Hong Kong from Singapore.

8.6.7 We have been told, and we accept, that after 3rd December, and before 7th December, Mr Lai liaised about this matter with Dr Teh and Mr Leong.

CHAPTER 9

THE LEONG GROUP: 7th TO 16th DECEMBER, AND AFTER

7th DECEMBER

9.1 During the week leading up to Monday 7th December, the price of PIIL shares had undulated. On 1st December, when the press carried the announcement by PIIL which had been issued on 30th November, and when the media carried the reports of the declaration which emanated from Beijing that contracts would or might not be honoured after June 1997, the HSI dropped 5.52%, and PIIL shares 10.91%. On 2nd December, the HSI dropped again, by about 1%; the price of PIIL shares rose 12.24%. On 3rd December, the HSI fell by 8%, and the price of PIIL by 7.27%. On 4th December the HSI rebounded by 5.28%;. PIIL fared even better - it rose 13.73%.

9.2 On Monday, 7th December 1992, the rumour mill appears to have been fully operational so far as concerned PIIL. 93 deals were effected, and the price rose by 32%, closing at 77 cents by the time trading was suspended at 2:51 pm.

9.3 During the morning of 7th December, Francis Chang approached Mr Yu to notify him that the market price of PIIL shares was rising, and that if they were to proceed, PIIL should be informed formally that CEF intended to make a serious proposal. Mr Yu contacted Mr Li Ka-shing to tell him that PIIL had been identified as the target, and Mr Li agreed, on behalf of Cheung Kong, to participate in the acquisition of PIIL. In the course of that day, Mr Chang and Mr Yu of CEF also liaised with their Mainland clients.

9.4 At about noon or 12:30 pm, Mr Wong telephoned Mr Lai and told him that a serious proposal would be forthcoming, and it was agreed that the two sides would meet. The nature of the conversation was such as to lead Mr Lai to believe that the CEF representatives would be on their way in the next ten minutes or so, but although he waited for them, they only came at about 2:15 pm. Against the background of the events beginning 1st December, there could not have been any doubt but that when CEF announced on 7th

December that it was coming over with a serious proposal, that was understood by Mr Lai (and also by Mr Leong, when he was told of it) to mean a serious proposal for the acquisition of a controlling interest in PIIL; and that is what we find. All references in this report to that serious proposal are references to the proposal by CEF on behalf of its clients to acquire a controlling interest in PIIL.

THE 2:15 pm MEETING

9.5 At about 2:15 pm that afternoon - times given for the meetings on 7th December are not drawn from any diaries or contemporaneous records, but are estimates - there began a meeting at JCG's offices between Mr Chang and Mr Wong of CEF and CEF's solicitor, Ms Elizabeth Hardy, on the one hand, and, on the other, Mr Lai and Mr Leong. It was the meeting at which CEF outlined its proposals. Mr Lai told us that he could not recall whether or not he had waited with Mr Leong for the arrival of the CEF officers. Be that as it may, Mr Leong was at the 2:15 pm meeting.. For the purpose of the issues to be decided in the case of the Leong group, it is not necessary to determine with precision what was revealed at that meeting about the bidders, for both Mr Lai and Mr Leong agree that at least background which revealed the China connection was provided, and Mr Lai goes further and says that names were revealed. Mr Leong preferred to rely on his statement to the SFC in June 1993, when he told the interviewer that he was sure that the detailed background (for example, that one of the purchasers was the biggest securities company in Shanghai) was revealed, and he also told the interviewer that the names of CEF Holdings and Cheung Kong were revealed.[1]

Contacting Dr Teh

9.6 Mr Lai informed us that it was important for him to have the background of the bidders, because he was trying to secure a seat on the board for Dr Teh, and Dr Teh would, naturally, wish to know with whom he was to serve as a member of the board. What interested Mr Lai in this regard was that Cheung Kong had been mentioned by CEF as an interested party, and it would, thought Mr Lai, be useful for Dr Teh to become acquainted with Cheung Kong. He recalls as well - and his evidence in this regard rang true - that he, Mr Lai, left the room in which the meeting with CEF was held to speak to Dr Teh and

[1] Note paragraph 15.5.2 below for our finding that at the 2:15 pm meeting the actual identities of the bidders and further particulars, or descriptions, of the Mainland parties were divulged.

to other directors. He is not sure whether Mr Leong also left the room, although it was possible, though not likely, that work on the figures had to be started and, if so, that Mr Leong left for that reason. Mr Lai was quite certain that he spoke to Dr Teh only after the market had opened at 2:30 pm - one of the reasons for the call to Dr Teh and the other directors was to secure their agreement to seek a suspension of trading. Trading was suspended at 2:51 pm. We note the evidence of Dr Teh, to which we have referred at paragraph 8.4.11 above, that the question of a seat on the board was likely to have been raised before 7th December. None other has made that suggestion, and the weight of the evidence is that it was first canvassed between the negotiating parties on 7th December.

After the 2:15 pm meeting

9.7 After the 2:15 pm meeting, there were other meetings and briefings at the JCG offices. Mr Don Lau of Nikko was called in by Mr Lai and briefed by Mr Lai with Mr Leong present; lawyers for PIIL were called in; and then there was a wider meeting at which the formula for the agreed price per share was discussed and agreed, and at which much attention was paid to the announcement that had to appear in the press the following morning. Later in the evening, CEF Capital sent to Mr Lai, for Dr Teh, a formal offer letter, which contained the names of the offerors; and the following morning, 8th December 1992, the announcement was in the press that the controlling shareholder of PIIL had been approached by a third party with a serious proposal.

9.8 What was said and done at the briefing and meetings on 7th December after the 2:15 pm briefing is a matter to which we shall have to return when we address the case of the Don Lau group. For present purposes, it suffices to state that by the end of the 2:15 pm meeting Mr Leong certainly knew what the investing public did not know, namely, that a serious proposal had been made, as well as the background (at least) of the purchasers which would have included the fact that they or some of them were Mainland enterprises, and that Cheung Kong was also involved. (Although Cheung Kong is a precise name, an actual identity, it is, we think, entirely unrealistic to suppose that the Cheung Kong element was not readily disclosed at the outset.) We have in any event held that something of the background was revealed to Mr Leong on 2nd December. We are also satisfied, to the requisite degree, that Mr Leong knew ahead of the 2:15 pm briefing that a serious proposal was

forthcoming. Mr Lai knew at about 12 noon to 12:30 pm and expected CEF to arrive shortly thereafter, and we think it highly probable, and so find, that Mr Leong was told, for it was an important matter, and his presence was required, that a serious proposal was to be made, by whom and to what end, and that there was to be a meeting shortly, for that purpose.

7th DECEMBER: THE SECOND PURCHASE OF PIIL SHARES

9.9 The point of all this is that on 7th December 1992, Miss Chan, on Amy Foong's introduction, applied to open an account with OCBC, and that Amy Foong placed an order through that new account, and purportedly on behalf of Miss Chan - a subordinate employee on a salary of about $7,000 per month - for the purchase of 120,000 PIIL shares at a cost of $95,279. Payment for these shares was again made possible by a cheque drawn the following day by Mr Leong in Miss Chan's favour. It is suggested that on this occasion, unlike the first, Mr Leong was told by his wife the purpose of the cheque. According to his evidence and hers, he was told that this was a loan (of Amy Foong's money, kept by him for her) to Miss Chan; but he was not, according to this account, told what the loan was for. Nor did he ask. The cheque, which, like the last, he paid in personally, was in the round sum of $42,000, much less than the value of the shares, but just sufficient if one added to that sum the difference between the cost of the shares bought by Amy Foong on 2nd December, and the cheque paid in by Mr Leong to Miss Chan's account on 3rd December. There had been no sale or purchase of PIIL shares by Amy Foong or by Miss Chan since the first transaction on 2nd December.

9.10 The inference that strongly suggested itself by this developing picture was met by Mr Leong - and if he is right, his point also avails Amy Foong and Miss Chan - with the contention that at the time the decision was made to buy this second batch of 120,000, and at the time of the transaction itself, he was either in possession of no inside information to pass to anyone, or that before the transaction was effected he was not in a position to pass on such inside information as he may by then have possessed.

9.11 Ms Joyce Lean could not recall who telephoned her - whether Amy Foong or Miss Chan - about opening an account for Miss Chan. She believes that Miss Chan came to the OCBC offices during the lunch hour to complete the account opening application form. The form itself is dated 7th December, and was completed by Miss Chan. Ms Lean could not remember

who placed the order that day for the purchase of 120,000 PIIL shares. In their respective interviews with the SFC, it was Amy Foong's case, and Miss Chan's, that Amy Foong placed this particular order. Ms Lean was prepared to accept that, and also the possibility that the order was placed in the morning. She recalled that the form was completed during the lunch hour, and when asked by Mr Leong whether it would be reasonable to assume that the introduction of Miss Chan to her was made before she, Ms Lean, went out to lunch, she said that it was.

9.12 The Stock Exchange Activities Report for that day shows that a purchase of 80,000 PIIL shares was entered at 2:39 pm, and a purchase of 40,000 was entered at 2:41 pm. It had also been Ms Lean's evidence that the time of that input was not necessarily the time of the transaction, but might be input some time after the transaction. It follows that the order must have been executed in the few minutes immediately following the re-opening of the Exchange at 2:30 pm, if not before; and Mr Leong's point is that it is therefore quite possible - given that it takes at least one or two minutes for an order to be executed - that the order was placed by Miss Chan during the lunch hour. We say "if not before" for there was evidence from Mr Gan, the Chief Executive Officer of OCBC, that there was in operation a procedure which allowed selling brokers up to 15 minutes grace - and sometimes more - between the making of a deal and its entry by the selling broker; although, he said, it was more likely than not that transactions concluded before 12:30 pm would be entered before the afternoon session.

9.13 The evidence is clear that at about 12 noon or 12:30 pm on 7th December, Mr Lai knew that CEF had a serious proposal to table, and he, Mr Lai expected the CEF representatives to arrive shortly, by which he meant very shortly, or within 10 minutes or so. We know, too, that Mr Leong attended the meeting with CEF which later took place. Mr Leong had taken a role in previous approaches, and, in relation to CEF's approach, he, Mr Leong had attended the meeting with CEF on 2nd December. It was therefore natural that his attendance would be sought at the meeting which Mr Wong's call had heralded, and very likely that he would be given advance notice of the meeting and its purpose. Mr Leong told us that Mr Lai called him to say that Mr David Wong "was coming with a proposal", and told him (Mr Leong) to attend the meeting. Whilst he told us that he could not recall being on standby, it could well be, he said, that he waited in his office.

FINDING

9.14 We have no hesitation in finding that at about 12 noon or 12:30 pm on 7th December, Mr Leong was told by Mr Lai that CEF were on their way to present a serious proposal for acquisition of Dr Teh's controlling interest in PIIL. We are further satisfied that that information constituted relevant information, as that term is defined by the Ordinance. We find that the order effected through Miss Chan's trading account that day was given to OCBC either within minutes of the Exchange opening at 2:30 pm, or during the lunch hour. We are satisfied that by the time the order was given, Mr Leong had had ample opportunity to pass to his wife the news that a serious offer was forthcoming. It is not strictly necessary for us to decide what information about the background or identity of the bidders was confirmed, or imparted by the time he spoke to her about PIIL on 7th December, for, as we say, the mere fact of the impending serious proposal was enough to arm Mr Leong with unpublished price sensitive information.

8th DECEMBER

9.15 This was the day upon which the newspapers carried the first announcement. The news which it announced was limited in the sense that it carried no information at all about the prospective purchasers, whether general or specific, nor did it reveal who was acting for the bidders, nor did it state anything whatsoever which hinted at a consortium, or at a repeat performance of Tung Wing, or the like.

9.16 The limited scope of the information available that day to the investing public is important, because it is clear beyond doubt that on 8th December and until 16th December when the second announcement was published, Mr Leong knew what the investing public did not know, namely, the very identities of the offerors.

9.17 It will be remembered (see paragraph 197 above) that on 8th December Mr Leong drew a cheque in Miss Chan's favour in the sum of $42,000.

9th DECEMBER

9.18 On 9th December, there was acquired in the name of Miss Chan, through trading on her OCBC account, a further 80,000 PIIL shares at a cost of $66,335. These shares were acquired at $0.825 per share.

9.19 It is by no means clear from Ms Lean's evidence who it was who placed this order or the order on the following day, 10th December. The impression she gave was that the two of them - Miss Chan and Amy Foong - would act in tandem; in other words, that both would speak to Ms Lean in the course of the same telephone conversation, or that one would speak with the other in the background; but that when she came to know Miss Chan better, Miss Chan would mostly place her own orders. In the context of this evidence, it is to be noted that in 1993 Miss Chan traded quite frequently on her OCBC account.

9.20 9th December 1992 witnessed a repetition of the cheque writing exercise which had taken place on 4th December, in that Miss Chan signed a cheque in the sum of $95,279.14 in favour of OCBC in payment of the 120,000 PIIL shares acquired on 7th December, and in that the details on the cheque were written by Amy Foong.

9.21 On 10th December, Mr Leong drew yet another cheque in favour of Miss Chan, this time in the sum of $67,000, a few hundred dollars more than the cost of the 80,000 PIIL shares acquired the previous day.

10th DECEMBER AND AFTER

9.22 On 10th December 1992, Miss Chan acquired 24,000 PIIL shares (in two batches, 16,000 before lunch and 8,000 after) at 83 cents per share at a cost of $20,020.

9.23 On 11th December, Miss Chan signed a cheque in favour of OCBC in the sum of $66,335, which was the cost of acquiring 80,000 PIIL shares on 9th December. Amy Foong inserted the necessary details on the cheque.

9.24 On 14th December, a cheque in the sum of $20,020 was drawn by Miss Chan (made out as to detail by Amy Foong) to pay for the 24,000

shares acquired on 10th December. No corresponding cheque was drawn by Mr Leong, although it is noted that on the same day $20,000 was transferred from Mr Leong's Hang Seng Bank current account to Amy Foong's savings account with the Hongkong Bank.

16th DECEMBER

9.25 On 16th December, the second announcement was published. It included the fact and details of the conditional agreement, and the identity of those behind the two purchasing vehicles, Gower and Artrel.

9.26 There was before 16th December 1992 no sale by Amy Foong or Miss Chan of any of the PIIL shares which they had acquired since 2nd December. On 14th December the price reached 96 cents per share at closing; and on 15th December it closed at 1.18 cents.

9.27 On the day of the second announcement, the price of PIIL shares soared by 82.2% to a high of $2.45, and closed at $2.15. Turnover for the day was 11.7 million, very substantially greater than on any previous date covered by the table at Appendix I.

9.28 On the same day Miss Chan purchased 2,000 Sun Hung Kai shares at a cost of $19,476.

AFTER 16th DECEMBER

9.29 On 17th December, Miss Chan placed with Ms Lean an order to sell PIIL shares. 64,000 were sold at a price of $2.60 per share; making a total for that sale of $165,558.

9.30 Our Inquiry took us upon a tracing exercise by which we sought to ascertain whether the proceeds of sale of the 64,000 PIIL shares sold on 17th December, and of PIIL shares sold thereafter, found their way back to Amy Foong, or to Mr Leong. The exercise became complex, because we discovered that work colleagues of Amy Foong, to whom we refer at paragraph 7.3.9 above, opened trading accounts with JCG Securities in July 1992, and with OCBC in early 1993, and that in and after January 1993, there blossomed a plethora of share transactions by Amy Foong, Miss Chan and the other ladies. We wondered whether there might be a trail from these ladies, or one or more

of them, which led back to Amy Foong or to Mr Leong, suggesting that transactions in shares of PIIL and other stocks were effected by them through the staff of Dragoco for the benefit of the Leongs. We examined the share transactions as well as the bank accounts of these ladies.

9.31 What emerged was that, apart from the sale of JCG shares in August 1992, none of Amy Foong's colleagues had traded at all until January 1993, and that in and after January 1993 all five tended to trade in the same shares and warrants at about the same time; that they committed relatively substantial sums to share transactions, and that Amy Foong's colleagues traded more speculatively than one would expect of novices. We noticed, too, that on occasions, funds flowed between the five ladies, although by no means including Amy Foong every time. The sums were not particularly substantial. By the end of August 1993, trading by them all had virtually stopped and was not revived. This applies as well to Amy Foong. So, too, at about that time, did funds stop flowing between them. We noticed further that in 1994, there appeared very substantial bank balances in the bank accounts of some of these ladies, and we pursued inquiries to find out, if we could, the source and destination of these funds. Explanations were given which did not support any suggestion of a thoroughfare for funds belonging to Amy Foong or Mr Leong. We heard oral evidence to the effect that loans by Amy Foong were not unusual. What is clear to us is that the ladies operated their affairs as a group, and we have no doubt but that Amy Foong was their adviser. Whether matters went further we cannot say. We concluded that any further tracing exercise would prove of doubtful value to our inquiry, and that the further delay and expense which would flow from such an exercise was not warranted. The evidence which we have examined - an examination which has been quite extensive - would not support a finding that the other Dragoco ladies were used to channel the proceeds of sale of PIIL shares.

AFTER 1992

9.32 It will be sufficient to summarise the events after December 1992 broadly. In January and February 1993, Amy Foong purchased 162,000 National Mutual warrants, and sold 162,000. Mr Leong bought National Mutual warrants at about the same time, as did Miss Chan. Those warrants acquired by Amy Foong cost over $150,000. In late February Amy Foong purchased more warrants, as did Miss Chan on the very same day.

9.33 In March, Amy Foong bought 36,000 shares of Truly International for $31,956. In late March, Amy Foong opened a current account, her first current account in Hong Kong, with the Hang Seng Bank.

9.34 On 20th April 1993, the price of PIIL shares suddenly increased by almost 15%; and on the following day by a further 27.78%. These increases followed an announcement on 16th April that a consortium led by PIIL and Shanghai International Securities (Hong Kong) Limited had acquired a controlling interest in Ong Holdings.

9.35 On 22nd April 1993, Amy Foong withdrew from OCBC the scrip for all 120,000 PIIL shares which were in her name; as well as the scrip for 36,000 Truly International shares. On the very same day, Miss Chan sold 24,000 PIIL shares for $78,838 and withdrew all scrip for the remaining 136,000 PIIL shares in her name with OCBC.

9.36 On 22nd and 30th June 1993, Miss Chan sold on each occasion 24,000 PIIL shares, when the price stood at $3.60 and $5.43 respectively. The proceeds of the sale on 30th June amounted to $129,791, and on that day there was a transfer of funds from Miss Chan to Amy Foong in the sum of $31,662.

9.37 On 29th September 1993, Miss Chan sold the remaining 88,000 First Shanghai (PIIL) shares in her name for $297,907 and then acquired, on the same day, 100,000 Shanghai International shares for $225,967. So far as we are aware, she still has those.

9.38 On 30th September 1993, Amy Foong sold the 120,000 First Shanghai (PIIL) shares which had always been in her name for $394,297, and purchased 170,000 Shanghai International shares for $395,192.

9.39 After September 1993, trading in shares by these ladies petered out, although in late January 1994 Amy Foong acquired National Mutual warrants, and 64,000 First Shanghai (PIIL) shares for $176,756, having sold Shanghai International for $190,000.

9.40 In the event, the 120,000 PIIL shares that had been acquired in Amy Foong's name for $65,394 on 2nd December 1992 were sold on 30th September 1993 for $394,297. The PIIL shares purchased in Miss Chan's name in December 1992 were purchased for $181,634, and sold in April, June

and September 1993 for $758,091. The total profit from these PIIL purchases and sales was over $900,000.

CHAPTER 10

THE LEONG GROUP ANSWERS

10.1 We now summarize the answers or defence offered by Mr Leong, Amy Foong and Miss Chan to the allegations which have been made in relation to the share transactions in December 1992 which have come under our scrutiny. In addressing their defence, there are two matters which must be emphasised:

(1) that there is no burden upon any of them to establish that they have not engaged in insider dealing; and

(2) that in the event that we were to reject their defence or answers, that rejection does not of itself prove anything against them. It would then remain incumbent upon us to see whether the remaining evidence suffices to establish to the requisite degree that insider dealing has taken place and, if so, whether there is sufficient evidence to establish the identity of the insider dealer, and the profit accrued as a result.

10.2 DEMEANOUR

10.2.1 A word, first, about the three Leong group individuals. Mr Leong is a quietly spoken, astute and intelligent man, a qualified chartered accountant and, we find, at home with share transactions.

10.2.2 Amy Foong is an educated woman, a career lady, a certified accountant, and with sufficient confidence to trade in shares and to give advice to work colleagues about share transactions. Her evidence was uncertain, confused, and prolix, qualities which were, quite discernibly, manifestations of a mind searching for answers that might pass muster - answers which, when they came, begged much naiveté on the part of the Tribunal.

10.2.3 Miss Chan struck the Tribunal as a young lady who was unusually confident for someone of her age, displaying occasional hints of aggression. She is nobody's fool, and we are satisfied that she is not, nor was

not, one to be duped into unwitting complicity in wrongdoing. In other words, there was either no wrongdoing or, if there was, she knew that there was.

10.3 THE DEFENCE

10.3.1 The essence of the defence advanced by the three was as follows:

(1) Amy Foong opened an account with OCBC because she wanted independence from her husband when it came to share transactions. She found irksome the questions he asked, and the role he played when he acquired shares for her on his own trading account.

(2) Amy Foong did not tell Mr Leong about her trading account with OCBC, nor about her share transactions through it.

(3) Amy Foong had no idea until about March or April 1993 that her husband had anything to do with PIIL.

(4) Mr Leong had no idea until March or April 1993 that Amy Foong had purchased PIIL shares in December 1992.

(5) When Mr Leong drew cheques in December 1992 which were in fact used to pay for the purchase of PIIL shares, he had no idea that that was the purpose. In relation to the cheque drawn on 3rd December, no reason was given, no reason was sought. As for the two subsequent cheques, he was told that they were for a loan to Miss Chan. The reasons for the loans and for the swift sequence in which they were made were neither provided, nor sought.

(6) The monies thus advanced by Mr Leong were not his anyway. Amy Foong had, after arrival in Hong Kong, advanced money to her husband from time to time. The monies paid in December 1992, however, were not paid in respect of these advances. What happened was that she, Amy Foong, was in the habit of spending too freely, so that in order to place upon herself a measure of self-discipline, she occasionally asked her husband to keep her

money, or some of it, for her. The sums represented by Mr Leong's three cheques in December 1992, totalling $229,000 within a space of about one week, were sums that Mr Leong had kept for her.

(7) The facts that the purchasing funds passed through Miss Chan's bank accounts, and that Mr Leong did not himself directly pay OCBC on Amy Foong's behalf, were natural consequences of the absence of a current account in Amy Foong's name, and of her desire that her husband should not know about her (Amy Foong's) share dealings.

(8) The choice of PIIL as a company in which to trade on 2nd December 1992 was partly the consequence of having dabbled in that share before, and partly the result of chat at the hairdresser's salon which Amy Foong visited on 1st December.

(9) Miss Chan had no idea, before the event, that her account was to be credited on 3rd December 1992 with the sum of $120,000 (or indeed with any other sum). She happily drew a cheque in favour of OCBC, when asked, because she knew that Amy Foong had no current account, and this was not the first time money had passed through her account on Amy Foong's behalf.

(10) The share transactions on 7th, 9th and 10th December 1992 were effected by or on behalf of Miss Chan. She had learnt that Amy Foong had made money in relation to her PIIL acquisition on 2nd December, and decided that she, too, would try her luck. She needed money for relocation and decoration in respect of a flat which she hoped would be allotted to her family, for which reason a windfall would be handy. Accordingly, she asked Amy Foong for loans, and Amy Foong provided them.

(11) Cheques signed by Miss Chan in favour of OCBC Securities were written by Amy Foong because, according to Amy Foong, Miss Chan had difficulty in spelling "Securities" in "OCBC Securities". According to Miss Chan, she had difficulty in

spelling the name of the company and her English was "not that good"[1].

(12) At no stage in December 1992 did Mr Leong impart to Amy Foong or to Miss Chan price sensitive information about PIIL, nor at the time of the purchases on 2nd and 7th December, was he in possession of any.

10.4 AMY FOONG'S TRADING HISTORY

Relevance

10.4.1 At paragraphs 7.3.4 to 7.3.6 above, we outlined the limited nature of Amy Foong's share trading in 1992. We now turn to examine her trading history in more depth, because resolution of the issues in the Leong group case will be aided by determination of the true relationship between Mr Leong and Amy Foong when it came to buying and selling shares. In December 1992, did Amy Foong operate independently of her husband when it came to questions of investment, or was he her adviser? Did they operate as a team in respect of certain transactions, or was she merely a front for some of his transactions?

10.4.2 Amy Foong said to us that it was in about September 1991 that she decided that she wanted to invest in shares, and she told her husband so. He had a trading account. But he never discussed shareholdings with her, nor she with him. She said that she felt that, as things were, he would tell her what to do, rather than leave decisions to her.

Why PIIL?

10.4.3 On 3rd September 1991, Mr Leong bought 104,000 PIIL shares; it is said that 48,000 were for Amy Foong, and the rest for his mother. Amy Foong was asked why she did not then open a trading account for herself. Her answer was that she had money "with him", and it was convenient to proceed in this way. There then followed a series of questions directed at the choice of PIIL shares, rather than any other. This was to be her first investment in Hong Kong. Her decision to invest was not tied to any particular event, and it was she who raised the subject with her husband. He recommended PIIL. He

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[1] See transcript, page 2770.

said that the cost was low, and, possibly, that brokers recommended it. She had no idea that he was in any way connected with PIIL; neither then, nor at any time in 1992. She had even herself been searching the newspaper for a suitable choice of stock - that is how incidental was the choice that was ultimately made. No connection between Public Bank and Public International ever occurred to her "..... because I am in Hong Kong now .....".[1] Even in retrospect she allegedly sees nothing odd about his failure to mention his connection with PIIL. She did not subscribe for JCG shares, because her husband was employed by JCG and was therefore sensitive about disclosure regulations, and told her never to touch JCG shares; yet he tendered no such advice in relation to PIIL shares. In March 1992, he acquired for her another 40,000 PIIL shares in his name, but in reality for her, again with her money kept by him. The trigger for this purchase was that JCG Securities had just opened for business. We were interested to learn why PIIL was chosen again, to which the short answer was: "Because I bought that before"[2] - this, even though the price of PIIL had moved either sideways or down since September 1991. We pressed the point, stating that she had worked in a stockbroker's office in Malaysia, and must have known that there was a wide range from which to choose - so why again choose PIIL? She replied that it was not something about which she had thought for a long time. Her husband had called her and said that it was the first day of trading for JCG Securities, and perhaps she wanted to buy something. So she agreed to buy. She had chosen PIIL because it was the only thing that had come to mind. She told him to buy five lots. Had her husband not called, she may well not have purchased at all.

March to May 1992

10.4.4 On 25th March 1992, Amy Foong opened her own trading account with OCBC. Her decision, she said, was the result of disagreements arising from her desire to buy "counters" and his contrariness. It was, after all, her money, and she was keen to trade with her money in her name.

10.4.5 On 28th April 1992, Amy Foong purchased 20,000 Lippo shares for $33,369. She did not, she says, canvass the purchase with her husband. The purchase was funded by a cheque from Miss Chan after a transfer of cash by Amy Foong (from her savings account) to Miss Chan's current account;

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[1] See transcript, page 3015.
[2] See transcript, page 3029.

both the accounts were at the Hongkong Bank. Amy Foong had been in Hong Kong by then for about 18 months, and had no current account, because, she told us, she hardly ever used cheques.

10.4.6 On 7th May 1992, Amy Foong sold 88,000 PIIL shares - these are the 88,000 PIIL shares said to be held for her by her husband from the September 1991 and March 1992 purchases. She sold them (for over $57,000) because, she says, the price had gone up. She did not tell her husband of her intention to sell. Having sold, she asked him for the scrip which he handed over. She had not seen the announcement of 6th April, nor had her husband mentioned it.

10.4.7 The proceeds of sale of the Lippo and PIIL shares together came to $97,184. Those proceeds were credited to her bank account on 6th and 8th May 1992.

10.4.8 On 14th and 15th May 1992, she transferred to her husband's bank account, through Miss Chan's bank account, the sum of $100,000, less than $3,000 more than the proceeds of the Lippo and PIIL sales. Her story is that this was money she was entrusting to her husband's care.

May to December

10.4.9 Between May 1992 and 2nd December 1992 Amy Foong acquired not one share. If it is true that she opened the OCBC account to enable her to take part in share transactions unencumbered by her husband's comments, questions or disapproval, this complete absence of trading was remarkable. So we put the point to her. She answered that she had tried unsuccessfully on a number of occasions to contact Mr Gan of OCBC, and so her enthusiasm had died.

10.4.10 In June and July 1992, further monies passed from Amy Foong to Miss Chan for which some explanations have been provided, and we do not deem it necessary to the issues we have to decide to determine the reasons for those particular transfers which totalled about $53,000. They may very well have been for the purpose of paying bills, as was suggested.

November 1992

10.4.11 On 23rd November 1992, another tranche of $100,000 found its way from Amy Foong's savings account, through Miss Chan's current account, to Mr Leong's savings account. This sum, she said, originated from her brother who lived in Singapore. She contended that she had lent him the money, and that because she was running low of Hong Kong dollars, he repaid her here in Hong Kong. Well, we wondered, if she needed Hong Kong dollars, why immediately hand to Mr Leong the whole sum sent by her brother? Because, she answered, she was afraid that she was going to spend more money again. Yet a few days later, we note, she was prepared to spend - and received from her husband on request and without any explanation - up to $120,000 for shares on the basis of gossip in a hairdressing salon by women whom she did not know, and in respect of which proposed purchase, if she is right, she did not receive, and did not even seek, advice from anyone at all, let alone from her husband who had first introduced the share to her.

The 2nd December purchase

10.4.12 Amy Foong was a regular visitor to a hairdressing salon, and it is established that she went there on 1st December 1992. Her story is that there were some ladies there, who talked about PIIL shares, saying that there had been movement in their price, and that "something could be happening". It was the first time since May 1992 that she had heard any mention of PIIL shares. She did not tell her husband about the conversation. She did not seek his advice. She did not consult anybody on 1st December about it. She did not consult anybody on 2nd December about it. All she did, she says, was to check the price a number of times on 2nd December. Particulars about the purchase of the shares on that day are to be found at paragraph 8.3 above.

7th December

10.4.13 Of the sum of $120,000 paid into Miss Chan's account on 3rd December, $54,066 was left after payment for the purchase of the first batch of shares. We were informed that that excess was there, in the first instance, because Amy Foong thought that she might purchase more shares, perhaps of a different company. When Miss Chan, according to this account, was asked to draw a cheque for a securities company, she asked Amy Foong whether she, Amy Foong, had made money, and Amy Foong said that she had. This

apparently is what sparked Miss Chan's interest, and her decision to purchase PIIL shares herself. So Amy Foong asked whether Miss Chan wanted to open a trading account, and on 7th December she telephoned Ms Lean to introduce this new client. The price was still going up. Miss Chan wanted to buy. Amy Foong did not seek to dissuade her, even though Miss Chan earned a limited salary, and had family to support. Miss Chan could do with some profit. And so it was that, in those circumstances, Amy Foong lent money to Miss Chan, and placed the order for her purchase of PIIL shares. Amy Foong did not, however, buy any more shares of her own, even though she had money "with" her husband, even though she had a balance from the $120,000 originally "retrieved" from him which she had earmarked for the purchase of more shares, and even though, she said, she expected the price to go up, especially after the announcement on 8th December.

8th December

10.4.14 Amy Foong says that on 8th December she saw the announcement in the paper. She did not however recognize Dr Teh's name, because she saw it in a Chinese language newspaper, and the Chinese name meant nothing to her. Nor did she notice Mr Lai's name at the foot of the announcement.

10.4.15 There arises from the record of the SFC interview of Miss Chan a particularly important piece of evidence. Miss Chan was asked by the SFC to give the reason for the second acquisition by her of PIIL shares - the acquisition of 80,000 shares on 9th December. This, again, was funded by a loan, it is said, from Amy Foong:

"61.	[Question]	:	Did Amy Foong mention at that time who the offeror in the takeover exercise was?"
	CHAN	:	She did mention that an enterprise in the PRC wanted to acquire PIIL. But I don't know which enterprise it was.
62.	[Question]	:	According to the announcement on 8 December, no mention is made that the purchaser is a PRC enterprise.
	CHAN	:	I don't know why this is not mentioned in newspapers. But Amy did say to me that a PRC enterprise wanted to acquire PIIL.
63.	[Question]	:	Did Amy say who mentioned this to her?

	CHAN	:	She told me that she knew this from the newspapers.
64	[Question]	:	Did you read that newspaper?
	CHAN	:	I only took a glance at the headlines, without going into details. Moreover, I also believed in what Amy said and therefore decided to buy an extra 80,000 shares."

If the answers to questions 61 and 62 were true, they were significant statements. We are asked, however, to accept that they were intended to relate to comments made by Amy Foong in March or April 1993 when Amy Foong allegedly first told her husband about her December acquisition of PIIL shares, and he then told her about Mainland participation in the take-over. Amy Foong told us that she asked her husband, in March or April 1993, what reason there was for the high activity in PIIL shares, because the price of PIIL shares had shot up again, and she was excited and wanted her husband to know that she could succeed on her own. Miss Chan told us that she must have misunderstood the question put by the SFC interviewer. Given the answer "..... I ..... believed ..... in what Amy said and therefore decided to buy an extra 80,000 shares", it is difficult to see where the misunderstanding could arise.

The proceeds of sale

10.4.16 If the account we were given is true, Amy Foong lent to Miss Chan in December 1992 about $163,000 for the purchase of shares. On 17th December, 64,000 PIIL shares were sold by Miss Chan for $165,558. But neither that sum, nor any part of it, was paid upon that sale to Amy Foong. Amy Foong told us that that was because she asked Miss Chan to "hang on" to the money, for she wanted Miss Chan to issue a cheque when the National Mutual warrants[1] were paid for. Miss Chan told the SFC that, in due course, she in fact drew three cheques totalling about $163,000 for buying shares for Amy Foong. There was, however, a problem with this explanation in that, although in January 1993 three cheques were drawn by Miss Chan to pay for National Mutual warrants, the total was $152,406, not $163,000 and, more significantly, one of the cheques, in the sum of $31,662 did not go to pay for anything acquired by Amy Foong, but went to pay for 36,000 National Mutual warrants acquired for Miss Chan herself. This was put to the two ladies in subsequent interviews, and they said that they had made a wrong assumption

[1] See paragraph 9.32 above.

based on Miss Chan's cheques stubs, and had mistakenly thought that Miss Chan had reimbursed in full the loan of $163,000, whereas it now transpired that there was still something in the order of $30,000 owing to Amy Foong.

10.4.17 In February 1993 there was a purchase by Amy Foong of JCG Holdings warrants, effected through the trading account of Ms Chik, one of the Dragoco ladies, and paid for by a cheque drawn by Miss Chan. The source of this money was said to be cash kept by Miss Chan for Amy Foong. Amy Foong explained that she and Miss Chan were shopping for jewellery before Christmas 1992, and she (Amy Foong) alighted upon a ring she wanted. Miss Chan said that her brother, who worked in the jewellery business, could obtain the ring more cheaply, so Amy Foong handed to Miss Chan, in cash, $40,000, which she carried on the shopping expedition. It was to be given to Miss Chan's brother. But Miss Chan failed to contact him, and later, they were too busy to shop together. Nonetheless, Miss Chan held on to the $40,000 and used them in February to pay for the warrants. The story has only to be recounted in order to demonstrate the nonsense it is. It has peripheral value to the issues we have to decide, but we include it, for it is fairly representative of the quality of the evidence to which we were subjected.

10.4.18 At paragraph 9.33 above, we referred to the opening of a new savings account in Amy Foong's name in March 1993 into which, via Miss Chan's current account, Amy Foong deposited $150,000. Amy Foong said that she opened this account to serve as a receptacle for her recent gains, and hoped also that it would serve as a deterrent against overspending.

10.5 Miss Chan

10.5.1 Miss Chan's account by and large matched that of Amy Foong, and we shall aver only to additional matters which are of some significance:

(1) Miss Chan was at the material time a shipping clerk with Dragoco. She earned about $7,000 per month, and gave about half of that to her family.

(2) Well before December 1992, Miss Chan knew Mr Leong. They had socialised, and she had joined Amy Foong and him on a trip to Beijing.

(3) She said that she frequently wrote cheques for Amy Foong who had no current account.

(4) Miss Chan told us that when she was asked in November 1992 to draw a cheque in the sum of $100,000 in favour of Mr Leong, she, Miss Chan, was given no reason for that exercise. But she thought (without any suggestion by Amy Foong in this regard) that Amy Foong was a spendthrift, and wanted her money kept out of temptations way.

(5) She told the SFC that she borrowed money to buy shares, because money might be needed "in case of emergencies ..... at home". But in her evidence before us, she said that she wanted to move accommodation, and needed a substantial sum of money for relocation and decoration[1]. She did not, she said, consider moving house to be such an emergency. Miss Chan showed us cheque stubs in order to support the loan story. For example, a cheque stub for 9th December has written on it "Borrow. Amy." In arriving at our findings, we have taken this evidence into account, and we have examined other cheque stubs which purport to support the purpose of certain payments. The nature of these entries is such that they are far from conclusive. Some are in pencil, some entries deleted, Chinese characters squeezed in, and Miss Chan has told us that she does not normally write on the counterfoil immediately after she has written the corresponding cheque.

(6) Her interest in acquiring shares was kindled, we were told, when, on 4th December 1994, at the time she drew the cheque to pay for Amy Foong's purchase of 2nd December, Amy Foong told her about that recent acquisition. Amy Foong mentioned that she had bought the shares because she had heard a rumour about them at the hairdressers, and that she had made a profit. Miss Chan told us that the figure mentioned as the profit was, she thought, some $30,000 or $40,000.

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[1] See transcript, page 2934.

(7) She said that on 7th December, she wanted to buy 120,000 shares, knowing that it would cost about $100,000. She accepted that she had never before spent that much on anything, and that it was, for her, a huge investment. But still, she wanted to take a risk and make a windfall. The thought that she might be in for a windfall arose because "..... Amy bought those shares on the 2nd and when she told me about it on the 4th [December] the price of the shares had already moved up and she had already made a profit in a matter of days."[1] No-one explained to her why the shares were moving up, nor did she ask. She suggested that the order for shares on 7th December was placed before lunch.

(8) As for the acquisition of shares on 9th December, that was her own idea. She told Amy Foong, who was prepared to lend her more money.

(9) It was she who ordered the shares purchased on 9th and 10th December. The shares purchased on 10th December were, she asserted, paid for from her own funds.

(10) She sold the 64,000 PIIL shares on 17th December because she wanted as soon as possible to return the money she owed Amy Foong. This reason did not rest well with the purchase on 16th December by Miss Chan of 2,000 Sun Hung Kai shares. So the answer (devised, we find, to cater for that problem) was that she had originally intended to sell the Sun Hung Kai shares on the same day that they were purchased, or a day or two later; in any event, Amy Foong had said that there was no rush.

(11) She admits providing to the SFC the answer that it was in December 1992 that Amy Foong said that the purchasers were Mainland enterprises, but asserts that that was an error.

(12) The proceeds of sale of PIIL shares on 22nd April 1993 went, she said, as loans to her elder brother and elder sister. This category of explanation - loans to family and to work colleagues

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[1] See transcript, pages 2745 and 2746.

- was a noticeable feature of the evidence of Miss Chan and Amy Foong. Many dispositions and receipts of funds of any significant size were explained as loans and repayments of loans. This was particularly the case with sums emerging from Miss Chan's accounts during 1993.

(13) She told us, as did Amy Foong, that in April 1993, she withdrew her scrip from OCBC because she was unhappy with the service she was obtaining. Amy Foong withdrew hers at the same time. Although the scrip in her hands alone represented shares then worth about half a million dollars, she kept them in a locked drawer in her office. She only opened another trading account, this time with JCG Securities, in March 1994. She sold 24,000 PIIL shares through OCBC on 22nd June 1993, and on 30th June 1993, she again used OCBC to sell 24,000 PIIL shares. In September 1993, she sold the rest of her PIIL shares, and purchased about $226,000 worth of Shanghai International shares, again through OCBC. In March 1994, the scrip for the Shanghai International shares were transferred from OCBC to JCG Securities. This history begged further questions. If she withdrew all her scrip from OCBC in April 1993 because she was so dissatisfied with them, why use OCBC again in June and September? The answer given was that "despite some small hiccoughs, I still found their services acceptable". Things all of a sudden improved, although how that came to pass, and why she bothered to try them out again, we do not know. Why not open an account with JCG Securities before March 1994? The response to that was that she had tried through OCBC to sell the First Shanghai shares and that, quite unbeknown to her, they failed to execute her order. We were told that she still has these 100,000 shares and, as far as we are aware, there has since March 1994 been no active trading in shares by Miss Chan. But the value of the PIIL shares has dropped substantially.

10.6 Mr LEONG

10.6.1 His evidence, too, largely tallied with that of his wife and of Miss Chan, so is not restated here, save for additional matters of significance.

Why PIIL?

10.6.2 We have already recounted the fact that from 1990 onwards, Mr Leong acquired PIIL shares, but none since March 1992. He recalls, he says, that it was a stock recommended by Morgan Grenfell (and there is before us evidence to support that recollection), although he cannot recall whether that was why he acquired them. However, when he advised his wife to invest in PIIL shares, he was motivated by the knowledge that they were fairly safe shares, and that their price stood at a substantial discount to NAV.

10.6.3 Mr Leong told us that the reason he purchased PIIL shares for his wife in March 1992 was that the day was auspicious - JCG Securities opened that day for business. He opened an account with them. But he had no idea less than two weeks later that his wife opened her own trading account with OCBC.

10.6.4 He accepted that he knew, of course, about PIIL's connection with JCG, but he emphasized that he did not impart that fact to his wife and that his working days were spent on JCG business, not that of PIIL; indeed, their offices were in different buildings.

10.6.5 We were interested to hear Mr Leong on the question of his wife's banking practices, particularly the fact that she had no current account. He could think of no reason for that state of affairs; it was not a matter they talked about; it had never occurred to him to ask her about; and he became aware of it when she presented him with Miss Chan's cheque for $100,000 in May 1992. It was a practice or a state of affairs that had always existed, even in Malaysia. She has since opened a current account, but that, he said, was because of the inconvenience and difficulties which the absence of such an account had now caused.

10.6.6 On 8th October 1992, Mr Leong sold 108,000 PIIL shares, for his mother, he says, because the price had stabilized. In November, he bought JCG Holdings warrants - by the end of November she had 272,000 warrants in her account. He says that he thought that to be a safe investment. The fact that a few weeks later his wife bought JCG Holdings warrants, as did her work colleagues, was, according to his case, an entire coincidence.

10.6.7 He says that he did not himself buy PIIL shares towards the end of 1992, because he already had a fairly big exposure to equities. He was not aware of the announcement of 30th November. He knew none of the CEF representatives. He was, however, aware of the Tung Wing deal. None of the approaches for PIIL in 1992, save for the CEF approach, was by or on behalf of a Mainland party. He was aware that Chinese interests were, at the time, attracted by backdoor listings, but it did not, he thinks, occur to him that PIIL was a suitable vehicle for such a listing.

Relevant information

10.6.8 Mr Leong accepted that the fact of the CEF approach on 2nd December was price sensitive information, and that he knew that it was. He did not, however, accept that the identity of a party to a takeover was price sensitive information. It did not, he asserted, occur to him that it made a difference whether the company making the acquisition was, as he put it, "company A ..... or company B". Nevertheless, he conceded that once he knew that the consortium included Mainland enterprises, it may have crossed his mind that that was price sensitive information. The essence of his case in this regard was that he would not at the time divide pieces of information in this way, and address separately whether this or that item of information was price sensitive. If, whilst an offer was on the table, he were asked by a stranger to divulge particular information, he would not do so, whatever the particular piece of information might be, for he would regard the whole takeover as confidential. The China factor was nevertheless a matter which he viewed at the time as significant, and he believed that at the time he recognized that if the CEF offer came to fruition, it would have the same impact on the market price of PIIL's share as on the market price of Tung Wing a few weeks earlier.

10.6.9 He told us also that when the announcement appeared in the press on 8th December, he did not see it; he was too busy. We think this exceedingly unlikely, and we do not believe him. It was only the second announcement that year concerning a third party approach for control of PIIL, and he was privy in a professional capacity to this approach which was the sole subject matter of the announcement. He could not, moreover, have been that busy; he had enough time to draw a cheque in Miss Chan's favour, and go himself to the bank to pay it in.

1993

10.6.10 Mr Leong also acquired National Mutual warrants in January 1993. He did not know that his wife bought the same instruments, nor did he tell her of his acquisition. She sold most of her warrants on 26th February. He sold his on 1st, 22nd and 24th March. We were asked to accept these facts as sheer coincidence.

10.6.11 There was some, but not much, share trading activity by Mr Leong in February and March 1993; but a very significant increase in his bank balance, to about $800,000. Some of that money, said Mr Leong, was from the sale of his mother's JCG warrants. In April, over $200,000 went to Mr Lai. In May, Mr Leong traded on the stock market quite heavily. There were some sales of stock in June, taking his bank balance up to $550,000, but within one week $550,000 was withdrawn, mostly, he says, to purchase Malaysian Ringitt for his mother. There followed then three dry months as far as concerned trading in shares - in other words, none was traded; at least, not on the trading account with JCG Securities in his name. Mdm Sin's account was relatively quiet in those months.

10.6.12 The payment at the end of April of over $200,000 by Mr Leong to Mr Lai came at a time heavily laden with PIIL activity, a time when Miss Chan and Amy Foong withdrew their PIIL scrip from OCBC, and when Miss Chan sold a few PIIL shares. We wondered whether the payment to Mr Lai might have been in respect of the sale of some PIIL shares. The explanation given was that it was part repayment of a loan of $500,000 from Mr Lai in September 1991 which enabled Mdm Sin to subscribe for JCG shares. If there was a loan in 1991, it was, we find, for Mr Leong's benefit and not for his mother's. The speculative investments in JCG warrants which replaced the JCG shares acquired in Mdm Sin's name, and the fact that the proceeds of sale of those warrants went to Mr Leong's account, and were mixed in the same account with other funds, lead us to that conclusion. Although no calculation was produced to demonstrate how the figure of $204,789 was reached, and although we are told that it includes an element of interest, even though no interest was sought or agreed, the payment may nevertheless have been in repayment of a loan. It is doubtful that if it represents a loan repayment, the loan was made as far back as 1991. But be that as it may, there is no evidence from which to infer that payment of the sum of $204,789 to Mr Lai by Mr Leong had any connection with the purchase or sale of PIIL shares.

10.7 ASSESSMENT OF THE DEFENCES

10.7.1 Well conscious of the distinction between hazy recollection or genuine error on the one hand, and deliberate lies on the other, we regret to say that we were treated by Mr Leong, Amy Foong and Miss Chan, time after time, to lies, some rehearsed, others spontaneous.

10.7.2 We do not believe that in opening a trading account of her own in March 1992, Amy Foong was motivated by a desire, or an eagerness, for financial independence in the transaction of shares. If that was the intention, it did not translate itself into action. The account was used once in April to buy Lippo shares. The sale of PIIL shares in May was not, we find, effected by Amy Foong without her husband's prior knowledge - he had purchased the shares and he held the scrip. According to Amy Foong, she only informed him of the sale after the event. But there was no need to wait in order to hide anything from him, for she would in any event have to retrieve the scrip from him which would reveal to him that she intended to transact, or had already done so; and in any event, she ran the risk, if what she says is true, that he might already have disposed of the shares by the time she sold them. She then effected no share transactions of any kind until December; hardly the conduct of a woman whose sole intention in opening a trading account of her own was to provide her with freedom to transact. Let us remember that Amy Foong is not, nor was she in 1992, an individual untutored in market matters. She had worked for a stock broker, is an accountant, and it is quite evident that in her dealings with OCBC, whether on her own behalf, or on behalf of others, she was not shy in effecting deals and introducing others. We are not therefore dealing with an unsophisticated individual who had some desire to dabble in shares, but who was so unfamiliar with shares and the way to go about transacting them, that she dabbled but once or twice a year. Her suggestion that she did not trade more often in 1992 because she could not get hold of her broker was pure nonsense. If she had wanted to trade, she could, and would, have done so.

10.7.3 In so far as it was suggested that she wanted financial independence in the sense that her monetary business was hers and his was his, and that she did not want him to know what she was doing with her money, it is a suggestion that does not sit well with the fact that she had no current account of her own; nor with her contention that such flow of money from him

to her, or for her use, as we have noted, was no more than a retrieval by her of money which belonged to her. If she was asking him to look after her money, that meant that from time to time she would have to ask him for it's return. That is not a manifestation of financial independence. In any event, the story that her funds were deposited with him because she was in the habit of overspending was also untrue. We note that there were times when there was not sufficient in Mr Leong's bank accounts to repay her, had she asked. She also, told us that she could retrieve money from him whenever she wished; a prime example was the fact that on 26th November 1992, she caused to be paid into his account $100,000; the sum which she said represented repayment of a loan from her brother. Within one week that sum was returned at Amy Foong's request - a request unaccompanied by any explanation - for Amy Foong's use. There was scant point in using her husband as a brake against overspending if, as she told us in terms was the case, the understanding was that she could (and did) retrieve deposited monies whenever she liked. We note, too, the extraordinary story that when she opened a new bank account in 1993, that was not only to provide a separate receptacle for her share funds, but was another means of ensuring that she spent less; why that last reason follows from the opening of an account to which she had ready access, it is difficult to say.

