REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

EMPEROR (CHINA CONCEPT) INVESTMENTS LIMITED

between

October 7th and October 11th 1993 (inclusive)

and on other related questions

CONTENT

ANNEXURES

ABBREVIATIONS

Mr. Albert Yeung Mr. Yeung	Mr. Albert Yeung Sau Shing
Miss Kelly Yeung Kelly Yeung	Miss Kelly Yeung Po Kam
Miss Rebecca Yeung Rebecca Yeung	Miss Rebecca Yeung Bo Chow
Kingsday	Kingsday Limited
Asian Star	Asian Star Holdings Limited
Emperor China Emperor	Emperor (China Concept) Investments Limited
Emperor International	Emperor International Holdings Limited
EIECL	Emperor International Exchange Company Limited
GITIC	Guandong International Trust & Investment Corporation Hong Kong (Holdings) Limited
Centre Regent	Centre Regent Investments Limited
CRED	China National Real Estate Development Group Corporation
CEF	CEF Capital Limited
Grand Paradise	Grand Paradise Investments Limited
Unifast	Unifast Profits Limited

Joray	Joray Trading Limited
Cheung Kong	Cheung Kong (Holdings) Limited
SFC	Securities and Futures Commission
PRC	People’s Republic of China
SEHK	The Stock Exchange of Hong Kong Limited
The Ordinance CAP. 395	Securities (Insider Dealing) Ordinance

CHAPTER 1

INTRODUCTION

The Insider Dealing Tribunal has sat on 10 days between April 15th and May 21st 1998 to hear evidence and submissions pursuant to the notice as set out on page (i). In addition there was a preliminary hearing on December 18th 1997. For ease of reference this inquiry has been referred to as the "Emperor" inquiry.

The Tribunal's terms of reference required us to inquire into and determine, inter alia, whether there had been any insider dealing in Emperor China shares by three people and two private companies namely, Mr. Albert Yeung Sau Shing, Miss Kelly Yeung Po Kam, Miss Rebecca Yeung Bo Chow, Kingsday Limited and Asian Star Holdings Limited between October 7th and 11th 1993.

On April 20th 1998 the Tribunal was informed by counsel appearing on behalf of Mr. Albert Yeung, the first named implicated party, that Mr. Yeung wished to make a full and frank admission of the insider dealing as alleged against him. His admission was therefore reduced to writing and read out in open court on May 4th 1998. This was the first occasion out of the six inquiries conducted hitherto by the 2nd Division of the Insider Dealing Tribunal that an admission of insider dealing had been made by an implicated person. The Tribunal therefore had, first of all, to decide how the inquiry should be conducted in the light of the admissions made. Our primary consideration was to achieve a fair balance between, on the one hand, faithfully fulfilling our task as set out in the Financial Secretary's s. 16(2) notice and on the other hand, maximizing the potential savings of both time and expense which could follow upon an admission made by the first named implicated person.

We set out the procedure we adopted more fully in Chapter 2. In short it will be seen that the Tribunal was able to answer questions (a) and (b) of the Financial Secretary's notice without any witnesses giving oral evidence to the Tribunal. Mr. Albert Yeung filed a signed statement of admitted facts and Miss Kelly Yeung and Miss Rebecca

Yeung filed statutory declarations. Two other witnesses, Ms Sandy Wan Yin Fong and Ms Agnes Tin Fu Man also filed statutory declarations. We then heard submissions from our own counsel and counsel appearing for the implicated parties as to the effect and sufficiency of the admissions and declarations as a result of which the Tribunal was satisfied that it could complete its inquiry and make its determination in answer to questions (a) and (b) without calling any witnesses to give oral evidence to us.

As far as question (c) was concerned although it was admitted that a profit was made from the admitted insider dealing by Mr. Yeung no admission was made as to the amount and accordingly the Tribunal heard evidence (from three expert witnesses) and submissions thereon over five days between May 6th and May 19th 1998. Our findings on this issue are set out in Chapter 5 of this report.

Background

We now give a brief outline of the background to this inquiry. We merely give an overview of the circumstances which led to the institution of this inquiry. The full picture is contained in the statement of admitted facts which are set out in full in Chapter 4.

1. "Emperor China"

Emperor China is a listed company in Hong Kong. It acquired its present name in December 1992. It was first listed in March 1973 as Yu Hing Holdings Limited. In 1993 the controlling shareholding in the company was Emperor International and through Emperor International Mr. Albert Yeung held approximately 71% of the issued share capital of the company. Mr. Yeung is described as the Chairman of the "Emperor Group" but was never a director or employee of Emperor China.

2. August/September 1993 - the unsuccessful proposed acquisition by the Guandong International Trust and Investment Corporation Hong Kong (Holdings) Limited ("GITIC")

On August 17th 1993 it was announced that "GITIC" was interested in acquiring a controlling interest in Emperor China. (See Annexure B.) In the week prior to this announcement there had been considerable activity in the trading of Emperor China shares. In the two months preceding this event the shares had traded at below $4.00. Between August 10th and August 16th it rose from $3.85 to $6.50. For the next five weeks it traded (approximately) between $5.00 and $6.00 on an above average turnover. However on September 23rd it was announced that negotiations had been terminated and there would be no acquisition. Over the next few days the share dropped to about $3.00.

The significance of these unsuccessful negotiations is that they preceded the successful acquisition which was the subject matter of our inquiry by a very short period of time. The fact that one followed so closely on the heels of the other provides support for the contention that Mr. Albert Yeung knew the price sensitive nature of the information he possessed on October 7th about the next proposed acquisition (which, in any event, he admits he knew was relevant information as defined by s. 8 of CAP. 395).

3. October 1993: the successful acquisition by the "Consortium"

(a) The announcements

Activity in Emperor China shares increased again in the first trading week of October 1993. The price rose quickly to around $5.00. On October 12th the share was suspended pending an announcement about the proposed acquisition by a consortium. (See Annexure C.) Mr. Albert Yeung's admitted insider dealing relates to purchases made on October 7th, 8th (a Friday) and 11th. The share remained suspended until October 25th following a second announcement on October 21st (published the next day, Friday 22nd) that a letter

of intent had been entered into between the relevant parties. (See Annexure D.) On October 25th the share price reached a high of $6.75.

(b) The "Consortium"

The parties to the consortium referred to in the announcements were Centre Regent Investments Limited ("Centre Regent") which was a wholly owned subsidiary of China National Real Estate Development Group Corporation ("CRED") and Cheung Kong (Holdings) Limited. This consortium agreed to purchase Emperor International's (i.e. Albert Yeung's) entire shareholding in Emperor China which amounted to 70.9%. The ratio of participation between Centre Regent and Cheung Kong was 70/30 respectively.

(c) The purchases made on relevant inside information

There is no dispute that on October 7th, 8th and 11th Mr. Albert Yeung purchased, in the name of two offshore companies, "Kingsday" and "Asian Star", 4,572,000 Emperor China shares with relevant inside information. Neither is it in dispute that the cost of those shares was $22,638,240.00, approximately $4.95 per share.

On October 25th Kingsday sold 1,948,000 shares. The proceeds of those sales was $12,946,000. Thus 2,624,000 remained unsold in the beneficial ownership of Mr. Albert Yeung. We calculate their value in Chapter 5.

4. Kingsday and Asian Star

The sole directors of these two offshore companies are two of Mr. Albert Yeung's younger sisters.

Rebecca Yeung was the sole director of Asian Star. Asian Star was acquired in 1991. Between March 9th and October 25th 1993 its only function was to trade in Emperor China shares.

Between 3:45 p.m. on October 7th (the latest moment that Mr. Albert Yeung was in possession of relevant information - see Chapter 4) and the close of business on October 11th Asian Star purchased 216,000 Emperor China shares.

Kelly Yeung was the sole director of Kingsday. Kingsday was acquired on October 8th 1993. Its sole raison d'etre was to trade in Emperor China shares. On October 8th and October 11th it purchased 4,356,000 shares.

CHAPTER 2

PROCEDURE

In this chapter we set out the procedures that have been followed:-

(A) Up to the commencement of the substantive hearing on April 15th 1998 (which are common to all inquiries conducted by the 2nd Division of the Insider Dealing Tribunal) and

(B) From April 15th onwards which are peculiar to this inquiry only, it being the first inquiry that this Division has proceeded on the basis of insider dealing being admitted by an implicated party.

(A) Pre-hearing:

1. The Tribunal

The constitution and operation of the Insider Dealing Tribunal is governed by Part III of the Securities (Insider Dealing) Ordinance CAP. 395. The Tribunal is established under s. 15 of that Ordinance.

Pursuant to s. 15 the Tribunal was duly constituted as follows:-

Chairman: The Hon. Mr. Justice Burrell

Member: Mr. Felix Chow Fu Kee. Mr. Chow is the Alternate Director and Consultant to Managing Director of First Shanghai Investments Limited. He is a past President and member of the Hong Kong Society of Accountants. He is also a member of the Australian Society of Certified Practising Accountants and the British Institute of Management.

Member: Mr. Michael Sze Tsai Ping. Mr. Sze is the Managing Director of NSC Securities (Asia) Limited. He is a Certified Public Accountant and is a fellow member of the Institute of Chartered Accountants in England and Wales, the Hong Kong Society of Accountants and the Chartered Association of Certified Accountants. He is also a council member of the Stock Exchange of Hong Kong Limited.

By a notice dated the 26th September 1997, pursuant to his powers under s. 16 of CAP. 395, the Financial Secretary requested the Insider Dealing Tribunal to hold an inquiry. The notice appears on page (i) of this report.

2. Legal Representation

The Tribunal appointed Mr. Joseph Pethes as counsel to the inquiry. He was assisted by Miss Cynthia Tang. Mr. Pethes is a barrister in private practice in Hong Kong and is a member of the Hong Kong Bar Association. Miss Tang is a senior Government counsel in the Civil Division of the Department of Justice.

Clause 16 of the Schedule to the Ordinance states:-

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

Before we heard any evidence applications for legal representation were made and granted. At the commencement of the hearing the implicated parties were legally represented as follows:-

Mr. Albert Yeung was represented by Mr. Ronny K.W. Tong, S.C. assisted by Mr. Godfrey W.H. Lam and Mr. David K.K. Tsang, all instructed by Messrs Fairbairn Catley Low & Kong.

Ms Rebecca Yeung, Ms Kelly Yeung, "Asian Star" and "Kingsday" were represented by Mr. Alan Hoo, S.C. He was assisted by Mr. Kevin Chan for Kelly Yeung and Kingsday instructed by Fred Kan & Co. and by Mr. Jonathan Harris for Rebecca Yeung and Asian Star instructed by Spencer Lee & Co.

3. "Salmon" Letters

The Tribunal's first task was to determine pursuant to paragraph 17 of the Schedule to CAP. 395 those persons whose conduct would be the subject of the inquiry or would be implicated or concerned in the subject matter of the inquiry.

The persons so identified were those mentioned in the Financial Secretary's s. 16(2) notice. In keeping with the procedure adopted in previous inquiries counsel to the Tribunal then drafted and served Salmon letters on each of the five implicated parties. The purpose of the Salmon letter is to give the parties advance notice that they may be affected by the inquiry. The letter contains an outline of the allegations which will be made together with a summary of the evidence which it is intended to call. A sample of the Salmon letters sent in the Emperor Inquiry is at Annexure A of this report.

It should be emphasized that a Salmon letter is not akin to a charge or a pleading. One of the difficulties with inquisitorial proceedings is that there is no plaintiff or defendant, no prosecutor or accused; the issues to be investigated are not narrowly defined by pleadings, charges, indictments or depositions. The only procedural mechanism for remedying these inherent difficulties is the Salmon letter. However, its content does not restrict the ambit of the inquiry nor does it restrict the persons who may be implicated

as a result of the inquiry. The requirement is that the implicated party has been forewarned at the outset that allegations of insider dealing will be made and the available evidence in support of those allegations has been disclosed. In principle an implicated party should have access to all material within the possession of the SFC. Any disputes on the question of disclosure are resolved by the Tribunal Chairman.

The Salmon letters were sent out on November 28th 1997. Contained in the letter was the date on which all implicated parties or their lawyers should attend court for a preliminary hearing.

4. Preliminary hearings

The preliminary hearing was held on December 18th 1997. At that hearing the Tribunal, inter alia, dealt with procedural matters. We outline for the purposes of our report those which are of particular importance:-

i) The Tribunal's function is inquisitorial rather than adversarial. This is a fundamental distinction between an inquiry by a Tribunal and conventional litigation. The distinction gives rise to a number of consequences. For example, the Tribunal directs the inquiry - it is empowered to investigate new matters should they arise, provided they are relevant to the terms of reference. Also, the Tribunal may adopt flexible procedures as it sees fit. Rules relating to, for example, leading questions, hearsay, examination on previous statements and the scope of re-examination need not be applied with the same strictness as in conventional litigation.

ii) The role of counsel to the inquiry is to present the evidence objectively, regardless of which way the evidence falls. He does not however have to remain neutral throughout. If he considers the evidence provides proof of insider dealing he should employ his skills of advocacy in the usual way to that end.

