

**REPORT OF THE
INSIDER DEALING TRIBUNAL
OF HONG KONG**

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

ASIA ORIENT HOLDINGS LIMITED

between

14 & 20 September 1999 (inclusive)

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 15 May 2003, The Hon. Antony Leung, the then Financial Secretary of the Hong Kong Special Administrative Region, requested the Insider Dealing Tribunal to conduct an inquiry. The notice reads as follows:

***“Notice under Section 16(2) of the
Securities (Insider Dealing) Ordinance, Cap. 395***

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Asia Orient Holdings Limited, (“the company”), has taken place, or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and to determine:

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of Lau Luen Hung Thomas during the period from 14 to 20 September 1999 (both dates inclusive);*

(b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and

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

In compliance with the notice, the Insider Dealing Tribunal, comprising of Deputy High Court Judge John Saunders as Chairman and Mr. Nigel Bacon and Mr. Pang Hon Chung, as members, heard evidence and submissions from counsel for a total of 18 days, between 5 June 2006 and 6 July 2006.

We now have pleasure in submitting the report on our findings in relation to questions (a) and (b) of that notice. Our report in relation to question (c) will be submitted at a later date.



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

**Section 16(2) of the
Securities (Insider Dealing) Ordinance Cap. 395**

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Asia Orient Holdings Limited, ("the company"), has taken place or may have taken place, the Tribunal is hereby required to inquire into and determine:

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of Lau Luen Hung Thomas during the period from 14 to 20 September 1999 (both dates inclusive);
- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated this 15th day of May, 2003.

(Antony Leung)
Financial Secretary

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Chapter 1

Background¹

1. In March 1999, Asia Orient Holdings Limited, (AOH), was a publicly listed company on the Stock Exchange of Hong Kong, (SEHK). The company, which was not particularly profitable, was primarily engaged in the property sector.
2. China INFOBANK Limited, (CIL), was a private company incorporated in Hong Kong in February 1993. It had, since inception, been engaged particularly in the gathering and collecting of information relating to China news and business, and storing and supplying that information from a database to customers and subscribers.
3. Swarkin Assets Limited, (Swarkin), was jointly owned, as to 50% each, by Thomas Lau Luen Hung, (Mr Lau), and Tjia Boen Sien, (Mr Tjia), the Deputy Chairman and Managing Director of Deson Development International Holdings Limited, (Deson). At all material times Mr Lau and Mr Tjia were the only directors of Swarkin. Swarkin held 42.5% of the shares in CIL. The other shareholders in CIL were Special Link Technology Limited, (Special Link) as to 22.5%, Mr Peter Kwan Pak Ming, (Mr Kwan), as to 17%, Mr Wilson Cho Kar Cheong, (Mr Cho), as to 15%, and Ellen Kong Yee Ching, (Ms Kong), as to 3%. Mr Lau was Chairman of directors of CIL, and Mr Tjia was the Vice Chairman.
4. On 14 September 1999, the share price of AOH recorded an increase of 4.05% after a public announcement that it had entered into discussions with an independent party in relation to a possible investment in an internet-related company.
5. Trading in AOH shares was suspended on Wednesday 22 September 1999, and on that day a press conference was held in which it was announced that a wholly owned subsidiary of AOH, Jetcom, had entered into a share swap agreement, as a result of which AOH, through Jetcom, acquired a 40% interest in CIL.

¹ Throughout this Report, the expression "TB" will be used to refer to the bundles of statements and documents produced to the Tribunal by the Securities and Futures Commission, (SFC), and supplied to all parties.

6. The shares acquired by AOH in CIL came primarily from Swarkin. By virtue of the share swap agreement the shareholding of Swarkin in CIL was reduced to 14%. The shareholding of Special Link was reduced to 18%, that of Mr Kwan to 13.6%, that of Mr Cho to 12%, and that of Ms Kong to 2.4%.

7. When share trading in AOH reopened, following the lifting of the suspension, on 23 September 1999, the share price rose sharply from a close of \$0.93 on 21 September 1999, by 40.86%, to close at \$1.31, with an intraday high of \$1.34.

8. An investigation by the Securities and Futures Commission, (SFC), established that discussions as to an investment by AOH, in CIL, had begun on the late afternoon of 13 September 1999, at a meeting between Mr Tjia and Mr Richard Poon Jing, (Mr Poon), Managing Director of AOH. Following that meeting Mr Tjia telephoned Mr Lau and informed him of the discussions.

9. The investigation established that between 14 September 1999, and 20 September 1999, Mr Lau, a director of Swarkin, and through that company, effectively a shareholder in CIL, had purchased 42,134,000 AOH shares, and sold 15,770,000 shares, a net acquisition of 26,364,000 shares in AOH. The acquisitions and sales were made at prices ranging from \$0.77 on 14 September 1999, and \$0.90 on 20 September 1999.

10. Following the investigation by the SFC and a report to the Financial Secretary, a Notice was issued to a Chairman of the Insider Dealing Tribunal pursuant to s 16(2) Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance). That notice appears at (iii) of this Report. Mr Lau was the only person named in the notice.

Chapter 2

Procedure

11. In this Chapter we set out, in brief, the history of this Tribunal's establishment following its receipt of the s 16(2) Notice from the Financial Secretary, (the Notice), and the steps taken by the Tribunal for the purposes of its conduct of the inquiry undertaken by it into the matters required by its terms of reference.

The Tribunal's Terms of Reference:

12. The Tribunal's Terms of Reference are governed by the Notice, dated 15 May 2003, sent to the then Chairman, Mr Justice Lugar-Mawson, by the Financial Secretary, pursuant to the provisions of s 16(2) of the Ordinance. The Notice instituted the present inquiry and required the Tribunal to inquire into suspected insider dealing by the persons named in the Notice.

The appointment of members and counsel assisting:

13. The Chairman of the Tribunal subsequently received a synopsis of the background facts and evidence which were relevant to the subject matter of the inquiry, and a list of companies and persons who were connected with the subject matter of the inquiry.

14. Following that, two lay members were appointed, by the Financial Secretary, to the Tribunal on 19 April 2004. Those members were Mr Nigel Bacon, a Solicitor, and a partner in Kennedys, Solicitors, of Hong Kong, and Mr Ng Kwok Wai, Eric, a Certified Public Accountant and principal of Eric Ng C.P.A. Limited, Chartered Accountants of Hong Kong.

15. On 17 August 2004, the Tribunal appointed Mr Herbert Li Kam Yiu, Senior Government Counsel of the Department of Justice, as counsel assisting the Tribunal.

16. In October 2004, in view of his impending retirement, Mr Justice Lugar-Mawson, the then Chairman of the Tribunal, notified the

Chief Executive that it was undesirable that he should continue to exercise his functions in relation to the Inquiry. On 30 October 2004, acting pursuant to Cl 8 of Schedule to the Ordinance, the Chief Executive of the Hong Kong Special Administrative Region, duly appointed His Honour Judge John Saunders, a Deputy Judge of the Court of First Instance of the High Court, to be temporary Chairman of the Tribunal.

17. For the purpose of the substantive hearing, on 18 January 2005, Tribunal appointed Mr Andrew Bruce SC, Barrister-at-Law, of the Hong Kong Bar, as Leading Counsel assisting the Tribunal. On 22 May 2006, Ms Kennis Tai, Barrister-at-Law, of the Hong Kong Bar, was appointed to assist Mr Bruce.

The service of Salmon letters:

18. Following the appointment of counsel, the Tribunal was provided with the various witness statements, the documentary evidence, exhibits and records of interviews which were to form the part of the evidence before the Tribunal. From that material, and following a meeting with counsel assisting, the Tribunal determined that one person only, Mr Lau, should be treated as implicated in the Inquiry.

19. Mr Lau was subsequently served with a Salmon letter² informing him that he was to be regarded as an implicated party in the Inquiry. Shortly thereafter all statements, documentary evidence, exhibits and records of interviews which had earlier been served on the Tribunal were served on Mr Lau, together with other documents such as the synopsis of the case which had earlier been provided to the Tribunal.

20. The Salmon letter specified a date for a preliminary hearing of matters germane to the Inquiry. That preliminary hearing took place on 28 February 2005.

21. At that preliminary hearing an issue was raised by Mr Lau as to the appointment of Mr Ng, as a member of the Tribunal. As a result of the matters raised, on 1 March 2005, Mr Ng notified the Chief Executive of his resignation from the Tribunal. Thereafter, on 1 April 2005, the Chief Executive, acting pursuant to Cl 8 of the Schedule to the Ordinance,

² Salmon letters are so named after Lord Salmon who first suggested this procedure as being appropriate for the notification of persons whose interests may be affected by the findings of a Tribunal of Inquiry.

appointed Mr Pang Hon Chung, Director of Finance and General Manager of Lotus International Limited, to be a temporary member of the Tribunal to act in place of Mr Ng.

22. The preliminary hearing resumed on Thursday 14 April 2005, at which time counsel for Mr Lau indicated that a challenge to the constitutionality of the Tribunal was to be made. That matter came before the Tribunal on Monday 25 July 2005. On that occasion Mr Lau was represented by Mr Gerard McCoy SC, with Mr Kevin Patterson of counsel. Leave was given to Mr Ronny Tong SC, with Mr Abraham Chan, to appear for the Financial Secretary. Mr Bruce SC, and Mr Herbert Li, appeared as counsel for the Tribunal.

23. Argument on the matters raised took place on 25, 26 and 27 July 2005. The decision on the constitutional points raised was handed down by the Tribunal on Thursday 11 August 2005. That decision rejected the complaints raised by Mr Lau.

24. The preliminary hearing resumed on Thursday 18 August 2005. On that day Mr McCoy indicated to the Tribunal that it was intended to challenge the Tribunal's ruling by way of Judicial Review in the Court of First Instance of the High Court of the Special Administrative Region of Hong Kong. Consequently the preliminary hearing was adjourned to Friday 13 January 2006. On that date the Tribunal was informed that the application for Judicial Review had been dismissed but that Mr Lau still wished to consider his position in that respect. The preliminary hearing was further adjourned to Friday 3 February 2006.

25. On that day Mr Sit, solicitor to Mr Lau, informed the Tribunal that Mr Lau did not wish to take the matter any further in the High Court, and wished to have the substantive hearing commence. That substantive hearing was duly set to commence on Monday 5 June 2006.

The substantive hearing:

26. The substantive hearing duly began on Monday 5 June 2006. On that day Mr Lau appeared by his counsel, Mr John Griffiths SC, QC, CMG, Mr Eric Kwok SC, and Mr Kevin Patterson. Mr Lau elected, as was his right, not to attend every sitting day of the hearing, but to attend, only as required, when called by counsel for the Tribunal. The Tribunal

recognised that Mr Lau was not required to be present and drew no adverse inference against him from his absence during the hearings.

27. Over 18 days of sitting, a total of 18 oral witnesses were called by counsel to the Tribunal. Those witnesses were (TW – Tribunal Witness), (LW – Mr Lau’s witness):

Name	General relevance to the inquiry
TW 1 (Day 2 & 3)	Mr Tjia Boen Sien, (“Mr Tjia”) Deputy Chairman and Managing Director of Deson. Director and shareholder of Swarkin, Director and shareholder of CIL in September 1999. He and Mr Lau held shares of CIL in the name of Swarkin. He promoted the business of CIL to Mr Poon and involved in the negotiations with Mr Poon leading to the acquisition of 40% interest in CIL through Swarkin by AOH in September 1999.
TW 2 (Day 3)	Mr Richard Poon Jing, (“Mr Poon”) Managing Director and shareholder of AOH in September 1999. Involved in the negotiations with Mr Tjia leading to the acquisition of 40% interest of CIL through Swarkin by AOH in September 1999.
TW 3 (Day 4)	Ms Amy Chan Chor Ling, (“Ms Amy Chan”) Worked as a free-lance, part-time consultant for Mr Tjia in relation to the acquisition of interest of CIL by AOH in September 1999.
TW 4 (Day 4 & 5)	Mr Peter Kwan Pak Ming, (“Mr Kwan”) Executive Vice-President and shareholder of CIL. Gave evidence as to the day-to-day operation of CIL, and the presentation on CIL given to AOH on 14 September 1999.
TW 5 (Day 5, 6 & 7)	Mr Ricky Lun Pui Kan, (“Mr Lun”) Financial Controller of AOH. Gave evidence as to the legal documents and due diligence in relation to the acquisition of interest of CIL by AOH.
TW 6 (Day 8)	Mr Clement Fung Siu To, (“Mr Fung”) Chairman of AOH in September 1999.

Name		General relevance to the inquiry
TW 7 (Day 8)	Mr Lim Yin Cheng, ("Mr Lim")	Deputy Chairman of AOH. Gave evidence as to the evaluation report on the acquisition of interest of CIL by AOH.
TW 8 (Day 8)	Mr Jimmy Wong Ka Fu, ("Mr Jimmy Wong")	Founder and President and shareholder of CIL. Gave evidence as to the day-to-day operation of CIL.
TW 9 (Day 9)	Ms May Li Ngan Mei, ("Ms Li")	Administrative Manager to Mr Tjia of Deson in September 1999.
TW 10 (Day 9)	Ms Stella Chan Mei Gwan, ("Ms Chan")	Mr Ricky Lun's secretary in September 1999.
TW 11 (Day 9)	Ms Cecily Tse Sau Chun, ("Ms Tse")	Mr Richard Poon's secretary in September 1999.
TW 12 (Day 9)	Mr Johnny Wong Siu Chow, ("Mr Johnny Wong")	Mr Wong Kong Ho's son. Dealing Director of Fair Eagle Securities Co Ltd through which Mr Thomas Lau traded in AOH securities in September 1999.
TW 13 (Day 9)	Mr Wong Kwong Ho, ("Mr Wong Snr")	Dealing Director of Fair Eagle Securities Co Ltd in September 1999.
TW 14 (Day 10)	Ms Rosita Yau Mun Yee, ("Ms Yau")	Personal Assistant to Mr Thomas Lau in September 1999.
TW 15 (Day 10)	Ms Renee Chiu Yuk Ching, ("Ms Chiu")	Company Secretary of AOH in September 1999.
TW 16 (Day 11, 12, 13 & 16)	Mr Eric Cheng Kai Sum, ("Mr. Cheng")	Senior Director of the Surveillance Department in the Enforcement Division of the SFC. Expert Witness as to the price sensitivity of the information concerning the acquisition of interest of CIL by AOH, presented as a witness by counsel assisting the Tribunal.

Name		General relevance to the inquiry
TW 17 (Day 14 & 15)	Mr. Thomas Lau Luen Hung, ("Mr Lau")	Implicated party.
LW 1 (Day 16)	Mr. Richard Arthur Witts ("Mr Witts")	Expert Witness in the same terms as TW16 called by Mr. Lau.

28. Each of the oral witnesses, including Mr Lau and Mr Witts, were open to questioning by counsel assisting, and by counsel for Mr Lau.

Tribunal procedure:

29. Prior to the issue of Salmon letters the Tribunal had consulted its counsel privately, in the absence of the parties, in order to determine to whom Salmon letters should be issued, and as to procedural matters. Once the substantive hearing commenced there were no further private meetings between counsel assisting and the Tribunal. All matters of a "housekeeping" nature were dealt with in open court.

30. The substantive hearing was conducted on an inquisitorial basis. That meant the Tribunal was itself responsible for the evidence that was called before it, though in this regard it had, prior to the commencement of the substantive hearing, sought the advice of counsel assisting, and duly considered any application for the calling of a witness by counsel for the implicated party.

31. At the conclusion of the evidence submissions were made by counsel assisting the Tribunal and by counsel representing Mr Lau.

32. Following submissions the Tribunal retired to consider its findings in respect of paragraphs (a) and (b) of the Terms of Reference as contained in the s 16(2) Notice, with a view to preparing this report.

Chapter 3

The law

33. The law applied by the Tribunal is set out hereunder so far as the general statutory provisions and fundamental principles of law which related to the Inquiry are concerned. More particular and specific aspects of law applied by the Tribunal will be dealt with, where appropriate, in the context in which they arise in later chapters.

“Insider Dealing” and “connected persons”:

34. The circumstances in which insider dealing in relation to a listed corporation takes place are set out in s 9 of the Ordinance. In this Inquiry the listed corporation with which the Tribunal was concerned was AOH.

35. In the context of this Inquiry the Tribunal has had regard, first, to the provisions of s 4 of the Ordinance in which a person connected with the corporation is defined in the following way, (words irrelevant to the present Inquiry had been omitted):

“(1) A person is connected with a corporation for the purposes of section 9 if, being an individual-

- (a) he is a director or employee of that corporation or a related corporation;
- (b) he is a substantial shareholder in the corporation or a related corporation;

.....

- (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....

- (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.”

The question as to whether Mr Lau received information from a “connected person”, and the analysis of that definition, will be undertaken in Chapter 9 below.

36. Second, the Tribunal has had regard to the following provisions of s 9, (words irrelevant to the present Inquiry had been omitted):

“(1) Insider dealing in relation to a listed corporation takes place

- (a) when a person connected with that 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....;

.....

- (e) when a person who has information which he knows is relevant information in relation to that 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 counsels or procures another person to deal in those listed securities”

Dealing in listed securities:

37. What is “dealing in listed securities” is defined by s 6 of the Ordinance as follows:

“For the purposes of this Ordinance, a person deals in securities if (whether as principal or agent) he buys, sells,..... any securities...”

It was not suggested by any counsel, or by any unrepresented party, that the transactions scrutinised by the Tribunal did not constitute “dealing in listed securities” as defined by the Ordinance.

Relevant information:

38. The essence of case presented to us was that information that AOH was interested in, and in discussion with CIL, as to acquiring a position in CIL, constituted “relevant information”. The case presented to us was that Mr Lau was in receipt of “relevant information” on the evening of 13 September 1999. What constitutes “relevant information” is defined by s 8 of the Ordinance. It was submitted by Mr Griffiths, on behalf of Mr Lau, that the evidence did not establish that, at any of the relevant points in time, Mr Lau was in possession of relevant information. Central to Mr Griffiths’ submission was an argument that no relevant information existed that could have been available to Mr Lau, prior to 20 September 1999, the last date upon which Mr Lau made purchases of shares in AOH.

39. What constitutes “relevant information”, and whether or not it existed in this case is, in any Insider Dealing Inquiry, a significant matter, and will be considered, as to the law, in Chapter 4, and as to the factual circumstances, in Chapter 11 of this Report.

General Principles of Law:

Standard of Proof:

40. A submission was made to the Tribunal by Mr Griffiths that the standard of proof to be adopted by the Tribunal ought to be the criminal standard of proof, namely proof beyond reasonable doubt. The basis of the

submission was that insider dealing inquiries were criminal proceedings, and consequently that standard should be adopted. The issue being a question of law, it was a matter for decision by the Chairman alone: see Securities (Insider Dealing) Ordinance, Schedule 1, Cl 13, Cap 395.

41. Having given the matter due consideration, the Chairman directed the Tribunal that the appropriate standard of proof was not the criminal standard, but the civil standard, as adopted by tribunals in the past.

42. The Chairman took the view that the law must be considered as at the date of the alleged insider dealing, namely 14 to 20 September 1999.

43. We accept the submission made, that the consequence of Article 39 of the Basic Law is to incorporate into Hong Kong law, as a matter of constitutional law, the International Covenant on Civil and Political Rights (ICCPR). It is clear that by virtue of article 14 ICCPR, in the determination of a criminal charge, a person is entitled to certain rights. One of those basic rights, in criminal proceedings, is that the facts upon which the prosecution rely in order to achieve a conviction must be proved beyond reasonable doubt.

44. The submission made requires us to consider whether the proceedings before the Tribunal are criminal or civil proceedings. In numerous previous decisions of the Tribunal the proceedings have been held to be civil proceedings.

45. Three criteria are used by the European Court to determine whether proceedings are “criminal” or “civil” proceedings. They are:

- (i) the classification of the proceedings in the applicable national domestic law;
- (ii) the nature of the subject matter of the proceedings;
- (iii) the severity of the potential penalty.

46. The domestic law of Hong Kong does not specifically classify insider dealing as a civil or criminal matter. In any event such a

classification is merely a starting point: see *Engles v Netherlands* (1976) 1 EHRR 647.

47. All of the Hong Kong cases recognise that the subject matter of the proceedings, insider dealing, is criminal in nature: see e.g. Sears J in *Dato Tan Leong Min v Insider Dealing Tribunal* [1998] 1 HKLRD 630 at 632, and Rogers VP in *Wong Sun v Insider Dealing Tribunal* [2000] 4 HKC 557 AT 571.

48. It must be accepted that the penalties that may be imposed by an Insider Dealing Tribunal may be severe. It is not unusual in insider dealing for very substantial sums of profit to be made or loss avoided. The Tribunal may impose a penalty not exceeding three times the profit gained or the loss avoided as a result of insider dealing: see s 23(1)(c).

49. Against these factors it must be noted that evidence given by a person in an Insider Dealing Tribunal Inquiry may not be used in civil or criminal proceedings against that person: see s 19, (there is an exception for perjury in respect of answers given in the Inquiry). That is a protection which is available to a person giving evidence to an Insider Dealing Tribunal inquiry, that is not available to a person giving evidence in criminal proceedings.

50. Further, while the subject matter of the proceedings involves an inquiry into conduct, and a determination upon that conduct, the law does not provide that the conduct proscribed is criminal conduct. In *Wong Sun*, at 571G, Rogers VP noted that the legislation made an effort to try and avoid reference to the proceedings being criminal proceedings. In *Dato Tan Leong Min v Insider Dealing Tribunal* [1999] 2 HKC 83 at 101D, Godfrey J. noted specifically that the legislature in Hong Kong had not made insider dealing a criminal offence.

51. In the Tribunal's view, notwithstanding the fact that proceedings before the Tribunal are criminal in nature, the deliberate decision of the Hong Kong legislature not to make insider dealing a criminal offence, at the relevant time, is a strong indication to the Tribunal that the legislature did not intend the Tribunal to impose the high criminal standard of proof in its proceedings. That view is reinforced by the protection given to witnesses giving evidence before the Tribunal.

52. In two decisions in Hong Kong, one from the Court of First Instance, and one from the Court of Appeal, both dealing with circumstances prior to 1 April 2003, the courts have ruled that the appropriate standard of proof is the civil standard as previously adopted by the Insider Dealing Tribunal. Those decisions are *R v Securities and Futures commission, ex parte Lee Kwok-hung* (1993) 3 HKPLR 1, and *Ex parte Lee Kwok-hung* [1993] 2 HKLR 51 CA. Like McMahon J. in the Report of the Insider Dealing Tribunal in the *Easy Concepts International Holdings Limited Inquiry*³, the Chairman considered that the Tribunal is bound by those decisions. It is right that the matter was not specifically argued in the Court of Appeal, but the court appears to have proceeded on the basis of the matter was clear.

53. In respect of behaviour alleged to be insider dealing since 1 April 2003, the Ordinance has been repealed, and replaced by Part XIII of the Securities in Futures Ordinance Cap 571. This provides for the establishment of a Market Misconduct Tribunal, (MMT). It also provides for the criminalisation of insider dealing, at the same time allowing for the examination of alleged insider dealing by the MMT. It is significant to note that the civil regime is retained for proceedings before the MMT. In particular s 252(7) provides that the standard of proof required to determine any question in issue before the MMT shall be the standard of proof applicable in civil proceedings in court of law. That standard is the balance of probabilities, the present standard applied by this Tribunal.

54. That the legislature should specifically provide the proceedings before the MMT are to be conducted according to the standard of proof required in civil proceedings, in our view, tends to indicate that that was the appropriate standard of proof in Insider Dealing Tribunal proceedings.

55. Insider dealing, like corruption, is notoriously difficult to prosecute because often the evidence required to establish the wrongful act, is known only to those involved in the behaviour. By retaining the civil standard of proof for proceedings before the MMT, but requiring the criminal standard of proof in a prosecution, the legislature makes it clear that notwithstanding the consequences of a finding of insider dealing, and the fact that a person may be disqualified from acting as a director of the company, there will be circumstances where a lesser standard of proof will be sufficient.

³ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Easy Concepts International Holdings Limited, dated 19 January 2006, pp 185-191.

56. Mr Griffiths referred to the decision in *Han & Anor v Customs & Excise Commissioners* [2001] 1 WLR 2253. In considering that decision, it is important to remember that the dual system of civil and criminal procedure for tax matters was not accompanied by a deliberate statement by the legislature that different standards of proof apply to the two different systems of procedure.

57. Submissions were addressed to us based upon the minority view of the standard of proof required to be taken in solicitors disciplinary proceedings, as expressed in *A Solicitor v The Law Society of Hong Kong* CACV 107/2005, judgement 7 July 2006. We are not persuaded that we should depart from the view of the majority, that the appropriate standard of proof in disciplinary proceedings is that of a high degree of probability. That is the standard of proof that has been adopted in Insider Dealing Tribunals in Hong Kong for many years now. We are not persuaded that the European jurisprudence should require a change now.

58. For these reasons, the Chairman directed the Tribunal as to the standard of proof in his view properly applicable to findings of insider dealing under the Ordinance. That standard of proof is proof to a high degree of probability. It is a genuinely high standard of proof and reflects the serious nature of a finding of insider dealing made against an implicated person. It is the standard appropriate to the matters at issue in this Inquiry. It is the same standard which has been adopted in previous inquiries.

59. It is appropriate that we should record the comments of the Tribunal in the *Hong Kong Parkview Group Limited Inquiry*⁴, to remind ourselves of that standard. There the Tribunal said:

“The standard of proof should be simply stated and remain the same throughout. It is a high standard of proof - not the highest reserved for criminal allegations - but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the higher the standard should be. The standard is at all times high. ‘A high degree of probability’ refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy”

⁴ Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Hong Kong Parkview Group Limited, dated 5 March 1997, p 19.

Good character:

60. As in past inquiries, the Tribunal took into account good character. Mr Lau had no criminal convictions recorded against his name. There was no evidence of him ever being condemned by any professional or disciplinary body. Due weight was given to these facts, i.e. that good character enhanced his credibility as a witness and rendered him of a lesser propensity to commit unlawful acts.

Considerations of Fact & Law:

61. So far as all questions of law which arose during the course of the Inquiry were concerned, the members were directed by and complied with the directions given by the Chairman. Statements within this Report that the Tribunal took a particular view of the law should be read in that light.

62. So far as the Tribunal's findings of fact were concerned, the Tribunal proceeded on the basis that it should strive to be unanimous in such findings, but that otherwise a finding of fact could be on the basis of a decision of a majority of the members.

63. The two lay members of the Tribunal had considerable experience in the operation of listed companies and of the Hong Kong financial markets. The Chairman directed the lay members in terms of the comments of Lord Widgery CJ in *Wetherall v Harrison* [1976] QB 773 at :

“So I start with the proposition that it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to draw on that special knowledge in interpretation of the evidence which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt.”

64. Accordingly, the lay members were aware that they should not provide themselves or the Tribunal with “evidence” from their own

knowledge of the defence, procedures, or other matters germane to these proceedings, but that they were to restrict the use of their professional experience and knowledge only to assessing the evidence actually presented to the Tribunal.

65. There was little dispute about the facts in this Inquiry. Most were largely established by the relevant documentation available to the Tribunal. The facts, as they are stated in this Report, are the facts found by the Tribunal. Where there is a dispute as to the facts we will indicate the parameters of the dispute and the relevant evidence.

Inferences:

66. There was little dispute as to the fundamental facts surrounding the allegations against Mr Lau. The real issue with which the Tribunal had to grapple was the inferences to be drawn from the established facts.

67. All findings of fact were based upon the evidence presented before the Tribunal. The Tribunal warned itself not to base any part of its findings on speculation or guesswork.

68. Following the completion of the evidence, in the course of considering that evidence, it was necessary from time to time, for the Tribunal, when determining an issue, to consider whether it was appropriate to draw an inference from the established facts. The Tribunal warned itself that it may not base its findings on conjecture or speculation, no matter how 'educated' or 'informed' that conjecture or speculation may be.