10.7.4 We do not accept that Amy Foong did not know that her husband was connected with PIIL. It was noticeable that she consciously sought to steer clear of any likely (and obvious) pitfall to her contention in this regard. She did not see Mr Lai's name on the press announcements; nor Dr Teh's. She did not connect Public Bank with Public International (not even when her husband advised her to buy Public International) because, she said, she was in Hong Kong. When JCG made its initial public offer, it produced, of course, a prospectus. That prospectus contained a paragraph about Amy Foong's husband, Mr Leong; and also paragraphs about Dr Teh and Mr Lai which stated that those two gentlemen were directors of Public International. It was common ground that Amy Foong had handed the prospectus, together with application forms, to her Dragoco colleagues. One might have expected her to have looked at the prospectus, but she said that she did not - an improbable scenario. But whether or not that was improbable, it is wholly unrealistic to suggest that an intelligent professional woman was unaware of her husband's connection with PIIL, not least since this was a marriage by 1992, of some twenty years. She knew full well that her husband worked for Public Bank. Her husband had bought for her PIIL shares, and none other. She was an

accountant interested in these matters, and it is simply not credible that she did not know that PIIL was connected with Public Bank and her husband's work. Indeed she relied, we find, on that connection in the choice made by her to buy these shares and none other.

10.7.5 We do not believe the account given for the decision to buy PIIL shares on 2nd December 1992. It was a fanciful account. It was fanciful both as to the choice of share and the timing of the purchases. Let us consider what we are asked to accept:

Of all the shares on the market, Amy Foong happens to choose one with which her husband has a professional and work relationship; she does not know that; and he does not know that she is trading at all, let alone trading in that counter. Nor does he know that that is the only share which she buys. Indeed it is the only share, upon that purchase, that she owns. Of all the days in the year that she buys, she buys the day after the first approach, and on the very day of a meeting which her husband attends at which PIIL is the subject of take-over talk. She buys these shares, the first purchase by her in just under eight months, on the basis of chat by ladies whom she does not know; whose occupations she does not know; whose source of information she does not know; and she makes no further inquiries and seeks no advice, either from her husband or from her broker, or from anyone at all. Her husband, Mr Leong, then funds the purchase, without knowing that he is funding the purchase of shares, let alone that he is funding the purchase of shares in a company whose controlling shareholder he is representing in a take-over approach at the very time of that funding and purchase. The purchase is effected through a third party's bank account (to whom Mr Leong quite innocently makes out a cheque rather than directly to the brokers), and the funds from which the purchase monies emanate consist in part of a repayment, only one week before, of $100,000 which Amy Foong lent to a brother in Singapore; the timing of the repayment being entirely coincidental, and unconnected with any decision to reactivate trading activity.

10.7.6 The story became more fanciful yet, for the next acquisition which at the very least involved Amy Foong directly, was again of PIIL shares, and happened to take place on the next auspicious day in the history of the take-over, namely, the day of the serious proposal. We do not believe for one moment that the acquisitions on 7th and 9th December 1992 were acquisitions at Miss Chan's own motion, independent of Amy Foong's interests. Miss

Chan's account that she decided on 4th December to buy because of the profit made by Amy Foong, to the tune of $30,000 or $40,000, did not fit the facts, for by 4th December, the paper profit on Mdm Foong's holding was, at best, in the order of $3,600. That was put to Miss Chan, who then said that it must have been a figure stated by Amy Foong on 7th, not 4th December. We do not believe that a shipping clerk earning as little as was Miss Chan, and who contributed to her family's support, would have borrowed $163000 in quick successive tranches within a space of four days for the purchase of shares, and we do not believe that Amy Foong would have lent it to her. It was also fanciful to suggest that Amy Foong was prepared to sit back whilst Miss Chan bought for herself. If she, Amy Foong, thought it a good idea for Miss Chan to buy, she would herself have purchased more shares.

10.7.7 Nor do we believe that Mr Leong made out cheques to Miss Chan in the total sum of $229,000 on three separate days and went to bank them on three further separate days, at a time when, we were told, he was frantically busy, without ever asking, even as a matter of natural curiosity, what the cheques were for; particularly given that he knew Miss Chan, and that he must at least have had some idea of her age and her earning capacity.

10.7.8 We do not believe the story that we have been told about the writing of cheques by Amy Foong, namely, that she filled them in rather than Miss Chan because Miss Chan could not get her pen around the word "Securities", or that she was insufficiently familiar with English. There are at least two occasions upon which Miss Chan had herself written "OCBC Securities". The first was on a cheque stub, dated 29th April 1992 - the counterfoil to the cheque drawn by Miss Chan for the purchase by Amy Foong of Lippo shares. The second was on a cheque, of which we have a copy, to OCBC Securities dated 12th January 1993. As for the Lippo counterfoil, the apparent ability of Miss Chan to tackle "Securities" on her own was put to Amy Foong, who resorted to the explanation that she, Amy Foong, had on that occasion, written the word for Miss Chan on a separate sheet of paper, and that Miss Chan had copied it.

10.7.9 We do not believe that it was only in March or April 1993 that Mr Leong came to learn that his wife had invested in PIIL shares in December 1992. Amy Foong's account that she was prompted then by excitement at her achievement in making money on her own, to tell her husband about her acquisition, and furthermore, to find out only then the reason for the

spectacular success of PIIL shares, is yet another lie. If success motivated her, she had already been successful in December. In any event, if the investments, or the substantial proportion of them, in December were in reality Miss Chan's, there would have been no reason to hide from her husband Miss Chan's success. It is ludicrous to suggest that the China factor was unknown to Amy Foong in December when the second announcement was released, and when the first batch was sold. The fact of the matter is that the story of the March-April revelations, was a story which was fabricated in an attempt to extricate this trio from the damage done by Miss Chan's statement to the SFC that it was on 8th December 1992 that Amy Foong told her that Mainland enterprises were behind the offer. We are satisfied that the record of interview in this regard is accurate, and that there was at the time of the interview no confusion in Miss Chan's mind about the question put or the answer given.

10.7.10 We do not believe, for reasons already given, that the trading account in Mdm Sin's name was operated for her benefit rather than for Mr Leong's, nor that the proceeds of sale of the JCG warrants in 1993 were intended and applied for her benefit. We do not believe that the timing of the sale of PIIL shares in Mdm Sin's name on 8th October 1992 was based on the considerations advanced by Mr Leong, namely, that the price had stood at 60 cents for some months and that since he had acquired them for 40 cents, there was a reasonable profit to be made; but we are not in a position to state why they where then sold, for we just do not, on the evidence we have, know. We do not believe that the acquisition by Amy Foong of National Mutual warrants in January and their sale in February and March was unconnected with Mr Leong's transactions at about the same time in the same warrants. We do not believe the explanations given by Amy Foong and Miss Chan for the movement of funds in and out of their respective bank accounts, in so far as their explanations are that these sums represented loans or the repayment of loans. We do not believe that the withdrawal by Amy Foong and Miss Chan of their scrip from OCBC in April 1993 had anything to do with dissatisfaction with OCBC's service; indeed, we find, for reasons implicit in our analysis at paragraph 10.5.1(13) above, that there was no dissatisfaction; and we do not believe that the reason for not opening another account until 1994 was because Miss Chan thought that OCBC had sold the shares. The truth is that she had not tried to sell them, through OCBC or anyone else.

10.7.11 We dare say that there are other items of evidence that we disbelieved, but it is unnecessary for the purpose of this report to go further.

The fact is that we found all three witnesses to have been dishonest in the case they have presented. They have put their heads together to produce a false account.

CHAPTER 11

THE LEONG GROUP: FINDINGS

11.1 Our rejection of the defences leaves us, though, to determine what in fact happened. In the course of stating why we have rejected the defences offered, we have stated facts which not only go to the destruction of those defences, but which clearly point the way to the conclusions to be drawn. So, for example, the facts that PIIL was the only share, bar one, transacted in 1992 by Amy Foong; that the transactions in December were the first in many months, and coincided exactly with price sensitive events concerning that very stock to which events Mr Leong was privy, but public investors were not; that the shares were acquired in the name of a third party; and that payment was made in the name of that third party, but was in reality payment by Mr Leong - these facts go towards establishing a case of insider dealing.

11.2 INTEREST IN, AND CHOICE OF, PIIL

11.2.1 Mr Leong was for some time during 1992 privy to a number of approaches for the possible take-over of PIIL. He knew, because it must have been obvious from the frequency and suddenness of approaches, and from the fact that he was put to work on several of them, that Dr Teh was interested in selling to the right buyer, and that PIIL had been identified - because of the simplicity of its structure and asset base, the fact that it had a single controlling shareholder, and that it had for some time been dormant - as a suitable take-over target. He was in a better position than the analyst, and certainly than the ordinary investor, to assess the prospects that a particular approach might have. He also, be it remembered, had invested since 1990 in PIIL shares, and had done so as recently as March 1992. It is idle in these circumstances to suggest that someone in that position did not follow the progress of events affecting PIIL in 1992. We find that he did. There was, we believe, a particular interest taken by Mr Leong (and Mr Lai) in PIIL shares, and whilst there may well have been something in the suggestion that they were a good buy because they were trading at such a discount to NAV, this does not account for the fact that in 1992 Amy Foong chose PIIL and no other share (bar one, and that only once).

11.2.2 If it is the case (and we doubt that it is), that the PIIL shares acquired by Mr Leong in September 1991 and March 1992 were acquired in

part for Amy Foong, we are sure that the choice of PIIL was not made in the *en passant* mode that Amy Foong would have us believe. It was chosen, at the least, because Mr Leong was connected with its progress and future, and Amy Foong knew that to be the case. It is highly probable that he saw the announcement of 6th April. We are certain that the sale of PIIL shares in May was not an independent decision of Amy Foong's. It is also certain that he knew of the surge in the price of PIIL shares in November, and that he saw the announcement in the press dated 30th November, and appearing on 1st December. We know that he took a decision to sell PIIL shares (he says for his mother) in October, and in explaining that step, he told us that he had noticed how the price of the share had remained steady for some months; there was every reason for his interest to continue, and we find that it did.

11.2.3 The absence of trading from May 1992 until 2nd December 1992 demonstrates that Amy Foong's trading account was not at the time of its opening intended by her as a regular vehicle for share transactions. The fact that such a long gap was followed by the choice again of PIIL, and the circumstances surrounding the acquisition on 7th December, and the acquisitions that immediately followed it, demonstrate too that those acquisitions were part of a course of conduct by Mr Leong and Amy Foong directed in December at PIIL alone, and decided upon because there was good reason then to know that it was a particularly sound buy.

11.3 SIGN POSTS TO CULPABILITY

11.3.1 We have identified those circumstances which have a cumulative impact. They include the fact that Mr Leong was privy to relevant information on 2nd, and 7th December, and that those were the days upon which, after such a long gap, it was decided to trade in PIIL shares alone, and repeatedly, and upon the very dates of significant meetings. We add to the recipe the fact that the acquisitions were funded not by those who purported to acquire them, but by another; and that that other was the man with the inside information. We add too the facts that for the second and subsequent purchases, the trading account of someone quite outside the Leong-Foong family was chosen, and that the details on the cheques which that third party presented for the acquisition of the shares were written not by her, but by the wife of the man with the inside information, and that Mr Leong, so we find, knew very well the purpose for which the cheques were drawn. We note too the fact that Amy Foong stopped trading in her own name when, had the trading been innocent and as likely to bear fruit as Amy Foong

suggests, one would have expected her to continue; her risk would have been no greater than Miss Chan's, and the impact of an adverse move in the price of shares much less dramatic for her than for Miss Chan. We find that Amy Foong told Miss Chan on or before 8th December 1992 that a PRC enterprise wanted to acquire PIIL. We are satisfied that that information, which was not then in the public arena as a fact, was information passed to Amy Foong by Mr Leong before 7th December, or on 7th December before Amy Foong placed the order that day for the purchase of PIIL shares.

11.3.2 As for lies, there has been a flood of them; many were material, and deliberate; and, in our judgment, they were lies that were told through an awareness of culpability. They go to support our conclusions, but our conclusions would be the same without them.

11.3.3 We regard the opening of a trading account with OCBC in March 1992 by Amy Foong with a degree of suspicion, given that JCG Securities would have been an obvious choice, and given the very limited use to which the OCBC account was put in 1992. That is, however, a matter that we disregard for the purpose of our conclusions, for that fact's connection with wrong-doing, particularly wrong-doing some months hence is, even in combination with other facts, far from established. What is significant, however, is the opening of the account by Miss Chan with OCBC on 7th December. It is not as if Miss Chan had had her own trading account which she had used, spasmodically perhaps, to trade, and then traded PIIL shares on these eventful days. The fact is that she had never had a trading account with anyone, and yet there was an apparent urgency not only to open an account that day, but also to activate it that day. There was no suggestion that she might trade through Amy Foong's trading account, nor through the existing trading accounts of any of her work colleagues.

11.4 Miss CHAN'S COMPLICITY

11.4.1 At paragraph 11.2.3 above, we refer to our finding that the transactions in PIIL shares in early December were part of a course of conduct, or joint enterprise by Mr Leong and Amy Foong. Was Miss Chan a culpable party to this enterprise? We are satisfied that she was, but there is scant evidence to support a contention that she was a party on or before 2nd December. Despite our scepticism about the payment on 23rd November 1992

of $100,000 to Mr Leong by Amy Foong through Miss Chan's bank account[1], there is no sufficient evidential basis upon which that transaction can be tied to a plan concerning PIIL. For reasons we describe at paragraph 8.5.3 above, it is unlikely that the acquisition of 2nd December was sparked by an event before that date. We can but speculate why Miss Chan was not used that day to cover the tracks left, or to be left, by the transaction. The price sensitive information was very fresh when Mr Leong received it and when he counselled Amy Foong to deal; and it is probable that they had not by then discussed the idea of an account in the name of another. Nor did Mr Leong then know whether the preliminary discussion would develop into a serious offer. On 7th December, however, the approach moved into a higher gear. Matters were now on a different plane, and two or more transactions by Mr Leong's wife, particularly on significant days in the trading history of PIIL would leave, no doubt, too much scope for suspicion. That is why it was necessary for Miss Chan to open a trading account that day.

11.4.2 It must have been obvious to anyone, and not least to Miss Chan, that this was an exercise in subterfuge to hide the true buyer or buyers. It was an exercise quite different from the use of an existing bank account to help Amy Foong make payments. This was the creation of a trading account to buy shares which were to be paid for by Mr Leong. There already existed a trading account in Amy Foong's name, and that is a fact that must have been known to Miss Chan, for it is most unlikely that the first OCBC cheque was signed by Miss Chan without her knowing the purpose for which it was intended; and, in any event, Amy Foong was at the advisory centre of the small band of ladies at Dragoco who had acquired, or in the case of Miss Chan, had wanted to acquire, JCG shares in 1991 and sold them in 1992, and there would have been an assumption that Amy Foong had her own trading account. In these circumstances, it was as clear to Miss Chan as night follows day that what was happening was secretive and unorthodox. We know that Amy Foong revealed to Miss Chan the fact that the offerors were Mainland enterprises. There was no need for Amy Foong to reveal such information at that stage if Miss Chan's part was to be a wholly passive one. Miss Chan struck us as a canny young lady, far from naive, and, subject only to the qualification explained at paragraph 11.8.10 below, we are entirely satisfied that she knew full well what was going on, and lent herself to it. We are certain that the scheme was one

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[1] See paragraph 10.4.11 above.

that required her co-operation, and that she was to benefit from it. She was not remote from the Leongs, and was no doubt easily approachable.

11.4.3 We had from Ms Joyce Lean something of the flavour of the degree to which Amy Foong and Miss Chan interacted when it came to share transactions. She suggested that the two women "always called me at the same time"[1], that when they passed orders to her, they would do so at the same time, by which we understood her to mean that the telephone receiver would be passed from one to the other, or that Ms Lean could hear discussions between those two; and she knew that they worked together "at the same spot". Her evidence about this, and about who placed the orders on the particular days in December 1992 with which we are concerned was not clear; that is not a criticism of Ms Lean, who was trying to recall fine detail of events two years old. The emphasis of her evidence changed as it progressed - we see nothing questionable about that; it may well be that she expressed her recollection more clearly as time pressed on, or that her recollection improved. It changed in that whilst she still could not remember who placed the deal on 7th December, most of the orders thereafter were, she said, placed by Miss Chan.

11.5 THE JOINT ENTERPRISE

11.5.1 We find that on and after 7th December there was a joint enterprise by which PIIL shares were to be acquired for profit with the benefit of inside information. Each party had his or her part to play. Amy Foong was to secure the opening of a trading account in Miss Chan's name, to place deals or to ensure that they were placed, to be at Miss Chan's elbow when necessary, and to complete such paperwork as was required, including the writing of cheques. Miss Chan was to open the trading account and to take part in, or effect, the placing of orders to buy and to sell, and to permit the use of her bank account as a conduit for payment of purchase prices. Mr Leong was to provide information and spur trading as and when the circumstances were opportune, to foot the bill, and to ensure that timely sums were credited to Miss Chan's bank account.

11.5.2 We have taken into account the evidence of Mr Lai about the matters he did or did not impart to Mr Leong. They are at best neutral, for he says that he does not recall what Mr Leong was told and when. That neutrality of recollection

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[1] See transcript, page 2512.

may be genuine, but it may also be born of a reluctance to cause difficulty for a long standing work colleague.

11.6 SECTION 9: CONNECTED PERSON

11.6.1 In December 1992, Mr Leong was a person connected with PIIL for the purpose of section 9 of the Ordinance. We arrive at that conclusion by the following routes:

(1) Under section 4(1)(a):

(i) Dr Teh was a controller of PIIL (as the word "controller" is defined by section 2 of the Ordinance), in that he was entitled to exercise more than 33% of the voting power at general meetings of PIIL (see section 2 of the Ordinance).

(ii) Dr Teh was also a controller of JCG Holdings in that he was entitled to exercise, or control the exercise of, more than 33% of the voting power of Public Bank of which JCG Holdings was a subsidiary (see paragraph (b) under the definition of "controller" in section 2 of the Ordinance). He was also, no doubt, one with whose directions or instructions the directors of Public Bank were accustomed to act (paragraph (a)).

(iii) It follows that JCG Holdings was, in relation to PIIL, a "related corporation" as that term is defined by section 2 of the Ordinance (see paragraph (b) of the definition).

(iv) Mr Leong was a director of JCG Holdings. He was therefore a director of a corporation related to PIIL.

(2) Under Section 4(1)(c):

(i) Section 4(1)(c) of the Ordinance provides that:

"(1) A person is connected with a corporation ..... if .....

> (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of -
>
> (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
>
> (ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or".

(ii) Mr Leong was not a director of PIIL, nor classified by it as one of its employees. Yet, as the events of 1992 demonstrate, Mr Leong was occasionally tasked to perform functions directly related to Dr Teh's controlling interest in PIIL. At paragraph 7.4.1 above, we describe the nature of that task, a task which he also performed in the case of the CEF approach. So, for example, it was Mr Leong who, on 7th December, delivered the briefing to CEF officers and others about the PIIL group of companies.[1] In relation to this approach, and in relation to the others, he, rather than any officer or employee of PIIL, was engaged to do so. He was asked why this was so, and he answered:

> "I think it's mainly because Mr Lai perhaps felt that there were no qualified accountants in Public International and he asked me to do this. And I did a similar exercise when there was the Goodwill exercise. So I had all the worksheets set up as such."[2]

So whatever label was attached to Mr Leong's employment, the reality was that he was expected to, and did, devote part of his working (and salaried) time, to PIIL affairs.

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[1] See paragraph 15.8.1 below.
[2] See transcript, page 4181.

(iii) Whether any individual is in a position "which may reasonably be expected to give him access to relevant information concerning the corporation" must depend on the particular facts of each case. An analysis of a similar provision, namely, section 9 of the Company Securities (Insider Dealing) Act 1985, suggests that:

> "..... it is insufficient for the officer or employee to come across the information by chance, or for him to be in a position of access to confidential information. If he is to be an insider under these provisions then he must be in a position which may reasonably be expected to give him access to information which, in relation to securities of either company, is unpublished price sensitive information and which it would be reasonable to expect a person in his position not to disclose except for the proper performance of his functions. Whether he does occupy such a position is an issue of fact to be determined in each case."[1]

The factual context which we are to apply is that there existed a close relationship, in theory as well as in practice, between PIIL and JCG Holdings. They had a common controller; Mr Lai devoted himself to PIIL affairs as well as to JCG affairs; he worked closely with Mr Leong, who happened to be a qualified accountant when there was none at PIIL. So, as an employee (or director) of JCG Holdings (which was a corporation related to PIIL) he was, in the context of that company's relationship with PIIL, and his own functions in relation to both companies, likely to have access to relevant information concerning PIIL.

(iv) There is an additional way by which he can be said to fall within the contemplation of section 4(1)(c), namely, that he was engaged for PIIL work precisely because of his particular professional expertise, namely, the expertise of an accountant, so that there can be said to have been a professional relationship between him and JCG Holdings or PIIL, and that in that capacity he could be expected to have access to price sensitive information concerning PIIL

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[1] See Brenda Hannigan - "Insider Dealing", page 60.

- indeed his services to PIIL were engaged particularly, if not only, for the handling of take-over approaches.

11.6.2 We are satisfied that in December 1992, Amy Foong knew full well that her husband was a person connected with PIIL. We recite at paragraph 10.7.4 above those factors which drive us to that conclusion.

11.7 2nd DECEMBER

11.7.1 We find that before lunch on 2nd December 1992, Mr Leong knew that an initial approach had been made by CEF Capital, a reputable investment banking company, on behalf of clients interested in acquiring PIIL or a controlling stake in PIIL, alternatively in acquiring control of PIIL jointly with Dr Teh, that Dr Teh was, at least on a preliminary basis, interested in the approach, and that a meeting between Dr Teh's advisers had been arranged for that same day with those acting on behalf of the prospective offerors. We find that those items of information, separately and cumulatively, constituted relevant information as defined by section 8 of the Ordinance. Mr Leong accepted as much. Sections 9(1)(b)(d) and (e) themselves tend to assume that contemplation of making a take-over is likely to be relevant information. In this case, neither CEF's initial approach, nor the setting up of a meeting, were facts known to those accustomed or likely to deal in PIIL shares, and these facts, if known, were bound materially to affect the price of those securities. In determining in each instance whether a piece of information is relevant information, we have applied the tests and criteria to which we make reference in Chapter 19 below.

11.7.2 We find that Mr Leong knew that the information he had on 2nd December 1992 was relevant information. The test in each instance is a subjective one.[1] His own evidence about the need for confidentiality about take-over approaches suffices, but even were that not so, it would be difficult indeed to believe that a man of his background and position would think otherwise.

11.7.3 If Mr Leong did not volunteer the information, it is most unlikely that Amy Foong would not have asked her husband why he recommended, and counselled the purchase of those shares. We think it highly probable and we

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[1] See paragraphs 20.1.3 and 20.1.4 below.

find that on 2nd December, and before the transactions on 2nd December, he told her why, imparting to her the information to which we refer at paragraph 11.7.1 above, or its essence. She is an intelligent lady, an accountant, and a person who has worked previously for a stock broker. We are sure that she knew that the information passed to her was relevant information, and knew or had reasonable cause to believe that her husband held that information by reason of being connected with PIIL. It is unnecessary for the purpose of the first question posed by the terms of reference, namely, whether insider dealing took place in the securities of PIIL on 2nd December, to decide whether the transaction was a deal made by Mr Leong. We are sure that he counselled Amy Foong to deal knowing that she would do so, and we are also sure that he disclosed the relevant information to her knowing that she would make use of that information for the purpose of dealing. He is therefore identified as an insider dealer in relation to the transaction on 2nd December by virtue of the provisions of sections 9(1)(a) and 9(1)(c), and section 2, of the Ordinance.[1]

11.7.4 There is no question but that Amy Foong dealt in the listed securities of PIIL on 2nd December, and it follows from that and from our other findings that Amy Foong is identified as an insider dealer in relation to the transaction on 2nd December by virtue of the provisions of section 9(1)(e) of the Ordinance.

11.8 DEALING ON 7th DECEMBER

11.8.1 There were three pieces of relevant information that were made known to Mr Leong on 7th December 1992. They were:

(1) the fact that a serious proposal was to be made that day by CEF on behalf of its clients for the acquisition of a controlling interest in PIIL;

(2) the fact that a serious proposal was in fact made that day by CEF on behalf of its clients for the acquisition of a controlling interest in PIIL; and

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[1] Section 2 is relevant because it defines "insider dealer".

(3) at least, that the bidders included Mainland enterprises, and Cheung Kong.[1]

11.8.2 In Chapter 19 below, we explore whether information in December 1992 that Mainland enterprises were part of the consortium was relevant information, and we conclude that it was. Mr Leong was lukewarm in his reaction to that suggestion (see paragraph 10.6.8 above), but recognized that if the deal came to fruition, the impact on the price of PIIL shares might mimic that in the Tung Wing episode. We know too that Amy Foong thought the matter sufficiently significant to relay it to Miss Chan on or before 8th December. We are satisfied that, whatever the date or dates upon which they heard and possessed this information - prior to 16th December - they all knew that it was price sensitive information.

11.8.3 At paragraph 9.8 above, we record our finding that during the 2:15 pm meeting on 7th December Mr Leong was told at least that some of the bidders included Mainland enterprises, and that Cheung Kong was involved. Both items of information, separately as well as in combination, were items of relevant information, and we find that all three - Miss Chan, Amy Foong and Mr Leong, at whatever stage that information was imparted to them - knew them to be items of relevant information.

11.8.4 It is unnecessary for the purpose of the transaction of 7th December to rely on facts other than:

(1) the fact that on 7th December, Mr Leong was (still) in possession of relevant information gathered on and since 2nd December 1992, namely, that an approach had been made by CEF Capital on behalf of Mainland interests for the acquisition of a controlling or joint stake in PIIL, and that that approach had been furthered by a meeting between CEF Capital and Dr Teh, and that the approach was still alive. It is highly probable, and we find, that on or before 7th December 1992, and in any event before the order for the purchase of PIIL shares was placed through Miss Chan's account, Mr Leong imparted this information or its essence to Amy Foong, that both knew this information to be relevant information, and that when he disclosed the information,

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[1] See paragraph 15.5 below for our more specific finding that identities were revealed and descriptions given at the meeting at 2:15 pm on 7th December.

he knew that she would make use of that information for the purpose of dealing, or counselling or procuring Miss Chan to deal.

(2) the fact that before lunch on 7th December and before the order of 7th December was placed, Mr Leong knew that CEF Capital intended to put forward on that day, on behalf of its clients, a serious proposal for the acquisition of a controlling stake in PIIL. That in itself was relevant information, and Mr Leong knew it to be so. Any person of his experience would. We are satisfied that he had time to, and did, pass that information to Amy Foong, and we are satisfied that when he did, he knew that she would effect a deal through Miss Chan's trading account. The nature of the respective acts of the trio on that day and on the following few days was such as to suggest strongly that Mr Leong and Amy Foong had decided in advance of the deal on 7th December how they would put that deal, and any other PIIL deal which might be made in the following days, into effect. It matters not whether, on 7th December, Mr Leong knew that Amy Foong would herself place the order, or whether he knew that she would counsel Miss Chan to do so. We find as a fact that the order on 7th December was placed by Amy Foong. There was no reason for her to have volunteered the fact if that is not what had happened, and the circumstances were such that Miss Chan might well not have taken a front seat, as it were, for the first deal in her name. Ms Lean's evidence does not undermine such a conclusion.

11.8.5 It follows from our findings that in relation to the transaction on 7th December 1992, Mr Leong was an insider dealer pursuant to the provisions of section 9(1)(c) and section 2 of the Ordinance, for he passed to Amy Foong information (namely, the information particularised in the preceding paragraph) which was, and which he knew to be, relevant information, knowing or believing that she would use the information for the purpose of dealing or counselling or procuring Miss Chan to deal. If the two items of information were imparted by Mr Leong to Amy Foong on separate occasions, each separate disclosure will have constituted an act of insider dealing, and Mr Leong an insider dealer in respect of each act. We are also satisfied that whilst in possession of those items of information, Mr Leong counselled Amy Foong to deal in PIIL shares, knowing that she would do so, and that, accordingly, he

was, for this reason also, an insider dealer pursuant to the provisins of section 9(1) of the Ordinance.

11.8.6 We are satisfied that Amy Foong placed the order for the purchase of securities of PIIL that day. We are further satisfied that when she dealt on 7th December, she was in possession of relevant information, namely, and at least, the information that there was forthcoming that day a serious proposal for acquisition of a controlling stake in PIIL. She knew that to be relevant information. She also knew that her husband, from whom she had received the information, was connected with PIIL, and knew that he held that relevant information by virtue of being so connected. It follows that her conduct constituted an act of insider dealing pursuant to the provisions of section 9(1)(e) of the Ordinance, and that she, having perpetrated the purchase, is identified as an insider dealer in respect of it.

11.8.7 That the placing of this order was a dealing in those shares by her is clear, for section 6 of the Ordinance provides that a person deals in securities "..... if (whether as a principal or agent) he buys, sells, ... or agrees to buy, sell, ... any securities". But the full circumstances were such that Amy Foong, and Mr Leong and Miss Chan were each party to this acquisition. Each, by separate acts, took part, as a joint enterprise, in the purchase of these shares, or agreed to buy them. The nature of their respective acts are described at paragraph 11.5.1 above. How the spoils were to be divided is another matter. (If it were the case that Miss Chan's conduct was as agent for Amy Foong and/or Mr Leong, that would not avail her, for the terms of section 6 are such as to establish that the Ordinance does not seek to exempt the person who effects a deal by reason only that that person has effected the deal on behalf of a principal. Section 10(4) is designed to exempt the broker or investment adviser who receives and acts upon a specific order from a client, where there is no question of collusion, or of advice by the broker to purchase that particular counter. The same reasoning applies to a similar hypothesis in the case of Mr Leong.) It follows that the dealing effected by Amy Foong was also Mr Leong's dealing; he was party to it. Accordingly, for this additional reason he was, again, an insider dealer pursuant to the provisions of section 9(1)(a).

Miss Chan

11.8.8 Miss Chan's position is not so straightforward. There is no doubt at all in our minds but that she opened her trading account on 7th December in

order to enable it to be used by Amy Foong and Mr Leong for a transaction or transactions in PIIL shares, and that she was willing to permit her bank account and her cheques to be used to effect payments for those transactions by Mr Leong to the brokers. She knew that the order was to be placed by Amy Foong; and she knew that Mr Leong was to pay for the shares. There had to be a reason why the transaction could not be in Mr Leong's name or that of his wife. There had to be a reason for the creation of banking and trading channels. There had also to be an explanation for the fact that Mr Leong was not prepared to pay directly for these shares. This paraphernalia of secretive trading was put into place with her active connivance, and it is inconceivable that she was not told why.

11.8.9 We find:

(1) that Miss Chan knew that these bank and trading routes were to be used to hide the fact that Mr Leong and Amy Foong were behind the PIIL purchases;

(2) that before Miss Chan lent herself to the transaction on 7th December, she received from Amy Foong such relevant information as was in Amy Foong's possession that day, or at least information to the effect that a serious proposal or an offer was to be made that day for the acquisition of a controlling interest in PIIL, and that she knew it to be unpublished price sensitive information; and

(3) that Miss Chan knew that that information had been imparted to Amy Foong by Mr Leong.

11.8.10 Miss Chan's conduct falls to be considered in the context of section 9(1)(e) of the Ordinance only. There is no other part of section 9 that could apply. She certainly received relevant information about PIIL, and received it indirectly from a person connected with PIIL, who held that information by virtue of that connection. For reasons explained in paragraph 11.8.7, we find that Miss Chan dealt in PIIL securities on 7th December. But this does not suffice to constitute an act of insider dealing, for it would first have to be shown that Miss Chan knew that Mr Leong was connected with PIIL, and that she knew or had reasonable cause to believe that he held the relevant information by virtue of that connection. We do not think that that is

the only reasonable inference to be drawn in this case. We have determined[1] that on or before 8th December Amy Foong told Miss Chan that a PRC enterprise wanted to acquire PIIL. That, and the inherent probabilities of the matter, demonstrate that Amy Foong was wont to impart to Miss Chan the nature of the inside information which was the cause of the scheme to which the trio were committed. So, too, would it have been obvious that the information came from Mr Leong. But it does not follow that Amy Foong told Miss Chan about her husband's connection with PIIL, or the circumstances in which he had acquired the information. She may have done, but we are not satisfied to the requisite standard that she did. Accordingly, it is not demonstrated that Miss Chan was an insider dealer in relation to the transaction of 7th December.

11.9 DEALING ON 9th DECEMBER

11.9.1 Regardless of what information she learned on or after 7th December, Amy Foong was on 8th and 9th December still in possession of knowledge acquired before then about the background of the bidders. On or about 8th December and in any event before the transaction on 9th December, Amy Foong told Miss Chan that the purchaser was a Mainland party or enterprise. On 9th December, an order was placed in Miss Chan's name for the purchase of 80,000 PIIL shares at cost of about $66,000. On any view of the matter, Mr Leong knew the very identities of the offerors before 9th December. We find that he had passed that information, or if not the names of them all, then the name Cheung Kong, and some material description of the Mainland parties, to his wife. These were very significant items of information, and there was every reason and opportunity to put her in the picture, and to counsel her to effect the purchase of more PIIL shares. That is what he did. He knew full well that each such item of information was price sensitive information not known to those likely or accustomed to deal in such shares, and when he passed that information to Amy Foong, he knew that she would make use of the information for the purpose of dealing, or counselling or procuring Miss Chan to deal. Whoever actually placed the order on 9th December, it is clear that the placing of that order was still in furtherance of the joint enterprise to trade in shares whilst the advantage of inside information remained with them. We are satisfied that this was not a "punt" on Miss Chan's own initiative. The cost of the acquisition was still too substantial for someone

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[1] See paragraph 11.3.1 above.

of her means; Mr Leong paid for the purchase of these shares; Amy Foong wrote the cheque; and the inside information was too fresh and valuable for them to pass by and leave to Miss Chan to do with as she wished. Amy Foong knew that the information which her husband had passed to her was relevant information, and Amy Foong knew that her husband had acquired it by reason of his connection with PIIL. If she did not place the order herself, then she counselled and procured Miss Chan to do so. On either view, her conduct constitutes insider dealing by virtue of section 9(1)(e) of the Ordinance; and Mr Leong's conduct is also thus categorized by virtue of sections 9(1)(a), (c), and (f).

11.9.2 Miss Chan also knew the information which she had recently received from Amy Foong was price sensitive and unpublished. That is why she was told. It is, moreover, implicit in the answer by Miss Chan to the SFC interviewer[1] that it was that piece of information that triggered her decision to buy those 80,000 PIIL shares. Miss Chan's conduct that day amounted to dealing, either because she placed the order or, if she did not place it, because she consciously permitted the order to be placed in her name through her trading account. We are satisfied also that she knew that the information had been passed to Amy Foong by Mr Leong. However, for the same reasons provided at paragraph 11.8.10 above, we are not satisfied that by her conduct Miss Chan was in respect of this transaction an insider dealer.

11.9.3 We add that it is not necessary to show that before each act of dealing, information was imparted afresh to render each transaction an act of insider dealing. In the case of dealing, infringement of the law is constituted by the act of dealing whilst in possession of relevant information, and for so long as that information remains relevant information, each act of dealing is an act of insider dealing. As for counselling and procuring and the passing of information, that is in each instance a single act, and a sequence of deals struck with the benefit of that single act does not multiply the act of insider dealing which is constituted by the passing of information, or the counselling, or the procurement. However, the profit which flows from that single act will be the profit accrued from all consequential transactions.

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[1] See answer 64 of the record of interview on 2nd June 1993.

11.10 DEALING ON 10th DECEMBER

11.10.1 The acquisition of 24,000 PIIL shares on 10th December 1992 differs from the earlier purchases by the trio in December in that the quantity was much smaller, the cost much less ($20,020), and there was no transfer of funds by Mr Leong to Miss Chan's bank account to cover that cost, although we note a transfer of $20,000 by Mr Leong to Amy Foong on 14th December 1992.' Miss Chan says that she placed this order and there is no evidence to the contrary, although we see that the cheque in settlement for this transaction was written by Amy Foong. We recall, too, Ms Lean's evidence that as time went on, orders on Miss Chan's account were almost always placed by her. There is not sufficient evidence upon which to conclude that this transaction was part of the joint enterprise which governed the earlier deals, so that no adverse finding against Amy Foong, or Mr Leong is made in relation to it. However, on the date this order was placed Miss Chan was still in possession of relevant information. If she placed the order herself, we are satisfied that the criteria set by section 9(1)(e) are almost met; if the transaction was still part of the joint plan, then the same result follows. But it has not been shown that Miss Chan knew Mr Leong to be connected with PIIL, for which reason Miss Chan is not shown to be an insider dealer in respect of this transaction.

CHAPTER 12

THE DON LAU GROUP: THE ISSUES

THE ACCEPTED FACTS

12.1 The case concerning Mr Don Lau, Mdm Pamela Wong, Mr Lau Wai-man and Mr Wallace Yuen centres upon one transaction, namely, the purchase on 8th December 1992 of 240,000 PIIL shares.

12.2 It is accepted by all those affected, the evidence is clear, and we find that:

(1) In February 1992, a trading account was opened in the name of Lau Wai-man with G K Goh. Mr Lau Wai-man is married to Mr Don Lau's sister-in-law, Pamela Wong. Mr Don Lau knew that that account was then opened, because to some extent he facilitated its opening.

(2) Mr Don Lau had a trading account with G K Goh in his own name. It was opened in May 1991, and Mr Don Lau traded through that account periodically. The broker with whom Mr Don Lau dealt was Mr Wallace Yuen of G K Goh.

(3) The Lau Wai-man trading account was first used in April 1992, when 10,000 shares of EIE Development ("EIE") were purchased. Those shares were sold in June 1992. Mr Don Lau also acquired EIE shares in April 1992, and sold them in June 1992. He bought and sold these shares through his own trading account.

(4) The next time that the Lau Wai-man trading account was used was in December 1992. On 8th December, 240,000 PIIL shares were purchased, and they were sold on 16th and 17th December. These are the transactions with which this part of the Inquiry is concerned. Mr Don Lau did not acquire any PIIL shares through his own account.

(5) On 7th December 1992, Mr Don Lau attended a meeting or meetings at the offices of JCG at which were discussed various matters connected with the proposal by CEF on behalf of its clients to acquire a controlling stake in PIIL.

(6) The person who placed the order for the purchase of the 240,000 PIIL shares on 8th December was Mr Don Lau who, at that time, was Managing Director of the corporate finance section of Nikko Securities (Asia) Limited ("Nikko").

(7) When Mr Don Lau gave instructions to Mr Wallace Yuen, on 8th December 1992, for the purchase of the PIIL shares, the announcement of the third party approach (the first announcement) had already appeared that morning in the press, and Mr Don Lau knew that to be the case.

(8) The order was placed by Mr Lau on the morning of 8th December 1992, and was executed in two batches, namely, 216,000 and 24,000 PIIL shares, at about 10:20 am and 11:15 am respectively. The first batch was purchased at 83 cents per share ($179,280), the second at 86 cents per share ($20,640) - a total of $199,920.

(9) The broker to whom the instruction by Mr Don Lau was given was Mr Wallace Yuen Moon-chung of G K Goh Securities.

(10) The purchases of these shares were effected in the name of Mr Lau Wai-man.

(11) On 10th December 1992, Mr Don Lau drew a personal cheque in favour of G K Goh in the sum of $200,931.76 which was the purchase price of the shares ordered by him on 8th December, plus the transaction costs.

(12) On 12th December 1992, Mdm Pamela Wong deposited, in cash, the sum of $16,745 to the credit of one of Mr Don Lau's bank accounts.

(13) On 16th December 1992, there appeared in the press the announcement of the conditional agreement for the acquisition of the controlling stake in PIIL, in which announcement were revealed the names of the purchasers as well as the names, including that of Nikko, of those who had been appointed as professional advisers.

(14) On 16th December 1992, upon Mr Don Lau's instructions, Mr Yuen sold 24,000 PIIL shares in Mr Lau Wai-man's account at $2.375 per share ($56,712.15 after deduction of transaction costs); and on 17th December 1992, Mr Yuen, again on Mr Don Lau's instructions, sold the balance of the shares acquired on 8th December, namely, 216,000, at prices ranging from $2.60 to $2.65 ($563,737.87 after deduction of costs). The profit, therefore, was $419,518.

(15) Accordingly, G K Goh drew two cheques for the proceeds of these sales, in favour of Mr Lau Wai-man, and on 23rd December 1992, these sums were credited to a joint savings account in the names of Mdm Pamela Wong and Mr Lau Wai-man. The sums were then transferred to a current account in their names, and on 27th December 1992, Mdm Pamela Wong drew two cheques, one in the sum of $573,737 in favour of Mr Don Lau, which sum was duly credited to Mr Don Lau's bank account, and the other in favour of herself in the sum of $46,713 which was credited to a bank account in her name only. Thus, Mr Don Lau's account was credited with $10,000 more than the proceeds of sale of the shares sold on 17th December, and Mdm Pamela Wong's sole account was credited with $10,000 less than the proceeds of sale of the shares sold on 16th December.

THE ALLEGATIONS - Mr DON LAU

12.3 The essence of the allegation against Mr Don Lau is that at a briefing on the afternoon of 7th December, Mr Don Lau acquired possession of price sensitive information about PIIL and that, on the following day, 8th December, he placed an order for the purchase of PIIL shares and that, at the time he placed that order, important parts of the information he possessed were still, despite the announcement published in the press on 8th December,

"relevant information" in that it was price-sensitive information not known to those accustomed or likely to deal in the listed securities of PIIL. The sensitive information, it was suggested, was information which revealed the background or actual identities of the purchasers.

12.4 There was a range of items of information which, on 8th December and despite the first announcement, were candidates for the category "relevant information", as defined by section 8 of the Ordinance:

(1) that the, or a, purchaser was a Mainland or China enterprise;

(2) that bidders constituted a consortium that included a Mainland or China enterprise (or enterprises);

(3) that Cheung Kong was one of the consortium;

(4) that the consortium comprised Mainland enterprises and (i) a local company; (ii) Cheung Kong; or (iii) a local company like Cheung Kong;

(5) the actual names of some or all of the Mainland enterprises. One such name was "Shanghai International", the biggest securities company in China; and

(6) that the purchaser or one of the purchasers was a big or the biggest securities firm in Shanghai.

These were the pieces of information upon which the case primarily concentrated, although there were a few others which we addressed:

(7) that the purchasers were "strong parties" or "strong and reputable parties", or descriptions along those lines.

(8) that one of the consortium was CEF Holdings.

(9) that - either expressly or by implication from other facts disclosed or apparent - a deal along the lines of the Tung Wing deal was being put together;

(10) the stage which negotiations had reached by close of business on 7th December, namely, an advanced stage where it appeared that a deal was likely.

The predominant area of inquiry was whether at the meeting on 7th December, Mr Lau was told the background or identity of the parties.

12.5 There were a number of features of the evidence collated by the SFC which, in combination and without explanation, suggested culpability on the part of Mr Don Lau. PIIL shares were acquired in the name of Mr Lau Wai-man, yet it was Mr Don Lau who placed the orders to buy and to sell, who paid for most of the shares, and who received the greater part of the proceeds of sale. The order to buy was placed on the morning after Mr Lau attended a meeting or meetings at JCG's offices, at which was discussed the serious proposal put forward by CEF Capital; and during the course of the same afternoon at least some who attended JCG's offices received particulars of the identity or background of the offerors. Mr Don Lau's account of how he came to be landed with the shares, namely, that they were all originally intended for his sister-in-law, was contradicted by her. Correspondence concerning Mr Lau Wai-man's trading account was not, as one might expect, sent to the account holder, but to Mr Don Lau. There were suggestions that Mr Don Lau encouraged others to lie about who placed those orders. There was also a letter signed by him in which he appeared to acknowledge that when he placed the order on 8th December, he knew the background or identity of the offerors, yet he told the SFC that that was not so, and that the entry in the letter was a mistake.

Mr DON LAU'S ANSWERS

12.6 Mr Lau's answers (put broadly at this stage, and emphasising that there is no burden upon him to prove that he did not engage in insider dealing) were these:

(1) that at the time he placed the orders, they were placed on behalf of Mdm Pamela Wong, not himself, and that he came to acquire most of them by chance, in the sense that she refused to take up the full quantity he had acquired;

(2) that at the time he placed the order he was in possession of no price sensitive information not then known by investors. In particular,

(i) he did not then know the identity of the purchasers;

(ii) he had been told nothing at the briefing, or at any meeting on 7th December (or at any other time prior to the order on 8th December to buy shares), about the purchasers, whether generally or by specific identification;

(iii) there was by 8th December 1992 such a widespread market perception that PRC enterprises were "going after" shell companies in Hong Kong to obtain backdoor listing, and that they were teaming up, or wished to team up, with top local corporate names to do so, that in November and December 1992 a proposed take-over of a shell company, once announced, was in effect known by those accustomed or likely to deal in PIIL shares to be a bid by substantial PRC enterprises in conjunction with a large local company, such as Cheung Kong, so that public revelation of the background or names of the offerors added nothing or nothing material to that which was already perceived by those accustomed or likely to deal in PIIL shares. Accordingly, even had Mr Don Lau been told the background or names of the bidders on 7th December he would not, at the time he placed the deals on 8th December, have been in possession of relevant information;

(iv) that many factors prevailed to influence the market price of any shell company then the target of an approach, and it was difficult, at least, to isolate information about the background or identity of purchasers and conclude that that particular factor was likely materially to affect the price of the shares, the more so when any takeover announcement was taken as an announcement of a bid by a substantial PRC enterprise teaming up with a large local company.

(3) that even had he been told the background or identity of the bidders, he would not have known (and the test is subjective) that that information was relevant information, for as far as he was concerned the perception of the market was such that that information in his hands, would, to his mind, constitute no material difference from that which was in effect known to the investing public;

(4) that, in any event, such information was not information "about" PIIL (see section 8 of the Ordinance), but was about the bidders.

(5) that information about the background of the bidders, namely, that that were PRC related was not "specific information" (see section 8 of the Ordinance);

(6) he denied that he had encouraged Mr Yuen to lie to the SFC in December 1992, or in April 1993, and he denied taking an active part in a discussion in April 1993 with Mr Lau Wai-man, Mdm Pamela Wong and Mr Yuen at which there was canvassed what answers should be given at SFC interviews. In any event, if there were lies or plans to lie, they prove nothing other than that the lies were told or that the plans were made; they do not go to support a case of insider dealing.

(7) As for a letter dated 5th January 1993 which he had signed, and which stated that he had been told on 7th December the identity of the purchasers, he acknowledged that he had signed the letter, but asserted that the letter had been drawn by a work colleague, Mr Derrick Lau, who had incorrectly assumed that Mr Don Lau had come by the identity of the purchasers during a briefing on the afternoon of 7th December. Mr Don Lau's case is that it was only during the afternoon of 8th December 1992 that he first acquired that knowledge, and that he acquired it in the course of a telephone conversation with Mr David Wong of CEF Capital.

THE OTHERS

12.7 We have also to examine the conduct of Mdm Pamela Wong, Mr Lau Wai-man and Mr Wallace Yuen. When first interviewed by the SFC, in April 1993, Mr Lau Wai-man and Mdm Pamela Wong told the SFC that Mr Lau Wai-man had placed the order on 8th December. On the same day, they retracted that story, and said that their earlier account was false, and that they had been tutored the previous day by Mr Don Lau and Mr Wallace Yuen to provide an untrue version of the salient events.

(1) Mr Lau Wai-man

12.8 The shares had been acquired and sold through Mr Lau Wai-man's account, and in the course of his first interview he took upon himself the sale of the shares. We had therefore to ascertain whether in fact it was he who had placed the order as originally suggested and, even if not, whether he knowingly facilitated the use of his account for insider dealing. There was also the very serious allegation that he had deliberately lied to the SFC, and had taken part in a plan to do so. Whether or not a particular individual had engaged in insider dealer, an allegation that he and others had conspired to tell lies to the SFC was a most serious allegation and, assuming the allegation to have relevance to our inquiry, it was incumbent upon us to notify Mr Lau Wai-man, Mdm Pamela Wong, Mr Don Lau and Mr Wallace Yuen of the allegation, since, if true, an adverse finding would impact most adversely against their reputations. Mr Lau Wai-man's case was that he was wholly divorced from the purchase and sale of PIIL shares through his account in December 1992. He said that he was persuaded to tell a tale to the SFC but that, after consulting his wife, he changed his mind, and told the truth.