His role also involves a high degree of administration. For example, he is responsible for the attendance of witnesses, drafting notices to secure the attendance of witnesses, drafting notices to require the SFC to carry out further investigation, disclosing all relevant information to solicitors and counsel involved in the inquiry, and generally ensuring that the inquiry progresses as smoothly and fairly as is reasonably practicable. To this end, it is sometimes necessary for counsel to the Tribunal and the members of the Tribunal to meet in Chambers. Prior to the commencement of the inquiry this is inevitable. After the start of the evidence however, although it is necessary from time to time for administrative reasons, it should be kept to a minimum. The lawyers for the implicated parties would always be informed if such a meeting became necessary.

iii) We emphasized also that we were conscious of the fact that the mere making of an allegation in a Salmon letter could adversely affect a person's reputation. We stressed that the making of an allegation is never evidence of the truth of the allegation. A person against whom an allegation is made may have a complete answer to it. There is no burden of proof on such a person (except by virtue of s. 10 CAP. 395) and the Tribunal will make no judgment until all the evidence has been heard and submissions made.

iv) We noted that the costs of inquiries such as this can become very high. We stated that a balance between expediency and focussing on the main issues on the one hand and not proceeding at a pace which might prejudice the parties on the other was a balance to be aimed for. We asked for evidence to be agreed and put in writing whenever possible.

In addition to i) above we wish to add that the Tribunal is always conscious of the danger that an excess of flexibility could disadvantage an implicated person. Although it is important that the Tribunal retains its inquisitorial function and its inquisitorial

powers, it should not lose sight of the fact that the recipient of a Salmon letter is a person against whom serious allegations of wrongdoing have been suggested and against whom findings of such wrongdoings may be made. Accordingly, should counsel to the inquiry form a view that the evidence points to insider dealing by one or more persons then, inevitably, the proceedings take on the characteristics of adversarial litigation. When this happens the Tribunal would not wish to restrain counsel from conducting the case with skills that had been developed and honed in an adversarial atmosphere but on the other hand would not permit an excess of flexibility to be utilized to such an extent as might be regarded as unfairly prejudicing the implicated person. The need to be fair overrides everything.

(B) The inquiry:

On April 15th 1998 Mr. Tong made an application, which was supported by all other counsel including counsel to the Tribunal, to adjourn the hearing for a few days. The reason given was that a substantial part of the evidence was in the process of being agreed. The Tribunal granted the adjournment. The Tribunal was assured that the effect of agreeing the volume of evidence which it was hoped would be agreed would be that the ultimate saving of time would far exceed the amount of time, on the face of it, wasted by the adjournment.

The next sitting of the Tribunal was on April 20th. On this occasion we were formally informed that Mr. Albert Yeung wished to make a full written admission of insider dealing in relation to the listed securities of Emperor China between October 7th 1993 and October 11th 1993. It was further proposed that Ms Kelly Yeung and Ms Rebecca Yeung file statutory declarations setting out their respective involvement, or lack of it, in the admitted insider dealing. It was further acknowledged on behalf of Mr. Albert Yeung that his insider dealing was done through the two companies, Asian Star and Kingsday although no admissions would be made that the two companies should be identified as insider dealers. The purpose of this proposed course of action was for Mr. Yeung to take full responsibility for all the alleged insider dealing and at the same time confirm and corroborate the proposed

contents of the statutory declarations of his sisters, namely that they were entirely unaware and wholly innocent of any involvement in Mr. Yeung's admitted unlawful dealings.

The Tribunal, through its counsel, was given some advance notice of this significant change of circumstances. We made the following directions at the hearing on April 20th:-

"(1) A draft statement of admitted facts by Mr. Albert Yeung to be served on or before Friday April 24th.

(2) Draft statutory declarations by Ms Rebecca Yeung and Ms Kelly Yeung to be served by the same date, Friday April 24th.

(3) Written reports by experts in relation to the question of the calculation of profit from insider dealing and other related matters to be served by Mr. Tong and those he represents on or before Tuesday April 28th.

(4) The signed admitted facts by Mr. Albert Yeung and the signed statutory declarations to be served on or before Wednesday April 29th.

The Tribunal will adjourn this inquiry into the Emperor (China Concept) Investments Company Limited to 9:15 a.m. on May 4th to hear on that morning submissions from counsel arising out of the admission of facts and statutory declarations. Following those submissions on 4th May the Tribunal will state:

(1) Whether it wishes to hear any further oral evidence from any source in relation to the alleged insider dealing by Mr. Albert Yeung, and if it does, the Tribunal will state which witnesses it wishes to hear and on what issues; if it does not wish to hear any further oral evidence the Tribunal will state its findings in outline orally on May 4th.

(2) The Tribunal will state what evidence, if any, it requires to hear in relation to Ms Kelly Yeung and Ms Rebecca Yeung in relation to:

(a) whether any findings under section 16(3) of CAP. 395 should be made against either of them; and

(b) whether it wishes to hear any evidence in relation to whether any finding under section 16(4) and section 16(6) of CAP. 395 should be made against one or either of them.

(3) Thereafter the Tribunal will hear such evidence as is necessary and submissions in relation to the issue of how to calculate the profit made from insider dealing and what penalties and consequential orders pursuant to sections 23 and/or 24 of CAP. 395 should follow our findings.

And finally, the Tribunal will only commence writing its written report to the Financial Secretary in answer to the terms of reference sent to us following the completion of all the evidence on all the issues and the submissions thereon."

During the adjournment the directions were complied with and the Tribunal sat on May 4th and May 5th to hear submissions in accordance with our directions. Before doing so Mr. Tong informed the Tribunal that not only did his client, Mr. Yeung make the admissions as set out but he further did not challenge the statements and opinions of the three expert witnesses, Mr. Derek Murphy, Mr. Michael Grimsdick and Mr. Alex Pang in so far as they were relevant to the Tribunal's inquiry into and determination of questions (a) and (b) in the section 16(2) notice.

Based on all the evidence now before the Tribunal Mr. Pethes submitted that:-

(a) Mr. Albert Yeung's admissions were consistent with a breach of s. 9(1)(a) of CAP. 395 and that there was sufficient evidence to make such a finding.

(b) There was insufficient evidence upon which to make any finding of insider dealing against Ms Kelly Yeung or Ms Rebecca Yeung.

(c) That the Tribunal should identify the two companies, Asian Star and Kingsday as insider dealers in breach of s. 9(1)(a).

(d) That the Tribunal could, on the evidence make an order under s. 16(4) of CAP. 395 against Ms Kelly Yeung and Mr. Rebecca Yeung but could not make any orders under s. 16(6).

Mr. Ronny Tong, S.C. agreed that the Tribunal should make a finding of insider dealing against Mr. Albert Yeung and that he be identified as an insider dealer.

Mr. Alan Hoo, S.C. submitted that no orders should be made against Ms Kelly Yeung or Ms Rebecca Yeung under sections 16(3), 16(4) or 16(6) and no orders should be made against Kingsday or Asian Star under s. 16(3).

Having carefully considered the evidence and submissions the Tribunal on May 6th, made the following findings:-

"The Tribunal is satisfied that it has been provided with sufficient evidence to enable it properly to prepare and issue a written report in accordance with section 22, CAP. 395, in answer to questions (a) and (b) of the notice received from the Financial Secretary under section 16(2) of CAP. 395 dated September 26th 1997. The Tribunal has now considered that evidence and heard submissions thereon. Before proceeding to hear further evidence in relation to question (c) of the Financial Secretary's notice and also to determine the appropriate penalties pursuant to section 23 or section 24 which would follow our findings pursuant to sections 16(3), (4) or (6) we now announce in outline what those findings will be.

(1) Our report will make a determination that insider dealing took place between October 7th and October 11th, 1993,

inclusive, arising out of the dealings in the listed securities of Emperor (China Concept) Investments Limited by Mr. Albert Yeung Sau Shing, Kingsday Limited and Asian Star Holdings Limited.

(2) Our report will only identify Mr. Albert Yeung Sau Shing, Kingsday Limited and Asian Star Holdings Limited as insider dealers, in breach of section 9(1)(a) of CAP. 395.

(3) Our report will not identify Ms Rebecca Yeung Bo Chow or Ms Kelly Yeung Po Kam as insider dealers, and

(4) Our report will not make any findings against Ms Rebecca Yeung Bo Chow or Ms Kelly Yeung Po Kam under section 16(4) or section 16(6) of CAP. 395."

The Tribunal's reasons for these findings are set out in Chapter 4 of this report.

In short a full inquiry which might have taken up to 3 months involving the examination of possibly 40 witnesses was considered unnecessary. The combination of the admitted evidence, the unchallenged evidence and the statutory declarations from two implicated parties and two additional witnesses was sufficient to enable the Tribunal to make a full inquiry and a fair determination in accordance with the Financial Secretary's request.

CHAPTER 3

LAW

In this chapter we simply set out those sections of CAP. 395 which it has been necessary to consider and apply to the various issues which have arisen in the Emperor inquiry. We consider those issues in detail in Chapter 4.

1. On the question of whether or not Mr. Albert Yeung's admission of facts constitutes insider dealing in law:-

s. 9(1)(a)

> "when a person connected with a corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;"

s. 8

> "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."

s. 4(1)(b)

> "(1) A person is connected with a corporation for the purposes of section 9 if, being an individual -
>
> ....
>
> (b) he is a substantial shareholder in the corporation or a related corporation;

s. 6

"For the purposes of this Ordinance, a person deals in securities if (whether as principal or agent) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities."

2. On the question of whether or not Ms Kelly Yeung or Ms Rebecca Yeung be identified as insider dealers:-

s. 9(1)(e)

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

(i) whom he knows is connected with that corporation; and
(ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,

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

3. On the question of whether Kingsday or Asian Star be identified as insider dealers:-

s. 9(1)(a) as above

s. 2 - definition of "director"

"director" includes -
(a) any person occupying the position of director, by whatever name called; and
(b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

s. 4(2)

"A corporation is a person connected with a corporation for the purposes of section 9 so long as any of its directors or employees is a person connected with that other corporation within the meaning of subsection (1)."

4. On the question of whether Asian Star or Kingsday have established a defence to insider dealing:-

s. 10(3)

"A person who enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction 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."

s. 10(4)

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

5. On the question of whether any order should be made against Ms Kelly Yeung or Ms Rebecca Yeung under s. 16:-

s. 13

"It shall be the duty of every officer of a corporation to take all such measures as may from time to time be reasonable in all the circumstances for the purpose of ensuring that proper safeguards exist to prevent the corporation from perpetrating any act which would cause it to be identified by the Tribunal as an insider dealer."

s. 16(4)

"Where the Tribunal identifies a corporation as an insider dealer under subsection (3)(b) the Tribunal may also identify any officer of that corporation to whose breach

of the duty imposed on him by section 13 the insider dealing in question is directly or indirectly attributable."

s. 16(6)

"Where the Tribunal identifies a corporation as an insider dealer under subsection (3)(b), if the insider dealing took place with the knowledge, consent or connivance of any officer of the corporation then such officer as well as the corporation shall be regarded as having been so identified."

In addition we highlight a small number of legal principles which are relevant to this inquiry.

(a) The standard of proof to be applied to all findings of fact is proof to a high degree of probability.

(b) All questions of fact are decided by all three members of the Tribunal. Unless specifically stated to the contrary it may be taken that all findings of fact in this report have been made unanimously.

(c) All questions of law are decided by the Chairman alone. Any reference in this report to a question of law being made by the Tribunal shall be read as a decision made on the Chairman's directions.

(d) The knowledge and expertise which Tribunal members bring to an inquiry is considerable and, used judicially, is invaluable. Members can and should use their knowledge and expertise provided the use to which it is put is in evaluating the evidence not giving it.

CHAPTER 4

REASONS FOR DETERMINATIONS IN ANSWER TO QUESTIONS (a) AND (b) OF S. 16(2) NOTICE DATED 26TH SEPTEMBER 1997

In this chapter we give our reasons for our determinations delivered in open court on May 6th 1998 under four headings:-

1. Reasons for identifying Mr. Albert Yeung as an insider dealer.

2. Reasons for identifying Asian Star and Kingsday as insider dealers.

3. Reasons for not identifying Ms Rebecca Yeung and Ms Kelly Yeung as insider dealers.

4. Reasons for not making orders under s. 16(4) or 16(6) against Ms Rebecca Yeung or Ms Kelly Yeung.

First of all however, as Mr. Albert Yeung's written admissions have formed such a crucial part of the evidence we consider it appropriate to set them out in full in this report. We also summarize the salient features of statutory declarations filed for our consideration.

The statement of admitted facts of Albert Yeung Sau Shing

> "For the purposes of this Inquiry only, I, Albert Yeung Sau Shing, admit the following facts and matters. Insofar as may be necessary or appropriate, I exercise my right under section 19 of the **Securities (Insider Dealing) Ordinance**, Cap. 395 ("the Ordinance") in respect of each and every admission:-
>
> **Overview**
>
> 1. It is admitted that there has been insider dealing in relation to the listed securities of Emperor (China Concept) Investments

Limited ("Emperor China") arising out of the dealings in the listed securities of Emperor China ("the Shares") by me during the period from 7th October 1993 to 11th October 1993 (inclusive) within the meaning of section 9(1)(a) of the Ordinance.

2. The answers to the first two questions of the Salmon letter addressed to me dated 28th November 1997 are therefore:-

   (a) Yes, by me;

   (b) Albert Yeung Sau Shing.

Evidence Relied On By the Tribunal

3. I agree and accept the Statement of Admitted Facts drafted by Counsel to the Tribunal and the appendices attached thereto, which are set out in Annexure A to this Statement.