69. An inference may, of course, be drawn from evidence provided that the evidence consists of primary facts which have been admitted or proved to a high degree of probability and the inference was a compelling one and was the only reasonable inference which could be drawn from those primary facts.

The statements and records of interview of the implicated person and other witnesses:

70. The previous statements of witnesses and that of Mr Lau, made to SFC investigators in the form of formal records of interview, or memoranda of interview, as well as any written statements produced to the Tribunal, were accepted as evidence by us in addition to any oral evidence given by the witnesses and Mr Lau. What weight we attached to the contents of the previous statements or record of interview varied in the circumstances of the particular statement. How soon after the event it was made and whether it was an admission against interest or exculpatory were matters we took into account.

71. In admitting such evidence before us we were doing so in accordance with the provisions of s 17(a) of the Ordinance which, where relevant, are as follows:

“The Tribunal may, for the purpose of an inquiry under this Ordinance –

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;”

72. In dealing with the evidence of the expert witness called by counsel for the Tribunal, Mr Cheng, we bore in mind his expertise, but reminded ourselves that, as with any other witness, we could accept or reject all or part of his evidence. His evidence was considered by us in the context of the other evidence in the case. Further, in assessing Mr Cheng’s evidence we bore in mind that while he held appropriate qualifications to enable him to express an opinion, he was an employee of the SFC, the body that was instrumental in bringing the proceedings before us. In relation to Mr Witts, again we bore in mind his considerable expertise, and we noted that while an independent expert, he was employed by Mr Lau’s advisors.

Chapter 4

Relevant information

73. Insider dealing can only take place on the basis of relevant information as defined by s 8 of the Ordinance. If the subject information falls short of being relevant information is then there has been no insider dealing. The case advanced by counsel assisting was that, put at its lowest, the fact that AOH was in discussion with CIL, was “relevant information”, as defined by the Ordinance. Before we consider the factual circumstances as to these submissions, we consider the law as to “relevant information”.

74. Section 8 of the Ordinance defines “relevant information” as follows:

“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.”

75. There are therefore three elements comprised in the concept of “relevant information” as that expression is used in the Ordinance. They are:

First, the information about the particular corporation must be specific.

Second, the information must not be generally known to that segment of the market which does or which would likely deal in AOH shares; and

Third, the information would, if so known be likely to have a material effect on the price of AOH shares. Information of this type has been described as “price sensitive” information.

Specific Information:

76. What may or may not amount to specific information will depend always on the particular factual circumstances of a case. We will consider the particular factual circumstances of this case in Chapters 6-9.

77. There have been a number of approaches to, and attempts at, determining what is required of information before it is “specific” for the purposes of s 8 of the Ordinance. For the purpose of this Inquiry we adopt the test used by the Tribunal in *Firststone International Holdings Limited Inquiry*⁵, and adopted by the Tribunal in both the *Chinese Estates Holdings Limited Inquiry*⁶, and the *Chinney Alliance Group Limited Inquiry*⁷. That test is in the following terms:

“We have directed ourselves that information concerning a company’s affairs is sufficiently specific if it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently described and understood.”

78. We accept that specific information is to be contrasted with mere rumour, vague hopes and worries, and with unsubstantiated conjecture⁸.

79. For information to be characterised as “specific information”, there is no requirement that the information should be precise⁹. As was said by an earlier Tribunal¹⁰:

“Information is not rendered general, as opposed to specific, merely because the information is broad and allows room, even substantial room, for particulars.”

⁵ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in Firststone International Holdings Limited Inquiry dated 8 July 2004, p 58.

⁶ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Chinese Estates Holdings Limited dated 25 June 1999, p 39.

⁷ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Chinney Alliance Group Ltd dated 24 December 2004, p 35.

⁸ See *Chinese Estates*, (supra fn 6), at p 39.

⁹ Supra at pp. 39-40. See also the Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Stime Watch International Holdings Limited, dated 14 February 2003, at p 83.

¹⁰ See 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 Limited at p 236.

80. The distinction between specific information on the one hand, and precise information on the other, is well illustrated by the following statement made in the course of the House of Commons debates on the equivalent English legislation:

“In general, specific information might typically be that a bid was going to be made. Precise information would be the price at which that it was going to be made. On that basis, precise information would be narrow, exact and definitive.”¹¹

It will always be the case that specific information need not be precise, but precise information will necessarily be specific. In determining whether information is specific it will be necessary for the Tribunal to look objectively at the information and ask where it should be placed on a scale rising from rumour, innuendo, hint, general information up to specific or precise information.¹² Whether information may be characterised as specific may be resolved, in part, by the Court assessing whether that information would be likely materially to affect the price of shares. The more likely it is that the information would affect a share price, then the more likely it is that that information will be found to be specific. Thus, where the evidence in a particular case demonstrates that upon the information becoming public the share price was affected, then it is more likely that that information will be found to be sufficiently specific to fall within terms of s 8.

81. In “*Insider Dealing*”¹³, Ms Hannigan gives a number of examples of specific or precise information. The clearest example of specific or precise information, and one which featured in the great majority of prosecutions under the English insider dealing legislation¹⁴, is a knowledge of an impending takeover bid. Equally clear is knowledge of a forthcoming share placing, even if the details of the placement are not known: see *R v Cross* [1991] BCLC 125 at 132 CA.

Information not generally known:

82. By its very nature, inside information is information which is known only to a few and is not generally known to the market, the market

¹¹ HC Debs, Session 1992-93, Standing Committee B, 10 June 1993 Col 174, cited in “*Insider Dealing*”, 2nd Ed, Longman, Brenda Hannigan, p 63.

¹² See “*Insider Dealing*” (supra fn 11), at p 64-5.

¹³ Op cite 12, at p 63.

¹⁴ The Company Securities (Insider Dealing) Act 1985.

being defined in s 8 as “those persons who are accustomed or would be likely to deal in the listed securities of that corporation”.

83. In the context of the present case there was no issue as to this definition. The Tribunal is satisfied that at the material time those persons accustomed to dealing in securities of AOH, or likely to deal in those securities, were constituted by the wider investing public.

84. In principle, all information that is sufficiently price sensitive will be important information concerning a company’s affairs. But the converse is not necessarily true. Not all important information concerning a company’s affairs will be price sensitive. Important information or information of great interest concerning a company may excite comment, but may nevertheless be information of the kind that would not be likely to have a material impact on the price of that company’s securities.

Contemplated transactions:

85. Mr Griffiths made the submission that relevant information could not exist until matters had reached the stage where the probable consequence was that agreement would be successfully concluded between AOH and the shareholders of CIL¹⁵. We reject that proposition. Relevant information can exist at the stage when parties are merely contemplating, or negotiating a transaction.

86. In the view of the Tribunal the following citation from the *Stime Watch International Holding Limited Inquiry*¹⁶ sets out the correct position:

“It has been suggested before other Tribunals in Hong Kong on occasion that before information concerning a contemplated transaction can be held to be sufficiently specific there must be demonstrated a probability that the transaction will proceed.

It seems to this Tribunal that there can be no additional requirement that information, otherwise specific, which relates to a proposed transaction can only be specific if, by some objective

¹⁵ See “Outline of Final Argument on behalf of Mr Thomas Lau” dated 5 July 2006, at para 21, and oral submission of counsel for Mr Lau, Transcript, Day 18, p 32.6-33.13; 35.9-11.

¹⁶ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in *Stime Watch International Holding Limited* dated 14 February 2003 at pp 85-8.

or even subjective measure, that proposed transaction is more probable than not to proceed or come to fruition.

In our respectful view such a requirement would tend to defeat the intended operation of the legislation. That is because in large part instances of insider dealing relate to transactions which are inchoate within the corporation's purview. That is, they are under negotiation and subject to final approval or agreement. In many cases, the chances as to whether or not the transaction will be finalised or agreed cannot be given anything but the broadest assessment. The probabilities of the transaction being finalised or agreed may in many cases be simply unknown or unable to be quantified or assessed in any meaningful commercial way, yet the information concerning the commercial negotiations or the commercial approach which has taken place or been made may well in some circumstances so far as the proposed transaction is concerned be quite detailed.

The requirement that information be specific relates to the characteristics and contents of the information concerning the company's affairs itself and does not logically depend on whether or not the subject matter of the information, if a proposed course of action, has any particular likelihood of fruition or success. There may be a huge number of variables extrinsic to the actual information which may have the potential to affect the likelihood of a proposed course of conduct coming to fruition.

It may well be, of course, that the lack of particularisation or specificity in information concerning a proposed transaction at a particular point of time is reflected by a correspondingly low probability, at that point of time, of the project or transaction being brought into being. But that is more to do with a commonsensical commercial reality that the more detailed and better researched a proposed transaction may come to be the correspondingly greater may be the probability of its achieving fruition.

The mere fact that a transaction is proposed, contemplated, or under negotiation, or is subject to preliminary discussions only would not and should not take it outside the provisions of s 8 of the Ordinance and therefore outside the protections our legislation gives to the investing public.

As stated by Brenda Hannigan in "Insider Dealing" (Kluwer Law 1988) at p 54:

‘Will knowledge of preliminary steps be sufficiently specific? What if.... an individual is found to know of a chain of events the most probable consequence of which is a takeover bid? Will that suffice? Both instances would seem to be within the legislation, for while unfounded rumours and the vaguest hopes would not be sufficient to amount to unpublished price sensitive information, contemplated acts as well as actual events are certainly within the legislation.’

Her comments related to the English Company Securities (Insider Dealing) Act of 1985 but are germane to our considerations as section 10 of that legislation required that the “unpublished price sensitive information” with which she was concerned related to “specific” matters.

She goes on to say regarding merely contemplated transactions:

‘After all, the whole point of insider dealing frequently is to deal while the transaction is only contemplated, for once it has actually occurred the market is likely to be aware of it and will move to reflect that fact in the price, thereby preventing any profiting by insiders.’

In this Tribunal’s view the fact that a transaction or project is at merely an introductory or preliminary stage is not decisive as to whether information concerning that proposed transaction or project is or can be specific. It may well be one of the factors to be taken into account and indeed may in some cases be an important factor. Nor, logically, are the probabilities of the transaction or project coming to fruition decisive.

It is the nature of the information which determines whether it is specific for the purposes of s 8 of the Ordinance, not the commercial probabilities or perceived probabilities of the subject matter reaching fruition.”

87. The two passages cited from the first edition of Ms Hannigan’s book, *Insider Dealing*, are not repeated in the current edition. However, other cases cited in the current edition make it clear that the mere possibility of something happening can constitute specific information.

88. At p 61 of the current edition, Ms Hannigan cites *R v Naerger*¹⁷ where a former director of WH Smith pleaded guilty¹⁸ to dealing in securities of Martins the Newsagents at a time when he knew WH Smith was considering making a takeover bid for the company. At p 61 and 64 of the current edition, Ms Hannigan refers to the *Collier*¹⁹ case. In that case, Collier, a merchant banker, dealt in the shares of Cadbury Schweppes while knowing that General Cinema, a client, had designs on obtaining a stake in, and possibly making a bid for, the company. This contemplated possibility came partly to fruition in November 1987 when General Cinema did launch a dawn raid on Cadbury Schweppes.

89. Both these decisions make it abundantly clear that, if sufficiently specific and price sensitive, information as to a contemplated transaction may constitute relevant information. In *Naerger*, the knowledge was not of the probability of a successfully included agreement, but merely that a takeover bid was under consideration. In *Collier*, the knowledge was of information at a similar level, merely “designs” and the possibility of a bid.

90. Notwithstanding the fact that the two citations are not repeated in the current edition of Ms Hannigan’s work, we are satisfied that the foregoing statement in *Stime Watch*, including the citations made, correctly sets out the law in relation to the proposition that information cannot be sufficiently specific unless there is demonstrated a commercial probability that the transaction will proceed.

91. Mr Griffiths argued, relying upon the decisions of the Insider Dealing Tribunal in *Firstone*²⁰ and *Easy Concepts*²¹, that knowledge of a possible commercial agreement was not sufficient to amount to specific information unless there existed “the probable consequence that the agreement would be successfully concluded”²².

92. The following passage from *Firstone*²³ is relevant:

¹⁷ Unreported, but see *The Guardian*, 30 April 1986.

¹⁸ Under the Company Securities (Insider Dealing) Act 1985, the predecessor legislation to the Criminal Justice Act 1993 which now deals with insider dealing in England.

¹⁹ Unreported, but see *Financial Times*, 2 July 1987.

²⁰ *Supra* fn 5.

²¹ *Supra* fn 3.

²² Counsel’s “Outline of Final Argument on behalf of Thomas Lau”, § 21(a) & 22(a).

²³ *Supra* fn 5 at 60-61.

“For the purposes of determining issues in the present inquiry relating to the specific nature of information as required by s 8 of our legislation, the proposed placement whether described as under contemplation or at a preliminary stage of negotiation must, in our view, have more substance than merely being at the stage of a vague exchange of ideas or a “fishing expedition”. Where negotiations or contacts have occurred, as in the present case, there must be a substantial commercial reality to such negotiations which goes beyond a mere exploratory testing of the waters and which is at a more concrete stage where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal.

.....

In our view, there is no need to impose any additional requirement that there be any foresight that the transaction will probably all likely come to fruition before information concerning the contemplated transaction becomes sufficiently specific.”

It is not without significance, that immediately following the foregoing citation, the Tribunal adopted the reasoning set out in *Stime Watch*, and cited above in para 86.

93. In *Easy Concepts*²⁴ the Tribunal adopted the reasoning in *Firstone*, holding that there must be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage, where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal. In our view that is a threshold which must be crossed before the issue of specificity can be determined.

94. In our view, the effect of Mr Griffiths’ submission was to elevate the concept of “an intent to negotiate with a realistic view to achieving an identifiable goal”, to the stage having been reached where there existed “a probable consequence that the agreement would be successfully concluded”. In our view that proposition is incorrect as a matter of law.

95. Parties may negotiate with a realistic view to achieving an identifiable goal, but not yet have reached the stage where there will be a

²⁴ Supra, fn 3, p 47.

probable consequence that the agreement would be successfully concluded. We are satisfied that it will be sufficient for information in relation to negotiations to be specific if there is a substantial commercial reality to such negotiations, and the parties are intending to negotiate with a realistic view to achieving an identifiable goal. If a transaction, event or matter may be identified and its nature coherently described and understood, whether or not fine or precise details, or even significant issues, are yet to be negotiated, and negotiations are underway, the circumstances may be sufficiently specific for information concerning the contemplated transaction to be relevant information. Whether that is so in any case will be a matter of fact.

96. An act of insider dealing is no less insider dealing if the relevant information relates to a contemplated transaction that, for some reason, is not concluded. Mr Witts agreed with that proposition.

97. It must be remembered that an insider dealer who has advance knowledge of a contemplated transaction, should he choose to act upon that knowledge, takes a risk that in acquiring or disposing of the stock involved, the transaction will be completed. If it is, his risk is justified, and his profit, or avoidance of loss, will be achieved. It may well be that at the time the dealing takes place major commercial terms and matters, even price, are still to be negotiated.

98. But the transaction may be never concluded. That is the risk that is taken. If the transaction is not concluded, the act of purchase or sale of stock, if predicated on relevant information, is no less an act of insider dealing. If the transaction is concluded, the resultant adjustment in the share price from the conclusion of the transaction serves simply to underline the price sensitive nature of the relevant information and to assist in determining both the fact of the existence of relevant information and any profit made or loss avoided for penalty purposes.

The knowledge of the recipient of the information:

99. We accept, of course, that the person who has received the information must know that the information is relevant information. Thus, if a person receives information that is relevant information, but is not aware of the fact that it is relevant information, and he acts upon that information, any such dealing in securities will not constitute insider dealing.

Chapter 5

The companies and personalities primarily involved in the Inquiry

Asia Orient Holdings Limited:

100. AOH was listed on the SEHK on 12 August 1991. The principle activities of AOH and its subsidiaries, (collectively, “the AOH Group”), included investment holding, property development, hotel management, securities investment, and engineering and maintenance services. Prior to September 1999, internet/technology activities were not part of the business of the AOH Group.

101. For the year ended 31 March 1999²⁵, the operating profit of the AOH Group had reduced significantly from \$819,900,000.00 for the year ended 31 March 1998, to \$57,890,000.00. In the previous financial year there had been a profit after taxation of \$744,127,000.00. For the year ended 31 March 1999, the Group had operated at a loss after taxation of \$3,165,000.00. In the accounts for the year ended 31 March 2000, that loss was restated at \$59,573,000.00. The result for the year ended 31 March 1999, was, in our view correctly, interpreted by Mr Cheng as disappointing, but not totally unexpected.

102. The Chairman of Directors of AOH was Mr Fung. His brother-in-law, Mr Poon was a Director, and the Managing Director of AOH. Mr Poon, through his personal interests, family interests, and corporate interests controlled 2,249,017,824 shares in AOH. That interest comprised approximately 66% of the shareholding in AOH, and was a controlling interest in AOH. Mr Lim, also a brother-in-law of Mr Poon and Mr Fung, was a Director of AOH, and was Deputy Chairman of the company.

103. Mr Lun was the Financial Controller of AOH. In that capacity he was also responsible for dealing with questions of compliance raised from time to time by the SEHK.

104. Both Mr Cheng and Mr Witts were of the view that AOH was properly described as a “third liner” in the market in 1999. That is right.

²⁵ TB 4 pp 7-11, Announcement of Results by AOH for y/e 31.3.99.

Throughout the first eight months of 1999, trading in AOH shares was generally low, with no volume being recorded at all on many days. On average the share price through those eight months was about \$0.40 per share, and the market capitalisation of AOH was under \$1.4 billion. Both Mr Cheng and Mr Witts were in agreement that in such circumstances those most likely to deal in AOH shares were retail investors. Both were of the view that the counter would be one which would have little interest to institutional investors. We accept those opinions.

105. Asia Standard International Group Limited, (Asia Standard), is a publicly listed company, and a subsidiary of AOH. Property development and investment was the core business of Asia Standard. Mr Fung was Chairman of Asia Standard. Mr Poon, was a substantial shareholder, as that expression is used in the Ordinance²⁶, in Asia Standard, and its Managing Director. Mr Lim was a Director, and Deputy Chairman of Asia Standard. AOH, primarily through Mr Poon's shareholding, held 73.5% of Asia Standard, a controlling interest in the company.

106. In July 1999, Grosvenor Limited, (Grosvenor), a company in which the Duke of Westminster had a significant interest, and Ayala International Pte Limited, (Ayala), a wholly owned subsidiary of Ayala Corporation which is listed on the Philippines stock exchange, together took a 16.6% interest in Asia Standard. We shall refer to this transaction in more detail in Chapter 6, later in this report.

China INFOBANK Limited, (CIL):

107. CIL was a private company incorporated in Hong Kong in February 1993. Mr Lau and Mr Tjia through their equal shareholding in Swarkin held 42.5% of the shares in CIL. Mr Lau was Chairman of Directors of CIL, and Mr Tjia was the Vice Chairman. The other directors of CIL were Mr Jimmy Wong, and Mr Kwan. Mr Jimmy Wong held his shares in CIL through the medium of Special Link, a company in which he and a Mr Leung Pan each held one of the two issued shares. Special Link held 22.5% of the shares in CIL. Mr Kwan held 17% of the CIL shares, Mr Cho held 15%, and Ms Kong 3%. Mr Cho was associated with Mr Lau in the Gemstar Group of companies.

²⁶ S 4(3) of the Ordinance defines a substantial shareholder in relation to a corporation as 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.

108. The business of CIL involved the gathering of news, both general and business, in relation to Mainland China, Hong Kong, Macao and Taiwan, and storing the processed information on a computer database. By electronic means, subscribers to CIL were able to access that information.

109. In an article published in the *South China Morning Post*²⁷, on 23 September 1999, the day after the transaction between CIL and AOH was announced, CIL was described as “the world’s largest Web-based independent Chinese content provider”. The article noted that CIL had formed alliances with the mainland’s State Economic and Trade Commission, Xinhua News Agency, the Ministry of Foreign Trade and Economic Cooperation, Reuters, and the *Financial Times*. In an article published in the *Hong Kong Economic Times*²⁸ on the same day the writer noted that CIL collected its information from over 1,000 Chinese newspapers, magazines, trade journals and government publications. It was said that there were 2 billion Chinese characters in its database, which increases in volume by 2.5 million Chinese characters per day. The evidence of the CIL witnesses did not cast any doubt on these articles.

110. Mr Lau, although Chairman of CIL, did not exercise any executive capacity within the company. He had been invited by Mr Tjia to invest in the company in 1995. At that time Mr Tjia had already acquired Swarkin, as a shell company, and upon inviting Mr Lau to join CIL, used Swarkin as the medium by which the two men held their interest in CIL.

111. CIL was founded by Mr Jimmy Wong. Although Mr Lau was the Chairman of Directors of CIL, Mr Jimmy Wong was described as the President of the company. His role in CIL was the supervision of the development of technology and the “content”, that it is the material to be sourced and maintained in the database. Mr Jimmy Wong and Mr Kwan were responsible for the day to day management of CIL.

112. Although not actively involved in an executive capacity in the company, and with no day-to-day role in its activities, Mr Lau met with the other CIL shareholders from time to time, usually over meals, when strategy in relation to the company was discussed, and when the other shareholders sought funds from Mr Lau and Mr Tjia to continue the operation of the company.

²⁷ TB 7 p 154.

²⁸ TB 7 p 162.

Mr Thomas Lau Luen Hung:

113. Mr Lau is well known in Hong Kong as the Chairman of Directors of Chinese Estates Holdings Limited, and as an investor. He is now aged 52, and was aged 46 at the time of these events. At the time he was also the Chairman of Evergo China Holdings Limited, and The Kwong Sang Hong International Limited. In 1999 he had had over 22 years experience in corporate finance, manufacturing and property investment.

114. He is presently a Director of four listed companies, Chinese Estates Holdings Limited, Chi Cheung Investment Company Limited, Lifestyle International Holdings Limited, and United Metals Holdings Limited. He is now a Director or manager of some 132 private companies, and at the time of these events was involved with some 25 companies.

115. Some years prior to these events Mr Lau had become involved with the Gemstar International Group Limited, (Gemstar), a technology company which produced an item known as a G-Coder, which enabled simple programming, by electronic means, of a video cassette recorder. The product was enormously successful. It was well-known in the public that Mr Lau was involved with Gemstar which had been listed on the NASDAQ in New York. Mr Lau's evidence was that in October 1999, Gemstar was worth some US\$1.5 billion, and that he held a 19.92% interest in the company, an interest which, alone, was worth US\$298.5 million or HK\$2.3 billion.

116. Mr Lau has no criminal record and has never been disciplined by the SEHK or the SFC. On one occasion he was warned by the SFC for the late filing of disclosure notices in respect of his shareholding in AOH, but we are satisfied from the circumstances disclosed to us that that was a technical offence. In all respects we treat Mr Lau as a man with a completely clear record.

117. Mr Lau has known Mr Poon for some years and, at the time of these events, knew that Mr Poon was an Executive Director of both AOH and Asia Standard.

118. In about 1995, Mr Lau had known Mr Tjia for some 10 years. He knew that Mr Tjia was an Executive Director of Deson Development International Holdings Limited, which specialised in construction and

building works both in the PRC and in Hong Kong. In 1999, Mr Tjia approached Mr Lau and introduced Mr Jimmy Wong to him. He was told, probably by Mr Jimmy Wong, that CIL had put in place an advanced Chinese characters search engine which had been developed by the People's Liberation Army. From the explanations given to him, Mr Lau understood that the business model of the company was that the company would collect news data from various published sources, in the PRC and Hong Kong and Taiwan, and store that information on the company's computer database. Paying subscribers would be able to search for, and retrieve, information collected on that database.

The proposed development of CIL:

119. In 1995, the internet was truly in its infancy. At that time data sought by subscribers to CIL was sent to them by facsimile machine. With the development of the technology related to the internet, it became possible for subscribers to connect directly to the database and retrieve information virtually instantly in their own offices. This was a development which plainly was greatly to the advantage of CIL.

120. By 1999, use of the internet had become a worldwide phenomenon, and stock markets entered a period variously described as the Telecommunication-Media-Technology bubble, (the TMT bubble), or the dot-com bubble. This was a period of stock market euphoria over the period 1999-2000. During the TMT bubble investors were lured to put their money into listed companies that were involved in, or intended to invest or diversify into TMT related business. Such intentions were demonstrated by either a company starting up a new business, engaging in a joint-venture with an appropriate company, acquiring an equity interest in an existing TMT operation, or even merely management showing an interest in TMT related matters.

121. By late 1999, CIL had accumulated a significant database of information, and had a number of paying subscribers. The company was not yet profitable and had been operating at a loss, funded primarily by loans from shareholders, particularly Mr Tjia and Mr Lau.

122. By the time CIL entered into discussions with AOH, shareholders loans to CIL stood at a sum in excess of \$15 million. It was clear however that, although the database assembled by CIL was, through its subscribers, producing some income, that income was not sufficient to

make the company profitable. Unless some other source of funds could be found, and the number of subscribers increased to the extent that the company could stand alone, in order to continue its operations, CIL would be dependent upon the injection of funds by way of shareholders loans from all of the shareholders. The position was rapidly being reached by mid-1999, where both Mr Lau and Mr Tjia were becoming reluctant to put more funds into the company.

123. The question was one which arose during the occasional meetings of the directors. As a marketing strategy, the concept of an Infocard was developed. This was a system whereby subscribers would prepay for the purchase of an Infocard permitting them access to data to the value of the sum available on the Infocard. We understand the proposal to be somewhat akin to a stored value Octopus card.

124. But that marketing strategy alone would not be sufficient to resolve the problem. A direction had to be found to solicit additional capital. The course to be adopted was to solicit fund houses, investment banks, or other investors to be strategic partners who would supply the necessary funds. No formal board meeting was called at which this decision was made, instead it was discussed at the informal meetings between the directors²⁹.

125. It is clear that the persons involved in CIL were fully aware of the facts and circumstances surrounding the TMT bubble. It was a matter which was discussed at the occasional meetings, which all from time to time attended. The extent to which they were aware of the significance of internet development may be seen in the following passage from the interview of Mr Jimmy Wong with the SFC.

“Q: When did CIL conceive the idea of finding a new shareholder and whose idea was it?”

A: In fact we had such free-talks all along, particularly in May 1999, when China.com was listed on the NASDAQ and made a big stir in Hong Kong. When we later got together and discussed, I indicated that I hoped that large companies such as AOL, Softbank and other listed companies would join us. We had talked about this as well. We, i.e. Peter, Mr Tjia, Mr Lau and I,

²⁹ See e.g. statement of Mr Kwan to the SFC, TB 2 p 114, and the statement of Mr Jimmy Wong to the SFC, TB 2 p 135.

discussed this when we had meals together. I believed that the joining of such large companies would bring in a significant impact. I asked them whether they had any relationship with such companies and said that I didn't.

Q: Since you were targeting at companies of the same industry, why did you let a company which deals in properties and has nothing to do with the internet business, i.e. Asia Orient, to invest in CIL?

A: I myself wasn't surprised. Let's take China.com as an example. Initially, New World Infrastructure bought into China.com in around 1997-98. From the case of China.com, I can see that listed companies in Hong Kong are restructuring their business and have started to cast an eye on the development of the internet field. Therefore, I also wished that our company could look for an investment partner step by step, just like China.com. As a result, I was not surprised when Asia Orient bought into CIL."

It is right to say that at that time none of those involved appreciated the extent to which the euphoria in the markets over TMT matters were to constitute a "bubble". At that time TMT was perceived as being a great future direction for business to take.

126. Mr Lau's evidence was that his role in CIL was an inactive one, involving meeting management for lunch on weekends every one to two months where there would be a general chat. It is clear that discussions concerning the involvement of CIL, as a technology company, with other large companies took place at such lunches. Although he did not take an active role in the operation of CIL, Mr Lau was plainly fully alive to the significance of TMT concepts, and the position of CIL to take advantage of the view being taken by markets of companies with TMT involvement.