(2) Mdm Pamela Wong

12.9 Mdm Pamela Wong undoubtedly acquired 20,000 PIIL shares on 8th December through Mr Don Lau. Neither she nor her husband had acquired any shares since April 1992. She made a fairly handsome profit on the PIIL transactions within the space of just over one week. She gave two wholly different stories to the SFC on 29th April 1993. It was part of our task to ascertain whether she had originally intended to acquire more than the 20,000 shares ultimately earmarked for her, and whether, if Mr Don Lau had engaged upon trading with the benefit of inside information, she had facilitated his

conduct, was privy to the same information when the order was placed, and knew that he had that information (if he did) by virtue of a professional connection with PIIL.

12.10 Mdm Pamela Wong says that Mr Don Lau approached her on 8th December asking if, or suggesting that, she might want to acquire some shares, that they were not identified to her, and that she had no inside information about them, nor any idea that Mr Don Lau possessed such information, if in fact he did. She says that she had asked for 40,000 shares, and that Mr Don Lau later told her that he had managed to acquire only 20,000. She left to him the decision to sell. She admits that in April 1993, she took part in a rehearsal of untruthful answers to give to the SFC, but says that this was not at her instigation. She had asked Mr Don Lau to mollify her husband who was upset at the need to attend an interview, and a visit to her flat by Mr Don Lau and Mr Yuen followed that request. Mr Yuen had recently been interviewed by the SFC, and the visit soon turned into a discussion about the answers he had given, and what answers should be given by Mr Lau Wai-man and Mdm Pamela Wong at the forthcoming interviews.

(3) Mr Wallace Yuen

12.11 Mr Wallace Yuen effected the purchases on 8th December, and the sales on 16th and 17th December. In December 1992, he lied to his employers about the identity of the person who had placed the order, and is said to have lied again to the SFC in the course of his interview on 26th April 1993. He admits as much, but says that he was, on both occasions, persuaded by Mr Don Lau to do so. He was interviewed by the SFC on 26th April 1993, and admits taking part in a discussion at Mr Lau Wai-man's flat on 28th April 1993. He now says that it was his idea to go and meet Mr Lau Wai-man, and, when there, he was asked by Mdm Pamela Wong what he had said at the recent interview; and he told her. He subsequently retracted the account given to the SFC on 26th April 1993 - he had told them that Mr Lau Wai-man had placed the orders to buy and to sell. His new account to the SFC was that Mr Don Lau had placed the orders.

12.12 We had to determine whether, if insider dealing was established against Mr Don Lau, Mr Yuen wittingly lent himself to that insider dealing, and in the course of so determining, whether he knew that the transactions he effected through Mr Lau Wai-man's account were bogus in the sense that the

account was used by Mr Don Lau as a cover for his own transactions, and whether he not only gave to the SFC a false account, but encouraged others to do so. His case is that although he executed the orders placed by Mr Don Lau on 8th December and 16th December 1992, he was not in possession of relevant information about PIIL, nor did he know, should it prove to be the case, that Mr Don Lau was. He relies also on the provisions of section 10(4) of the Ordinance:

> "A person who, as agent for another, enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction as agent for another person and he did not select or advise on the selection of the securities to which the transaction relates."

CHAPTER 13

THE DON LAU GROUP: HISTORY

13.1 The events of early December 1992, in so far as they affect the Don Lau group cannot satisfactorily be determined in isolation. For example, Mr Don Lau was, before December 1992 acquainted with CEF and some of its employees, had recently worked with them on another take-over, and had lunch with one or two of them in late November. He was also previously acquainted with Mr Lai. Mr Lau Wai-man's trading account with G K Goh was opened in February 1992, and a couple of transactions in it since then are relevant in determining how the account was operated at the time of those transactions, and if it had been operated under the guidance of Mr Don Lau at Mdm Pamela Wong's request, that might throw light on how dealing in December was, may have been, conducted. And we also need to know something about Mr Don Lau's field of experience in order, for example, to judge what he would or would not have appreciated to be price sensitive information.

Mr DON LAU'S CAREER

(1) Pre-Nikko

13.2 Mr Don Lau is now aged 37 years. He went to University in Canada where, in 1976, he obtained a degree in Business Administration and a Master's degree in the same subject in 1981.

13.3 He came back to Hong Kong in 1981, and joined Schroders Asia as a trainee in corporate finance. By the time he left Schroders in 1986, he was an assistant manager.

13.4 In December 1986, Mr Don Lau joined CEF Capital as an associate director of the corporate finance division, where he stayed for one year. He left CEF Capital in November 1987, and in December 1987, he joined Bankers Trust, as a vice president. He told us that he had been head-hunted. It seems that he established or joined or headed their corporate finance department. He remained with Bankers Trust until April 1990.

13.5 He was invited to return to CEF Capital, which he did in May 1990, as managing director, corporate finance.

(2) At Nikko

13.6 In November 1991, he joined Nikko Securities as Managing Director, Corporate Finance, although it did not have a corporate finance department when he joined. He told us that his brief was to establish such a department and "to generate as many corporate finance assignments for Nikko as possible and to generate a new revenue stream for Nikko".

13.7 We heard evidence from Mr Suzuki who was, from June 1990 until March 1993, managing director of Nikko Securities (Asia) Limited, based in Hong Kong. At the time of his evidence before us, he was adviser to the Nikko Research Centre. We also heard evidence from Mr Kumagai, who came to Hong Kong in late March 1993, and occupied the position of Managing Director. We hasten to state that there has been no allegation of wrongdoing against either gentleman or against Nikko, all of whom have been most helpful, and eager to assist our task where at all possible. It is evident that neither gentleman had experience of take-over tasks - their expertise lay elsewhere. One of Mr Don Lau's functions was, according to Mr Suzuki, to act as adviser to minority shareholders in take-over deals. Mr Suzuki did not involve himself in such business - Mr Don Lau, he said, was in charge of it.

13.8 Mr Don Lau said that up to December 1992, the focus of his work was to see that Nikko became involved in corporate finance advisory work, and in initial public offers as sponsors or main underwriters - his role in that regard was to concentrate on the local market, because that was the market with which, he said, he was most familiar, and also the market in which he had business contacts. He said that from the time he was with Schroders in November 1981 until (and including) December 1992, his work was mainly with the Hong Kong securities market, and that by December 1992 he had had virtually no involvement with the PRC market or PRC corporations. This evidence was material to that part of his defence in this Inquiry that the names of the Mainland enterprises that formed part of the purchasing consortium, particularly Shanghai International, meant nothing to him.

(3) Reputation

[Note: At the first stage of this Inquiry, that is, when we were determining whether or not Mr Don Lau had engaged in insider dealing, Mr Don Lau had been suspended from his employment with Nikko, whereas in consequence of our conclusions adverse to Mr Don Lau, he is no longer employed by Nikko. The following paragraph represented the factual position, and our approach, at that earlier stage, and appeared in the first stage report to which we refer at paragraph 5.5.1 above.]

13.9 Mr Lau has been employed by highly reputable institutions (of which his present employer is one), and has occupied senior positions with them. He has told us that up to the time that he was suspended from his employment with Nikko in August 1994, the propriety of his conduct had never in his entire career been called into question, whether by an employer, the Stock Exchange, or the SFC. In other words, he has enjoyed an unblemished reputation since the beginning of his career. We accept that evidence, and bear it in mind for the purpose of the decisions we have to make. These factors support his credibility, and make it less likely than otherwise might be the case that he would embark on unlawful conduct, especially conduct allied to his field of work. We also proceed on the basis that his suspension from Nikko is not to be interpreted as a conclusion by Nikko adverse to Mr Don Lau, but rather as a step deemed appropriate whilst an allegation of the kind we have to determine is in the air and unresolved. So, it is not a matter which reflects adversely against him.

EARLIER CONNECTIONS

13.10 Before December 1992, Mr Don Lau knew, and was known by, a number of individuals who feature prominently in the PIIL story.

(1) Mr Lai and Mr Don Lau

13.11 Whilst Mr Don Lau was with Schroders, they were financial advisers to PIIL and to Public Finance. Mr Don Lau says that he assisted in a project concerning PIIL in 1982 or 1983, and knew Mr Lai since that time, but purely on a business footing; and that when he changed jobs to CEF, Bankers Trust and Nikko, he kept Mr Lai informed of his moves. Mr Lai told us, and we accept, that Mr Don Lau used to write to him when he, Mr Don Lau, took

up new employment. Mr Lai also remembers that when Public Finance was sold in 1991, a merchant bank was needed to act as adviser to the minority shareholders, and Mr Don Lau, who was then with CEF, called him and suggested that CEF might be appointed, and although Mr Lai had virtually promised him the job, there was another merchant bank whose fees were less, so CEF was in the event not appointed. Mr Lai's evidence was that Mr Don Lau had "always been in touch with me seeking assignments"[1] and because of the Public Finance episode, he, Mr Lai, felt rather obliged to call upon Mr Don Lau in connection with the December 1992 approach by CEF.

(2) CEF and Mr Don Lau

13.12 Mr Don Lau had twice been employed by CEF, so he knew some of the people there. He knew Mr David Wong in particular, for Mr Wong had worked as Don Lau's immediate subordinate from May 1990 to October 1991.

13.13 Nikko had also been involved in the Tung Wing take-over.[2] An announcement had appeared in the press on 24th October 1992 with details of the unconditional agreement into which the parties had entered. Nikko were appointed as adviser to the minority shareholders. CEF Capital had been appointed as advisers to the purchasers. Mr Don Lau told us that Nikko had been an adviser to Tung Wing even earlier - about the middle of 1992, in some connected transaction. Mr Don Lau's evidence was that he thought Mr David Wong, Ms Judith Lee[3] and a Ms Cheuk, all of CEF, were involved in that transaction. But Nikko and he only became involved on the day of the public announcement, when the deal had already been struck. On the days immediately following he, Mr Don Lau, had a number of meetings with CEF staff.

13.14 We also heard that periodically Mr David Wong and Mr Don Lau lunched together. There was evidence about a lunch on 26th November 1992 attended by Mr Don Lau, Mr Francis Chang and, possibly, Mr David Wong, to which we refer at paragraph 15.11 below.

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[1] See transcript, page 3457.

[2] For details of the Tung Wing take-over, see paragraph 2.8 above.

[3] Judith Lee, who was employed by CEF and worked under Mr Chang and Mr Wong attended the meeting on 7th December at Mr Lai's offices.

13.15 What therefore emerges is that by December 1992 Mr Don Lau knew CEF and some of its senior staff quite well, and he had been professionally engaged in a transaction (the Tung Wing transaction) only some six weeks or so prior to 7th December, in which CEF had also been engaged. That was the transaction which triggered the market's "China fever", and which had a cast which included the same local names as in the PIIL take-over, both as to purchasers and advisers, and the same central excitement factor, namely, the fact that one of the purchasers was a Mainland enterprise, and one of high profile.

(3) Mr Yuen and Mr Don Lau

13.16 Mr Wallace Yuen and Mr Don Lau were also known to each other before the events of December 1992. They had come to know each other in about 1987 or 1988 when they worked at Bankers Trust. They had worked in different departments, Mr Don Lau in corporate finance and Mr Yuen in securities sales. Mr Don Lau had been senior to Mr Yuen in the company's hierarchy.

13.17 In 1990, Mr Yuen moved to CEF. Mr Don Lau was also there, again occupying a more senior position. They had some contact in the course of their work, but their social contact was, according to one, non-existent, and to the other, very limited. In April 1991, Mr Yuen left CEF and went to work for G K Goh Securities. In May 1991, Mr Don Lau opened a trading account with G K Goh.

TRADING HISTORIES

(1) Mr Don Lau

13.18 When Mr Don Lau worked for Schroders, he opened a share trading account with them; and he opened share trading accounts with Bankers Trust and CEF when he worked for them. The brokerage operations of Bankers Trust and CEF closed down when or after Mr Don Lau left their employment, but he maintained his trading account with Schroders. By 1992, the market value of the shares he held with Schroders was only a few hundred dollars.

13.19 In May 1991, Mr Don Lau opened a trading account with G K Goh Securities. He says that he did so on Mr Wallace Yuen's request. Mr Lau's evidence was that over the years he was an infrequent investor, about half a dozen times a year, an assessment supported by the evidence of Mr Wallace Yuen. Mr Don Lau said that he had always opened his trading accounts in his own name. The address which he provided on the account opening form was the address of his residential flat in North Point.

13.20 The trading account in Mr Don Lau's name with G K Goh suggests relatively infrequent trading. In March 1992, he sold 350,000 Asia Orient warrants for about $9,800, in May he purchased and sold Hong Kong and Macau Holdings for $132,165 and $141,033 respectively, and sold some Lam Soon Food shares for over $200,000 - he had acquired them in December 1991. In June 1992, he purchased 200,000 Fu Hui shares for $313,575.

13.21 The transactions in one particular stock require specific mention, namely, his purchase and sale of EIE Development ("EIE") shares. On 16th April 1992, he purchased 20,000 EIE shares for the sum of $77,500. He sold the same shares on 11th June 1992 for $94,468. The relevance becomes partially apparent in light of the fact that on 16th April 1992, there were purchased through Mr Lau Wai-man's trading account with G K Goh 10,000 EIE shares for $38,000; and they were sold on 10th June for $49,500.

13.22 Little happened with Mr Don Lau's trading account with G K Goh until October 1992 when Mr Lau sold 200,000 Fu Hui shares for over $260,000. No trading then appears on this record until 29th April 1993, when Mr Don Lau bought 36,000 Conic Investment shares, which he sold the following day.

(2) Mr Lau Wai-man

13.23 Mr Lau Wai-man's trading account application form is dated 24th February 1992. G K Goh's records show that in 1992, there were only two stocks traded that year on that account. One was PIIL, when 240,000 shares were bought and sold in December 1992; the only other shares traded were the EIE shares bought and sold in April and June respectively.

THE SFC INVESTIGATION

(1) Correspondence

13.24 The SFC first began inquiries into this matter within days of the transaction of 8th December 1992. In December, the SFC wrote letters to Dr Teh, CEF Capital, Nikko and others. The first letter from the SFC to Nikko, dated 10th December 1992, and marked for the attention of Mr Don Lau, asked for information about the date upon which the addressee was first approached "to [represent] PIIL", for a timetable of events, and for the names of all Nikko staff who may have been involved in or aware of the proposed sale prior to the announcement on 7th December.[1] A timetable was drawn, and the reply signed by Mr Don Lau was dated 15th December.

13.25 Then a second letter was sent by the SFC to Nikko. It was dated 29th December, was addressed to Nikko for the attention of Mr Lau, and asked for a timetable of events from the time from the date "you first knew of the identities and background of the purchasers" until 15th December 1992, and for the names of all at Nikko who, before 15th December, were aware of those identities and background. The reply was again signed by Mr Lau. It was dated 5th January 1993, and it stated, amongst other matters, that the identity of the purchasers was explained to Mr Don Lau at a meeting attended by Mr Lai, Mr Leong and Mr Don Lau at 3:15 pm on 7th December 1992. These are important letters, to which we turn in some detail at Chapter 17 below.

(2) Interviews

13.26 In due course, there took place a series of interviews with those comprising the Don Lau group. They all took place within a space of five days, namely, between 26th April and 30th April 1993.

13.27 Mr Wallace Yuen was interviewed on 26th April 1993, in the afternoon. In that interview, he said that it was Mr Lau Wai-man who had opened the account with G K Goh. Mr Lau Wai-man had come to his offices. He had asked for documentation to be sent, not to his own address, but to Mr Don Lau's. It was Mr Lau Wai-man who had placed the purchase order on 8th December, and the sell orders on 16th and 17th December. Mr Yuen was

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[1] The reference to an announcement on 7th December is to the announcement released on that day, and published by the press the following day. It is the announcement of the third party approach.

reminded that to reveal the contents of the interview would constitute a breach of secrecy provisions of the Securities and Futures Commission Ordinance.

13.28 On 29th April, Mr Don Lau was supposed to go to the SFC for interview, but, because of a business commitment, asked for the appointment to be put back to 30th April, and that was done. On 29th April, however, Mdm Pamela Wong and Mr Lau Wai-man attended the SFC offices for interviews. At first, they each told roughly the same tale as the other.

13.29 Mr Lau Wai-man was interviewed on 29th April 1993. He told the SFC that "about 2 years ago" he mentioned to Mr Don Lau that he wanted to trade in securities, and Mr Don Lau gave him the name of a broker, Mr Yuen, to whom he, Mr Lau Wai-man, went and with whom he opened an account. Mail, he said, was sent to Mr Don Lau's North Point address. He said that he, Mr Lau Wai-man, had placed the order for 240,000 PIIL shares on his wife's instructions. The purchase price was to be furnished by a loan from Mr Don Lau. He told the interviewer that he, Mr Lau Wai-man, also gave the order to sell the shares.

13.30 Mdm Pamela Wong, interviewed by another investigator at the same time as her husband gave a story along the same lines, adding that she had authority to place orders. She had made the decision to buy, and had told Mr Lau Wai-man to place the order. That scenario was repeated for the sale. The money for the purchase was borrowed from Mr Don Lau, she said. The story began to wear thin when, no doubt in order to explain why so much more than the purchase price went into, and remained in, Mr Don Lau's bank account when the shares were sold, Mdm Pamela Wong said that by then it was Mr Don Lau who needed money, and the proceeds of sale went from Mdm Pamela Wong to Mr Don Lau as a loan which he needed for the purchase of property.

(3) Retractions

13.31 There was then an important turn of events, for on 29th April and whilst still at the SFC offices, Mdm Pamela Wong and her husband conferred with each other, and decided there and then to retract the accounts which they had just given to the SFC. They both then said that the story which they had told was false, and that they had been put up to it by Mr Wallace Yuen and Mr Don Lau the day before, namely, 28th April. Mr Wallace Yuen had by that date already been for his SFC interview, and there was a meeting at Mr Lau

Wai-man's house, where they were tutored to tell a false tale at their forthcoming interviews.

13.32 The new story from Mdm Pamela Wong was that the trading account with G K Goh had been opened because Mr Lau Wai-man had been spurred on to do so by the trading successes of some friends. Mr Lau Wai-man and she successfully traded in EIE shares; and from time to time she had asked Mr Don Lau to recommend stocks, but he did not do so until early December, namely "1 to 2 days before Lau [Wai-man] bought ..... [PIIL] shares .....". Mr Don Lau spoke to her on the telephone, and said that there were shares which could be bought at about a dollar, and that the transaction "should be effected in Lau Wai-man's account .....". There had never been any question of her buying 200,000 shares. She had told Mr Don Lau that she would buy 40,000, but only 20,000 were in fact purchased for her. The name "Public International" had never been mentioned. She knew nothing of the third party approach. She added that her purchase of EIE shares in April had been prompted by newspaper reports, and that her colleagues at work also bought EIE shares at about the same time.

13.33 In his second statement to the SFC on 29th April, Mr Lau Wai-man asserted that he had had nothing to do with the acquisition or sale of the PIIL shares. He also stated that on the day before this interview, Mr Yuen and Mr Don Lau had visited him, and that Mr Yuen had told him what to say to the SFC.

13.34 In September 1993, Mr Yuen retracted the story originally given to the SFC. He said that Mr Don Lau had placed the PIIL orders in December 1992, and that the idea of lying about that to the SFC when original inquiries were made in December 1992, and at his interview on 26th April, was on each occasion Mr Don Lau's idea.

(4) Mr Don Lau's interview

13.35 On the day that Mr Don Lau was interviewed, 30th April, his story tallied with neither the original accounts, that is, those on 26th and 29th April by Mr Wallace Yuen, Mdm Pamela Wong and Mr Lau Wai-man, nor with the later accounts by Mdm Pamela Wong and Mr Lau Wai-man. He told the SFC that he had telephoned Mdm Pamela Wong during the morning of 8th December, and had asked whether she wanted to buy securities. She said that

she did, so he telephoned Mr Wallace Yuen and placed the order - in fact, he placed an order twice, and altogether ordered 240,000 PIIL shares. When he telephoned Mdm Pamela Wong later that day, however, she said that 240,000 were too many - she only wanted 20,000; so Mr Don Lau decided to take the balance, that is, 220,000. He was asked by the interrogator whether he had previously traded for Mdm Pamela Wong or Mr Lau Wai-man through G K Goh, and he said that he had not. He denied that on 7th December he had been told the identity of the purchasers. As for the entry in the letter of 5th January 1993, it was an error, in that so far as his recollection served him at the time of the interview, the entry ought to have referred to the time at which the identities of the professional advisers - not those of the purchasers - were disclosed.

CHAPTER 14

THE DON LAU GROUP: THE LAU WAI-MAN TRADING ACCOUNT

14.1 The previous chapter describes the picture we were given at the outset of this Inquiry. Almost every aspect of the relevant events was disputed. Perhaps the one about which there was least in issue, were the circumstances in which the account was opened, but we doubt whether we were told the truth by anyone about that. It is far from being a decisive factor in the case, so we shall spend little time on it.

(A) OPENING THE ACCOUNT

14.2 Mr Lau Wai-man told us, and we accept, that he is a full-time bone-setter, and had before that also been a chef. He is also very interested in martial arts, and used to teach kungfu and lion dancing. He had never before 1992 had a trading account, nor had he ever traded in securities. He earned $5,000 to $10,000 per month. He had then (in 1992) about $300,000 saved, and he owned his residential premises in Queen's Road West.

14.3 He said that although he knew Mr Don Lau, for they were relatives, they seldom met - perhaps once or twice a year at dinner parties or banquets. He told us that he thought Mr Don Lau worked in a bank. He had, he said, never heard of Nikko, nor, at the time, was he at all aware of the PIIL transactions. He said that he had wanted to learn to trade in stocks - it was his own decision. He asked Mr Don Lau to recommend stocks. At a banquet Mr Don Lau had given him a form to sign. His wife had asked Mr Don Lau to have correspondence sent to his, Mr Don Lau's, address because mail would sometimes be stolen from Mr Lau Wai-man's mail box. The whole idea - the idea to trade in shares - had been his idea and his wife's. Of particular significance was his evidence, which we accept, that he never traded on that account. He only learned of the EIE transactions after each deal. He told us, and we also accept, that when it came to stocks, he knew nothing about them. Mr Don Lau never recommended any shares to him. This, too, we accept.

14.4 Mr Lau Wai-man was a witness from whom it was difficult to elicit clear answers. He is not a businessman, and it was evident that he and his

interests were, and are, far removed from the world of financial services and stock markets. We are satisfied that he was not involved in the purchase and sale of stocks in 1992, and it seems most unlikely to us that he ever initiated the opening of a trading account. In our judgment, in so far as he took any role in opening the account, or in speaking to the SFC, he did what he was told.

14.5 Mdm Pamela Wong had a slightly different tale about the trigger for the opening of the account. She thought in 1992 that Mr Don Lau was an investment adviser, worked for a company called Nikko, and held a very senior position. She said that she heard friends of Mr Lau Wai-man speaking in his clinic about profits they had made by share investments. Mr Lau Wai-man also had a friend of whom Mdm Pamela Wong did not approve, and she feared that her husband might fall under his influence in the question of investments, so she asked Mr Don Lau to introduce a broker. Mr Don Lau brought a form, and filled in all the details. Mdm Pamela Wong's name as well as Mr Lau Wai-man's were on the form as persons authorized to give instructions. The address given was Mr Lau Wai-man's address in Queen's Road West, and the bank account stiuplated on the form was their joint account. She told us that Mr Don Lau gave her Mr Wallace Yuen's telephone number. No authority was given to Mr Don Lau to operate that trading account, whether oral or written, although it was Mdm Pamela Wong's evidence that she looked on Mr Don Lau as a "correspondent", meaning that he could relay her orders to the broker. She said that when they met Mr Don Lau from time to time, Mr Lau Wai-man would ask Mr Don Lau whether he had good stocks to recommend, but he never gave any suggestions, and just smiled. Mr Don Lau supported this - he would indeed simply smile for, he said, it was a diplomatic way of saying that he had nothing to recommend, and he did not want the "moral obligation", as he put it, should his advice not bear fruit.

14.6 Mr Don Lau's case about the opening of the trading account ran along the same lines as that proffered by Mdm Pamela Wong, and her husband. He was broached by them about opening an account, he recommended Mr Yuen, and on another occasion he brought forms to a family dinner for them to sign. He, Mr Don Lau, completed the forms with information which they supplied.

Findings

14.7 We find this all rather odd. The fact is that for the whole of 1992, there were only two sets of transactions effected through this account. No transaction was suggested or initiated by Mr Lau Wai-man. Yet he was the one, it is said, who wanted to open the account so that he could trade. Here we have a trading account opened by two ordinary individuals, one a bone-setter, the other a nurse, and one might expect in the circumstances that upon opening the account, or upon filling in the form in Mr Don Lau's presence, there would then follow an immediate and perfectly natural discussion about where they should go from there; in what stock might they invest. One might even expect an investment to follow swiftly. But nothing at all happened until mid-April, and then only in a relatively obscure counter in which Mr Don Lau also invested. After the EIE transactions, months passed before the next transactions, this time, it is common ground, on Mr Don Lau's initiative.

14.8 We very much doubt, given the circumstances described and the whole picture which later emerged, that Mr Lau Wai-man was in the slightest interested in having a trading account in his name. The fact that it was in his name when he, alone of the three, had in practice nothing to do with its operation is bound to make us wonder why his name alone was chosen as the holder of the account, not least because we also see that Mr Lau Wai-man and Mdm Pamela Wong had bank accounts, and property, in joint names. We find that there were no occasions upon which investment recommendations were sought from Mr Don Lau by Mr Lau Wai-man, or (save possibly in relation to EIE shares) by Mdm Pamela Wong. Whilst we cannot say for what purpose the account was originally intended, or whether there was any ulterior design in the use of his name, we are satisfied that it was not opened to give rein to any desire on the part of Mr Lau Wai-man to invest in shares.

(B) REDIRECTED MAIL

14.9 We do not believe the reason given for the redirection of mail to Mr Don Lau's address. Mr Lau Wai-man told us that they had a letterbox with a lock on it. Although he said in his oral evidence that some mail went astray, it remains the fact that, if the account given is true, this mail was the only mail ever redirected, save for a period when Mdm Pamela Wong was living with her mother when mail was sent to her mother's address. Not even banking documents were re-routed. Furthermore, we noticed that in the course of his

first interview with the SFC on 29th April 1993, Mr Lau Wai-man was asked to what address contract notes were sent, and his reply was that they were sent to Mr Don Lau's address at North Point, and when asked why that was so, he said,

> "My wife said to me that mails were lost easily if sent to our present residential address. She therefore asked me to change the address with Mr. YUEN. I asked for Mr. YUEN on the phone the first time I traded in Public International to direct all the correspondence thereafter to LAU Yuen-leung's address at North Point."

When it was then pointed out to him that the documents were in fact sent to Mr Don Lau at Pacific Place (and not North Point), he, Mr Lau Wai-man, had no explanation. Mr Lau Wai-man's version to the SFC had the hallmark of a tutored story incorrectly recalled. And when these answers were put to him in the course of examination by the Tribunal, Mr Lau Wai-man said that Mr Don Lau and Mr Wallace Yuen had taught him to say what he had said. The credibility of the mail story suffered a further blow, for Mdm Pamela Wong told us that on the day immediately after the trading account was opened, they had lost mail, so she became worried, called Mr Don Lau and asked if the correspondence could be redirected to his office. That, however, is to be contrasted with a statement she made in her second interview on 29th April 1993, when she said that she had told Mr Wallace Yuen to send statements to Mr Don Lau.

Finding

14.10 We find that this was always intended to be an account operated under Mr Don Lau's aegis, and that the mail was directed to his office because it was intended to be an account with which he was going to have significant practical contact.

(C) THE EIE TRANSACTIONS

14.11 There is a dispute as to the circumstances in which Mr Pamela Wong acquired 10,000 EIE shares in April 1992, and sold them in June 1992. Mr Don Lau suggests that he was given express authority by Mdm Pamela Wong to purchase these shares on her behalf. The issue is relevant, for if Mr Don Lau is correct, it might support his contention that Mdm Pamela Wong had, before December 1992, given to him such discretion to operate her trading account with G K Goh as he thought was in her interest and, if that were so, it

may cast a somewhat different light on his conduct in acquiring the PIIL shares in December.

14.12 In the course of her first interview with the SFC, Mdm Pamela Wong said that she could not recall the reason for buying EIE shares. In her second interview, she said that they had been recommended by the newspapers, and that her colleagues also agreed to buy at the same time. In her evidence to us, she repeated that she had heard her colleagues talk of EIE, and she then telephoned Mr Don Lau and asked what procedure to adopt if she wanted to purchase stocks. He told her to call Mr Wallace Yuen, and tell him that she was the holder of an account which belonged to Mr Lau Wai-man, who had been recommended by Mr Don Lau. He also told her that she had to buy at least one lot, which was 2,000 shares. She told him that she wanted to buy EIE shares and sought his opinion, and he said that they were worth buying. So she telephoned Mr Wallace Yuen and placed an order for 10,000 EIE shares. She told us that she then called Mr Don Lau, told him she had purchased, and asked him to keep an eye on the stock for her. She added that she had no idea that he had purchased EIE shares on the same day. She was however insistent that it was she who had placed the order. She says that she monitored the stock closely, and one day Mr Don Lau called her either saying he had sold the shares, or advising her to sell. Later he gave her a cheque for the proceeds of sale.

14.13 We note from an entry in a joint savings account passbook that on 21st April 1992 Mdm Pamela Wong withdrew $38,200 in cash. She told us at first that she could not remember to whom she gave that cash, but was brought round to concede, somewhat reluctantly, that Mr Don Lau settled the purchase cost on her behalf and that she then reimbursed him. Indeed she said that after she had placed the order with Mr Wallace Yuen, she called Mr Don Lau to discuss how settlement should be effected; a rather odd thing to do given that she had just spoken to Mr Wallace Yuen, an obvious person to whom to put that question. We are satisfied that Mdm Pamela Wong has been trying to play down Mr Don Lau's role in the EIE acquisition. We note in this regard that in an affirmation dated 14th October 1992, she had said that Mr Don Lau had not been at all involved with her EIE purchase.

14.14 Mr Don Lau's case on the matter of the EIE shares was also not always consistent. In his interview with the SFC, he had said that PIIL was the first trade he had conducted for Mdm Pamela Wong or Mr Lau Wai-man. In a

statutory declaration dated 11th October 1994, he said that prior to PIIL he had been involved in a purchase of shares through Mr Lau Wai-man's account, namely, on 16th April 1992 when "..... either I placed an order (on behalf of Lau and Pamela Wong) or Pamela Wong placed an order on my recommendation for shares in EIE ..... through Lau's trading account"[1]. In his written statement produced towards the end of our hearings, he said that whilst he had no specific recollection of calling Mr Wallace Yuen, he thought it more probable than not that he, and not Mdm Pamela Wong had done so. In his oral evidence he said that it was probable that he placed the order for Mdm Pamela Wong. She agreed to sell the shares when he suggested that she should do so. He had decided how many to buy for Mr Lau Wai-man, and had been given no limit or range for the amount he could spend.

14.15 Mr Wallace Yuen's recollection was that Mr Don Lau called him and placed an order for 30,000 shares. The shares were apportioned, on Mr Don Lau's instructions, between the two trading accounts, although he could not say whether the apportionment request came later when the purchase was confirmed. He thought it "highly probable" that Mr Don Lau placed the order[2]. He had no recollection about speaking to Mdm Pamela Wong at all about the matter.

Findings

14.16 We have concluded that it is much more likely that the order was placed by Mr Don Lau. For this conclusion, there are a number of reasons:

(1) It is inherently unlikely that Mdm Pamela Wong on the basis of canteen gossip, invested coincidentally on the same day as Mr Don Lau in the same share.

(2) The trading records of G K Goh show on one buying slip that 30,000 EIE shares were purchased. This would suggest either that one order in that sum was placed, or that two orders were placed at the same time, and found their way on to one slip. What is entirely unlikely is that the two orders were placed independently of each other, but nevertheless found themselves recorded on the one slip.

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[1] See documents bundle, page 1641.
[2] See transcript, page 2127.

14.17 There are, however, material differences between the EIE and PIIL transactions. In the first place, although Mr Don Lau was himself acquiring EIE shares at the same time as was Mdm Pamela Wong, he did so through his own trading account. Secondly, the quantity purchased through Mr Lau Wai-man's account was modest. We do not accept Mr Don Lau's suggestion that he alighted upon the quantity of shares to be purchased for Mdm Pamela Wong through mere assessment, rather than on the basis of a limit signified by Mdm Pamela Wong.

CHAPTER 15

DON LAU GROUP: THE EVENTS OF 7th DECEMBER

What was known by Mr Don Lau on 7th December 1992 is central to the case which concerns him.

15.1 MEETINGS AND BRIEFINGS

15.1.1 It emerged that there were several PIIL related meetings at JCG's offices on the afternoon of 7th December, or perhaps one lengthy meeting growing and shrinking in attendance with the arrival and departure of individuals or small groups. The meeting or meetings can, we believe, fairly be divided as follows:

(1) the 2:15 pm meeting attended only by Mr Francis Chang, Mr David Wong and Ms Elizabeth Hardy, for CEF and Mr Lai and Mr Leong at which CEF Capital put forward a serious proposal for the acquisition by its clients of a controlling stake in PIIL;

(2) a briefing of Mr Don Lau, at which were present, apart from Mr Don Lau, only Mr Lai and Mr Leong;

(3) a briefing of the solicitors Mr Moses Cheng and, possibly, Mr Tommy Lo, by Mr Lai - there is some disagreement about whether this briefing followed or preceded Mr Lau's briefing;

(4) a wider meeting attended by Mr David Wong and Ms Judith Lee of CEF, Mr Leong, Mr Lai, Mr Don Lau, solicitors for the consortium, and solicitors for PIIL. This meeting concentrated upon the drafting of the announcement to appear the next morning in the press, determination of the formula upon which the offer price was to be calculated, and calculations based on that formula. It seems to us universally accepted by those who attended this meeting (which we shall call "the long meeting"), and we find, that these were the matters discussed; and also that Mr Don Lau was entrusted with the task of drafting and finalising

the text of the announcement, and of clearing it with the SFC and the Stock Exchange.

15.1.2 It is also accepted, and we find, that during the early evening the parties dispersed, and that Mr Don Lau went back to his office from where he contacted Mr Alan Mercer of the SFC, and Ms Mary Lam of the Stock Exchange, and submitted to them various drafts of the proposed announcement.

15.1.3 The allegation of insider dealing which is made against Mr Don Lau rests upon evidence that at the 2:15 pm meeting CEF Capital identified their clients to Mr Lai and Mr Leong; that Mr Lai then called Mr Don Lau to come to the JCG offices to render advice and assistance to Mr Lai, and that at the briefing of Mr Don Lau which then followed, Mr Don Lau was given the identity or background of the bidders.

15.2 Mr DON LAU'S CASE

15.2.1 Mr Don Lau's case is that it was only on 8th December in the afternoon that he learnt the identity of the purchasers. David Wong had telephoned him in the afternoon to discuss the timetable by which to move forward with the acquisition programme. It was during that call, he says, that the identities had first been revealed to him. That too was the first time that anything had been revealed to him about the background of the bidders. He had originally asserted this in the course of his SFC interview on 30th April 1993.

15.2.2 In a statement presented to us, Mr Don Lau said that on 7th December, he received a telephone call at about 2:45 pm from Mr Lai who told him that Dr Teh had been approached by a party represented by CEF Capital to acquire a controlling stake in PIIL; and some reference was made to suspension of shares. Mr Lai asked Mr Don Lau to attend a meeting at his (Lai's) office. He arrived at about 3:15 pm, and waited for about 10 to 15 minutes before Mr Lai fetched him into his office. Then Mr Leong was fetched, and in Mr Lai's office there was a short briefing . So central is this evidence to Mr Lau's case that we set out his version in full:

> "4. LAI returned with LEONG. LAI told me that he had requested The Stock Exchange of Hong Kong Limited ("SEHK") to suspend the dealings in PII and showed me a letter which he had sent to SEHK requesting the suspension. I asked LAI to let me have a copy of that letter. He then explained to me that he had been

approached by David Wong ("DW") of CEF with a proposal to acquire 51% of the shares in PII from TEH. LAI mentioned that representatives of CEF had visited TEH in Kuala Lumpur. LAI informed me that CEF had said that the proposal would involve the payment of a premium of HK$60 million on top of the net asset value of PII. LAI asked me whether the amount of the premium was fair and I replied that because of the increase in demand for shell companies, the level of premium had risen and that HK$60 million appeared to be the then market rate. LAI said that the minority shareholders in PII would need advice if a general offer eventuated and asked if NIKKO would be interested in taking on this role. I replied, on behalf of NIKKO, that NIKKO would wish to be so appointed.

5. This conversation was brief, business-like and formal. Other than that the purchaser was represented by CEF, neither the identity nor the background of the purchaser was revealed to me or discussed. It was apparent that an announcement would have to be made by PII that day and published in the press on 8 December 1992 to enable trading to re-commence in the shares of PII on 8 December 1992. During both this conversation and the meeting that followed, there was a sense of urgency to agree on the form of the announcement so that it could be provided to, and cleared by, SEHK and by the Securities & Futures Commission ("SFC") on that day. Only the three of us, LAI, LEONG and me, were present during this briefing.

.....

7. At the end of this conversation, LAI, LEONG and I moved to a conference room in which DW and Elizabeth Hardy ("EH") (of Richards Butler) ("RB") were already seated. My recollection is that there were documents spread on the table indicating that this meeting might have already started although I could not see clearly what they were. DW informed the meeting that his client was interested in acquiring control of PII at a premium of HK$60 million over the net asset value of PII. No mention was made of the identity or background of his client. At the meeting, DW always referred to the purchaser as his client."

15.2.3 According to Mr Lau, PIIL lawyers then arrived. A decision was taken that Mr Lau would carry responsibility for the draft announcement and its clearance with the regulatory authorities, namely, the SFC and the Stock Exchange. Mr Leong gave a briefing about the PIIL group of companies, and the discussion then turned to the NAV, the definition to be used, the date for striking the NAV, the date of the unaudited adjusted NAV for the purposes of providing an estimated sale price per share, and an estimated sale price per share was calculated. These were all matters that had to be determined for the press announcement. Work was carried out on a draft of the announcement, and amendments were discussed, made and retyped. At some stage, Mr Lau telephoned property valuers asking if they would undertake valuation of PIIL properties. Mr Lau says that he left JCG's offices at about 6 pm, and returned to his own office, where he set about the task of liaising with the SFC and the Stock Exchange, and finalising the announcement.

15.2.4 Mr Lau insists that at the long meeting, when NAV and the announcement were thrashed out, there was no information given or sought about the identity of the purchasers. He also insists that there was never any question but that he was brought in from the outset as adviser to the minority shareholders.

15.3 Mr LAI AND ANSWER 18

Answer 18 itself

15.3.1 In the course of his interview with the SFC on 9th June 1993, Mr Lai was asked the rather broad question: "What happened on 7th December 92?" to which he gave the following answer, an important answer ("Answer 18"), which has been the subject of much dissection:

> "Around 12.30 pm of 7 December, David Wong called me to inform that a serious proposal will be forthcoming. David Wong said that they would come to my office as soon as possible. At 2.15 pm, Francis Chang, David Wong and Elizabeth Hardy ("EH") (the solicitor representing the purchasers) came to my office. A meeting was held between they, [Mr Leong] and I. In the meeting, one of them presented the proposed offer of 51% of PIIL at a premium of $60 million plus NAV. The identity of the beneficial shareholders of the Purchasers was verbally disclosed. At that time, it was the first time for me to come across names of the purchasers, China Venturetech, Shanghai International Securities and Shenzhen Concord. Of course, in respect of CEF Holdings and Cheung Kong (Holdings), they were very familiar to me. In the meeting, [Elizabeth Hardy] also advised me to suspend the tradings in PIIL shares in the Stock Exchange of Hong Kong temporarily. After seeking clearance from [Dr Teh] over phone, I had done accordingly. At that time, I needed an finance expertise on my side to advise me on this proposed offer which I was not familiar with. I therefore, called Don Lau of Nikko Securities Co (Asia) Ltd ("Nikko Asia") at 2.45 pm, asking him to come to my office immediately. After he had come, I explained to him, in the presence of [Mr Leong], the detail of the deal which I knew and also the identities of purchasers. I recall that I told Don Lau and [Mr Leong] that the purchasers included China Enterprises. The names of them are: China Venturetech, Shanghai International Securities and Shenzhen Concord."[1]
>
> (Emphasis added)

15.3.2 There is contained in that answer a very clear assertion indeed that, at the briefing on the afternoon of 7th December, Mr Don Lau was told the identities of the purchasers, and a further assertion that Mr Don Lau was called, in the first instance, not as prospective adviser to the minority

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[1] See documents bundle, page 134.

shareholders, but because Mr Lai "needed an finance expertise on my side to advise me on this proposed offer which I was not familiar with".

15.3.3 We bear in mind that the passage which is recorded as one answer is almost certainly the result of a collation of questions and answers, but we note too that it was read by Mr Lai before he signed it as correct. We also bear in mind, when considering the reliability of Answer 18, the dim view we have taken about Mr Lai's reliability (or lack of it) when answering questions put to him by the SFC, when it came to his own interest in PIIL shares.

Mr Lai's timetable

15.3.4 There is exhibited at Appendix V a timetable or sequence of events compiled by Mr Lai, with Mr Leong's assistance, and submitted to the SFC on behalf of Dr Teh under cover of a letter dated 14th December 1992 (only one week after the events of 7th December). This letter was a response to an SFC request for information. What the SFC had requested were the names of those who, before the announcement of 8th December, had been aware of the CEF proposal; and a timetable of events with the names of those involved. Whilst the SFC inquiry made specific reference to negotiation of prices and the time when the estimated sale was agreed, there was no inquiry in that letter about disclosure of the offerors' identities.

15.3.5 A few items recorded in the Lai sequence are worthy of special note:

(1) the entry which refers to 2:45 pm (7th December) "LKL advised DL of the proposal".[1] That on its own is neutral in the context of the issue of fact we have to decide, for Mr Don Lau's case is that a proposal was mentioned to him, only not in the terms which Mr Lai suggested in his SFC interview;

(2) the entry which refers to 4 pm (7th December) "Meeting between DL, MC, TL, LKL, LKN[2] to discuss proposal". MC is Mr Moses Cheng who, with Mr Tommy Lo (TL), was called in to act as legal adviser to the company. There is a divergence of

[1] LKL is Mr Lai; DL is Mr Don Lau.
[2] LKN is Mr Leong.

recollection as to who was called in first, the solicitors or Mr Don Lau, and this entry, like much of the evidence, suggests that Mr Lau was first; and

(3) the list of professional advisers annexed to this timetable describes Nikko (and Mr Lau) as professional advisers "to the Public Shareholders". That accords with a letter from Nikko dated 10th December 1992 setting out the proposed terms of Nikko's appointment.

The effect of Mr Lai's oral evidence

15.3.6 In the course of Mr Lai's evidence, there was expressed by counsel for Mr Don Lau serious concern about the Tribunal's questioning of Mr Lai. Put broadly, the complaint was that after Mr Lai had given clear answers to questions, primarily questions put by Mr Li, the Tribunal "revisited" the evidence thus adduced by Mr Li, and so probed matters as to give rise to a perception that the Tribunal was angling for answers adverse to Mr Lau, and would not let alone answers from Mr Lai which were non-committal or inconclusive, or helpful to Mr Lau. The submission encompassed not only the suggestion that the proceedings were tainted with unfairness, but also the contention that repetitive probing by the Tribunal implanted the real risk that a witness - in this particular instance, Mr Lai - would be driven to an answer that he assumed the Tribunal wanted. We have addressed quite fully in Chapter 5 (which deals with matters of procedure), most of the contentions thus canvassed, and the Tribunal's answers to them. They are contentions and answers which are explained by direct reference to the evidence of Mr Lai. Given those complaints and the importance of Mr Lai's evidence, the development of his evidence warrants some recounting, after which we will state what impact or meaning we judge it to have. It is also a convenient opportunity to illustrate by example why "clear" answers were not always treated as final answers.

(1) In examination by his own counsel he told us that after the CEF people arrived at about 2:15 pm "..... they made a verbal offer of 51% of Public International and at this meeting I remember clearly Mr Francis Chang telling the [names of the] parties.[1] All

[1] The transcript at page 3369 reads "I remember clearly Mr Francis Chang telling me they were the main parties". It was agreed (see transcript, page 3489) that that was an error in transcription.

the parties were not known to me except for CEF and Cheung Kong". He remembered it clearly, he said, because the Chinese parties did not ring a bell, and "I was trying to make enquiries [from Francis Chang] on who they were". He needed more background, and he believed that Mr Chang explained the background that Shanghai International was the biggest securities firm in China. But it was a very brief explanation of the background "because I had to know the information to speak to Dr Teh", and that was "because I was trying to get a board seat for Dr Teh and it would be important for Dr Teh to know who are the parties behind, if he was to remain a director of Public International".

(2) "..... I called up Don Lau to assist me ..... to advise me on the matter ..... I remember having a meeting with Don Lau privately with Mr Leong ..... When Don Lau came over, I briefed him on the matter, on the proposal, and sought his advice on what to do next.

"Q. Can you remember what you told him of the proposals?

A. I believe I told him exactly what happened, what was communicated to me, as the names of the parties, the price, and Don Lau advised me to get the lawyers in."[1]

(3) Under examination by counsel for the Tribunal, he was reminded of his evidence that there was this private meeting at which he was able to brief Don Lau. "That," he responded "is my recollection", which answer prompted the Tribunal to ask whether he was not sure that there had been a private briefing. "It is just my recollection", he answered, "I cannot be sure of events in 1992".[2] He also said that there was no reason at that stage for him not to take Mr Don Lau into his confidence, and that he thought that at the 2:15 pm meeting Mr Francis Chang had said that it would not be appropriate to disclose in the announcement the names of the parties, "because the deal was not finalized".

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[1] See transcript, page 3371

[2] See transcript, page 3458.

(4) It was pointed out to Mr Lai that it was important for the Tribunal to assess the clarity of his recollection, particularly in the light of his evidence that he "believed" that he told Mr Don Lau the names of the parties (see paragraph (2) above), to which Mr Lai replied that he based his answer to these questions (that is, the questions asked during our hearings) on the statement he had made to the SFC and on the sequence of events drawn in December 1992 as the reply to the SFC's first inquiry. As for the last two sentences of answer 18, he could not recall whether he told Mr Don Lau the very names, or simply that the purchasers included China enterprises. When the question was canvassed whether it was possible that nothing (about the identities) was mentioned at all, Mr Lai replied that he could not remember at this stage.

(5) It was evident to us that Mr Lai was no longer clear in his own mind about the sequence of events, and he said so. Whatever one makes of Mr Lai's recollection about what was said and when at the various meetings on 7th December, there were a number of matters about which he was firm. They were the fact that he called Mr Don Lau before he called the lawyers, and, more significantly, that he called Mr Don Lau in "for the whole transaction .....", by which he meant as a general adviser, and not, at that stage, just as prospective adviser for the minority shareholders. The latter issue is material, for if Mr Don Lau's role at the outset was the broad role for which Mr Lai contends, it is more likely that Mr Don Lau would have been told something about the identity, or at least the background, of the parties. He commented that Mr Don Lau was not brought in for just the announcement, for the announcement was, to Mr Lai's mind, "a very simple thing to be done"; that he did not so much need advice on financial matters as on procedural requirements; and that Mr Don Lau was brought in to ensure that "all the regulatory Stock Exchange requirements were observed as far as the advice to the minority shareholders was concerned". His answer was, in its delivery and common sense, convincing. He said:

"At that time when I called Don Lau I wasn't only thinking of the minority interests, I was thinking of the whole scheme, what kind of procedures needed to be done. It's not only just Don Lau's role to advise the minority."[1]

(6) There then followed in cross-examination by Mr Li a series of questions and answers about what Mr Lai could now remember; upon what he based his answers to the SFC when he was interviewed in June 1993; and whether he could now remember what his "state of mind" was when he went for that interview. By "state of mind" we assume was meant how much he could then recall, and upon what he then based his answers.

(7) Mr Lai conceded (and we bear this in mind) that when he went to the SFC for interview, it was some six months since the events in question, and that he had refreshed his memory from the sequence of events, as well as from the timetable which went with Dr Teh's letter of 4th January 1993. He also told us that he looked at the timetable of events at the time he was interviewed. He was asked whether he assumed from the 2:45 pm entry on the sequence, that he had told Mr Don Lau the identities, and he said that was a possibility, but he could not remember how he came out with his answers at the interview. The point was pressed, that he had relied on the sequence, and he accepted that, but added that he had also relied on his memory. He was taken to question 20 of the records of the interview:

"Wong: What happened after this meeting?

Lai : Upon the advice of Don Lau, I called Tommy Lo of P.C. Woo & Co to act as Legal advisers to PIIL at 3:00 pm. I asked him to come for a meeting at 4.00 pm. At 4:00 pm, a meeting was held at JCG finance office at Gloucester Tower, The Landmark. The following persons were present: Don Lau, Moses Cheng, (P.C. Woo & Co), Tommy Lo, LKN and I."