4. I accept and agree the following evidence in the Exhibit Bundles before the Tribunal:-

   Volume 1; Volume 2 except item 26;
   Volumes 3-6 except item 8;
   Volume 6A except item 8;
   Volume 7 except items 10, 11, 13, 15 and 16
   Volume 8 items 5-8.

Circumstances Of The Insider Dealing

5. I also admit the facts which are set out below.

The Information

6. On 5th October 1993, there was an article in Hong Kong Sheung Po stating that the price rise of Emperor China was related to another intended acquisition by a third party. Vanessa Fan ("Fan") received a copy of this article from Mark Chan of the

Stock Exchange of Hong Kong in the morning. Fan immediately sent a fax to Mark Chan confirming that there were no negotiations or agreements relating to intended acquisitions. I was not, however, aware of this at the time.

7. In any event, I remember there were considerable press reports prior to and at the time of the telephone conversation referred to in paragraph 8 below that an interested party was either in the process of making or about to make an offer for the Shares which resulted in sharp rises of the share price of Emperor China. I cannot, however, now recall any specific article on this matter. I am now informed that there were at least the following reports in the press;-

(a)	HK Economic Journal	1/10/93
(b)	Sheung Po	5/10/93
(c)	Announcement	5/10/93

8. On 7th October 1993, shortly before 3:45 p.m. (in any event not before 3:00 p.m.), David Wong ("Wong") of CEF Capital Limited ("CEF") telephoned me.

9. Prior to this telephone conversation, there was no approach made by anyone from CEF to me as regards this transaction.

10. In this telephone conversation, I was merely asked by Wong whether Emperor International Holdings Limited ("Emperor International") would be interested in disposing of its controlling interest in Emperor China and was advised that his client was interested in acquiring such interest. I was not told:-

(a) the identity of the intended buyer;
(b) the likely price the intended buyer was prepared to offer;
(c) the amount of shares the intended buyer was prepared to buy;
(d) the terms and conditions upon which any offer was to be made;
(e) the time frame within which the purchase was to proceed.

The above can be confirmed by Pinky Tse's note of 7/10/93 where it can be seen that Wong did not even deem it necessary to mention his call to me to the SFC.

11. There was no discussion of any kind between me and Wong other than my informing him he should contact Fan, the Managing Director of Emperor International who would handle such matters.

12. Between this telephone conversation and 11th October 1993 when I together with Fan met with representatives of CEF, I do not recall there was any other contact between anyone from CEF and myself. I have however been advised that Wong, in statements to the SFC, has indicated that he had discussions with Fan and myself between 8th and 10th October 1993. Be that as it may, I certainly did not receive any other information over and above what I described above in paragraph 10.

13. I am now told that in fact between 7th October and 11th October 1993, the main discussion was between CEF and the Stock Exchange/SFC and what communication there was between Fan and Wong consisted solely of whether the identity of the interested party should be revealed. In any event, I understand the identify of the interested party was not revealed to Fan nor to me prior to the meeting on 11th October 1993 described in paragraph 15 below.

14. Prior to this telephone call, I was aware of the failed approach of GITIC. I understand now that CEF was involved with this transaction from 17th August 1993 onward. I have no clear recollection of this either on 7th October 1993 or now but I am prepared to agree and accept CEF's role in that transaction as set out in the statements of Francis Chang and Wong. It is suggested by Wong that I should deduce that the interested buyer was of Chinese background. I made no such deduction, but again, I am prepared to agree and accept that one could have inferred that the interested buyer was of PRC background.

The Meeting

15. On 11th October 1993 at about 5:50 p.m., there was a meeting between representatives of CEF on the one hand and Fan and myself on the other. I cannot now recollect precisely who else was present. It was disclosed at this meeting that the interested buyer was a consortium between Cheung Kong and 中皇 (its English name was not revealed at that stage) and CEF. The party behind 中皇 was not disclosed to Emperor International or myself until about the time when the announcement of 21st October 1993 was prepared.

Relevant Information

16. Between 3:45 p.m. on 7th October 1993 and the close of market on 11th October 1993, I did not form any conclusion that the approach by CEF would mature into a concluded deal and not fall through in the same way as the GITIC approach did. I was hoping, however, that given the amount of interest created by the press and the rising market of the Shares, if there was eventually a sale of Emperor International's controlling interest in Emperor China (not necessarily to the client represented by CEF), the share price of Emperor China might go even higher. Since I have always been interested in investing in securities, I decided to purchase some shares in Emperor China.

17. On mature reflection, I now realise it was a wrong thing for me to do and I regret it very much. This is the main reason why I have now decided to admit the allegation of insider dealing and to accept full responsibility for my acts even though I have received strong advice from my Counsel and experts retained in this matter that on the above facts, there may well be a good defence on the issue of whether the information I received on 7th October 1993 constituted relevant information within the meaning of the Ordinance.

18. For the avoidance or doubt, despite such advice I agree and

accept that the information I received as aforesaid constituted relevant information and that I knew such information to be relevant information within the meaning of the Ordinance in that I knew the information received on 7th October 1993 from Wong as aforesaid was likely materially to affect the price of the Emperor China shares if it had been generally known to investors at the time.

The Dealings

19. I do not now have a clear recollection of how the shares in Emperor China in question as identified in Appendices 1 and 8 to the statement of Mr. Grimsdick dated 30th March 1998 ("the Dealing Shares") were purchased but as I regularly used off-shore companies to make investments, I must have given instructions to my secretary, Sandy Wan, to purchase Kingsday in the name of one of my sisters, Kelly Yeung. Asian Star had been set up in 1991 by Sandy Wan on my instructions.

20. Concerning the setting up of Asian Star and Kingsday, their bank account opening documents, the operation of the company bank accounts, and the account opening documents for brokers, I instructed Sandy Wan to arrange and complete such matters. In this regard, she would have been assisted from time to time by Agnes Tin, one of my other secretaries.

21. At all material times within the relevant period, namely, from 7th October 1993 to 11th October 1993 inclusive, I dealt in the Dealing Shares in the respective names of Kingsday and Asian Star. In this respect, I used Kingsday and Asian Star as my nominees or agents. They were not involved in any way as principals and certainly did not select or advise on the selection of the Dealing Shares.

22. As to the actual carrying out of the orders, again I do not now have a clear recollection but I must have instructed my secretaries like Sandy Wan or Agnes Tin or brokers like Johnny Yim to place the orders. I am prepared to agree and accept all

the evidence before the Tribunal as to the execution of these orders in the names of Asian Star and Kingsday.

23. As far as Kelly Yeung and Rebecca Yeung ("my Sisters") are concerned, I simply used their names as directors and shareholders of Kingsday and Asian Star. In truth, they had very little, if anything, to do with the said companies. In placing the orders for the Dealing Shares as aforesaid, I did not give specific instructions to my said secretaries to seek the approval of my Sisters and I am sure they knew nothing about the purchase of the Dealing Shares nor the reason or any information which formed the basis for the purchase of these shares. For the avoidance of doubt, I confirm that I did not at any time pass on to my Sisters any information derived from the aforesaid telephone conversation with Wong.

24. I have no clear recollection now as to the precise funding of the purchases of the Dealing Shares. However, I admit that Asian Star and Kingsday were companies controlled by me and that I funded the purchases of the Dealing shares in the manner set out in Appendices 1 and 8 to Mr. Grimsdick's statement and as described therein. Furthermore, I was the beneficial owner of all the Dealing Shares when they were purchased and subsequently sold. No other person or company benefited in any way from the purchase or sale of the Dealing Shares. The payments to brokers for the Dealing Shares were completed by Sandy Wan on my behalf and also in accordance with my instructions.

25. However, I can categorically state that orders placed for the purchase of Emperor China shares on 7th October 1993 by Asian Star prior to the telephone conversation with Wong at about 3:45 p.m. were not placed on the basis of any information received by me as a result of that telephone conversation.

26. For the avoidance of doubt, I admit that during the period of 7th October 1993 to 11th October 1993 (inclusive), I dealt in the listed securities of Emperor China through Kingsday and Asian

Star within the meaning of section 6 of the Ordinance as follows:-

Date	Number of Shares Dealt in	
	Asian Star	Kingsday
7/10/93	44,000	----
8/10/93	170,000	1,892,000
11/10/93	2,000	2,464,000

27. I do not now have a clear recollection as to when orders for the purchases of the Emperor China shares by Asian Star were placed on 7th October 1993. I suspect these orders were all placed well before the telephone conversation I had with Wong. However, having discussed this matter at length with Counsel, I am prepared to agree and accept that shares purchased after 3:45 p.m. were shares purchased with the knowledge of relevant information referred to in paragraph 18 above irrespective of when orders for these shares were placed.

28. What remains is for me to apologise to all concerned and in particular, this Tribunal for what I have done as set out above. I understand my Counsel will in due course make the necessary plea of mitigation on my behalf but I wish to say now that I regret very much what I have done and that I have resolved to bear full responsibilities for all my acts."

The statement is dated April 29th 1998 and signed by Albert Yeung Sau Shing. Mr. Yeung confirmed his signature before the Tribunal.

Annexure A to the Admitted facts referred to in paragraph 3 is as follows:-

Annexure A: Statement of Admitted Facts

"1. At all material times, Mr. Albert Yeung Sau Shing ("Albert

Yeung") was the Chairman of the Emperor Group.

2. The Emperor Group is a group of over 300 companies engaged in various businesses including property investment and development, financial services, watch and jewellery manufacturing, retailing and publishing. Four of the companies were listed on the Stock Exchange of Hong Kong ("SEHK") including Emperor International Holdings Limited ("Emperor International") and Emperor (China Concept) Investments Limited ("Emperor China").

3. Emperor International is an investment holding company. The principal activities of its subsidiaries and associated companies are property investment and development in Hong Kong and in the People's Republic of China ("PRC"), and trading and investment in securities.

4. Emperor International was incorporated in Hong Kong in 1970 under the name of Man Shing Gourmets & Estates Limited and its securities became listed on the SEHK in 1972. In 1991, the company was re-domiciled to Bermuda and changed its name to Emperor International Holdings Limited.

5. Between 7 July 1993 and 31 March 1994, Charron Holdings Limited ("Charron") held between 576,395,258 and 609,939,258 (approximately 34%) of the shares of Emperor International. Charron was a wholly-owned subsidiary of Questrel Holdings Limited ("Questrel"). Questrel was incorporated in British Virgin Islands and was a discretionary trust vehicle. At all material times, Albert Yeung was the sole director of Questrel. As of 31 March 1994, the authorised share capital of Emperor International was 7,500 million shares of HK$0.10 each and 1,816,862,958 were issued and fully paid. As of 31 March 1994, Charron held 609,939,258 shares (33.6%) of the company. No other person or company held 10% or more of the issued share capital of Emperor International.

6. In 1973, a company was incorporated under the name of Yu Hing Holdings Limited ("Yu Hing") and later that year, its shares were listed on the SEHK. In August 1991, Emperor International acquired a major interest in Yu Hing and changed the company name to Bo Shing Real Estate Limited. In July 1992, pursuant to a group re-organisation, Bo Shing Real Estate Limited became the subsidiary of Bo Shing Holdings Limited ("Bo Shing"), a company incorporated in Bermuda in May 1992. In December 1992, Bo Shing changed its name to Emperor (China Concept) Investments Limited.

7. Between 1 October 1993 and 31 March 1994, Emperor International held 218,499,598 shares (70.9%) of Emperor China through Worthly Strong Investment Limited ("Worthly Strong") and Dessin Enterprises Limited ("Dessin"), both wholly-owned subsidiaries of Emperor International. As of 31 March 1994, the authorised share capital of Emperor China was 800 million shares of HK$0.10 each and 308,040,214 were issued and fully paid.

8. At all material times, Albert Yeung was a person connected with Emperor China for the purposes of section 9 of the Securities (Insider Dealing) Ordinance, Cap. 395 ("the Ordinance"), being a substantial shareholder of a related corporation within the meaning of section 4 of the Ordinance.

9. At no material time was Albert Yeung a director, officer or employee of Emperor China or Emperor International.

10. At all material times, the executive directors of Emperor International were :

    (a) Mr. Sonny Yeung Hoi Sing ("Sonny Yeung"), Chairman
    (b) Mr. Bryan Wong Chi Fai ("Bryan Wong"), Managing Director
    (c) Ms Vanessa Fan Man Seung ("Vanessa Fan"), Managing Director
    (d) Mr. Michael Yeung Lik Shing ("Michael Yeung")

(e) Ms Daisy Yeung ("Daisy Yeung")

11. At all material times, the executive directors of Emperor China were:-

(a) Mr. Sonny Yeung, Chairman
(b) Mr. Bryan Wong
(c) Ms Vanessa Fan

12. Between July and November 1993, the executive offices of Emperor International and Emperor China were located on the 7th Floor, the International Building, 141 Des Voeux Road, Central, Hong Kong. The offices of Albert Yeung and his personal staff were located on the same floor of that building. The personal secretaries of Albert Yeung at the time included Ms Sandy Wan Yin Fong ("Sandy Wan") and Ms Agnes Tin Fu Man ("Agnes Tin").