Chapter 6

Mr Lau's dealings in AOH shares

Mr Lau's position in AOH prior to September 1999:

127. Mr Lau made his first acquisition of AOH shares on 11 December 1995, when he acquired 378,000 shares. Throughout December 1995, and January 1996, he continued to purchase AOH shares, and by the end of January 1996, held 9,088,000 shares. By the end of that year he had reduced his total shareholding to 5,218,000 shares.

128. During 1997, corporate actions on the part of AOH, involving splitting and combining shares, transformed Mr Lau's holding to 31,308,000 shares. On 20 May 1998, Mr Lau purchased 200,000 AOH shares at \$0.40, bringing his total holding in AOH to 31,508,000 shares³⁰. For the next 16 months, up until 6 September 1999, Mr Lau maintained that position in AOH. He then began to acquire shares again.

129. Over a period of 14 days, commencing on Monday 6 September 1999 and ending on Monday 20 September 1999, Mr Lau both bought and sold AOH shares.

130. The case presented to us was that the first opportunity upon which Mr Lau could have received relevant information was the evening of Monday 13 September 1999. The transaction between AOH and CIL was signed on the evening of 21 September 1999, and was publicly announced on 22 September 1999. It is accordingly convenient to examine Mr Lau's purchases and sales of AOH shares in two separate sections, first the period between Monday 6 September 1999, and Friday 10 September 1999, and second, from Monday 13 September 1999, to Tuesday 21 September 1999. That examination must take place in the light of the pattern of trading in AOH during 1999, up to the end of August 1999.

131. Annexed hereto, as Annexure 1, is a schedule setting out the Stock Historical Data for the period from 4 January 1999, to 30 December 1999.

³⁰ See TB 5 p 130, and TB 11 p 134.

The trading pattern of AOH shares to 30 August 1999:

132. On the opening of trading on the SEHK on 4 January 1999, AOH stood at \$0.28, having closed at that price at the end of 1998. The first week of trading in January 1999, saw a turnover of 310,000 shares with the share trading on one day only, Thursday 7 January 1999, at a high of \$0.30, and a low of \$0.29. Throughout January the counter traded on 11 days, but not at all on 9 days. This pattern of trading continued until mid-April 1999, with the turnover exceeding 800,000 shares on only two occasions. From January until mid April 1999 the price fluctuated, reaching a high of \$0.29 but declining to \$0.24 on 13 April 1999.

133. From mid-April 1999, until mid-June 1999, trading was more consistent with only seven days on which there was no trading. Turnover however remained low, until mid June 1999, exceeding one million shares on only seven days. Until that time, the share price fluctuated between \$0.295 and \$0.238, closing at \$0.26 by mid-June.

134. Over a 19 day period commencing on 14 June 1999, to 12 July 1999, the turnover increased significantly, exceeding one million shares every day, reaching a high of 11,876,000 on 23 June 1999. By 12 July 1999, the share price settled at \$0.38 having reached a high of \$0.405 on 2 July 1999.

135. It is reasonable to expect that this significant change in the trading pattern of AOH was attributable to rumours in the marketplace prior to 5 July 1999, and after that date to a joint announcement³¹ by AOH and Asia Standard on 3 July 1999, published in Hong Kong newspapers on 5 July 1999. This announcement informed the public that AOH and Asia Standard had entered into a memorandum of understanding with an unnamed independent party with a view for that independent party subscribing for new shares in Asia Standard. Those shares would amount to 18% of the existing share capital, and 15% of the enlarged issued share capital of Asia Standard.

136. The apparent excitement generated by the announcement of the involvement of the unnamed independent party in Asia Standard quickly subsided. Between 13 July 1999, and 13 August 1999, turnover reduced significantly, exceeding 670,000 shares only on 16, 28, 29 and 30

³¹ TB 4 pp 3-6.

July 1999. The announcement on Monday 26 July 1999, of the results of AOH for the year ended 31 March 1999, disclosing a substantially reduced turnover, a substantially reduced operating profit, and a loss after taxation of \$3,165,000.00 as against a profit in the previous financial year of \$744,127,000.00, not surprisingly, attracted little interest by buyers, with a turnover of only 224,000 shares. The price however rose 11.76% from the previous day's close of \$0.255 to close at \$0.285.

137. During the period 13 July 1999, to 13 August 1999, the share price subsided from \$0.365 to reach \$0.33 in light trading on 6 August 1999, after which it did not trade at all, closing on 13 August 1999, at which time it was offered at \$0.30, attracting no buyers at all. From 13 July 1999 to 13 August 1999, the counter did not trade at all on 12 occasions.

The Grosvenor and Ayala involvement in Asia Standard:

138. On Monday 16 August 1999, trading in AOH was suspended. On that day a joint announcement was made which revealed the identity of the unnamed independent party. AOH and Asia Standard jointly announced that Asia Standard had entered into a subscription agreement with Grosvenor, and a separate agreement with Ayala, for both of those companies to take a position in Asia Standard. The effect of the subscription agreements were that Grosvenor would take approximately 18% of the existing issued share capital of Asia Standard, which would represent approximately 15% of the enlarged issued share capital, after the subscription. Ayala would take 2% of the existing share capital, representing approximately 1.6% of the enlarged share capital of Asia Standard. The notice also informed the public that these transactions would have the effect of diluting the controlling shareholding interest of AOH in Asia Standard from approximately 64.8% to 54.1% upon completion of the subscriptions.

139. It is abundantly plain from the trading pattern that this was an announcement which signally failed to excite the market. When trading resumed on Tuesday 17 August 1999, the turnover was 2,212,000 shares, with the share price closing only 6.67% higher at \$0.32, after an intraday high of \$0.34. The next day, Wednesday 18 August 1999, the turnover was 600,000 shares, the price declining 1.56% to \$0.315.

140. For the next five days of trading there were no sales at all of

AOH shares, the offer price declining a further 1.59% to close at \$0.31. On Thursday 26 August 1999, 20,000 shares were traded, at \$0.30, a further decline of 3.23%. On Friday 27 August 1999, 350,000 shares traded, the price declining further by 1.67% to close at \$0.295. It may be reasonably assumed that the market had, following the rumours and the 5 July 1999 announcement, factored into the share price as much as it would be prepared to do consequent upon the transaction coming into effect.

141. On Monday 30 August 1999, 630,000 shares were traded, the price recovering Friday's loss, to close at \$0.30. On Tuesday 31 August 1999 turnover was 500,000 shares, on the decline of 6.67%, to close at \$0.28. On Wednesday 1 September 1999, the turnover declined again to 200,000 shares, and the closing price by 5.36% to \$0.265. Thursday 2 September 1999, saw a further decline in the turnover to 150,000 shares, the share price declining further by 1.89% to close at \$0.26.

142. On Friday 3 September 1999, the turnover increased to 700,000 shares closing price recovering by 9.62% to \$0.285.

143. The net position was that the stock had opened in January 1999, at \$0.28, and had closed on 3 September 1999, at virtually the same price; \$0.285. In the same period, the Hang Seng index had closed on the first day of trading in January at 9,809.17 and on 31 August 1999, at 13,482.77, a rise of 3,673.60 points, or 37%.

The trading in AOH between Monday 6 September and Friday 10 September 1999:

144. The position changed dramatically after the weekend. On Monday 6 September 1999, for no apparent reason, the turnover soared to 10,110,000 shares, with the stock closing 42.11% higher, at \$0.405, after an intraday high of \$0.41. Not surprisingly, during the morning, having regard to the sudden increase in both turnover and price, the SEHK requested an explanation from AOH.

145. At 11:57 a.m. on Monday 6 September 1999, the SEHK announced that it had received a message from AOH³² explaining that the company was in negotiation to issue US\$10 million worth of 5-year

³² TB 4 p 24.

Mandatory Exchangeable Bonds to independent third-party institutional investors which were exchangeable into approximately 3% of the issued shares in Asia Standard. Other than that, the board of AOH stated that it was unaware of any reason for the increase. The company confirmed that there were no other negotiations or agreements relating to intended acquisitions or realisations which were discloseable under paragraph 3 of the Listing Agreement, neither were the Board aware of any matter discloseable under the general obligation imposed by paragraph 2 of the Listing Agreement, which was or may be of a price sensitive nature.

146. The next day, Tuesday 7 September 1999, the turnover in AOH shares doubled to 22,102,800, the share closing a further 17.28% higher, at \$0.475, after an intraday high of \$0.50. On that day an article was published in the Chinese newspaper *Ta Kung Pao*³³, headlined “Technology stocks play games on treasure hunt”. Included in the article was the following statement:

“Some investors have already begun their games on treasure hunt to explore those stocks that have lagged behind or have technology stock concepts, such as Asia Orient Holdings (214). Yesterday, the company released an announcement that it was preparing to issue convertible bonds to independent corporate investors. It was also rumoured in the market that it would participate in some internet businesses, the investors had better pay attention to its news.”

It is not clear from the article whether AOH fell within the category of a stock that “had lagged behind”, or a stock that had “technology stock concepts”. On the basis of the performance of the shares over the previous eight months, and the absence of any evidence of any involvement of AOH in technology matters it is likely that AOH was considered to be a stock that had lagged behind.

147. On Wednesday 8 September 1999, the turnover was 12,480,000 shares, the price remaining steady.

148. On Thursday 9 September 1999, turnover increased to 26,486,842 shares, and the price closed that day at \$0.61, up a further 28.42%. Again, during the day, the SEHK sought an explanation from AOH. At 14:52 p.m. on Thursday 9 September 1999, the SEHK

³³ TB 7 p 26-27.

announced³⁴ that it received a message from AOH stating that, save as disclosed in the 6 September 1999 notice, the Board were not aware of any reason for the increase in the price of the shares.

149. On Thursday 9 September 1999, an article appeared in *Ta Kung Pao*³⁵. The article was headlined: "Asia Orient had active trading which could be pursued and purchased". The article recommended AOH, commenting on the recent involvement of "two renowned shareholders", (plainly a reference to Grosvenor and Ayala). No reference was made to internet activity, but the article noted that turnover had become active which it said was worth pursuing and buying.

150. On Friday 10 September 1999, the turnover was 23,594,000 shares, the share price closing at \$0.66, an increase of a further 8.2%. An article appeared in the *Hong Kong Daily News*³⁶ on that day. The article noted the sharp recent rising trend which it said was:

"allegedly related to its intention to undergo transformation and develop the high-technology business".

151. AOH had closed on Friday 3 September 1999, at \$0.285. The stock had begun the next trading week, Monday 6 September 1999, with a substantial increase, both in turnover and price. The turnover had consistently exceeded 10 million shares, and on three occasions exceeding 20 million shares. The price increase had continued through the week to end the week at \$0.66, a weekly increase of 133%. During that week the Hang Seng index rose 470 points, from 13,385.16 to 13,855.93, an increase of only 3.51%.

152. The explanation that had been offered by the directors of AOH for this movement was the announcement of negotiations concerning Mandatory Exchangeable Bonds. There had been no suggestion from the directors of AOH that the company was involved in any way in TMT matters. There is no evidence at all to support the rumours that had been published in the newspapers.

³⁴ TB 4 p 28.

³⁵ TB 7 pp 31-35.

³⁶ TB 7 pp 37-39.

Mr Lau begins acquiring AOH shares again:

153. Between the last occasion on which he acquired or sold AOH shares, in May 1998, and 6 September 1999, a period of some 15 months, Mr Lau was apparently content with the extent of his shareholding. He neither purchased nor sold AOH shares.

154. During that period of 15 months AOH had issued two annual reports, that for the year ended the 31 March 1998, and that for the year ended 31 March 1999. Neither had apparently stimulated any buying activity on the part of Mr Lau. Notwithstanding the flurry of interest that had occurred in AOH in the period mid-June to mid-July, Mr Lau made no purchases. Notwithstanding the Grosvenor-Ayala announcement on 16 August 1999, Mr Lau made no purchases of either AOH or Asia Standard for the remaining part of August, or the first three trading days of September.

155. On Monday 6 September 1999, the day on which the price rose 42.1%, Mr Lau purchased 4,978,000 shares at prices between \$0.30 and \$0.41. His purchases accounted for 49.2% of the total turnover in the shares. At the same time he sold 1,038,000 shares, at prices between \$0.39 and \$0.40. Those sales accounted for 10.3% of the total turnover.

156. The next day, Tuesday 7 September 1999, Mr Lau purchased a further 8,762,000 shares at prices between \$0.465 and \$0.495. These purchases accounted for 39.6% of the day's turnover. At the same time he sold 1,440,000 shares at prices between \$0.425 and \$0.495. These sales accounted for 6.5% of the turnover on that day. Mr Witts' opinion³⁷ was that Mr Lau's buying was probably the single main reason behind the rise in the share price on those two days, aided however, by the newspaper articles.

157. On Wednesday 8 September 1999, Mr Lau sold 5,500,000 AOH shares at prices between \$0.46 and \$0.485, these sales amounting to 44.1% of the turnover. On that day he made no purchases of AOH shares.

158. On Thursday 9 September 1999 Mr Lau purchased 15,968,000 AOH shares at prices ranging from \$0.485 to \$0.62. These purchases

³⁷ Evidence-in-chief, p 11 para 37.

accounted for 60.3% of the turnover. No sales were made.

159. On Friday 10 September 1999, and Monday 13 September 1999, Mr Lau neither bought nor sold AOH shares.

160. On the evening of Monday 13 September 1999, after the close of trading, Mr Tjia telephoned Mr Lau and told him of his meeting with Mr Poon, and the steps that were to be taken.

Mr Lau's position by 13 September 1999:

161. By the close of trading on Monday 13 September 1999, Mr Lau had acquired an additional 21,730,000 AOH shares, an increase in his shareholding in AOH, from his position at the beginning of the month, of 68.96%. He now held 53,238,000 AOH shares. To achieve this position he had acquired 29,708,000 shares and sold 7,978,000 shares³⁸. The purchases had cost a total of \$15,062,180.00. He had earned from the sales, \$3,652,400.00. Mr Lau's net cash outlay was \$11,409,780.00.

The trading pattern of AOH shares between 13 September 1999 and 21 September 1999:

162. Again, before considering the transactions undertaken by Mr Lau in AOH shares during this period, it is necessary to review the trading in those shares generally, and the background to the market at the time.

163. On Monday 13 September 1999, turnover in AOH was 24,470,000 shares, with the closing price increasing a further 12.12% to close at \$0.74 after an intraday high of \$0.77. Yet again, the SEHK requested an explanation from AOH. The announcement, prepared and supplied to the SEHK on the evening of Monday 13 September 1999, following the close of trading, was published by the SEHK at 10:23 a.m. on Tuesday 14 September 1999, and on the same day in Hong Kong newspapers.

164. The announcement³⁹ was headlined:

³⁸ TB 4 p 84-86.

³⁹ TB 4 pp 30-32.

“Asia Orient Holdings Limited is in discussions with an independent party for a possible investment in an internet related company.”

The notice began by reminding investors of the negotiations in relation to Mandatory Exchangeable Bonds, previously announced on 6 September 1999. The Board of AOH then announced that the company was in discussion with an independent party for a possible investment in an internet related company. The notice stated that no agreement had yet been reached at that stage, and terms and conditions of the investment, including pricing had not been agreed.

165. The involvement of AOH in internet related matters was also reflected in the Chinese press. In the *Hong Kong Daily News*⁴⁰ of 14 September 1999, an article was published headlined: “Asia Orient rumoured to be embarking on huge high-technology projects”. The article noted recent active trading with strong buying support and tipped the counter for short-term speculative selling with a target price of \$1.00, and a stoploss limit at \$0.68.

166. On Tuesday 14 September 1999, the turnover remained high, at 27,921,600 shares and the closing price rose a further 4.05% to \$0.77, after reaching an intraday high of \$0.81.

167. On Wednesday 15 September 1999, the turnover reduced to 18,114,000 shares, closing at \$0.76 a modest decline of 1.3%. On Wednesday 15 September 1999, certain newspaper articles were published, particularly in the Chinese press⁴¹, indicating that restrictions may be imposed by the Government of the PRC on foreign investors in respect of their participation in telecoms networks, internet business and broadband networks on the mainland. These articles specifically referred to AOH’s intention to participate in internet related business in the mainland, and commented that the restrictions may affect that proposal. The SEHK sought an explanation of the situation from AOH.

168. There was no trading on Thursday 16 September 1999, due to a gale warning.

⁴⁰ TB 7 pp 43-45.

⁴¹ TB 7 pp 46-55.

169. On Thursday 16 September 1999, the day in which the exchange was closed, newspapers in Hong Kong published a notice⁴² issued by AOH informing the public that the transaction in relation to the issue of Mandatory Exchangeable Bonds had been concluded. The notice was published by the SEHK at 10:19 a.m. on Friday 17 September 1999. When trading resumed on 17 September 1999 the turnover in AOH increased again to 30,410,000 shares. The stock closed 9.21% higher at \$0.83, after an intraday high of \$0.88.

170. On Wednesday 15 September 1999, the SEHK had requested an explanation from AOH in relation to the newspaper articles referred to in para 167 above. The explanation was given to the SEHK late on Friday 17 September 1999, and published in Hong Kong newspapers on Monday 20 September 1999. The company said⁴³ that it was:

“... still in the process of negotiating the possible investment (“Possible Investment”) in an internet-related company. The Company will seek legal opinion to the Possible Investment prior to any transaction. Investors are advised to exercise caution when dealing in the shares of the Company.”

The notice was published by the SEHK at 10:43 a.m. on Monday 20 September 1999.

171. On Monday 20 September 1999, the turnover was again high at 21,582,000 shares, AOH closing at \$0.90, its intraday high, up 8.43%.

172. The turnover increased substantially on Tuesday 21 September 1999 to 40,890,000 shares, the stock closing 3.33% higher at \$0.93 after an intraday high of \$0.95.

173. At the request of AOH trading in the company’s shares were suspended on 22 September 1999. On that day AOH issued a notice informing the public that a wholly owned subsidiary of AOH, Jetcom Capital Limited, had acquired a 40% interest in CIL. The consideration for the transaction was stated to be US\$30 million.

174. AOH had closed on Friday 10 September 1999, at \$0.66. The

⁴² TB 4 pp 33-34.

⁴³ TB 4 p 37.

substantial turnover had continued throughout the week, and by the end of trading on 21 September 1999, the share price stood at \$0.93, an increase of 40.9%. On Friday 10 September 1999, the Hang Seng index had closed at 13,855.93, and had closed on 21 September 1999, at 13,420.46, a decline of 3.14%.

Mr Lau continues acquiring AOH shares:

175. On Tuesday 14 September 1999, Mr Lau, having made no purchases in AOH on the previous day, re-entered the market acquiring 19,830,000 shares. These were bought at a price between \$0.77 and \$0.80. The turnover on that day was 27,921,600 shares, and Mr Lau's acquisition accounted for 71% of the total turnover. Mr Lau made no sales of AOH stock.

176. The next day, Wednesday 15 September 1999, Mr Lau acquired a further 13,700,000 AOH shares, at prices between \$0.76 and \$0.80. The turnover on that day was 18,114,000 shares. Mr Lau's acquisitions accounted for 75.6% of the total turnover. Mr Lau made no sales of AOH stock.

177. There was no trading on Thursday 16 September 1999, due to the gale warning.

178. On Friday 17 September 1999, when the turnover in AOH was 30,410,000 shares, Mr Lau bought no shares in AOH. However he sold 11,770,000 shares, at prices between \$0.80 and \$0.87, those sales accounting for 38.7% of the turnover.

179. On Monday 20 September 1999, Mr Lau bought a further 8,604,000 AOH shares at prices between \$0.86 and \$0.90. During that day he sold 4,000,000 AOH shares, at prices between \$0.85 and \$0.89. The acquisitions made by Mr Lau accounted for 39.9% of the turnover and his sales for 18.5% of the turnover.

180. On Tuesday 21 September 1999, Mr Lau neither bought nor sold AOH shares.

181. On the evening of Tuesday 21 September 1999, the sale and

purchase agreement⁴⁴ in which AOH, by its wholly owned subsidiary, Jetcom, acquired 1,080,000 ordinary shares in the issued share capital of CIL from Swarkin, with a consideration of US\$30 million, was signed.

182. On Wednesday 22 September, AOH shares were suspended, at the request of the company. On that day, a press conference was held at which the transaction was announced.

Mr Lau's position by 21 September 1999:

183. Between the period 14 September 1999 and 21 September 1999, Mr Lau had acquired an additional 26,364,000 AOH shares. He had increased his shareholding in AOH from his position on Monday 13 September 1999, by 49.52%. To achieve that position he had acquired 42,134,000 shares, and sold 15,770,000 shares. Mr Lau's purchases cost a total of \$33,769,420.00. He had earned from sales a total of \$13,271,500.00. His net cash outlay was \$20,497,920.00⁴⁵. We note that it is this trading that is the subject of our Inquiry.

184. It is relevant to note also that from his position at the end of May 1998, when he owned 31,508,000 AOH shares, Mr Lau had increased his shareholding to the point where he now owned a total of 79,602,000 AOH shares. He had increased his shareholding in AOH by 152.64%. He had incurred a total cost of \$48,831,600.00. He had earned from sales \$16,923,900.00. His net cash outlay, over a period of 15 days, had been \$31,907,700.00.

⁴⁴ TB 7 p 61 et seq.

⁴⁵ TB 4 pp 86-87.

Chapter 7

The movement of AOH shares after the announcement of the transaction

185. Trading in AOH shares was suspended on Wednesday 22 September 1999. On that day AOH, and those involved in Swarkin and CIL held a press conference at which the transaction was announced. The press conference was widely reported in both the English and Chinese press in Hong Kong on that day and over the next few days⁴⁶.

186. Trading resumed on Thursday 23 September 1999. At 9:59 a.m. on that day the SEHK formally published a notice⁴⁷ it had received from AOH, notifying the public of the transaction. On the same day a notice was published in the English and Chinese press in Hong Kong⁴⁸ in identical terms.

187. On Thursday 23 September 1999, the turnover far exceeded any previous turnover, doubling, from the last day of trading, reaching 79,029,332 shares. AOH closed at \$1.31, which represented an increase of 40.86% over the pre-suspension price of \$0.93. The intraday high was \$1.34. On that day the Hang Seng index increased by 0.2%.

188. On Friday 24 September 1999 the turnover reached 88,298,788, closing 1.53% higher at \$1.33, after an intraday high of \$1.57. At 3:02 p.m. that afternoon, AOH requested the SEHK to suspend trading in its shares pending an announcement in relation to the placing of shares. Trading in the shares was suspended. At 15:35 p.m., the SEHK published an announcement⁴⁹ to this effect. Trading remained suspended on Monday 27 September 1999.

189. On Tuesday 28 September 1999, AOH notified the SEHK that Mr Poon had agreed to place 340 million existing AOH shares at \$1.13, to independent investors, and to subscribe for the same number of new AOH shares at that price. At 9:43 a.m., shortly before trading opened on that day, the SEHK published a notice⁵⁰ announcing the placement and subscription,

⁴⁶ TB 6 pp 89-121, TB 7 pp 141-143, 152-179.

⁴⁷ TB 4 p 47-51.

⁴⁸ TB 4 pp 44-46.

⁴⁹ TB 4 p 52.

⁵⁰ TB 4 pp 57-61.

and the resumption of trading in AOH shares. On the same day the notice was published in English and Chinese newspapers⁵¹ circulating in Hong Kong.

190. The turnover on Tuesday 28 September 1999, soared dramatically, by some 595%, to 613,422,400 shares, but with the closing price falling 19.55%, to close at \$1.07, after an intraday high of \$1.20, and an intraday low of \$1.03.

191. On the next day, Wednesday 29 September 1999, trading remained strong with a turnover of 159,653,994 shares, but with the price falling a further 1.87%, to close at \$1.05, after an intraday low of \$0.99. Thursday 30 September 1999, saw brisk trading with a turnover of 80,291,410 shares, but a 7.62% fall in the closing price to \$0.97.

192. On Friday 1 October 1999, the SEHK was closed for the National Day holiday.

193. Trading resumed on Monday 4 October 1999. There was again a high turnover in AOH of 95,096,000 shares, with the price falling 13.40% to close at \$0.84. On Tuesday 5 October 1999, the turnover increased to 125,458,000 shares, but the price declined a further 7.14% to close at \$0.78, after an intraday high of \$0.87, and an intraday low of \$0.66.

194. Over the next two days, Wednesday 6 October 1999, and Thursday 7 October 1999, turnover remained high, on each day exceeding 150 million shares, and the price recovered, on Wednesday, 16.67%, and on Thursday, a further 3.3%, to close at \$0.94.

195. Through the remainder of October turnover remained high, the lowest on 26 October 1999, of 31,776,000 shares, and the highest on 29 October at 134,042,320 shares. The price declined, to \$0.72 on 19 October, and fluctuated thereafter, closing the month at \$0.78.

⁵¹ TB 4 pp 53-56.

Chapter 8

The events leading to the transaction between Swarkin and AOH

196. The transaction whereby Swarkin agreed to sell shares in CIL to AOH's subsidiary Jetcom, was entered into on the evening of Tuesday 21 September 1999. In this Chapter we consider the circumstances and events leading to the signing of the transaction.

Background:

197. During the first half of 1999, all those involved in CIL knew that it would be necessary at some stage to seek further funds to continue the development of the CIL database. The matter had been discussed between the directors and shareholders over meals and it had been informally agreed that an investor or strategic partner needed to be found. In August 1999, positive steps were being taken to this end.

198. Amongst the steps taken were an approach to an investment company called Offshore Capitals Limited, and discussions with the international accounting firms, Deloitte, and Ernst and Young. There had been an introduction to PricewaterhouseCoopers, and through that, to Core Pacific-Yamaichi. There had been discussions with a Singaporean web page company. CIL had engaged Cazenove Asia and Core Pacific-Yamaichi, separately, as financial advisors. Notwithstanding all this effort, most of which took place during August 1999, no progress had been made in finding an investor or strategic partner.

199. Mr Tjia had known Mr Poon for six or seven years, they having been introduced to each other by Mr Lau. Mr Tjia's company, Deson, specialised in construction and building works in both Hong Kong and the mainland. There was a commonality of interest in these areas of business between Mr Poon and Mr Tjia. It was Mr Tjia's practice to speak with Mr Poon from time to time, either over meals or at Mr Poon's office, and at such times to promote the business of Deson to Mr Poon in the hope that Deson would be able to take up some projects with AOH.

200. Despite the assertion in the *Hong Kong Daily News*⁵² on Friday

⁵² See para 150 above.

10 September 1999, that the rising trend in the stock price of AOH was “allegedly related to its intention to undergo transformation and develop the high-technology business”, the evidence of Mr Poon was that prior to September 1999, neither he nor AOH had been involved in any businesses concerning the internet or the provision of internet or database services.

Monday 13 September 1999:

Mr Tjia promotes CIL to Mr Poon:

201. On the late afternoon, sometime between 3:00 p.m. and 5:00 p.m., of Monday 13 September 1999, Mr Tjia called upon Mr Poon at his office. Mr Tjia said that the purpose of the visit was to get some projects for Mr Poon. Both said that they first discussed potential business concerning AOH and Deson. In the course of the discussion Mr Tjia mentioned the circumstances of CIL to Mr Poon, and described the nature of the business of CIL. Mr Tjia, not wanting a chance to go by, and knowing that CIL needed investors, asked Mr Poon if he was interested in investing in CIL.

202. Mr Tjia said that Mr Poon responded with interest. Mr Tjia then explained that although the company had been running for seven years and was still losing money, the directors considered that by the use of the “Infocard” they had resolved a marketing issue.