Now it was put to him in cross-examination that his answer was an example of his reliance on the sequence. He accepted that. So the matter was pressed one stage further with this question:

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[1] See transcript, page 3599. See, also, pages 3543, 3550, 3551 and 3595 of transcript.

"Q. And the same applies for other answers given at the SFC interview: they were also based on the sequence of events and the time table?

A. That's correct."

Now, that was a very clear answer, and, so we understood the argument, the clear answer was what bound the Tribunal, and any "revisiting" the point constituted unfairness, and gave rise to a perception of bias. But, as we state in Chapter 5, that was to confuse clarity with accuracy, reliability, and finality. A moments comparison of the sequence with the interview answers demonstrated that the sequence could not possibly on its own have accounted for the detail of some of the answers. So, for example, answers 14, 17 and 21 referred to matters not in the sequence, and answer 18 itself, by far the most detailed answer of all, contained much that was not mentioned in the sequence - for example, that the identities were disclosed at the 2:15 pm meeting, that he called in Mr Don Lau because he needed financial expertise, that it was Elizabeth Hardy who advised that the shares be suspended.

(8) As with much of the cross-examination of this and other witnesses, a number of propositions were put to him as "possibilities" - he said it was possible that he had based answer 18 on the sequence, and had assumed from the sequence entry that he had revealed the identity to Mr Don Lau. But he added again, that although that was "a possibility, ... I think my memory in June 1993 should be clearer than my memory now". Possibilities were further explored, thus:

"Q ..... So it's possible that you cannot remember your state of mind at the SFC in respect of this matter; that's correct?

A That's right.

Q And it's possible that you based it on the sequence?

A It's possible."

He accepted too that it was possible that at the briefing of Mr Don Lau, Mr Lai showed him the letter requesting suspension of the shares; that there was reference in the conversation to the visit

to Kuala Lumpur; that Mr Don Lau, when asked, said that the premium appeared to be fair; and that Mr Lai asked if Nikko would accept appointment as adviser to the minority shareholders, and Mr Don Lau said "yes". That, it was put, together with Mr Lai revealing that the proposal was for Dr Teh to sell 51%, and had been made by Mr Wong of CEF, was the length and breadth of the briefing. And then this was put:

> "Q And I put it to you, in fact, at that conversation nothing was said about the background or identity of the purchasers. Do you accept that to be possible?
>
> A I can't recall."

(9) He thought it logical that he would have told Mr Lau about the identity of the purchasers, because "he was supposed to advise me on the mechanics of the whole exercise, so I have to tell him the whole exercise"[1]. There was, however, no particular reason why the identity had to be disclosed, he conceded. But if that was so, why suggest that it was logical for him to have revealed the identities to Mr Don Lau? "Because", he answered, "at that time I was aware who the parties were and also at that time I have written Dr Teh who the parties were. I suppose when I met Don Lau, it would be the same thing. That's my assumption."[2]

(10) He accepted that at the end of the SFC interview, he was given an opportunity to read the record, and that he had signed the record as true and correct.

15.3.7 Distilling the effect of that evidence, Mr Lai was saying to us that he could not now remember what he said to Mr Lau at the briefing, nor can he now analyse what influenced his answers at the time of the interview, but that it is logical to assume that, whatever possibilities there might be, he relied on the sequence of events and on matters which he then remembered. He seemed, however, quite sure that he needed to know the identity of the purchasers for the purpose of his discussion with Dr Teh, and he was firm in his insistence that Mr Don Lau was brought in by him at that early stage on a wider basis than that suggested on behalf of Mr Don Lau. He also thought it logical to

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[1] See transcript at pages 3658 and 3659; and also at page 3614.

[2] See transcript, page 3660. Although the word "written" appears on the transcript, it is clear that Mr Lai telephoned Dr Teh during the 2:15 pm meeting.

assume that what he had told Dr Teh, he would also tell Mr Don Lau. Whether the critical sentence in Answer 18 was an assumption he could not now say.

15.3.8 As for the suggestion that the Tribunal's probing of Mr Lai's evidence might have pushed him to inaccurate answers out of some assumption on his part that the Tribunal wanted a particular answer, Mr Lai was perfectly at home in saying what he could and could not remember. Our questions did not drive him upon some errant course which was contrary to that which he intended us to believe. We told him quite specifically not to speculate[1], and we made it perfectly clear that, in relation to what he did or did not tell Mr Don Lau, we were seeking his assistance as to the clarity of his recollection[2]. In relation to Mr Lai, as well as in the case of other witnesses, we were, we believe, quite able to judge the reliability of evidence.

15.4 Mr LEONG

15.4.1 His evidence is important, because he attended the briefing of Mr Don Lau.

15.4.2 Mr Leong's statement to the SFC was messy in terms of the chronology of events which he supplied; and it contained obvious errors[3]. He also prefaced his oral evidence about the December events with these comments:

> "The problem I have is that now I have heard of a lot of things during the progress of the hearing. To be very honest I really cannot recall conversations or specific details of conversations. What I can recall are events, things that happened, but what was said across the table is really very difficult for me to recall. But from my interview with the SFC at the time my recollection was probably better, and also because I had to think about it earlier."[4]

15.4.3 With those caveats in mind, we note the following:

(1) In his interview, Mr Leong had said that the briefing of Mr Don Lau was very short and he could not remember "the details of the offer told by [Mr Lai] to [Don Lau]", and

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[1] See transcript, page 3548.
[2] See transcript, page 3544.
[3] For details of the errors, see page 4195 of the transcript.
[4] See transcript, page 4024.

(2) He said that he could not remember whether Mr Don Lau was told about the identities or the background of the purchasers. He was however sure that the CEF representatives revealed in one of the meetings the background of the companies; for example "they ..... said that one of the purchasers was the biggest securities company in Shanghai, and the others were big Beijing based investment companies. They also said that CEF Holdings and Cheung Kong ..... were also the purchasers ..... I am sure that it was mentioned the China enterprises would get the majorities stake while CEF Holdings Ltd and Cheung Kong ..... would get the minority stakes".

15.4.4 Whatever hand Mr Leong may have had in the drafting of the sequence of events, this kind of detail could not have been drawn from that sequence, for it goes further than particularising the nature of the proposal; it specifies the details released.

15.4.5 In his oral evidence, he went further, saying that Mr Chang revealed the names, and that it was the first time he had heard them. He was asked why he was sure, as he asserted, that mention was made of the fact that China enterprises would receive the majority stake, and this was his answer:

> "Because that's what I remembered the events, and because some of these things the first time that's told to you, it sticks clearer in the memory. That's the first time, for instance, that I knew about a Beijing-based investment company which was China Venturetech and so on. So it's things that sticks a bit more in the memory."[1]

The fact that his oral evidence went further than his statement to the SFC was put to him, and he suggested that the interview record was probably more accurate. In due course, the effect of his evidence on this point was this, that he could not remember one way or the other whether names had been spelt out, but he was sure that "they gave the background".

15.4.6 He said that he could not recall what was said to Mr Don Lau at the briefing, a briefing which he accepted was very short, but he said that he thought that his SFC interview record was now a more reliable source of

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[1] See transcript, page 4198.

information than his oral evidence, because there were instances where he said he could not recall a particular matter, where he was saying that because he could not be sure whether there was a danger that his recollections had, by the time of his evidence, been infiltrated by the testimony he had already heard in those proceedings. He was certain, however, that "the proposal" was briefed to Mr Don Lau, and that proposal, he said, "comprised of really what was told to myself and Mr Lai at ..... the 2:15 meeting".[1] He accepted, however, that there was no particular reason why identities or background had to, or should have been, disclosed to Mr Don Lau. He was pressed with the suggestion that Mr Don Lau's recollection that nothing was said about identity or background was as likely as not, and Mr Leong said that he could not recall, so it was as likely as not.

15.4.7 He viewed Mr Don Lau's role that day as financial adviser as "their" financial adviser, and he thought it was likely that whatever one is told in such circumstances, one would pass on to one's financial adviser. There was no reason to be selective about it. But his attention was drawn to the record of his interview with the SFC which shows that he said, in relation to the briefing of Mr Don Lau that "[Don Lau] was told by [Mr Lai] that he might or would be appointed as minority adviser". He answered that the word "might" was more appropriate than "would", and he had in mind that that was the appointment eventually made. His impression was that Nikko was looking for a role.

15.5. THE 2:15 pm MEETING: FINDINGS

15.5.1 We pause to emphasise that whilst it is important for us to determine what was revealed at the 2:15 pm briefing, it does not necessarily follow that what Mr Lai and Mr Leong were told by the CEF representatives was passed on to Mr Don Lau at the private briefing. We have summarised what Mr Lai and Mr Leong recall about this meeting. On the CEF side, Mr Francis Chang told the SFC that he could not recall whether "the identity of the purchaser or its background was mentioned in this meeting", but logic suggested to him that it must have been. Whilst it was, he said, theoretically possible to have reached a point where it was felt an agreement had been reached but without specifics of the purchasers, he also suggested as a general proposition that a vendor would like to know as much as possible with whom he was dealing. Mr David Wong also could not remember whether the

[1] See transcript, page 4065.

identities were disclosed, but he thought that it would have been reasonable for the vendors to know with whom they were dealing, not least given that matters had reached a stage where dealing in the shares was suspended. Ms Elizabeth Hardy, the solicitor for CEF, could not remember whether the identity or background of the purchasers was revealed.

15.5.2 It is we believe most unlikely that the call to Dr Teh during the afternoon of 7th December to secure his agreement to the suspension of trading was bereft of the answer to the most obvious question for him to pose, namely: "With whom am I dealing?". That assessment is fortified by the fact that matters were at a much more advanced stage than any of the other approaches to PIIL in 1992. None had reached the stage of suspension of trading, accompanied by a public announcement and the employment of advisers. None had drawn a premium offer as high as the $60 million asked of, and accepted without demur by, CEF. But the facts do not stop there. We know that that afternoon, before the suspension of shares, one of the matters discussed with Dr Teh was the retention for him of a seat on the new board. Now that question was not going to get off the ground, let alone be resolved, unless Dr Teh knew who his fellow board members were to be. As far as concerns the recollections of Mr Lai and Mr Leong about this meeting, it does not follow from the fact that their statements and oral evidence have been unreliable about their own interests, that that unreliability is all pervading. This was no ordinary day in the year for PIIL, Mr Lai and Mr Leong; and Mr Lai, champing at the bit at the prospect of Dr Teh establishing this connection with Cheung Kong, has particular reason for remembering the meeting at 2:15 pm, and his conversation with Dr Teh. We note too the fact that at his interview with the SFC in June 1993, Mr Lai not only stated that the very identities of the bidders were disclosed, but he underscored that contention by a recollection that could not have been drawn from any timetable or sequence, namely, that it was the first time that he had come across the names of the Mainland parties. We note the array of possibilities put to and accepted by Mr Lai and Mr Leong, but the very high degree of probability - and we would go further on that scale on this issue - is that the identities themselves were disclosed to Mr Lai and Mr Leong at the 2:15 pm meeting. That is what we find. We also find that in addition to disclosing the names of the bidders, further particulars about the Mainland bidders, for example, that one of the purchasers was the biggest securities company in Shanghai, were imparted at the 2:15 pm meeting by the CEF representatives to Mr Lai and Mr Leong. That follows from the inherent

probability of the matter, from the fact that the names were unfamiliar to Mr Lai, and from the statement in June 1993 by Mr Leong.

15.5.3 There appears to have been some suggestion during the hearings and in submissions that, on the afternoon of 7th December, CEF was reluctant to reveal the identity of the purchasers. We are certain that such reluctance as there was was a reluctance to release the identities outside the circle of those representing the purchasers, and the vendor, and those advisers called to the meetings that afternoon; in other words, a reluctance to reveal identities to the public in the first announcement.

15.6 WHAT THE SOLICITORS WERE TOLD

15.6.1 We heard the evidence of two solicitors, Mr Moses Cheng and Mr Tommy Lo, both of P C Woo and Company, solicitors for PIIL. Their evidence is important because Mr Cheng says that when he arrived at Mr Lai's offices, he and Mr Lo had a short meeting with Mr Lai and Mr Leong, before joining the others in the conference room, and that at that meeting there was no indication of who was behind, or who comprised, the consortium, save that he was given to understand that "one of the companies within the CEF group was one of the parties to the consortium". The only other matter discussed at this briefing, according to Mr Cheng, was what was to go in the announcement, and that negotiation for the sale of Dr Teh's controlling interest was in progress. The significance of this evidence is that it is argued that the briefing of the solicitors by Mr Lai was of the same kind as that given to Mr Don Lau, and their role similar to his, so that if the solicitors were given information as broad or as vague as they recall, there is then every reason to assume or conclude that Mr Lau was told no more than were they; or, put in the appropriate way, that there is no reason to conclude, upon the requisite standard of proof, that he was told more.

15.6.2 Mr Lai cannot recall such a briefing with Mr Cheng, and Mr Tommy Lo did not aver to it; indeed, Mr Lo said that when he arrived at JCG's offices that afternoon, he went straight into the meeting, namely, the meeting attended by the CEF representatives. In none of the chronologies or time sequences prepared on behalf of Dr Teh, and by Nikko and CEF in December 1992 in response to the SFC enquiries is there any mention of a separate briefing of the solicitors, whereas there is in each a reference to a briefing of

Mr Don Lau and, in contrast to those relatively contemporaneous letters, the solicitors did not have the benefit of any attendance or other note freshly made.

15.6.3 Mr Cheng's evidence about the events of that afternoon was forthright, and he was clearly doing his best to recall events and to assist the Tribunal. We think, however, that he was not always accurate in his recollection which, given a busy schedule and the time elapsed since the events in question, is not at all surprising. He told us that he received a call from Mr Lai either before noon or immediately after lunch on 7th December and was asked to attend a meeting. PIIL was one of their established clients. There had, so far as he recalled, been no consultation at any other time that year about an approach to take-over the company. Over the telephone Mr Cheng was given vague information that the Teh family were negotiating a sale of their controlling interest in PIIL. He was asked to attend to assist with the drafting of a press announcement. No details were given. He thought that Mr Lo and he set off for the JCG offices "not too long after lunch". Once there, he was told that negotiations were still taking place, no deal was concluded, but an announcement was required. When asked about the name "Don Lau" in the context of the afternoon's proceedings, Mr Cheng said this:

> "A I believe that in the course of the meeting, we feel that we need the help of a financial adviser and so Mr Don Lau was called to attend the meeting."

He could not recall whose decision this was. It was put to him by counsel for the Tribunal that Mr Don Lau's role was to act as adviser to the minority shareholders, and Mr Cheng replied that that is what he understood Mr Lau's role to be. Then, a little later, he said that he clearly and definitely recalled the question being raised of the need to have the help of a financial adviser to the minority shareholders. He thought Elizabeth Hardy dealt with the draft announcement; and that she and Tommy Lo did most of the work. He was not told, nor given any hint, about the identity of the third party - of that he was very sure. He added that there was no need for the solicitors to know that identity until documents had to be prepared by the solicitors. Nor was there a need to divulge identity in the announcement, for the deal had not been finalized.

15.6.4 The aspects in respect of which we believe Mr Cheng's recollection to be mistaken are none of them of great importance. However, the evidence, including that of Mr Lo, strongly suggests that it was long past lunch time, about 4 or 4:30 pm, before the solicitors joined the meeting. The

chronologies or sequences provided to the SFC by Dr Teh and by Nikko only days after the events in question clearly suggest that Mr Don Lau arrived well before Mr Moses Cheng and Mr Lo, and we think that the same is implicit in the sequence provided by CEF Capital. Mr Lai was adamant that he called on Mr Don Lau first. His recollection was connected with the role which he expected of Mr Don Lau, namely, that Mr Don Lau was called in "to advise me on what necessary steps were to be taken in regard to this offer ..... [and] that's why he asked me to get the lawyers in"[1]. That recollection and that reasoning rang true. We note again the prominence given by those sequences to the briefing of Mr Don Lau as a separate item, with no parallel entry connoting a briefing of the solicitor. We are satisfied that Mr Lai called Mr Don Lau, and that Mr Lau arrived well before Mr Cheng and Mr Lo. Mr Cheng's evidence that Ms Elizabeth Hardy and Mr Tommy Lo did most of the work on the announcement also goes against the grain of the bulk of the evidence that this task was primarily in the charge of Mr Lau.

15.6.5 Whether there was a briefing of the solicitors is in the circumstances difficult to decide, for none other than Mr Cheng recalls it, and the accuracy of some of his recollections is uncertain. It would however have been perfectly natural, and we think probable, for Mr Lai to take the company's legal advisers aside for an introductory word before they joined the full meeting. We will therefore proceed on the footing that there was a short briefing of the kind described by Mr Cheng. Whether it supports the suggestion that the briefing of Mr Don Lau was similarly broad, is a matter to which we shall shortly turn.

15.6.6 One matter does however seem clear, and that is that neither Mr Cheng nor Mr Lo were told anything about the identities that afternoon (save, possibly, to the extent suggested by Mr Cheng[2]). Mr Lo was satisfied that nothing was said in his presence that afternoon about the identity of the purchasers, nor could he see any need for such revelation, firstly because the object of the meeting was to compile a press notice and, secondly, because he would have thought the information might already have been communicated to Mr Cheng. He accepted that, as solicitors for the company, there was no need for them to have that information at such an early stage.

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[1] See transcript, pages 3549, 3550.
[2] See paragraph 15.6.1 above.

15.7 Mr DON LAU'S ROLE

15.7.1 We are satisfied that the roles played by those two solicitors, and by Mr Don Lau that afternoon were different, not only in the obvious fact that their expertise lay in different professional arenas, but because Mr Don Lau's actual involvement was on an altogether wider plane. We accept Mr Lai's evidence about the role which Mr Don Lau was expected to, and did play, when he was called and arrived at the offices of JCG. There was no reason for Mr Lai to have mis-stated or exaggerated that role. What rings true is the atmosphere of a role not clearly defined. Mr Don Lau was expected to help Mr Lai as best he could in areas in which he, Mr Don Lau, had expertise and Mr Lai did not. It was not as if they were strangers to each other. Whether Mr Lai alighted upon Mr Don Lau because of some feeling of obligation arising from a previous pass, we cannot say. But we think that the closest to the truth of the matter was Mr Leong's feeling that Nikko was looking for a role. That is not to say that the slot into which Nikko was ultimately to fit was not implicit, or even expressed on that day. It may well have been expected that in due course Nikko would fulfil the role of, or refine its role to that of, adviser to the minority shareholders.

15.7.2 Although Mr Lai told us that as far as he was concerned on the 7th December, he brought in the solicitors "for the whole deal", the picture which emerged of comparative roles that afternoon is that they were not centre stage, whereas Mr Lau was. It was he who was called in first by Mr Lai. It was he who was expected from the outset to advise Mr Lai of steps to be taken, and to ensure that there was compliance with regulatory requirements. It was he who had carriage of the announcement. He continued to play that central role well beyond the break-up of the long meeting. He took part in a discussion about management accounts; he commented upon the level of the premium which had been offered; he contacted the property valuers; he liaised with the regulatory authorities, and kept Mr Lai and CEF and P C Woo informed of progress. He arrived at JCG's offices well before the solicitors, and the fact of his briefing was sufficiently prominent a part of the afternoon's events to warrant specific mention in each of the schedules sent by CEF, Dr Teh and Nikko, to the SFC a few days later. P C Woo were solicitors to the company; the company was not a party to the anticipated agreement; and the only paperwork for which, it seems, they had the carriage that afternoon were the terms of a board resolution. Such a briefing as there was by Mr Lai of the solicitors has not featured in anyone's recollection other than Mr Cheng's, a

fact which tends to cement the feeling that to compare it with Mr Don Lau's briefing is not to compare like with like.

15.8 THE LONG MEETING

15.8.1 The course of events that afternoon, after the briefing of Mr Lau, appears to be that Elizabeth Hardy arrived with the first draft announcement, and that thereafter Mr Don Lau was in charge of further drafts and finalisation of the announcement. Mr Leong, with the aid of a corporate chart, delivered a briefing about the PIIL group of companies. There was discussion about the definition to be used for the NAV of PIIL, and the date upon which to strike the NAV. It was agreed that the estimated sale price should be worked out by reference to an adjusted NAV at a certain date and there was discussion as to what date that should be; and discussion about the most recent date for which management accounts would be available. Drafts were amended by Mr Lau, and sent for retyping at the JCG offices. There was also discussion about an Australian subsidiary. A decision was made that the announcements should be carried in the South China Morning Post and the Hong Kong Economic Journal. A valuation certificate, referring to PIIL properties was produced, and Mr Lau was given the task of instructing the valuers to value to PIIL property. It was also agreed that Mr Don Lau would carry the task of clearing the announcement with the SFC and Stock Exchange, and that he would fax to the parties the announcement which was to go to the regulatory bodies.

15.8.2 The evidence of Mr Cheng and Mr Lo, that nothing was revealed at the long meeting about the background or identity of the bidders, is amply supported by the evidence of others. We find that neither background nor identity was revealed at that meeting.

15.9 ANALYSIS

15.9.1 We think it relevant to consider the setting and circumstances in which Mr Lai had occasion to speak to and brief Mr Don Lau on the afternoon of 7th December 1992. We know that at the 2:15 pm meeting with CEF the question of Dr Teh retaining a board seat was mentioned. It was one of the matters which was discussed with Dr Teh before trading in the shares was suspended. The identities of the bidders were revealed at that meeting.[1] So, it

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[1] For the finding to this effect, see paragraph 15.5.2 above.

was then known to Mr Lai that Cheung Kong was part of the bidding consortium. It was also then made known to him how prestigious or large or significant was at least one of the Mainland bidders.[1] Mr Lai gave evidence about the importance, particularly to Dr Teh, of his doing a deal with Cheung Kong. Dr Teh also said in evidence that he wanted to expand his business in China. So, retaining a board seat was a particularly important matter, for that seat would bring Dr Teh closer, as it were, to Cheung Kong and, in the context of the present deal, would enhance the China connection. Those were the highlights for Mr Lai. In none of the previous PIIL approaches of 1992 were professional advisers called in. Yet, here, by the time of the second meeting between PIIL and CEF, Mr Lai was calling in advisers. He was treating the event as a very serious matter, and there was no doubt but that Dr Teh was particularly interested in this offer.

15.9.2 Now the call to Mr Don Lau was placed by Mr Lai hot on the heels of the recently received news. Mr Don Lau was called, and arrived shortly. He was the first of the professional advisers on Mr Lai's side to arrive. We find that there was no limitation, at least in the first instance, of Mr Don Lau's (Nikko's) role to that of adviser to the minority shareholders. His role was central to Dr Teh's interests that afternoon, and it was a wide role, the extent of which we have described at paragraph 15.7 above. He was Mr Lai's foremost adviser that day, and he and Mr Lai were not strangers to each other. He was seen by Mr Lai very shortly after Mr Lai had spoken to Dr Teh, a conversation which included the question of a seat on the board for Dr Teh. In these circumstances, it would, we find, have been very strange for Mr Lai to hold back from Mr Don Lau the very information which was, on any view, unusual and, surely, the most exciting information of the day, and which was of paramount significance to Mr Lai and to Dr Teh, namely, that a serious proposal had been made by bidders who comprised not only Mainland enterprises, and prestigious or large ones at that, but also Cheung Kong, and that Dr Teh was to retain a seat on the board. The Nikko "sequence" makes separate provision for the briefing of Mr Don Lau and records that during that briefing "the deal was explained to Mr Don Lau". The seat on the board was part of that deal, part of the proposal, and a significant part at that. That information went hand in hand with information about those with whom Dr Teh would be working. We think it highly probable to the requisite degree, for these reasons alone, and we find, that information which identified the

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[1] See also paragraph 15.5.2 above.

bidders - if not their very names then at least their background - was divulged to Mr Don Lau. We find that at the least he was told that the bidders included Mainland enterprises and Cheung Kong.

15.9.3 So, too, in these circumstances, one would expect that, at the very least, Mr Don Lau would ask Mr Lai who the bidders were. That expectation is so obvious a matter that Mr Don Lau, who as a witness was remarkable for his reluctance to concede even the most obvious matters, conceded that his curiosity was aroused. If his curiosity was aroused, it would have been expressed and answered. He would, however, have none of that:

> "There was a curiosity or temptation to ask because some curiosity is a very natural human behaviour but I did not ask or I held myself back from asking because you know these are formal discussions, and not a social chat, and I only need to know information which would enable me to discharge my responsibility as a minority adviser or potential minority adviser. So before asking any question that process went through my mind, do I need to know this information, do I need to know that information. If I think I don't need at that stage then I don't ask, and also, I mean in corporate finance or merchant banking information is always or normally provided on a need to know basis."[1]

One would have expected Mr Don Lau's curiosity to have been aroused even further given the fact that there was "China fever" at that time, and that he found himself, once again, doing business with CEF, a company by whom he had previously been employed and, more particularly, a company with which he had worked on the first China deal, namely, Tung Wing, only a few weeks previously. Nor were the meetings that afternoon between strangers. Mr Don Lau knew Mr Lai, as well as Mr David Wong. Even so, he tells us, he did not ask either then, or later that day, anything at all about the background or identity of the parties. Indeed, if Mr Don Lau's version is the true version, he was told even less than was Mr Cheng.

15.9.4 It is however not only the common sense and circumstances of the matter that drive us to that conclusion. The following matters point in the same direction:

(1) The whole thrust of the evidence of Mr Lai suggests that Mr Don Lau was given such information. He is not, even now when his present recollections are unclear, neutral about the probabilities. So, too, with Mr Leong. Although he at one stage said that since

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[1] See transcript, page 4557.

he could not recall now what was said, and that it was as likely as not that Mr Don Lau was told about the background of the bidders, the thrust of his evidence was also one which asserted that it was very probable that Mr Lau was given that information.

(2) Answer 18 is, if reliable, highly cogent evidence that Mr Don Lau was told the background of the bidders. The key sentences of the answer do not appear as asides or assumptions. They mention the explanation of the deal, but specifically add, not once, but twice, the fact that the identity of the bidders was explained to Mr Don Lau. The second sentence is even prefaced with an assertion of specific recollection:

> "I recall that I told Don Lau and [Mr Leong] that the purchasers included China Enterprise."
>
> (Emphasis added)

We note, too, that these answers were adopted (as were the other answers) by Mr Lai as accurate in so far as he had been expressly invited by the SFC to read the statement to see if it required amendment, and having done so he signed each page as correct. There was, in the extensive dissection of Mr Lai's recollection, a danger of losing sight of these features of these answers. We find that Answer 18 represented Mr Lai's recollection of events at the time of his interview. There was no reason for Mr Lai to have overstated the position, and we find that Answer 18, in so far as it deals with the question of Mr Lau's briefing, was reliable.

15.9.5 These findings cannot, however, stand without consideration of a very important piece of evidence which came to light in the course of the Inquiry, as a result of one of our numerous calls for the discovery of documents.

15.10 THE MERCER NOTES

The Faxes

15.10.1 On the evening of 7th December, Mr Don Lau proceeded apace to his office at Pacific Place to finalise the announcement, and to clear it with the authorities. The gentleman at the SFC with whom Mr Don Lau dealt for

this purpose was Mr Alan Mercer, a solicitor, who at that time was a senior manager in the corporate finance division of the SFC. His job with the SFC included the vetting of documentation, including public announcements, in respect of take-overs, to ensure compliance with the Take-over Code.

15.10.2 At about 6:34 pm, he received a draft announcement by fax from Mr Don Lau. He had first spoken to him by telephone. We were shown a copy of the faxed draft. On it and shortly after its receipt, Mr Mercer penned on the sheet itself several comments or queries. Two in particular are noteworthy. The first is an arrow to the words "the Controlling Shareholders" with the comment "who they?"; and the second is a like comment directed at the reference to "independent third party", about which Mr Mercer also wrote: "who they". Mr Mercer told us that they were matters of concern to him, for trading had been suspended and "[the] identity of the third party seemed to me to be price-sensitive information which I would have wanted to put in front of the investing public". Although public announcements were quite regularly made without disclosure of the third party's name at a stage when there had been a third party approach, Mr Mercer viewed the stage reached on the evening of 7th December as a stage more advanced than that normally associated with preliminary announcements, even though not as advanced as a full or conditional agreement. Mr Mercer communicated his concerns to Mr Don Lau. He was asked how firm on these points he, Mr Mercer, would have been with Mr Don Lau, and he answered: "Very firm".

15.10.3 There were two further faxes sent to Mr Mercer's office that evening by Mr Don Lau. The second, headed "Draft 3", contained amendments required by Mr Mercer, including the name of the controlling shareholder, but not the name of the third party. The phrase "independent third party" stayed in the draft announcement, without any particulars which identified that third party. That version was faxed at 7:54 pm. The covering page has on it a date stamp "8th December 1992", which suggests that that is when it was first processed at the SFC. The third of the drafts sent to the SFC by Mr Don Lau was headed "Final Draft". It, again, did not identify the third party. It was sent at 8:22 pm.

15.10.4 Mr Mercer saw neither the second nor the third fax. Had he done so, he would have returned to the omission of the name of the third party. He had assumed that his written comments, and his insistence that the identities of controlling shareholder and third parties be divulged in the announcement,

would be translated into action. That is the position as he left it when he departed his office that night.

15.10.5 When, the following morning, he saw the announcement, he was angry, because his requirement had not been met. So he telephoned Mr Don Lau. Shortly after that call, he dictated an attendance note. He then telephoned Mr David Wong of CEF, and then dictated another attendance note. After those calls, he wrote a memorandum, internal to the SFC, to Mr Stuart Crosby of the SFC's Enforcement Division. The two attendance notes, and the memorandum are at Appendix VI.

The Significance of the Notes

15.10.6 If the first attendance note (the one about the Don Lau conversation) is accurate, and we have no reason to doubt that, it shows three things:

(1) that Mr Don Lau accepted that the previous evening Mr Mercer had asked for the inclusion of the identity of the third party;

(2) that Mr Don Lau knew at least that CEF did not wish to disclose the name of the purchasers, for reasons there stated; and

(3) that in order to give the answer he did, Mr Don Lau must have discussed the point with CEF the night before, or (much less likely) that morning before Mr Mercer telephoned Mr Don Lau to complain. That call to Mr Don Lau was made between about 9 am to 10 am.

15.10.7 The memoranda or notes are of very particular significance for what they record about Mr Don Lau's assertions about the state of his knowledge about the identity of the purchasers. Breaking the first note down, he was saying:

(1) that CEF acted for what he, Mr Don Lau, believed to be a consortium; and

(2) that Nikko did not know who the third parties were, but believed that it was a consortium in which Cheung Kong and a Mainland Chinese party were involved.

15.10.8 The memorandum to Mr Crosby is also noteworthy for Mr Mercer's comment that:

> "Apparently, CEF has not revealed the identity of the third party to Nikko."

15.10.9 A central point is made, namely, that it would have been foolish for Mr Lau to have lied about not knowing the identity of the third party by the time he spoke to Mr Mercer, for such a lie would, as Mr Don Lau would have known, soon be discovered.

Mr Mercer's interpretation

15.10.10 Mr Mercer was asked whether the basis for Mr Don Lau's belief was revealed by Mr Lau, to which Mr Mercer said this:

> "With the shares going up and Mainland Chinese parties seeking to obtain control I considered Public International to fall into that category, and therefore his statement didn't surprise me and I would have assumed that in any discussions that had taken place between the proposed exiting controlling shareholder and these third parties, the identity of those third parties would have been revealed. And I would have assumed that Mr Lau was at least aware of the characteristics, if you like, of the third party who was seeking to obtain control, mainly Mainland Chinese, so it didn't surprise me."[1]

15.10.11 We are satisfied that Mr Mercer was not thereby suggesting that he would have been surprised had the bidders been other than Mainland parties; but rather that when he was told that they were, he was, given recent trends in the market, not surprised. He also appears to be suggesting that even though Mr Lau may not have been told the actual identities, he, Mr Mercer, took it that he was at least aware of the third party's characteristics or background. That sense of the matter emerged also in Mr Mercer's written statement prepared for the purpose of this Inquiry, dated 5th November 1994, for he there stated that

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[1] See pages 1258 and 1259 of the transcript, and for a similar statement, see page 1257.

> "Nikko did not appear to know the actual identity of the third party. However, Mr Don Lau clearly had some idea of the parties as he told me that it was a consortium in which Cheung Kong and a mainland Chinese party was involved."
>
> (Emphasis added)

The first attendance note, however, had referred to a "belief" on Mr Lau's part about the composition of the consortium, rather than a statement of fact; so we pressed Mr Mercer about that, and he said that he thought that the attendance note was an indication to him that it was a belief, a judgment, a view. He also told us that, from the nature of the conversation, he had no reason to disbelieve Mr Lau when the latter said that he did not know the actual identity.

Mr Don Lau's version

15.10.12 Mr Mercer was, under cross-examination, firm in his assertions that he had not seen the later draft announcement, and that he had not again spoken to Mr Don Lau after he had communicated his comments to Mr Don Lau on the first draft. He denied that the requirement that the identity of the third parties be revealed was in fact a request rather than a matter of insistence; and he further denied seeing draft announcements that evening other than the first sent to the SFC.

15.10.13 Mr Don Lau's evidence about his contacts with Mr Mercer was somewhat strange. He said that he had no recollection of a request by Mr Mercer for inclusion of the name of the third party, although he says that it is possible, and that if such a request had been made he would have passed it on to Mr David Wong, and "it is possible" that Mr Wong explained his reason for not wishing to disclose the information. He is sure, however, that Mr Mercer did not insist on disclosure, for had he done, he, Mr Don Lau, would have consulted CEF on the matter. He relies also on the fact that he sent a copy of the proposed announcement to the parties that evening, on which the words "Already approved by Stock Exchange and the SFC" are written in Mr Don Lau's hand. The evidence established that addressees received such a copy that night.

15.10.14 Mr Wong's evidence is also somewhat surprising in that he too says that he has no recollection of a conversation with Mr Mercer on 8th

December[1], nor of any request by the SFC on 7th December for the inclusion in the announcement of the identity of the third party[2].

Findings

15.10.15 However, we have no doubt whatsoever but that there was a telephone conversation during the evening of 7th December between Mr Mercer and Mr Don Lau, and that Mr Mercer reinforced his manuscript comments with a requirement that the identity of the bidder be disclosed. That conclusion is supported by the manuscript notes themselves, and by the fact that Mr Mercer was prompted by something sufficiently important to warrant the call the following morning. We are satisfied, too, that the attendance notes and memoranda are an accurate reflection of the thrust of conversations on 8th December between Mr Lau and Mr Mercer, and between Mr Wong and Mr Mercer. There is nothing in those notes to suggest that Mr Don Lau was surprised by the question raised by Mr Mercer on 8th December, namely, why the third party's identity had not been disclosed. Nor is there any hint in them that Mr Mercer's silence in the face of the later drafts had been taken by CEF or Mr Lau as signifying the SFC's consent to let the matter of identity drop. Accordingly, we prefer Mr Mercer's evidence to that of Mr Lau, where they conflict. Mr Don Lau's evidence was also that he cannot remember any conversation with Mr Mercer on the morning of 8th December. He does, however, remember, he says, that there were several calls with Mr Mercer on the evening of 7th December, but he asserts that in the last, Mr Mercer said that he had no further comments. If that were so, it is difficult to understand why Mr Don Lau did not point that out in the course of the conversation the next morning. We are satisfied that on 7th December there was no conversation with Mr Mercer during which Mr Mercer accepted a draft without the name of the third party.

15.10.16 It is difficult to believe that Mr Don Lau has no recollection of the request to include the identity of the third parties, and it is particularly difficult to believe that he cannot remember receiving the call on 8th December from Mr Mercer. That there was such a request on 7th December, and that there was a call from Mr Mercer on 8th December, is established beyond doubt. The calls were important, coming as they did from the regulatory

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[1] See transcript, pages 686 and 687.
[2] See transcript, page 706.

authority to the man whose prime responsibility on 7th December was to compile an announcement satisfactory to the parties, and to that same regulatory authority. Indeed, all other requests by the SFC for changes to the announcement were met, including the request for disclosure of the name of the controlling shareholder. There was, by close of play on 7th December, but one outstanding issue between the SFC and Mr Lau concerning the wording of the announcement, and it is the one issue which Mr Don Lau says that he cannot recall discussing. The following morning, that issue, and no other, was the trigger for Mr Mercer's call to Mr Don Lau, and again, of that whole conversation, Mr Lau has, if we are to believe him, no recollection. But our scepticism goes beyond that, because in order for Mr Lau to deal with Mr Mercer's request, he would have had to discuss it with someone from CEF or PIIL on 7th December. And in order to provide to Mr Mercer the explanation which he provided on 8th December, he, Mr Lau, would have to have had, or been party to, some conversation with CEF or PIIL representatives about the question of revealing the names of the bidders. That conversation would either have taken place during the afternoon of 7th December, or after Mr Mercer made his first request that evening for the identity of the third party to be revealed. Yet Mr Lau will have it that he recalls no such discussions. One might therefore be forgiven for suspecting that Mr Lau's loss of memory was contrived rather than real; and we have no doubt but that it was contrived.

15.10.17 We are, in the circumstances described, faced with apparently irreconcilable evidence. On the one hand, there is evidence that Mr Mercer's wish that the identity of the third party be revealed was a firm requirement; the attendance note of the conversation on 8th December clearly suggests an acceptance by Mr Lau that the SFC had indeed asked for the identity to be revealed, and there was no assertion by Mr Don Lau on the morning of 8th December that he had assumed that the SFC was content with the announcement, or that Mr Mercer had expressly indicated acceptance of the draft without that identity; and it is clear that Mr Don Lau has not been frank with us about his recollection of these calls and their content. On the other hand, there is evidence that further drafts were sent to the SFC with the name of the controlling shareholder, but without the identity of the bidders and, beyond that, that the last draft sent to the parties expressly asserted that it had been approved by the SFC. In these circumstances, a finding that Mr Don Lau deliberately chose to ignore the SFC's requirement would not be justified. It is possible that Mr Lau thought it to be something less than a firm requirement, and that he took the absence of a response by the SFC to the further drafts to be

an intimation of consent. Even in the context of that scenario, there must have been some discussion between Mr Lau and CEF or Mr Lai about the SFC's preference, so that it is decidedly odd that CEF's attitude was not conveyed to Mr Mercer that evening. But be that as it may, we proceed on the assumption that a misunderstanding of this type occurred.

15.10.18 That conclusion does not sit ill with our finding that Mr Lau's loss of memory was contrived, for it is likely that Mr Lau, in this instance, as in others, could not bring himself to admit to any knowledge of any kind whatsoever touching upon the background or identity of the bidders. It is part of a pattern which was manifest throughout his evidence, by which he constantly sought to place maximum distance between himself, on the one hand, and, on the other, any evidence which he thought might go towards establishing as against him an element of insider dealing as defined by the Ordinance.

15.10.19 We have at paragraphs 15.9.1 to 15.9.4 particularised features of the events of 7th December which drive us to the conclusion on the evidence thus far that Mr Lai told Mr Lau something about the background of the bidders. The episode of the Mercer conversations adds to the equation at least to the extent that the evidence shows that at some stage on 7th December Mr Lau is very likely to have discussed with either CEF or PIIL representatives, the SFC's requirement to include in the announcement the identity of the bidders. The question which now arises is whether the contents of the Mercer attendance notes and memorandum detract from, or cast doubt upon, those findings, or whether they go the other way and prove, or support the conclusion, that the background or identities of the bidders were revealed to Mr Lau on 7th December, and, if so, in what terms.

15.10.20 What was it that caused Mr Don Lau to tell Mr Mercer that he believed the bidder to be a consortium involving Cheung Kong and a Mainland Chinese party?

15.10.21 According to Mr Don Lau, nothing whatsoever was said to him on 7th December about the bidder, whether in general terms, or specifically. All he was told was that CEF represented the bidders. The bidder, he conceded, could have been anybody. But, and this was the core of his answer, he had a hunch. That hunch, he said, was that it was most likely that the bidder was a PRC interest that would team up with a local company. Such was the

flavour of the times. Tung Wing had set the scene. Cheung Kong had discovered a formula for success; this was a way of expanding into China. His suggestion in other words amounted to this, that any take-over of a shell company at that time was very likely to be by a Mainland enterprise and Cheung Kong. So, that was the basis upon which, if we accept his evidence, the head of the corporate finance department of a renowned financial institution was making representations to an official of a regulatory authority in the course, not of idle chat, but of formal business.

15.10.22 The point emphasised in submissions on behalf of Mr Don Lau, was that Mr Lau was conveying to Mr Mercer a belief, rather than knowledge, that the bidders were a Mainland party and Cheung Kong. The attendance note used the word "belief" and Mr Mercer stated in his evidence that he thought the note indicated a view or a judgment, rather than an assertion of fact. We agree that we should be slow to depart from the assessment which Mr Mercer makes of the reference in his note to a "belief". Nonetheless, we have concluded in the light of the evidence as a whole, and in particular in the light of other parts of Mr Mercer's evidence, that the assessment in his statement of 5th November 1994, that whilst Nikko did not appear to know the actual identity of the third party, Mr Don Lau clearly had some idea of the parties, more accurately reflects the true position. Mr Mercer did not treat the information imparted by Mr Lau to him as common knowledge or obvious assumption, either on his (Mr Mercer's) part, or on the part of investors. He treated information that Mainland interests were involved and that Cheung Kong were involved as very price sensitive. Nor was there press speculation on 8th or during the days following that Cheung Kong was involved. It is most unlikely that all that Mr Lau was doing was repeating popular perceptions. Indeed, we see from Mr Mercer's evidence that he, Mr Mercer, placed reliance on Mr Don Lau's comments about the identity of the bidders, in that although Mr Don Lau had not told him the basis for his belief that they were a Mainland party and Cheung Kong, he, Mr Mercer, assumed that

> "in any discussions that had taken place between the controlling shareholder and these third parties, the identity of that third party would have been alluded to at the very least. So his statement didn't surprise me and it didn't shock me. I just wanted to know who they were. ..... I would have assumed that Mr Lau was at least aware of the characteristics, if you like, of the third party who was seeking to obtain control, mainly mainland Chinese."[1]

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[1] See transcript, pages 1257 and 1259.

This was far from treating Mr Lau's remarks at the time as guesswork. It was treating the information as information gathered by Mr Lau in the course of the discussions and negotiations to which Mr Lau had so recently been party. It was treating Mr Lau as better informed than himself on 7th and 8th December 1992.

15.10.23 There are further considerations that lead us to conclude that Mr Lau was not giving voice to mere speculation:

(1) Mr Lau was engaged in a professional capacity to effect a number of tasks on behalf of Dr Teh, the most significant of which that day was to shape and clear the public announcement. Nobody else involved in the negotiations was tasked to liaise with the regulatory authorities. Nobody else was in charge of the announcement. It was in that capacity that he liaised with the regulators on 7th and 8th December. The question of disclosing the identity of the controlling shareholder and of the bidders was a question which was raised formally by the regulator with Mr Don Lau on 7th December. It was raised formally again the following morning. That conversation with Mr Mercer was a serious enquiry, and we do not believe that someone in Mr Lau's position would in those circumstances, when asked the specific question about identity, speculate about the matter. He did not act for CEF Capital or for their clients. Actual identity was, as Mr Mercer rightly asserted, a sensitive matter. It was not only price sensitive. It was sensitive in the hands of CEF Capital; in other words, the people who would be most concerned about what was revealed, and to whom, were the officers of CEF. Assume then that Mr Lau had been told nothing about the identity of the bidders, whether as to background or actual names. What, then, was Mr Lau doing speculating about the identity of the bidders, and what is more, proffering, without any authority, the idea that the bidders were Mainland bidders, and not just any large local company but Cheung Kong? And from whence did he draw that conclusion? We do not believe for one moment that Mr Lau had arrived at that conclusion by the route he suggests.

(2) There must have been a basis for putting forward, not only the "characteristics" of the bidders (as Mr Mercer put it in his evidence before us), but also the name Cheung Kong. That CEF was acting for the bidders was not of itself ground for settling upon Cheung Kong as one of them. CEF act and have acted for a range of clients. There was some evidence that they were known in December 1992 as "China makers", but the weight of the evidence did not support that conclusion. There was certainly no hint in all the evidence which we have received that the fact that CEF was acting for bidders was reasonably to be taken as meaning or implying that one of those bidders was Cheung Kong.

15.10.24 The point has been made that a lie by Mr Lau to Mr Mercer about the state of his knowledge was destined to be uncovered. That is to assume that Mr Lau was lying. It is the fact, as we have found, that he gleaned the information from Mr Lai rather than from CEF, and it is quite possible, indeed probable, that the background rather than precise names of the Mainland parties were revealed, for the information which was of prime interest to Mr Lai, who had briefed Mr Lau, was not the actual names of the Mainland parties, but the fact that they were Mainland parties, and the fact that the local party was Cheung Kong. Nor did Mr Lau know the identity of the purchasing vehicles. It may be that Mr Lau in his (reported) conversation with Mr Mercer, put the matter as broadly as he did because he thought the matter more appropriately thrashed out between Mr Mercer and the CEF, or because CEF had expressed clear reservations about the extent to which identities should be revealed to the public, or that for some other reason he was coy about saying more.

15.10.25 We have rehearsed in some detail the circumstances which have led us to conclude that at the briefing on the afternoon of 7th December the fact that the bidders included Mainland enterprises and Cheung Kong was disclosed to Mr Don Lau. That conclusion is founded on the matters to which we refer in the section of this chapter entitled "Analysis". It is founded, separately and in combination, on the strong inherent probabilities of the matter, on Answer 18 of Mr Lai's interview, and on the thrust of the evidence of Mr Lai and Mr Leong. We are satisfied that the attendance notes and the memorandum do not detract from the validity of those conclusions. On the contrary, we are satisfied that the conversations with Mr Mercer support those conclusions.

ADDENDUM

15.11 At paragraph 13.14 above, we refer to a lunch on 26th November 1992 attended by Mr Francis Chang, Mr David Wong, and Mr Don Lau. We wondered whether something may have been said at that lunch to indicate, or from which to glean, that CEF Capital was looking for a suitable vehicle for a backdoor listing, or that a Tung Wing repeat was possible. That was not to suggest for a moment that such a comment by CEF would have been improper. We asked Mr Chang and Mr Wong about it, and neither altogether discounted the idea that something may have been said, but Mr Chang thought that it was unlikely. We note that Mr Francis Chang had not worked with Mr Don Lau as a colleague; there is no evidence of any suggestion at that stage, or at all, that Nikko might act in an advisory capacity for CEF; and there is no evidence of any reliance or trading at about that time on news of a search by CEF. We are satisfied that there is no cogent evidence of a leak at that stage, and no evidence of trading in reliance on anything said at that lunch.

CHAPTER 16

THE DON LAU GROUP: 8th DECEMBER 1992

THE DATE OF Mr DON LAU'S CALL

16.1 There has been evidence suggesting that Mr Don Lau contacted Mdm Pamela Wong about buying (PIIL) shares one or two days before the order of 8th December was placed. It was a suggestion first made by Mdm Pamela Wong in her second statement of 29th April 1993. According to that statement, the next time she heard from Mr Don Lau was on 9th December. In an affirmation dated 14th October 1992, she repeated that suggestion, and in examination by her counsel, Ms Shui, she did not resile from that evidence about the date, save that she told us that for the date given in her affirmation she had relied on the record of her interview. He had paged her and she returned the call. When she called him, she was at work. When he spoke to her, he said that the shares were standing at about $1. She remembered that the call was placed one morning when she was very busy at work. An examination of a duty roster compiled by her employers showed that if the call was made during the morning and at her place of work, it could not have been placed on 6th or 7th December. The roster was examined and various alternatives put to her. In the result, she agreed that the most likely day for the call was 8th December. We note, too, that there was a stage that day, but not on the preceding few days, when the price of PIIL shares almost reached $1. Accordingly, we proceed on the basis that Mr Don Lau's first call to Mdm Pamela Wong about PIIL shares took place during the morning of 8th December.

THE CONTENDING EVIDENCE

16.2 Paragraph 12.2 above tabulates undisputed facts about the placing of the orders on 8th December. However, Pamela Wong's evidence differs in several essential respects from that of Mr Don Lau.

16.3 Mdm Pamela Wong's case is that Mr Don Lau telephoned her at work, and said to her that there were some shares which were worth buying. The shares were never named, nor was she told why they were thought to be a

desirable purchase. He said the price was about $1 per share. He said that Mr Lau Wai-man's account at G K Goh Securities should be used. She was in a rush, and said she would take 40,000. She placed no order, and her husband, Mr Lau Wai-man knew nothing of the matter until the following April. She says that on the following day, 9th December, Mr Don Lau told her that he had managed to buy only 20,000. She had no idea that an order for 240,000 had been placed. She asked Mr Don Lau to keep an eye on the share price. On 12th December she paid $16,745 into Mr Don Lau's bank account for her portion of the shares. About a week after purchase of the shares, Mr Don Lau told her that he had sold the shares. She received the proceeds of sale of 240,000 shares, a total of $620,450, of which she paid $573,737 to Mr Don Lau, and retained the balance for herself.