13. Albert Yeung is the eldest son of Yeung Shing, the founder of the Emperor Group. Albert Yeung has several brothers and sisters including:

(a) Sonny Yeung
(b) Michael Yeung
(c) Ms Rebecca Yeung Bo Chow ("Rebecca Yeung")
(d) Ms Kelly Yeung Po Kam ("Kelly Yeung")

14. Albert Yeung and his former wife Ms Imelda Yam Man Ling ("Imelda Yam") have three daughters:

(a) Cindy Yeung who is married to Mr. Alfred Cheung Kin Ting ("Alfred Cheung")
(b) Daisy Yeung, and
(c) Patsy Yeung Sze Sze who is married to Mr. Raymond Choi Ping Kuen ("Raymond Choi")

15. Emperor International Exchange Company Limited ("EIECL") is a private company incorporated in Hong Kong on 11 September

1990 and is engaged in financial and brokerage services. Between 1 July 1993 and 31 December 1993, Albert Yeung, through two companies in the Emperor Group, owned 99.99% of the shares of EIECL and Sonny Yeung owned the remaining 0.01%. The directors of EIECL included Sonny Yeung and Michael Yeung. Albert Yeung was appointed as a director of EIECL in October 1990 and resigned on 12 February 1992.

16. Grand Paradise Investments Limited ("Grand Paradise") is a private company incorporated in Liberia before December 1991. At all material times, Albert Yeung was the sole shareholder and director.

17. Asian Star Holdings Limited ("Asian Star") is a private company incorporated in Liberia on 9 September 1991. According to the documents filed with the Hong Kong & Shanghai Banking Corporation Limited ("the HK Bank") and dated 4 December 1991, the sole shareholder and director was Rebecca Yeung (Vol. 6, pp. 314-333).

18. Joray Trading Limited ("Joray") is a private company incorporated in the British Virgin Islands in May 1993. The company was sold to Alfred Cheung on 19 May 1993 by Offshore Incorporations Limited.

19. Unifast Profits Limited ("Unifast") is a private company incorporated in the British Virgin Islands on 2 July 1993. The company was sold to "Emperor International Ltd" by Offshore Incorporations Limited.

20. Kingsday Limited ("Kingsday") is a private company incorporated in the British Virgin Islands on 14 September 1993. According to the documents filed with the Hong Kong Bank and dated 8 October 1993, the shareholder and director was Kelly Yeung (Vol. 6, pp. 288-308). the company was sold to Emperor International Ltd on 8 October 1993 by Offshore Incorporations Limited. The invoice was directed to Ms Tobie Lam, the secretary to Vanessa Fan, and was later paid for by

EIECL on 24 February 1994 by a cheque drawn on its HK Bank account.

21. Appendix 1 accurately sets out the sequence of events in relation to the proposed acquisition of Emperor China by Guangdong International Trust & Investment Corporation Hong Kong (Holdings) Limited ("GITIC") between 13 July 1993 and 19 August 1993.

22. Appendix 2 is an announcement published on 18 August 1993 by Emperor International and Emperor China concerning the approach by GITIC to acquire the controlling interest in Emperor China held by Emperor International. *(See Annexure B)*

23. On 23 September 1993, Emperor International and Emperor China announced that GITIC would not proceed further on the proposed acquisition of Emperor China and that negotiations had been terminated.

24. Appendix 3 accurately sets out the sequence of events in relation to the proposed acquisition of Emperor China by China National Real Estate Development Group Corporation ("CRED") between 30 September 1993 and 14 October 1993. *(See Annexure E)*

25. Appendix 4 is an announcement published on 12 October 1993 by Emperor International and Emperor China concerning the approach by a consortium comprising substantially a PRC enterprise and a company listed on the SEHK to acquire the controlling interest in Emperor China held by Emperor International. The announcement noted that trading in the shares and warrants in Emperor International and Emperor China had been suspended at 10:00 a.m. on 12 October 1993. *(See Annexure C)*

26. On 19 October 1993, the identity of CRED was disclosed to the directors of Emperor International.

27. CRED is a state-owned enterprise in the PRC and was engaged in the construction and engineering, real estate and foreign trade businesses. CRED was one of the largest real estate development companies in the PRC. CRED was established on 16 January 1981 and was controlled by the Ministry of Construction.

28. Appendix 5 is an announcement published on 22 October 1993 by Emperor International and Emperor China indicating that a letter of intent had been entered into between Emperor and the consortium led by Centre Regent Investments Limited ("Centre Regent") and Cheung Kong (Holdings) Limited ("Cheung Kong") relating to the proposed acquisition by the consortium of 70.9% of the issued share capital of Emperor China held by Emperor International. *(See Annexure D)*

29. Centre Regent was incorporated in Hong Kong on 18 May 1993 and was a wholly-owned subsidiary of CRED.

30. On 25 October 1993, trading in the shares of Emperor China resumed.

31. On 1 December 1993, an announcement was published indicating that negotiations relating to the proposed acquisition between Emperor International and the consortium were still in progress. Although negotiations continued for several months, an announcement was published on 21 March 1994 indicating that the Listing Committee of the SEHK had determined that the proposed restructuring of Emperor China following completion of the acquisition would not satisfy the SEHK requirements for an "adequate track record". As a result, the proposed acquisition did not proceed.

32. Appendix 6 (Exhibit AP-2 to the statement of Mr. Alex Pang Vol. 7, pp. 253-256) correctly sets out the trading in Emperor China shares on the SEHK between 1 July 1993 and 30 November 1993 including the daily turnover, the daily high and

low price, the closing price, the percentage change in price, and the level of the Hang Seng index at the end of each trading day. *(See Annexure F)*

33. Appendix 7 (Exhibit AP-3 to the statement of Mr. Alex Pang Vol. 7, p. 257) is a graph that correctly shows the daily closing price and turnover of Emperor China shares between 1 July 1993 and 30 November 1993. *(See Annexure K)*

34. Appendix 8 (Exhibit AP-4 to the statement of Mr. Alex Pang Vol. 7, p. 258) is a graph that correctly shows the daily closing price of Emperor China shares compared to the closing level of the Hang Seng Index between 1 July 1993 and 30 November 1993. *(See Annexure L)*

35. Appendix 9 (Table, Vol. 2, pp. 291-306) is an accurate record of the trading in Emperor China shares on the SEHK by Asian Star between 9 March 1993 and 25 October 1993, including the number of shares bought or sold, the price and the broker through which the transaction was effected. During this period, Asian Star bought only the shares of Emperor China. *(See Annexure G)*

36. On 3 trading days between 7 and 11 October 1993, Asian Star purchased a total of 664,000 shares of Emperor China at prices ranging from $4.25 to $4.975 through 7 brokers. The total consideration was $3,150,094.77.

37. Appendix 10 is a Table which accurately sets out the timing of the purchases by Asian Star of Emperor China shares on 7 October 1993.

38 Appendix 11 (Appendix 8 to the statement of Mr. Michael Grimsdick, Vol. 6A, p. 406) is a Chart which accurately sets out the flow of funds in relation to the purchases of shares in Emperor China by Asian Star on 7, 8 and 11 October 1993, including the deposits to the Asian Star account with the HK Bank, the cheques drawn on the account to the 7 brokers to settle

the purchases and the number of shares purchased through each broker. *(See Annexure J)*

39. Appendix 12 is a Table which accurately sets out the information from the brokers through which Asian Star effected purchases of Emperor China shares between 7 and 11 October 1993, including the date and person opening the account, the authorized signatory for the account, the person giving the purchase orders and the broker's staff handling the account.

40. Appendix 13 (Table, Vol. 2, pp. 321-341) is an accurate record of the trading in Emperor China shares on the SEHK by Kingsday between 8 October 1993 and 6 December 1993, including the number of shares bought or sold, the price and the broker through which the transaction was effected. During this period, Kingsday bought only the shares of Emperor China. *(See Annexure H)*

41. On 8 and 11 October 1993, Kingsday purchased 1,892,000 and 2,464,000 Emperor China shares respectively at prices ranging from $4.325 to $5.45 through 15 brokers. The total consideration for the purchases was $21,698,617.09.

42. Appendix 14 (Appendix 1 to the statement of Mr. Michael Grimsdick, Vol. 6A, p. 385) is a Chart which accurately sets out the flow of funds in relation to the purchases of shares in Emperor China by Kingsday on 8 and 11 October 1993, including the deposits to the Kingsday account with the HK Bank, the cheques drawn on the account to the 15 brokers to settle the purchases and the number of shares purchased through each broker. *(See Annexure J)*

43. According to the account opening documentation from the Hong Kong Bank, the current account for Kingsday (account no. 172-357360-001) was opened on Saturday, 9 October 1993 and Kelly Yeung was the sole authorised signatory. Agnes Tin introduced the account to the bank.

44. On 12 October, a cash cheque for $8,500,000 was deposited to the Kingsday account enabling 10 cheques totalling $6,781,413.85 to clear to pay for the purchases of Emperor China shares effected on 8 October 1993. A cash cheque for the same amount was debited to the account of Unifast at about the same time on the same day. Both transactions were executed through the same work station at the International Building Branch of the HK Bank. The cash cheque from the Unifast account funded the deposit of $8,500,000 to the Kingsday account.

45. On 13 October 1993, 16 cheques totalling $15,187,070.28 were debited to the Kingsday bank account to pay for the purchases of Emperor China shares effected on 11 October 1993. These cheques caused the account to have a debit balance of $13,466,484.13 at the close of day. On 14 October 1993, two "cash" deposits for $2,500,000 and $11,000,000 respectively were made to the Kingsday account. These deposits immediately rectified the previous debit balance.

46. On 14 October 1993, 3 cash cheques totalling $1,700,000 were debited to the account of Unifast with the HK Bank and 1 cheque for $1,800,000 was debited to the account of Joray. These transactions and the deposit of $2,500,000 to the Kingsday account were effected through the same work station at the International Building Branch at about the same time. The 4 cash cheques totalling $3,500,000 funded the deposit of $2,500,000 to the Kingsday account.

47. On 14 October 1993, a cash cheque for $11,000,000 was debited to the account of Albert Yeung with the HK Bank. This transaction and the deposit of the same amount to the Kingsday account were effected through the same work station at the International Building Branch at the same time. The cash cheque from Albert Yeung funded the deposit of $11,000,000 to the Kingsday account.

48. After trading in the shares of Emperor China resumed on 25

October 1993, Kingsday sold 1,948,000 shares on that day. Between 26 October and 2 November 1993, Kingsday bought 14,248,000 more shares and continued to buy and sell Emperor China shares until 6 December 1993.

49. Appendix 15 is a Table which accurately sets out the information from the brokers through which Kingsday effected purchases of Emperor China shares on 8 and 11 October 1993, including the date and person opening the account, the authorized signatory for the account, the person giving the purchase orders and the broker's staff handling the account.

50. Appendix 16 is a Table which accurately sets out the account information from the HK Bank for Asian Star, Kingsday, Unifast, Grand Paradise, Joray, Kastech, Incord, Pacific Star, Fundway Securities Limited, EIECL and Albert Yeung, including addresses, the account number, the date on which the account was opened and the authorized signatory."

(References in this statement of admitted facts to volumes and page numbers are references to the SFC files of evidence prepared for the purpose of this inquiry.)

By paragraph 4 of his admission (on page 21 of this report) Mr. Yeung admitted the statements and exhibits produced by all the witnesses in Volumes 1-8 inclusive of the evidence prepared by the SFC. These volumes contained the statements of all the potential witnesses except those of the implicated parties and the two other witnesses who made statutory declarations namely Sandy Wan and Agnes Tin.

In paragraph 4 Mr. Yeung specified certain items which he did not agree. However, in court Mr. Tong informed the Tribunal that his client did not challenge five of those exceptions namely, the evidence of Mr. J.M.H. Grimsdick, Mr. Alex Pang Cheung Hing, Mr. D.J.M. Murphy, Ms Vanessa Fan Man Seung and Mr. Johnny Yim Wai Yip.

The significance of this was that Mr. Yeung was not challenging

the expert reports which firstly provided evidence that the funding for all the suspect share trading emanated from Mr. Yeung himself (Mr. Grimsdick's report) and secondly that the information which Mr. Yeung admitted he possessed prior to dealing would constitute relevant information as defined by s. 8 (Mr. Murphy's report and Mr. Pang's statement).

The Statutory Declarations

We summarize these as follows:-

(A) On April 29th 1998 Rebecca Yeung Bo Chow made a statutory declaration which contained, inter alia, the following:-

(i) She is a younger sister of Mr. Albert Yeung and currently employed as a director and manager of a shop called "Jewellery City".

(ii) Her contact with Mr. Yeung is normally confined to family gatherings when business matters are rarely discussed.

(iii) In 1991 she agreed with Mr. Yeung to let her name be used for a company. Mr. Yeung said he would arrange the documentation which, in due course, she signed having cursorily read them. The company was Asian Star. She later signed all the necessary forms to open a bank account for Asian Star. Sandy Wan was made the sole signatory of the bank account.

(iv) In 1992 and 1993 she signed all the necessary documents to open share trading accounts for Asian Star with three different brokers.

(v) She had no other involvement in the activities of Asian Star. Whenever she received mail addressed to Asian Star she forwarded it unopened to Sandy Wan.

(vi) She has never received any remuneration or dividends from her

directorship of Asian Star. She regarded it as a company for all practical purposes owned and controlled by Mr. Albert Yeung.

(vii) She never had any contact with Asian Star's brokers and had no knowledge which shares the company was trading in.

(viii) She had no knowledge of the funds which were placed into the Asian Star bank account between October 7th and 11th 1993.