203. In the course of the meeting Mr Poon indicated that he was interested in acquiring 20% of CIL. Mr Poon said that if he made an investment he wished to be the largest single shareholder amongst the shareholders, and that any investment would not be in the form of cash. Mr Tjia said that Mr Poon expressed particular concern as to the business turnover of CIL, and he told Mr Poon that CIL was very likely to make a sales turnover of US\$4 million in the coming year, that is the calendar year, 2000.

204. When Mr Tjia suggested the company, (CIL), might go to listing, Mr Poon indicated that in those circumstances he would want to increase his shareholding by another 20%. They discussed the possibility of a listing of CIL on the NASDAQ. Mr Tjia told Mr Poon that he would arrange for a presentation by a colleague of CIL, and that he would prepare a letter of intent. Mr Tjia told the Tribunal in evidence that the purpose of

the letter of intent was to record what they had talked about on that day.

205. Mr Poon, for his part, recalled being told that CIL had the biggest Chinese database in the world, and that CIL was better than something like China.com. Mr Poon recalled saying that he wanted to be the largest single shareholder, and that he wanted a revenue guarantee if he was to invest in the business.

206. At the conclusion of the meeting, arrangements were made for a presentation in relation to CIL to be made to the directors of AOH the next day. Mr Tjia told Mr Poon that he would be out of town for a few days, and if Mr Poon wanted to talk about the matter he could talk about it with Mr Lau. Mr Tjia left the meeting.

Mr Lau is informed of the meeting:

207. Immediately following the meeting Mr Tjia telephoned Mr Kwan and gave him instructions in relation to making the presentation to AOH the next day. Mr Tjia called Ms Amy Chan⁵³, , who was working on a freelance basis for Mr Tjia, and instructed her to contact his solicitors, Sit Fung Kwong & Shum, (SFKS), and instruct them to prepare a letter of intent incorporating the conditions that had been mentioned by Mr Poon.

208. Following those telephone calls, Mr Tjia telephoned Mr Lau. His evidence was that he told Mr Lau “briefly” of the discussion with Mr Poon. He said that he did not tell Mr Lau anything of the possible terms of the transaction⁵⁴. He also told Mr Lau of the arrangements he had made with Mr Kwan to make a presentation to Mr Poon and the directors of AOH the next day on the nature of the CIL business. He told Mr Lau that he had instructed Ms Amy Chan to prepare a letter of intent.

209. Mr Lau did not recall the detail of his conversation with Mr Tjia after the meeting, either when interviewed by the SFC in October 2000, or when giving evidence. He did not dispute the evidence of Mr Tjia. On the next day, at the presentation, Mr Tjia told Mr Poon that he would be away for the next few days and if there were any queries Mr Poon should contact Mr Lau.

⁵³ Ms Amy Chan is a Member of the Institute of Chartered Secretaries and Administrators, and holds a Law Degree, (LL. B.), and an MBA.

⁵⁴ Transcript Day 2 pp 44-45.

210. Neither Mr Tjia, nor Mr Lau, suggested that Mr Tjia was on a frolic of his own in offering to Mr Poon an interest in CIL, the majority of which must come from the interest held by himself and Mr Lau in Swarkin. We are satisfied that Mr Lau and Mr Tjia, and the other shareholders of CIL had, prior to the meeting with Mr Poon, discussed, in general terms, the basis upon which, if the opportunity ever arose, they might offer for sale a significant interest in CIL.

211. The proposition that Mr Tjia said nothing about the conversation with Mr Poon, other than that it had taken place, and that there was to be a letter of intent, is simply unbelievable. There was little purpose in Mr Tjia telephoning Mr Lau unless it was to tell him what had been discussed. Both men had made a significant investment in CIL, from which they were not getting any return, and they were being asked to contribute more funds. The prospect of selling shares in CIL to Mr Poon was an opportunity to recover that investment and to further fund CIL. It defies belief that in those circumstances Mr Tjia would not outline to Mr Lau the terms that had been discussed or the basis on which the letter of intent would be prepared.

212. Further, if, as both Mr Tjia and Mr Lau asserted, Mr Lau knew nothing of the proposed terms of the transaction, and as Mr Lau asserted, the deal was Mr Tjia's deal, there was simply no point at all in Mr Tjia suggesting to Mr Poon that he should contact Mr Lau. There was no point in Mr Lau being named as the point of contact in respect of technical issues. He had no day-to-day knowledge of such issues. He was however an experienced business man and well capable of negotiating a transaction such as that being contemplated, in the absence of Mr Tjia. There was no suggestion that any one else at CIL had such a background or capability. The only inference to be drawn from identifying Mr Lau as the point of contact is that he had been briefed as to the basis on which the negotiations had begun.

213. In the whole of the circumstances we are satisfied that Mr Lau was appraised of the terms being discussed in relation to the transaction.

AOH announces discussions with an independent party for an investment in an internet related company:

214. During trading on Monday 13 September 1999, AOH stock had risen a further 12.12%, on high turnover, consistent with that of the

previous six days of trading. Late in the afternoon of Monday 13 September 1999, the SEHK sought an explanation from AOH. The inquiry was received by Mr Lun.

215. Mr Lun discussed the request for an explanation with Mr Poon at about 6:00 p.m. on that evening. It was Mr Poon's evidence that he did not inquire from Mr Lun whether the price movement for which the SEHK sought an explanation was a rise or a fall, or even the extent of the rise or fall. Although the notice ultimately published⁵⁵ was published under the name of the Company Secretary, Ms Chiu, and expressed to be "By Order of the Board", it appears that the content of the notice was determined by Mr Poon and Mr Lun.

216. The explanation, conveyed to the SEHK that evening, and published in Hong Kong newspapers, and by the SEHK on Tuesday 14 September 1999, related the increases in price and trading volume to the negotiations taking place in relation to the issue of Mandatory Exchangeable Bonds,⁵⁶ and announced its discussions with an independent party for a possible investment in an internet related company.

217. It is clear therefore that from the morning of Tuesday 14 September 1999, the general public, being those persons likely to deal in AOH shares, were aware that AOH had engaged in discussions that may involve the company in TMT activities. The response of the market was to maintain a high turnover, at 27,921,600 shares with the closing price rising 4.05% to \$0.77.

218. On the evening of 13 September 1999, following her receipt of instructions from Mr Tjia, Ms Amy Chan attended at the offices of SFKS, where she saw the senior partner, Mr Peter Sit, (Mr Sit). Mr Sit asked a commercial partner, Mr Joseph Wong, and an assistant solicitor, Ms Wynne Lau, to assist him. Ms Amy Chan gave instructions for the preparation of a letter of intent.

219. A note prepared by the solicitors⁵⁷ records the matters of detail upon which she had received instructions from Mr Tjia, and which she passed on to the solicitors.

⁵⁵ TB 4 p 30; see para 163-164 above.

⁵⁶ See para 145 above.

⁵⁷ TB 10 p 26.

Tuesday 14 September 1999:

The preparation of the letter of intent:

220. The letter of intent was prepared by SFKS the next day, 14 September 1999, and faxed to Ms Amy Chan at 3:11 p.m., and to Ms Elke Li of CIL at 3:51 p.m. Ms Amy Chan told Mr Tjia that the letter of intent had been prepared⁵⁸, and was instructed by him to go and see Mr Poon. This she did, and was told by him to approach Mr Lun. She went to Mr Lun, and gave him the letter of intent. Mr Lun's evidence⁵⁹ was that he received it, read it, and, either on 14 September or 15 September 1999, asked AOH's solicitors to liaise with SFKS in relation to the sale and purchase agreement.

221. When Ms Amy Chan told Mr Tjia that the letter of intent had been prepared, she asked Mr Tjia if there was a need to prepare a sale and purchase agreement. Her evidence was that he left it to her judgement as to whether or not a sale and purchase agreement should be prepared⁶⁰. It was not in dispute that the letter of intent was never signed. It is likely that as the discussions proceeded between the parties after 14 September 1999, the situation moved sufficiently rapidly towards a formal agreement for sale and purchase that the letter of intent was simply left to the side.

The presentation:

222. On Tuesday 14 September 1999, Mr Kwan and Ms Elke Li attended at AOH's offices to make a presentation on the business of CIL to AOH. Mr Tjia gave no particular instructions to Mr Kwan in relation to the content of the presentation. He was content to rely upon Mr Kwan's professionalism and experience in having undertaken other promotions to possible investors. Mr Lun and Mr Poon attended the presentation. At the presentation they were shown a PowerPoint presentation⁶¹ relating to the business of CIL. Amongst the matters that were discussed were sales, the growth model, the major assumptions underlying the growth model, and the prospects of the company.

223. Following the presentation Mr Poon gave instructions to Mr Lun to obtain further accounting information concerning the company, and

⁵⁸ Transcript Day 4 p 17.

⁵⁹ Transcript Day 6 p 12.

⁶⁰ Transcript Day 4 p 18.

⁶¹ TB 5 p 158-188.

asked Mr Lim to prepare an evaluation report. In evidence⁶² Mr Lun accepted that process he undertook was, in part, a “desktop due diligence”.

Wednesday 15 September 1999:

Beijing speaks about the internet:

224. On Wednesday 15 September 1999, newspaper articles were published⁶³ tending to indicate that restrictions may be imposed by the government of the PRC on foreign investors in TMT business. The articles particularly referred to AOH and the intention it had announced the previous day to participate in internet-related business.

225. The issue was plainly one of concern for all involved. Ms Amy Chan became aware of the articles following the query raised by the SEHK. Mr Lun also raised the matter with her. The matter was sufficiently serious that Ms Amy Chan herself flew to Beijing on Saturday 18 September 1999, to inquire about the position.

The meeting at the Grand Hyatt:

226. On the evening of Wednesday 15 September 1999, arrangements were made for Mr Lau and Mr Jimmy Wong to meet with Mr Poon. Mobile phone records show that at 8:00:57 p.m. on that evening Mr Lau telephoned Mr Poon, a call lasting 0.8 minutes. We accept that the purpose of that call was in relation to the arrangements for the evening. The meeting was at Mr Poon’s request, and the arrangements were made by him. He explained the purpose of the meeting in the following way⁶⁴:

“When I invest in the company, it’s a business between people. It’s not the asset business that we have been doing. So I think it’s necessary to meet the management. To see if they are commercially oriented. Or technically oriented.”

227. The evidence of Mr Jimmy Wong was that upon returning late from Beijing, he called a colleague at CIL, and was told to go to the Grand Hyatt as Mr Lau had something to discuss, and required his, (Mr Jimmy

⁶² Transcript Day 6 p 14.

⁶³ See para 167 above.

⁶⁴ Transcript Day 3 p 50.

Wong's), participation. Mr Jimmy Wong said that that was at about 9:00 p.m. He said that Mr Lau came to the Grand Hyatt with Mr Poon and introduced them. Mr Lau took little part in the discussions, the emphasis, and prime purpose of the meeting, being for Mr Poon to meet and evaluate Mr Jimmy Wong who was at the centre of the technical aspects of CIL.

228. Mr Jimmy Wong said that he left the meeting first, at around 11:00 p.m.. Mr Lau's evidence was that he and Mr Poon settled the bill and then left. Mr Lau said that there was no further discussion between himself and Mr Poon as to the potential transaction, explaining that the deal was Mr Tjia's deal, and that he went simply to introduce Mr Poon and Mr Jimmy Wong.

Thursday 16 September 1999:

229. Nothing of consequence occurred on this day, the SEHK being closed in consequence of a No 8 gale warning signal having been hoisted.

Friday 17 September 1999:

The first draft SPA is prepared:

230. On the evening of Friday 17 September 1999, Ms Amy Chan telephoned Mr Sit and instructed him to begin preparing a standard sale and purchase agreement for the sale of shares using the terms in the draft letter of intent as the basis⁶⁵. At the same time Ms Amy Chan told Mr Sit that she would be going to Beijing, and would take the opportunity to find out more about CIL's operation on the mainland, and to consult PRC lawyers regarding CIL's business on the mainland. Either that evening, or the next day, Saturday 18 September 1999, Mr Sit instructed Mr Joseph Wong to prepare the document.

231. The document was duly prepared and sent by fax⁶⁶ to Mr Fred Yip of Messers Chan, Lau & Wai, solicitors for AOH. Although the cover sheet was dated 18 September 1999, the fax was in fact dispatched at 00:47 a.m. on the early morning of Sunday 19 September 1999.

⁶⁵ TB 10 SFKS letter to counsel for the Tribunal dated 20 June 2006, p 2 para 5.

⁶⁶ TB 10 SFKS letter to counsel for the Tribunal dated 20 June 2006, p 2 para 6 & pp 29-78.

232. The draft SPA substantially followed the letter of intent. It was an agreement promoted between the same parties. It related to 240,000 shares in CIL. The dollar amount of the consideration was not yet determined, but it was to be satisfied by the issue and allotment of shares in the investor company. Both documents contained an estimation of the turnover of CIL for the year ended 31 December 2000, but no warranty or guarantee was given.

233. There were some differences. The letter of intent provided for the purchaser to be a Hong Kong listed company. The draft SPA provided for some other company to be the purchaser, with AOH, the purchaser's parent company guaranteeing the performance of the contract. There was a provision giving the purchaser an option to subscribe for further shares if CIL was listed on the NASDAQ within 12 months. That was not contained in the draft SPA.

Telephone contact between Mr Lau and Mr Poon:

234. In the early evening of Friday 17 September 1999, Mr Lau was in Tsim Sha Tsui. That is established by the fact that over the space of an hour he received two telephone calls from Mr Poon. The first call, timed at 6:22:43 p.m. lasted for 3.1 minutes. The second call timed at 7:37:04 p.m. lasted for 1.2 minutes. Neither Mr Lau nor Mr Poon were questioned, either by the SFC in their interviews, or in the course of their evidence as to the content of these telephone calls.

235. In his submissions Mr Bruce invited us to conclude that the topic of the conversations was the proposed transaction. Nothing has been suggested to us as to any other reason why there might have been such telephone calls, at such time, between these two men. We are satisfied to the appropriate standard of proof that the topic of the conversations was the proposed transaction, but we are unable to say precisely what was discussed.

Saturday 18 September 1999:

Ms Amy Chan's visit to Beijing:

236. Ms Amy Chan flew to Beijing with Mr Jimmy Wong, and there she met a mainland lawyer, from whom she sought advice concerning

the potential contravention of Chinese law by CIL. She obtained oral advice which was subsequently confirmed in writing and sent by her to Mr Sit and Mr Joseph Wong at SFKS, and Ms Chiu of AOH, on 30 September 1999⁶⁷.

237. It was initially Ms Amy Chan's evidence that she had other clients who had business in Beijing. The impression she sought to give the Tribunal was that she was going to Beijing in any event and that for convenience sake she should deal with this matter at the same time as she went to Beijing for those clients. However on examination by the Tribunal it transpired that CIL paid for her visit, and that the inquiry she was to make on behalf of CIL was the only reason she went to Beijing⁶⁸. Although she asserted that the matter was not a matter of urgency, it is plain that it was a matter of serious concern in the negotiation of the transaction.

Sunday 19 September 1999:

Documents are supplied for due diligence:

238. At their first discussion Mr Poon had told Mr Tjia that a due diligence report would have to be prepared. After the presentation, Mr Poon had instructed Mr Lun to carry out that due diligence. He said that that was the company's usual practice, and that it was rare for them to engage outside agents to undertake due diligence.

239. At some time on Sunday 19 September 1999 documentation had been supplied by CIL to AOH, to enable Mr Lun to undertake his desktop due diligence. Mr Lun, for Asia Orient signed a letter of confidentiality⁶⁹ in relation to the information on Sunday 19 September 1999. Included in that information with the management accounts as at 31 August 1999, and the audited accounts for the years of March 1997, and March 1998. Also included were banking information, certain licence agreements, an employee list, and a standard employee contract. Also involved in the due diligence was Mr Lim.

⁶⁷ TB 12 Ex 8, 9 & 10.

⁶⁸ Transcript Day 4 p 32.

⁶⁹ TB 8 p 63.

The SPA is returned:

240. At 5:15 p.m. on the evening of Sunday 19 September 1999, the first draft of the SPA was returned to SFKS by Chan, Lau & Wai⁷⁰. There were significant amendments. The involvement of AOH as parent company guaranteeing the performance by the purchaser company was deleted. Further definitions were added, and a number of technical conditions were added. Provision was made for a revenue guarantee to be executed by the vendors. Later that evening, at 7:08 p.m., Mr Sit received from Chan, Lau & Wai⁷¹ additional comments and a new schedule of representations and warranties to be given by the vendors. Mr Sit instructed Mr Joseph Wong to consider those amendments and some other matters he raised.

The price for the transaction is discussed:

241. Mr Tjia returned to Hong Kong on Saturday 18 September 1999. During the time he had been in Japan, arrangements had been made for him to meet with Mr Poon on the afternoon of Sunday 19 September 1999. Mr Tjia was informed of those arrangements while he was in Japan.

242. Mr Tjia's evidence⁷² was that he wanted to use the free time on Sunday to discuss the matter with Mr Poon, and to see what progress there had been from their earlier discussion. His evidence was that during the time he had been in Japan he had paid no attention to the potential transaction with AOH, neither, on his return to Hong Kong, did he inquire from anyone else involved in CIL whether there had been any developments during the five days that he had been away.

243. The meeting took place at the Grand Hyatt. It was a meeting between Mr Poon and Mr Tjia. Mr Poon described to Mr Tjia his meeting with Mr Lau and Mr Jimmy Wong on the previous Wednesday evening. At some stage in the course of the meeting they discussed the price for the transaction. Mr Tjia said⁷³ that the turnover for CIL could reach US\$4 million a year, and that accordingly the valuation of the company should be calculated by multiplying the turnover by 25 giving a figure of US\$100 million.

⁷⁰ TB 10 pp 79-109.

⁷¹ TB 10 pp 110-119.

⁷² Transcript Day 2 pp 50-53.

⁷³ Transcript Day 2 pp 53-56.

244. The question of the turnover guarantee was also discussed, with Mr Tjia saying that the matter was negotiable⁷⁴, and Mr Poon believing that he had a 90% chance of getting the guarantee⁷⁵. As Mr Tjia was basing the valuation on the turnover of the company, the question of a guarantee of the turnover was an important factor.

245. Although Mr Poon did not consider that he was properly prepared for the meeting, he had discussed at least some of the accounting documents that had been supplied earlier that day with Mr Lun⁷⁶. He was aware that there were approximately \$10 million worth of shareholders loans on the books of CIL. He raised the question of shareholders loans and it was agreed that that would be a matter for negotiation at a later time.

246. Mr Tjia asked Mr Poon if he knew why the share price of AOH had moved, as it had, during the previous four days. Mr Poon responded that he could not explain the movement.

Telephone contact between Mr Tjia and Mr Lau:

247. There was a telephone conversation between Mr Lau and Mr Tjia at 11:12:17 p.m. that evening. Mr Tjia was not questioned about that telephone conversation. In evidence⁷⁷ Mr Lau said that he did not remember what the telephone conversation was about, but did not think that it would be about CIL. He offered no other explanation as to the content of the telephone call. There was no suggestion that there were any other particular transactions taking place between Mr Tjia and Mr Lau at that time.

248. The overwhelming inference from the fact of the telephone conversation that late at night, between the two, following a meeting with Mr Poon, is that Mr Lau and Mr Tjia discussed the CIL-AOH transaction that was in the course of negotiation at the time. Such a discussion would inevitably have included the discussion that had just taken place between Mr Tjia and Mr Poon as to the price discussed and the fact that the issue of the shareholders loans had been raised.

⁷⁴ Transcript Day 2 p 57.

⁷⁵ Transcript Day 3 p 61.

⁷⁶ Transcript Day 3 p 59.

⁷⁷ Transcript Day 15 p 63.

Monday 20 September 1999:

AOH seeks valuation of CIL:

249. Mr Lim, along with Mr Lun, had been reviewing the proposed investment by AOH into CIL. Mr Lim also looked at the question of valuation. He relied upon the suggested turnover of US\$4 million, and applied to that the multiplier that he considered appropriate, 20, giving a valuation of CIL of US\$80 million. Mr Lim had also been involved in evaluating the accounts received by Mr Lun under the disclosure made on Sunday 19 September 1999.

250. That morning, Mr Poon discussed Mr Tjia's valuation of CIL, at US\$100 million, with Mr Lun and Mr Lim. He instructed Mr Lun to obtain an independent valuation of CIL. Mr Lun said that the valuation was requested by an independent director, but nothing turns on at whose request the valuation was obtained. It is not clear from the evidence whether Mr Lun received a verbal assessment of the valuation on that day, or whether he did not learn of the valuation until the written appraisal was received the next day.

251. At 1:07 a.m. in the early morning, SFKS sent by fax to Chan, Lau & Wai, a revised copy of the draft SPA. The name of the purchaser company was still not identified. The turnover remained an estimate.

Mr Tjia and Mr Poon meet again:

252. At about 4:00 p.m. on the afternoon of Monday 20 September 1999, Mr Tjia went to Mr Poon's office to discuss the matter further. Mr Poon told Mr Tjia that the valuation was too high and sought a discount. No specific figure was mentioned, but Mr Tjia said that the price was negotiable. They discussed the turnover issue, which at that time was not in the draft SPA as a guarantee, but as an estimate by the vendors, which was neither warranted nor guaranteed by the vendors. Mr Poon's position was that there had to be a guarantee. He also required the shareholders loans to be capitalised. It was agreed that they would go to Mr Lau's office for a further meeting at 6:00 p.m. Mr Tjia went back to his office with the arrangement that they would meet later.

The meeting at Mr Lau's office:

253. Mr Poon and Mr Tjia met again at Mr Lau's office sometime between six and seven in the evening. They went separately, meeting each other at the lobby. Both Mr Lau and Mr Poon said that upon meeting in Mr Lau's office, the first thing that Mr Lau said to Mr Poon was:

"Are you serious? Are you really interested in doing that."

Mr Poon responded in the affirmative. It was Mr Poon's evidence⁷⁸ that that was the first time that he expressed positive interest to Mr Lau or Mr Tjia that he really wanted to invest in CIL. There then followed a detailed discussion between the three men as to the price, the steps to be taken in respect of the shareholders loans, and the status of the turnover guarantee.

254. Mr Tjia and Mr Lau were the only shareholders from CIL who were present at the meeting. It was obviously necessary to obtain the approval of the other shareholders. It was also necessary to instruct SFKS to revise the draft SPA to reflect the discussions that had taken place.

Tuesday 21 September 1999:

The transaction is concluded:

255. Mr Lau neither bought nor sold AOH shares on this day, nor did he deal again in the listed securities of AOH until sometime after the transaction became public. Strictly, therefore, the events of this day are not particularly relevant, but we record them as they reflected the culmination of the activities of the previous eight days.

256. The commercial partner at SFKS, Mr Joseph Wong, worked diligently through the evening of Monday 20 September 1999, and, in the early hours of 21 September 1999, sent by fax to Chan, Lau & Wai, for AOH, the third draft SPA.

257. Ms Amy Chan had returned to Hong Kong and was asked by Mr Tjia to go to Mr Lau's office. There she reviewed the terms of the

⁷⁸ Transcript Day 3 p 78.

documents that had been prepared and was present, and presumably gave some advice, during the meeting of the CIL shareholders that evening, at which they agreed upon the final basis for the transaction. It was intended that Swarkin would sell a 40% interest in CIL to AOH, retaining 2.5%, and acquiring 11.5% of the total CIL shares from the remaining shareholders. The effect would be that Swarkin would then hold 14% of CIL.

258. During the day, Mr Lim submitted his formal evaluation of CIL to Mr Poon, Mr Lun, and the AOH company secretary. His evidence was that from time to time during the previous week Mr Poon had been making inquiries of him as to his progress with the evaluation⁷⁹. Mr Lim said that he had kept Mr Poon and Mr Lun informed of the view he was forming. We understand that the formal report was ultimately a document encompassing the oral advice he had given them.

259. During the afternoon Mr Tjia, Mr Wong, Mr Kwan and Mr Lau met together in Mr Lau's office to discuss the transaction. Final agreement was reached that Swarkin would give a formal guarantee for the US\$4 million sales revenue, and that Swarkin would sell a 40% interest in AOH. The price was agreed at US\$30 million, putting the total value of CIL at US\$75 million.

260. At 4:15 p.m. Mr Lun was in contact with a company called American Appraisal Hong Kong Limited, from whom he requested a valuation of CIL. At 5:53 p.m. on the afternoon of Tuesday 21 September 1999, Mr Lun received a fax setting out the terms upon which the valuation would be undertaken, which he accepted on behalf of AOH. Mr Lun supplied to the valuers the information that he had received from CIL in the course of his desktop due diligence. Remarkably, by 6:43 p.m., less than an hour later, he received, in writing on a single page, a preliminary estimation of the fair market value of CIL as being in a range between US\$110 million and US\$138 million⁸⁰. Subsequently American Appraisal Hong Kong Limited received further information, undertook further market research and analysis, and submitted to AOH a final report on 11 October 1999.

261. The SPA and all other relevant documents were signed by all parties late on the evening of Tuesday 21 September 1999.

⁷⁹ Transcript Day 8 p 35.

⁸⁰ TB 5 p 83.

Wednesday 22 September 1999:

The transaction is announced:

262. At the request of AOH, trading in the company's shares was suspended on Wednesday 22 September. On that day a press conference was held. The evidence did not go into the precise details of what took place at the press conference, however newspaper articles⁸¹ published on that day and the next day covered the terms of the conference extensively. It was not suggested that these articles did not accurately reflect the matters stated at the press conference, or any other matter in relation to either AOH or CIL.

263. We have recorded the movement of AOH shares after the announcement of the transaction in Chapter 7 above. Significantly, when trading resumed on Thursday 23 September 1999 the turnover doubled and the counter closed at \$1.31, an increase of 40.86%. That trading pattern continued on Friday 24 September 1999, with equally high turnover, and the share price increasing slightly.

⁸¹ TB 6 pp 89-121.

Chapter 9

Did Mr Lau receive information from a “Connected Person”?

264. The submission was made on behalf of Mr Lau that he did not “receive” information from a person who was “connected with” AOH, as that expression is defined by s 4 of the Ordinance. We have set out the relevant provisions of s 4 in para 35 above. The submission requires us to consider four particular issues. First did Mr Lau “receive” information. Second, did that information concern AOH. Third, was the person from whom that information came “connected with” AOH. Fourth, in the circumstances can it be said that Mr Lau “knew or ought to have known” the source of the information was connected with AOH.

265. The case presented to us was that relevant information concerning AOH was conveyed, from Mr Poon, a person connected with AOH, indirectly, via Mr Tjia, to Mr Lau.

Did Mr Lau “receive” information:

266. Although the formal submission was made that Mr Lau did not “receive” information the issue was not pursued in oral submission. We have however considered the matter.

267. We are satisfied that there can be no doubt at all that when Mr Tjia telephoned Mr Lau on the evening of 13 September 1999 and told him of what had taken place shortly before the telephone call, Mr Lau was receiving information. No positive act was required on the part of Mr Lau in relation to the information. It is sufficient if he merely listens to and perceives the information. In *Attorney General’s Reference (No 1 of 1988)* [1989] 1 All ER 1, the House of Lords considered a contention in relation to the English legislation which required that a person must “obtain” confidential information. The submission was made that to obtain confidential information required, there must be an effort or request on the part of the obtainer of the information. The submission was rejected. The court held that a person “obtained” confidential information about a company if he acquired or got it without any effort on his part. *A fortiori*, the word “received” does not imply any particular overt act, and certainly includes hearing and understanding information conveyed over a telephone line.

268. We are satisfied that on 13 September 1999, Mr Lau “received” information.

Was the information about AOH:

269. For information to be “relevant information” it must be information “about” a corporation: see s 8 of the Ordinance. The information in this case concerned a contemplated transaction between AOH and CIL. There can be no doubt that the information received by Mr Lau was information “about” AOH. The contrary was not argued.

Did the information come from a person “connected with a corporation”:

270. The formal submission was made that Mr Lau did not receive information from a connected person. Again, the point was not pursued in oral argument. Nevertheless we have considered the submission. The information at issue in this case may be broadly described as information in relation to a contemplated transaction between AOH, CIL, and Swarkin.