Mr DON LAU'S CASE

16.4 Mr Don Lau told us that on the evening of 7th December 1992, he left work after 8 pm and from there went home. On the morning of 8th December, he went to his office, and there examined the announcement which appeared in the press. After doing that, he remembered that Mr Lau Wai-man and Mdm Pamela Wong had in the past sought from him investment advice and, for reasons which we later recount, he thought PIIL would be a good buy. Mdm Pamela Wong came to mind because Mdm Pamela Wong, at about that time, had been coming to his apartment to help her sister (Mr Don Lau's wife) after the birth in October of Mr Don Lau's son. So, before the market opened, he telephoned Mdm Pamela Wong.

16.5 He asked her whether she was interested in buying shares. She said that she was. He told her that there was a share worth buying, but even though she asked, he said to her that the name of the stock would not mean anything to her. He asked her how many she wished to purchase, but she said that she would leave that up to him. He, Mr Don Lau, at work on the morning of 8th December, said that he would himself telephone Mr Wallace Yuen and place the order. On his own version of events, accepted by Mdm Pamela Wong in cross-examination, he said to her "Use Lau Wai-man's account, right?" In her statement to the SFC, however, Mdm Pamela Wong had recounted a similar remark, put however in the sense of a decision by him, or of a requirement coming from him.

16.6 Shortly after trading opened, Mr Don Lau telephoned Mr Wallace Yuen, and told him that he wished to place an order for 240,000 PIIL shares at market price. Mr Wallace Yuen later called to say that he had acquired 216,000. Later, Mr Don Lau telephoned Mr Wallace Yuen again and placed an order for a further 24,000 shares.

16.7 Mr Lau told us that matters then went contrary to his expectations and to his understanding, for when he telephoned Mdm Pamela Wong and told her that he had purchased 240,000 shares and that the price was $200,000, she said that that was too much; she would only take 20,000 shares. He told her that if that was the case he would have to take the balance. He insisted that it had never been his intention to acquire any PIIL shares that day, whether through Mr Lau Wai-man's trading account, or through his own.

16.8 It had always been his impression, he said, that Mr Lau Wai-man and Mdm Pamela Wong were well able to afford sums of this kind. Mr Lau Wai-man was a successful bone-setter, and Pamela Wong a nurse. They seemed to him to have plenty of money for shopping and meals; they owned an apartment, and they had matching gold Rolex watches.

16.9 Mr Lau told us that he kept his eye on the price of the PIIL shares, and on 16th December 1992 the price rose significantly, up to $2.15, for shares that had been acquired for 83 and 86 cents, and he telephoned Mdm Pamela Wong and told her that now was the time to sell. She left the decision to him. So he told Mr Wallace Yuen to sell 24000 that day. The next day he told Mr Wallace Yuen to sell the rest, 216,000. That was done, in three different tranches and prices. In due course, two cheques for the proceeds of sale were drawn in favour of Mr Lau Wai-man, and sent, no doubt, to Mr Don Lau's address.

16.10 These two cheques which were given to Mdm Pamela Wong were in the sums of $56,712.15 and $563,737.87. Mr Don Lau was then given by Mdm Pamela Wong the sum of $573,737, exactly $10,000 more than the cheque representing the sale of 216,000 PIIL shares. Although he says that he did not explain the matter to Mdm Pamela Wong at the time, the excess was attributed by Mr Don Lau to a sum which he contended Mdm Pamela Wong owed to him for some hospital charges he had paid for her father's care.

ASSESSMENT

16.11 We find Mr Don Lau's account of the circumstances in which he came to place the orders for PIIL shares on 8th December incredible at almost every turn.

16.12 Mr Lau Wai-man's trading account had been a singularly inactive one. It was suggested that it was opened to slake Mr Lau Wai-man's newly acquired thirst for trading, yet it had previously been used for the purchase (in April 1992) and sale (in June 1992) of only one stock, and Mr Lau Wai-man, acknowledged by Mr Don Lau to be, in matters financial, primitive, had played no, or virtually no role in that purchase and sale. On this occasion - the purchase and sale of PIIL shares - he took no part in the matter at all, even though the account was in his name. It was not in joint names, but in the sole name of the one member of the trio who had no part in the transaction that day, or in the sales on 16th and 17th December. So, why, all of a sudden, was Mr Don Lau, who had allegedly been asked several times that year, unsuccessfully, for advice - why was he not only tendering advice, but doing so when the advice was unsolicited, and further yet, placing the order on Mdm Pamela Wong's behalf; and, if that were not a sufficient measure of helpfulness, making a second call to Mr Yuen to order some more? We see from the transcript of our proceedings the following answers:

> "A After checking or making sure that the announcement appeared I remember Lai Wai-man and Pamela Wong have in the past asked me for recommendation and the only thought that went through my mind as to why Public International was, my impression that in 1992, shares which were the subject of a takeover or a rumoured takeover always goes up.
>
> Q Why was it that you suddenly thought of Pamela Wong in the morning of the [8th] December?
>
> A During the period surrounding the 8th, I think Pamela Wong came up to my flat and helped out my ..... wife."[1]

16.13 The suggestion (even if merely a rationalisation after the event, which is what he asserted in evidence) that he was motivated to recommend these shares because and only because in 1992 shares of companies which were the subject of take-over always went up, was more than a little surprising coming from someone of Mr Don Lau's professional background. The truth of

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[1] See transcript, page 4611.

the matter is that what he wanted to avoid in his evidence at all cost was anything at all which hinted at reliance on the China factor. So:

(a) He was asked if he had imparted to Mdm Pamela Wong the hunch he had told us about, that China enterprises were looking to team up with companies like Cheung Kong. No, he did not. Why not? "Perhaps," he answered "because ..... I am reticent man."

(b) The point was pressed. Was not the China factor part of the reason he thought the price would go up?

> "A ..... No, as I said yesterday, the only thought that went through my mind was that the price of a stock which was the subject of a take-over or a rumoured take-over would normally go up. That was the only thought that went through my mind at that time.
>
> CHAIRMAN: Can I just see if I understand your position correctly. Are you saying, Mr Lau, that the China and Cheung Kong factors were, as far as you were concerned, irrelevant to the decision whether to invest or not?
>
> WITNESS: Yes, because the only thought that I had at that time was that the share would go up because of a take-over or rumoured take-over."[1]

(c) He was then asked why, in those circumstances, EIE apart, he had not bought shares in other companies the subject of approaches, especially in the latter part of 1992:

> "Q And so I'm asking, why in 1992, and particularly towards the end of 1992 when there were any number of announcements about potential take-overs of companies, why you didn't buy shares in those companies?
>
> A One reason could be that that impression, the impression that the share price of a company being the subject of a take-over or rumoured take-over would go up, has firmed up towards the later part of the year because you have to see; the impression is going to be influenced by precedents, for example."[2]

This, he said, was not the reason he had in mind on 8th December 1992, but a rationalisation after the event.

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[1] See transcript, pages 4618 and 4619.

[2] See transcript, page 4621.

16.14 The suggestion that Mdm Pamela Wong came to mind that particular morning because she frequented his home to help his wife is also a suggestion which struck us as entirely improbable. The evidence established that Mdm Pamela Wong was a regular visitor to her sister, Mr Don Lau's wife, and if there was a particular period when she attended to her sister's needs, that was October when Mr Lau's son was born and in the weeks following. There was nothing magic about the week beginning 7th December.

16.15 At paragraph 16.5 above we refer to some difference in emphasis about Mr Don Lau's comment directed at which trading account was to be used. Assuming for the moment that Mr Don Lau's recollection is accurate, namely, that he asked Mdm Pamela Wong a question in these terms: "Use Lau Wai-man's account, right?", we wondered why he would ask such a question. His answer was that he asked that question because as a banker it is his practice to obtain confirmation of instructions, even when the answer might be obvious. This, too, might be thought a little surprising when there was no other account he could possibly have been talking about, and when he had, he said, purchased for Mdm Pamela Wong through that account before, and when the account was opened for the singular purpose of trading by Mr Lau Wai-man and Mdm Pamela Wong, hopefully on his advice, and when the "customer" in this case happened to be his sister-in-law. We do not believe that, if he asked such a question, it was asked for the reason he provides. It may very well be that it was understood as between the two of them that Mr Don Lau was to buy some PIIL shares himself, and he was stating that he intended to use Mr Lau Wai-man's account, or was asking Mdm Pamela Wong for permission to do so. Or it may be that he was making it clear that he would not buy shares for Mdm Pamela Wong through his own account. Whatever was the motive, it was not the motive which he has advanced at this Inquiry.

16.16 Mr Don Lau placed an order for 240,000 shares at a cost of about $200,000 on behalf, he says, of someone about whose ability to meet that kind of sum he, Mr Don Lau, could only have guessed. He knew, we find, that such authority as he had from Mdm Pamela Wong to trade at all did not extend anywhere near that sort of sum. The only other order he had ever placed on that account was for 10,000 EIE shares at a cost of about $38,000. He told the Tribunal that the discrepancy between the size of the orders was of no significance, for the EIE order was but a trial run.

16.17 Mr Don Lau's evidence was that, before contacting Mdm Pamela Wong that morning he had actually turned his mind to the question whether he was possessed of any inside information. He concluded that he was not. If, then, he felt free to advise her to purchase PIIL shares, why, we asked, did he not purchase himself? That, he replied, might have given rise to perceptions of impropriety; having said which, he told us that he felt only a little discomfort at the fact that, unintentionally, he was landed with a substantial number of shares acquired through the trading account of another, at a time when he was professionally and closely involved in an approach, and negotiations, for the acquisition of shares in that company, the announcement of which approach had caused the price to move so advantageously. We do not believe him. We do not believe that the most senior man at Nikko's corporate finance division, who had the previous day been brought in as a professional adviser in the proposed take-over of PIIL, a take-over still the subject of negotiations, upon whom reliance was placed for ensuring compliance with regulations, and to whom had been allotted the task of liaison with the SFC, would in innocence allow to develop the situation which he has described. Even were the scenario less inherently improbable - and we assess the story as wholly improbable - there was nothing done by this senior executive to retrieve what, even on the most charitable view, was a very awkward situation. He allowed himself to acquire PIIL shares in the name of another. He did not seek allotment of his portion to his own trading account. He allowed by far the greater proportion of the substantial profit to accrue to his benefit, rather than simply retrieve his outlay and allow his sister-in-law to be the sole beneficiary of the profit on the sale of 240,000 shares, which, after all, on his account, was what was originally intended.

16.18 Nor did he take the precaution of informing his employers about the events which had unfolded. He did not, as was required by the current rules of the Take-over Code[1], disclose his dealings in these securities to the authorities or, for that matter, to anyone else. When that breach was put to him, he said that he believed that, in December 1992, he was aware of the Rule, recognised now that he ought to have made the disclosure, but that the matter had not occurred to him at the time[2]. On the morning immediately following that evidence, he interposed the commencement of further examination by returning to the subject and he asserted that, on reflection, he

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[1] Take-over Code, March 1992, Rule 22.

[2] See transcript, pages 4836 and 4838.

had not been aware of the disclosure requirements of Rule 22. Had he been, he said, he would have disclosed it[1]. We do not believe him.

CONCLUSION

16.19 The facts reek of subterfuge. We have not a scintilla of doubt but that the purchases on 8th December placed through Mr Lau Man-man's account were purchases which were intended from the outset to be for the benefit of Mr Don Lau, with a few for Mdm Pamela Wong. Mr Don Lau acquired 220,000 for himself and 20,000 for Ms Wong. The use by Mr Lau of that account was designed to hide the fact that he was trading at all in PIIL shares.

ADDENDUM

16.20 A matter of days after his SFC interview, namely, on 3rd May 1993[2], Mr Don Lau spoke to his employers, at his own request or initiative, to inform them that he had been interviewed by the SFC. He produced then, alternatively at a meeting on 7th May with Nikko's solicitors, a note entitled "Sequence of Events". He there discussed the events of 8th December 1992 thus:

> "8 Dec 1992
>
> - Public announcement was advertised in major financial newspapers that morning.
>
> - Believing that the public announcement was already made known to the general public and that the general public has the same relevant information, DL and his relative bought some PIIL shares at the then prevailing market price that morning through their usual broker. DL settled his payment for the share purchase by issuing his personal cheque."

It may be said to be a misleading note in that it does not reveal that the purchase by Mr Don Lau was through the relative's trading account. Nor is there any mention of the circumstances in which Mr Don Lau came to buy shares which he did not want. Nonetheless, it may equally be said that it does not purport to be a comprehensive statement, and we do not give to it any weight which is adverse to Mr Don Lau, but we take into account the matters in it to which he points as evidence in his favour, namely, that the order on 8th

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[1] See transcript, page 4855.

[2] There was an issue about the date of this meeting. Mr Don Lau says that it took place on 3rd May, and we think that that is probably correct.

December was placed after the appearance in the press of the public announcement, and that he paid for the shares with a personal cheque.

CHAPTER 17

THE DON LAU GROUP: THE LETTER OF 5th JANUARY 1993

THE LETTER'S SIGNIFICANCE

17.1 Within a few weeks of the events of 7th and 8th December there were two letters written by Nikko to the SFC, one dated 15th December 1992, the second dated 5th January 1993 each of which was in answer to queries raised by the SFC in their letters dated 10th December and 29th December respectively.[1] We exhibit all four letters at Appendix VII.

17.2 The letter dated 5th January 1993 is important because it was signed by Mr Don Lau, and against the entry about events at 3:15 pm on 7th December, it said this:

> "3:15 p.m. Meeting between Mr. Don Lau and Mr. Lai Kim Leong and Mr. Leong Kwok Nyem of PIIL during which the identities of the Purchasers and the deal was explained to Mr. Don Lau."
>
> (Emphasis added)

17.3 The letter was in answer to a request, a requirement by the SFC, to provide:

> "(a) A detailed timetable of events with names of persons involved, from the date you first knew of the identities and background of the Purchasers to 15 December 1992; and
>
> (b) The full names (in both English and Chinese, if applicable), home addresses and telephone numbers of all the directors, executives or other staff (including secretaries and clerical staff) of your company who have been involved in or aware of the identities and background of the Purchasers prior to it being announced on 15 December 1992."
>
> (Emphasis added)

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[1] There was, in fact, a third and very short correction letter sent by Nikko to the SFC. We refer to it at paragraph 17.7 below, and it too is exhibited at Appendix VII. This short letter is also dated 5th January, but this Chapter concentrates on the four-page letter sent by Nikko in response to the SFC's letter of 29th December. Each reference in this chapter to the letter dated 5th January is a reference to that four-page letter.

THE ISSUE

17.4 We have to determine whether Mr Don Lau drafted or consciously adopted, the passage which referred to the 3:15 pm meeting. Even if he did, however, it cannot be used in proof of possession of relevant information, unless it is also true.

Mr DON LAU'S CASE

17.5 It is accepted by Mr Don Lau that he wrote Nikko's first reply to the SFC, dated 15th December 1992. It was a letter written only a week after the events to which it related. It was, said Mr Don Lau in evidence, a routine matter that he had nothing to feel uncomfortable about, arising from his transaction in PIIL shares the week before, and that his recollection, at the time he wrote it, was clear.

17.6 Then he received the letter of 29th December. Like the first, it was marked for his attention. He told us that it did not strike him as other than routine. He thought that the letter related to the second stage of developments, in other words, events referred to in the second announcement, and he drew our attention to the similarities between the front page of the SFC letter of 10th December and the front page of the letter of 29th December. The fact that the letter concentrated on identities was not apparent to him. He was also very busy at the time. So what he did was to pass the letter to Mr Derrick Lau, a senior manager in the same division of Nikko, who worked to Mr Don Lau on the PIIL project, and he asked Mr Derrick Lau to "do a reply" to the SFC, and he suggested to Mr Derrick Lau that he should use the letter of 15th December to the SFC as a basis for that reply. Mr Derrick Lau had been out of Hong Kong from 6th to 9th December 1992, and when he returned on the afternoon of 9th December he was told by Mr Don Lau about the PIIL developments, and, with Mr Don Lau, attended a PIIL meeting that afternoon of 9th December at the solicitors' offices.

17.7 Mr Derrick Lau's evidence tallied with that of Mr Don Lau. What he had done, he said, was to assume from the phrase "when the deal was explained to Mr Don Lau" which featured in the Nikko letter of 15th December, that that was when the purchasers identities were revealed. On that footing, he drafted the reply, inserting the words "during which the identities of the purchasers and". Once it was typed, he placed it before Mr Don Lau "for

his review and signature". He also brought to Mr Don Lau's attention an error in the first letter, the letter of 15th January, in that it referred to a meeting with the solicitors on 8th December, whereas that meeting had taken place on 9th December. Mr Don Lau gave instructions for a third letter to be written to point out that error, and that was done. This third letter is also dated 5th January 1993, and was also signed by Mr Don Lau. It is exhibited together with the other SFC-Nikko correspondence, at Appendix VII.

17.8 The mistake (about disclosure of identities on 7th December), if it was a mistake, came to light when the SFC interviewed Mr Don Lau on 30th April 1993. He was shown the letter of 5th January. This was his response:

> "..... The sentence which says, '... during which the identities of the Purchaser and the deal was explained to Mr. Don LAU.' should read as, '... during which the identities of Purchasers' financial advisers and legal advisers and the deal was explained to Mr Don LAU." This is based on my present recollection which may not be correct."
>
> (Emphasis added)

When asked by the interviewer upon what he based that answer, Mr Don Lau replied that it was based on his memory on 5th January, on his personal diary, and by making reference to the first Nikko response of 15th December. When further asked why, then, in his letter he had stated that he knew the identities on 7th December at 3:15 pm, he answered:

> "This is what I recalled at the time (when I wrote the reply letter)."

17.9 He was then asked to reveal the circumstances under which he came to learn the identities of the purchasers. This was his answer:

> "CEF Capital's David WONG rang me up on 8/12/1992 in the afternoon (I cannot recall the exact time) to discuss about the progress and timetable concerning the acquisition of PIIL. David WONG disclosed to me the identities of the purchasers in the telephone conversation. At that time, David WONG said that the purchasers included China Venture Tech, Shanghai International Securities and Cheung Kong Group."

ASSESSMENT

17.10 We note that the Nikko copy of this letter has on it the words "please file" in Mr Derrick Lau's hand, and it may very well be that Mr Derrick Lau did have a hand in the drafting of this letter. We do not, however, accept that it was finalised on an assumption. We accept the suggestion that the

first pages of both SFC letters have a resemblance to each other. We note the point advanced that if what is said in the letter of 5th January is an accurate reflection of Mr Don Lau's knowledge on 7th December, it was at odds with what Mr Don Lau is recorded as saying to Mr Mercer on 8th December, namely, that Nikko did not know who the third parties were. It is, however, only at odds if the Mercer notes are interpreted as excluding from Mr Don Lau's knowledge the characteristics or background of the bidders as well as their specific identities. It is also to ignore any element of reticence which, we believe, found its way into Mr Don Lau's conduct when dealing with Mr Mercer on the question of the bidders' identity. We bear in mind too that if Mr Don Lau had indeed the identity (broad or specific) in his hands on 7th December, and acted unlawfully on 8th December precisely because he was in possession of that identity, it could be said to be crass folly to volunteer the fact in a letter to the SFC.

17.11 We are nevertheless satisfied that Mr Don Lau was aware of the entry on the letter of 5th January 1995, and signed it whilst thus aware. We note in particular the following matters:

(1) It can safely be concluded that before he went to the SFC, Mr Don Lau refreshed his memory from such documents as he or Nikko possessed which were relevant to the PIIL take-over, including correspondence between Nikko and the SFC. He would have us believe, however, that he only "..... very quickly flipped through the file. I did not concentrate on the replies". Why he would take the trouble to look at the correspondence without concentrating on the replies, especially replies purporting to come from him, is hard to say. He says that it was because the replies looked very similar. He contends that he had not, before he went to the interview, addressed his mind to the question of identity, and did not even appreciate until after the interview that the SFC's "angle" was that in this case identity of the bidders was price sensitive information. He was, he added confused in the course of his interview, and he said that some of his answers, particularly those which itemised the sources of recollection used when the letter of 5th January was signed, reflected assumptions which he was making during the interview.

(2) We do not believe that his preparation for the interview was as cursory as he suggests. He knew that the SFC was making an investigation into possible insider dealing. He knew, we have no doubt, that his own conduct was or would be under particular scrutiny. The mere circumstances in which he acquired the PIIL shares would have made him fully aware that, in the absence of sound explanation, his behaviour would be viewed as suspect. He knew that the SFC had asked questions in December 1992 about transactions in PIIL which he had effected, and - as our later findings illustrate - he knew that Mr Wallace Yuen had told a lie about those deals. He knew that four days before the SFC interview, Mr Wallace Yuen had been interviewed by the SFC about the very orders which he, Mr Don Lau, had placed, and he knew also by 30th April 1993 that his sister in law and her husband had been interviewed by the SFC about the same subject. He could hardly have been under any illusion but that he was a suspect, and a key one at that. The events of 28th April, which we address at Chapter 18 below, demonstrate the importance which Mr Don Lau attached to the SFC investigation. He must, by the time of his own interview, have asked himself what information was, or may have been, or might be thought to have been, in his possession on 8th December, at the time of his purchase of PIIL shares, which was also unpublished price sensitive information, and in what information the SFC was likely to be interested. The answer to those questions lay in the SFC letter dated 29th December, and in the reply signed by Mr Don Lau himself. We do not believe that, in those circumstances, Mr Don Lau merely "flicked" through the documentation in his possession, or that his reference in the course of his interview to financial and legal advisers was a shot in the dark, or an assumption. At his interview, he was specifically shown the letter from the SFC dated 29th December. He was asked to "explain" the letter. He acknowledged it as a letter sent to him. He explained it as a letter which specifically addressed the time at which <u>he</u> came to know the background of the bidders. There was no expression of surprise at it, or about its contents, or any suggestion or hint that he had not previously read it, or that he may have delegated its response to another, or that he did not recall preparing that response. There was nothing at the interview

to compel him to itemise the information upon which the letter was based, and he was able to recount in detail his version of what was disclosed to him at the briefing. The fact that he had considered the issue of identity before he went for the interview is suggested also by his purported ability to recollect, and in as unqualified and detailed a manner as the record suggests, the date and time of day when he first learned these identities, and the source of that information. It is perfectly apparent that before he went for the interview, he knew full well what the thrust of the questions would be; had read the correspondence between Nikko and the SFC; and had decided how to respond to the questions which were to be put.

(3) We do not accept that Mr Don Lau was too busy to pay proper attention to this letter. It was, after all, not some internal memorandum or note, but an external letter to a regulatory authority, and Mr Don Lau had taken care to draft the first letter himself. Beyond that, we note that on 4th January 1993, Mr Leong of JCG sent to Mr Don Lau a fax which comprised a draft response which it was intended that Dr Teh would sign and which would be sent to the SFC in response to a letter from the SFC to Dr Teh dated 30th December, which was slightly broader in its requests than that sent to Nikko. It is accepted by Mr Don Lau that he not only saw the draft, but took the time to make to it some suggested amendments in manuscript. We annex that amended draft at Appendix VIII. The original which Mr Don Lau saw made two specific and consecutive references to the disclosure of identities of the purchasers, albeit in relation to the 2:15 pm meeting, and the offer letter sent to the parties on the evening of 7th December. There was no reference to the briefing of Mr Don Lau, no doubt because the SFC questions were directed at information in the hands of PIIL staff. The point, though, is that Mr Don Lau had time to consider and alter this fax on 4th January. It was also important enough for him to do. His amendments must have taken his consideration to the two paragraphs themselves, both of which on the first page made specific reference to identities. He did not delegate this task to Mr Derrick Lau, and he dealt with this draft whilst himself in

possession of the SFC letter about identities, which was answered by Nikko the very next day.

(4) The matter to which the second SFC letter was directed - and it was clearly directed at one thing only, namely, the time at which identities were first revealed - were matters peculiarly within Mr Don Lau's knowledge. Mr Derrick Lau had not attended the meetings on 7th December. It would be strange, whether Mr Don Lau had a guilty or innocent mind, to leave the matter to Mr Derrick Lau's assumptions or, if the first draft was left to assumptions, to sign it without scrutiny of its contents.

(5) It was in itself evidently a letter into which some care was injected. It was a much longer letter than the first, adding much (because the period to which the letter from the SFC was directed was wider than the first), and also deleting one paragraph (the entry at 5:30 pm) which had appeared in the first letter.

(6) Even assuming that the significance of the letter of 5th January was not apparent to Mr Don Lau until the interview, it must have troubled him by the end of the interview, yet it was not a matter which he discussed with Mr Derrick Lau at any time in the months following that interview. The suggestion that he would not have done so because of the secrecy requirements which by law were supposed to preclude or deter Mr Don Lau from such a discussion is a suggestion which we do not believe. As subsequent events showed, that nicety was of no concern to Mr Don Lau.

17.12 In arriving at our conclusion about this letter, we have considered an argument which, at first sight, has some attraction. The argument would run as follows: that if Mr Don Lau had indeed engaged in insider dealing on 8th December, he would have appreciated then the circumstances which constituted the illegality in his case. That could not have been that he had advance knowledge of the third party approach, for at the time of the transactions which he ordered, that information was already public knowledge. Although a number of other candidates have been advanced, the most likely candidate for classification as unpublished price-sensitive information on that date was the identity or background of the bidders. That being so, the guilty

mind would hardly have lent itself to a confession, as it were, on 5th January, that it possessed that information. An alternative argument might be that the revelation to the SFC on 5th January that he had possessed that information on 8th December demonstrates that he was not aware that that was relevant information.

17.13 The arguments' attraction survives only in isolation. The trading account through which Mr Don Lau placed his PIIL orders was not an account in his name. Whilst payment was made on a cheque drawn by him, that was not, so far as he was then aware, a fact known to the SFC. Indeed, he knew that the SFC had been told by the brokers, no less, that Mr Lau Wai-man had bought these shares and had himself placed the orders. He could not have been entirely comfortable, because the client's address supplied as one of the account's particulars, was Mr Don Lau's address. Still, so far as he knew, and in fact, the representation had been made by reputable brokers that Lau Wai-man had placed the order. By 5th January 1993, the SFC had directed no further questions about the matter to G K Goh. The questions by the SFC in late January were not directed only at Nikko. CEF Holdings received a letter dated 30th December. If Mr Don Lau did not know about that letter, he certainly knew that Dr Teh had a letter from the SFC to answer. It was not therefore to be assumed by Don Lau that attention was narrowing towards him. That was the state of play when the letter of 5th January was signed by Mr Don Lau. There was at that stage at least one person other than Mr Don Lau who was bound to know whether or not, on 7th December 1992, Mr Don Lau was told about the identities of the bidders. That person was Mr Lai. Mr Don Lau had only the day before seen the letter drafted by Mr Leong or Mr Lai, which referred to revelation of identities to PIIL personnel on the afternoon of 7th December. As subsequent events have well demonstrated, an assertion by Mr Don Lau that he was told nothing that afternoon about the identities of the bidders ran the risk of stark contradiction by the information which might be supplied by Mr Lai or Mr Leong. That was more likely to draw the horizon of suspicion closer to Mr Don Lau, than was an open admission about the time at which he came to learn of those identities. It is further noteworthy that in his comments on the Lai/Leong draft answer, Mr Don Lau suggested inclusion of the 3:15 and 4:30 meetings, but inserted no qualification about what was or what was not revealed at those meetings.

17.14 We have also considered Mr Li's contention that the contested entry in the 5th January letter contradicts Mr Lau's comments to Mr Mercer on

8th December. The effect of our findings about Mr Lau's comments to Mr Mercer is that such a contradiction does not result, unless something is made of the distinction between background and identity, for the letter of 5th January uses the word "identities". Since the identity of Cheung Kong was revealed to Mr Lau, little turns on the point.

CONCLUSION

17.15 We find that Mr Don Lau signed the letter dated 5th January 1993, and that when doing so, he was aware of its contents and intended to make the representations which it conveys.

CHAPTER 18

THE DON LAU GROUP: LIES TO THE SFC

THE ALLEGATIONS

18.1 On 18th December 1992, the SFC asked G K Goh to disclose details of any dealings in PIIL shares between 24th November and 15th December 1992. The return submitted by G K Goh disclosed the purchase of 240,000 shares on 8th December. The name of the client was given as Lau Wai Man, his address as care of Don Lau, Pacific Place, and under the column "Name and Address of Person Giving Order", Lau Wai Man's name was again provided. It is common ground that Mr Wallace Yuen provided the information to his employers and thereby caused them to submit a return which was false in stating that Mr Lau Wai-man had given the order. There is no suggestion of any complicity by anyone at G K Goh, save Mr Wallace Yuen. Mr Yuen's case is that the lie was prompted by Mr Don Lau. Mr Don Lau denies this, and says that he had no communication with Mr Yuen in December 1992, other than to place the orders for PIIL shares.

18.2 In Chapter 12 we allude to the allegations which have been made that Mdm Pamela Wong and Mr Lau Wai-man were tutored on 28th April 1993 to lie to the SFC the following day by telling the SFC that the orders had been placed by Mr Lau Wai-man. Mr Yuen was interviewed on 26th April. On 29th April Mr Lau Wai-man and Mdm Pamela Wong were interviewed, and Mr Don Lau was interviewed on 30th April. It is common ground that on 28th April 1993 Mr Don Lau and Mr Wallace Yuen visited the residence of Mr Lau Wai-man and Mdm Pamela Wong, and that a discussion ensued about what Mr Yuen had said at his interview, and that that discussion spilled over into suggestions as to what Mr Lau Wai-man and Mdm Pamela Wong should say to the SFC at their interview the next day. Mr Don Lau contends that the coaching, such as it was, was not only Mr Yuen's idea, aimed at covering the unorthodox operation of the Lau Wai-man trading account - unorthodox, because Mr Yuen had never met the client and had accepted instructions from Mr Don Lau without written authority - but that he, Mr Yuen, alone coached Mdm Pamela Wong and Mr Lau Wai-man, to Mr Don Lau's surprise and

discomfort. There is, on the other hand, evidence which suggests that the visit was Mr Don Lau's idea, and that he took part in coaching.

Relevance

18.3 The conclusions to which we have come in the preceding chapters, namely, that on 7th December, Mr Don Lau was well aware that the bidders comprised Mainland parties and Cheung Kong, would not be affected by a finding in Mr Don Lau's favour in respect of the issues of fact to which this chapter is devoted. A determination against him, on the other hand, could in certain circumstances support those conclusions, as well as the evidence, to which we refer at Chapter 20 below, which indicates that Mr Don Lau knew that that information about the bidders was relevant information.

18.4 The allegations of lies, and of procurement of lies, are very serious. Very few facts are agreed between the participants, and almost every participant has made material changes to his or her story since the SFC began its investigation. To appreciate the weight of the evidence, and the plausibility of some, and the implausibility of other, accounts, some rehearsal of the contending versions is necessary.

Mr WALLACE YUEN

18.5 We have thus far said little about Mr Yuen, and his case. Mr Yuen had known Mr Don Lau since about 1987, and he told us that he trusted him. Mr Don Lau had, he suggests, informed him that Mr Lau Wai-man was a friend, and he believed him. In his oral evidence, he emphasised that he had given no advice on the selection of the shares, had not been the recipient of any price sensitive information when Mr Don Lau placed the orders to buy PIIL shares, had learnt only at the time of the second announcement of Nikko's role in the PIIL take-over, and had derived no financial benefit from any PIIL transactions.

The first interview

18.6 In his first interview (26th April 1993), Mr Yuen told the SFC that Mr Lau Wai-man had opened the account, and had placed the orders on 8th December, and a week or so later he, Mr Lau Wai-man, had asked him to sell the PIIL shares.

The second interview

18.7 On 8th September 1993 Mr Wallace Yuen attended a further interview. He referred to the false return in December 1992, attributable to him when the SFC asked G K Goh who had placed the purchasing order. He told the SFC that he had telephoned Mr Don Lau to ask what should be done, and Mr Don Lau had said that they should say it was Mr Lau Wai-man. When in April 1993 Mr Wallace Yuen received the SFC's notice to attend for interview, he again consulted Mr Don Lau who told him what to say. After Mr Yuen's first interview had taken place, Mr Don Lau had asked Mr Wallace Yuen to go with him to Mr Lau Wai-man's house "for a chat" and, once there, a coaching session took place for Mr Lau Wai-man and Mdm Pamela Wong, so that they would know what to say to the SFC questions. Mdm Pamela Wong, he said, took an active part in the coaching as did Mr Don Lau. Mr Lau Wai-man was passive. He, Mr Wallace Yuen, took no part in the coaching.

Oral evidence

18.8 Mr Yuen told us that Mr Don Lau's suggestion in December that the SFC be told that Mr Lau Wai-man placed the order caused him to hesitate, but he thought that it might not be "any big deal", because securities companies receive numerous such letters, and usually said that the client placed the order, so that is what he told the manager of "the back office". He said that in April 1993, Mr Don Lau had asserted that the matter was not serious for it was a civil rather than criminal matter. Mr Wallace Yuen described an inner struggle, for the matter had now acquired a different hue. But Mr Don Lau was, to his mind, a capable person, this seemed to matter a lot to him (Mr Don Lau), and he, Mr Wallace Yuen, was not involved.

18.9 His oral evidence, however, took a somewhat different road from that travelled in his statements during the interview in September 1993. In September 1993, he had asserted to the SFC that Mr Don Lau telephoned him, Mr Yuen, because he, Mr Don Lau, knew that he had been for an interview; asked him to go to Mr Lau Wai-man's house; and once there it was Mr Don Lau who initiated discussion about the content of Mr Yuen's interview. Mr Don Lau suggested questions that might be asked during the forthcoming interviews, and he "constructed questions and put them forward to Pamela Wong and Lau Wai-man". The emphasis changed in the course of oral

examination. It was he, Mr Yuen who suggested the visit to Mr Lau Wai-man's house. He had suggested it, because if the account was to be used in the future, he wanted to know the person for whom he was acting, although as his testimony progressed he seemed to place less reliance on this as a reason for suggesting the visit and more on a need to understand what had gone wrong with the account. He said that after his interview on 26th April 1993, he had talked to Mr Don Lau about seeing Mr Lau Wai-man and "we decided I will go to see him after the close of the market on 28th". He said that before he met Mr Lau Wai-man (and Mdm Pamela Wong), he did not know that they were to be interviewed, nor did he anticipate being asked about his own interview.

18.10 His testimony was that on arrival, Mr Don Lau introduced him as the broker who had purchased the PIIL shares for them. He, Mr Yuen, then spoke to Mr Lau Wai-man, and told him that he was in charge of all his transactions, and that he had been to the SFC. Mdm Pamela Wong then asked if he had been to the SFC, and she was anxious and inquired what questions had been asked. He told them broadly what he had said to the SFC. He told us that he had the impression that she already knew how Mr Lau Wai-man should answer. Mdm Pamela Wong told her husband, who was confused and indifferent, what to say. She told him to give the same answers as Mr Wallace Yuen, and he, Mr Yuen, told them that it would be right if they answered questions that way. Mdm Pamela Wong became active in predicting possible questions and in suggesting answers. Mr Don Lau took some part in the discussions, but he did not take much part, probably because, speculated Mr Yuen, he had already discussed matters with Pamela Wong. Mr Yuen told us that he had rather exaggerated Mr Don Lau's role when he, Mr Yuen, was interviewed in September 1993, because he felt aggrieved at the way in which he had been landed in trouble because of Mr Don Lau. He even went so far as to say that what he had said in September 1993 was true as far as Mr Lau Wai-man and Mdm Pamela Wong were concerned, but that comments about Mr Lau's contribution at the visit were based on assumptions.

18.11 Cross-examination of Mr Wallace Yuen on behalf of Mr Don Lau was directed at demonstrating that the consequences for Mr Yuen, as he perceived them, of the double irregularity of opening a trading account without meeting the client and of trading on the account upon the instruction of a third party not authorized to place orders, was such as to motivate him to lie in the first instance in December to his employers and later to seek to persuade Mr Lau Wai-man and Mdm Pamela Wong to see his story through. Mr Yuen

accepted that his conduct was not a model, but suggested that it was common practice.

Mr LAU WAI-MAN

18.12 Mr Lau Wai-man's evidence was not very reliable, which is not to say that he set out to deceive us. Rather, it was due, we think, to the fact that his role in the entire episode, namely, the share transactions and the idea to lie to the SFC was peripheral, and that his world is one which is somewhat removed from the world of securities transactions. He was therefore bewildered, perhaps, by the questions, and no doubt anxious about the possible ramifications of his answers, although we do not think that he is as lacking in business sense, and in the rights and wrongs of the situation, as was sometimes suggested.

18.13 In the early stages of his evidence, he attributed to Mr Yuen most, if not all, of the tutoring at the meeting of 28th April, but as his evidence progressed he drew Mr Don Lau in to the conversation. Whilst Mr Don Lau had not done very much talking, he said, he did teach him to say that he, Mr Lau Wai-man, had placed the orders for the transactions through Mr Yuen.[1] They were, he said "both involved. Both of them taught me".[2] He was asked two questions, the answers to which rang true:

> "CHAIRMAN: Why did you do it, Mr Lau? Why did you go to the SFC and tell a false story?
>
> WITNESS: Because the two of them came and taught me to say those things to the SFC, and so I did.
>
> CHAIRMAN: Well, I know what started it off. You told us what started it off - but I am wondering why you succumbed to their teaching.
>
> WITNESS: I thought we were relatives."[3]

18.14 Mr Lau Wai-man told us that he is very keen on martial arts, and lion dancing, taught both, and that his living room has displayed in it martial arts equipment, and trophies. These facts are relevant to Mr Don Lau's account of the visit of 28th April.

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[1] See transcript, page 1487.
[2] See transcript, page 1558.
[3] See transcript, page 1488.

Mdm PAMELA WONG

18.15 In her second statement in April 1993, Mdm Pamela Wong told the SFC that when she received their letter, she had contacted Mr Don Lau who said that the investigation must have some connection with the PIIL shares which he had traded on her behalf, and that if he, Mr Don Lau, was found guilty he would be fined and lose his job. He and Mr Wallace Yuen visited her residence, and she was asked to tell the SFC that she had placed the PIIL orders.

18.16 Mdm Pamela Wong recounted to us how angry her husband had been upon receipt of the SFC letter and that she asked Mr Don Lau to talk to him. He agreed, and later he let her know that he was going to pay a visit. There was no suggestion that anyone was to accompany him. Upon arrival Mr Wallace Yuen said that he had been for his SFC interview, and she asked questions about it. It is quite clear that her recollection of the tutoring embraces participation by both Mr Yuen and Mr Don Lau.

18.17 Mr Don Lau's comment about a fine (a hefty fine) and losing his job was, she said, a response to a question which she had asked, when she assumed that he, as an investor adviser, ought not to have traded. Although he had told her that it was only an investigation, and that nothing would happen to him, it was the fact of these possible consequences to Mr Don Lau, whose son had so recently been born, that persuaded her to lie on his behalf.

18.18 The morning after the interviews of 29th April, Mdm Pamela Wong telephoned Mr Don Lau to tell him what had transpired. She offered an apology, to which he said nothing or nothing much.

Mr DON LAU

18.19 Mr Don Lau's case is that he had never told anyone to lie, whether in December or at any other time. The December story given by Mr Yuen was a figment of his imagination. He attended the meeting on 28th April at Mr Wallace Yuen's request for a purpose wholly divorced from anything said or done by Mr Don Lau. It was a meeting that went wrong, and caused Mr Don Lau great embarrassment and discomfort. Mr Wallace Yuen had been worried because he had never met Mr Lau Wai-man, and the order had not

been placed by him. This could mean a problem for Mr Yuen who asked Mr Don Lau to arrange a meeting with Mr Lau Wai-man.

18.20 Once there and after introductions, Mr Wallace Yuen started to talk about his interview with the SFC, and said that it was important for Mr Lau Wai-man to say to the SFC that he had personally given instructions for the orders. Mr Don Lau told us that he was keen to avoid listening to what was going on, and so he engaged Mdm Pamela Wong in talk about his baby, recently born. But then Mdm Pamela Wong was drawn into the discussion with Mr Lau Wai-man and Mr Wallace Yuen, so Mr Don Lau stood up and wandered around the room, and examined Mr Lau Wai-man's martial arts collection. He tells us that he posed no questions, and suggested no answers. He and Mr Wallace Yuen travelled back together after the meeting. He did not speak to Mdm Pamela Wong after her interview. He did not speak to Mr Wallace Yuen after her interview, nor after his own on 30th April. Mdm Pamela Wong had never asked whether he in fact had engaged in insider dealing. He did not explain to her how the circumstances of his acquisition of shares had so turned out as to give rise to a suspicion of insider dealing. He did not do that, he said, because "she wouldn't understand".

18.21 Amongst Mr Don Lau's explanations or statements in evidence were these:

(1) When he received the SFC letter inviting him for interview, he knew he was a target for investigation, and he also learned that Mr Wallace Yuen had received a similar letter. But he never discussed with Mr Wallace Yuen the question of insider dealing in PIIL shares in December 1992.

(2) He did not appreciate at the time that his visit with Mr Wallace Yuen to Mr Lau Wai-man and Mdm Pamela Wong might be compromising.

(3) The purpose of the meeting was merely to introduce Mr Wallace Yuen, and exchange pleasantries.

(4) In the taxi on the way to Mr Lau Wai-man's place, there was no discussion about Mr Wallace Yuen's interview with the SFC two days before.

(5) Had he thought that there would be any discussion about PIIL and the SFC interview, he would not have gone to Mr Lau Wai-man's flat.

(6) He intended, on 28th April, to answer truthfully on 30th April such questions as the SFC put to him.

(7) When he realized at the meeting at Mr Lau Wai-man's house that Mr Wallace Yuen had lied to the SFC, he had an uncomfortable feeling.

(8) He was horrified when Mr Lau Wai-man and Mdm Pamela Wong were encouraged to lie to the SFC. That is why he tried to avoid listening and walked around, looking at trophies.

(9) He did not tell Mdm Pamela Wong or Mr Wallace Yuen or Mr Lau Wai-man that he intended to tell the truth to the SFC. It follows from that, we pointed out, that he then knew, at Mdm Pamela Wong's place, that because he, Mr Don Lau, was going to tell the truth to the SFC, Mdm Pamela Wong, his sister-in-law, and the lady who had been so helpful to his wife, would, to his certain knowledge, be exposed as a liar. Yet, he agreed, he did nothing to alert her. He did nothing to protest. He did not intervene. He did not warn them that he would feel duty bound to contradict their tale. His failure to take any of these steps was because he was pre-occupied, or disturbed by an "uncomfortable feeling".

(10) He did not leave when he realised what was going on. He thought that if he left before the meeting finished it would be impolite.

(11) He travelled back with Mr Wallace Yuen by car. He did not remonstrate with Mr Wallace Yuen. He did not even bring up the subject.

(12) He did not inquire from Mdm Pamela Wong after her interview what had there transpired, because he knew that contents of interviews were confidential.

(13) He did not convey to his wife that evening his fears for her sister, nor did he telephone or visit Mdm Pamela Wong or Mr Lau Wai-man to warn them off the disastrous course upon which they were embarked. Although when he reached home he was still disturbed, he said, his attention switched to his wife and baby. They had no maid at the time, and he had to do the cooking and the washing.

(14) He went for his interview with the SFC oblivious of what Mdm Pamela Wong or Mr Lau Wai-man had said in the course of their interviews the day before.

FINDINGS

18.22 There is not a contention in this catalogue of assertions by Mr Don Lau that we accept, save for those which assert, or concede, that he did nothing to dissuade lies.

18.23 It is inconceivable that Mr Wallace Yuen would have lied, first to the SFC in December, and then to the SFC on 26th April, whilst having no idea whether Mr Don Lau would back him up. It is inconceivable that Mr Don Lau would have allowed his relatives to be drawn in to a conspiracy to lie to the regulatory authorities merely in order to do Mr Wallace Yuen a favour. It is inconceivable that a senior member of the financial services industry would have behaved as he describes his behaviour at and after the visit, if the improper conversation at that visit materialised to his surprise. The timing of the visit was, we find, no accident. The suggestion that the main or sole purpose of the visit was so that Mr Wallace Yuen could meet Mr Lau Wai-man is undermined, first, by the fact that the meeting was devoted not to a discussion about how the account should be operated in future, but to a rehearsal for the following day's interviews with the SFC, and secondly, by the fact that one would have expected such a meeting to take place before, and not after, Mr Yuen's SFC interview. In this latter regard, we note the evidence of Mr Ferris Bye, Managing Director of G K Goh, who told us that Mr Yuen had discussed the affair with him after receipt of notice of these proceedings. He

had told him that at the SFC interview he had merely recounted a version fed to him by Mr Don Lau. He had, however, said that he had gone to Mr Lau Wai-man's house because "..... if the SFC were going to ask him about the account opening, that he really ought to meet Lau Wai-man" (Emphasis added).

18.24 A special trip in a taxi on a weekday afternoon by two busy and senior members of the industry to a flat in Sai Ying Pun, falling two days after one of them has been interviewed by the SFC in an insider dealing investigation, one day before the people to whom they are about to speak were to be interviewed in the same investigation, and two or three days before the other passenger was to be interviewed, is not a trip during which the participants do not expect discussion to take place about the interviews, past or future. The idea that Mr Don Lau did not know what had transpired at Mr Yuen's interview is nonsense, as is the suggestion that he was taken by surprise at the turn of events at his sister-in-law's home.

18.25 We are satisfied, and find, that the visit was deliberately timed to fall after the first interview, that of Mr Wallace Yuen, and the interviews of the others, to ensure that the stories would tally. We have no doubt whatsoever (by which we mean that we find beyond reasonable doubt) that Mr Don Lau was party to, and the prime mover of, a plan to persuade Mdm Pamela Wong and Mr Lau Wai-man to lie to the SFC. We are sure that Mr Don Lau took part in the coaching. We note in particular the second statements of Mdm Pamela Wong and Mr Lau Wai-man which are in this regard inherently likely to be true, given the circumstances in which they were made. In their oral evidence, too, they said that most of the talking was done by Mr Wallace Yuen, but they were firm in their evidence that Mr Don Lau also took part. We believe them. There was and is no reason for them falsely to inculpate Mr Don Lau. Indeed, in his own cross-examination, Mr Li on behalf of Mr Don Lau put it to Mr Yuen and to Mdm Pamela Wong that Mr Don Lau occasionally answered when asked what should be said about particular matters. The fact that Mr Wallace Yuen did most of the talking during the visit is not surprising, since he was the one who had attended the recent interview. He told us that he was under the impression that Mdm Pamela Wong already knew what had to be said. It appears to us from all the circumstances most likely that there had taken place a conversation between Mr Don Lau and Mdm Pamela Wong prior to the 28th April meeting, in which Mr Don Lau told her something about the nature of the SFC investigation, about the line to be taken, and that he and Mr Yuen would visit her before her interview. We are also sure that Wallace Yuen's evidence

is accurate when he says that he telephoned Mr Don Lau in December 1992 to ask him how he wished G K Goh to respond to the SFC's inquiry, and that Mr Don Lau told him to lie about who opened the account and who placed the orders.

18.26 We are somewhat sceptical about the suggestion that one of the reasons for the visit to Mr Lau Wai-man's flat on 28th April was so that Mr Yuen could meet Mr Lau Wai-man. At the same time, we reject the contention put forward on Mr Don Lau's behalf that the lies to the SFC and the procurement of those lies were initiated by Mr Yuen, and we also reject the contention that Mr Yuen was motivated to suggest that course by the "double irregularity" for which he was responsible.

18.27 We accept the evidence of Mr Yuen that he called Mr Don Lau in December 1992 when he was asked by his employers for information to relay in response to the SFC inquiry. It was part of a pattern which repeated itself, for we also accept that Mdm Pamela Wong telephoned Mr Don Lau in April to seek guidance about an appropriate response to the SFC's investigation; and that Mr Wallace Yuen telephoned Mr Don Lau to the same end when he received the SFC letter in April 1993. Mr Don Lau was at the centre of the wheel. It was to him that those involved in the transaction turned, not because they wanted to persuade him to take a certain course, but because the problem which the SFC was investigating was primarily a problem of Mr Don Lau's creation. That is not to say that Mr Yuen and Mdm Pamela Wong had no concerns of their own. Mr Bye told us that Mr Yuen's conduct in opening an account without meeting the client, and in operating the account on the orders of a third party without express authorisation of the client, were matters taken seriously by his company. Such conduct not only breached rules, but exposed the company to risk. Nevertheless, it was unlikely that for an isolated incident embracing such breaches, a person in Mr Yuen's position would be dismissed. The seriousness of the matter would be drawn to his attention, and G K Goh's head office in Singapore would be informed. If financial loss had been incurred by the company, that might well affect bonus payments. Although this is not the doomsday scenario for Mr Yuen that Mr Li on behalf of Mr Don Lau suggested, and although we accept Mr Yuen's contention that he did not view the breaches that seriously, given in particular that he knew Mr Don Lau and that there was unlikely to be any default in payment, it is nevertheless very likely that Mr Yuen felt uneasy about the role which he had played, and that, in April, Mdm Pamela Wong was worried about her own position, given that the

shares had been acquired through her account. Nonetheless, we do not believe that Mr Wallace Yuen would have embarked on this unlawful course solely because of the irregularities; although the fact of the irregularities almost certainly rendered Mr Yuen more susceptible to persuasion by Mr Don Lau, and once persuaded to lie in December, he was caught in the lie, so that he was the more readily moved to its repetition in April. We believe that when Mr Wallace Yuen spoke to his employers, he shied away from the central reason for the visit, because the core reason in which he found himself enmeshed, was particularly unattractive. That then became a theme which he was bound to play to us; a theme which included evidence which we do not accept, namely, that he did not know that Mdm Pamela Wong and Mr Lau Wai-man were to be interviewed, and that he did not expect to be asked about his own interview. We note in particular that in his September statement to the SFC the only reason cited for the visit was that Mr Don Lau suggested it, knowing that Mr Yuen had been for his interview. We do not think that Mr Yuen then exaggerated the position. If indeed there was a further reason for the visit, namely, Mr Yuen's desire to see Mr Lau Wai-man, it was a secondary or ancillary reason.