(ix) She had no involvement in or knowledge of the purchase of Emperor China shares by Asian Star in October 1993.

(x) She was never in possession of any information concerning the proposed take-over of Emperor China by the consortium prior to the announcement on October 21st 1993. *(See Annexure G and I)*

(B) On April 29th 1998 Kelly Yeung Po Kam made a statutory declaration which contained, inter alia, the following:-

(i) She is a younger sister of Mr. Albert Yeung. Her current employment is the general manageress of the watch and jewellery operations of the Emperor Watch & Jewellery Company Limited in the PRC. Mr. Albert Yeung is her ultimate boss but she had little contact with him on a day to day basis.

(ii) She knows Sandy Wan as Mr. Albert Yeung's personal secretary. Messages between herself and Mr. Yeung were normally sent through Sandy. She also knew Agnes Tin as another of her brother's secretary but she had no dealings with her.

(iii) She agrees she signed all the documents by which she became the sole director of Kingsday on October 8th 1993. The documents were sent to her by Sandy Wan on behalf of Albert Yeung. She merely signed where she was asked to sign and did not read them. She was not made aware that her husband's office address was to be used as the mailing address for

Kingsday.

(iv) Mail addressed to Kingsday was forwarded, unopened, to Sandy Wan.

(v) She has not attended any meetings relating to the affairs of Kingsday. She played no active role in the conduct of Kingsday's affairs other than to sign documents when requested to do so by Sandy Wan.

(vi) She has no personal interest in share trading. She does not know a broker named Johnny Yim.

(vii) She agrees she signed the documentation for the opening of fifteen accounts with brokers in the name of Kingsday. None of them were explained to her and she did not read any of them. She never gave any instructions to any of the brokers to buy or sell shares.

(viii) She agrees she signed the documents to open a bank account for Kingsday. At Sandy Wan's request she signed all the blank cheques in a cheque book on the Kingsday bank account. She had no further involvement with any of the blank cheques which she had signed.

(ix) She never made any deposits into the bank account nor was she involved in any of the transactions in relation to the account.

(x) She was never in possession of any relevant information in relation to the proposed take-over of Emperor China by a consortium prior to October 21st 1993.

(xi) She has never received any remuneration or benefits arising out of her directorship of Kingsday. *(See Annexure H and J)*

(C) On April 29th 1998 Sandy Wan Yin Fong made a statutory declaration which contained, inter alia, the following:-

(i) She is currently employed as a personal assistant to Mr. Albert Yeung. She first worked within the Emperor Group in 1989.

(ii) Apart from secretarial duties her job included trading in listed securities through offshore companies on the instruction of Mr. Yeung.

(iii) She knew Rebecca and Kelly Yeung in their working capacities.

(iv) In 1991-93 she handled all the documentation in relation to Asian Star including its incorporation, its bank account and its trading accounts. She simply sent the documents to Rebecca Yeung for her signature on each occasion. Rebecca did not ask her any questions about them.

(v) She agrees that she became the sole signatory of the Asian Star bank account. She agrees that Rebecca's address was used for Asian Star correspondence and that all its mail was re-directed to herself unopened.

(vi) The setting up of Kingsday in October 1993 followed the same pattern but in the name of Kelly Yeung. She did not explain to Kelly the purpose of setting up Kingsday or its bank accounts or its trading accounts.

(vii) She agrees she requested Kelly Yeung to sign a cheque book full of blank cheques which she did.

(viii) Kelly Yeung's husband's office address was used for Kingsday correspondence. All mail received was returned to herself unopened.

(ix) All share dealings in Emperor China shares done by Asian Star and Kingsday were carried out by herself on Mr. Albert Yeung's instructions. All the necessary funding of these trades was arranged by Mr. Albert Yeung.

(x) She was never in possession of any relevant information prior to October 21st concerning the proposed take-over of Emperor China by a consortium. All the orders placed on October 7th, 8th and 11th were made on Mr. Albert Yeung's instructions without any reference to Rebecca or Kelly Yeung.

(D) On April 29th 1998 Agnes Tin Fu Man made a statutory declaration which contained, inter alia, the following:-

(i) Between 1992 and 1994 she was employed as a personal secretary to Mr. Albert Yeung. She was one of four personal secretaries in October 1993. Sandy Wan was senior to her. She acted as an assistant to Sandy Wan when carrying out Mr. Yeung's instructions in relation to share trading.

(ii) She knows Rebecca and Kelly Yeung but had no business dealings with them.

(iii) She has no recollection of any of the documentation in relation to Kingsday, its bank account or trading accounts.

(iv) She has no recollection of any of the documentation in relation to Asian Star, its bank account or trading accounts.

(v) She was never in possession of any relevant information concerning the proposed take-over of Emperor China by a consortium in October 1993.

The Tribunal's Determinations

The Tribunal's determinations in answer to questions (a) and (b) of the Financial Secretary's s. 16(2) notice:-

(A) That Mr. Albert Yeung Sau Shing be identified as an insider dealer in relation to dealings in the listed securities of Emperor China between October 7th and 11th 1993 inclusive.

In order to be so identified the Tribunal had to be satisfied to

a high degree of probability that the evidence proved the following ingredients:-

(a) that Mr. Albert Yeung was a person connected with Emperor China as defined by s. 4(1)b (page 16)

(b) that he knew he was in possession of relevant information as defined by s. 8 (page 16)

(c) that he dealt in the listed securities as defined by s. 6 (page 17)

If each ingredient is so proved then Mr. Yeung is in breach of s. 9(1)(a) of CAP. 395.

A person connected

By paragraph 8 of Annexure A to Mr. Yeung's statement of admitted facts he admits he was a person connected with Emperor China by virtue of his substantial shareholding in a related corporation as set out in paragraphs 5-7 of the same Annexure.

Possession and knowledge of relevant information

Mr. Yeung admits that at about 3:00 p.m. - 3:45 p.m. on October 7th 1993 he was telephoned by Mr. David Wong of CEF Capital Limited who asked him if Emperor International would be interested in disposing of its controlling interest in Emperor China because his (i.e. Wong's) client was interested in acquiring such an interest. Mr. Yeung adds that he was aware of the recent failed approach of GITIC and further states that he is prepared to agree and accept that one could have inferred that the interested buyer was of PRC background. He states that he hoped that if there was a sale of Emperor International's interest in Emperor China the share price might go even higher. At paragraph 18 he states:-

> "For the avoidance of doubt, ... I agree and accept that the information I received as aforesaid constituted relevant information and that I knew such information to be relevant information within the meaning of the Ordinance in that I knew

the information received on 7th October 1993 from Wong as aforesaid was likely materially to affect the price of the Emperor China shares if it had been generally known to investors at the time."

The Tribunal must be satisfied that these admissions of fact constitute knowledge and possession of relevant information as a matter of law.

Mr. Yeung emphasizes in paragraph 10 of the statement of admitted facts those pieces of information that he was not in possession of at the time he dealt. The evidence we take into account in deciding, as we do, that the information he did have does constitute relevant information and he knew it to be relevant is as follows:

(i) The GITIC approach had come to an end only 2 weeks earlier. In broad terms it was identical namely, an approach by a PRC party to acquire the controlling interest in Emperor China held by Emperor International.

(ii) Mr. Yeung's conversation with Mr. Wong was on October 7th (Thursday). On Monday October 11th Mr. Yeung met Mr. Wong (and others) at a formal meeting at which a proposal to form the basis of further negotiations concerning the acquisition was submitted. In Mr. Wong's statements to the SFC he indicates that he had further discussions with Mr. Yeung between Oct. 7th and Oct. 11th. Mr. Yeung neither recalls nor disputes these contacts.

(iii) The expert evidence. Firstly, Mr. Alex Pang's (the Director of Surveillance at the SFC) unchallenged evidence was:-

> "it can be said that in October 1993 every reasonable investor would realize or infer the material effect of a possible takeover in Emperor China on its share price. If that reasonable investor was also aware that such

> possible takeover was raised by an executive director of CEF, which had extensive experience in the backdoor listing, on behalf of their clients, although no discussion had been held, he would expect that news would highly likely cause the share price of Emperor China to rise materially. Accordingly, there appears no reason for Albert Yeung, the controlling shareholder of Emperor International which is the holding company of another two listed companies, to be not aware of such effect as a reasonable investor. .... As explained at paragraph 23, it can be said that the 80.6% jump in the share price of Emperor China from $3.875 (closing price of 10 August) to $7.00 (highest price of 18 August) was mainly attributed to the possible GITIC's acquisition. In association with the general trend, it is therefore highly likely that the information received by Albert Yeung in the telephone conversation with David Wong on 7 October, that was the information about a possible takeover in Emperor China by a purchaser probably with PRC background, would materially affect the share price of Emperor China. Such information in my opinion amounts to "relevant information" as defined in Section 8 of the Securities (Insider Dealing) Ordinance."

Secondly, Mr. Derek J.M. Murphy's (the former Deputy Commissioner for Securities in Hong Kong and a former Managing Director of Wardley Investment Services, the Group Vice President of First Pacific Davies, an Honorary Adviser to the Society of Business Administration in Hong Kong and a member of the Securities and Futures Appeal Panel in Hong Kong) evidence that:

> "information respecting the acquisition of a controlling interest in ECC by a company whether a PRC enterprise or not, is "relevant information" within the meaning of section 8 of Cap. 395 It follows in my view that information of a contemplated "take-over offer" for

ECC, that is, a general offer to the holders of the remaining shares, would also constitute "relevant information"."

(iv) Mr. Yeung's own admissions.

Deals

The combined effect of Mr. Yeung's admissions, the four statutory declarations, the unchallenged evidence of Mr. Michael Grimsdick (a partner in the firm of Ernst & Young, Certified Public Accountants in charge of the firm's Investigation and Litigation Department) and the admitted statements of all the brokers used to purchase Emperor China shares between October 7th and 11th 1993 proves that:-

(i) Asian Star and Kingsday were set up and operated on Mr. Albert Yeung's instructions;

(ii) Asian Star and Kingsday's dealings were done on Mr. Albert Yeung's instructions without the knowledge or approval of Rebecca or Kelly Yeung;

(iii) Mr. Albert Yeung funded the purchases and was the sole beneficial owner of the shares purchased;

(iv) Mr. Albert Yeung dealt in a total of 4,572,000 Emperor China shares between 3:45 p.m. on October 7th and close of business on October 11th 1993.

(B) That Asian Star and Kingsday be identified as insider dealers in breach of s. 9(1)a CAP. 395

Before the two companies can be identified as insider dealers there must be evidence before the Tribunal which proves that Mr. Albert Yeung was a "director" of the companies as defined in section 2 of CAP. 395 (page 17). That definition includes "any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act". Mr. Albert

Yeung admits that he was the controller of the companies. The definition of controller includes "any person in accordance with whose directions or instructions the directors of the corporation ... are accustomed to act". To this extent a controller and a director amounts to the same thing. It is also fundamental to both the cases of Mr. Albert Yeung on the one hand and his younger sisters on the other that the sisters had total respect for and trust in their elder brother and unfailingly acted on his instructions. They, without question, followed all the instructions of Mr. Yeung in the setting up of the companies and their accounts which resulted in the dealing by the companies.

Once this ingredient is established, as it clearly is, Asian Star and Kingsday become "persons connected" to Emperor China as defined by s. 4(2) CAP. 395 (page 18). The heart and mind of the companies were those of Mr. Albert Yeung. His acts in dealing through the companies were their acts and vice versa.

Defences

Having found the dealing by the companies to be insider dealing as defined by s. 9(1)(a) we can only identify them as insider dealers if none of the defences in s. 10 of CAP. 395 apply. The burden of proving a s. 10 defence rests on the person seeking to rely on it and the standard of proof required is proof on a balance of probabilities.

Mr. Alan Hoo, S.C. invites the Tribunal to find that s. 10(3) and/or s. 10(4) apply to Asian Star and Kingsday.

s. 10(3) can be dealt with very shortly. It plainly has no application. In a nutshell, the companies' insider dealing was that of Albert Yeung. His motive was profit. It defies logic to suggest that the motive of the companies was otherwise than with a view to the making of a profit. Mr. Yeung used the information to make a profit, so did the companies.

The question has, not unreasonably, been posed - if the real insider dealer is Mr. Albert Yeung, what is the point of also

identifying two offshore companies, one of which no longer trades and the other no longer exists? The answer is twofold. Firstly, if the companies have breached the Ordinance it is the Tribunal's duty to say so. Secondly, it illustrates a mischief which needs to be addressed namely the cavalier use of offshore companies to add to the camouflage of unlawful acts by individuals.

The Tribunal has also been invited to consider the application of s. 10(4) as a defence available to the companies (page 18). There is no doubt that Mr. Albert Yeung was the principal and the companies were his agents. However it is fallacious to argue that it was Mr. Yeung who selected the securities and therefore the companies did not select them therefore s. 10(4) succeeds.

The reason s. 10(4) does not apply is the same reason that s. 10(3) does not apply. Albert Yeung insider dealt in the name of the companies. In these circumstances their acts and decisions are inseparable. The companies did select the shares because Albert Yeung selected them.

(C) <u>That Ms Rebecca Yeung and Ms Kelly Yeung be not identified as insider dealers</u>

This determination is based on the Tribunal's acceptance of Mr. Albert Yeung's statement of admitted facts and the four statutory declarations. There is no evidence at all that either sister possessed any relevant information or dealt in the listed securities at the material time.