271. There were two primary sources of the information. First there was Mr Poon. He was a director of AOH and its managing director. On 13 September 1999, Mr Poon held a controlling interest in AOH, (directly and through associates), of approximately 66% of the issued share capital of AOH. Both in his capacity as a director, and in his capacity as a substantial shareholder in AOH, Mr Poon plainly falls within the definition in s 4(1)(a) and (b) of the Ordinance. There can be no doubt at all that Mr Poon was a person “connected with” AOH, as that expression is used in the Ordinance. Information from Mr Poon, a connected person, was conveyed indirectly to Mr Lau via Mr Tjia.

272. Second, there was Mr Tjia. Mr Tjia was plainly a person connected with CIL. He received information from Mr Poon, and passed information from that source, and from his own knowledge, to Mr Lau. Mr Tjia, is a connected person, as that expression is defined by s 4(1)(c) and (d) of the Ordinance.

273. If there were any doubt about the issue, it is resolved by s 4(1)(d). A third source of information was Mr Lau himself. By virtue of his being a director of CIL, which corporation was involved in a contemplated transaction with AOH, he had access to information in

relation to AOH, namely information in relation to the progress of the contemplated transaction. Mr Lau himself is, as far as the particular transaction between AOH and CIL is concerned, a connected person.

274. We are satisfied that the information received by Mr Lau came from a person who was “connected with the corporation” as that expression is defined by s 4 of the Ordinance.

Did Mr Lau know that Mr Poon was “connected with” AOH:

275. Mr Tjia told Mr Lau that his conversations concerning the proposed involvement of AOH in CIL were with Mr Poon. Mr Lau knew who Mr Poon was, and his position in AOH. There can be no doubt at all that Mr Lau knew that Mr Poon was a person “connected with” AOH. The contrary was not argued.

Chapter 10

Mr Lau's explanation for his AOH share purchases

276. Mr Lau said that he began buying AOH shares on 6 September 1999, at what he saw was a discounted price against the net assets value, (NAV) of the company. He said that the involvement of Grosvenor and Ayala in Asia Standard enhanced the circumstances of the AOH acquisition for him.

Mr Lau's position in AOH prior to 13 September 1999:

277. The evidence establishes that Mr Lau first acquired shares in AOH on 11 December 1995, and that by 20 May 1998, the last occasion on which he was involved in the sale or purchase of AOH shares before this matter arose, he held 31,508,000 shares in the company.

278. Between 20 May 1998 and 5 September 1999, a period of a little over 15 months, Mr Lau neither bought nor sold AOH shares.

Mr Lau's position in AOH by 21 September 1999:

279. By the close of trading on Monday 20 September 1999, at which time substantial agreement had been reached on the transaction between AOH and Swarkin and CIL Mr Lau had increased his shareholding in AOH by 152.64%, to 79,602,000 shares. Over a period of 15 days he had spent, in cash, \$31,907,700.00 to reach this position.

The circumstances prior to 13 September 1999:

280. All those involved in the AOH-CIL transaction asserted that nothing had occurred in relation to the transaction prior to the meeting between Mr Poon and Mr Tjia on the late afternoon of 13 September 1999. There is no real evidence to the contrary⁸².

281. We have set out the circumstances of the Grosvenor and Ayala involvement in Asia Standard in paras 138-143 above. From the beginning

⁸² See paras 297-308 in Chapter 11 below.

of 1999, until mid June 1999, there had been little movement in AOH stock. The stock had risen, both in turnover and price, between mid-June and mid-July 1999. We have concluded that those movements were attributable first to rumours in the marketplace, and subsequently to an announcement by AOH and Asia Standard of an impending subscription for new shares in Asia Standard by an unnamed party.

282. But in the period following mid July 1999, both turnover and price reduced significantly and on a number of days there was no trading at all. When the formal transaction was announced there was a brief flurry of movement on the day of the announcement, but thereafter little interest in the stock until 6 September 1999.

283. Mr Lau's primary assertion was that he invested in stock with a view to holding the shares for the medium to long term, and that he preferred stocks with good fundamentals, such as NAV, (as a ratio to the share price), cash flow and good management. His re-entry into AOH stock on 6 September 1999, must be tested against his evidence and the established facts.

284. During the period from Mr Lau's last acquisition of AOH shares, in May 1998, up to 3 September 1999, AOH had issued two annual reports. If NAV was an important factor Mr Lau would have been able to determine the NAV of AOH from those reports. At both of those times the stock was trading at around \$0.30 or below, which even further improved the NAV/share price ratio from the level it went to on or after 6 September 1999. Yet for the whole of that 15 month period Mr Lau made no purchases at all. There was nothing in the evidence to establish that immediately prior to 6 September 1999, Mr Lau had learned of some significant improvement in either the cash flow or the management of AOH.

285. Mr Lau's evidence was that he could not remember when he became aware that the NAV/share price ratio of AOH fell, following the announcement of results in 1999. At that time he held a substantial position in AOH, (at a share price of \$0.30, worth some \$9,450,000.00). He said that although he did not look at the stock price on a daily basis, he did look at the stock price from time to time. Mr Lau is an experienced businessman, and with the NAV being important to him, we have no doubt that he would have been aware of the relativity of the NAV, to the current stock price.

286. If, as he asserted, the NAV of AOH was a crucial factor in making the acquisitions he did, Mr Lau ought to have been able to explain to us why he waited until 6 September 1999, to begin purchasing again. We were offered no satisfactory explanation for the long delay.

287. Mr Lau relied also on the Grosvenor-Ayala transaction with Asia Standard. The transaction was announced on 17 August 1999. Trading responded to the announcement by an increase in the share price of 6.67% to \$0.32 but fell the next day to close at \$0.315. The NAV/share price ratio of AOH would have been marginally worsened by that increase in share price, but the apparent attraction of the Grosvenor-Ayala announcement was apparently not such as to encourage Mr Lau to re-enter the market.

288. On 12 July 1999, Mr Lau sold 35 million shares in Asia Standard. He said he had been approached by a businessman who expressed an interest in buying the shares from him, which would enable him to get cash from the transaction. By 12 July 1999 the announcement had been made of the impending subscription of new shares in Asia Standard, and the stock price of AOH, the parent company in which Mr Lau said he had primary interest, had increased.

289. Mr Lau's explanation for his disposal of Asia Standard shares at that time, and his subsequent explanation for his acquisition of AOH shares, an Asia Standard transaction, was, we found confusing and inconsistent. There was no reason to dispose of shares in Asia Standard, at a time when it was likely that there would soon be an announcement as to the identity of the new Asia Standard investor. There was no reason to sell Asia Standard, substantially owned by AOH, if he was to take an increased position in AOH because of a perceived bargain in the NAV. Put simply, if Mr Lau's explanation for his re-entry into AOH is true, then he had no reason at all to sell his interest in Asia Standard.

290. Mr Lau's assertion that he found the Grosvenor-Ayala transaction to be "exciting"⁸³ was quite inconsistent with the fact that he waited three weeks before acting on the information.

291. If, as he asserted, the Grosvenor-Ayala involvement in Asia Standard, a subsidiary in which AOH held a controlling interest, was so

⁸³ Transcript Day 14 pp 29-31.

significant as to encourage him to re-enter the market in AOH, Mr Lau ought to have been able to explain to us why he waited from 17 August 1999, until 6 September 1999, to begin purchasing again. Again, we were offered no satisfactory explanation for the delay.

292. When Mr Lau did re-enter the market on 6 September 1999, his purchases of 4,978,000 shares, amounting to 49.2% of the turnover in the stock on that day, were at a price ranging between \$0.30 and \$0.41, on a day when the stock price rose to close 42.11% higher. That increase in the stock price would have significantly reduced the NAV/share price ratio of AOH. Notwithstanding that reduced ratio, Mr Lau entered the market again the next day, 7 September 1999, acquiring 8,762,000 shares at between \$0.465 and \$0.495 a further increase in the closing price of 17.28%.

293. If, as he asserted, the NAV of AOH was so significant, Mr Lau ought to have been able to explain to us why, with a consistently reducing NAV/share price ratio as a result of the steadily increasing share price, he continued increasing his position in the company, spending over \$31 million in the process. He did not do so.

294. We have had careful regard to the whole of Mr Lau's explanation for his involvement in the acquisition of AOH shares between the period 6 September 1999 and 13 September 1999. We are unable to accept Mr Lau's explanation. We are of the view that the evidence before us does not satisfactorily explain the acquisitions made by Mr Lau during that period.

Chapter 11

Was the information received by Mr Lau on 13 September 1999

“relevant information”?

295. In this chapter we consider whether or not the information available to Mr Lau on the evening of 13 September 1999, constituted relevant information.

Discussions prior to 13 September 1999:

296. The evidence of both Mr Tjia and Mr Poon was that the entire transaction had its genesis with the discussion that took place between them on the late afternoon of Monday 13 September 1999. Both accepted that they were businessmen who knew each other well and that Mr Tjia regularly approached Mr Poon to see if AOH could refer business to Deson. That was how, both said, the meeting began.

297. Mr Tjia did not dispute the proposition that prior to Monday 13 September 1999, those involved in CIL had had a series of informal discussions in which it had been agreed that they needed to source a strategic investor for CIL. A number of steps had been taken particularly with investment bankers.

298. Both Mr Poon and Mr Tjia characterised the discussions as mere preliminary exploration between the parties. Mr Bruce made the submission that that evidence was not evidence that could be accepted at face value. The inference in the submission was that the discussions between AOH and CIL had begun before 13 September 1999. There are three factual circumstances which justified the submission. They are the content of the discussions at that stage, Mr Tjia's proposed absence from Hong Kong, and the basis relied upon by AOH to explain the increase in AOH's share price and turnover on that day.

The content of the discussions:

299. It is right that nothing was finalised in the discussion on the afternoon of Monday 13 September 1999. It appears to have been a

discussion that took place in the absence of any documentation concerning CIL, and to have arisen almost accidentally in the course of a quite unrelated discussion. Yet Mr Poon's first concern in the course of the discussion appears to be that in the event of the transaction proceeding, he wished to be the single major shareholder.

300. Next there was discussion that there should be a guarantee of a particular revenue level, at US\$4 million. Further, the discussions included an indication from Mr Poon that the acquisition may be undertaken by a share swap.

301. These are all matters of detail which it may be thought might not arise in the course of a mere preliminary exploration. One might well expect that before matters of such detail were discussed, there would have been first a preliminary exploratory discussion, followed by greater inquiry into, and investigation of the nature of the business, and, particularly in the case of a public company, discussions by the board of that company. Those discussions would result in appropriate instructions to a director as to important factors the board would require to consider, such as relative size of shareholding, revenue guarantee and the structure of any acquisition.

The response to the SEHK query:

302. After the meeting concluded, Mr Lun told Mr Poon that the SEHK had inquired as to the reasons for a substantial increase in price of AOH shares, (12.12%). Remarkably, Mr Poon, the controlling shareholder, made no inquiry as to extent of the rise or the increase in the turnover. Any rise in the value of AOH shares would significantly affect Mr Poon's personal net worth. We have the greatest deal of difficulty in believing Mr Poon's evidence that he took no interest at all in the share price of AOH. He was a very substantial shareholder in AOH. We find the evidence of Mr Clement Fung, the holder of stock options for 10 million AOH shares, to be equally difficult to accept.

303. Mr Lun and Mr Poon, apparently in the vacuum of any knowledge as to the extent of the price movement or the increase in the turnover, discussed the response to be given to the SEHK. The answer given that evening, and published next day, gave two possible explanations for the price movement. The first was the negotiation of the Mandatory Exchangeable Bonds. The second was discussions with an unnamed third party about the acquisition of an internet business.

304. The negotiation of the Mandatory Exchangeable Bonds may be readily dismissed as the genuine explanation for the price movement. Plainly, any impact in relation to the negotiation of mandatory exchangeable bonds, a singularly uninspiring corporate step, would have dissipated soon after its announcement on 6 September 1999.

305. The second explanation offered by AOH was discussions with an unnamed third party about the acquisition of an internet business. To an extent, this announcement confirmed the rumour that had been published in *Ta Kung Pao* on Tuesday 7 September 1999,⁸⁴ and *Hong Kong Daily News* on Friday 10 September 1999⁸⁵. Mr Witts described AOH as being “very prompt in making full and responsible disclosure to its shareholders and the investing public during the period under review”⁸⁶.

306. But on any analysis, the discussions referred to, that is the discussions with Mr Tjia and CIL, could not have been the basis for an increase on that day. Quite simply, no one could have known of discussions, which took place after the close of trading on that day. The inference arises that if Mr Poon thought that knowledge of the discussions could be a basis for the share price movement, there must have been discussions between the parties prior to Monday 13 September 1999.

307. It may well be right that AOH was acting promptly in disclosing the fact of the discussions. But this explanation simply does not stand up when all those involved, on the AOH, Swarkin and CIL sides of the transaction, characterised all discussions and negotiations until the evening of 21 September 1999, as being mere vapour. If, as they asserted, the discussions were mere vapour, there is simply no good reason to have relied upon the fact of the discussions as an explanation to the SEHK as a basis for the price movement. Indeed it may even be said that to do so was positively misleading.

308. However, at the end of the day, and bearing in mind the standard of proof, we are not satisfied that it has been established that there were in fact discussions between these parties prior to Monday 13 September 1999. Accordingly we reject the submission made by Mr Bruce, and proceed upon the basis that there were no such discussions.

⁸⁴ See para 146 above.

⁸⁵ See para 150 above.

⁸⁶ Mr Witts, Evidence in Chief, p 6 para 14.

Discussions within CIL:

309. We are however satisfied that there must have been discussions between the investors in CIL, which went well beyond the mere exploration of the need to involve a strategic investor in CIL. We are further satisfied, for the reasons given above, that there were discussions between Mr Tjia and Mr Lau as to the terms that would be required if they were to dispose of part of the interest in CIL held by Swarkin.

310. Further, on 14 September 1999, Mr Tjia telephoned Mr Poon and confirmed to him that Mr Kwan would contact him for the presentation⁸⁷. Mr Tjia told Mr Poon that he would be back on Saturday and if Mr Poon had any queries he should contact Mr Lau. Mr Lau's position throughout was that he knew nothing of the transaction other than the initial information Mr Tjia had given him on the previous evening. Mr Lau insisted that throughout the transaction was Mr Tjia's transaction for him to negotiate.

311. If that is right, and Mr Lau knew nothing of the circumstances, then there seems to be no point at all in Mr Tjia using Mr Lau as the point of contact in his absence. Mr Tjia's explanation of this situation was confused and evasive⁸⁸. The inference arises that by being designated the point of contact with someone as important as Mr Poon, Mr Lau must have known of the basis upon which those involved in CIL would be willing to consider the involvement of another shareholder.

312. Next, in giving instructions to Ms Amy Chan to prepare the letter of intent, Mr Tjia referred to the acquisition of shares by the purchaser on a pro rata basis from all of the CIL shareholders according to the ratio of their respective existing shareholding in the company. There would be no reason for him to give such an instruction if there had not already been discussions between the CIL shareholders resulting in knowledge on the part of Mr Tjia that all shareholders were willing to sell shares. We do not believe that, if as he would have us believe, Mr Tjia was on an unexpected frolic of his own, he would have suggested that other CIL shareholders should dispose of shares they may well wish to retain.

⁸⁷ TB 2 p 15.

⁸⁸ Transcript Day 3 pp 14-17.

The letter of intent:

313. Immediately following the meeting with Mr Poon, Mr Tjia took three steps. The first of those was to instruct Ms Amy Chan to contact SFKS to prepare a letter of intent incorporating the conditions mentioned by Mr Poon.

314. Mr Tjia's initial evidence was that his primary motivation in drafting the letter of intent was to make a record of the discussion between himself and Mr Poon⁸⁹. The concept of the letter of intent being a mere record of the discussion was consistent with the proposition, strongly advanced by the witnesses, and in submissions for Mr Lau, that the meeting on 13 September 1999, had been mere vapour, and nothing more than a preliminary exploration of a direction in which a discussion might later take place.

315. If Mr Tjia wished to make a personal record for his own purposes of what had taken place, he did not need to prepare a letter of intent. It would have been a simple matter to have made a written *aide memoir* recording the conversation. There would be no need to send that to Mr Poon. But Mr Tjia wished to go further. The letter of intent was in fact the first step in a series of negotiations which had begun at the meeting on the afternoon of Monday 13 September. That that was so is amply demonstrated by the immediate instruction of Ms Amy Chan, the solicitors, and the efforts of the solicitors who then worked both through the night and over weekends, in pursuit of the transaction.

316. We are satisfied that the discussions on the afternoon of Monday 13 September 1999, between Mr Tjia and Mr Poon had begun with a mere exploratory inquiry on the part of Mr Tjia, and in that same discussion matters had rapidly reached the stage where negotiations as to a contemplated transaction were under way.

317. We accept Mr Bruce's submission that the true purpose of the preparation of the letter of intent was to summarise Mr Tjia's position in such a way that it could be used as a basis for negotiation. It was the first step in the negotiating procedure which may or may not ultimately result in a consummated transaction.

⁸⁹ Transcript Day 3 p 16.

318. Correctly, Mr Bruce did not suggest that the letter of intent was in any way binding upon any party. But it cannot be ignored. Following the discussion with Mr Poon, Mr Tjia had been able to give instructions for the preparation of the document and then have it dispatched to Mr Poon. That demonstrates the stage at which the parties had reached. They were in negotiation. They had reached a point in the negotiations where the form and structure of the transaction was capable of being identified and put into a document. That document was the letter of intent.

319. It is important to record the primary terms of the letter of intent. The letter of intent identified the intended vendors, the shareholders in CIL; Swarkin, Special Link, Mr Kwan, Mr Cho, and Ms Kong. Collectively they were called "the Shareholders". The precise purchaser was yet to be identified, but was recognised to be a company incorporated under the laws of Bermuda, and a listed company on the SEHK in Hong Kong. For the purposes of the letter of intent, the purchaser was described as "the Investor". Eight discrete matters may be identified all of which were integral to the transaction discussed between Mr Poon and Mr Tjia. They are:

- (i) the subject matter of the transaction was to be 20%, or 240,000 shares of CIL: cl. 1(a);
- (ii) the consideration was to be either in cash or the issue and allotment of shares in the Investor to the Shareholders: cl. 1(b);
- (iii) the allotment of shares in the Investor would be to the Shareholders on a pro rata basis according to the ratio of their respective existing shareholders in CIL: cl.1(b);
- (iv) the Investor would have the option to subscribe for a further 240,000 shares in CIL at a price to be agreed, if CIL can be listed on the NASDAQ stock market within 12 months of the date of completion: cl. 1(e)(i);
- (v) the Investor would be entitled to appoint an additional director to the Board of Directors of CIL: cl. 1(e)(ii);
- (vi) the effect of clause 1(e)(iii) was that the Investor would

have to agree to the person to be appointed as chairman of CIL;

- (vii) a due diligence review would be undertaken upon the execution of the confidentiality letter: cl. 2; and
- (viii) an estimate was given by the Shareholders that the gross turnover for the year ended 31 December 2000, would be not less than US\$4 million: cl. 3.

320. The letter of intent was duly prepared and, after being perused by Ms Elke Li of CIL, was physically taken by Ms Amy Chan to Mr Poon, who sent her to Mr Lun, to whom she gave the document. Mr Lun received and read it, and either on that day, or on 15 September 1999, asked AOH's solicitors to liaise with SFKS to prepare the sale and purchase agreement⁹⁰.

321. For the reasons set out in paras 207-213 above, we are satisfied that the course of his telephone conversation with Mr Lau in the evening of 13 September 1999, Mr Tjia told Mr Lau the essential terms that would be contained in the letter of intent.

The information available to the investing public on Tuesday 14 September 1999:

322. On Tuesday 14 September 1999, those persons who were accustomed or would be likely to deal in listed securities of AOH, that is the general investing public, had available to them certain information in relation to AOH. That information comprised the following:

- (i) the involvement of Grosvenor and Ayala in AOH's wholly-owned subsidiary, Asia Standard, had been publicly announced on 17 August 1999;
- (ii) apart from a brief period between 15 June 1999 and 12 July 1999, turnover in AOH shares throughout the year had been consistently low and there had been little significant movement in the share price;

⁹⁰ See para 220 above.

- (iii) between 15 June 1999 and 12 July 1999, the turnover in the stock had risen significantly, and the share price marginally, consequent upon first rumours, and after 3 July 1999, the announcement of a memorandum of understanding with an unnamed independent party with a view to that independent party subscribing for new shares in Asia Standard⁹¹;
- (iv) commencing on 6 September 1999, turnover in AOH shares had increased dramatically and the share price had increased significantly;
- (v) on Monday 6 September 1999 AOH had publicly announced no knowledge as to the reasons why there had been that dramatic turnover and significant share price increase;
- (vi) on Tuesday 7 September 1999, and Thursday 9 September 1999, *Ta Kung Pao* had published rumours involving AOH with internet activity; a further similar article appeared in the Hong Kong Daily News on Friday 10 September 1999; and
- (vii) on Tuesday 14 September 1999, AOH had announced that it had commenced discussions with an unnamed independent party for a possible investment in an internet related company.

323. All of the matters that were available to the investing public on the morning of Tuesday 14 September 1999, were matters which were not confidential. All were in the open market.

The information available to Mr Lau on 14 September 1999:

324. All of the information available in the open market was known to Mr Lau. Mr Lau's evidence was that he read seven to eight newspapers each day, but took no notice of the tipsters columns. Information as to the price movement and turnover in AOH was readily available to him.

⁹¹ See para 135 above.

325. In addition Mr Lau had the following information;

- (i) he knew the identity of the company with which AOH was in negotiation, it was CIL;
- (ii) he knew that negotiations had reached the stage where a letter of intent was to be submitted by CIL to AOH;
- (iii) he knew, in general, the principle terms that were to be contained in the letter of intent;
- (iv) he knew the precise nature of CIL's internet business; and
- (v) he knew that he personally was involved in CIL.

326. In our view all of that information was price sensitive.

327. The price sensitive nature of the knowledge that CIL was involved revolves primarily around the extent of its involvement with the internet and the TMT activities which at the relevant time were perceived as so attractive to the market.

328. We have set out the background to CIL in paras 107-112 and 119-126 above. CIL was a company which was fundamentally technology-based. It used a specialised search engine to locate its information. It stored its information on a computer database. The establishment and development of the internet was the precise basis which opened the door for the company to make the information it collected readily and quickly available to its customers. Mr Lau was aware of the proposals for the Infocard which would enable CIL to efficiently market its information.

329. Mr Witts' evidence was that the identity of the target, CIL, was not price sensitive. We do not accept that opinion, and are satisfied that the identity of the target was price sensitive. Mr Witts acknowledged that the public announcement by AOH on 14 September 1999, that it was in discussions with an independent party for a possible investment in an internet related company was, prior to its publication, price sensitive information. If that were so, then the identity of the target must itself be

price sensitive. This was not a proposed investment by AOH in a new “startup” internet company, but in an established company with an existing track record, albeit a company operating at a loss. The identity of the target substantiated and increased the strength of the price sensitive nature of the information.

330. In our view that is all more so in this case. These events occurred at a time when the influence of TMT matters on the price of listed securities had grown significantly and was to grow further. Although the so-called “red frenzy” involving China shares had to an extent abated, the combination of a TMT company, together with a heavy mainland China involvement, was a significant factor. That was accepted by Mr Witts⁹². These factors add to the price sensitive nature of the knowledge of the identity of the target disclosed by the announcement made by AOH on 14 September 1999.

331. In his interview with the SFC⁹³, Mr Lau asserted that he did not believe that the share price of AOH would go up, just because the company was going to invest in a technology related business. We reject that evidence, and are satisfied that Mr Lau knew that involvement of AOH in TMT matters would be advantageous to the share price.

332. It is abundantly plain from the discussions undertaken by the board members of CIL prior to the transaction that they were fully aware of the significance of the TMT bubble. Their knowledge of the companies identified by Mr Jimmy Wong could have done nothing but lead them to the fact that involvement by another company in CIL had the clear potential of enhancing the share value of that company.⁹⁴

333. The knowledge that the transaction had reached the stage where a letter of intent had been issued, and the general terms of that letter of intent, was in our view price sensitive. The fact that that stage had been reached tends to indicate a greater likelihood that the transaction will ultimately be consummated. If that is so there is, thereby, a lesser risk on the part of someone who moves into the market with that knowledge. If the public are told, as they were by the notice of 14 September 1999, only that no agreement has yet been reached at this stage and, terms and conditions of the investment, including pricing have not been agreed, then there is a

⁹² Transcript Day 16 p 65.

⁹³ TB 1 p 15.

⁹⁴ See para 125 above.

clear risk in embarking upon a purchase of AOH shares. The notice itself recognises that, concluding with the words:

“Shareholders should exercise caution when trading in shares of the Company.”

334. But the situation is entirely different if the public knew that one of the parties has submitted a letter of intent containing the particulars that were contained in this letter of intent. While there will still be a risk of trading in the shares of AOH, the risk is noticeably less with the knowledge that the negotiations have proceeded to that extent.

335. Mr Witts’ opinion was that Mr Lau’s involvement in CIL was not itself price sensitive, because his role was a very passive one. The mere fact that Mr Lau himself was involved in CIL, a TMT related company, both as a substantial investor, and as chairman of directors, was in our view price sensitive.

336. Mr Lau had, in the public mind, an established reputation in the TMT field. Mr Lau’s involvement in Gemstar was known to be a passive involvement. While Gemstar was not an internet based company it was technology based, as Mr Lau acknowledged⁹⁵. Mr Lau was known in the Hong Kong market as an investor, not as a technical man per se, and was well known for his success in having taken Gemstar to listing on the NASDAQ. Mr Lau was also well known in Hong Kong through his involvement in Chinese Estates Holdings Limited.

337. Knowing as they did, of Mr Lau’s success in Gemstar, as an investor, it is inevitable that the public would seek to follow him into any other TMT activity in which he chose to involve himself. While Mr Lau might not be of the status of Mr Bill Gates of Microsoft, Mr Masayashi Son of Softbank, Mr Richard Li of PCCW, or Mr Rick Siemens of E-Kong or Sunday, his image as a perceptive investor, arising primarily from his involvement in Gemstar, was widely known. That was amply reflected in the newspaper articles following the announcement of the transaction.

338. Mr Lau did not seek to distance himself from the perception of those articles, and the clear conclusion to be reached is that he himself knew how he was perceived by the market. Mr Witts was obliged to

⁹⁵ Transcript Day 15 p 121.

acknowledge that exposure to the fact that Mr Lau was involved in CIL was potentially price sensitive⁹⁶. In the light of the evidence as to Mr Lau's involvement in Gemstar that was a proper acknowledgement.

339. There is nothing in the evidence to suggest that Mr Lau was not fully aware of all of the foregoing factors on the evening of 13 September 1999, or on the morning of 14 September 1999, when he gave instructions to his broker to continue making purchases. It is plain that Mr Lau knew that all of the foregoing matters, known to him, but not the public, were price sensitive and constituted relevant information, as that expression is defined by the Ordinance.

The response of the market to the information:

340. All of the additional information set out in para 326 above, was known to Mr Lau, but not to the general investing public, on 14 September 1999. All of this information effectively became public with the announcement of the transaction and the subsequent press conference on 22 September 1999. In the foregoing paragraphs we have set out why we consider these various items of information to be price sensitive.

341. The response of the market was to double the turnover in AOH shares, and to increase the price by 40%. We are satisfied that the response by the market amply demonstrates the price sensitive nature of the information available to Mr Lau on 13 September 1999. Between that date and 21 September 1999, the price increases were relatively modest, probably primarily driven by the continuing high turnover, a great deal of which was attributable to Mr Lau's own trading.