18.28 We are satisfied that Mdm Pamela Wong was party to the agreement in April 1993 to lie to the SFC, but there is no question of her initiating the plan. Whatever her actual role in December 1992 when the shares were acquired, it is likely that when she received the letter from the SFC in April, she became concerned about her own position, so that she lent herself to the scheme more easily than would otherwise have been the case. Nevertheless, the readiness with which on 29th April she resiled from the false account given to the SFC that day suggests that the main motivation had been to protect someone else, namely, Mr Don Lau, and that there came a point beyond which she was not prepared to protect him. That was also evident when she gave evidence before this Tribunal.

LIES, AND THE PROCUREMENT OF LIES

18.29 We have concluded that Mr Don Lau set out to persuade Mdm Pamela Wong and Mr Lau Wai-man to lie to the SFC. In addition, we have examined other lies which we are satisfied have been told by Mr Don Lau to the SFC, and to this Tribunal.

18.30 There are features of this case, and of Mr Don Lau's evidence, which call for particular caution in the treatment of lies. This is because it was apparent that Mr Lau contested any suggestion or item of evidence which could, or which he thought could, conceivably cause him harm. He would not accept even the most obvious propositions. He refuted any suggestion that he may have told lies not because of insider dealing, but because some aspect of his conduct might in some other way have been less than commendable. But despite that denial, we have nevertheless to ask whether those alternative causes might be an explanation for the lies which he told. In our approach to lies, which includes the agreement to lie or the procurement of lies, lies to the SFC, and lies to this Tribunal, we remind ourselves of the directions at paragraph 4.28 of this report, and, in particular, the importance of determining whether a lie, or an encouragement to lie, may have been motivated by something other than an intent, or hope, to hide insider dealing. It is only if we exclude such other reasons that we could rely on the lies, and the procurement of lies, as evidence which can support the case against Mr Don Lau.

18.31 That the lies we were told were deliberate, we have no doubt. To what were they directed? They were primarily directed at distancing Mr Don Lau from the transactions which were the subject of the SFC investigation and which are the subject of this Inquiry. They were directed at negating the notion that Mr Don Lau deliberately set about to acquire shares through the trading account of another, and that having done so he orchestrated those whom had he used to effect his purpose, to cover his tracks. We have considered a number of possibilities, even though none has been suggested by Mr Don Lau, for it is his case that he has not lied. We have asked ourselves whether it may reasonably be concluded that he has gone to the extent which he has to cover embarrassment, or, perhaps, to avoid the wrath of his employers or that of the regulatory authorities at having dealt at all in these shares whilst an adviser in the take-over negotiation, or at having dealt in the trading account of another. We heard the evidence of senior officers from Nikko that although there exist rules within the company about the use by employees of outside brokers, and about trading in the name of others, the rules are not enforced to the hilt in the case of local employees. Mr Kumagai, who is the Managing Director of Nikko in Hong Kong told us, however, that he was very surprised when he learnt that Mr Lau had purchased shares of PIIL when Nikko was engaged in the negotiations for PIIL's take-over. It was, he said, and we agree, a matter of common sense that he should have avoided such an involvement. We have also asked ourselves whether Mr Don Lau may have lied or procured lies out of

panic, or to protect others, or, perhaps, out of a fear that the truth was so encumbered by suspicious characteristics that it would inevitably, though wrongly, lead to a conclusion that he engaged in insider dealing.

18.32 We are satisfied that some lies were told to this Tribunal because of Mr Lau's absolute determination to give not an inch to any suggestion which might, in his perception, make a brick in the case against him. Such lies take the inquiry nowhere. But on the central theme, namely, the lies to the SFC about the operation of this account and the circumstances in which the PIIL purchases were effected, and in particular the procurement of lies in April 1993, we are firmly of the view that Mr Lau would not have embarked on the very serious course upon which he certainly embarked, unless it was out of a realisation of participation in insider dealing. That is what he knew was under investigation, and that alone is what was certain to result in the loss of his job, a fact of which he was sufficiently aware to mention to Mdm Pamela Wong, even if it was in response to a question from her.

CHAPTER 19

RELEVANT INFORMATION

A number of submissions were made by Mr Li on behalf of Mr Don Lau which, if valid, would assist not only Mr Don Lau but the other suspects too.

19.1 "about" PIIL

19.1.1 Information can only carry the mantle "relevant information" if (amongst other conditions precedent) it is information "about that corporation", where "that corporation" is the corporation in the listed securities of which the suspect trading has taken place. The argument is that information about the identity or background of the bidders is not information about the target company - in this case, PIIL. We are satisfied that that is too narrow an approach. A piece of information may indeed be information about a bidder, but that does not mean that it cannot as well constitute information about the target company.

19.1.2 The fact, for example, that a company is subject to a takeover approach or a serious offer is a fact which becomes part of the company's character at that time. It is a matter which affects the future prospects of the target company and the expectation of the investor in its future, and information affecting its future or investors' assessment of its future is information about the company. A glance at sections 9(1)(b) and (d) of the Ordinance and the circumstances there defined as constituting acts of insider dealing shows that the legislation embraces, as one would expect, contemplated take-overs as "relevant information in relation to [the target] corporation". That, however, as we understand the position, was not quite Mr Li's point. His point was that whilst a bid is indeed information about a target company, the identity of the bidder cannot be information about the target company. We do not agree. The identity or background of the offeror may equally say or convey something significant about the target company's future, potential future, or proposed future. Whether or not the identity or background of the bidder in a particular case does convey such a message will depend on the facts of the case.

19.1.3 The setting of the present case provides an example of the kind of circumstance in which the identity of the bidder may be information about the target company. There was evidence that "Shougang's involvement in Tung Wing instilled investors' confidence in the company and that company's future in Hong Kong".[1] Mr Richard Witts, who gave evidence in this Inquiry as an expert in market matters, was asked to what he attributed the injection of that confidence, and he answered:

> "..... firstly, the fact that Tung Wing now had PRC support by the obvious injection, or by the purchase of the shares, therefore it was, can we say, a PRC favoured company. That would have helped to instill confidence; and secondly, the direct commercial benefits that would flow from Shougang injecting a significant proportion of their business through Tung Wing, therefore the future profitability of the company."

Now all these factors tell one something about Shougang and its plans. But they also tell us something about Tung Wing. They tell us about Tung Wing's future profitability, and they tell us that Tung Wing has powerful allies in the PRC, and that because of that connection, investor's confidence in Tung Wing is enhanced. Such confidence is confidence in Tung Wing, and it is enhanced not because the information tells the investor something about Shougang, but because the information tells the investor something "about" Tung Wing.

19.1.4 So, in the same vein, it was argued that information that one of the bidders was Cheung Kong was not information about PIIL. The point can be taken shortly. There was very clear evidence of the impact on the market of knowledge that a bidder was Cheung Kong. Mr Murray pointed out that "..... not every take-over has such a good name associated with it ..... Cheung Kong and Li Ka-shing ..... have a great following in the market here." He actually recalled that on the second announcement he had been "very encouraged by the fact that Cheung Kong were one of the parties associated with the bidder", and the feeling in the market was that Mr Li Ka-shing would only associate himself with "a name party" in the PRC, by which we understood him to mean a large and reputable Mainland party.[2] Mdm Diana Foong's opinion was that for the purpose of an investment decision by an ordinary investor, the Cheung Kong factor was "not as important as the fact that a China enterprise was behind the acquisition. The fact that Cheung Kong was a party would only serve to reinforce the investor's confidence".[3] The confidence of which she and Mr

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[1] See Mr Witts' statement, page 2074, paragraph 7, of the documents bundle.
[2] See transcript, page 993.
[3] See transcript, page 846.

Murray speak is confidence in the target company's future, and which arises because of information imparted to the investor about that company's future and newly acquired status.

19.2 "specific information"

19.2.1 The argument was advanced that information about the "background of the bidders, merely that they are PRC related, is not specific information. PRC related is only general information. It embraces a wide range of specific possibilities: that it is wholly or majority or partly owned by PRC concerns; that PRC concerns could be state organs or companies owned by the state, or companies owned by PRC parties; that the PRC parties could be companies or individuals; if companies, they may be incorporated in or only doing business in the PRC; if individuals, they may be PRC nationals or non-PRC nationals but conducting their business with or in the PRC; and so on."[1]

19.2.2 The distinction which is drawn by some of the texts is between day to day activities of a company, day to day knowledge, on the one hand, and, on the other, knowledge of important factors which, when revealed to the market, would shift the price of the shares. The rationale for the distinction between specific and general information which is suggested by one author is that the legislature sought to "..... preserve incentives for individuals such as analysts and researchers to pursue information ..... It also reflects the fact that it was not Parliament's intention to bar directors and others connected with a company from markets altogether ..... However, Parliament has drawn the line at their exploitation of specific information which is unavailable to the investing public"[2]. The same rationale is provided by another text [3]. Both texts were analysing section 10 of the Company Securities (Insider Dealing) Act 1985 which referred to information which "relates to specific matters relating or of concern (directly or indirectly) to that company, that is to say, is not of a general nature relating or of concern to that company". A further analysis of an identical provision in the Companies Act 1980 is along much the same lines:

> "The definition of inside information contained in s73(2) is deliberately drafted so that the bulk of information which investment advisors, managers, senior employees etc inevitably

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[1] From closing submissions on behalf of Mr Don Lau.

[2] See "Insider Dealing", Brenda Hannigan, at p 52.

[3] "Financial Conglomerates and the Chinese Wall" by H McVea, p 71.

> know, but which is not generally available, does not fall within the definition of inside information; thus, the reference in s73(2) to 'specific matters' concerning the company as contrasted with information which is merely of a general nature. In this way it is hoped that directors and employees will not be discouraged from holding shares in their companies for fear of inadvertently committing a criminal offence."[1]

19.2.3 This test, which seems to equate any information not available to analysts and investment advisers with specific information, does not address the point which Mr Li advances. His point was that information that the bidders were "PRC related" is far too broad to be called specific. The answer to that argument is illustrated by an explanation of section 56(1)(b) of the Criminal Justice Act 1993, Part V of which Act replaced the 1985 legislation. Section 56 defines inside information as follows:

> "(1) For the purposes of this section and section 57, 'inside information' means information which -
>
> (a) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally;
>
> (b) is specific or precise;
>
> (c) has not been made public; and
>
> (d) if it were made public would be likely to have a significant effect on the price of any securities."
>
> (Emphasis added)

The commentary to which we refer is by Rider and Ashe, "Insider Crime" (at page 32):

> "The second characteristic of inside information is that it must either be 'specific or 'precise'. Information is precise when it is exact. The reason for putting in the word 'specific' was because, if left on its own, the word 'precise' might have the effect that, for example, information that there will be a huge dividend increase would not amount to inside information without also details of the quantum of the increase. The word 'specific' is intended to ensure that information about a huge dividend cut can be inside information, whilst mere rumour and untargeted information cannot.
>
> .....
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> But whatever the correct approach to inferences may be, information may still be specific even though, as information, it has a vague quality. Thus, information that a company is having a financial crisis has been held to be specific. Also, information as to the

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[1] See The Company Lawyer, 1981, Vol 2, page 13, at p 14.

> possibility of a takeover may be regarded as specific information and will certainly rank as precise, given that it is more than mere rumour."

The distinction between precision and specificity demonstrates the flaw in the proposition put by Mr Li. Information is not rendered general, as opposed to specific, merely because the information is broad and allows room, even substantial room, for particulars. Information that the purchasers were or comprised wholly, or in part, PRC enterprises was certainly specific. So was information that one of the bidders was Cheung Kong.

19.2.4 If the distinction between specific and general information is to be gleaned in this case by the test summarised in paragraph 19.2.2 above, the answer is still that the information was specific. The information that the bidders in fact included Mainland enterprises and Cheung Kong was certainly not knowledge about the company's day to day activities. Neither were those pieces of information inevitably known by analysts and advisers, nor available to those who would but ask.

19.3 "...not generally known..."

19.3.1 Information will only be relevant information if, in addition to other criteria which are specified by the section, it is information "which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation". It has been suggested , although not by counsel in this case, that

> "..... [the] test is ambiguous. Does it mean that once the information becomes known by market professionals the requirement is fulfilled? Or must the information be known by both market professionals and the general public? The latter would appear to be the better view, since those who are 'likely to deal' would be the general public."[1]

We raised the point in the course of submissions, but none has suggested that that approach is invalid. It cannot be that in Hong Kong, where market trading is widespread amongst most echelons of society, the requirement is limited to professional dealers, or advisers.

19.3.2 So much seems agreed. But Mr Li argues that the group or class cannot, in this case, be so broad as those who are accustomed to deal in shares generally, but are rather "those ..... who were accustomed to deal in the shares

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[1] "Financial Conglomerates and the Chinese Wall", McVea, at p 71.

of PIIL or companies of that sort".[1] "That sort" means, in this argument, second and third liners, and shell companies. There would be excluded, according to this argument, those who were, for example, only interested in blue chips. Mr Li does not go so far as to say that the group or class is restricted to those whose only interest is second and third liners. The significance of the point, he says, is that the class who would deal in such shares was a class whose expectation that any approach for a shell company meant an approach by Mainland interests and a top local company, was an expectation significantly higher than that of the general investor, thereby narrowing still further the already narrow gap between market expectation and announcement.

19.3.3 In a commentary on the meaning of the phrase "who are accustomed or would be likely to deal in those securities", which appears in section 10(b) of the Company Securities (Insider Dealing) Act 1985 (since repealed), and where "those securities" is a reference to the securities of a particular company, the proposition is put that:

> "This class of persons would, first of all, encompass professional dealers or investors who are 'accustomed' to deal. However the latter part of section 10(b) requires that the information must also be generally known to those who would be 'likely' to deal in securities i.e. any persons likely to buy or sell securities. As the public are likely to (and do) deal in securities, it is suggested that the information must not only be known to those professional dealers and investors with elaborate networks for obtaining information on securities but also to the general public."[2]

19.3.4 In many, perhaps most, cases, the investing public at large will be the same class as those likely to deal in the shares of a particular corporation. But the analysis to which the preceding paragraph refers ignores on its face the words "in those securities". Section 10(b) of the 1985 Act, and section 8 of the Ordinance, do not say "those likely to deal in listed securities", and no more. We are directed, therefore, that the test to be applied is one which looks to that class of person that was, at the material time, likely to deal in the securities of PIIL.

19.3.5 How wide a class was that? Mdm Diana Foong gave some idea when she told us that as from mid-1992, there was a keen interest in Mainland

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[1] See submissions at pages 5352 to 5356 of the transcript.

[2] See Tolley's Company Law, 2nd Edition, paragraph 28.12, p 678. See also Hannigan "Insider Dealing" at p 56; and McVea "Financial Conglomerates and the Chinese Wall" at p 71.

companies seeking listing in Hong Kong. Shares in such companies were heavily oversubscribed "..... which shows that the investors at the time were very interested ..... in speculating on these shares". She was asked whether the Mainland factor was such as, in her opinion would influence the ordinary investor in deciding to buy, to which she answered:

> "That knowledge would induce those who would like to speculate to buy the stock. It would only attract those speculators who were interested in speculating on second liners and third liners to buy that stock. Because the acquisition itself was already been announced, so it is a commonly known fact.
>
> Now, because the acquisition would either have to be made by a mainland Chinese enterprise or a foreign enterprise - furthermore, even if the fact of acquisition is a fact and the investors were told, they still could choose not to buy these shares. For those who are not interested in speculating on second liners and third liners, they can choose not to buy that stock."[1]

19.3.6 The group or class was a large one. It comprised not only professional dealers and investors who dealt in second and third liners, but also those of the investing public including small investors who dealt in second and third liners. It is not restricted to those who only dealt in such securities, and none other. But it excludes those who did not.

19.3.7 A significant part of Mr Don Lau's case, particularly in cross-examination of the several seasoned market watchers and traders from whom we heard, was devoted to this issue, that is, whether the information was generally known to those accustomed or likely to deal in the securities of PIIL. The essence of the argument was directed at market expectations after the success of the Tung Wing take-over in October 1992. The Tung Wing take-over was the first occasion upon which a major Mainland enterprise obtained a backdoor listing in Hong Kong by acquiring a Hong Kong shell company. Also new was the fact that that Mainland enterprise joined with prominent Hong Kong concerns (Cheung Kong and CEF) in that acquisition. In what was a dull market at the time, the reaction of investors to that development was electric, the price of Tung Wing shares soared, and upon one matter there seems to be agreement, namely, that the "China factor" was itself then the prime cause for the dramatic surge in price. The fact that Cheung Kong had joined in the enterprise was also price sensitive. There was evidence from a number of witnesses that after Tung Wing, there ran through the market a

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[1] See transcript, page 829.

"fever" which has been described in the course of this Inquiry as "China fever". The effect of that evidence is something we shall have to assess, but Mr Li's argument is that it amounted to a "widespread market perception that PRC enterprises would be going after shells to obtain a back door listing in Hong Kong"; that there was a perception and an expectation that there would be more take-overs of the Tung Wing type; and, in particular, that "top drawer or substantial PRC enterprises would be involved, and that they would team up with a top local name". The contention was that such was the fever, or the expectation, that any announcement in November or December 1992 of a proposed take-over of a shell company would be "regarded as a bid by substantial PRC enterprises teaming up with a large local company". In other words, there was no need to spell it out, or confirm it officially, for it was, in effect, already generally known. There was another way that the matter could be put, namely, that actual knowledge, actual revelation, would add nothing material to the strong perception and the clear expectation, so that if, which was not admitted, there was a difference between certainty and the market expectation, that difference, that additional piece of information, was not information that would be likely "materially to affect the price of those securities."

19.4 MATERIALITY

19.4.1 This was a somewhat more complex submission and, again, one which was foreshadowed by extensive cross-examination. Information, even though specific, not generally known, and about a corporation, is nevertheless not relevant information unless it is information which "would if it were generally known to [those accustomed or likely to deal in the securities] be likely materially to affect the price of those securities" (section 8).

The test

19.4.2 The test is hypothetical in that on the date that the insider acts on inside information, he acts when the investing public, not in possession of the inside information, either does not act, or acts in response to other information or advice. The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment. It is true that an examination of how those investors react once the information is stripped of its confidentiality and becomes public knowledge, will often provide the answer, although care must

be taken to ascertain whether the investors' response is indeed attributable to the information released, or whether it is wholly or in part attributable to other events, or considerations. In so far as we have referred, or hereafter refer, to the general investor, or to the ordinary reasonable investor, that classification is to be read as a reference to ordinary investors who dealt in second and third liners, and shell companies.

19.4.3 In Public Prosecutor v Alan Ng Poh Meng ([1990]1 MLJ v) the same phrase as appears in section 8 of the Ordinance fell for consideration . The matter was put thus :

> "Information that is *likely* materially to affect the price is information which *may well* materially affect the price. Put another way, it is more likely than less likely that the price will be affected materially. The further element of the statutory test concerns materiality ..... It may be that what is a material price increase in one case may not necessarily be a material price increase in another case. It all depends on the share and the circumstances obtaining at the time. However, the standard by which materiality is to be judged is whether the information on the particular share is such as would influence the ordinary reasonable investor, in deciding whether or not to buy or whether or not to sell that share. A movement in price which would not influence such an investor, may be termed immaterial. Price is, after all, to a large extent determined by what investors do. If generally available, it is the impact of the information on the ordinary reasonable investor, and thus on price, which has to be judged in an insider dealing case."
>
> (per Foenander SDJ, at page X)

19.4.4 It has been suggested that an appropriate question to be distilled from the authorities is this: "..... if the inside information is placed in the market place along with the information mix about the securities which is already there, then will it affect the price?"[1] That proposition is drawn in part from the American case TSC Industries v Northway 426 US 438 (1976), a case to which reference is also made in a discussion[2] about the test for price sensitivity (albeit in the context of Part V of the Criminal Justice Act 1993, where the definition of "inside information" requires proof that the information "if ..... made public would be likely to have a significant effect on the price of the securities):

> " What must be judged is whether the effect likely to be made on the price of the securities is significant and, for this purpose, 'price' includes value. What is or is not significant will vary depending on the circumstances and, while it is clear that a significant price change will only come about after events of an 'extraordinary' nature, such an

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[1] See "Insider Trading" by Ashe and Counsell, 2nd Ed, p 100.

[2] See "Insider Crime - The New Law" by Rider and Ashe, pp 37 & 38.

> approach merely puts into different words the same concept without analysis. It is, in fact, impossible to analyse this concept by reference to quantification.
>
> In the absence of any further guidance from the CJA 1993 a court must propound a 'reasonable investor' test relative to the securities in question and leave the matter to the jury. In one US case, it was held that in order for information to be price sensitive there must be substantial likelihood that the disclosure of the fact would have been viewed by the investor as having significantly altered the total mix of information made available. In a Singapore case, it was held that information will become price sensitive if it is information which would influence the ordinary reasonable investor to buy or sell the security in question.
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> This approach has commended itself to the Australian legislature and has been included in recent legislation on insider dealing as follows:
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> > '..... a reasonable person would be taken to expect information to have a material effect on the price or value of securities of a body corporate if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first mentioned securities'."[1]

19.4.5 There is no inconsistency in the various tests which are propounded, save that the approach in TSC Industries refers to a "substantial likelihood" that the disclosure would impact on the investor's decision, whereas Judge Foenander in the Alan Ng case applies the test on a "more likely than less likely" footing, and that some suggested tests speak in terms of a significant alteration to the mix of information, and others merely of a factor which will influence the decision of investors. We think that the word "materially" speaks for itself - it is to be contrasted with "slight", "insignificant" and "immaterial"; and we shall approach the question of likelihood as meaning a real or substantial likelihood.

19.5 THE ARGUMENT

19.5.1 With those considerations established, we move back to Mr Li's argument. He says (and the evidence supports him) that when a shell company is taken over, there are a host of matters which may influence the market expectation of the price, the market's reaction to news, and therefore the price of the share. It then becomes very difficult, he argues, "to decide whether a particular item of information if separated out [from other items of information] would be likely materially to affect the price." The factors to which he points are these:

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[1] Section 1002C, Corporation Act 1989, (Australia).

(1) Take-overs are usually accompanied by considerable speculative activity;

(2) The market itself will in the case of a take-over of a shell, expect the price to rise because

(i) an expansion of business and an injection of assets will be expected;

(ii) it will be in the purchaser's interest for the price to rise, for that will affect the level of minority acceptances; so the higher the price, the fewer acceptances, the cheaper the acquisition; and the higher the price, the more funds (from a rights issue or a placement of shares) will be available for use in expansion and injection of assets.

(3) There are legitimate ways to raise price. So, for example, the controlling shareholder can quite properly encourage the purchase of shares in his company, and in the case of a thinly traded stock, the impact of strong buying will be substantial. He will encourage buying to serve the interests referred to at paragraph (2) (ii) above.

(4) Investors will buy in response to the mere fact that price is moving.

(5) Investors will buy in response to items of information in the public announcement which heralds the take-over; and

(6) Investors will respond to what Mr Li has termed "media hype".

19.5.2 As we understand the argument, all these factors influence the price of the share, and influence investors in their decision to buy, and the very expectation that this is what will happen in the case of a shell company influences the assessment of likely price trend in the counter, and in that way influences the decision to buy. It becomes all the more difficult to determine whether a particular item of information has affected, or was likely at a given time to affect, the price of the share when one adds the ingredient that investors also bought because of China fever, and the expectations that went with it.

How then can one siphon from that pot-pourri the single item of actual knowledge that the purchasers were Mainland enterprises, teaming up with a local company, and say that that item has had, or would have had, a material impact on the price of the shares?

19.6 THE AVERAGES EXERCISE

19.6.1 . We received written evidence from Mr Alex Pang of the SFC. He is a qualified accountant who for some years has run the Surveillance Section there. He collates information about the price movements of shares, about the level of indices which are used to gauge market movements, about rumours, and about listed companies. He monitors newspaper reports and keeps cuttings; and for the purpose of this Inquiry, he summarised newspaper articles about PIIL published in December 1992. He undertook a thorough examination of PIIL's share movements, and that of the HSI, in November and December 1992, and he also told us about key events, mainly political, which appeared to have a bearing on the HSI. There is exhibited to this report as Appendix IX an illuminating description or summary by him, of those key events, and of market movements, during that period. In addition, he presented to us statistics showing price performance of listed companies which, from January 1992 to July 1993, had been take-over targets. During that period there were 16 shell companies, of which PIIL was one, taken over by Mainland enterprises and he gave figures for market reaction when public announcements were made. He also provided figures spanning 1992 showing market reaction to non-Mainland acquisitions. He then calculated the average increases in the Mainland enterprise cases, and compared them with the average percentage increases in the non-Mainland acquisitions, and the average figure given for Mainland acquisitions substantially exceeded the average for other cases.

19.6.2 That analysis drew a response in the form of a statement made at the request of those acting for Mr Don Lau, by Professor K C Chan of the Hong Kong University of Science of Technology. He suggested that there were a number of flaws in Mr Pang's analysis, and he produced an analysis of his own which considerably narrowed the difference in average.

19.6.3 The averages exercise upon which both Mr Pang and Professor Chan engaged was, we felt, of limited use to us in determining the impact on the PIIL case of the Mainland factor. We emphasise that neither has been called to give evidence to advance their conclusions, and that Professor Chan's

paper was more directed at demonstrating factors which should qualify Mr Pang's analysis than at establishing a particular conclusion or average of his own, and he very properly pointed out that in his own analysis it had not been possible to marry the period of Mainland acquisitions with that for non-PRC acquisitions.

19.6.4 Our reservation about an averages exercise was that it could not effectively cater for factors extraneous to the take-overs themselves, but which would or could have significant impact on market reaction in each such case. The political backdrop, for instance, in late 1992, was unusually gloomy, and the gloom was a response to negative or hostile reaction by the PRC to proposals by the Governor of Hong Kong for political reform; in such circumstances, news of investment in Hong Kong by state run Mainland enterprises was likely to yield a particularly warm reception by the market. There were other considerations likely to be peculiar to each take-over; for example, the identities of the offerors, and the identity of the local company with whom Mainland enterprises were to join in the acquisition. There was cogent evidence in this case that the fact that Cheung Kong was one of the offerors would certainly enhance the deal in the eyes of the market. So, too, was the reaction of the market to news of a take-over affected by the nature of plans for the target company. Averages can also be distorted by one or two exceptional cases.

19.6.5 We decided, and we so notified Mr Don Lau's solicitors, that we did not intend to rely on the reports and analyses in so far as they engaged on an exercise in determining the comparative averages to which we have referred. What we did was to receive evidence from a spectrum of witnesses, the effect of which was that the Mainland and Cheung Kong factors were significantly responsible for the extent of the market's dramatic reaction on 16th and 17th December 1992 to the announcement by PIIL on 16th December - rises of 82.20% and 25.58% respectively. It was not a matter of statistical calculation. It was a question of feel, of experience, and of the obvious.

19.7 A TAKE-OVER: RELEVANT INFORMATION

19.7.1 There was ample evidence - although none was necessary to persuade us of the point - that mere knowledge of an impending take-over was itself price sensitive information. There was also evidence that on and prior to 7th December there were rumours of an impending take-over of PIIL.

19.8 THE MAINLAND AND CHEUNG KONG FACTORS

Witnesses

19.8.1 The witnesses who, in one capacity or another, addressed the China or Mainland, and Cheung Kong, factors, included:

(1) Mr Richard Witts, whose testimony was presented as expert evidence and who has had extensive exposure to the Hong Kong stock market. He has been Secretary and General Manager of the Stock Exchange, a director of Jardine Fleming Securities, managing director of Schroder Securities (Hong Kong) Limited; and is now managing director of United Mok Ying Kie Limited.

(2) Mdm Diana Foong, who bought PIIL shares on 8th December. She is a licensed share broker, a dealing director, and a director and shareholder of Realight Investment Limited. She trades for clients and for herself. She follows market news on a daily basis.

(3) Mr Allan Murray, who is Dealing Director of Jardine Fleming Broking Limited, and who purchased PIIL shares in November 1992.

(4) Mr Frances Chang of CEF Capital;

(5) Mr David Wong of CEF;

(6) a number of ordinary investors[1] ; and

(7) Mr Don Lau.

Rumours

19.8.2 Most witnesses recalled market rumours after the Tung Wing exercise relating to possible take-over targets by PRC enterprises. Mr Murray had identified PIIL as a take-over target (though not necessarily by Mainland

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[1] Their evidence was written.

enterprises) well before the Tung Wing deal. Mr David Wong said that there had been rumours since April 1992 about a possible take-over of PIIL. Mdm Diana Foong had noticed heavy activity in PIIL stocks in late November, and thought that something was in the air - the denial on 1st December strengthened that assessment. The stock had been ripe for acquisition - it was cheap, thinly traded, and apparently not actively seeking to develop its business.

Tung Wing's relevant information

19.8.3 The Tung Wing agreement was announced on 23rd October 1992, and the announcement appeared in the press on 24th October. On 22nd October, the closing price was HK$0.92 per share. The offer for each share was HK$0.928 in cash. The offerors were Shougang, a substantial PRC state-owned enterprise, Cheung Kong, and CEF Holdings. When trading resumed on 26th October, the price shot up to close the day at $1.50; by 30th October it stood at $2.90; and by 30th November at $4.35. It was , by any standard, a meteoric rise.

19.8.4 Mr Witts put forward a number of propositions which were accepted by other witnesses. In particular, he said that "Shougang's investment in Tung Wing instilled investors' confidence in the company and that company's future in Hong Kong". One of the reasons for that response was that Tung Wing then became a company favoured, or was seen to be favoured, by the PRC; a company with powerful friends in the PRC. Mr David Wong, who was directly involved in the Tung Wing deal, was satisfied that the "China factor" played a major part in the success of the Tung Wing deal. Mr Chang's assessment was that the dramatic increase in the price of Tung Wing shares was principally attributable to the fact that Mainland interests were behind the purchase. He and other witnesses spoke of the black mood of the market, brought upon it by political developments. The contrast of PRC acquisitions of local companies provided an element of "jazz", as Mr Li graphically put it, in an otherwise dull market.

19.8.5 We are satisfied, and find, that the main cause of the dramatic rise in Tung Wing shares in October and November 1992 was the fact that one of the purchasers was a large state owned Mainland enterprise. In relation to that deal, there is no question but that that factor was, in the hands of those privy to that fact before the public announcement, relevant information, as that term is defined by section 8 of the Ordinance.

After Tung Wing

19.8.6 After Tung Wing, there developed a market perception that further acquisitions of the Tung Wing type would follow. The nature of that perception, and the likely reaction of the market to news of another such take-over or approach, were described by several key witnesses.

19.8.7 Mr Witts said that the Tung Wing take-over "set the scene for future take-overs of Hong Kong listed companies by PRC enterprises, or consortia in which PRC enterprises had a substantial interest ..... There was a market perception that there would be more injections of a similar type". He thought that even if the identity of the Chinese party was not revealed, mere revelation that Chinese parties were interested would materially affect the share price, for there would be a hope that those following Tung Wing would also be substantial PRC entities.

19.8.8 It was Mr Witts' opinion that "anybody aware of information concerning take-over by a PRC enterprise prior to such information being made public ..... could anticipate a significant re-adjustment upwards of share price of the company after takeover was made public. Prior knowledge of a [Chinese] takeover was price sensitive information".[1] He was of the opinion that at the time of the second PIIL announcement, that of 16th December, the identity of the purchasers was the paramount piece of information - more important than the fact that a deal was concluded.[2]

19.8.9 Mdm Diana Foong had at the time of the first announcement formed the view that "if [PIIL] shares were taken over by a PRC related party, the shares might make a similar trading performance as Tung Wing ....."[3]. She told us that from mid-1992, Mainland enterprises had made their way into the securities market and all had been oversubscribed. Investors, she said, "..... had great expectations from these China enterprise stocks and they were very interested in speculating on these China concept shares."[4] As far as she was concerned, when she purchased PIIL shares, the China factor was, to her, very important. In her opinion, knowledge that acquisition of PIIL was by a

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[1] Mr Witts' statement (page 2073 of the documents bundle) at page 2075.
[2] See paragraph 19.10.2 below.
[3] See transcript, page 810.
[4] See transcript, page 820.

Mainland enterprise was a factor that would influence those who liked to speculate in second and third liners to buy. She did not think that the actual identity was such an important factor for so long as the purchaser was a Mainland enterprise, that sufficed.[1]

19.8.10 She was also asked about the importance to an investment decision by an ordinary investor, of the fact that one of the offerors was Cheung Kong. She thought it not as important as the fact that a Mainland enterprise was behind the acquisition. Nevertheless, the Cheung Kong factor was one which would serve to reinforce the investors' confidence.

19.8.11 Mr Murray and his clients already had PIIL holdings before December, and, as a sophisticated investor, it mattered not to him, he said, whether the bidder was a PRC enterprise. To him, "the important things was that there might be a take-over or a major corporate transaction". He thought that the market would be more interested in the identity of the local company, and in that regard, he was clearly satisfied that the fact that it was Cheung Kong was information which was very price sensitive. "Not every take-over has such a good name associated with it"."[2] Furthermore feeling in the market would be that Mr Li Ka-shing would only associate himself with a significant party in the PRC. That said, he agreed that in late 1992, the fact that a bidder was a Mainland bidder was itself price sensitive information.

19.8.12 There was evidence from others (for example, Mr Mercer of the SFC, and from a Mr Lau Shiu-kit, the son of an ordinary investor since passed away) that gives full support to the thrust of the evidence of Mr Witts, Mdm Diana Foong and Mr Murray.

19.8.13 We note, too, that by the time of the CEF approach in early December 1992, the political backdrop, the black mood of the market, had changed little since Tung Wing. That was especially so in late November and early December, when, according to Mr Witts[3] , the mood was particularly black. The Tung Wing deal had been the first Mainland acquisition of a shell for backdoor listing. It carried with it, therefore a significant novelty factor, which had not passed by the time of the approach for PIIL. Indeed, that approach could be expected to be received by the market as confirmation of a

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[1] See transcript, page 829.
[2] See transcript, page 993.
[3] See transcript, page 539.

trend. Against this background, announcement of the identities or background of the bidders for PIIL was bound, we believe, to have a material impact on the behaviour of that sector of the market interested in securities of this type.

Conclusion

19.8.14 There can surely be no doubt that by late November and early December 1992 fact that a bidder for backdoor listing was a Mainland enterprise, and fact that one of the bidders was Cheung Kong, were facts which excited the market, or at least a substantial proportion of the market. We leave out of the equation, for the moment, the questions whether the impact of those facts could be distilled from other items in the information mix, and whether those facts were in effect known to investors likely to deal in PIIL shares. Those are the next questions which we address. But subject to those questions, the evidence readily establishes, and we find that in December 1992, prior knowledge of a Mainland and/or Cheung Kong take-over was price sensitive information.

19.9 SEPARATING PRICE SENSITIVE ITEMS

19.9.1 Mr Witts accepted that it was difficult to separate the impact of each factor which influences investor decisions, and the influencing factors to which Mr Li took him were not simply those revealed by the announcement, but extraneous factors such as those itemised at paragraph 19.5.1 above. This proposition, that it was difficult to separate the impact of various pieces of information, was a proposition accepted by other witnesses as well.

19.9.2 The fact that it is or was difficult to separate the impact of individual factors which go to influencing investors to buy, or which cause price rises, is not however to say that the separate features cannot be identified. The very fact that Mr Li has been able to identify separate factors operating on motive to buy demonstrates that separate operating factors can readily be identified. The fact that the impact of each in percentage terms cannot be provided is neither here nor there. Indeed, Mr Li would not appear to suggest otherwise, for in his submission he expressly concedes that the difficulty to which he points does not mean that each separate item is not price sensitive, but merely that it is difficult to decide whether a particular item, "..... if separated out would be likely materially to affect the price". What we have to examine is whether a factor can be identified as one which will induce

investors to buy. The fact that there are other factors which operated as price sensitive factors does not denude each such piece of information of its character. However, the suggestion seems to be that its individual impact is somehow diluted by the presence of the other price sensitive pieces of information, to the stage that it can no longer be shown, in the particular context with which we are concerned, to operate materially to affect the price of the share.

19.9.3 If that is correct as a general proposition, then it could be argued that none of the items can be classed as price sensitive for it is difficult to gauge the impact of each, or to say that amidst the pool of information presented, this or that particular item materially affected the price. One has to look at the facts of each case. There will often be more than one piece of information. That is why we find that the test of materiality is sometimes addressed in the context of "the information mix". We approach the problem by recognizing that in this case there was an information mix. Given that mix, are we in a position to say that the information about the background and identity of the purchasers, namely, that they included China or Mainland enterprises, and Cheung Kong, would in early December 1992 have influenced the ordinary reasonable investor (accustomed or likely to deal in second and third liners) in deciding whether or not to buy? Was this piece of information when placed in the market along with the information mix about PIIL such that it would materially affect the price?

19.9.4 We have no doubt about the matter. In this case the single factor to which all the witnesses (save for Mr Murray) point as the most cogent operating factor is the China or Mainland factor. That is evident from the very fact that there was China fever. That was the only fever about. That was the "jazz". The other items of information, confirmation of the deal, the expectation that the price will go up because of the perceived benefit to, and behaviour of, the acquiring party - these items of information were not the jazz instruments of the day. They were items common to any take-over of shell companies. PIIL had been the subject of approaches earlier in the year. There was nothing staggering about those approaches, nor, in so far as they were known, was the reaction particularly excited.

19.9.5 So, too, we have no doubt about the importance of the Cheung Kong factor. The effect of evidence in that regard goes one way, namely, that on its own, as well as in combination with the Mainland factor, the fact of the

participation of Cheung Kong stood out from the general pool of information, as a significant fact.

19.10 THE MARKET'S PERCEPTION

19.10.1 That leaves us, then, with the remaining argument rehearsed at paragraph 19.3.7 above, that such was the market perception and expectation that it was in effect known in December 1992 by those accustomed or likely to deal in shares of shell companies or second and third liners, that a proposed take-over of a shell company would be a take-over by a Mainland interest, and by a large local company such as Cheung Kong. Indeed, Mr Witts agreed that after Tung Wing there was a market expectation that top drawer Chinese enterprises would be interested in taking Hong Kong shells; and that when there was a rumour of a take-over of a shell the market expectation was that there was a top drawer Chinese enterprise involved. Therefore the fact revealed in the announcement on 16th December that the purchasers were substantial PRC enterprises was a fact which was in line with market expectation[1].

19.10.2 The answer to this line of argument is that although the announcement was in line with expectation, the announcement nevertheless constituted hard fact; the expectation did not. Fact is quite different from market sentiment and market expectation, in the sense that the term "market expectation" was used by the witnesses. The fact that an assessment made, a rumour circulating, a hope harboured, or an expectation nurtured, turns into fulfillment, does not mean that when the assessment was made it was not an assessment. All that happens is that the rumour, assessment, hope, or expectation, proves to have been accurate. We do not believe for one moment that, in acknowledging that when there was a rumour in late 1992 of a take-over of a shell company there was market expectation that the bidder would be a Mainland company in co-operation with a prominent local company, witnesses sought to equate that expectation with hard fact, or even with information that was so firm in its character that it was tantamount to fact. An examination of their answers and the language they used illustrates the proper interpretation to be given to that acknowledgment, and to the true nature of the mood of the market after the Tung Wing deal:

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[1] See transcript, pages 575 to 577.

(1) Mr Chang of CEF. It is true that Mr Chang, in cross-examination, talked of market expectations, that after Tung Wing the market expected the beginning of a new trend by which substantial PRC corporations would "come in" to acquire shell companies in Hong Kong, and that the market was "pretty hot regarding red chip or China concept stocks". The perception however was just that, a perception - it was put to him that there was in December 1992 a "wide market perception that any take-over would probably involve PRC enterprises, that they were one of the hottest candidates for that purpose". He agreed, adding that "many investors would have that kind of speculation or expectation".

(2) (a) Mr Witts talked of the market perception, or theme, after Tung Wing, of injections of a similar type. He noticed that in the cases of quite a few companies taken over by PRC enterprises there were increases in share price before the announcements, and he thought that:

> "These increases can be attributed to two factors:
>
> a) a leak of information to the market of a potential takeover by a PRC enterprise;
>
> b) traders in the market, who had identified possible takeover targets by PRC enterprises, bought shares in anticipation of such a takeover."
>
> There is every reason to believe investors bought shares on the basis of (b) as there were many market rumours at the time relating to possible takeover targets by PRC enterprises."

Mr Witts described a hope that take-overs following Tung Wing would also be by substantial PRC enterprises. He pointed out that PIIL was only the second take-over of its kind, and it is, we think, difficult to believe that there was a settled consensus that the next time a take-over of a shell was rumoured, it was safe to take that rumour as clear evidence that the offerors were in fact Mainland bidders.

(b) He was asked about the impact of the second announcement, that of 16th December. There were two factors to which he

was taken, as factors likely to impact on the price, namely, the fact of confirmation of the deal, and there was the identity of the offerors. His answer was this:

"So we only had two, wherein Tung Wing Steel we had three factors: the price, the identity and an injection. On Public International we only had the price and the identity. So the identity has to be paramount."[1]

There is clearly no suggestion by this very experienced expert that all that was awaited was confirmation of the deal, since all else was assumed anyway.

(c) One particular answer given by Mr Witts relates to evidence about the buying of PIIL shares on 14th and 15th December 1992. He thought that on those two days there must have been those who were buying on inside information, or were speculating that PIIL would be the subject of a counterbid. He explained his reasoning as follows:

"The only significant factor in the public domain at that time was their announcement of ..... 7th December, saying that negotiations were taking place and that an offer price, if it was forthcoming, was likely to be at 80.4 cents and we previously looked at the four subsequent days, that is up until the 11th where the share price initially went slightly above the bid and then settled below. However, on the 14th and 15th we see, I believe, a significant increase in volume but also a substantial increase in the share price so what I am saying here is if you were - I cannot, on the basis of that public announcement, I couldn't be recommending - I personally couldn't be recommending investors to go in and buy at those levels on the basis of the public knowledge that was available."[2]

(Emphasis added)

The point is that there was no question of treating the announcement of 7th December as hard information that the bidders were Mainland bidders and, accordingly, of advising clients to buy on that basis.

(3) (a) Mdm Diana Foong told us that:

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[1] See transcript, page 556.
[2] See transcript, page 604.

"After the Tung Wing Steel's take-over, rumours abounded in the market that other PRC companies, with excess funds, would follow suit and attempt to buy 'shell companies' .....

.....

The press had intimated and I too had suspected that the third party could well be a PRC company and that it was likely to acquire shares from the single major shareholder. There is now ..... shown to me ..... a photocopy of a press article dated 8th December 1992. With Tung Wing Steel at the back of my mind, I thought the price of the stock was likely to rise over its takeover price. As a trader, I am aware that every investment bears a risk; in fact 'high risk, high return'. I was willing to take the risk of investing in this share in the belief that there would be a great chance of upside potential. If the shares was taken over by a PRC related party, the shares might make a similar trading performance as Tung Wing Steel."[1]

(Emphasis added)

In other words, whilst there appeared to her to be a real chance that the bidder was a PRC company, that was not a certainty, which is why the investment was a risk. She does not say: "one could be sure or almost certain that the bidder was a Mainland party"; or that the only "if" was whether the deal would be concluded. Instead, the "if" was whether it would prove to be the case that "the share was taken over by a PRC related party".

(b) In making her decision to buy PIIL on 8th December, she took into account a number of factors - basic financial data, chart analysis, the announcement of 1st December (which she disbelieved) market movements, and "rumours prevailing at the time". The rumour was the Mainland factor, and that is what it clearly was, a rumour, not a fact.

(c) Mr Li, in cross-examination, and in submissions, frequently spoke of "market expectation" and "market perception". Those phrases, in isolation, have, or could be said to have, about them a certain connotation, namely, something in the nature of a considered conclusion. That was, however, not the sense of the market mood described by witnesses. That fact and the danger of alighting on one phrase rather than

[1] See transcript, pages 809, 810.

another was, perhaps, no more apparent than in the following exchange between counsel and Mdm Foong:[1]

"MR LI: ..... Madam Foong, you told us earlier that from about mid-1992, there was widespread interest on the part of some PRC, some substantial PRC enterprises, taking over Hong Kong - or obtaining listings in the Hong Kong market.

A Yes.

Q And from that time onwards, it would be fair to say that if there were any market rumour about any takeover, the market speculation would be that it would be a PRC enterprise.

A In most cases, yes.

.....

Q And after Tung Wing, it was the widespread market expectation in relation to any takeover rumour or preliminary takeover announcement, that substantial PRC enterprises were involved?

A People would guess.

Q But that was the widespread market expectation?

A Yes.

.....

Q And it was not confined to experts like yourself, it was a general market expectation that generally PRC enterprises would be involved?

A Because the rumour said so, if one read the papers at the time.

Q So in relation to a rumour of the takeover of any particular company or, better still, an announcement that there had been an approach of takeover, without disclosing the identity of the bidder - the widespread market expectation was that there was a substantial PRC enterprise at work, particularly after Tung Wing Steel?

A Yes."

(Emphasis added)

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[1] See transcript, page 838.

(4) Mr Murray was asked to describe the mood of the market in November 1992. He told us that:

> "..... There had been a lot of interest in so-called shell situations or companies with a back-door listing and, in fact, that had extended over quite sometime. ..... But there had been a number of shell companies which had been acquired and, you know, the performance of some of these shares had been quite spectacular relative to the rest of the market. I guess it is rather like being at the races, you know, everyone wants to get the 40 to 1 outsider."[1]

(5) In the context of the argument that once it was known that there had been a third party approaching for the shell company, PIIL, the market would in effect know that that approach was by a Mainland enterprise teaming up with a local company such as Cheung Kong, or that actual knowledge would itself have no material impact on the price, it is instructive to consider those parts of Mr Mercer's evidence which, aided by contemporaneous notes, touch upon his attitude on 8th December. The central point, of his concern on 7th December, and of his conversation with Mr Don Lau and Mr David Wong on 8th December, was the matter of identity of the third party. That he was on those two days treating the actual identity of the third party as important, as "..... price sensitive information which I ..... wanted put in front of the investing public"[2], is crystal clear. He was not treating that information as information which was in effect already before the public. That is also evident from the explanation he gave about his concern, expressed in his memorandum to Mr Crosby, that there may have been insider dealing. The price of the share had, he explained[3], been rising, and the concern was that those dealing were doing so on an informed basis. He was asked whether the Mainland factor had any influence in this context. This was his answer:

> "The presence of a Mainland party seeking to acquire an interest in a publicly listed company, what had gone on before suggested that that would drive the stock price up very very considerably, so I was concerned that people were dealing ahead of that information being disclosed because once it is disclosed fully, the stock price of a

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[1] See transcript, page 965.
[2] See transcript, page 1247.
[3] See transcript, page 1264.

> number of other issues earlier had gone up very very considerably, far beyond the net asset value of the company concerned."

The answer, and its effect, speaks for itself. Not only was the Mainland factor very obviously price sensitive information, but its release as information was not release of information already generally known, whether "in effect" or otherwise, and was, again obviously, information bound to have a material impact on the price of the share.

Press Reports

19.10.3 If Mr Alex Pang's summary of press articles about the PIIL take-over in December 1992 is complete, a few articles appeared before 16th December 1992. On 1st December, there was a report in Ming Pao of the Board's announcement of 30th November. On 8th December, Ming Pao and the South China Morning Post reported the announcement of the third party approach. There was no media speculation, let alone conclusion, about the identity of the purchasers save for an article we have seen by the Hong Kong Economic Times dated 8th December. It is the article referred to by Mdm Diana Foong at paragraph 19.10.2(3)(a) above. It is quite important because it is, so far as we are aware, the only one published before 16th December which addresses the prevailing market mood in relation to PIIL. In its relevant part it says this:

> "The trading of PIIL's stock suspended suddenly yesterday. Its closing price was $0.58 last Friday. Before the suspension yesterday, the price had risen to $0.77 already and the day's high was $0.8. Recently, trading of low priced stocks tended to relate to China elements. It seemed that this one will most probably follow the same line."