(D) <u>That no orders be made against Ms Rebecca Yeung or Ms Kelly Yeung under s. 16(4) or s. 16(6) CAP. 395</u> (page 18/19)

s. 16(6) can be disposed of very shortly. There is clearly no evidence of knowledge, consent or connivance by either sister.

s. 16(4) warrants more detailed consideration. Before an order under s. 16(4) can be made the Tribunal must be satisfied that two

separate ingredients have been proved. The two ingredients are:-

(a) That the director was in breach of his or her duties under s. 13 and, if so,

(b) That the insider dealing is directly or indirectly attributable to the breach of duty.

We will deal with them each in turn and consider the evidence in relation to each director separately.

(a) Breach of duty?

The s. 13 duty requires a director to ensure that safeguards exist which have the effect of preventing the company from insider dealing. Mr. Pethes has submitted to us that by taking no steps at all to ensure that such safeguards existed they are in breach of that duty. The particular matters he relies on, which apply to both sisters, are that they signed numerous documents in relation to both the setting up and operation of the company without even inquiring about their nature or purpose, they re-directed the company's mail, without reading it, to Sandy Wan and they took no active interest and played no role at all in the companies' business. An additional matter concerning Ms Kelly Yeung only is that she signed a complete book of blank cheques without question or concern on the Kingsday bank account.

Mr. Hoo, S.C. on behalf of the companies submits that the duty imposed by s. 13 is a specific duty to prevent insider dealing. He argues that any neglect or negligence by the sisters by their admitted lack of interest in the activities of their respective companies, whilst it may be in contravention of the general duties of a company director as laid down in the Companies Ordinance CAP. 32, it is not a breach which could be construed as a failure to ensure safeguards against insider dealing. The argument he says has even greater force when considering Kelly Yeung's position because Kingsday was only

set up on October 8th, the same day that it started insider dealing.

The Tribunal's view is that the wholesale disregard by a company director, as occurred with both Kingsday and Asian Star, in the affairs and conduct of its company constitutes a breach of s. 13. Where that disregard when analyzed item by item amounts to specific breaches of duties imposed by the Companies Ordinance the Tribunal is entitled to take them into account in deciding whether or not a breach of s. 13 has taken place. Signing important documents with eyes closed, ears plugged and mouths sealed; never opening company mail and signing blank cheques for use by someone else all amount to a failure to take some sort of reasonable safeguards as required by the section.

(b) Is the insider dealing attributable to the breach?

The Tribunal is not able to conclude, on the evidence, that the insider dealing which the companies committed was attributable directly or indirectly to the breach. If they had asked questions about the setting up of the companies, their bank accounts or trading accounts, if they had opened and read the mail and if Kelly had only signed the cheques after the details had been filled in, in all probability the outcome would have been no different. We nonetheless emphasize that simply because the reasonable measures expected of a company director do not succeed in preventing insider dealing it does not follow that there is no duty to take those measures in the first place. However, in this case we cannot say that their failure to take those measures in any way facilitated Mr. Albert Yeung's admitted insider dealing.

We therefore make no order under s. 16(4) or s. 16(6).

CHAPTER 5

CALCULATION OF PROFIT FOR THE PURPOSES OF ANSWERING QUESTION (c)

In this chapter we answer item (c) in the s. 16(2) Notice.

Mr. Albert Yeung's statement of admitted facts contained no admission as to the amount of profit which resulted from his insider dealing. We therefore heard evidence and submissions on the issue. Three witnesses were called:-

1. Mr. Alex Pang, the Associate Director of Enforcement within the SFC.

2. Mr. James Miller-Day, a fellow of the Institute of Chartered Accountants in England and Wales and former stock broker who has considerable experience in matters of corporate finance in both Hong Kong and the U.K.

3. Mr. Peter Wai Hark Wah, the Executive Director of Peace Town Securities Limited. Mr. Wai is a registered investment adviser and has over 10 years experience as a dealing director on the Hong Kong Stock Exchange.

Both Mr. Miller-Day and Mr. Wai had prepared written reports addressing the issues to be considered when calculating the amount of profit gained by Mr. Yeung resulting from his insider dealing. The issues, which we shall deal with in turn are these:-

(i) How should the value of the share after the inside information has been made public be calculated?

(ii) Where some of the shares purchased were sold soon after the information was made public and some were not, should the actual proceeds of those sold be included in the calculation for the overall profit or should the notional or paper value be used for all the shares, whether they were in fact sold or not?

(iii) Did other price sensitive supervening events occur between the original purchase and the time when the information became public?

(iv) Should an allowance be made for movements in the market over the relevant period?

(v) If so, what is the quantum of any such discounts or allowances?

(vi) Should both actual and notional transaction costs be deducted?

1. <u>The value of the share after the public announcement</u>

An acceptable and convenient definition of "profit gained" is that provided by American legislation (as ours does not provide a definition). It is:-

> "... 'profit gained' or 'loss avoided' is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information."

Mr. Yeung purchased 4,572,000 shares between 3:45 p.m. on October 7th and the close of the market on October 11th at an average price of $4.95 per share. We will not take into account any shares purchased before 3:45 p.m. on October 7th. Mr. Albert Yeung came into possession of the relevant information sometime on October 7th. The exact time cannot be determined. Mr. David Wong of CEF telephoned him on that day sometime before 3:45 p.m. (paragraph 8 of Mr. Albert Yeung's statement of admitted facts). 3:45 p.m. is the recorded time after the fact of Mr. Wong's phone call to Mr. Yeung had been notified to the SFC. In fairness to Mr. Yeung we will not guess exactly what time he was telephoned even though his admitted facts state "in any event not before 3:00 p.m." (page 22). However for the purpose of calculating profits we will only consider all those shares purchased between 3:45 p.m. on October 7th and the close of the market on October 11th.

The trading of the share was suspended from October 12th to Friday October 22nd inclusive. We must calculate its fair value in the light of the information which was made public prior to the recommencement of trading on Monday October 25th.

Firstly we must decide what is "a reasonable time" after public dissemination of non public information.

The opinions of the expert ranged from one day to eight days. The actual figures on the trading for the share for the ten days afterwards are as follows:-

Date	Volume (No. of shares)	SHARE PRICE					HSI Index
		High	Low	Close	Weighted Average	% change from previous day's closing	
25/10/93	36,858,587	6.750	5.300	6.550	6.47	22.43	8,767.50
26/10/93	16,656,304	6.550	6.200	6.400	6.37	-2.29	8,790.90
27/10/93	7,763,058	6.400	6.150	6.300	6.26	-1.56	8,903.20
28/10/93	6.812,376	6.300	6.100	6.300	6.22	0.00	9,010.27
29/10/93	2,710,343	6.350	6.150	6.200	6.27	-1.59	9,329.09
1/11/93	3,794,100	6.250	6.050	6.150	6.18	-0.81	9.629.19
2/11/93	7,214,956	6.200	5.900	5.950	5.99	-3.25	9.642.91
3/11/93	10,167,000	6.200	5.500	5.950	5.90	0.00	9,352.11
4/11/93	2,964,792	6.000	5.800	5.900		-0.84	9,204.88
5/11/93	2,014,336	5.950	5.600	5.650		-4.24	8,996.93

The number of days it takes a share to re-rate itself varies from case to case and depends on a number of different circumstances. In the PIIL Report quoting the American case of SEC v MacDonald 699 F 2d 47 it was said that:-

> "... 'in determining what was a reasonable time after the inside information had been generally disseminated, the court should

consider the volume and price at which [the] shares were traded following disclosure, in so far as they suggested the date by which the news had been fully digested and acted upon by investors'. So the approach taken was to ascertain the profit 'accrued from the rise in price caused by the disclosure'. That was an echo of the approach by the District Court, where it was said that 'the gain is determined by how much "paper" profit accrued between the acquisition dates and the conclusion of "the gestation period" '."

In our case the experts called on behalf of Mr. Yeung, namely Mr. Miller-Day and Mr. Wai, argued that eight days was a reasonable period. Mr. Pang however did not agree. His original opinion was that in this particular case one day was sufficient. However at the conclusion of his evidence he stated that three days would be appropriate. In the American case of MacDonald the court said that five days would normally be a reasonable time. Five days was also used in the Success Holdings inquiry in Hong Kong.

The principal argument in favour of an eight day period is the fact that on the 7th and 8th day (re November 2nd and 3rd) there was another surge in trading. In the first five days it had gone from 36.8 million shares traded on the first day down to 2.7 million on the fifth day. However on days seven and eight the trading was 7 and 10 million respectively. In the absence of any other explanation it should be assumed, it is said, that this trading was still the result of the public digesting the information.

On the other hand it was submitted that there are a number of factors in this particular case which point to a rapid digestion by the investing public of the news. Such factors include:-

(i) The exceptionally high turnover in the first three days. In total there were 61 million trades. Putting to one side the acknowledged fact that some shares may have been traded more than once during this short period, 61 million represents approximately two-thirds of all the shares in public hands.

(ii) There was considerable publicity on October 22nd and October 23rd after the announcement but prior to the resumption of trading. October 22nd was a Friday and a normal trading day.

(iii) It was the sort of information which at that time caused people to respond quickly rather than slowly. For example the news was that the buyers were a consortium comprising a PRC entity and Cheung Kong, a Hong Kong blue chip. Also, it was that Cheung Kong's involvement (37%) was unusually high.

(iv) The price of the share over this period was relatively stable. The first three closing prices were $6.55, $6.40 and $6.30 respectively. Even on the fifth day when the volume dropped to 2.7 million, the High/Low was almost identical to the third and fourth days.

(v) Investors in third line companies are, generally speaking, rumour led and speculative. The reaction therefore would be to deal as soon as possible rather than to take a more considered position.

These factors have caused the Tribunal to conclude that the Emperor share had clearly re-rated itself during the first three days of trading.

Having decided that three days is a "reasonable time" we now must decide what method to use to arrive at a fair figure for the re-rated value. Two methods were canvassed in evidence. They were simply an average of the closing prices and an average of the daily weighted average price. The Tribunal also considered a third method namely a weighted average over all the trading in the relevant period (as distinct from averaging each daily weighted average). In other words the total of all the money spent divided by the total number of shares traded in that period.

The figures we considered were these:-

		3 days	5 days	8 days
First method:	Average of closing prices	$6.41	$6.35	$6.23
Second method:	Average of daily weighted prices	$6.37	$6.32	$6.21
Third method:	Weighted average for the whole period	$6.42	$6.39	$6.29

At the conclusion of his evidence Mr. Pang was asked which of the first two methods he considered to be the fairer. He said an average of the closing prices. Mr. Wai used the same method but a longer period. Mr. Miller-Day used the second method.

The closing price method was criticized on the basis that it was a mere "snapshot" of the share at end of the day. This is a fair criticism. However the Tribunal also takes the view that averaging the daily weighted averages does not give a clear picture either because of the significant differences in volume on each day. The third method is therefore the most appropriate. It is interesting to note in this case that the "snapshot" closing price method is closer to the third method than the second method for the three day, five day and eight day calculations.

We were urged not to use the third method because it only arose during submissions and therefore had not been considered by the expert witnesses. For this reason only we will not use it but encourage its consideration in future inquiries. Because of our comments in the preceding paragraph and the fact that 2 of the 3 experts used the closing price average, we will use the figure of $6.41 to calculate the profits.

2. Should this figure be used to calculate the value of all the shares purchased or only those which were not sold during the three days after the announcement

On October 25th, the first trading day, 1,948,000 of the 4,572,000 shares bought were sold at various prices which produced proceeds of $12,946,700. 2,624,000 shares remained unsold.

Any calculation of a "notional" or "paper" or "assumed" or "hypothetical" value has an element of artificiality. To use the "paper" value for all shares bought when a significant number had been sold on day one of the resumption of trading would be to ignore an indisputable fact (i.e. the value of those shares at that time) and therefore increase the artificiality.

We therefore propose to use the "paper" value of $6.41 per share only in respect of those shares which were not sold, i.e. 2,624,000.

Our decisions, so far, produce the following result:-

Purchase price of 4,572,000 shares	-	$22,734,640 (A)
Sale proceeds of 1,948,000 shares	-	$12,946,700 (B)
Paper value of 2,624,000 shares	-	$16,819,840 (C)
B + C	-	$29,766,540 (D)
D – A	-	$7,031,900
(Less purchase and sale transaction costs 0.42%)	-	$220,500
Profit	-	$6,811,400

3. Transaction costs

In the foregoing calculation we have deducted a figure for transaction costs at 0.42% not only on those shares which were in fact sold but also on those which were not. This seems proper as we are endeavouring to find a figure for the total proceeds if they had all been sold during the three day period.

4. Supervening events

It is common ground that there may be circumstances in which the profit gained, whether it be actual profit resulting from actual sales or paper profit as hitherto calculated, should be discounted or reduced because of other events which occur between the date of purchase and the date the inside information becomes public.

The issue here is whether or not a particular event which can qualify as such has occurred, so as to entitle the insider dealer to a discount or reduction.

There are two different ways to resolve this issue. The first is to say that the only "other events" which are relevant to the question of profit calculation are those which are wholly unforeseeable and unrelated to the corporate activity which caused the insider to deal in the first place. If such events had occurred and had caused a significant further increase in the value of the share it would be wrong to penalize the insider dealer with such increases.