342. We are accordingly satisfied, to the appropriate standard of proof, that when he commenced making purchases of the listed securities and AOH on 14 September 1999, Mr Lau did so, having information which he knew to be relevant information, which he had received indirectly from a person whom he knew was connected with the corporation, namely Mr Poon, and directly from a person whom he knew was connected with the corporation, namely Mr Tjia.

⁹⁶ Transcript Day 16 p 63.

The variations between the first draft SPA and the final agreement:

343. It is right that there were significant changes from the first draft of the SPA to the final executed agreement. The vendor had changed, from the shareholders of CIL to Swarkin. The shares of CIL to be sold increased from 240,000 to 480,000. The consequence of the capitalisation of the shareholder loans was to raise the number of shares to 1.08 million.

344. These are matters which simply reflect a product of the negotiating process over the relevant period. The basic structure of the deal remain. Shares in CIL were sold to AOH. AOH became the largest single shareholder in CIL. The fact that these changes occurred, do not detract from the price sensitive nature of the information received by Mr Lau on the evening of 13 September 1999.

Mr Lau's trading between 15 September 1999 and 20 September 1999:

345. Mr Lau continued to buy and sell shares between 15 September 1999 and 20 September 1999. Strictly, it having been established that Mr Lau was in possession of relevant information on 14 September 1999, which he knew to be relevant information, it is not necessary to examine any additional information that may have come into his possession after that date up until 22 September 1999 when the information became public. We do so, for the sake of completeness.

346. The information that Mr Lau did receive in that period came first on Wednesday 15 September 1999, when Mr Lau met with Mr Poon and Mr Jimmy Wong at the Grand Hyatt. The fact of the meeting itself is important because it would have served to confirm in the mind of anyone in possession of the information that Mr Lau had on the previous day, that discussions in relation to the transaction were continuing and had not been terminated.

347. As we have recorded in para 234 above, Mr Lau and Mr Poon spoke on the phone on two occasions in the evening of Friday 17 September 1999. For the reasons set out in paragraph 235, while we are satisfied that a topic of conversation would have been the contemplated transaction, we are unable to reach any other conclusion as to the conversation. Accordingly we are unable to say whether or not Mr Lau received further relevant information in that conversation.

348. During the late evening of Sunday 19 September 1999, Mr Lau spoke again with Mr Tjia. We have dealt with this conversation in paras 247-248 above. The public were not informed of the meeting between Mr Tjia and Mr Poon at which further matters including price were discussed. The fact that discussions as to price were coming to a head, thereby further emphasising the likelihood that the transaction would proceed, was a reassuring factor for anyone who sought to acquire AOH shares in the next few days. For the reasons given above, we are satisfied that Mr Lau was informed of the progress that had been made in discussions on price. The content of the telephone conversation was, we are satisfied relevant information that was price sensitive.

349. Mr Lau continued to purchase shares on Monday 20 September 1999.

350. We are accordingly satisfied, to the appropriate standard of proof, that when he continued making purchases of the listed securities and AOH from 14 September 1999 to 20 September 1999, Mr Lau did so having information, which he knew to be relevant information, which he had received indirectly from a person whom he knew was connected with the corporation, namely Mr Poon, and directly from a person whom he knew was connected with the corporation, namely Mr Tjia.

351. As we have recorded in para 294, above, the true reason why Mr Lau began acquiring AOH shares between 6 September 1999 and 13 September 1999, has not been established. We have rejected the proposition that the acquisitions were because of a perception on the part of Mr Lau of the NAV of AOH, or the influence of the Grosvenor-Ayala transaction.

352. Whatever reason Mr Lau had for acquiring AOH shares up until 13 September 1999, that reason was undoubtedly still in his mind when he continued to make acquisitions of AOH shares on and after 14 September 1999. We are satisfied however, that in addition to any other reason Mr Lau may have had, the prospect of the AOH-CIL transaction, then under discussion and subsequently in the course of negotiation, was also a reason why Mr Lau continued to acquire AOH shares.

Chapter 12

“Mere Vapour”, or a Contemplated Transaction

353. In paragraphs 85 to 98 above we set out the law in relation to contemplated transactions. In this Chapter we consider the facts to be applied to that law.

Was there a contemplated transaction:

354. The evidence of Mr Lau, and the primary emphasis of the submissions made on his behalf, was to the effect that until the late evening on 21 September 1999, when the parties met at Mr Lau’s office to negotiate final terms, the transaction was not such which fell within the category of a contemplated transaction which would attract the consequences of the Ordinance.

355. The evidence of all those involved in the transaction was that until the meeting in Mr Lau’s office on the evening of 20 September 1999, and Mr Poon confirmed in response to a question from Mr Lau that he was serious about the transaction, all that was taking place was merely exploratory. The evidence of Mr Poon, Mr Tjia, and Mr Lau, those primarily involved in the decisions that were required to bring the discussions to a conclusion, was that all were taking little interest in any matter or activity in relation to the transaction.

356. During the period 13 September 1999, to 20 September 1999, solicitors for the parties were working extremely hard, regularly through the night, in order to advance the negotiations that were taking place in relation to the draft SPA. We accept Mr Bruce’s submission that in the light of the picture painted by those involved in the transaction the first draft of the SPA is a remarkable document, containing significant detail which appears to have been common ground between the parties. The solicitors could only have obtained that information by instructions from the parties. Those instructions could only have come from those at the centre of the discussions.

357. Mr Bruce was on good ground in describing the approach of the witnesses as to the nature of the negotiations as based upon an unspoken fear that the minute any of them admitted that they saw the

discussions as a contemplated transaction which those concerned were determined would be brought to a conclusion, that would be an admission which would run counter to the thesis being presented by Mr Lau. That thesis was that until as late as the evening of 20 September 1999, there was nothing more than occasional chit chat, casual exploratory conversations, all of which fell within the description of “mere vapour”.

358. If the evidence of the witnesses were accepted, the draft SPA’s containing, in each new draft, significant developments of terms, were appearing either as if by magic, or were a product of solicitors working over the weekend, and through the night, in the absence of any instructions at all. We are satisfied, to the appropriate standard of proof, that at the stage when Mr Tjia gave instructions for the preparation of a letter of intent, and for that letter of intent to be sent to AOH, there existed a contemplated transaction, identifiable and describable, and that thereafter the parties were in negotiation with a view to bringing that transaction to a conclusion.

The letter of intent:

359. We have come to the conclusion that it would only be in the rarest of circumstances that, when a letter of intent has been issued by one party to another, in relation to a transaction that has been the subject of some prior discussion, a connected person could take a position in the listed securities of one of the parties to the transaction that is the subject of the letter of intent.

360. It may well be that it is a common practice that companies or men in the course of negotiations or discussions submit to one another letters of intent. In virtually any case where a letter of intent has been submitted that letter of intent will be seen, as it was in this case, to be at the very least the opening stage of negotiations. Unless the details contained in the letter of intent are made public, in circumstances where the consequence of the consummation of the intention expressed in the letter has or will be likely to have a material effect on the price of listed securities, then the mere existence of the letter of intent is highly likely to constitute relevant information.

361. We are accordingly satisfied that, in the circumstances of the present case, the issue of the letter of intent constituted relevant information.

362. First, the fact that it was to be sent was relevant information. Mr Lau knew that the letter of intent was to be sent. The public did not. They had been told only that discussions had been entered into. Mr Lau knew the progress that had been made in the discussions, they had reached “letter of intent” stage, having progressed beyond a mere exploratory discussion.

363. Second, Mr Lau knew, in general, the terms of the letter of intent. The public did not. They were told about discussions, but were not told the terms or nature of those discussions. They were not told of the terms of the letter of intent, the basis upon which the CIL shareholders used as the starting point in their negotiations.

The purpose of the Ordinance, and the yardstick of reality:

364. Having reached that conclusion we tested our views against the yardstick of reality. The plain purpose of the Ordinance is to prevent those on the inside, that is those participating in or negotiating a transaction, from gaining an advantage on the general public, by taking a position in listed securities which may be to their advantage, at a time before the information is available to the general public. In simple terms, would the man in the street think it right, that the director of a company negotiating a deal with a listed company, which deal may well send the share price of the listed company higher, be able to take a position in the listed company before he, the man in the street, can. The answer must plainly be no.

365. Mr Lau variously described the transaction, prior to 21 September 1999, as “just another cooking deal, just a piece of business conversation”⁹⁷, or as mere “boiling water”⁹⁸:

“Because, okay, some time from the beginning the whole deal is a chit chat or what I call the boiling water in Chinese, okay, we call it “Mo Mei Jok” (Chinese spoken). No rice boiling, which is just vapour. That’s my (way of putting it).”

Mr Witts was of the view that the existence of the draft letter of intent, particularly unsigned by either party, was of no significance. The letter of intent reflected the stage at which discussions had reached on the evening

⁹⁷ TB 1 p 18.

⁹⁸ Transcript Day 15 p 64.

of 13 September 1999.

366. We are satisfied that this was not a transaction which can be properly characterised as mere water without rice. From the very beginning it was a transaction with substance. It was a transaction, from the evening of 13 September 1999, which was capable of being identified and its nature coherently described and understood. It does not matter that the precise identity of the investor had not yet been established. It would plainly be AOH or a wholly-owned subsidiary thereof. It does not matter that the price had not yet been identified. The nature of the transaction was clear. It was to be the acquisition of a position in CIL, by AOH or a subsidiary thereof, to be paid for either by cash or by the issue of shares in AOH or a listed subsidiary thereof.

367. We are satisfied to the appropriate standard of proof that the transaction contemplated by Mr Poon and Mr Tjia, and communicated to Mr Lau on the evening of 13 September 1999, was a clear identifiable transaction, and one capable of being the basis for relevant information.

Does our conclusion prevent a businessman from dealing in listed securities:

368. Mr Lau has expressed a concern that if the present circumstances are found to constitute insider dealing he would not be able to trade on the SEHK. In the course of interview by the SFC⁹⁹ Mr Lau reasserted his view that the discussion on 13 September 1999, was “a mere expression of interest”, and “was not a serious business talk”. He went on to say:

“We often have such talks with private or public companies day by day. If I have this kind of mentality, I don’t think I can trade at all.”

369. It is perfectly proper for businessmen to explore between themselves transactions which might take place in the future. But when they do so they must bear in mind the provisions of the Ordinance. If, with the knowledge of such exploratory conversations, they choose to take a position in one or other of the listed companies involved in the discussions, they must do so with great care. It may well be that many circumstances

⁹⁹ TB 1 p 42.

will arise for a businessman like Mr Lau where he cannot trade in companies who are contemplating an involvement in other companies with which he personally is involved. That is a consequence of the provisions of the Ordinance, and the wide range of Mr Lau's investment interests. It is a consequence that he must accept.

370. It is quite likely that from time to time, particularly in a relatively small business community such as Hong Kong, businessmen will receive information in the course of conversations with other businessmen. They will have to consider whether or not they ought to act on the information that they have received. They are free to do so, so long as they bear in mind the provisions of the Ordinance. The whole purpose of insider dealing legislation is to create a level playing ground for those who deal in the listed securities of public companies, be they prominent businessmen, or a man on the Shau Kei Wan tram. The fact that a prominent businessman associates with other business people, from whom he may receive information concerning listed securities, which information is not available to the general public, does not prevent that businessman from dealing in listed securities. But it does prevent him from dealing in the listed securities in respect of which he has privileged information.

Chapter 13

Mr Lau as a long-term investor in AOH

The defences under the Ordinance:

371. By s 10 of the Ordinance certain persons are deemed not to be held insider dealers. Consequently, for example, if a person enters into a transaction for the sole purpose of the acquisition of qualification shares required by that person as a director of a corporation, the acquisition will not constitute insider dealing, even if the transaction is otherwise an insider dealing: see s 10(1)(a). Further, if a person enters into a transaction and he establishes that he entered into the transaction otherwise than with a view to the making of a profit or the avoiding of a loss, (whether for himself or another), by the use of relevant information the transaction will not be caught by the legislation, even if the transaction is otherwise an insider dealing: see s 10(3).

The Criminal Justice Act 1993 (UK):

372. Under the legislation replacing the Ordinance, Part XIII of the Securities and Futures Ordinance, Cap 571, the statutory defences are significantly extended. But they do not go so far as to encompass all of the specific defences to insider dealing for which provision is made in the equivalent English legislation; the Criminal Justice Act 1993. In s 53(1) of that legislation three specific defences are available to an individual accused of insider dealing. They are:

“(1) an individual is not guilty of insider dealing by virtue of dealing in securities if he shows -

- (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities; or
- (b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or

- (c) that he would have done what he did even if he had not had the information.”

The legislation provides for a similar defence where the allegation of insider dealing is by way of encouraging another person to deal in securities, see s 53(2).

373. In the circumstances of the present case Mr Lau made a contention that was parallel to the defence contained in s 53(1)(c) of the English legislation, that is that he would have done what he did, even if he had not had the information. The factual basis for this contention, which we will consider in detail later in this Chapter, was that the purchases that he made in AOH were purchases that had been made consequent upon a decision to extend his holdings in AOH prior to the first date upon which relevant information could have come into existence, i.e., 13 September 1999, and that consequently the decision to purchase was made without the application of any relevant information. Consequently, it is argued, none of the dealings undertaken after 13 September 1999, could amount to insider dealing.

The law in Hong Kong:

374. There are certain circumstances when it will be obvious that a person is not an insider dealer although he may have dealt in listed securities at a time at which he was in possession of relevant information. For example, an individual in a prominent political position may be required, or choose, to place the whole of his personal investments in a blind trust, and thereafter, so long as he holds that position, remain separate and apart from any decision-making in relation to those investments.

375. Any acquisitions or sales of listed securities made by the trustees on behalf of the trust are for the benefit of the individual. If the individual has no contact at all with his trustees and leaves it entirely to them to deal with his investments as they best assess, there will be a strong argument that there will have been no insider dealing on the part of the individual. If at the time of creating the trust, and prior to being in receipt of any relevant information, the individual instructs his trustees that he wishes to take a particular position in a particular company, the trustees may take that position. If it subsequently transpires that information arises in relation to that company which would constitute relevant information in the hands of the individual, he will have a good argument that the

acquisitions made will not constitute insider dealing.

376. There is a paucity of authority on s 53(1)(c) of the UK Act. Examples given by academic writers include economic compulsion, for example a person who was forced to sell to meet a liability, in the face of no other readily realisable property. In *Market Abuse and Insider Dealing*¹⁰⁰ the editors make the following statement:

“In such a case, after the prosecution has proved all the ingredients of the offence, the defendant must show that, on a balance of probabilities, its possession of inside information did not affect its decision to deal or to encourage another to deal. The policy rationale seems to be that an individual that is planning either to deal or to encourage someone else to deal should not be inhibited from doing so merely by being in possession of inside information. It would follow that a defence is available for an individual who has come into possession of inside information after making a decision to deal.”

As may be seen from the foregoing passage, the effect of s 53(1)(c) is to render a transaction, that is otherwise insider dealing, not to be insider dealing.

377. The Ordinance was enacted in 1991, but underwent a number of amendments in 1994, 1995, and 2000. Notwithstanding the existence of the 1993 English legislation, no amendment was introduced into Hong Kong legislation providing for the defence contained in s 53(1)(c). We have no doubt at all that the Law Draughtsman in Hong Kong would have been fully aware of the provisions of the English legislation. We note too, that no provision is made for such a defence in Part XIII of the Securities and Futures Ordinance Cap 571.

378. In the absence of a specific statutory basis for the defence available under s 53(1)(c) of the English legislation we are unable to say that a defence in those clear terms is available in Hong Kong. But the matter does not end there.

¹⁰⁰ Butterworths Compliance Series, 2005, Barry Rider, Kern Alexander and Lisa Linklater, at p 146 § 9.3.

A defence under s 10(3):

379. It is necessary also to consider whether or not the argument made by Mr Lau brings him within the provisions of s 10(3) of the Ordinance. The defence was not put to us in terms of s 10(3), but the factual basis relied upon implies an argument that Mr Lau entered into the transaction otherwise than with a view to the making of a profit by the use of relevant information.

380. In considering s 10(3), it is necessary to remember that there must be established transactions which are insider dealing transactions, following which there is an onus on the implicated person to establish that he entered into the transaction otherwise than with a view to the making of a profit by the use of relevant information. If the implicated person establishes that, then notwithstanding that the transaction is otherwise an insider dealing transaction, he will not be held to be an insider dealer.

381. It will accordingly, in each case, be a matter of fact for the Tribunal to determine, whether, at the particular time the decision was made to acquire or dispose of the relevant listed securities, that decision was made, first, with the knowledge of the relevant information, and secondly in reliance upon that relevant information with a view to making a profit. It will be a matter of fact in each individual case whether the possession of the relevant knowledge has had any impact on the decision to acquire or dispose of listed securities.

Mr Lau's dealings with his brokers:

382. Mr Lau relied upon the fact that he had owned AOH shares for a number of years, and that he had commenced purchasing AOH shares again, on 6 September 1999, before the relevant information could have existed. The argument was that the whole pattern of purchase of shares by Mr Lau was in reliance upon a longstanding intention to increase his position in AOH, and had nothing to do with any relevant information.

383. Mr Lau could not recall the precise instructions he gave to Mr Johnny Wong, the trader at Fair Eagle Securities Limited, the stockbrokers who undertook the purchases for Mr Lau.

384. We did not find Mr Johnny Wong to be in any way a

convincing witness in relation to the instructions that he may have been given by Mr Lau. In particular, we reject completely his assertion that he had a complete discretion in relation to the purchase of shares, both as to money expended or the number of shares purchased, as the client could see those matters on a terminal¹⁰¹. We do accept Mr Johnny Wong's evidence that he would report to Mr Lau when an order was completed, or at the end of the morning trading.

385. The evidence was that on 7 September 1999, 14 September 1999, and 15 September 1999, a substantial portion of the orders to buy AOH shares were farmed out to other brokers for execution. We are satisfied that this was done by Mr Johnny Wong, on the instructions of his father, in circumstances where the firm was very busy and they may not be able to fulfil all orders. We draw no adverse inference from the fact that orders were farmed out.

386. Mr Lau's evidence was that he usually placed a bulk order with the broker, and usually gave a certain price range. He said that sometimes he gave the broker full discretion. His evidence was that if the trade was completed in accordance with the instructions a report would be made, either to him personally or to his assistant, at the time, Ms Rosita Yau. There was no particularly regular pattern of reporting. Mr Lau acknowledged that occasionally he would call the broker and ask how the instructions for the trades were going, and whether he would be able to finish the trade.

387. The trading pattern for the first day on which Mr Lau resumed trading in AOH shares, 6 September 1999, showed that the first purchase he made was 10:04:52 a.m., at \$0.30. Within 18 minutes, by 10:22:42 a.m. purchases were being made at \$0.41, 42% higher than at the commencement of trading. Mr Lau accepted that the broker would have called him and confirmed the instructions to keep purchasing. On that same day Mr Lau bought 4.9 million shares. He commenced selling at 10:55 a.m. His evidence was that he sold shares to test the market to see whether or not there was liquidity and to determine whether or not he was the only buyer.

388. We are satisfied from the whole of the evidence that Mr Lau took a similar active interest in the trading pattern on each subsequent day,

¹⁰¹ Transcript Day 9 p 22.

and was in contact with his brokers, either directly or by report through an assistant, at least at the end of each trading session, and occasionally more often if the circumstances required. In simple terms, Mr Lau was involved on a day-to-day basis, in assessing the extent to which he should further buy and sell AOH shares, and price at which his transactions should be undertaken. The evidence does not establish a bulk order given on 6 September 1999, with a wide discretion to the brokers, and thereafter no involvement on the part of Mr Lau.

389. That is entirely consistent with the manner in which Mr Lau traded in AOH shares. Between 6 September 1999 and 21 September 1999, there were 11 days upon which trading could take place on the SEHK. On three of those days, 6 September 1999, 7 September 1999, and 20 September 1999, Mr Lau both bought and sold AOH shares. On two of those days, 8 September 1999 and 17 September 1999, Mr Lau only sold shares in AOH. On three of those days, 9 September 1999, 14 September 1999, and 15 September 1999, Mr Lau only bought shares in AOH. On three of those days, 10 September 1999, 13 September 1999, and 21 September 1999 Mr Lau neither bought nor sold shares in AOH.

390. The trading pattern demonstrated is the trading pattern of a man who is taking a close and active interest in his movements in the market in a particular stock, on his own evidence selling from time to time to test the market to see whether there are other buyers, and to stabilise the price. It is not the trading pattern of a man who has given a substantial order to a broker and then, disregarding himself any movement in the market, left it to the broker entirely to execute that order.

391. We are satisfied, to the appropriate standard of proof, that the active involvement Mr Lau took in the acquisition and disposal of AOH shares from 14 September 1999, demonstrates that as well as acting in reliance upon any other information he may have had prior to that date, he was thereafter undertaking transactions in the listed securities of AOH with a view to making a profit by the use of relevant information. The relevant information could only have enhanced his decision to continue increasing his position in AOH. The defence available under s 10(3) is not established.

392. It follows too that we do not find the fact that Mr Lau sold AOH shares, as well as purchasing AOH shares, constitute an answer to the allegation of insider dealing. To the contrary, the sales, and Mr Lau's involvement in the decision to make the sales, demonstrate the extent to

which he was carefully monitoring the position throughout the whole period under examination.

393. We are satisfied, to the appropriate standard of proof, that after receiving the relevant information, on 13 September 1999, knowing that it was price sensitive, Mr Lau continued to trade in AOH shares, taking a personal and active involvement in the instructions given to the broker on each day of trading until 22 September 1999. This is plainly not a situation where a man, prior to the receipt of relevant information has given an instruction to his broker, and then left it entirely to the broker, thus putting him in a situation where he can say that the relevant information had no influence on the decision to trade in the listed securities.

394. In the course of argument it was suggested to us that there had been authority in which a person had given a standing instruction to a broker to acquire a particular stock, and subsequently that person had come into possession of relevant information. It was said that the authority would demonstrate that in those circumstances, the person having taken no active role in the subsequent trades, was acquitted of insider dealing. We invited counsel to supply the authority to us. Nothing has been supplied.

395. We reject the proposition that the trading in listed securities in AOH undertaken by Mr Lau between 13 September 1999 and 22 September 1999, was trading undertaken consequent upon a long-term decision, made prior to the receipt of relevant information, to increase his position in AOH.

Chapter 14

Open Trading by a Wealthy Investor

396. Mr Lau relies upon the fact that his acquisition of AOH shares was undertaken openly, in his own name. He relies too upon the fact that he did not sell the shares that he had acquired in AOH for a quick profit, and later, before the SFC investigation began, continued to acquire AOH stock. He further relies upon the fact that he was a busy, wealthy man who had neither the time nor the need to undertake insider dealing in order to achieve a profit.

Open trading:

397. We accept that Mr Lau undertook his trading in listed securities of AOH openly, in the sense that he did not seek, as so many insider dealers do, to conceal his trading by using stock trading accounts in the names of other persons, or by using a series of companies in an effort to conceal his identity.

398. The fact that trading is undertaken openly is not decisive in any way that trading is not insider dealing. Equally the fact that trading is undertaken surreptitiously is not decisive that trading is insider dealing. Both, when established, are facts to be taken into account. To repeat an analogy made in the course of submissions, a burglar is no less a burglar if he does not wear a mask.

399. We have carefully weighed this fact when reaching our decision. Neither this fact nor this fact, together with the other matters referred to in this Chapter collectively, are sufficient to raise an appropriate doubt in our minds.

The shares were not sold for a quick profit:

400. The evidence of Mr Witts was that the fact that Mr Lau did not dispose of his shares in AOH after the price sensitive information became public was indicative of a long-term investor, and not an insider dealer who is more likely to realise a quick profit.

401. We accept that Mr Lau was a long-term investor in AOH, but nonetheless, a long-term investor may be an insider dealer. The fact that an immediate profit is realised upon relevant information becoming public is not decisive of insider dealing, just as retention of the shares does not, of itself, establish innocence. Again, to repeat an analogy made by Mr Bruce in submissions, a thief is no less a thief if he hangs a stolen painting above his fireplace, and does not immediately dispose of it to a fence.

402. Again we have carefully weighed this fact when assessing the evidence. It is necessary to consider this fact in the light of the trading pattern following the announcement of the AOH-CIL transaction on 22 September 1999.

403. Trading opened on 23 September 1999, the price increasing 40.86% on very high turnover. The turnover was again high the next day and the price increased marginally, by 1.53%. However on that day, in mid-afternoon trading at 3:35 p.m., trading in AOH shares were suspended and remains suspended until 27 September 1999. Upon suspension trading was at \$1.33, after an intraday high of \$1.57.

404. When trading reopened on 28 September 1999, AOH announced that Mr Poon had placed 340 million existing AOH shares at \$1.13 to independent investors, and had subscribed for the same number of new AOH shares at the same price. This price was significantly below the closing price when trading was suspended. We appreciate that it is common on a significant placing such as this, for the placing to be made at a discount to the market price. While the turnover increased dramatically, from some 88 million shares to 613 million shares, the price fell to \$1.20. On high trading over the next two days the price closed at \$0.97. It fell further on Monday 4 October 1999, to \$0.84.

405. Mr Lau had begun his purchases on 14 September 1999, in the range of \$0.77 to \$0.80. His final purchases on 20 September 1999, had been in the range of \$0.86 to \$0.90.

406. In the light of this trading pattern Mr Lau had every reason not to sell his shares, although he would have made a good profit on shares purchased prior to 13 September 1999. He had every reason to retain the shares because of the subsequent trading pattern, and we are accordingly not persuaded that we should have a reasonable doubt over his intentions in relation to the use of relevant information, by reason of the fact that he did

not sell immediately.

An insignificant profit for a wealthy man:

407. It is right that Mr Lau is a very wealthy man. The profit that he may have made, even had he successfully sold all his AOH shares on 22 September 1999, would for an ordinary person, be a very substantial sum. We accept that for Mr Lau, while still a substantial sum, in relative terms having regard to his wealth, the sum may be less significant. Again, the fact that a man is a wealthy man and a particular profit may not be significant for him, is not decisive of the absence of insider dealing motives.

408. It is yet again a fact that we weigh into the account when reaching our decision. Having regard to the absence of a proper explanation for his acquisition of AOH shares, and his active involvement in the trading pattern undertaken, we are satisfied that this fact does not detract from the conclusion that we have reached, either by itself or collectively with the other matters raised in this Chapter.

Chapter 15

Findings as to Insider Dealing

409. We now set out our findings.

410. We have found that the dealings in listed securities undertaken by Mr Thomas Lau Luen Hung between 14 September 1999 and 20 September 1999, in which he purchased 42,134,000 AOH shares, sold 15,770,000 AOH shares, a net acquisition of 26,364,000 shares, constitute insider dealing.

411. In so far as Mr Lau received information from Mr Poon, via Mr Tjia, the dealing he undertook in the listed securities of AOH was insider dealing contrary to s 9(1)(e) of the Ordinance. Insofar as Mr Lau received information from Mr Tjia, the dealing he undertook in the listed securities of AOH was insider dealing contrary to s 9(1)(e) of the Ordinance. In so far as he undertook dealings in the listed securities of AOH in reliance upon his own knowledge of the contemplated transaction between AOH and CIL, those dealings constituted insider dealing contrary to s 9(1)(a) of the Ordinance.

Chapter 16

Conclusion

412. Chapters 1-16 are now forwarded to the Financial Secretary in response to the questions raised by his notice of 15 May 2003, in sub-paragraphs (a) and (b) thereof.

413. In due course, after hearing from counsel assisting the Tribunal and counsel representing Mr Lau, we will provide a response to sub-paragraph (c) of the Notice, and set out the terms of any penalties imposed and orders made by us.

414. We propose to resume sitting on Monday 6 November 2006, at 9:00 a.m., in order to hear from counsel as to any procedural matters in relation to our determination of issues raised by sub-paragraph (c) of the Notice, and to fix dates for the hearing of those issues.