On 16th December there were reports by at least seven newspapers of the take-over . They were purely factual. On 17th December, the headline of the Hong Kong Economic Times is said to have read: "PIIL drastic surge same as Tung Wing Steel: market focus on China enterprises buying into shell companies". The Express, a few days later, is said to have stated that "..... before the purchasers being made public, there were market rumours that Cheung Kong and China Capital were the purchasers. This made the market price."

19.10.4 These reports do not support the case which Mr Li seeks to make out. The bulk of reports were written and published after the second announcement; and even they speak in terms of earlier rumour, rather than hard

fact. If announcement of an approach was viewed by the market in early December 1992 as tantamount to announcement of an approach by a PRC company teaming up with a local company of substance, one might have expected significantly more media attention on 8th December than was the case. Such publicity as there was, was sparse and hardly conclusive in its tone.

Conclusion

19.10.5 The flavour of the evidence was, in our judgment, significantly removed from the level at which Mr Li would have us pitch it. A survey of the words emphasised in the review of the evidence at paragraph 19.10.2 above conveys the reality or feel of the matter. We believe that the market mood was accurately captured in a question put to Mr Chang by the Tribunal, that when an approach was announced, of the kind published on 8th December 1992, people in the market tended to assume that there was a good chance that this was another PRC approach. It was an assessment with which Mr Chang agreed. "I believe," he said, "that [that] was the market sentiment". We accept that in tandem with that sentiment, or as part of it, was the assessment that such approaches, if indeed they were PRC approaches, may well be approaches made jointly with reputable local companies. But the assessments were still in the nature of feelings, speculation, perceptions, and guesses, and the word "expectation" when used by the witnesses, was used in those senses - perhaps though to indicate that the feelings or perceptions or hopes were not drawn from thin air, but that there was a basis for the speculation. There was, in our judgment, a significant and material difference in impact between that mood, that state of knowledge, on the one hand, and, on the other, the solid information in the hands of Mr Don Lau (and for that matter, Mr Leong, Mdm Amy Foong and Miss Chan) on 7th, 8th, 9th and 10th December 1992. They knew what outsiders did not know, namely, that the offerors were in fact Mainland entities, and also Cheung Kong.

Mr Don Lau's account

19.10.6 In coming to our conclusion, we have taken fully into account the evidence on this issue by Mr Don Lau. His own deduction, he said, was that after the Tung Wing deal, Cheung Kong would be interested in repeating the joint venture formula. Hence, if indeed there was a conversation about the matter with Mr Mercer, he would have told Mr Mercer that he knew rather than believed that a Mainland party and Cheung Kong were involved. The matter

was as obvious as that. It was, he said, a deduction he made in relation to this very third party approach, although he could not say why it was a deduction concerning this particular take-over, rather than others in the last quarter of 1992. It was also, he had said earlier, a "hunch" which was already with him "around November 1992"[1], although the extent of the hunch "around" November was not easy to discern, since he described it as both a general hunch and one which included PIIL. We take it to mean a hunch that there would be more deals of the Tung Wing type, and that bidders for any listed shell companies around November - and PIIL was such a company - would be Mainland interests and Cheung Kong. He did not accept that an investor who knew that the bidder was a Mainland enterprise was in a better position to make an investment decision than the investor who assumed that the bidder might well be a Mainland enterprise - the matter, he said, was such an open secret that it would have been a surprise had the purchaser not been a Mainland concern.[2]

19.10.7 As so often was the case in this Inquiry, these answers were tailored by Mr Don Lau to meet what he perceived to be in his best interest at any given juncture of examination. The hunch in November, developed in his mind to a certainty, and to a near certainty, in the minds of the investing public by the time of the approach to PIIL. It had, we find, to develop into a certainty, for a hunch cannot be equated with firm knowledge. Be that as it may, and despite the fact that, on any view, the prospect of a repeat of the Tung Wing formula must, in those days, have been an exciting and newsworthy development - the China factor did not, he says, cross his mind at or after Mr Lai's call, and even at the briefing it did not occur to him (save that it might have been at the back of his mind) that the deal was probably a Cheung Kong-Mainland deal. And he thinks that it did not even cross his mind when he went to the conference room and saw Mr David Wong of CEF, that CEF involvement meant Cheung Kong or Chinese offerors. His mind, he added, did not draw that connection even in the light of the Tung Wing take-over a few weeks earlier - an answer directly contradictory to a later answer about the part played by Tung Wing in his deductive reasoning. Even when he purchased, or decided to advise Pamela Wong to purchase, PIIL shares, the hunch which he had so recently acquired - or even the conviction that the hunch must be

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[1] See transcript, page 4804.

[2] See transcript, page 4810.

accurate - these did not enter his mind - "..... the only thought that went through my mind at the time was the share price go up."

19.10.8 At a still earlier part of his evidence, he was asked why at the briefing with Mr Lai he had not asked who the bidder was. One might have expected, in the light of his later stance, that his answer would be that there was no need because he, like the investing public, knew full well who the purchasers were, at least in general terms. His answer, however, was that he asked himself whether he needed to know this piece of information or that, and decided he had no need to know. There was then the following exchange:

> "Q So, as far as you were concerned Mr Lau, at this briefing, the bidder could have been anybody?
>
> A Yes, although I had a hunch.
>
> Q It could have been a Hong Kong company, it could have been a Japanese company, it could have been a China company, it could have been an European or an American company as far as you knew?
>
> A Yes, it could have been anyone although I have a hunch."
>
> .....
>
> A [that] most likely the bidder were PRC interest and that they may team up with other companies in making a bid.
>
> Q And what was it Mr Lau that gave you that hunch?
>
> A After the Tung Wing case there was a lot of market movements."

19.10.9 These various answers were divorced from reality, and we do not believe them. They also evidence that unfortunate hallmark of his testimony to which we have made several references, namely, a determination to shun any suggestion, no matter how inherently valid, which he thought could contribute, as against him, to any one ingredient of the statutory definition of insider dealing.

19.11 RELEVANT INFORMATION: FINDINGS

19.11.1 We find that the following pieces of information constituted relevant information as defined by section 8 of the Ordinance:

(i) Until 8th December 1992, the approach by a third party for acquisition of a controlling interest in PIIL. (By "approach" we include the initial approaches on 1st and 2nd December 1992);

(2) until 16th December 1992, the fact that the offerors were or included Mainland enterprises;

(3) until 16th December 1992, the fact that one of the offerors was Cheung Kong;

(4) Until 16th December 1992, the fact that the offerors were Mainland enterprises and Cheung Kong;

(5) until 16th December 1992, the names of any of the Mainland enterprises as one or more of the bidders;

(6) until 16th December, the fact that the bidders included a large Mainland or Shanghai securities company;

(7) until 16th December, the fact that Mainland enterprises were teaming up with a local, or a major local company, for the purpose of the acquisition.

In the term "offerors" in this paragraph, we include prospective offerors and parties who have registered an interest in acquiring a stake.

19.12 OTHER INFORMATION

There were canvassed in the course of closing submissions a number of other items of information as candidates for classification as relevant information. We can deal with these briefly.

CEF Capital

19.12.1 One question was whether the fact that CEF Capital was acting for the bidders - which was a piece of information known to Mr Don Lau (and to Mr Leong) on 7th and 8th December 1992, and not to those investors likely to deal in the shares of PIIL - could itself be price sensitive. We are satisfied that the evidence does not establish that; indeed, the weight of the evidence

bears against such a conclusion. At most, that revelation might have led seasoned investors to speculate that Cheung Kong was involved. Nor was there unanimity of evidence that CEF were taken in the last quarter of 1992 to be "China makers", in other words that that information was synonymous with a conclusion or deduction that one of the bidders must be a mainland party. Again, the weight of the evidence ran against such a conclusion.

The stage of negotiations

19.12.2 A second question canvassed was whether such information as Don Lau possessed on the morning of 8th December 1992 about the state or stage of negotiations was information over and above that released in the public announcement and, if so, whether that extra information constituted relevant information. Certain particulars were not revealed in the public announcement; for example, that Dr Teh was to retain a seat on the board; that a valuation had been obtained; and that Nikko were or were likely to be appointed as advisers to the minority shareholders. We think that there can be cases where the state or stage of negotiations will constitute relevant information, so long as the state of negotiations can be articulated clearly, and so long as it can be shown that knowledge of that fact will materially affect the response of the investor. But the evidence in this case does not reach that position.

Deductions

19.12.3 Then there was canvassed whether certain primary facts in Mr Don Lau's possession, but not in the public realm, on 7th and 8th December 1992 were such as to lead to a deduction which itself constituted relevant information. There seems to be some authority for the proposition that if one can arrive at a conclusion about a state of affairs only by a process of deduction, the resulting conclusion cannot be specific information. If that is the suggestion, it is not one with which the Chairman agrees. In the same way that we are on other issues of fact entitled to draw inferences from established primary facts, so too can a deduction constitute information. It is a question of fact in each case. The argument postulated in this case was that the investor was, on 8th December 1992, not aware that CEF Capital was acting for the bidders, and that Nikko had been drawn in to advise Dr Teh, or to act for the minority shareholders; that what the thinking investor would, however, know was that the same combination had presented itself in the Tung Wing saga, and

had he known that that combination was repeated around the negotiating table on 7th December, he would have deduced that this too was a case involving a mainland enterprise and Cheung Kong. We are satisfied that there is no, or no sufficient, evidence that that was the conclusion that would be drawn.

CHAPTER 20

THE DON LAU GROUP: CONCLUSIONS

20.1 Mr DON LAU

20.1.1 We have concluded that, on 8th December 1992, Mr Don Lau was in possession of information that the offerors, the third party referred to in the announcement which appeared in the press that day, included Mainland parties and Cheung Kong. We are satisfied that he was in possession of that information when he placed the order in the morning with Mr Wallace Yuen for the purchase of 240,000 PIIL shares. We find, too, for reasons given in Chapter 19, that that information was relevant information as that term is defined by section 8 of the Ordinance.

Knowledge

20.1.2 The next issue therefore is whether Mr Don Lau knew that information to be relevant information.

20.1.3 In addressing the question whether a particular individual knew particular information to be relevant information, a subjective test must be applied: in other words, we must ask whether that particular individual knew that the information was specific information about the target corporation which was not generally known to those persons who were accustomed to or would be likely to deal in the listed securities of that corporation but which would, if it were generally known to them, be likely materially to affect the price of those securities. "It matters not that a reasonable man would have known the information to be [relevant information]"[1].

20.1.4 The Ordinance applies other conditions precedent to culpability which depend on the knowledge of the individual who passes on information (section 9(1)(c)), or who, having received information, deals or counsels or procures someone else to deal (section 9(1)(e)). So, for example, there are conditions precedent to culpability which depend on whether a recipient of information knows that the person from whom he has received it is connected

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[1] See McVea "Financial Conglomerates and The Chinese Wall" p 71.

with the corporation. In such circumstances, too, the test is subjective - did that person in fact know?

20.1.5 Mr Don Lau's case in this regard is that had he known that the bidders were PRC enterprises and Cheung Kong, he would nevertheless not have appreciated that that information was likely materially affect the price of the shares. This was the market perception argument which we have examined extensively in Chapter 19, but it goes one stage further in that there is implicit in the contention that even if the market perception and expectation was not such as to be equated with knowledge, or was such as to render material the effect of actual knowledge, Mr Don Lau did not know that. There is no burden upon him to negate the requisite state of mind; rather, we are to examine whether the evidence proves to the requisite degree that he knew the information to be relevant information.

20.1.6 Mr Don Lau has addressed the further scenario which assumes that he knew the very identities of the bidders by or on the morning of 8th December. That he denies, but he contends that had he known the identities he would, nevertheless, not have known or appreciated that that information was relevant information. He said that he had never heard of China Venturetech or Shanghai International. This, he explained, was because he concentrated so heavily on local clients that he "had not paid too much attention to the PRC market or PRC corporations". We do not believe that he was ignorant about Mainland market affairs and Mainland corporations as he suggests. He had worked on the Tung Wing affair. That and the prevalent China fever must have engendered interest in a man in his position. Nevertheless, he states that had he been told that they were the bidders, he would have regarded them as PRC companies, a fact which, as he says, was not, as far as he was concerned, price sensitive information. That left the problem of Cheung Kong, and the market, he says, already assumed that a company like Cheung Kong would be involved. CEF, he says, added nothing because "I would simply have regarded them as associates of Cheung Kong", a surprising contention given his subsequent insistence that when he saw Mr David Wong of CEF at the conference room on the afternoon of 7th December, he (Mr Don Lau) made no connection between CEF and Cheung Kong. In the event, we are not satisfied that the very names of the Mainland companies were divulged to Mr Don Lau on 7th December, so that it becomes unnecessary to determine whether he appreciated their price sensitivity.

20.1.7 We are entirely satisfied that Mr Don Lau knew full well that the fact that Cheung Kong was a bidder or part of the consortium, was relevant information. He also knew full well that the fact that the bidders included Mainland enterprises was relevant information. A man in his position, who had been involved in the Tung Wing deal, and who was well aware of the atmosphere which has been described as "China fever", was bound to know the price sensitivity of that information. If he had a hunch, he knew full well that his hunch was just that, a hunch, and that that was also the nature of the market sentiment, and that there was a significant difference between a hunch and solid information.

20.1.8 There is no question, but that on the morning of 8th December he also knew that Mr Lai was a person connected with PIIL, and that the information which he had imparted to Mr Don Lau on 7th December about the background of the bidders was information which Mr Lai held by virtue of his (Mr Lai's) connection with PIIL.

A connected person

20.1.9 The submission was made that if Mr Don Lau had not been appointed as adviser to the minority shareholders but had, rather, an ill-defined role he could not be a "connected person" as that is defined by the Ordinance. We do not agree. Section 4 provides that

> "4(1) A person is connected with a corporation for the purposes of section 9 if, being an individual -
>
> .....
>
> (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of -
>
> (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director of a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporation;"

Although his role was not precisely defined, it cannot have been assumed that Mr Don Lau (Nikko) was coming in as a mere favour. Matters had reached an advanced stage, and the professionals, including the solicitors and Mr Don Lau, were called in to provide their professional advice and expertise. It was perfectly clear that at the time the deal was placed on 8th December, Mr Don

Lau occupied a position which might reasonably be expected to give Mr Don Lau access to relevant information about PIIL by virtue of a professional or business relationship between Nikko, his employer, and PIIL.

Dealing

20.1.10 We also find that when in possession of relevant information in relation to PIIL on the morning of 8th December 1992, Mr Don Lau, on two occasions, dealt in the listed securities of PIIL. He selected the shares in respect of which he was to deal, and he dealt as to 220,000 shares for his own benefit, and as to 20,000 for the benefit of Pamela Wong.

Finding

20.1.11 Accordingly, we find that each act of dealing in PIIL shares by Mr Don Lau that morning constituted an act of insider dealing, by virtue of the provisions of sections 9(1)(a) and 9(1)(e) of the Ordinance, and that in respect of each such transaction, Mr Don Lau was an insider dealer (see definition of "insider dealer" in section 2 of the Ordinance).

20.2 Mdm PAMELA WONG

20.2.1 There are features of the evidence which suggest that Mdm Pamela Wong may well have known before December 1992 that the account might be used by Mr Don Lau for his own purpose. We do not accept Mdm Pamela Wong's account about the circumstances which gave rise to the opening of the account, and we think it a cause for some suspicion that the account was opened in Mr Lau Wai-man's name only. Nor do we accept that the address of Mr Don Lau was given for the reason provided by Mdm Pamela Wong.

20.2.2 We are unable to say how much, if anything, Mdm Pamela Wong knew on 8th December 1992 about the background to Mr Don Lau's decision to buy PIIL shares. We remind ourselves that Mdm Pamela Wong was not an experienced investor, and the fact that someone else placed an order on her behalf may well not have occurred to her as odd or unusual. It is, we think, most likely that the account which she gave to the SFC on the afternoon of 29th April was accurate as far as concerns the events of 8th December 1992, and the circumstances in which she came to acquire these shares on that day;

save as to the date upon which he first spoke to her about buying them[1]. We do not accept that the amount of $10,000 paid to Mr Don Lau by Mdm Pamela Wong over and above the proceeds of sale of his own portion of the shares represented reimbursement of hospital and medical charges, but we are not in a position to come to a settled conclusion about its true purpose[2]. It is very possible that the circumstances in mid-December were such as to alert her to the fact that the transactions effected by Mr Don Lau for his own benefit were not orthodox, which is not to say that she knew the nature of the transgression.

20.2.3 We are satisfied that Mdm Pamela Wong became involved in the agreement to lie to the SFC, but we are also satisfied that she did not initiate the plan.[3]

20.2.4 We are, however, satisfied that the evidence is far from showing that Pamela Wong engaged in insider dealing on 8th December 1992. There is insufficient evidence that the name of the share was revealed to her by Mr Don Lau before their acquisition; and even if it had been, it is not shown that she knew that Mr Don Lau was connected with PIIL. Nor is there any evidence which shows, or from which it can properly be inferred, that she was provided with relevant information in relation to PIIL shares.

20.3 Mr LAU WAI-MAN

20.3.1 We can state our conclusions about Mr Lau Wai-man's role briefly. We believe that his role in the operation of this trading account was wholly peripheral. It is most likely that he had no say at all in the acquisition or sale of the PIIL shares in December 1992, and that he was unaware of those transactions until receipt of the SFC letter inviting him to the interview on 29th April. It follows that he was not engaged upon any insider dealing in relation to those shares.

20.4 Mr WALLACE YUEN

20.4.1 Mr Chiu, on behalf of Mr Yuen, has quite understandably latched on to a remark which we made early in the proceedings, that it was not our function to ferret for whatever conceivable wrongdoing there might be. The

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[1] See Answer 14, second interview.
[2] See, however, the footnote to paragraph 22.7.3 below, drafted during the second stage of this Inquiry.
[3] See paragraph 18.28 above.

reason for his reminder is that he contends that there is absolutely no evidence that Mr Yuen was party to insider dealing, and that if it were shown that Mr Yuen breached certain rules, or helped in some way in encouraging Mdm Pamela Wong and Mr Lau Wai-man to tell a tale to the SFC, that at most could support such primary evidence of insider dealing as there may be, but as there was no insider dealing by Mr Yuen, it would be outwith our remit to embark upon findings on such extraneous matters. We have some sympathy with that submission. However, the potential relevance of lies is a matter fully explored in Chapter 18, and it was germane to our inquiry to ascertain whether lies were told, and if so, by whom, and for what reasons. Furthermore it was Mr Don Lau's case that he, Mr Don Lau, had nothing to hide in December 1992, or in April 1993, and that it was Mr Yuen's needs and instigation that led to the track-covering exercise which we have examined. It was in those circumstances that we were bound to scrutinise Mr Yuen's conduct.

20.4.2 We are satisfied that a finding of insider dealing against Mr Yuen would be unjustified. He has, as Mr Chiu correctly emphasises, been courageous enough to admit to a number of pieces of conduct which do not show him in a favourable light. He admits that he allowed Mr Don Lau to place orders when there was no authority from the account holder for that to happen. He admits, too, that he lied to his employer about the placing of the order, and he admits that he lied to the SFC when interviewed on 26th April. As against that, we know that he retracted his account later that year, and has provided to us an account which is, in the main, believable. We say "in the main", because we find that Mr Don Lau's prime purpose in going to the flat of Lau Wai-man in April 1993 was to ensure that stories told on 29th April tallied with Mr Yuen's. We do not therefore accept that the main purpose was to introduce Mr Lau Wai-man to Mr Yuen. Be that as it may, it does not prove that Mr Yuen wittingly abetted insider dealing by Mr Don Lau. It may be that Mr Yuen, especially knowing that correspondence went to Mr Don Lau, harboured some misgivings about the circumstances in which that account was operated, but there is no evidence that his knowledge went further than that. We tend to accept that he lied to his employers uneasily, and again to the SFC with misgivings. It may also well be that because his relationship with Don Lau was of long standing, he did not assert himself against such conduct, as otherwise he might.

20.4.3 There is no evidence that on 8th December 1992, Mr Yuen knew Mr Don Lau to be connected with PIIL, and there is no evidence that he

received inside information about PIIL from Mr Don Lau or from anyone else. There is no need in those circumstances to deal with the defence under section 10(4).

CHAPTER 21

INSIDER DEALING AND INSIDER DEALERS

CONCLUSIONS

21.1 We now answer questions (a) and (b) of the terms of reference, as amended:

> "(a) whether insider dealing has taken place in relation to the listed securities of Public International Investments Limited during November and December 1992;
>
> (b) the identity of every insider dealer, if any, in the above-mentioned securities."

21.2 We have determined that insider dealing has taken place in relation to the listed securities of PIIL during December 1992. There were a number of such instances:

A. Mr LEONG AND Mdm AMY FOONG

(1) On 2nd December

On 2nd December 1992, insider dealing took place when:

(a) Mr Leong disclosed to Amy Foong information about the initial CEF approach on behalf of parties interested in acquiring a stake in PIIL;

(b) Mr Leong counselled Amy Foong to deal in the listed securities of PIIL; and

(c) Amy Foong purchased 120,000 PIIL shares. In so far as that acquisition was effected by a number of separate purchases, each purchase was an act of insider dealing.

The acts specified in paragraphs (a) and (b) above were each perpetrated before Amy Foong ordered the shares to be purchased.

In respect of each act specified in paragraphs (a) and (b) above, Mr Leong was an insider dealer.

In purchasing the shares, Amy Foong was an insider dealer.

(2) On (and before) 7th December

Insider dealing took place when:

(a) on or before 7th December 1992, Mr Leong disclosed to Amy Foong the fact that an approach had been made on behalf of Mainland interests for the acquisition of a controlling stake in PIIL;

(b) on 7th December 1992, Mr Leong disclosed to Amy Foong the fact that there was to be put forward that day a serious proposal for the acquisition of a controlling stake in PIIL;

(c) on 7th December 1992, Mr Leong counselled Amy Foong to deal in PIIL shares; and

(d) on 7th December 1992, Amy Foong (and Mr Leong) purchased, through Miss Chan's trading account, 120,000 PIIL shares.

The acts specified in paragraphs (a) to (c) above were each perpetrated before Amy Foong placed the order for the shares to be purchased.

In respect of each act specified in paragraphs (a) to (d) above, Mr Leong was an insider dealer.

In purchasing the shares, Amy Foong was also an insider dealer.

(3) On (or before) 9th December

Insider dealing took place when:

(a) on or before 9th December 1992, Mr Leong disclosed to Amy Foong, from information revealed at the meeting with CEF Capital on 7th December, the identity, or a description, of the Mainland bidders, or of one or more of them, and that the bidders included Cheung Kong;

(b) on or about 9th December 1992, Amy Foong herself ordered the purchase of 80,000 PIIL shares, or counselled or procured Miss Chan to purchase them;

(c) on or before 9th December 1992, Mr Leong counselled Amy Foong to purchase PIIL shares in addition to those purchased on 2nd and 7th December; and

(d) on 9th December 1992, Amy Foong and Mr Leong purchased, through Miss Chan's trading account, 80,000 PIIL shares.

The acts specified in paragraphs (a) to (c) above (save for the order referred to at paragraph (b)) were each perpetrated before the order was placed for the shares to be purchased.

In respect of the acts specified at paragraphs (a), (c) and (d) above, Mr Leong was an insider dealer.

In respect of the acts specified at paragraphs (b), (c) and (d) above, Amy Foong was an insider dealer.

B. Mr DON LAU

On 8th December

On 8th December 1992, insider dealing took place when Mr Don Lau purchased 240,000 PIIL shares.

In purchasing them, Mr Don Lau was an insider dealer.

CHAPTER 22

PROFIT GAINED

A. THE APPROACH

22.1 The Ordinance

22.1.1 Section 23(1) of the Ordinance provides as follows:[1]

> "(1) At the conclusion of an inquiry, [or as soon as is reasonably practicable thereafter,] where a person has been identified [in a determination under section 16(3) or] in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders -
>
> (a) an order that that person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order;
>
> (b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;
>
> (c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing."

22.1.2 This Chapter is restricted to a consideration of the profit related subsections (1)(b) and (c). Those sections require us to determine what profit was "gained ..... as a result of the insider dealing". An order under subsection (1)(b) can only be made if the Tribunal is in a position to determine who, in each instance of insider dealing, has made the profit. It is not open to us to order a party to disgorge profits gained by a third party. However, an order under subsection (1)(c) may be directed at an insider dealer whether the profit has been gained by him or by another, and, further, it matters not whether that

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[1] The Securities (Insider Dealing) Amendment Ordinance which came into effect on 14th July 1995 made amendments to a number of sections of the Ordinance, of which section 23(1) is one. The change to section 23(1) is reflected by the passages which we have enclosed in square parenthesis.

other individual has or has not been identified as an insider dealer in respect of the transaction which has given rise to the profit.

22.2 The American approach

22.2.1 The Ordinance does not stipulate how the profit is to be measured. American legislation does. Section 21(d)2(A) of the Securities Exchange Act 1934, introduced by section 2 of the Insider Trading Sanctions Act 1984, provides the courts with jurisdiction to impose a civil penalty not exceeding three times the profit gained as a result of the unlawful purchase or sale which constitutes the insider dealing, and states that

> " For purposes of this paragraph 'profit gained' or 'loss avoided' is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information."

That is also the approach adopted by the United States Court of Appeals for the First Circuit in SEC v MacDonald 699 F 2d 47. These provisions and that judgment are referred to in Chapter 9 of the SHL Report, and the approach is there commended. The essence of the decision in MacDonald is rehearsed at paragraph 9.2.6 of that report :

> "9.2.6 It was decided (see 699 F 2d 47 at pp 54 and 55) that the 'point of his full gain ...[was] a reasonable time after the undisclosed information has become public...' and that 'any consequence of a subsequent decision, be it to sell or to retain stock, is .... not causally related to the fraud.' Since there was in the case 'no evidence of other material events during the period in question,' it was said that the market itself may be the best indicator of how long it took for the investing public to learn of, and react to, the disclosed facts .....
>
> '..... in determining what was a reasonable time after the inside information had been generally disseminated, the court should consider the volume and price at which [the] shares were traded following disclosure, in so far as they suggested the date by which the news had been fully digested and acted upon by investors'. So the approach taken was to ascertain the profit 'accrued from the rise in price caused by the disclosure'. That was an echo of the approach by the District Court, where it was said that 'the gain is determined by how much "paper" profit accrued between the acquisition dates and the conclusion of "the gestation period"' (568 F Supp. 111, 112)."

22.3 The Argument

22.3.1 The present case raises a number of points about the calculation of profit. They hinge on the fact that the level of profit which forms the

starting point for determination of the appropriate penalty under sections 23(1)(b) and (c) can at its highest only be that profit which is shown to be the result of the insider dealing. It is not suggested that there arises any particular difficulty in this case about determining at what point the market reacted to the news of the take-over, and to the news that the bidders were Mainland enterprises and Cheung Kong. It is, however, contended that to conclude that the profit gained by Mr Don Lau was the difference between the cost of his purchases on 8th December and the full price of the shares on the date when the market has reacted to the information, is to ignore the influence on that price of factors other than the piece of relevant information used by the insider to gain his advantage. So, assuming for the moment that the market can be said to have reacted on or by 17th December 1992 to the information about PIIL released to the public on 16th December, the extent of the reaction (in this case, a positive reaction, and therefore a profit to those who held the shares) was, it is contended, indeed attributable to news of the Mainland and Cheung Kong factors, but only in part. The rest of that positive movement was due, it is said, to other pieces of information, to other parts of the information mix, and that to ignore that fact would be to penalise the insider in respect of gain which was not the result of the abuse by him of one particular piece of information. The other influencing factors in this case are those itemised at paragraphs 19.5.1 and 19.5.2 of this report - speculative activity (which occurs whenever there is a take-over); the expectation by investors of an injection of assets; the likelihood that the purchaser will encourage the purchase of shares; the mere fact of a price rise (itself encouraging followers); media "hype"; and the fact of a conditional agreement. The argument is that none of these additional factors constituted unpublished price sensitive information in the hands of Mr Don Lau or the members of the Leong group prior to the activity of the market on 16th and 17th December, and since they were factors which influenced the prices reached on those days, a discount from the full and actual profit enjoyed on resale (or notional resale) on 16th or 17th December is required to reflect these extra influencing factors.

22.3.2 There was an additional contention, albeit to the same end. It related to the period between 8th December and 15th December. Some of the rise in price between those dates was, it is suggested, attributable to the market's assessment that the third party approach, announced on 8th December, was likely to be an approach by a Mainland entity in conjunction with a prominent local company. That assessment was open to anyone to make, and did not depend on the availability or use of confidential information.

In any event, such rise as there was before 16th December could not be attributed to the release of information on 16th, so that the starting point should be a comparison between the closing price of the shares on 15th December, namely, $1.18, and the closing price on 16th ($2.150) or 17th ($2.70), and not a comparison with the price at which Mr Don Lau bought the shares on 8th December ($0.83 and $0.86 per share). These figures demonstrate the practical impact of the issue. The argument continued that from that correct starting point had to be deducted a percentage to reflect the effect on price of the factors, other than the Mainland and Cheung Kong factors, referred to in the preceding paragraph.

22.3.3 The case of Mr Leong and Amy Foong is somewhat more complex, but to their case must be applied the same principles in this regard as are applied to the case of Mr Don Lau. The purchase on 9th December was a purchase made with the benefit of information about the identities of the bidders. That information was only made public on 16th December, but there was a dramatic rise in the price of the share on 14th and 15th December which, it would no doubt be said, ought not to lie at the door of those who had purchased earlier. So too does the point arise to the extent that the transaction on 7th December gave rise to a profit on or after 16th December, and to the extent that the purchase on 2nd December gave rise to a profit on or after 8th December[1], not least, in the latter instance, because the rumour mill was very active on 7th December.

22.3.4 Those who argue that adjustments be made to reflect the impact of factors other than the items identified by us as relevant information on the days of the offending transactions, pray in aid of those arguments certain comments in the SHL Report, and in earlier parts of this report. In Chapter 9 of the SHL Report, the Tribunal remarked that in the application of the MacDonald principle :

> "(2) One must be careful to ascertain whether there is 'evidence of other material events during the period in question'.
>
> (3) The circumstances which may, and indeed should, impact on the analysis will almost certainly vary case by case. These factors would include, for example, general market movement, the number of shares in 'the float', that is, shares held by persons other than one or more controlling shareholders, average daily volume, and market capitalization. The less spectacular the information, the longer will be the

[1] See paragraph 22.8 below as to the profit arising from the transaction on 2nd December.

> 'reasonable period' for public dissemination of information. Allowance must be made for the impact of supervening events. If, for instance, the release of price sensitive information coincides with, or precedes by a day or two, a favourably viewed and significant political event which buoys market sentiment and behaviour, it may well be an error to attribute the whole of a stock's rise to the particular corporate news."

At paragraph 19.4.2 above, in a discussion about the test of materiality, we say that:

> "The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment. It is true that an examination of how those investors react once the information is stripped of its confidentiality and becomes public knowledge, will often provide the answer, although care must be taken to ascertain whether the investors' response is indeed attributable to the information released, or whether it is wholly or in part attributable to other events, or considerations."

22.4 The evidence

22.4.1 There were very significant rises in the price of PIIL shares on 2nd, 4th, 7th, 14th and 15th December, namely, 12.24%; 13.73%; 32.76%; 21.52% and 22.92% respectively. These were not rises matched by the market as a whole. In that period the market moved, generally speaking, sideways. Whether the rises were the product of rumour or of more informed trading, the rises were fired by developments (or by assumptions about developments) about and directly affecting PIIL, rather than the market as a whole, or companies other than PIIL.[1] The same can be said of the rises on 8th December and 16th December, that is, that the rises then were responses to information about PIIL, not about developments extraneous to PIIL. The only occasion upon which there was significant movement of the HSI in the same direction as the price of PIIL was on 4th December, but even then the rise in the cost of PIIL shares was substantially in excess of that of the market.

22.4.2 The closing price on Friday 11th December was $0.79. By close of the market on Tuesday 15th December, the price of each PIIL share stood at $1.18. It had been as high as $1.35 earlier in the day. This is what Mr Witts had to say about the causes of that activity on 14th and 15th December:

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[1] Mr Witts suggested or accepted that the high increase on 7th December was "undoubtedly" due to rumour that was rife. (See transcript, page 605.)

> "I have noted the significant change in price of PIIL shares on 14 and 15 December 1992. I do not believe this to be a reflection of the market's perception of the announcement ..... as the closing price on these two days was totally illogical based on the potential offer price of 80.4 cents. It would appear that on these two days people were either buying whilst in possession of information that was not known to the market or they were speculating PIIL would be the subject of a counter bid, whether it be from a PRC entity, or any other organisation."[1]

It was not, he explained, likely that this activity was in response to the announcement on 8th December, because the trading prices were far in excess of the likely offer price of $0.804 to which reference was made in that announcement.[2]

22.5 Analysis

22.5.1 It is clear that there are issues the resolution of which require account to be taken of new and superseding events:

(1) In assessing the point of time at which the market absorbed and responded to previously unpublished price sensitive information, one has naturally to make sure that the reaction that one is gauging is in fact the reaction to that information and not to something else.

(2) In deciding whether information is "likely materially to affect the price of [the] securities"[3], the answer will often be found in the actual reaction of the market upon release of the information. However, the point is made that "..... in some cases, because of general market conditions, the behaviour of the price on disclosure of the information may not be a reliable guide to price sensitivity. Accordingly, in one US case, it was held that the fact that a company's shares dropped 11 3/4 points on disclosure of information did not establish price sensitivity in view of the fact that a substantial decline in the company's shares was not uncommon in its recent history and that several other reasons accounted for a decline in the company's share price".[4]

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[1] See paragraph 14 of Mr Witts' statement, page 2077 of the documents bundle.
[2] See transcript, page 603.
[3] See section 8 of the Ordinance.
[4] See Rider & Ashe, " Insider Crime - The New Law" page 37. The US case is SEC v Bausch & Lomb 565 F 2d 8 (2d Cir 1977).

(3) In determining the profit which has resulted from insider dealing, there should be disregarded from that calculation profit which has nothing to do with that transaction but is the result of a new event or a new decision by the investor. The new decision or event may be a decision to hold on to the shares after the market has completed its response to the released information[1], in which case profits beyond that are "..... purely new matter"[2]. It may be significant news about the company unconnected with the original developments; or it may be a significant upward trend in the market for stocks of a particular type. The principle applies regardless of whether the price of the shares rises or falls after the new and unconnected phase. So, in SEC v Shapiro, the court required the appellant to disgorge not the actual profits realised when he sold the shares some time after the gestation period, but the paper profit accrued at the earlier time even though the price after that period had dropped. "To require disgorgement only of actual profits in cases where the price of the stock subsequently fell would create a heads-I-win-tails-you-lose opportunity for the violator: he could keep subsequent profits but not suffer subsequent losses."[3]

22.5.2 It might be said that the apt approach should be one which deprives the insider of the entire fruit which can be traced to its seed, namely, the original transgression, regardless of the passage of time, and intervening events. That was the stance taken by the Securities and Exchange Commission in MacDonald, as well as by the District Court[4], but rejected by The First Circuit, (although the decision was not without dissent).

22.5.3 The advantage of the MacDonald test is not only that it directs itself at the causal connection between the illegality and the pickings which arise therefrom, but it also appears to cater readily and logically for a variety of

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[1] See, however, our findings at paragraph 22.8 below about the correct approach in the case of shares acquired in tainted circumstances just before a first announcement, and their retention beyond the date of a second and related announcement.

[2] See MacDonald 699 F 2d 47, 54

[3] See SEC v Shapiro, 494 F 2d 1301, 1309.

[4] The district court noted that "any changes in the market after the 24th of December were because of other developments", and felt that it would be "inequitable to permit the defendant to retain the benefits of a bargain that was ..... clearly illegal". (See MacDonald page 52.)

circumstances which are likely to present themselves to this Tribunal, in this and future Inquiries.[1] Those circumstances include the situation in which the insider dealer sells (or buys) immediately on release of the price sensitive information; or where he decides to retain the stock for an extended period (and, in such a case, whether the ultimate sale is at a loss or at a gain); or where no sale has taken place at all by the time the assessment of profit has to be made. It is also a test or approach apparently favoured by the texts. The Financial Services Act 1986 "provides a right of action for certain breaches of the regulatory framework established by the Act"[2]. Section 61 of the Act enables a court on application by the Secretary of State to make a disgorgement or restitution order "..... if satisfied ..... that profits have accrued to any person as a result of his contravention" of certain rules promulgated by the Security and Investments Board. The provision is in its effect available for use in cases of insider dealing. The comment has been made that :

> "..... s.61 seems to provide a most attractive solution to the difficult problem of retrieving the insider's ill-gotten gains, for it is not dependent on privity or causation but simply requires that there has been a contravention and profits have accrued to a person as a result of his contravention. Establishing the amount of that profit can be done, as in the United States, simply by comparing the price at which the insider dealt with the price of the security a reasonable time after the material information has become generally available."[3]

22.5.4 The test examined and revealed thus far goes no further than the suggestion that there should be discarded from the calculation of profit the impact of a development which can properly be described as wholly unrelated to the impeached transaction, as an intervening and superseding cause, and as a purely new factor or decision. It is noteworthy that Hannigan does not suggest that in the case of a contravention which gives rise to an order under section 61, the width of the order must reflect the value, in terms of profit, of the item of price sensitive information, taking care to discard that portion of profit represented by other items of information.[4] It is noteworthy, because in a discussion about civil remedies available to those who are the victims of insider dealing, the author posits a difficulty which might arise in the application of the remedy of an account of profits as against a director who

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[1] See, however, the cautionary note at paragraph 22.8.12 below.

[2] See McVea "Financial Conglomerates and the Chinese Wall" page 97.

[3] See Hannigan "Insider Dealing" pages 172 and 173.

[4] See, also, Rider & Ashe "Insider Crime - The New Law" page 71, where the authors refer to the advantage of utilising section 61, namely, that it "avoids many of the conceptual and practical problems which are involved in determining civil liability according to traditional compensatory procedures."

has, in breach of his fiduciary duties, profited by the use of information entrusted to him in the course of those duties:

> "One difficulty, in terms of the extent to which the director must account, might be that since factors other than the unpublished price sensitive information which the fiduciary utilised will be reflected in the price at which the shares stand on the information being released, it may be difficult to decide how much of the profit made relates to his use of the information. One solution would be to hold him liable for the entire gain as measured by the difference between the price on purchase or sale and the price of the security a reasonable period after the release of the information. While this makes no allowance for any other factors at work in the market, the importance of upholding the fiduciary obligation not to profit justifies such a harsh approach and is consistent with the rigorous approach adopted by the courts in this area."[1]

Much the same point is made in a discussion by Ashe & Counsell about remedies available in actions for breach of confidence. One remedy is an account of profits:

> "The basis of assessment in an account of profits is the amount by which the defendant has gained from the use of the information. For the difficulties of assessment, see *Peter Pan Manufacturing Ltd v Corsets Silhouette* [1964] 1 WLR 96. The proper basis for assessing damages is to compensate the plaintiff, namely to put him in the position he would have been in had he not sustained the wrong (*Dowson and Mason v Potter* [1986] 1 WLR 1419; see also *Seager v Copydex Ltd (No 2)* [1969] 1 WLR 809). The practical problem with regard to someone who trades on inside information may well be in establishing what element of profit or loss is attributable to the inside information, although in some cases the relevant difference in share values may be readily ascertainable."[2]

22.6 Conclusion

22.6.1 There is no inconsistency in these approaches, for the private civil remedies which arise from breaches of fiduciary duties and breach of confidence are directed at the use of information, which information is treated as a species of property. In such situations, there may be circumstances where it is possible and appropriate to divorce the use of misappropriated information from other information used at the same time.[3] But that is not the position in the application of section 23, for what section 23 specifically requires is an assessment of profit gained as a result of the insider dealing. It is the act of insider dealing that is prohibited, and it is the profit which results from that act which is the target. That too is the scheme of the power of disgorgement

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[1] See Hannigan, page 106.
[2] See Ashe & Counsell "Insider Trading", page 136.
[3] See, however, Peter Pan Manufacturing Corporation [1964] 1 WLR 96 at pages 107 to 109.

provided by the 1984 Act in the United States: the basis of the penalty to which the court is enjoined to look is the profit "gained as a result of such unlawful purchase or sale," where "such unlawful purchase or sale" means the purchase or sale of a security "while in possession of material nonpublic information". The test is whether the profit is attributable to the unlawful transaction, and not whether it is attributable to the use of a particular item of information the receipt of which has induced that transaction. Not only is there no reference to such a limitation, but the Act itself defines the profit gained as "the difference between the purchase and sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information". That is the long and the short of it; and it allows for no whittling down on the basis urged upon us in this Inquiry.

22.6.2 In the context of Hong Kong's statutory framework, the act of insider dealing is constituted by the act of dealing or of counselling or procuring a deal whilst in possession of relevant information. What is prohibited is the transaction, or the encouragement of a transaction, or the passing of information in contemplation of a transaction, and it is to those acts that the penalty is directed. The fact of the matter is that Mr Don Lau should not have purchased PIIL shares on 8th December for, as he well knew, he was then in possession of relevant information. Looked at in the light of the provisions of section 23, the effect of his submission is that he should be penalised only in respect of that part of his transaction which was unlawful, namely, that part which was motivated by information not already in the public domain. There is no such concept. There was but one transaction, and the entire transaction was unlawful, even if part of the motivation was hope of a profit arising from factors other than the information yet unreleased to the investing public. The profit gained on 16th December was the profit gained as a result of his transaction on 8th December, which transaction was an act of insider dealing. The whole profit was gained as a result of that act of insider dealing.

22.6.3 The matter can be examined another way. Mr Don Lau could not lawfully have entered upon any purchase of PIIL shares between 8th and 15th December inclusive. He could not lawfully do so for so long as he was knowingly in possession of relevant information. The first moment, after 7th December, upon which he could have purchased PIIL shares lawfully was on

16th December. Had he done so, he would not have made the profit he did make in consequence of buying on 8th December.

22.6.4 The rise in the share price on 14th and 15th December, and the items in the information mix other than the "offending" items cannot truly be regarded as "other developments", or as purely new events in the history of the company or the market , such that they can be classified as intervening or superseding events. It would be quite inappropriate to discount the rises in the price of the share on 14th and 15th December, not only because the level which the market set upon receipt of the full picture on 16th December was above the prices fetched on 14th and 15th, but also because the factors which accounted for the rise on those two days were foreseeable (indeed, much the same had happened on 7th December), and because the reasons for the unusual activity were part of the same factual matrix and the same subject matter as the announcements on 8th December, and on 16th December, and PIIL's fortunes as they unfolded during that period. They were connected with the same corporate events which had induced Mr Don Lau, Mr Leong and Amy Foong to buy earlier.

22.6.5 Nor do we think that any adjustment should be made to reflect movement in the market generally, especially in a case where movement is within a small range and where such volatility as might be revealed is foreseeable, given known conditions at the time.

22.6.6 Applying this approach, which we are directed to do by the Chairman, we decline the invitation to discount the rise in price from the date of Mr Don Lau's purchase of the shares until 15th December, and to discount an amount which will reflect the value placed by the market on items of information other than those which rendered trading by Mr Lau before 16th December insider trading. The same position is reached in the case of Mr Leong and Amy Foong in respect of their transactions on 2nd, 7th and 9th December. We will in the event look to the full profit gained, and by full profit we mean the difference between the purchase price in each case, and the value of the security at that time when the market reacted to and absorbed the relevant information.[1]

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[1] See, however, the approach we adopt at paragraph 22.8 below in the case of the acquisition of PIIL shares on 2nd December by Amy Foong (and Mr Leong), and submissions by Mr Leong and Amy Foong in that regard.

B. THE FIGURES

22.7 Mr Don Lau

22.7.1 Both counsel for the Tribunal and counsel for Mr Don Lau have put forward figures for the profit gained by Mr Don Lau which are based on the actual proceeds of sale of the 240,000 shares on 16th and 17th December rather than some paper profit assessed by reference to the price at the "stage where the market's settled reaction to the information can be gauged", and the point at which "the insider dealer's unfair advantage crystallises ....."[1]. Where the insider dealer buys with a view to realising a profit upon release to the public of the inside information, and the profit is in fact taken immediately or almost immediately upon release of the information and upon the impact of that information on the market, it would be wholly artificial to engage in an exercise of determining, by an examination of other factors, the point of the market's settled reaction. The reasoning in MacDonald does not require such artificiality[2], and in any event the market's "settled reaction" will often be immediate; nowhere else, perhaps, as much as in Hong Kong.

22.7.2 The total purchase price of the shares on 8th December, including transaction costs, was $200,931.76. Mr Don Lau paid this sum to G K Goh. Mdm Pamela Wong paid to Mr Don Lau the sum of $16,745 which was slightly more than the purchase price of 20,000 shares at $0.83 per share. Mr Don Lau's contribution to the purchase price and costs was, therefore, $184,186.76.

22.7.3 The proceeds of sale of 240,000 PIIL shares on 16th and 17th December amounted after deduction of transaction costs to $620,450.02. Of that sum $573,737 found its way to Mr Don Lau, and $46,713.02 remained with Mdm Pamela Wong[3]. Mr Don Lau's profit was therefore $389,550.24.

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[1] SHL Report, paragraph 9.2.3.

[2] See the court's approval of the approach advanced by the Securities and Exchange Commission in the case of an immediate sale at a profit, at 699 F 2d 47, 52.

[3] At paragraphs 16.10 and 20.2.2 of this report, we refer to the fact that the sum of $573,737 which found its way to Mr Don Lau exceeded by $10,000 the cheque representing the sale of 216,000 PIIL shares, and that we are not in a position to come to a settled conclusion about the purpose of that extra payment. It now occurs to us that $10,000 is about the sum represented by the proceeds of sale of 4,000 PIIL shares; thereby completing payment to Mr Don Lau of the proceeds of sale of his 220,000 PIIL shares.

Mdm Pamela Wong's profit was $29,968.02. The total profit gained as a result of the transaction on 8th December was, therefore, $419,518.26.

22.7.4 The calculation of these profits, and of those arising in the case of Mr Leong and Amy Foong, are explained in a schedule exhibited to this report as Appendix X.

22.8 Mr Leong and Amy Foong:
The problem of two announcements

22.8.1 The exercise in calculating profit in the case of Mr Leong and Amy Foong is not nearly as straightforward as in the case of Mr Don Lau, because in the case of Mr Leong and Amy Foong:

(1) there were several instances of insider dealing;

(2) after the first and second purchases (2nd and 7th December) there were two public announcements (8th and 16th December) which caused a rise in the price of the shares:

(3) save for the sale of 64,000 PIIL shares on 17th December 1992, the shares acquired on 2nd, 7th, 9th (and 10th) December were not sold in the immediate aftermath of the publication of the relevant information, but were sold months later - primarily in June and September 1993; and

(4) it has been difficult to identify the true ultimate beneficiary of the proceeds of sale.

22.8.2 Appendix X includes a schedule of expenditure and income arising from the purchases and sales of PIIL shares by Mr Leong and Amy Foong in December 1992. The purchase costs of the three transactions with which we are concerned are:

(1) 2nd December: 120,000 purchased for $65,934.08;

(2) 7th December: 120,000 purchased for $95,279.14; and

(3) 9th December: 80,000 purchased for $66,335.30.

22.8.3 There was only one sale which was close in time to the price sensitive events with which we have been concerned, namely, the sale of 64,000 on 17th December at $2.60 per share - a total of $165,558.48 after deduction of transaction costs.

22.8.4 The balance of the history of the PIIL shares acquired by the Leong group is set out in Chapter 9 above[1]. 24,000 shares were sold in April 1993; 48,000 in June 1993; and 208,000 in September 1993.

22.8.5 There is no difficulty in assessing the profit gained in respect of the 64,000 shares sold on 17th December. We merely take the purchase price paid for 64,000 PIIL shares on 9th December (40,000 from the batch purchased at 83 cents and 24,000 for the batch purchased at 82 cents), a total of $53,148.24 (including transaction costs), and compare that with the net proceeds of sale, $165,558.48, to result in a profit of $112,410.24.

22.8.6 An important and unusual point arises, however, in respect of the shares purchased on 2nd and 7th December. It is this: is the profit attributable to the acts of insider dealing which culminated in the purchases on 2nd and 7th December, the profit accrued in response to the announcement on 8th December or, on the other hand, the profit after the announcement on 16th December? The question becomes slightly more complex when we bear in mind the fact that some relevant information known to Mr Leong and Amy Foong at the time of the transaction on 7th December was information released to the public on 8th December, and some was only released on 16th December.

22.8.7 We have found[2] that by the time of the purchase on 2nd December Mr Leong and Amy Foong knew of the initial approach by CEF and that a meeting was arranged to take place later that day to discuss that approach. We have also found that at the meeting during the late afternoon of 2nd December Mr Leong "discovered that the bidders were or included Mainland interests, and ..... that Tung Wing was referred to ..... as conveying a suggestion that the consortium in the proposed acquisition had a similar background"[3]. That there was no sale of this batch on 8th December, the day upon which the third party approach was publicly announced, was not a

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[1] See paragraphs 9.32 to 9.40 (pages 97 to 99 above).
[2] See paragraph 11.7 above.
[3] See paragraph 8.5.5 above.

coincidence, for well before that date those shares were imbued with the advantage of additional important price sensitive information, which would have rendered sale on 8th December foolhardy. That information was the background of the bidders.