The second approach was that submitted by Mr. Tong on behalf of Mr. Yeung. He argued that the correct approach was only to penalize the insider dealer for those profits which were directly attributable to the relevant information in the insider dealer's possession, however little that may have been, at the time he dealt and to take no account of future developments concerning the take-over prior to the resumption of trading.

The difference in the two approaches is highlighted by the particular facts and chronology of events in this case. Mr. Yeung received the inside information on October 7th and then he insider dealt between October 7th and 11th. On October 12th the share was suspended. He could not have realized his ill-gotten gains on October 13th even if he had wanted to. He in fact started to sell the shares on October 25th as soon as the suspension had been lifted.

The Tribunal has therefore been invited, firstly, to calculate what the share would have been worth on October 13th when the inside

information in his possession became public because, but for the suspension, he would have been able to trade the shares he had bought on that day. He should not, it is submitted, be penalized for the further rise in the value of the share whilst it was suspended.

Secondly, the Tribunal was invited to calculate a further discount to take account of the rise in the stock market generally during the suspension of the Emperor China share. The basis of the submission is the same - why should Mr. Yeung have to pay under s. 23(1)(b), profits which are likely to have accrued in any event in a bull market regardless of the inside information on this particular share.

Thirdly, the Tribunal was invited to consider the effect of a small article in the press which was published on October 11th which concerned the Company's long term profits. The subject matter was nothing to do with the take-over and could be regarded as independent good news which would have caused a rise in the share price on its own. If so, it is submitted, the Tribunal should estimate what that independent price rise would have been and deduct it from the calculation of profit as at October 25th.

In relation to each of these three events, two questions must be answered; firstly, should they qualify as a supervening event thereby warranting a discount in the profit calculation and secondly, if so, by how much?

(A) <u>When is an "event" a "supervening event" for the purposes of insider dealing profit calculation?</u>

This issue has been considered in previous inquiries in Hong Kong, in particular in "Success Holding" and "PIIL" (Public International Investments Limited). In his submissions to this Tribunal, Mr. Tong, with his usual skill, has endeavoured to distinguish the facts of this inquiry from the facts of those in order to persuade this Tribunal not to apply the principles which appear in those reports, to this case. It is acknowledged that there is a significant difference in the facts, namely the suspension of the share for nine trading days. Mr. Tong

argues that that difference makes the Emperor case entirely different. Mr. Pethes, on the other hand, whilst agreeing with the factual difference, submits it has no effect on the application of the principle.

Later, we shall consider each of the three "events" in turn. First of all however, we recite at some length the observations made in the Success Holdings and PIIL reports. This Tribunal considers those observations to be both correct and applicable to this case.

In Success Holdings the Tribunal adopted as its starting point a quote from the MacDonald case (p. 54) "the gain is determined by how much 'paper' profit accrued between the acquisition dates and the conclusion of the 'gestation period' ". To this, three notes of caution were added:-

(i) the facts in each case will differ,

(ii) one must ascertain whether there is evidence of "other material events" during the period in question and if there is,

(iii) one must evaluate the impact of the event, which also will vary from case to case.

The Report gives the following example - "if, for instance, the release of price sensitive information coincides with, or precedes by a day or two, a favourably viewed and significant event which buoys market sentiment and behaviour it may well be an error to attribute the whole of a stock's rise to the particular corporate news."

The issue was considered more fully in PIIL. The core of the argument in that case was summarized at page 276:-

> "It is, however, contended that to conclude that the profit gained by Mr. Don Lau was the difference between the

> cost of his purchases on 8th December and the full price of the shares on the date when the market has reacted to the information, is to ignore the influence on that price of factors other than the piece of relevant information used by the insider to gain his advantage. So, assuming for the moment that the market can be said to have reacted on or by 17th December 1992 to the information about PIIL released to the public on 16th December, the extent of the reaction (in this case, a positive reaction, and therefore a profit to those who held the shares) was, it is contended, indeed attributable to news of the Mainland and Cheung Kong factors, but only in part. The rest of that positive movement was due, it is said, to other pieces of information, to other parts of the information mix, and that to ignore that fact would be to penalise the insider in respect of gain which was not the result of the abuse by him of one particular piece of information"
>
> ".... The argument is that none of these additional factors constituted unpublished price sensitive information in the hands of Mr. Don Lau or the members of the Leong group prior to the activity of the market on 16th and 17th December, and since they were factors which influenced the prices reached on those days, a discount from the full and actual profit enjoyed on resale (or notional resale) on 16th or 17th December is required to reflect these extra influencing factors."

The "other factors" in the PIIL case were not dissimilar from those in the Emperor case. In the Emperor case the "other factors" crystallized during the suspension and therefore after the time when Mr. Yeung would have had his first opportunity to sell the shares had it not been suspended, namely, factors such as - the identity of the intended buyer in the take-over - the number and price of the shares to be bought by the intended buyer - the terms and conditions of the proposed offer.

At p. 282 the PIIL report concludes as follows:-

> "... what section 23 specifically requires is an assessment of profit gained as a result of the insider dealing. It is the act of insider dealing that is prohibited, and it is the profit which results from that act which is the target. That too is the scheme of the power of disgorgement provided by the 1984 Act in the United States: the basis of the penalty to which the court is enjoined to look is the profit "gained as a result of such unlawful purchase or sale," where "such unlawful purchase or sale" means the purchase or sale of a security "while in possession of material nonpublic information". The test is whether the profit is attributable to the unlawful transaction, and not whether it is attributable to the use of a particular item of information the receipt of which has induced that transaction. Not only is there no reference to such a limitation, but the Act itself defines the profit gained as "the difference between the purchase and sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information". That is the long and the short of it; and it allows for no whittling down on the basis urged upon us in this Inquiry.
>
> In the context of Hong Kong's statutory framework, the act of insider dealing is constituted by the act of dealing or of counselling or procuring a deal whilst in possession of relevant information. What is prohibited is the transaction, or the encouragement of a transaction, or the passing of information in contemplation of a transaction, and it is to those acts that the penalty is directed. The fact of the matter is that Mr. Don Lau should not have purchased PIIL shares on 8th December for, as he well knew, he was then in possession of relevant information. Looked at in the light of the provision of section 23, the effect of his transaction which was unlawful, namely, that part which was motivated by

information not already in the public domain. There is no such concept. There was but one transaction, and the entire transaction was unlawful, even if part of the motivation was hope of a profit arising from factors other than the information yet unreleased to the investing public. The profit gained on 16th December was the profit gained as a result of his transaction on 8th December, which transaction was an act of insider dealing. The whole profit was gained as a result of that act of insider dealing."

Having set out the test in PIIL, with which we agree, we now deal briefly with each of three "events" in this case.

a) The take-over announcement which marked the end of the 9 trading days suspension:

We view the whole history of the matter as a natural continuing development. The unlawful act of dealing had been done and the events relating to the take-over which unfolded thereafter cannot be regarded as "purely new events" which were "wholly unconnected with the original corporate event".

Mr. Tong submits that because the Emperor share was suspended the principles in PIIL should not apply - we do not agree.

Put simply, an insider deals in the hope and expectation of handsome profits. The possibility of a suspension of the share would not have been outside Mr. Yeung's contemplation. It was an event which was wholly connected with the take-over which caused him to deal in the first place. The fact that the profit was increasing further during the suspension was part of a continuing process the seed of which had been sown on October 7th which bore its full fruit on October 25th. The notion that the profits should magically convert from unlawful to lawful on October 13th is untenable.

b) The upward movement of market indices:

The PIIL Report dealt with this issue briefly on p. 284 as follows:-

> "Nor do we think that any adjustment should be made to reflect movement in the market generally, especially in a case where movement is within a small range and where such volatility as might be revealed is foreseeable, given known conditions at the time."

It is submitted on behalf of Mr. Yeung that because of the general upward trend of the market between October 11th and October 25th the Emperor China share would have gone up in any event. Therefore, Mr. Yeung should not have to pay under s. 23(1)(b) such sum which reflects the increase in price which would have occurred regardless of the events surrounding the take-over.

Whilst Emperor was suspended the Hang Seng Index rose by 7.0% and the Hang Seng China Affiliated Companies Index rose by 7.7%. We accept that the latter index is a more appropriate one to use for this particular stock. If one takes the value of the share on October 11th as $4.95 (the average price of all Mr. Yeung's purchases between October 7th-11th) a rise of 7.7% produces a value of $5.33 or an increase of 38 cents per share. Applying simple statistics this means that a hypothetical profit on 4,572,000 shares would have been $1,737,360. A sum of this order, it is submitted, should be deducted from profit calculation because it is not profit attributable to insider dealing. For the following reasons we think that no such deduction should be made.

(i) It is not accurate to say that the Emperor China share followed market trends to such a degree that it would be safe to assume that when the Hang Seng or the China Affiliated Index went up, then so would Emperor China and vice versa. An examination of the figures, through examination of Mr. Miller-Day by Mr. Pethes, showed little correlation between the movements of Emperor

China and the Index during the months before the take-over and surrounding the material time.

(ii) The Emperor China share was volatile in the latter half of 1993. Mr. Peter Wai in evidence produced graphs which showed the movement and trend of the share if one eliminated the peaks and troughs of its high rises and falls. In determining this particular issue we do not consider such an exercise to be helpful. The share is correctly described as volatile because it has sharp peaks and troughs and it is this very feature which means that it is not safe or reliable to correlate it with market indices.

(iii) The rise of above 7% over a two-week period is not insignificant but neither is it dramatic. The market was on an upward trend during this period in 1993. There had been a series of take-overs involving PRC organizations to which the market had reacted favourably in almost every case. This situation would have contributed to Mr. Yeung's state of mind that he knew the information he had was relevant information. It can be safely said that the market sentiment helped push the price up but it cannot be regarded as a separate event nor can it be separately assessed.

(iv) There was no specific unrelated outside event that caused a sudden surge in the market. The upward movement was a general trend. Had there been a special happening it would be just to take account of it. For example if there had been a sudden breakthrough in the Joint Liaison Group negotiations on political reform which caused a dramatic upward movement over one or two days it would be taken into account. However there was no such event while the Emperor share was suspended.

(v) Both expert witnesses, Mr. Miller-Day and Mr. Peter Wai, argued that a figure of approximately 40 cents per share should be deducted from the profit because the market went up approximately 8%. However neither expert conceded that approximately 40 cents per share

should have been added to the profit if the market had gone down by 8%. Thus, their argument is that the good fortune resulting from an upward market movement should be taken into account in favour of the insider dealer but the bad fortune of a downward move should not. Wanting the plum without the duff highlights the fallacy of the argument.

c) The publication of an article in the press on October 12th:

On October 12th the South China Morning Post published a small report of an article which had appeared in the Economic Times on October 11th. The article quoted Mr. Bryan Wong, Emperor China's managing director, who estimated that Emperor China's investments in China would reap profit of $100 million over the next two years.

It is submitted that this article on its own would have caused a rise in the Emperor China share value and whatever rise it would have caused should be deducted from the insider dealing profit calculation. It is said to be price sensitive because of the source of the information - the company's managing director and because of its content - namely a profit forecast of an extra $100 million over two years. The previous annual profit for 1992/3 was $88 million.

Mr. Miller-Day estimated that 10% of the actual price rise from $4.95 to $6.4 (approx.) would have been due to this article and therefore calculated that Mr. Yeung's profits should be further reduced by approximately $340,000. Mr. Peter Wai estimated that the share would have gone up by 10 cents per share in any event because of this article. He also reduced the profit by a similar amount.

The Tribunal has determined that no reduction should be made due to the publication of this article. Our reasons are as follows:-

(i) Mr. Alex Pang pointed out that Mr. Bryan Wong's statement to the press was arguably in breach of the Stock Exchange's Regulations. In fact the Stock

Exchange took no action against Mr. Wong which in itself is a pointer in favour of the suggestion that the contents of the article were not regarded as price sensitive. If so, it would be unrealistic to estimate a movement in the share price attributable to non price sensitive information.

(ii) If, on the other hand, the Stock Exchange's non action is not to be regarded as a test of price sensitivity, the impact of the news would have been relatively minor. Both experts put it at or below 10 cents per share. The article itself was very short and gave a long term forecast which would not have been of particular interest to the type of investor who would normally buy 3rd liner stock such as Emperor China.

(iii) The article preceded the announcement of the take-over approach on October 12th by just one day. The reality is that the impact of the October 12th announcement would have totally swamped and overshadowed the October 11th article. It is simply not realistic to argue that, for example, because of the take-over the share went up $1.35 but because of this very small article on October 11th it went up even further to $1.45. The difference in impacts is so great that the greater swallows the lesser.

For all the foregoing reasons the Tribunal has determined that the only sums to be deducted from the profit as calculated on page 57 of this report are the transaction costs of 0.42% on all 4,572,000 shares. We therefore determine Mr. Yeung's "profit gained" to be $6,811,400.

(B) <u>If so, by how much</u>

This second issue, referred to on page 59, is now academic because of our determinations of issue (A). However for the sake of completeness we refer briefly to the submissions made on the amount of the discount for each of the three events if they had been events which had warranted a discount.

(i) The approach announcement and the take-over announcement

Much of the expert evidence related to this issue. All experts, including Mr. Alex Pang, agreed that the take-over announcement on October 21st would have caused a further increase in the Emperor share price over and above the increase caused by the approach announcement on October 12th. Each gave an estimate of the relative importance and significance of each announcement on the share price. The estimates were based on careful analyses of the content of each announcement and comparisons with earlier take-overs during 1993 which had similar characteristics.