His Honour Judge John Saunders

Deputy High Court Judge

Chairman



Mr Nigel Bacon

Member



Mr Pang Hon Chung

Member

8 September 2006

Introduction

We now submit the second part of the Report of our findings in relation to the Financial Secretary's Notice pursuant to s 16 of the Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance), dated 15 May 2003, requesting the Insider Dealing Tribunal to conduct an Inquiry into certain dealings in the listed shares of Asia Orient Holdings Limited, (the company), between 14 and 20 September 1999 (inclusive).

The second part of the Report constitutes our findings in relation to the third question raised by the Notice. By paragraph (c) of the Notice we are required to inquire into and determine the amount of any profit gained or loss avoided by those persons we identify as insider dealers.

With this second part of the Report are the orders that we have made under ss 23, 26, and 27 of the Ordinance.

As ss 23(2) of the Ordinance provides that the Tribunal shall not make an order in respect of any person under ss 23(1) without first giving that person an opportunity to be heard, we sat on Thursday 7 December 2006, to hear submissions from the person identified as an insider dealer, and counsel to the Tribunal relating to:

1. The calculation of any profit gained as a result of the insider dealing we found proved;
2. The appropriate financial penalties and orders under s 23 of the Ordinance consequent upon our findings of insider dealing;
3. What witness expenses should be granted under s 26 of the Ordinance;
4. What orders, if any, should be made under s 27 of the Ordinance.

Save where the context otherwise requires it, the same terms and

abbreviations in the first part of the Report used in this second part. Where sums of money are referred to, cents are ignored, and the figures are rounded up or down to the nearest dollar.

Chapter 17

Calculation of Profit Gained

415. By paragraph (c) of the Notice we are required to inquire into and determine the amount of any profit gained or loss avoided by the person identified as an insider dealer. There was no suggestion that any loss was avoided in this case. This is clearly a case of profit gained as a result of the insider dealing.

Calculation of the profit gained:

416. During the relevant period, 14 to 20 September 1999, Mr Lau sold 15,770,000 AOH shares. He accepts that the actual profits gained on the sale of those shares was \$529,927.00.

417. During the relevant period Mr Lau acquired, but retained 26,364,000 AOH shares which he still holds. He having not disposed of those shares, it is necessary for the Tribunal to calculate the notional profit gained through the acquisition and retention of those shares.

The principles behind the calculation:

418. There is no provision in the Ordinance setting out how the Tribunal should calculate the notional profit made through the retention of the shares. It is now well settled that the principles to be applied in the calculation of those set out in the judgement of the Court of Final Appeal in *Insider Dealing Tribunal v Shek Mei Ling* [1999] 1 HKLRD 879. The proper approach is set out in the judgement of Lord Nicholls of Birkenhead in the following terms:

“The approach adopted by the Tribunal in this type of situation, in my view correctly, is to treat the relevant information as that gained by the insider dealer when the information was made public and the market had had a reasonable opportunity to digest the information. The gain is to be measured by reference to the market value of the shares at that date. At that date, the amount of the insider dealer’s profit, whether realised or not, is fixed once and for all. Subsequent changes in market prices are

irrelevant for the purpose of a s 23 calculation. They are irrelevant, because such changes are not to be regarded as flowing from the original improper purchase of shares. Rather, they flowed from the insider dealer's decision to retain the shares at a time when the effect of the misuse of the confidential information had become spent and the insider dealer was on an equal footing with every other investor."

We apply this principle in this case. It is established, and not in dispute, that the application of the principle requires the Tribunal to determine the volume weighted average price, (VWAP), at the appropriate time at which the market had had a reasonable opportunity to digest the information.

The issue:

419. The only issue between the parties in this case was whether the date at which the market had had a reasonable opportunity to digest the information was 23 September 1999, or 24 September 1999. As to the mathematics to be applied, whichever date was held to be relevant, there was no dispute.

The relevant facts:

420. It is appropriate to record the facts, following the relevant information being made available to the general investing public.

421. Late on the evening of Tuesday 21 September 1999, the SPA and all other relevant documents were signed by all parties. Prior to the commencement of trading on Wednesday 22 September 1999, at the request of AOH, trading in the company's shares was suspended. During that day a press conference was held at which the transaction was announced.

422. The press conference, and the transaction were the subject of extensive newspaper publicity in both morning and daily newspapers, particularly in the Chinese press, on Thursday 23 September 1999. Formal notification of the announcement, and the announcement of the resumption of trading was made by the SEHK at 9:59 a.m. on Thursday 23 September 1999.

423. Trading in AOH shares had been rising steadily since late August and the beginning of September, and had peaked on Tuesday 21 September 1999, with a turnover of 40,890,000 shares. The intraday high had been \$0.95, and the intraday low \$0.90, with the stock closing at \$0.93.

424. With the resumption of trading on Thursday 23 September 1999, the stock surged to an intraday high of \$1.34, and an intraday low of \$0.94. The stock closed at \$1.31, an increase of 40.86% above the close on 21 September 1999. The turnover virtually doubled to 79,029,332 shares.

425. Trading for Friday 24 September 1999, saw the intraday high rise to \$1.57, with the stock closing at \$1.33, an increase on the previous day of 1.53%. The turnover increased by nearly 10 million shares to 88,298,788 shares.

An intervening event:

426. On Friday 24 September 1999, an event occurred which is directly relevant to the issue of a disgorgement order. It is important to note however the fact that that trading took place on a day when trading was again suspended. At 3:02 p.m. on Friday 24 September 1999, trading in AOH shares was again suspended. At 3:35 p.m. an announcement was circulated by the SEHK that trading had been suspended, with effect from 3:02 p.m., pending issue of an announcement in relation to the placing of shares¹⁰².

427. Trading resumed on Tuesday 28 September 1999, following the announcement of a placing of up to 374 million shares at \$1.13 per placing share, which, according to the announcement¹⁰³,

“...represents (i) a discount of approximately 13.74% to the closing price of \$1.31 per share quoted on the Stock exchange of 23rd September 1999; and (ii) a premium of approximately 31.40% to the average closing price of approximately \$0.86 per share as quoted from the Stock Exchange from 10th September 1999 to 23rd September 1999, both dates inclusive, being the last 10 full trading days immediately before the issue of this announcement.”

¹⁰² TB 4 p. 52.

¹⁰³ TB 4 p. 53.

428. Trading on Tuesday 28 September 1999, over a full day, amounted to 613,422,400 shares, with the price closing at \$1.07, a reduction of 19.55% from the price at suspension at 3:02 p.m. on 24 September 1999. It is quite clear, and was accepted by counsel for the Tribunal, that the intervening event of the suspension pending placement meant that the maximum period that could be applied in determining the VWAP was two days, from the commencement of trading at 10:00 a.m. on Thursday 23 September 1999, to the conclusion of trading, upon suspension, at 3:02 p.m. on Friday 24 September 1999.

The respective arguments:

429. The case for Mr Lau was that the appropriate date upon which to determine when the market had had a reasonable opportunity to digest the information was as at the close of trading on the 23 September 1999. The case propounded by counsel for the Tribunal was that the appropriate date should be 24 September 1999.

430. On the case for counsel for the Tribunal, based on the evidence of Mr Eric Cheng, using two days market activity, the VWAP is \$1.36493 per share, giving a notional profit \$14,771,749.00. On the case for Mr Lau, using one day of market activity, the VWAP is \$1.2686 per share, giving a notional profit of \$12,762,032.00. There is no difference between the parties as to the mathematics, the difference lies purely in whether the calculation is made upon one or two days trading activity.

Discussion:

431. In reaching our conclusion we have had a full regard to the submissions made to us by both parties. An analysis of the decisions of past tribunals shows that a varying number of days have been taken over which the average of closing prices has been assessed. That has ranged between one and five days.

432. We accept, as did Mr McCoy, Mr Cheng's evidence that:

"The relevant information was simple and without subtleties, in that respect, it seems unnecessary for investors to spend a long time to digest the information....."

But it does not follow from that, that a period of only one day should be taken.

433. It is clear that the market reacted immediately to the information. Trading on 23 September 1999, nearly doubled and the share price surged by 40%. We are of the view that it is necessary to look also at the trading figures for the following day, a day that was virtually one hour short of a normal trading day, so far as trading in AOH shares was concerned. On that day a very high level of trading was maintained, with the total turnover exceeding the previous day by nearly 10 million shares, and the price rising to reach an intraday high of \$1.57, 68% higher than the close on 21 September 1999. That intraday high was 19.84% above the previous day's close. At 3:02 p.m. when trading was suspended AOH closed at \$1.33, 1.53% up on the previous close, and 43% up on the close on 21 September 1999.

434. We are satisfied that the very high level of turnover, and the substantial increase in the intraday high that took place on 24 September 1999, plainly indicates that the market was still in the process of absorbing and reacting to the information on that day. We accordingly conclude that the VWAP should be assessed over the two days of 23 and 24 September 1999.

435. The appropriate basis upon which the notional profit must be determined is upon the VWAP over two days of 23 and 24 September 1999, a sum of \$1.36493. There is no dispute that the average purchase price for the shares acquired was \$0.80463.

436. We accordingly hold that Mr Lau made a notional profit of \$14,771,749.00 in relation to the retained balance of 26,364,000 shares purchased during the relevant period. To that sum must be added the actual profit obtained on sales actually made, a sum of \$529,927.00.

Disgorgement Order:

437. We accordingly order that Mr Thomas Lau Luen Hung must make a disgorgement payment pursuant to s 23(1)(b) of the Ordinance in the sum of \$15,301,676.00.

Discussion as to Penalty order:

438. Pursuant to s 23(1)(c) of the Ordinance the Tribunal has the power to impose a financial penalty on Mr Lau of up to three times the profits gained by him. The maximum penalty therefore exceeds some \$45 million. We are quite satisfied that the maximum penalty would be quite disproportionate to the gravity of the infringement.

439. We accept the submission made that Mr Lau's trading was open trading in his own name, and that he made no attempt whatsoever, as so many insider dealers do, to conceal his dealings in AOH shares, either by using share trading accounts in the name of others, or off-shore based companies.

440. It is right that Mr Lau was already a significant holder in AOH shares, and that he could have made a substantial profit from the relevant information in his possession by selling the shares that he had held for some time. We do not regard that as a relevant factor. It was a commercial decision made by Mr Lau not to dispose of the shares, either held for a long time, or those acquired during the relevant period. Those shares that Mr Lau did sell during the relevant period were sold, on his own evidence, in an effort to test the market to see whether there were other buyers, and to stabilise the price.

441. We are satisfied that this was a clear case of insider dealing, where the director of a company, in receipt of information as to the future of the company and a public company, took a position in the public company, intending to benefit from his early acquisition of that position. The fact that Mr Lau's position in AOH may have resulted now in a very substantial loss is a commercial matter, the consequence of his decision to retain shares, and is not relevant to our consideration.

442. In assessing the appropriate penalty we have regard also to the ability of Mr Lau to meet a penalty and a disgorgement order, to the need to deter others from insider dealing, and to the totality of the amount required to be paid by Mr Lau.

Penalty Order:

443. Weighing all of the foregoing matters we order, pursuant to s

23(1)(c) of the Ordinance that Mr Thomas Lau Luen Hung must pay a penalty in the sum of \$15 million.

Costs and witness expenses:

444. No objection was taken to the sum assessed by counsel for the Tribunal as to the costs to be paid by Mr Lau in relation to the Inquiry. The costs and expenses of the Inquiry phase incurred through the Department of Justice were \$2,287,495.96. The costs and expenses of the Department of Justice for the Penalty Phase were the sum of \$246,081.60. The costs of the SFC in relation to the conduct of the Inquiry were \$136,777.00. The cost of the Tribunal itself, including verbatim transcription services, interpretation services, costs of Chairman and Tribunal staff, Members fees, and incidental expenses were \$1,190,151.77. The total costs of the inquiry were therefore \$3,860,506.33.

445. No application was made by any party in relation to witness expenses.

Costs Order:

446. We accordingly order, pursuant to s 27 of the Ordinance, that Mr Thomas Lau Luen Hung must pay to the Government of the Hong Kong Special Administrative Region in the sum of \$3,860,506.33 in respect of the expenses of and incidental to the Inquiry.

Disqualification:

447. Whether or not a disqualification order, pursuant to s 23(1)(a) of the Ordinance was the primary issue to be dealt with by the Tribunal in the Penalty Phase of the Inquiry.

The relevant law as to disqualification:

448. Mr McCoy accepted that the statement made by the Tribunal in the Gilbert Holdings Inquiry¹⁰⁴ that: it would only be in exceptional

¹⁰⁴ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Gilbert Holdings Ltd, dated 15 December 2005, at p 100, para 309.

circumstances that the Tribunal, having found a person to be an insider dealer, would not make a disqualification order. That conclusion plainly follows from the following statement made by the Tribunal in the Success Holdings Inquiry¹⁰⁵:

“(6) In determining whether to disqualify a person from acting as a director of a listed corporation or corporations, 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 trusts; 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 a private company; and the impact upon the individual of such a disqualification.”

449. Central to the submission made by Mr McCoy was the following passage from the Success Holdings Inquiry:

“(8) Where an incident in, or in connection with, the inquiry, gives rise to a justified sense of grievance, (on the part of the implicated person), the Tribunal should recognise and take that fact into account in determining the appropriate penalties.”

450. We have had due regard to these principles in our consideration of the issue of disqualification.

The submission for Mr Lau:

451. Mr Lau is a director or manager of some 60 private companies, none of which were in any way involved in the insider dealing in question. These companies primary served as personal investment vehicles for Mr Lau. We are satisfied that there is no need to disqualify Mr Lau from his involvement as a director or manager of any of those companies.

¹⁰⁵ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Success Holdings Ltd, dated 24 June 1994, p.97, para 10.4.

452. Mr Lau is a director of three publicly listed companies. They are:

- (i) Chinese Estates Holdings Ltd, (Chinese Estates);
- (ii) United Metals Holdings Ltd, (United Metals), listed on the SEHK on 6 January 2003;
- (iii) Lifestyle International Holdings Ltd, (Lifestyle), listed on the SEHK on 15 April 2004.

453. The submission made for Mr Lau was that his disqualification in relation to Chinese Estates and United Metals would assuage the public interest and meet the relevant principles, and that the Tribunal should differentiate between those two companies, and Lifestyle, so as to permit Mr Lau to continue to act as a director of, and be involved in, the management of Lifestyle.

Mr Lau's background:

454. Mr Lau is presently aged 52 years. He was aged 46 years at the time of the breach in 1999. At that time he had had over 22 years experience in corporate finance, manufacturing and property investment.

455. Mr Lau is a man of good character, having no criminal record. He has not been disciplined by either the SEHK, or the SFC.

456. Over the years Mr Lau has consistently made significant charitable donations to a number of organisations and institutions. We were presented with a number of testimonials as to those charitable donations. Mr Lau's general reputation was attested to by letters from a number of prominent Hong Kong individuals. The Tribunal was gratified to see that those letters were not excessive in number and that they confined themselves appropriately to expressions of Mr Lau's character without making assertions as to the subject matter of the Inquiry.

457. We are satisfied that the disqualification of Mr Lau from the corporate governance of Lifestyle may potentially have a significant effect on Lifestyle. In this respect we note particularly the statement made by

HSBC Global Research in a research report dated 4 October 2006¹⁰⁶, in the following terms:

“Progress likely to be hampered for now

However, we believe that further gains in the stock price are highly unlikely, until the Insider Dealing Tribunal decides on the appropriate penalty for Mr Lau, after meeting on November 6. Mr Lau has been instrumental in Lifestyle’s past success, and plays a crucial role in current decision-making. If the Tribunal rules that Mr Lau must depart from the board, this may damage the market’s perception of Lifestyle’s management structure and decision-making ability, which is crucial for the company to execute on expansion plans in China.”

458. Similar sentiments were expressed by UBS Investment Research in a report, also dated 4 October 2006¹⁰⁷, where the following statements appear:

“Lau could cease being a director; some impact on operations

While Lifestyle was not involved with the incident, it could be impacted if Mr Lau were to cease being its director. In our opinion, Mr Lau has been active in the management of Lifestyle and instrumental in its expansion efforts. We are less concerned about the day-to-day operations of Lifestyle given an existing team of professional management in place, than any delays in new projects in China.

We are more concerned about potential impact on expansions

In our financial model, we do not include potential contributions from new projects. However, any delays could dilute the investment case of Lifestyle in our view.”

The consequences to Lifestyle:

459. The fact that the decision of a Court or Tribunal will have an adverse impact on others, such as employees of a large company, is

¹⁰⁶ TB 13 p. 43

¹⁰⁷ TB 13, p. 52.

generally not a matter that it is appropriate for a sentencing court to take into account. That is so for two reasons.

460. First, the submission has the effect of passing responsibility for the consequences of behaviour regarded by society as inappropriate from the offender to the Court. If adverse consequences to others flow from an otherwise appropriate sentence, it is not the sentencing court, but the offender, which is responsible for those consequences.

461. Second, and more importantly, the application of the proposition that a person should not be prosecuted or sentenced because the prosecution or sentencing of that person will have an adverse effect on others carries with it the very grave risk that the bigger or more important a person is, the less regard he may need to pay to the consequences of the law. It would be quite wrong for the Tribunal not to impose a disqualification order, where the circumstances were otherwise appropriate for disqualification, simply because of the impact on the business operated by the insider dealer.

462. We accept that Mr McCoy's submission that there should be no disqualification in relation to Lifestyle was not put to us in these terms.

463. Mr Lau has taken appropriate steps in anticipation that he may be disqualified from his position as a director of Lifestyle. A new General Manager has been appointed, and Mr Lau has plainly set in train events in order to protect the position of Lifestyle to the best of his ability.

464. The Tribunal put to Mr McCoy the proposition that disqualification would not pose the risk of disadvantage to Lifestyle propounded by him because upon disqualification Mr Lau might be employed as a consultant to Lifestyle thereby providing to Lifestyle the advantage of his connections and negotiating skills in China, while at the same time being removed from the decision-making processes in the company that are the essential feature of the role of a director.

465. We were impressed with the response to this question. We were told that Mr Lau recognised that the implication of a disqualification must be honoured. The advice that he had been given, and that he had accepted, was that employment by Lifestyle as a consultant or an advisor carried with it the risk that he would be in a marginal position where he

may be seen as, in fact, acting as a de facto director. Mr Lau, we were told, recognised that if he were disqualified, that disqualification must be honoured. We accept that that is the position he holds, and give him appropriate credit for that.

A justified sense of grievance:

466. In order to examine the basis upon which the submission was made that Mr Lau has a justified sense of grievance in relation to the Inquiry it is necessary to examine the chronology of events. Annexed hereto, as Annexure 2, is a Chronology of Relevant Events prepared by those advising Mr Lau, and to which no exception was taken by counsel to the Tribunal.

467. The following facts may be drawn from the chronology:

1. Mr Lau first learned of the investigation on 2 December 1999 when he received a requisition from the SFC for information in relation to trading in AOH. The first knowledge that Mr Lau had that he would be subject to a formal inquiry did not come until 5 years and 2 months later, when Mr Lau received the Salmon Letter.

2. In September 2002, three years after the dealing had taken place, when the advice of the Department of Justice as to the future of the Inquiry was in the hands of the Financial Secretary, the SFC knew that Mr Lau intended to become a director of the soon to be listed United Metals. United Metals was duly listed on 6 January 2003, and Mr Lau was appointed an executive director of the company.

3. On 16 October 2001 the SFC had passed the Case File to the Financial Secretary in order that he may obtain legal advice from the Department of Justice. The s 16 Notice was not issued by the Financial Secretary to the Tribunal until 15 May 2003, 1 year and 7 months after legal advice was first sought and over three years after the relevant trading.

4. The Tribunal received the Notice on 22 May 2003, but did not issue a Salmon Letter until 28 January 2005, 1 year

and 7 months later.

5. On 30 January 2004, Financial Advisors to Lifestyle notified the SEHK and the SFC of the intention to list Lifestyle with Mr Lau as an executive director. At that time the SFC must have known that the Financial Secretary had, seven months earlier, instituted an insider dealing inquiry in relation to Mr Lau's activities.

6. The SFC did not notify Mr Lau of any objection to the listing, nor of any objection to Mr Lau's involvement as an executive director.

7. On 25 February 2004, Mr Lau wrote to the SEHK informing them that he had been the subject of an investigation by the SFC in late 1999, and that he did not know whether the matter was still current.

8. On 15 April 2004, Lifestyle was duly listed and Mr Lau was appointed an executive director of the company.

468. No explanation was offered to the Tribunal for the very long delay between the time in which the investigation began, December 1999, and the time at which the case files were sent by the SFC to the Financial Secretary, October 2001. Having regard to the relatively straightforward nature of the investigation, and the limited number of personalities involved, there appears to be no reason why the investigation should have taken as long as 1 year and 10 months.

469. No explanation was offered to the Tribunal for the very long delay between the time in which the case files were first sent to the Financial Secretary for advice, and the time the Notice was issued. Again, having regard to the straightforward nature of the matter, that it should take 1 year and 7 months to give legal advice to the Financial Secretary, seems to the Tribunal to be excessive.

470. Collectively those delays amounted to Three years and five months. During the whole of that time, and despite having made inquiry of the SFC, Mr Lau did not know that he was to be the subject of an Inquiry.

471. The Tribunal received the Notice on 22 May 2003. At that time the then Chairman of the Tribunal was engaged in another Inquiry, public hearings in which did not conclude until 10 September 2003. Two further s 16 Notices, in relation to two other Inquiries, were received by the Tribunal on 25 September 2003. There are two divisions of the Insider Dealing Tribunal. At the time the three Notices were received, both divisions were fully engaged in other Inquiries. The facilities of the Tribunal are such that each division of the Tribunal is able to conduct only one Inquiry at a time. The then Chairman elected to defer action on all three Notices until such time as the Tribunal had concluded its then current Inquiry.

472. The then Chairman resigned his position in October 2004, and on 1 November 2004, a new Chairman, the present Chairman was appointed by the Chief Executive. Immediate steps were taken to constitute the Tribunal and to issue the Salmon letter.

473. The Tribunal now recognises that the more appropriate course to have followed, upon receipt of the Notice in the AOH and other Inquiries, would have been to immediately constitute the Tribunals, and dispatch Salmon letters in order that implicated persons should know that they are the subject of Inquiry, at the same time informing the implicated persons that there would be a delay before the Inquiry could commence. That course properly notifies an implicated party, enables them to take appropriate preparatory steps, such as preserving documents, and the same time permits the Tribunal to proceed with its current business. The Tribunal will ensure that such a circumstance does not occur again, whether in its present existence, or as the Market Misconduct Tribunal.

474. The material point advanced by Mr McCoy was that at no stage during the period after the SFC handed the case files to the Financial Secretary, 16 October 2001, until Mr Lau's receipt of the Salmon letter on 28 January 2005, a period of 3 years and 3 months, did Mr Lau become aware that he was to be the subject of an Inquiry. The submission is made that had Mr Lau been so aware, he would have taken other steps in the conduct of his business affairs. In particular, Mr McCoy says, Mr Lau would not have listed Lifestyle as he did, had he known that he was to be the subject of an Inquiry.

The role of the SFC:

475. The listing of Lifestyle was undertaken in 2004. That listing was governed by the provisions of the Securities and Futures Ordinance Cap 571 (SFO). The regulatory objectives of the SFC are set out in s 4 SFO and include the following:

“(a) to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

.....

(c) to provide protection for members of the public investing in or holding financial products;”

The functions of the SFC are set out in s 5 SFO. They include:

“(a) to take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;

.....

(d) to promote, encourage and enforce the proper conduct, competence and integrity of persons carried on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;

.....

(g) to maintain and promote confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;

.....

(l) to secure an appropriate degree of protection for

members of the public investing in or holding financial products, having regard to their degree of understanding and expertise in respect of investing in all holding financial products;”

476. The SFC, pursuant R 6(2)(d), Securities and Futures (Stock Market Listing) Rules, may object to a listing of any securities if such a listing would not be in the interest of the investing public or not in the public interest for the securities to be listed.

477. The essence of the submission advanced by Mr McCoy was that the SFC,

- (i) having a regulatory objective of providing protection for members of the public, and
- (ii) the function of securing an appropriate degree of protection for members of the public investing in financial products, and
- (iii) with a specific power to object to a listing that is not in the interests of the investing public, not in the public interest, and
- (iv) with its knowledge of the impending Inquiry into Mr Lau’s activities as a potential insider dealer,

was, by standing by and taking no action, thereby permitting the listing of Lifestyle to proceed, with Mr Lau as an executive director of the company, effectively making a statement to the public that Mr Lau was a fit and proper person to hold the office of an executive director of a public company listed on the SEHK. That was a public statement, it was submitted, that must be assessed by the Tribunal now, in the light of the knowledge in the hands of the SFC as to the impending inquiry involving Mr Lau.

478. The Tribunal finds this to be a powerful argument. The Tribunal finds that the long delays that have occurred in this matter, and the steps taken by Mr Lau in the ignorance of the action that was being undertaken by the SFC, steps which were taken with the tacit approval of the SFC, arising from their silence on the matter, have given rise to a justifiable sense of grievance on the part of Mr Lau.

479. That justifiable sense of grievance is sufficient in the view of the Tribunal to give rise to exceptional circumstances which may justify a decision not to disqualify Mr Lau from being a director of a public corporation.

480. Mr Lau accepts, properly, that it is appropriate to disqualify him from being a director of Chinese Estates and United Metals, both of which public corporations were listed prior to the institution of the Inquiry by the Financial Secretary. The Tribunal accepts that by the use of the expression: "a listed company or any other specified company", in s 23(1)(a) of the Ordinance it is not incumbent upon the Tribunal, in appropriate circumstances, to disqualify an insider dealer from directorships of all companies or corporations of which he is a director.

481. The Tribunal accepts that an exceptional situation arises in relation to Lifestyle, and the listing of that company, with Mr Lau as a director. The delays that have occurred in Mr Lau learning of the fact that the Inquiry was to proceed has resulted in Mr Lau taking steps that he would not otherwise have taken. In those exceptional circumstances the Tribunal proposes to exercise its discretion not to disqualify Mr Lau from being a director of Lifestyle.

482. For the avoidance of doubt the Tribunal records that it recognises that it is taking an exceptional course. It does so for exceptional reasons. The mere fact of the delay by itself will not normally be sufficient to justify the exercise of discretion in favour of an insider dealer. The course taken by this Tribunal should not be seen as a precedent for future Tribunals.

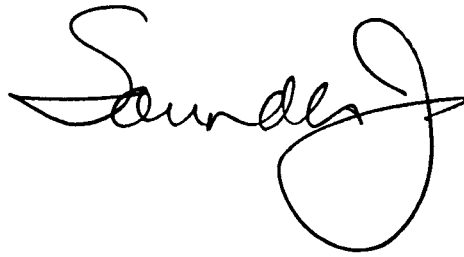
Disqualification Order:

483. The Tribunal accordingly orders that Mr Thomas Lau Luen Hung shall not, without the leave of the Court of First Instance, be a director of Chinese Estates Holdings Ltd, or United Metals Holdings Ltd, for a period of 12 months commencing from 22 December 2006.

Registration of orders:

484. Pursuant to s 29 of the Ordinance the Tribunal directs that the orders made shall be registered in the Court of First Instance. Payment of

Disgorgement Order, Penalty Order and Costs must be made within 28 days after the date of this report.