22.8.8 At paragraph 22.6.1 above, we emphasise that the section 23 test is whether the profit "is attributable to the unlawful transaction, and not whether it is attributable to the use of a particular item of information the receipt of which has induced that transaction". Where an investor acquires shares ahead of the market because he has advance notice of an item of price sensitive information, he normally profits from his wrong-doing by the extent to which the price of his shares increases once the market as a whole has received and reacted to the published information. If he retains his shares well after the disclosure of the information and well after the market has reacted to the news, it is likely that that retention will be treated as a new decision, and the profit or loss arising from that decision as not causally connected with the insider dealing transaction. The court in MacDonald explained the point in this way:

> "We see no legal or equitable difference, absent some special circumstances, ... between an insider's decision to retain his original investment with the hope of profit and a decision to sell it and invest in something else. In both cases the subsequent profits are purely new matter." (see MacDonald 699 F 2d 47,54) and
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> "When a fraudulent buyer has reached the point of his full gain from the fraud, viz., the market price a reasonable time after the undisclosed information has become public, any consequence of a subsequent decision, be it to sell or to retain the stock, is *res inter alios*, not causally related to the fraud." (see MacDonald at page 54)
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> (Emphasis added)

22.8.9 The MacDonald guideline applies to a decision subsequent to the release of the price sensitive information. It enjoins tribunals not to make disgorgement orders which deprive the insider dealer of profits which are not the result of the insider dealing. Now, at the time of the insider dealing resulting in, and constituted by, the purchase on 2nd December, it must have been within Mr Leong's contemplation that more information was going to be revealed at the meeting that afternoon, and that talks and negotiations might follow over the coming days. So the advantage to be gained from the transaction was not only the advantage of knowing ahead of the market that an approach had been made, but was also an advantage from such consequential developments as might follow that initial approach. In counselling and in

making the purchase on 2nd December, the intention was not only that profit might flow from advance notice of the initial approach, but that it would flow from such additional information as would or might be revealed later that day, or in the days immediately following. It would be somewhat artificial and illogical so to compartmentalise matters as to suggest that to render the insider dealer liable for the full ultimate profit in circumstances such as those we here examine, there must be a fresh purchase each time an additional item of information was revealed to the insider, regardless of the fact that that additional information related to the same matter as the first item of information, and regardless of the fact that confidential receipt of further information of that kind was foreseeable. If that were so, we would have the strange result that Mr Leong and Amy Foong would be able to retain the substantial profit attributable to the retention beyond 8th December of the 120,000 shares acquired on 2nd December, despite the fact that the prime motive for that retention was the possession by Mr Leong and Amy Foong of highly sensitive information not revealed to the public until 16th December, and despite the fact that had they purchased the same shares a few hours later than the purchase was in fact effected on 2nd December (that is, after the meeting on 2nd December which disclosed information about the bidders' background), they would be liable to disgorge the full profit. That cannot be right. All that should be excluded as not constituting resulting profit, is matter that is purely new, or wholly unconnected with the original corporate event. That is not to say that, on its own, the mere retention of shares acquired before possession of relevant information is itself insider dealing, but that is quite a different circumstance from the one which we see here. (In such a case, the original transaction - the original purchase - is untainted; whereas in the present case the purchase was certainly tainted, and the various items of information were related one to the other.) For these reasons, the profit to which we look in relation to the events of 2nd December is the profit accrued between the purchase of the shares on 2nd December, on the one hand, and, on the other, a point after the announcement of 16th December.

22.8.10 In arriving at this conclusion, we have taken into account submissions made to us by Mr Leong and Amy Foong. They had assumed from submissions made by counsel for the Tribunal that profit made as a result of insider trading on 2nd December would be calculated by reference to the price of shares at a point somewhere between 8th and 11th December, but in any event before 16th December. They were subsequently notified that the

Tribunal was minded to a contrary view, and they made submissions in response.

22.8.11 They refer in particular to:

(1) the passage in paragraph 22.6.6 above[1] that: "[the Tribunal] will in the event look to the full profit gained, and by full profit we mean the difference between the purchase price in each case, and the value of the security at that time when the market reacted to and absorbed the relevant information";

(2) paragraph 9.2.3 of the SHL Report which states that: "The point is that once inside information is no longer inside information, and has percolated to and been absorbed by those who would normally deal in the securities of the corporation concerned, to a stage where the market's settled reaction to the information can be gauged, the benefit of the insider dealer's unfair advantage crystallises, and what happens to the value of the securities beyond that stage is attributable to other factors and forces."

They point out that the inside information possessed by them at the time they purchased the shares on 2nd December was knowledge of the initial approach, and of the fact that a meeting had been arranged, but that that was no longer relevant information after the announcement on 8th December, and that movement in price after 15th December "was influenced by other relevant information which the Tribunal had found to be in our possession only after the transactions on 2nd December 1992 was effected".

22.8.12 The passage in paragraph 22.6.6 above, to which Mr Leong and Amy Foong refer, is a passage in response to an argument which sought to persuade the Tribunal to make certain discounts from the profit that would normally be calculated by a comparison of the acquisition price and the price at or after publication of price sensitive information. The intent of that passage is to signify that the basic approach did not, in its application, require the suggested discount. The passage at paragraph 9.2.3 of the SHL Report addresses a straightforward scenario, and should be read as emphasising the need to disregard profit that has nothing to do with the insider dealing, and that

[1] The parties had been sent a draft of passages directed to the issue now addressed at paragraphs 22.5 and 22.6 above.

is "not causally related to the fraud". Indeed, the paragraph itself introduces the point by stating that "[the] basis adopted in the Statement of Facts for calculation of profit is inappropriate, for it assumes that all profit after the publication of the confidential or inside information is attributable to the advantage gained by the insider dealing".

22.8.13 In any event, the Tribunal in the SHL case was at pains to point out that "..... there will be situations which do not fit the kind of facts envisaged by the MacDonald case", and that "[the] circumstances which may, and indeed should, impact on the analysis will vary case by case".[1]

22.8.14 The facts presented by the acquisition of shares on 2nd December, and by the subsequent developments, are not straightforward. We have considered Mr Leong's succinct and clear submissions, but we remain satisfied that our approach to the question of profit arising from the insider dealing on 2nd December, on the facts of this particular case, remains the correct approach, and we abide by the conclusion at the foot of paragraph 22.8.9 above.

22.8.15 The purchase of 120,000 PIIL shares on 7th December presents less of a problem, for we have determined that on 2nd December, Mr Leong came to learn that the bidders included Mainland interests. We have also found that before the acquisition of the block of 120,000 shares through Miss Chan's newly opened trading account on 7th December, Amy Foong had been told by Mr Leong that it was a PRC enterprise that wanted to acquire PIIL[2], and that she had also been told by Mr Leong that CEF Capital intended to put forward that day, on behalf of its clients, a serious proposal for the acquisition of a controlling stake in PIIL[3]. Only the second piece of information was revealed to investors on 8th December, whilst the first was revealed on 16th December. Again, it would be quite artificial to split the advantage gained according to separate items of information. The information about the background of the bidders was especially price sensitive. It was the most significant item of information in the information mix. We are satisfied that the true profit gained as a result of the insider dealing identified in paragraph 21.2(2) above, namely, conduct which culminated in the PIIL share purchase on 7th December was the profit gained by reference to a point following the

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[1] SHL Report, paragraph 9.2.8.
[2] See paragraphs 11.3.1 (page 124) and 11.8.4 (page 132) above.
[3] See paragraph 11.8.4(2) (page 133) above.

announcement on 16th December, rather than the announcement on 8th December.

22.9 Mr Leong and Amy Foong: the amount of profit

22.9.1 The amount of profit in relation to the sale of 64,000 on 17th December was $112,410.24[1].

22.9.2 What of the profit attributable to the remaining shares, which were not sold until the summer of 1993? It is clear that the prices obtained on actual sale of the shares in the summer of 1993 were well beyond the price level reached on application of the approach advocated by paragraph 9.2.3 of the SHL Report (see paragraph 22.8.11 above), in other words after the market's settled reaction to the announcement of 16th December. We see from Appendices I and IV that the price of PIIL shares hovered in the region of $2.15 to $2.50 and back to about $2.20 from 16th December 1992 to early January 1993, that thereafter they stayed at about $2 for some months, and that in late April there was a sharp rise following an announcement concerning the acquisition by a PIIL-led consortium, with further very significant rises in June 1993. The disposal of PIIL shares by Amy Foong and Miss Chan is described at paragraph 9.32 above. It would, in our judgment, be fallacious to conclude that the profit gleaned on ultimate sale was attributable to the acts of insider trading in December.

22.9.3 With an eye on the MacDonald test, Mr Witts was "asked to comment on the market reaction to the announcement of 16th December", and he proffered his analysis of the time by which "the market had fully digested the information". This is what he had to say about the matter:

> "I have been asked to comment on the market reaction to the announcement of 16 December 1992 and when the market had fully digested the information. ..... PIIL shares closed on 16 December 1992 at $2.15, an 82.2% increase over the closing price of $1.18 on 15 December 1992 (at the time of suspension). In my view, the market re-rated the share in the next six trading days ending on 24 December 1992 on which day the Hang Seng Index had only risen marginally, from 5416 (on 16 December) to 5442 (24 December). By 24 December 1992 volume had also decreased significantly showing the tapering off of interest in the share."[2]

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[1] See paragraph 22.8.5 above.

[2] See paragraph 17 of Mr Witts' statement, page 2077 of the documents bundle.

22.9.4 Although Mr Witts very helpfully answered the question that was put to him, we ought perhaps to have asked a more precise question, for the apt point at which to strike the paper profit gained is, so it seems to us, not necessarily the time at which the news has been wholly digested by the market. The majority judgment in MacDonald refers to "profit accrued prior to the time the inside information was in general circulation among the investing public ....." and to "..... the reasonable period for the general dissemination, and then, digestion of the ..... press release"[1] (Emphasis added). In the context of the facts of that case, the court went on to say that:

> "The natural effect of public disclosure would be to increase the demand for, and correspondingly, the price of, RIT stock, and once investors stopped reacting to the good news, the price could be expected temporarily to level off. Therefore, upon remand, in determining what was a reasonable time after the inside information had been generally disseminated, the court should consider the volume and price at which RIT shares were traded following disclosure, insofar as they suggested the date by which the news had been fully digested and acted upon by investors."[2]

The observation was also made that the less spectacular the information the longer is the gestation period likely to be.

22.9.5 These various considerations must, of course, always be viewed in the light of the particular circumstances of the case. Reaction in Hong Kong in the 1990s to important corporate information is likely to be swift, the more so in December 1992 when the information was as exciting as a take-over by Mainland interests and Cheung Kong. The major impact in this case revealed itself on 16th December when the price shot up by 82.20%, and on 17th December when the increase was 25.28%. The number of deals remained unusually high on 18th December, although there was no change in the closing price. We note, too, that the only PIIL shares sold by Miss Chan in December were sold on 17th December when the price stood at $2.60.

22.9.6 We have determined that the appropriate point at which to lock in the market's reaction to the announcement of 16th December is the close of trading on 16th December. The prices set on 17th and 18th December appear to be the result of over-shooting or over-reaction by the market. That is evident by the drop after 18th December. The announcement on 16th December was an announcement made before trading opened that day, and we consider one

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[1] See 699 F 2d 47, 54.
[2] See 699 F 2d 47, 55.

day to be sufficient for digestion of the announcement by the market. The rise on 16th was very dramatic, and given the liquidity of the market, the insider would have had little difficulty in selling so soon as that reaction was manifest. We do not, in the circumstances see justification for using prices reached on dates beyond 17th or 18th.

22.9.7 The price at close of trading on 16th December 1992 was $2.15, and, accordingly, save in respect of the profit gained as a result of the sale on 17th December, it is that price that we use to determine profit gained as a result of the insider dealing by Mr Leong and Amy Foong in December 1992.

22.9.8 Accordingly, the profit gained as a result of the insider dealing in the case of the Leong group is, as we see from Appendix X, as follows:

(1)	the profit gained as a result of the insider dealing culminating in and including the purchase of 120,000 shares on 2nd December 1992 was:	$190,763.02
(2)	the profit gained as a result of the insider dealing culminating in and including the purchase of 120,000 shares on 7th December 1992 was:	$161,417.96
(3)	the profit gained as a result of the insider dealing culminating in and including the purchase of 16,000 shares on 9th December 1992 was:	$21,039.22; and
(4)	the profit from the sale of 64,000 shares on 17th December 1992 was:	$112,410.24

C. WHOSE PROFIT?

22.10 Mr Don Lau

Mr Don Lau's profit was $389,550.24. Mdm Pamela Wong's profit was $29,968.02.

22.11 Mr Leong and Amy Foong

22.11.1 Liability under section 23(1)(b) only attaches to the insider dealer who has gained profit as a result of the insider dealing. On the face of the transaction records, the gain made in respect of the purchase on 2nd December was gain made by Amy Foong, and the gains made in respect of the purchases on 7th and 9th December were made on each occasion by Miss Chan.

22.11.2 At paragraph 11.2.3 we recite our conclusion that the acquisitions of PIIL shares in December 1992 were "part of a course of conduct by Mr Leong and Amy Foong directed ..... at PIIL alone". We have also found that Miss Chan was brought into the scheme in order to "hide the true buyers", and that in relation to the purchases on 7th December and after, "the scheme was one that required her co-operation, and that she was to benefit from it"[1]. In relation to the purchase of 120,000 shares on 7th December, we have stated that the order for the purchase of the shares was placed by Amy Foong[2], and that all three were party to that acquisition, although "how the spoils were to be divided [was] another matter"[3]. We have not decided who placed the order on 9th December[4], but we have decided that that transaction was also part of the joint enterprise, and that if Amy Foong did not place the order, she counselled and procured Miss Chan to do so.

22.11.3 An order to disgorge profits (section 23(1)(b)) can only be made against an insider dealer in respect of the profits gained by that insider dealer. So if it is not shown that that insider dealer has gained profit, no such order can be made against that person. It is clear that whoever was the ultimate or intended beneficiary, it was Amy Foong who, in the first instance, acquired the shares purchased in her name on 2nd December, and that they stayed in her

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[1] See paragraph 11.4.2 above.
[2] See paragraph 11.8.4(2) above.
[3] See paragraph 11.8.7 above.
[4] See paragraph 11.9.1 above.

name until sold in September 1993, when with the proceeds of sale she purchased 170,000 Shanghai International shares, again in her name. We have not, through our tracing exercise, been able to determine for whose ultimate benefit the proceeds of sale of the PIIL shares sold by Miss Chan in 1993 were channelled or held. They have not been traced back to Mr Leong or to Amy Foong. We are, however, satisfied that we have not been told the truth by Mr Leong or by Amy Foong or by Miss Chan about the beneficial ownership of the shares acquired in December 1992 or of the proceeds of their sales, particularly in so far as they would have us believe that the transactions of 7th and 9th December were for the benefit, indeed the entire benefit, of Miss Chan.

22.11.4 Where a person identified by this Tribunal as an insider dealer has withheld information from the Tribunal, or has provided to the Tribunal misleading or untrue information about the true beneficiary of profit gained as a result of the insider dealing, it cannot be that he or she is thereby placed in a better position, in terms of the penalty to be imposed, than a party who has been identified as an insider dealer and has assisted the Tribunal in identifying the true beneficiary of the profits. The Tribunal would in those circumstances be entitled to draw inferences against the parties that sought to mislead it, although, as in the case of someone in Miss Chan's position, it would not always be permissible to do so.

22.11.5 In this case, however, we have more than the mere desire by Mr Leong and Amy Foong to hide the truth. The transactions of 2nd, 7th and 9th December were the consequence, as we have found, of a joint enterprise by Mr Leong and Amy Foong to profit from the acquisition of PIIL shares, with the benefit of insider information. They funded the transactions, and each played parts which were integral to the transactions themselves. Those separate yet necessary parts were more evident once Miss Chan joined the scheme on and after 7th December. Each therefore contributed to the objective, which was to gain profit from each transaction.

22.11.6 We have also rejected Amy Foong's contention that her financial affairs were matters apart from Mr Leong's. On the contrary, it would appear from the absence of a current account held in her name, and the freedom with which funds flowed to and from Mr Leong's account, that their financial affairs were conducted for their joint benefit. That likelihood is enhanced by information which we have recently acquired from Mr Leong. In order to address the question of appropriate penalties, we sought from Mr Leong and

Amy Foong details of their current assets. The details provided reflect a significant change in their respective cash and share holdings since late 1994. Whereas during 1994, Amy Foong held something in the order of $591,000 in shares and cash in Hong Kong, she holds, in July 1995, something in the order of $2.2 million. Mr Leong's cash and share assets have dropped from about $530,000 to about $180,000. We asked them to explain the change. Mr Leong has replied, saying that "The change in Ms Amy Foong's position in Hong Kong has arisen from consolidation of my bank account balances with that of Amy Foong into one main account;" this allegedly for tax planning purposes.

22.11.7 We think it clear that in relation to the transaction on 2nd December 1992 and the profit gained from it, we are entitled to infer that the profit was gained jointly by Amy Foong and Mr Leong, even if it was agreed that she would retain the profit, once gained, for herself. As for the profit gained as a result of the transactions of 7th and 9th December 1992, we have been minded to conclude that they too were gained by Amy Foong and Mr Leong, to the exclusion of Miss Chan, because these transactions were obviously funded by Mr Leong and Amy Foong, and also because it has occurred to us that the transaction on 10th December and the profits arising from it might well represent Miss Chan's reward for allowing her name to be applied to a trading account to cover transactions by Amy Foong. We cannot however be satisfied that that was the full extent of Miss Chan's benefit; we have determined that hers was an integral part in the transactions of 7th and 9th December; and we proceed on the footing that the benefit of any doubt should be resolved in favour of those who are to be penalised.

22.11.8 Accordingly, our determination is that the profit in relation to the transaction of 2nd December was gained jointly by Amy Foong and Mr Leong; and that the profit which resulted from the insider dealing on or leading to the transactions of 7th and 9th December were gained jointly by Amy Foong, Mr Leong and Miss Chan.

22.11.9 It should be noted that if an act of insider dealing led to the transaction on 10th December, it could be said that the perpetrator of that act may be liable for profit arising from it, even though Miss Chan has not been shown to be an insider dealer in respect of that transaction. We think the route to such a result would be somewhat tortuous in this case, and in any event the decision that "no adverse finding against Amy Foong or Mr Leong is made in

relation to [the transaction on 10th December]" at paragraph 11.10.1 above militates against any such course.

22.11.10 Accordingly, the sums attributable to Mr Leong, and Amy Foong, corresponding with the schedule of profits set out at paragraph 22.9.8 above are as follows:

(1) $190,763.02 (the total profit gained in relation to the purchase of 120,000 shares on 2nd December

(2) $107,611.97 (that is, two-thirds of $161,417.96, the profit gained in relation to the transaction on 7th December)

(3) $14,026.14 (that is, two thirds of $21,039.22, the profit gained in relation to the purchase of 16,000 shares on 9th December)

(4) $74,940.16 (that is, two-thirds of $112,410.24, the profit gained from the sale of 64,000 shares on 17th December).

D. CONCLUSIONS

22.12 We have determined that the following profits have been gained as a result of the insider dealing which we have identified:

Mr Leong and Amy Foong

22.12.1 The total profit gained by Mr Leong and Amy Foong was $387,341.29. We treat half that profit as gained by Mr Leong, and half by Amy Foong. The total profit gained by all persons in relation to the three transactions (the transactions on 2nd, 7th and 9th December 1992) was $485,630.44.

Mr Don Lau

22.12.2 The total profit gained as a result of the insider dealing on 8th December 1992 was $419,518.26, of which sum Mr Don Lau's profit was $389,550.24.[1]

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[1] See paragraph 22.7.3 and 22.10 above, and Appendix X.

CHAPTER 23

ORDERS

SOME GENERAL PRINCIPLES

23.1 In the SHL Report there is set out an analysis of the correct or desirable approach to section 23[1]. That analysis applies to this case, save for the significant difference in their impact to the extent that in the SHL Inquiry there was an admission at the outset that insider dealing had taken place.

23.2 In that report, the Tribunal commented that:

> "10.5 To say that the reputation of Hong Kong's securities market is an issue of importance to this territory is not to make a policy statement, but is a statement of the obvious. It is also stating the obvious to remark that insider dealing and the degree to which it may prevail are matters that materially affect that reputation. The legislature has acknowledged these facts by enacting new laws conferring on the Insider Dealing Tribunal significant powers in the form of penalties, absent from the Ordinance's predecessor. Still, the conduct is not a criminal offence, and the maximum disqualification from commercial office is five years. Those are the parameters within which we must address the question of appropriate orders in this case."

23.3 Some of the principles we itemised were these[2]:

> "(1) The fact that [the insider dealers] presented to the SFC investigators a false story does not go in aggravation of the penalties which would otherwise be imposed. It is merely that he who admits fault at the very outset will be credited for that fact.
>
> (2) The fact of an admission before the Insider Dealing Tribunal, especially at an early stage, is a fact which goes in mitigation of the penalty, though in a strong case that will carry less weight than in a case where the evidence is not strong.
>
> (3) .....
>
> (4) Financial penalties are to accord with the gravity of the wrong-doing, and are not to be increased by reason of the substantial wealth of the insider dealer.
>
> (5) The Tribunal should not impose a financial penalty on an assumption that someone else will pay.

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[1] SHL Report, Chapter 10.
[2] SHL Report, paragraph 10.4.

(6) In determining whether to disqualify an insider dealer from holding office as a director of a listed company, or of listed companies, there come into play a number of considerations. The determination will take into account the need to ensure the integrity of the securities market; to protect the public from further abuse by that person of the privileged position of trust which that office carries; to deter others from breaching that trust; and to mark the disapproval of the investment community with the conduct of the insider dealer.

(7) In determining whether to disqualify an insider dealer from holding office as a director of a private company, one should have regard to the connection, if any, of the company with the insider dealing, and any relationship between the insider dealer and the private company; and the impact upon the individual of such a disqualification.

(8) Where an incident in, or in connection with, the inquiry, gives rise to a justified sense of grievance, the Tribunal should recognise and take that fact into account in determining the appropriate penalties.

(9) In making its orders under section 23(1)(b) and (c) and section 27, the Tribunal should have regard to the totality of the financial burden imposed by these orders.

(See *"Current Sentencing Practice"* by Thomas, from which text some of these principles, albeit in relation to criminal matters, are drawn.)"

We would add in this case the further principle that the fact that a party has contested the case "does not justify the imposition of a [penalty] more severe than the gravity of the [illegality] will warrant".[1]

Mr DON LAU

23.4 Mitigation advanced

23.4.1 Mr Li QC, on behalf of Mr Don Lau, presented a number of matters which, it was contended, go in mitigation of the penalty to be imposed:

(1) He has described Mr Don Lau's rise from humble beginnings to "the top of the financial world". The history of Mr Don Lau's career is described at paragraphs 13.2 to 13.9 above.

(2) It is pointed out that Mr Don Lau's career and reputation was, before this Inquiry, unblemished. We have had placed before us a number of references from prominent members of the

[1] See Thomas, "Current Sentencing Practice", page 505.

community, including one from a Council Member of the Stock Exchange. They testify that they have always found Mr Don Lau to be someone of "honesty and integrity"; "an extremely professional and able corporate financier"; "an extremely professional, able and responsible merchant banker"; and "totally scrupulous and professional".

(3) Against that background, the act of insider dealing is described by Mr Li as an "isolated act of utter folly and foolishness", a spur of the moment decision. In support of that contention, our attention is drawn to the fact that there existed the opportunity to trade again on inside information after 8th December and before 16th December 1992; an opportunity that Mr Don Lau did not utilise.

(4) The amount gained as a result of the insider dealing by Mr Don Lau is depicted as relatively modest in the context of the "huge killings" sometimes associated with insider dealing.

These facts, it is contended, leave the gravity of the infringement at the low end of the spectrum.

(5) A number of forceful submissions are made about the impact on Mr Don Lau and on his family of this Inquiry and of our findings. He is described by his counsel as "..... a man whose life has been ruined and wrecked; a man who rose from humble beginnings, whose unblemished reputation and record has been destroyed; a man now of few assets who has been rendered unemployable in the financial field and whose employment prospects elsewhere are uncertain; a man who has suffered mentally a great deal already and his family with him." We are asked, in those circumstances, "to seek to do justice with compassion".[1] Our attention is drawn in particular to:

(a) the fact that Mr Don Lau is, in consequence of our findings, no longer employed by Nikko (or indeed, at the moment, by anyone else). The matter goes further than

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[1] See transcript, page 5487.

that because, it is contended, Mr Don Lau is rendered practically unemployable in the "financial field". It is not merely the fact that the regulatory authorities will almost certainly refuse to classify Mr Don Lau as a fit and proper person for the purpose of such statutory registration as is, across a broad field, required in the arena of financial services, but, says Mr Li, it is extremely unlikely that any institution "in the financial field"[1] will be prepared to employ Mr Don Lau, given our findings and the publicity which has attached to these proceedings. That is so, it is suggested, whatever part of the financial sector is, for these purposes, examined; for whatever the sector, requirements of trust and integrity and a desire to preserve an institution's own reputation will militate against employing Mr Don Lau. Added to that are the bleak employment prospects in Hong Kong at the moment, and one is left with a dismal picture. As at the date of our hearing on 20th July 1995, Mr Don Lau remained unemployed and, it was said, with no prospect of employment in sight.

(b) the impact that these proceedings have had on Mr Don Lau's assets, and therefore his ability to meet penalties which we may impose. These proceedings have taken very much longer than was anticipated, and Mr Don Lau's legal costs, the figures for which we have seen, are very substantial indeed, and not all of them have been paid. He has now remaining to his name something in the region of $828,000 in cash and, apart from the matrimonial home, has other assets in the region of $3 million dollars. One of those assets is an investment property in which he has a joint interest with his wife, and which they hope to sell. We are told that his total liabilities are about $3.6 million; leaving net assets of about $280,000. His current monthly commitments are in the region of $122,000. He has a young child, his wife devotes her time to the child, and Mr Don Lau has aged parents whom he supports. His financial plight is the more precarious, it is said, because

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[1] See submissions, at page 5513 of the transcript.

employment prospects are so uncertain. He holds two non-executive directorships in private companies in Hong Kong for which, he says, he receives no remuneration. The companies are owned by a friend. Mr Don Lau is not a director or manager of any listed company.

(c) the embarrassment and considerable mental stress which these proceedings have occasioned to Mr Don Lau and to his family.

23.4.2 These various factors are advanced not only to demonstrate that, from a practical point of view, there is a limit to Mr Don Lau's ability to meet financial penalties, but also to highlight the degree to which these proceedings and the consequences of our findings have already inflicted considerable punishment upon Mr Don Lau.

23.5 Assessment

23.5.1 Mr Don Lau's conduct constituted a serious breach of trust. He occupied a senior and responsible position with a reputable organisation, and came by the relevant information whilst employed as a professional adviser to a party to the take-over negotiations. He abused that trust, and engaged upon underhand conduct in order to gain financially from his position of privilege. Behaviour of that kind, by someone in his position, inevitably damages the reputation of Hong Kong's securities market, particularly so in the case of misbehaviour by an adviser employed by a reputable and renowned institution with a wide client base. Those in such a position who fall foul of those provisions of the Ordinance which are designed to combat insider dealing in this territory must normally expect to bear the full brunt of its penal provisions. We have therefore to strike in this case an appropriate balance that will honour that approach, but which will at the same time accord proper weight to valid factors in mitigation of penalty, which will include consideration of the extent to which the violator of those provisions has already been punished, and of his ability to meet such financial penalties as the Tribunal is minded to impose.

23.5.2 In the SHL Report, the Tribunal stated that the term of a disqualification order was "not easy to determine when the legislation

prescribes a maximum of five years".[1] Cases where large profits have been reaped will normally have that fact reflected in penalties under sections 23(1)(b) and, especially, 23(1)(c). Where there has been a serious breach of trust, as in this case, the insider dealer should expect disqualification at or near the top of the scale. The matter is not a science and much will, of course, depend on the facts and feel of the case.

23.5.3 We accept that the impact of our findings are significantly more serious for someone like Mr Don Lau than for a speculator to whom disqualification from office, and the attitude of prospective employers, does not spell preclusion from the pursuit of a career, and does not result in an uncertain financial future. It is likely that whatever employment Mr Don Lau finds, his earnings are likely to be much lower than the level to which he has been accustomed. We are, however, sceptical about Mr Don Lau's contention that his employment prospects are as bleak as he suggests, and we sense that he has not been open with us in this regard. He has had these proceedings hanging over him for a long time, and it is difficult to believe that he has made no contingency plans for the situation in which he now finds himself. However, we believe that his prospects of employment are bleak in the securities and merchant banking industries, but given his familiarity with the arrangement of financial deals, we do not think that that expertise will lie fallow for too long. We proceed, therefore, on the footing that he will not, for some years at least, find employment in the securities industry, but that he may well find gainful employment elsewhere within the following few months. That said, we are bound to recognise that the loss of employment and the impact on his career which flow from our findings reflect a significant degree of punishment already inflicted.

23.5.4 We pay full attention to the testimonials and the high regard in which Mr Don Lau has been held in the past. The fall which our findings will effect will no doubt be a hard fall. However, in so far as the insider dealing has been depicted as a single act of folly, on the spur of the moment, that may be valid in so far as it describes the act of insider dealing itself. But we are bound to say that Mr Don Lau's conduct in relation to surrounding events does not paint an edifying picture. We have, for example, found that we have not been told the truth about the circumstances surrounding the opening and maintenance of the Lau Wai-man account, and we have rehearsed in

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[1] SHL Report, paragraph 10.13.

considerable detail Mr Don Lau's role in causing Mr Wallace Yuen to lie in December 1992, and his conduct in seeking to ensure that the truth was withheld from the SFC in their investigations. Whilst these matters do not go in aggravation of the penalties we are to impose in relation to the act of insider dealing, they are matters which do no credit to his character. However, we bear in mind the probability that the unsavoury conduct to which we refer was a pit into which Mr Don Lau dug ever deeper because of a realisation that the truth would result in the parlous state in which he now finds himself. That does not lessen the gravity of his behaviour. It merely suggests he might not be given naturally to that sort of conduct.

23.5.5 The fact that Mr Don Lau lied to the SFC and has lied to this Tribunal does not go in aggravation of penalty. It means that there is no demonstrable remorse for which credit can be given.

23.5.6 We fully accept that these proceedings have caused Mr Don Lau very considerable and prolonged stress, and that the prominent publicity which has accompanied them has been a source of much embarrassment to him and to his family. The length of proceedings have far exceeded original estimates, so that Mr Don Lau's legal expenses have accordingly been much greater than he anticipated, and those costs have, we are satisfied, eaten very significantly into his assets. Part of the extended length of this case is a matter in respect of which Mr Don Lau has been the author of his own misfortune. He contested almost every conceivable question of fact. On his account we had, for example, to hear expert evidence about the China factor - whether it constituted relevant information; we had to examine his doomed contention that if it did constitute relevant information, he did not know it; and quite apart from the issues of fact surrounding the opening of the Lau Wai-man account; the events of December 1992; the letter of 5th January; and the events of April 1993, (in respect of all of which issues we found against him), we were presented with the unattractive but important contention that the lies in December 1992 and April 1993 were the brainchildren of Mr Wallace Yuen. These were all issues that were thoroughly examined.

23.5.7 On the other hand, other aspects of the case, not affecting him or affecting him only in part, but extending the length of the hearing, developed in ways that he could not at the outset have foreseen. He has also had to ensure the presence of his lawyers whilst evidence has been given not only by those who were witnesses primarily related to his case, but also when evidence was

adduced from those whose testimony was relevant mainly to the case of the other groups, but which touched upon matters of significance to Mr Don Lau. All that apart, it would not be just to lay entirely at his door the extended length of the case as it affected him (which is not to suggest that his legal representatives acted other than efficiently and with due expedition). It must also be said that the writing of this report took much more time than Mr Don Lau (and this Tribunal) no doubt expected, and anticipated deadlines for completing the first stage of our report were missed more than once. To this extent he must have been occasioned added anxiety whilst waiting for the outcome. Beyond that, we note that some delay was occasioned by the fact that the Tribunal could not begin its work on this case until the SHL Inquiry was completed. So, the case has been hanging over Mr Don Lau's head a long time, and we take that into account.

23.5.8 In relation to the funds available to Mr Don Lau to meet a disgorgement order, a penalty under section 23(1)(c), and expenses pursuant to the provisions of section 27, we note the recurrent monthly commitments which he particularises, amounting to about $122,000 per month, and the amount stated to be his net assets, namely, about $280,000. We note that that figure does not include a sizeable equity in the matrimonial home, a sum in the region of $4.6 million dollars. We have no desire to force a sale of the matrimonial home, but we note that the premises are very large, and that it is an equity of a size which lends itself to the real feasibility of a sizeable loan. We note too that although the investment property, which it is intended to sell, is in the joint names of Mr Don Lau and his wife, the funds for its purchase were provided by Mr Don Lau. We must say that the figure of $122,000 per month is very high, and in any event includes over $33,000 per month as mortgage payments in respect of the investment property.

23.5.9 But for the cogent mitigating factors which present themselves in the case of Mr Don Lau, in particular the loss of employment, the inevitable drop in earnings once fresh employment is found, the ruination of a career, and the significant impact of these proceeding thus far on his assets, we would be minded to penalise him to the full extent permitted by sections 23(1)(b) and 23(1)(c) of the Ordinance.

23.6 The orders in Mr Lau's case

23.6.1 Taking into account those mitigating factors and balancing with them the seriousness of the breach of trust, we make the following orders pursuant to the provisions of section 23 of the Ordinance:

(1) that Mr Don Lau shall not for a period of three years from 1st September 1995 without leave of the High Court, be a director or a liquidator or a receiver or manager of the property of any listed company, or in any way, whether directly or indirectly, be concerned in, or take part in the management of any listed company;

(2) that Mr Don Lau shall pay to the Hong Kong Government on or before the 31st day of December 1995 the sum of HK$389,550; and

(3) that Mr Don Lau shall pay to the Hong Kong Government on or before 30th day of April 1996 the sum of HK$839,036 in addition to the sum referred to at paragraph (2) above.

The figure in paragraph (2) represents the profit gained by Mr Don Lau as a result of the insider dealing.[1] The figure in paragraph (3) represents twice the profit gained by Mr Don Lau and Mdm Pamela Wong as a result of the insider dealing.[1]. We allow substantial time for payment of the financial penalties, because of the present uncertainty about future employment. Our order as to expenses is revealed after paragraph 23.6.3(5) below.

23.6.2 This is a convenient stage at which to draw attention to what we feel is a lacuna in the Tribunal's armoury. In our judgment, there ought to be a power to disqualify an individual identified as an insider dealer from holding office for a specified period in private companies which offer services in particular fields, for example, in companies in the financial services industry.

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[1] Save that cents are omitted from the orders we make.

23.6.3 Expenses

(1) Section 27 of the Ordinance provides that:

> "At the conclusion of an inquiry [or as soon as is reasonably practicable thereafter], the Tribunal may order any person who has been identified as an insider dealer [in a determination under section 16(3) or as an officer of a corporation under section 16(4), as the case may be] to pay to the Government such sums as it thinks fit in respect of the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the purposes of the inquiry."[1]

(2) We adopt the approach to this provision which is explained in Chapter 11 of the SHL Report, in particular:

(a) that the cost of the SFC investigation prior to the institution of this Inquiry is outwith the provisions of section 27;

(b) that the decision whether to compel an insider dealer to pay towards the expenses of an Inquiry is a matter within the Tribunal's discretion;

(c) that section 27 orders should be compensatory in effect, and not punitive; and

(d) that the ability of the insider dealer to pay is highly relevant, and the combined impact of section 27 orders and a section 23 order, should not be disproportionate to the gravity of the infringement.

(3) The Tribunal has carried out an exercise in estimating expenses attributable to the employment of the Chairman, of Members of the Tribunal, of Counsel for the Tribunal; the expense of shorthand reporters, and the cost of an interpreter; and the expenses of the SFC. The exercise sought to estimate what proportion of the expenses were attributable to the case of each group, and the parties have been served with an explanation of

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[1] The passages which we have placed in square parenthesis represent amendments to section 27 of the Ordinance introduced by the Securities (Insider Dealing) (Amendment) Ordinance, which came into effect on 14th July 1995.

the method employed and the breakdown. Expenses attributable to Mr Don Lau have been estimated at about $1.333 million, including expenses of and after the hearing on 20th July 1995.[1]

(4) One of the items of expenditure which was included in the schedules of expenditure which have been sent to the parties was an amount attributed to the expenses of the SFC in direct connection with these proceedings.[2] The total sum was $156,436; and it was proposed to attribute 40% of that sum to Mr Don Lau, and 40% to Mr Leong and Amy Foong. Mr Li has submitted that the intent of section 27 is to cover expenses incurred by the Government, but that the SFC is not part of the Government, and is not funded by the Government. It is self-funding, primarily through a levy on transactions conducted through the Stock Exchange and the Futures Exchange. We have received a number of written submissions about the point since our last sitting. The SFC say that the words of the section are wide, and do not specify that the expenses targetted are only those of the Government; and that the expenses are incurred directly in assisting the Tribunal in its task. They contend that section 27 gives the power to order payment of the expenses of any party, and that there is nothing to prevent the Government from reimbursing the SFC in respect of an order made. We have decided that the expenses which will be covered by our order will not include an amount in respect of the SFC's expenses, because:

(a) We have received information from the Financial Services Branch of Government that indicates that it is unlikely to reimburse the SFC in respect of such portion of an order, if made, that is related to the SFC's expenses. If that is so, an order covering those expenses would be punitive and not compensatory.

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[1] The Tribunal's attention has very recently been drawn to the fact that the figures distributed to parties have omitted the cost of the Tribunal's support staff. The Tribunal has determined that further delay to notify various parties, and receive representations, if any, in relation to this item, is not justified. In the event the item is not included in the estimates.

[2] For example serving orders, carry out inquiries pursuant to statutory authorisations issued by the Tribunal under section 18 of the Ordinance.

(b) We also note that a recent amendment to the Ordinance introduces a section, section 26A, which expressly confers on the Tribunal a power to award to any witness, or to any person whose conduct is the subject of an inquiry, costs incurred by that person in relation to the inquiry. That does not include the SFC, but the introduction of that section does not support the contention that section 27 is not intended to include "the expenses of any party".

Accordingly, this item is not included in the final estimate. We make the observation that this is far from satisfactory. The SFC has provided very significant, necessary, and able support to the effective progress of our inquiries.

(5) In the normal course, we would require expenses to be met in full. In this case, we depart from that course:

(i) because we have regard to the overall impact of the orders under sections 23 and 27;

(ii) to reflect the fact that the estimate of expenses is not precise, and that division of the expenses in this case has been difficult to gauge, not least because this Inquiry has involved several quite separate cases; and

(iii) because the length of the case as it affects Mr Don Lau should not all be laid at his door.

We have determined that a fair order is one which requires a contribution by Mr Don Lau of $700,000 towards the expenses of this Inquiry, and we have made an order accordingly. That sum is to be paid on or before the 31st day of July 1996.

Mr LEONG AND AMY FOONG

23.7 Mitigation advanced

23.7.1 Mitigation advanced by Mr Leong and Amy Foong has been sparse. That in part is due, no doubt, to the fact that they are unrepresented,

and to the fact that such factors as they wish to raise have been reduced to writing (they reside now in Malaysia), and possibly because neither wishes to concede the validity of the Tribunal's findings that they have engaged in inside dealing. Nevertheless, such representations as have been made on their joint behalf by Mr Leong have been made well, and to the point.

23.7.2 They submit that the findings of this Tribunal will have a serious and significant detrimental effect on their "present and future means of livelihood". They say that they have always been employed in the accounting and financial services industry, and that they rely heavily on their qualifications as accountants to earn their living. They contend also that "the likelihood of the loss of employment with Public Bank [in Malaysia] arising from the findings of the Tribunal is high". Apparently, Amy Foong is not at present employed, because of their recent relocation to Malaysia, and the need to settle their daughter in to school there. They add that there is at present no source of livelihood other than Mr Leong's present employment, and a small amount of interest on savings.

23.7.3 Mr Leong's salary is said to be about HK$34,600 per month. There is a house purchased in 1988 for HK$935,500. We are told that there is a loan on the property of about HK$686,000, but we are not told what is its current worth. Mr Leong has cash and shares to the value of HK$181,271, where Amy Foong is said to have cash to the tune of just over HK$2 million, and shares to the value of about HK$194,000. This all represents a significant change in the balance of their assets compared to the position last year when they were in Hong Kong. That fact has been put to Mr Leong, who informs us that there has been a consolidation of his bank account balances with those of his wife.

23.7.4 We intend to send this report to those professional accounting bodies of which Mr Leong and Amy Foong are members, and we will assume for present purposes that disciplinary proceedings will follow.

23.8 Assessment

23.8.1 The infringements of the law were, unlike the case of Mr Don Lau, repeated infringements (although part of the same series of transactions), which infringements also involved on Mr Leong's part a serious breach of trust. In the context of the negotiations for the take-over of PIIL, Mr Leong

found himself in a privileged position, assisting Mr Leong in handling the events on behalf of the controlling shareholder. Mr Leong was, at the time, a director of a Hong Kong public company, related to PIIL. Such conduct also damages Hong Kong's commercial reputation, particularly in the eyes of those who wish to invest in listed companies.

23.8.2 Although the infringements were effected by husband and wife, we are satisfied that both are intelligent, independently minded, and shrewd individuals, and there is no question of Amy Foong simply following the wishes of her husband. But the illegality is more serious in Mr Leong's case than in Amy Foong's, because it was his willingness to abuse the confidences entrusted to him that allowed all else to follow. Their conduct is aggravated by the fact that they drew into their net, in order to facilitate their scheme, a much younger and less sophisticated individual, Miss Chan, whose low earnings and junior position in the same office as Amy Foong must have made the invitation difficult to resist.

23.8.3 There is on the part of Mr Leong and Amy Foong no hint of remorse or shame at their conduct. We derived the clear impression of a couple who thought that they could readily pull the wool over our eyes, and had no compunction in attempting to do so.

23.8.4 We do not accept that the prospect of Mr Leong losing his present job is high. On receipt of this contention, we pressed the matter, asking him whether his employers had been informed of our findings, and whether there existed anything in writing from them. The response was that his employers have been told, and that any decision may take some time. We would expect something more solid than that if employment was at serious risk.

23.8.5 We shall treat Amy Foong's present unemployed state as temporary. She is a career lady, a certified accountant, someone who has worked for most of her married life.

23.8.6 We do not think that an adverse result from such disciplinary proceeds as might follow, will make a serious impact on their earning capacity. Their experience and history is such as to suggest that their skills will continue to be utilised as in-house employees.

23.8.7 We discerned some strain on Amy Foong during the proceedings, but not from a fear of the outcome.

23.8.8 Mr Leong was very economical in the conduct of the case on his own behalf and on behalf of his wife, and although there were many issues which we had to examine in order to determine the facts, it would in the case of the Leong group not be just to place the full extent of the length of the case as it affected them at their door. The expenses estimated as attributable to them both are $1.215 million.

23.8.9 We believe that Mr Leong should be penalised to an extent greater than Amy Foong, because his breach of his privileged position is conduct more blameworthy than was Amy Foong's conduct.

23.8.10 We note the provisions of section 25 of the Ordinance by which we are precluded from imposing penalties under section 23(1)(c) the aggregate of which is greater than three times the profit gained as a result of the insider dealing.

23.8.11 It has not been easy to determine the appropriate level of penalties in the case of Mr Leong and Amy Foong, especially in comparing considerations relevant to their case, and to the case of Mr Don Lau. Although we acknowledge that the cases are separate, and must be dealt with on their merits, some comparison is inevitable. In Mr Don Lau's case we have had particular regard to punishment inflicted so far, notably in the fact of losing a job and career. A disqualification order in his case will have a greater impact than such an order in the case of Mr Leong and Amy Foong. On the other hand, we view Mr Don Lau's breach of trust as more serious than that of Mr Leong. Mr Leong's present assets are more liquid than Mr Don Lau's, but that should not obscure the realisable value of Mr Don Lau's assets. We believe that the earning capacity of Mr Leong and Amy Foong in Malaysia is lower than Mr Don Lau's, although we have of course carried in mind the present uncertainty about Mr Don Lau's employment prospects. We bear in mind, also, in the case of Mr Leong and Amy Foong, that although they are strong minded individuals, each of whom was wholly willing to engage in the insider dealing scheme, they are husband and wife, and orders under sections 23(1)(b) and 23(1)(c) will impact on their joint assets. We were at first minded to make orders under section 23(1)(c) which in combination penalised them to the extent of three times the overall profit, but taking into account the various

circumstances we have here rehearsed, and the totality of the sums which under sections 23(1)(b) and 23(1)(c) would be payable, we have concluded that such a course would be too harsh.

23.9 The orders in the case of Mr Leong and Amy Foong

23.9.1 We make the following orders pursuant to sections 23 and 27 of the Ordinance:

(1) that Mr Leong shall not for a period of four years from 1st September 1995 without leave of the High Court, be a director or a liquidator or a receiver or manager of the property of any listed company, or in any way, whether directly or indirectly, be concerned in, or take part in the management of any listed company;

(2) that Amy Foong shall not for a period of four years from 1st September 1995 without leave of the High Court, be a director or a liquidator or a receiver or manager of the property of any listed company, or in any way, whether directly or indirectly, be concerned in, or take part in the management of any listed company;

(3) that Mr Leong and Amy Foong shall each pay to the Hong Kong Government on or before the 30th day of September 1995 the sum of $193,670;

(4) that Mr Leong shall pay to the Hong Kong Government on or before the 30th day of November 1995 the further sum of $728,445;

(5) that Amy Foong shall pay to the Hong Kong Government on or before the 30th day of November 1995 the further sum of $242,815; and

(6) that Mr Leong and Amy Foong shall each pay to the Hong Kong Government the further sum of $300,000 on or before the 31st day of January 1996.

23.9.2 • The sum in paragraph (3) above is the profit gained by each as a result of their insider trading.[1] The order is made pursuant to the provisions of section 23(1)(b).

• The sum in paragraph (4) is one and a half times the amount of profit gained by Mr Leong, Amy Foong and Miss Chan as a result of the insider dealing; and the sum in paragraph (5) is an amount equal to half the profit thus gained.[1] These orders are made pursuant to the provisions of section 23(1)(c) of the Ordinance.

• The order in paragraph (6) is made pursuant to the provisions of section 27 of the Ordinance.

23.9.3 We have decided that the orders we make shall be produced to the Registrar of the Supreme Court, pursuant to the provisions of the Securities (Insider Dealing) (Registration of Orders) Rules, so that those orders will be registered in the High Court under section 29 of the Ordinance.

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[1] Save that cents are omitted from the orders we make.

CHAPTER 24

ACKNOWLEDGEMENTS

24.1 This has been a long and difficult inquiry, and the Tribunal has been fortunate in the assistance which it has received.

24.2 We are much indebted to all counsel for their assistance and hard work. Those who venture to read this report will discern the numerous points of law which have had to be considered, and counsel for the parties have been industrious and helpful in their presentation of arguments.

24.3 The Tribunal has, by the nature of these proceedings, had much contact with counsel for the Tribunal, Mr Harris and Miss Amy Chan. Their task, in the setting of our inquisitorial role, goes well beyond that normally assigned to the advocate. They have not only presented material and examined a large number of witnesses in public hearings, but in a case in which the Tribunal has conducted much investigation of its own, they have attended to its many requirements, and in doing so have frequently worked extended hours behind the scenes, and we are most grateful for their assistance.

24.4 The SFC has had to bear the burden of a very big task. It was asked by the Tribunal to carry out much investigative work pursuant to authorisations under section 18 of the Ordinance, a function executed with a high degree of professionalism. Its staff have produced at our request excellent aids to our task, such as schedules and tables. We are particularly grateful to Mr Leslie Wong (Manager, Enforcement Division of the SFC) who has assisted counsel for the Tribunal on a day to day basis, and who has worked unstintingly and with very considerable efficiency to respond to our frequent requirements.

24.5 We have received outstanding support from the support services available to the Tribunal. The Secretary to the Tribunal, Mr David Cheng has excellently managed the administrative side of the Inquiry with his usual efficiency and drive. The Chairman's secretary, Miss Betsy Mak has worked very long hours indeed and has, as always, produced work of outstanding quality. Miss Tammy Tam, our office assistant, has also performed sterling and hard work, and has been an indispensable source of practical assistance.

The Honourable Mr Justice Stock
Chairman

Professor Richard Ho Yan-ki, Ph D
Member

Mr Duffy Wong Chun-nam, FCIS, ATIHK, ACI Arb,
FCS, Solicitor & Notary Public

Member

5th August 1995