In view of our findings under (A) supra we do not consider it necessary to report on that part of the evidence. In the event there was not a great deal of difference between the experts. Mr. Pang estimated an apportionment of 50/50 between the two announcements. An apportionment of 60/40 (60% being the later announcement and 40% the approach announcement) was suggested by Mr. Peter Wai. Mr. Miller-Day became between the two. They all agreed there was no scientific way to make the estimate.

Had the Tribunal agreed that the second announcement was a discountable supervening event it would therefore have been necessary to reduce the profit calculation by something in excess of 50%.

(ii) Market Movements

As this was purely a matter of statistics there was, again, little disagreement. We have already noted that, had it been discountable the China Affiliated Companies Index would have been more appropriate. This would have resulted in a discount of about 38 cents per share.

(iii) Press article October 12th

Mr. Pang assessed this as nil. Mr. Miller-Day and Mr. Wai were in the region of 10 cents a share.

To conclude, the calculations of Mr. Miller-Day and Mr. Peter Wai resulted in an assessment of the profit attributable to insider dealing by Mr. Albert Yeung at $1,194,023 (Mr. Miller-Day) and $1,156,888 (Mr. P. Wai). Mr. Wai's precise calculations were as follows:-

	$ per share
Average purchase price	4.95
Average 8 day closing price	6.23
Rise	1.28
Less: (1) Movement in HSI (8.69% Oct. 7th - 25th)	0.43
(2) Press article - Oct. 11th	0.10
	0.75
(3) Effect of Take-over announcement Oct. 21st (60%)	0.45
	0.30

Thus, increase attributable
to insider dealing = 4,572,000 x 30 cents = $1,371,600

(Less transaction costs) = $1,156,888

Applying Mr. Wai's approach it would mean that of the profit calculated based on the value of the share in the few days after the take-over announcement, in round figures, just under 20% should be disgorged by Mr. Yeung under s. 23(1)(b) as being unlawfully obtained by insider dealing and just over 80% be kept by him as being legitimate profit.

CHAPTER 6

PENALTIES AND ORDERS PURSUANT TO SECTION 23 OF CAP. 395

S. 23 of CAP 395 provides as follows:-

"(1) At the conclusion of an inquiry or as soon as is reasonably practicable thereafter, where a person has been identified in a determination under section 16(3) or in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders -

(a) an order that that person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order;

(b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;

(c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing."

In Chapter 5 when calculating the amount of the profit gained in order to answer question (c) of the Financial Secretary's s. 16(2) Notice no consideration was given to the considerable mitigation which has been advanced on Mr. Albert Yeung's behalf. Mitigating factors are relevant to the question of penalties, they are not relevant to the question of how the profit should be calculated.

We will deal with section 23(1) in the following order - (b), (c) and (a).

Subsection (b) - Payment of profit to the Government

The order to be made under this subsection need not necessarily be the same as the amount of profit gained as calculated in the previous chapter. It could be less. The subsection says an amount "not exceeding ... the profit ...".

Whereas mitigation is highly relevant to the orders under subsections (a) and (c), we do not think it has any application to subsection (b). It requires a disgorgement of the profits actually or theoretically made. The circumstances in which it might be appropriate to award a lesser sum than the profit gained might be the individual's lack of means but not mitigating factors. No submissions on behalf of Mr. Yeung have been made that he does not have the means to pay the orders which must be made in this case. We will therefore order the sum of $6,811,400 to be paid to the Government under s. 23(1)(b).

Subsection (c) - A penalty of up to three times the profit gained

This is a penalty not a fine. Orders under s. 23(1)(c) are frequently reported, wrongly, as fines. A fine is a criminal sanction. Insider dealing in Hong Kong is not a crime.

The maximum which could be ordered under this subsection is approximately $20.5 million. When added to the order under 23(1)(b) and the expenses order under s. 27 the amount at the end of the day could become alarmingly high. However when many millions of dollars are spent in the hope and expectation of making further millions by the mis-use of price sensitive information it will inevitably prove to be a very expensive exercise when detected. As Mr. Ronny Tong, S.C. very correctly said on Mr. Yeung's behalf "this has been a very expensive lesson for him".

We fully accept that there are significant mitigating factors in this case. Plainly the most important is that Mr. Yeung admitted that he had insider dealt before any evidence was called. In all the inquiries heard by the 2nd Division of the Insider Dealing Tribunal, this is the first

occasion that an implicated party has admitted insider dealing. The Tribunal will give full credit for that admission.

Mr. Tong's submissions to the Tribunal on Mr. Yeung's behalf on all matters were always of great assistance. On the question of mitigation we take into account the following matters.

(I) Matters of Principle:

(i) An admission mitigates the penalty, an earlier denial does not aggravate it. However the timing of the admission is relevant to the amount of credit which should be given for it.

(ii) The wealth of the insider dealer will not cause the Tribunal to impose a higher penalty.

(iii) The principle of totality applies. When considering the principle of totality the Tribunal should also consider the expenses order under s. 27 which the insider dealer is liable to pay.

(iv) The Tribunal must also consider the integrity of the securities market in Hong Kong and mark the disapproval of the investing public and the financial services profession with insider dealing activities.

(II) The admission and its consequences:

(i) Mr. Yeung made a full and clear admission of his wrongdoing. He set out precisely what he knew. For the avoidance of doubt he also set out what he did not know and for the further avoidance of doubt accepted that his conduct constituted insider dealing.

(ii) He demonstrated remorse and a willingness to take full responsibility for the consequences of his admitted insider dealing.

(iii) The admissions were made at the outset of the inquiry and resulted in considerable saving of time and expense.

(iv) By giving full credit to Mr. Yeung for his admissions implicated parties in future cases who know they have insider dealt will see the benefits to themselves and the community by following the example set by him.

(III) The particular circumstances of the insider dealing in this case:

(i) Mr. Yeung was not a director or officer of Emperor China.

(ii) He did not set out to acquire the information which caused him to deal. It came to him.

(iii) Having received the information he made no efforts to gain more information before dealing. He dealt on what he knew as set out in his statement of admitted facts.

(IV) Other factors:

(i) The publicity surrounding his admission will have caused an adverse effect on his reputation both in the eyes of the public and, perhaps more importantly to him, his family.

(ii) The matter has been hanging over him for over 3 years.

On the other hand the Tribunal must not lose sight of and must weigh in the balance other factors which cannot be prayed in his aid:-

(i) It was a blatant act of insider dealing with personal profit as the only motive.

(ii) He involved two of his younger sisters who obediently complied with his instructions without knowing they were getting involved in unlawful activities. Because of his admissions and their statutory declarations they have now been exonerated.

However they were rightly investigated and they too had the matter hanging over them for over 3 years.

(iii) He set up Kingsday for one purpose only - to insider deal. The use of the offshore companies, the two sisters and fifteen different brokers were all part of an attempt to distance himself from the dealing and camouflage himself against detection.

(iv) The money involved was considerable. Whatever the worth of the insider dealer the outlay of over $20 million on unlawful dealing on the Hong Kong Stock Exchange can only be regarded as a very large sum.

Bearing these aggravating features in mind the Tribunal would have adopted a multiplier in excess of two in order to determine the penalty under s. 23(1)(c) had Mr. Yeung not made his admissions and thereby made significant savings of time and money to both himself and others.

We have already commented that the maximum order under this section could be over $20 million. Had he contested the matter the multiplier in excess of two would have resulted in a penalty of approximately $15 million.

After careful consideration the Tribunal has determined that a discount of one third is appropriate as credit for Mr. Yeung's admission and other mitigating factors. In addition therefore to the considerable saving of costs we will reduce the penalty that would otherwise have been appropriate by $5 million.

Our order under s. 23(1)(c) will be that he pays a penalty of $10 million. In terms of multipliers this represents a multiplier of approximately 1.4.

In coming to this conclusion the Tribunal has not gained much assistance from comparing this multiplier with multipliers in previous inquiries. The seriousness of the wrongdoing must be evaluated in the context of the facts of its own case. It is consequently of no assistance

to note that in other cases a smaller multiplier was used when no admissions were made.

Subsection (a) - Disqualification

There are many possible variations of disqualification orders under s. 23(1)(a). It permits disqualification from one or more of a number of different positions relating to a company - director, liquidator, receiver, manager of property or a person taking part in the management of a company. It can be directed at a listed company or other specified companies or both. It can prohibit both direct and indirect involvement. The making of an order under s. 23(1)(a) is discretionary. However, only in unusual and exceptional circumstances would no order at all be made following a finding of insider dealing.

We adopt the comments made in the Success Holdings Report (Page 98) concerning the principles to be considered when deciding what order to make under this section:-

> "In determining whether to disqualify an insider dealer from holding office as a director of a listed company, one has to consider the need, if any, to ensure the integrity of the securities market is maintained; to protect the public from further abuse by that person of any privileged position of trust which that office carries; to deter others from breaching that trust; and to mark the disapproval of the investment community with the conduct of the insider dealer;
>
> In determining whether to disqualify an insider dealer from holding office as a director of a private company, one should have regard to the connection, if any, of the company with the insider dealing, and any relationship between the insider dealer and the private company; and the impact upon the individual of such a disqualification."

Bearing these principles in mind in addition to the mitigating and aggravating factors already recited at pages 72-74 we have addressed four questions:-

(i) Should there be any order under s. 23(1)(a)?

(ii) If so, in what terms?

(iii) If so, what would the length of disqualification have been had the matter be contested?

(iv) By how much should that period be reduced because of the admissions made and other mitigating factors?

Dealing with each question:-

(i) We are certain that an order should be made. There are no unusual or exceptional circumstances in this case which persuade us to make no order.

(ii) Having given careful consideration to the submissions made on Mr. Yeung's behalf we consider the proper disqualification order in this case should be against holding office in listed companies. In deciding not to extend the disqualification to other specified private companies (of which Mr. Yeung holds directorships in many) the most compelling factor has been his full and frank admission. The terms of the order will be that he shall not be a director or a liquidator or a receiver or manager of the property of a listed company.

(iii) The Ordinance permits a maximum disqualification of 5 years. Although this was a classic case of making substantial personal profit secretly by the misuse of inside information we can nonetheless envisage worse cases. Had no admissions been made we would have considered 3 years as an appropriate period of disqualification.

(iv) Because of the mitigation, most significantly, the admission, we reduce it by the same amount as we reduced the financial penalty, namely, one third. The s. 23(1)(a) order will be for 2 years.

s. 27 Expenses order

Mr. Yeung shall pay, pursuant to s. 27 CAP. 395, the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the purpose of the inquiry.

For the avoidance of doubt those expenses shall include:

(i) The expenses of the Tribunal:-

(a) $863,105 for the fees and salaries of the Tribunal members and staff and the costs of the court interpreters, court reporters and photocopying which have been directly attributable to the inquiry.

(b) $927,144 for witness expenses. In addition to the usual expenses incurred in arranging for witnesses in Hong Kong to attend the inquiry, the Tribunal has in this case approved the fees submitted by the expert witnesses, Mr. Derek Murphy and Mr. Michael Grimsdick.

(c) $49,771 for expenses incurred by the SFC from December 18th 1997 onwards in so far as it relates to work done at the request and direction of the Tribunal for the purpose of the inquiry.

(ii) The expenses of the Department of Justice which are $2,042,013.

Asian Star and Kingsday

It is open to the Tribunal to make orders against these companies. We made inquiries as to their present status and as a result

of those inquiries it seems proper in this case to make no orders in respect of them.

We were informed and accept that Kingsday no longer exists as a corporate entity and Asian Star is dormant. Neither has any assets.

ORDERS

Pursuant to the Tribunal's determinations in answer to the Financial Secretary's notice under s. 16(2) of CAP. 395 as set out in Chapters 4 and 5 of this report the Tribunal makes the following orders:-

(1) Pursuant to s. 23(1)(a) CAP. 395 Mr. Albert Yeung Sau Shing shall not, without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company for a period of 2 years with effect from the date of this order.

(2) Pursuant to s. 23(1)(b) CAP. 395 Mr. Albert Yeung Sau Shing shall pay to the Government the sum of $6,811,400 being the amount of profit gained as a result of the insider dealing as determined in Chapter 4 of this report.

(3) Pursuant to s. 23(1)(c) CAP. 395 Mr. Albert Yeung Sau Shing shall pay a penalty of $10,000,000.

(4) Pursuant to s. 27 CAP. 395 Mr. Albert Yeung Sau Shing shall pay $3,882,033.00 being the expenses of and incidental to the inquiry and investigation of his conduct or affairs made for the purpose of the inquiry.

ACKNOWLEDGEMENTS

The Chairman wishes to thank the two Tribunal members, Mr. Felix Chow Fu Kee and Mr. Michael Sze Tsai Ping for their invaluable assistance during the Emperor Inquiry and in the preparation of this report.

The Tribunal wishes to thank all the legal representatives and expert witnesses involved in the hearing. Their assistance was, without exception, always highly professional and most thorough. We are grateful also for the reliable and efficient support rendered by the Tribunal staff, verbatim reporters and the court interpreters.

The Honourable Mr. Justice Burrell
Chairman

Mr. Felix Chow Fu Kee
Member

Mr. Michael Sze Tsai Ping
Member

June 8th 1998