The Honourable Mr Justice John Saunders

Chairman



Mr Nigel Bacon

Member



Mr Pang Hon Chung

Member

14 December 2006

Insider Dealing Tribunal Inquiry into Asia Orient Holdings Limited

Annexure 1

Trading Statistics for Asia Orient shares on the Stock Exchange of Hong Kong
for the period from 4 January 1999 to 30 December 1999

Stock Historical Data

Annexure 1
(P. 1 of 6)

Stock	00214 - Asia Orient Co. Ltd.	Total Volume	4,874,002,670 shares
Date (dd/mm/yyyy)	01/01/1999 - 31/12/1999	Daily Average	19,732,804 shares
Max / Min Closing Price	1.33 / 0.23	Total \$ Turnover	4,036,718,277
Max / Min Price	1.57 / 0.226	Average \$ Turnover	16,342,989
Weighted Average Price	0.828		

Date	Volume	\$ Turnover	High	Low	Close	%Change	HSI Close
04/01/1999	0	0	--	--	0.280	0.00	9,809.17
05/01/1999	0	0	--	--	0.280	0.00	9,891.06
06/01/1999	0	0	--	--	0.280	0.00	10,233.80
07/01/1999	310,000	91,200	0.300	0.290	0.290	3.57	10,693.57
08/01/1999	0	0	--	--	0.290	0.00	10,722.70
11/01/1999	0	0	--	--	0.290	0.00	10,634.27
12/01/1999	1,164	338	0.290	0.290	0.290	0.00	10,711.56
13/01/1999	100,000	27,000	0.270	0.270	0.270	-6.90	10,273.77
14/01/1999	0	0	--	--	0.270	0.00	10,183.13
15/01/1999	0	0	--	--	0.270	0.00	10,147.40
18/01/1999	0	0	--	--	0.270	0.00	10,402.54
19/01/1999	50,000	13,000	0.260	0.260	0.260	-3.70	10,290.11
20/01/1999	98,000	25,500	0.295	0.250	0.260	0.00	10,314.91
21/01/1999	20,000	5,600	0.280	0.280	0.280	7.69	10,048.57
22/01/1999	0	0	--	--	0.275	-1.79	9,738.52
25/01/1999	790,000	211,450	0.270	0.250	0.270	-1.82	9,499.50
26/01/1999	100,000	25,000	0.250	0.250	0.250	-7.41	9,509.83
27/01/1999	430,000	113,100	0.270	0.250	0.250	0.00	9,719.66
28/01/1999	1,326,400	347,800	0.290	0.250	0.290	16.00	9,360.96
29/01/1999	372,000	94,000	0.260	0.250	0.260	-10.34	9,506.90
01/02/1999	750,000	183,180	0.250	0.240	0.249	-4.23	9,599.55
02/02/1999	0	0	--	--	0.249	0.00	9,502.72
03/02/1999	0	0	--	--	0.249	0.00	9,419.85
04/02/1999	0	0	--	--	0.249	0.00	9,438.65
05/02/1999	0	0	--	--	0.255	2.41	9,190.20
08/02/1999	0	0	--	--	0.255	0.00	9,139.60
09/02/1999	100,000	25,500	0.255	0.255	0.255	0.00	9,244.49
10/02/1999	0	0	--	--	0.255	0.00	9,076.33
11/02/1999	227,998	59,248	0.265	0.248	0.265	3.92	9,146.80
12/02/1999	2,000	540	0.270	0.270	0.270	1.89	9,425.42
15/02/1999	0	0	--	--	0.270	0.00	9,402.39
19/02/1999	0	0	--	--	0.270	0.00	9,254.12
22/02/1999	0	0	--	--	0.270	0.00	9,229.34
23/02/1999	0	0	--	--	0.270	0.00	9,433.99
24/02/1999	400,000	100,000	0.250	0.250	0.250	-7.41	9,677.57
25/02/1999	0	0	--	--	0.250	0.00	9,658.07
26/02/1999	390,000	96,300	0.250	0.243	0.250	0.00	9,858.49
01/03/1999	370,000	92,500	0.250	0.250	0.250	0.00	10,020.46
02/03/1999	44,000	11,000	0.250	0.250	0.250	0.00	9,913.58
03/03/1999	0	0	--	--	0.250	0.00	9,922.40

Annexure 1
(P. 2 of 6)

04/03/1999	0	0	-	-	0.250	0.00	9,912.76
05/03/1999	1,191,612	296,979	0.246	0.242	0.242	-3.20	10,241.12
08/03/1999	480,000	118,772	0.260	0.239	0.239	-1.24	10,263.99
09/03/1999	40,000	9,800	0.245	0.245	0.245	2.51	10,532.95
10/03/1999	0	0	-	-	0.245	0.00	10,749.01
11/03/1999	0	0	-	-	0.245	0.00	10,662.81
12/03/1999	0	0	-	-	0.245	0.00	10,801.76
15/03/1999	0	0	-	-	0.245	0.00	10,836.86
16/03/1999	0	0	-	-	0.245	0.00	10,911.25
17/03/1999	314,000	74,154	0.241	0.226	0.230	-6.12	10,940.07
18/03/1999	320,000	74,150	0.243	0.226	0.243	5.65	10,659.30
19/03/1999	50,000	12,350	0.247	0.247	0.247	1.65	11,082.92
22/03/1999	0	0	-	-	0.247	0.00	11,107.24
23/03/1999	340,000	83,020	0.245	0.243	0.245	-0.81	11,041.01
24/03/1999	300,000	72,280	0.243	0.238	0.243	-0.82	10,711.34
25/03/1999	30,000	7,330	0.247	0.243	0.243	0.00	10,826.13
26/03/1999	10,000	2,430	0.243	0.243	0.243	0.00	10,803.31
29/03/1999	0	0	-	-	0.243	0.00	10,688.47
30/03/1999	0	0	-	-	0.243	0.00	10,940.21
31/03/1999	0	0	-	-	0.243	0.00	10,942.20
01/04/1999	0	0	-	-	0.243	0.00	11,072.98
07/04/1999	0	0	-	-	0.243	0.00	11,614.87
08/04/1999	345,600	84,648	0.245	0.245	0.245	0.82	11,727.84
09/04/1999	120,000	29,280	0.244	0.244	0.244	-0.41	11,914.10
12/04/1999	0	0	-	-	0.244	0.00	11,744.74
13/04/1999	590,000	142,300	0.248	0.238	0.240	-1.64	11,899.69
14/04/1999	2,882,000	717,266	0.255	0.242	0.243	1.25	11,834.13
15/04/1999	200,000	48,820	0.245	0.244	0.244	0.41	11,962.23
16/04/1999	451,998	113,440	0.255	0.250	0.250	2.46	12,490.30
19/04/1999	878,000	230,830	0.270	0.255	0.260	4.00	12,766.44
20/04/1999	476,000	121,130	0.255	0.250	0.255	-1.92	12,409.78
21/04/1999	61,966	15,292	0.247	0.247	0.248	-2.75	12,543.76
22/04/1999	620,000	160,700	0.260	0.255	0.260	4.84	12,933.54
23/04/1999	890,000	222,540	0.255	0.246	0.247	-5.00	12,905.30
26/04/1999	1,480,000	365,200	0.250	0.244	0.246	-0.40	13,127.02
27/04/1999	200,000	48,400	0.242	0.242	0.242	-1.63	13,364.79
28/04/1999	100,000	23,800	0.238	0.238	0.238	-1.65	13,133.39
29/04/1999	1,910,000	455,340	0.241	0.231	0.241	1.26	13,179.70
30/04/1999	130,000	31,720	0.248	0.240	0.248	2.90	13,333.20
03/05/1999	980,000	242,830	0.250	0.246	0.249	0.40	13,337.07
04/05/1999	1,010,000	261,980	0.275	0.249	0.270	8.43	13,559.69
05/05/1999	2,400,000	729,950	0.330	0.270	0.320	18.52	13,586.21
06/05/1999	4,500,000	1,523,850	0.355	0.320	0.325	1.56	13,570.24
07/05/1999	1,010,000	312,700	0.320	0.295	0.295	-9.23	12,997.43
10/05/1999	240,000	67,550	0.310	0.270	0.270	-8.47	13,163.20
11/05/1999	0	0	-	-	0.275	1.85	12,874.37
12/05/1999	100,000	29,500	0.295	0.295	0.295	7.27	13,012.97
13/05/1999	300,000	81,000	0.270	0.270	0.270	-8.47	13,053.67
14/05/1999	530,000	142,600	0.280	0.265	0.265	-1.85	12,855.52

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17/05/1999	0	0	—	—	0.265	0.00	12,588.60
18/05/1999	670,000	174,200	0.260	0.260	0.260	-1.89	12,627.10
19/05/1999	0	0	—	—	0.260	0.00	12,403.14
20/05/1999	20,000	5,600	0.280	0.280	0.280	7.69	12,375.42
21/05/1999	160,000	40,380	0.260	0.249	0.255	-8.93	12,272.14
24/05/1999	50,000	12,750	0.255	0.255	0.255	0.00	12,436.86
25/05/1999	0	0	—	—	0.255	0.00	12,346.91
26/05/1999	224,000	63,340	0.290	0.260	0.285	11.76	12,409.16
27/05/1999	424,000	119,950	0.290	0.275	0.275	-3.51	12,308.53
28/05/1999	1,124,000	292,240	0.275	0.275	0.275	0.00	12,059.25
31/05/1999	0	0	—	—	0.275	0.00	12,147.12
01/06/1999	170,000	45,950	0.275	0.260	0.260	-5.45	12,363.56
02/06/1999	0	0	—	—	0.260	0.00	12,458.64
03/06/1999	170,000	43,000	0.255	0.250	0.255	-1.92	12,471.61
04/06/1999	40,000	10,000	0.250	0.250	0.250	-1.96	12,415.54
07/06/1999	50,000	13,750	0.275	0.275	0.275	10.00	12,837.39
08/06/1999	0	0	—	—	0.275	0.00	12,864.86
09/06/1999	190,000	51,300	0.270	0.270	0.270	-1.82	12,874.42
10/06/1999	550,000	143,450	0.270	0.250	0.250	-7.41	12,839.21
11/06/1999	390,000	96,720	0.250	0.246	0.250	0.00	12,992.76
14/06/1999	1,230,000	338,850	0.290	0.260	0.260	4.00	13,007.57
15/06/1999	1,950,000	509,800	0.270	0.255	0.260	0.00	12,935.41
16/06/1999	3,054,000	799,310	0.265	0.260	0.265	1.92	13,155.12
17/06/1999	2,892,000	772,340	0.275	0.255	0.265	0.00	13,408.27
21/06/1999	2,100,000	568,700	0.275	0.265	0.265	0.00	13,994.23
22/06/1999	4,744,000	1,270,120	0.275	0.260	0.275	3.77	14,004.88
23/06/1999	11,876,000	3,351,330	0.295	0.270	0.295	7.27	13,976.04
24/06/1999	5,472,000	1,579,970	0.300	0.280	0.285	-3.39	13,780.12
25/06/1999	6,240,000	1,909,190	0.320	0.290	0.295	3.51	13,784.51
28/06/1999	9,544,000	3,101,200	0.335	0.300	0.330	11.86	13,840.29
29/06/1999	3,296,000	1,080,750	0.340	0.310	0.325	-1.52	13,765.49
30/06/1999	8,734,000	3,121,750	0.380	0.315	0.360	10.77	13,532.14
02/07/1999	6,474,000	2,554,910	0.405	0.380	0.405	12.50	14,184.58
05/07/1999	3,328,000	1,257,230	0.400	0.350	0.385	-4.94	14,506.74
06/07/1999	1,066,000	385,240	0.375	0.355	0.365	-5.19	14,372.61
07/07/1999	1,930,000	682,500	0.360	0.350	0.350	-4.11	14,257.44
08/07/1999	1,090,664	382,469	0.370	0.340	0.340	-2.86	14,226.30
09/07/1999	1,429,912	504,874	0.360	0.350	0.360	5.88	14,222.57
12/07/1999	2,332,000	898,850	0.395	0.355	0.380	5.56	14,061.84
13/07/1999	668,000	246,820	0.370	0.365	0.365	-3.95	13,980.93
14/07/1999	332,000	119,520	0.360	0.360	0.360	-1.37	13,575.57
15/07/1999	502,000	180,720	0.360	0.360	0.360	0.00	13,758.89
16/07/1999	680,000	240,180	0.360	0.340	0.345	-4.17	13,545.24
19/07/1999	604,000	205,900	0.350	0.340	0.350	1.45	13,447.13
20/07/1999	230,000	77,350	0.345	0.335	0.345	-1.43	13,600.40
21/07/1999	260,000	88,400	0.340	0.340	0.340	-1.45	13,419.66
22/07/1999	0	0	—	—	0.340	0.00	13,369.06
23/07/1999	0	0	—	—	0.340	0.00	13,093.70
26/07/1999	0	0	—	—	0.340	0.00	12,866.52

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27/07/1999	0	0	--	--	0.340	0.00	13,075.09
28/07/1999	1,204,000	365,410	0.310	0.260	0.305	-10.29	13,140.42
29/07/1999	1,660,000	476,300	0.290	0.280	0.285	-6.56	13,117.84
30/07/1999	1,288,000	384,630	0.310	0.260	0.310	8.77	13,186.86
02/08/1999	310,000	103,800	0.340	0.330	0.335	8.06	13,435.43
03/08/1999	0	0	--	--	0.330	-1.49	13,473.84
04/08/1999	0	0	--	--	0.325	-1.52	13,591.02
05/08/1999	0	0	--	--	0.325	0.00	13,254.34
06/08/1999	318,000	102,190	0.330	0.310	0.330	1.54	13,167.06
09/08/1999	0	0	--	--	0.320	-3.03	12,945.47
10/08/1999	0	0	--	--	0.320	0.00	12,596.71
11/08/1999	0	0	--	--	0.300	-6.25	12,437.80
12/08/1999	0	0	--	--	0.300	0.00	12,779.75
13/08/1999	0	0	--	--	0.300	0.00	12,608.18
16/08/1999	0	0	--	--	0.300	0.00	12,894.78
17/08/1999	2,212,000	718,210	0.340	0.320	0.320	6.67	12,783.16
18/08/1999	600,000	190,500	0.320	0.315	0.315	-1.56	12,993.10
19/08/1999	0	0	--	--	0.315	0.00	13,403.59
20/08/1999	0	0	--	--	0.315	0.00	13,566.74
23/08/1999	0	0	--	--	0.315	0.00	13,573.66
24/08/1999	0	0	--	--	0.310	-1.59	13,633.87
25/08/1999	0	0	--	--	0.310	0.00	13,479.13
26/08/1999	20,000	5,800	0.290	0.290	0.300	-3.23	13,608.38
27/08/1999	350,000	101,500	0.300	0.270	0.295	-1.67	13,383.13
30/08/1999	630,000	185,950	0.300	0.290	0.300	1.69	13,688.66
31/08/1999	500,000	140,800	0.290	0.280	0.280	-6.67	13,482.77
01/09/1999	200,000	53,000	0.265	0.265	0.265	-5.36	13,544.19
02/09/1999	150,000	38,750	0.260	0.255	0.260	-1.89	13,367.56
03/09/1999	700,000	193,000	0.285	0.270	0.285	9.62	13,178.31
06/09/1999	10,110,000	3,976,010	0.410	0.300	0.405	42.11	13,385.16
07/09/1999	22,102,800	10,516,352	0.500	0.415	0.475	17.28	13,396.09
08/09/1999	12,480,000	5,864,480	0.490	0.450	0.475	0.00	13,356.63
09/09/1999	26,486,842	14,779,217	0.620	0.465	0.610	28.42	13,854.88
10/09/1999	23,594,000	15,426,320	0.690	0.610	0.660	8.20	13,855.93
13/09/1999	24,470,000	18,169,260	0.770	0.680	0.740	12.12	13,860.85
14/09/1999	27,921,600	21,946,800	0.810	0.750	0.770	4.05	13,804.03
15/09/1999	18,114,000	14,083,940	0.800	0.750	0.760	-1.30	13,430.60
17/09/1999	30,410,000	25,195,820	0.880	0.740	0.830	9.21	13,484.84
20/09/1999	21,582,000	18,887,160	0.900	0.820	0.900	8.43	13,472.37
21/09/1999	40,890,000	38,359,840	0.950	0.900	0.930	3.33	13,420.46
22/09/1999	0	0	--	--	0.930	0.00	13,187.62
23/09/1999	79,029,332	100,258,525	1.340	0.940	1.310	40.86	13,214.44
24/09/1999	88,298,788	128,132,391	1.570	1.300	1.330	1.53	13,032.07
27/09/1999	0	0	--	--	1.330	0.00	12,760.46
28/09/1999	613,422,400	689,607,272	1.200	1.030	1.070	-19.55	12,844.93
29/09/1999	159,653,994	168,312,178	1.100	0.990	1.050	-1.87	12,834.89
30/09/1999	80,291,410	81,720,014	1.080	0.960	0.970	-7.62	12,733.24
04/10/1999	95,096,000	90,537,800	1.030	0.840	0.840	-13.40	12,875.86
05/10/1999	125,458,000	95,425,800	0.870	0.660	0.780	-7.14	12,998.89

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06/10/1999	176,024,000	153,308,620	0.930	0.760	0.910	16.67	13,017.98
07/10/1999	158,698,000	153,568,620	1.010	0.920	0.940	3.30	13,113.20
08/10/1999	70,590,000	65,977,460	0.990	0.880	0.900	-4.26	13,112.42
11/10/1999	83,512,000	76,076,380	0.960	0.860	0.890	-1.11	12,992.72
12/10/1999	73,834,000	63,059,680	0.900	0.820	0.840	-5.62	12,759.35
13/10/1999	95,746,000	80,870,960	0.890	0.770	0.850	1.19	12,475.87
14/10/1999	55,276,000	46,465,300	0.870	0.800	0.810	-4.71	12,486.82
15/10/1999	68,254,000	52,993,760	0.830	0.750	0.780	-3.70	12,299.08
19/10/1999	41,284,000	29,196,340	0.750	0.670	0.720	-7.69	12,134.13
20/10/1999	46,666,000	34,688,700	0.760	0.720	0.750	4.17	12,498.56
21/10/1999	65,890,000	51,563,820	0.810	0.760	0.780	4.00	12,523.00
22/10/1999	107,862,000	89,476,040	0.860	0.800	0.820	5.13	12,863.08
25/10/1999	65,120,000	52,916,540	0.840	0.780	0.790	-3.66	13,034.18
26/10/1999	31,776,000	24,164,280	0.800	0.730	0.750	-5.06	12,797.38
27/10/1999	67,370,000	50,632,600	0.780	0.730	0.750	0.00	12,709.07
28/10/1999	44,084,000	32,930,060	0.760	0.720	0.740	-1.33	12,758.88
29/10/1999	134,042,320	104,115,584	0.800	0.750	0.780	5.41	13,256.95
01/11/1999	63,234,000	50,681,680	0.820	0.770	0.780	0.00	13,322.11
02/11/1999	32,198,000	24,847,340	0.800	0.750	0.750	-3.85	13,335.84
03/11/1999	22,398,000	16,805,200	0.770	0.740	0.750	0.00	13,257.33
04/11/1999	22,522,000	16,758,400	0.760	0.730	0.730	-2.67	13,651.51
05/11/1999	36,108,000	26,682,880	0.760	0.720	0.750	2.74	13,610.27
08/11/1999	29,388,000	21,530,520	0.760	0.710	0.710	-5.33	13,521.11
09/11/1999	26,819,200	19,153,852	0.730	0.700	0.720	1.41	13,669.70
10/11/1999	33,578,000	24,148,000	0.740	0.710	0.720	0.00	13,975.54
11/11/1999	18,530,000	12,977,120	0.720	0.680	0.680	-5.56	14,105.71
12/11/1999	19,592,000	13,207,720	0.690	0.660	0.680	0.00	14,189.67
15/11/1999	15,350,000	10,204,860	0.690	0.630	0.640	-5.88	14,562.22
16/11/1999	35,434,000	24,216,500	0.720	0.640	0.670	4.69	14,689.46
17/11/1999	23,842,000	16,214,780	0.720	0.660	0.670	0.00	14,704.48
18/11/1999	119,524,000	85,327,440	0.740	0.660	0.730	8.96	14,721.74
19/11/1999	103,816,000	76,862,640	0.760	0.700	0.710	-2.74	15,073.10
22/11/1999	39,198,000	28,498,140	0.740	0.710	0.730	2.82	15,285.03
23/11/1999	27,945,330	19,557,724	0.740	0.680	0.690	-5.48	15,393.20
24/11/1999	20,996,000	14,273,480	0.690	0.670	0.670	-2.90	15,307.28
25/11/1999	44,710,000	31,277,240	0.720	0.670	0.690	2.99	14,998.77
26/11/1999	14,226,000	9,616,420	0.700	0.670	0.670	-2.90	15,274.53
29/11/1999	15,931,332	10,337,686	0.690	0.640	0.640	-4.48	15,461.11
30/11/1999	18,572,000	11,541,900	0.650	0.600	0.630	-1.56	15,377.19
01/12/1999	15,548,000	9,950,100	0.650	0.620	0.630	0.00	15,422.52
02/12/1999	26,142,996	17,210,687	0.670	0.630	0.660	4.76	15,603.04
03/12/1999	0	0	-	-	0.660	0.00	15,840.41
06/12/1999	54,304,000	38,350,700	0.740	0.670	0.680	3.03	16,168.62
07/12/1999	41,370,000	28,608,880	0.710	0.670	0.680	0.00	16,073.09
08/12/1999	22,300,000	15,088,940	0.690	0.670	0.670	-1.47	15,989.38
09/12/1999	71,886,000	49,705,940	0.720	0.660	0.670	0.00	16,370.95
10/12/1999	32,020,000	21,718,580	0.690	0.670	0.670	0.00	16,380.21
13/12/1999	16,812,000	11,261,600	0.690	0.660	0.670	0.00	16,442.11
14/12/1999	22,584,000	14,829,180	0.680	0.630	0.640	-4.48	16,282.70

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15/12/1999	17,704,006	11,039,443	0.650	0.610	0.610	-4.69	15,825.31
16/12/1999	11,054,000	6,841,100	0.640	0.610	0.610	0.00	15,571.36
17/12/1999	12,008,000	7,414,120	0.630	0.610	0.610	0.00	15,986.35
20/12/1999	13,348,000	7,854,920	0.610	0.560	0.570	-6.56	16,212.39
21/12/1999	21,986,000	12,079,220	0.580	0.530	0.550	-3.51	16,248.74
22/12/1999	53,533,006	32,502,273	0.640	0.550	0.610	10.91	16,192.40
23/12/1999	32,548,000	19,898,780	0.630	0.580	0.590	-3.26	16,296.08
24/12/1999	26,496,000	14,969,720	0.590	0.540	0.570	-3.39	16,833.28
28/12/1999	64,958,000	39,273,620	0.620	0.570	0.610	7.02	16,928.29
29/12/1999	290,076,000	199,250,740	0.750	0.630	0.730	19.67	16,660.82
30/12/1999	230,178,000	172,067,360	0.790	0.690	0.740	1.37	16,962.10

Insider Dealing Tribunal Inquiry into Asia Orient Holdings Limited

Annexure 2

Chronology of relevant events

IN THE INSIDER DEALING TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
(DIVISION 3)

(Inquiry into dealings of shares of Asia Orient Holdings Limited
between 14 and 20 September 1999)

Chronology of Relevant Events

<u>Date</u>	<u>Events</u>
06.09.99-20.09.99	Lau Luen Hung Thomas (" <i>Lau</i> ") traded in Asia Orient Holdings Limited (" <i>AOH</i> ") shares.
24.09.99	SFC sent out s.31 enquiry letters to 14 stock brokers.
01.12.99	SFC commenced formal s.33 investigation.
02.12.99	SFC requisition information from Lau.
23.05.00	Lau interviewed for the first time by the Security and Futures Commission (" <i>SFC</i> ").
27.10.00	Lau interviewed for the second time by the SFC.
16.10.01	Unknown to Lau, SFC passed their Case Files in respect of the said insider dealing activities to the Financial Secretary (" <i>FS</i> ").
16.10.01 to 15.05.02	The FS obtained legal advice from his legal adviser, the Civil Division of the Department of Justice (" <i>DOJ</i> ").
*10.09.02	Unaware of developments, Richards Butler (" <i>RB</i> ") wrote to SFC for clearance to inform SEHK regarding the investigation of Lau (in connection with the listing of United Metals Holdings Limited (" <i>United Metals</i> ")).
*16.09.02	SFC replied to RB that it had no objection to disclosure to SEHK.
*06.01.03	Listing of United Metals and Lau appointed an executive director.

- 15.05.03 Unknown to Lau, the FS instituted the AOH Inquiry by issuing a notice under s. 16(2) of the Securities (Insider Dealing) Ordinance, Cap. 395 ("*the SIDO*").
- 22.05.03 Unknown to Lau, Lugar-Mawson J as the then Chairman of the Tribunal was sent the Terms of Reference for the AOH Inquiry.
- *16.01.04 Lau submitted his Form B (Declaration and Undertaking with regard to Directors) to the Stock Exchange as one of the listing documents in the listing of Lifestyle.
- *30.01.04 BNP Paribas or sponsors of Lifestyle filed Form A1 (Advance Booking Form) relating to the listing of Lifestyle to the Stock Exchange disclosing Lau would be an executive (managing) director of Lifestyle. By virtue of "dual filing" system, SFC would receive a copy of Form A1.
- *25.02.04 Lau sent to Stock Exchange a letter wrongly dated 25.2.2002 stating the investigation by SFC started in late 1999 and he did not know whether the matter was still current.
- *15.04.04 Listing of Lifestyle and Lau appointed an executive director.
- 14.07.04 Unknown to Lau, the DOJ nominated Herbert Li as Counsel for the Tribunal.
- 17.08.04 Unknown to Lau, the Tribunal appointed Herbert Li as Counsel for the Tribunal.
- 10.04 Chairman Lugar-Mawson J notified the Chief Executive ("CE") that, in view of his impending retirement, it was undesirable that he should continue to exercise his functions in relation to the AOH Inquiry.
- 30.10.04 Unknown to Lau, the CE appointed Deputy Judge Saunders in place of Lugar-Mawson J with effect from 01.11.04.
- 31.12.04 Unknown to Lau, Counsel for the Tribunal sent to the Tribunal the hearing bundles together with the revised Synopsis and Dramatis.
- 28.01.05 Counsel for the Tribunal sent a Salmon Letter with a Summary of Evidence to Lau informing him for the first time that he was an "implicated person" in an insider dealing inquiry instituted by the FS on 15.5.2003. The letter also informed Lau that the first public sitting of the Inquiry would be held within a month i.e. on 28.2.2005.

- 28.02.05 First public sitting of the Tribunal was held in which it was announced that Lau had been found as an “implicated person”.
- The next public preliminary hearing of the Tribunal was scheduled to resume on 14.4.05. The full hearing of the Inquiry was scheduled to begin on 27.6.05.
- 14.04.05 The preliminary hearing of the Tribunal resumed. Counsel for Lau indicated that a challenge would be made against the constitutionality of the Tribunal. The hearing was then adjourned to 27.07.05 for argument.
- 17.05.05 Tribunal sat to hear Lau’s counsel apply for an extra day to be reserved for the preliminary argument. The hearing was then adjourned to 25.07.05.
- 25-27.07.05 The Tribunal sat to hear the constitutional arguments made by Lau’s Counsel.
- 11.08.05 The Ruling of the Tribunal on the constitutional challenges made on behalf of Lau was handed down and it was directed that the Inquiry recommence on 18.08.05.
- 18.08.05 Tribunal sat. Counsel for Lau indicated the judicial review would be taken against the Ruling of the Tribunal.
- 14.09.05 Lau initiated judicial review proceedings. Leave was granted by Hon. Reyes J.
- 03.01.06 - 04.01.06 Hearing of the application for judicial review before Hon Lam J and Hon Reyes J. Application dismissed.
- 13.01.06 Tribunal sat and was informed that the application for Judicial Review had been dismissed. Lau requested time to consider his position.
- 03.02.06 Tribunal sat and was informed that Lau wished to have the substantive hearing commence.
- 05.06.06 to 06.07.06 Substantive inquiry commenced.
- 08.09.06 Part 1 of the Report of the Tribunal published, Lau found an insider dealer in respect of his AOH securities trading between 14.9.1999 and 20.9.1999.