REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

NGAI HING HONG COMPANY LIMITED

on

July 21st 1995

and on other related questions

CONTENT

ANNEXURES

ABBREVIATIONS

NNH	-	Ngai Hing Hong Company Limited
NNHCL	-	Ngai Hing Hong Company Limited
Ngai Hing Hong	-	Ngai Hing Hong Company Limited
Taylor Ho	-	Taylor Ho Tai Loi
Hui S.C.	-	Hui Sai Chung
Hui K.K.	-	Hui Kwok Kwong
SEHK	-	The Stock Exchange of Hong Kong Limited
SFC	-	Securities & Futures Commission
HSI	-	Hang Seng Index
Deloitte	-	Deloitte Touche Tohmatsu
Good Benefit (GBCL)	-	Good Benefit Limited
Ever Win	-	Ever Win Limited
Evergrow	-	Evergrow Company Limited
NHH Plastic	-	Ngai Hing Hong Plastic Materials Limited
HK Colour	-	Hong Kong Colour Technology Limited
Landpool	-	Landpool Industrial Limited
China Everbright	-	China Everbright Securities
FIRL	-	First International Resources Limited

CHAPTER 1

INTRODUCTION AND BACKGROUND

Introduction

The Insider Dealing Tribunal has sat on four days in response to the Notice pursuant to s. 16(2) of the Securities (Insider Dealing) Ordinance CAP. 395 from the Acting Financial Secretary, Mr. Rafael S.Y. Hui, dated May 6th 1998.

A preliminary hearing was held on May 22nd 1998 at which the Tribunal made an opening statement and granted applications for legal representation. At the preliminary hearing the Tribunal set July 6th 1998 as the first day of the substantive hearing. The parties were ready on July 6th and as events unfolded it was only necessary to sit on July 6th, 9th and 10th to complete our inquiry. The brevity of the inquiry was due to the fact that on July 6th we were informed by Mr. Taylor Ho Tai Loi's (hereafter referred to as "Taylor Ho") counsel that he wished to make a full and frank admission of the insider dealing alleged against him. We set out more fully the consequence of this information and its effect on our inquiry into the alleged conduct of Mr. Hui Sai Chung and Mr. Hui Kwok Kwong (hereafter referred to as Hui S.C. and Hui K.K. respectively) and the procedure the Tribunal followed in Chapter 2.

In short, the Tribunal was satisfied that the statement of admitted facts signed by Taylor Ho and his solicitors together with brief oral testimony given by him, amounted to an admission of insider dealing by him contrary to s. 9(1)(a) of CAP 395 in relation to his purchase of 1 million Ngai Hing Hong shares on July 21st 1995. The Tribunal made an oral finding to this effect in open court on July 9th 1998 and stated that its report would contain a finding to this effect. Pursuant to s. 23(2) of CAP 395 Taylor Ho was then given an opportunity of being heard on the question of penalties and orders under s. 23(1).

The effects of Taylor Ho's evidence of admissions, together with consideration of two statutory declarations, one each from Hui S.C. and

Hui K.K., caused the Tribunal to conclude (having also considered submissions from counsel to the Tribunal and counsel for Hui S.C. and Hui K.K.) that the justice of the case would be met by no findings of insider dealing being made against either Hui S.C. or Hui K.K. An oral statement to this effect was made in open court on July 10th 1998.

In bringing the Ngai Hing Hong inquiry in court to a relatively swift conclusion the Tribunal was careful to balance, on the one hand, our obligation to carry out an inquiry and make a determination pursuant to the s. 16(2) notice received from the Acting Financial Secretary and on the other hand, achieve a just outcome to all implicated parties as expeditiously as possible consequent upon Taylor Ho's admission of insider dealing.

Background

Ngai Hing Hong Company Limited was listed on the Stock Exchange of Hong Kong Limited (SEHK) on April 25th 1994. The company's principal business was in the manufacture and sale of plastic colorants and plastic raw materials. The Ngai Hing Hong group had seven subsidiary companies as follows:- Ngai Hing Hong Plastic Materials Limited, Hong Kong Colour Technology Limited, Landpool Industrial Limited, Safeway Development Company Limited, Foment Company Limited, Ngai Hing (International) Company Limited and Dongguan Ngai Hing Plastic Materials Limited. Of these, only the first three named (known as Ngai Hing Hong Plastic, H.K. Colour and Landpool respectively) made any significant contribution to the group's turnover and profit. The turnover of the remaining four was sufficiently small to be safely ignored for the purpose of this inquiry.

Taylor Ho joined the company in 1993 before it was listed, as its financial controller. Prior to its listing Hui S.C. and Hui K.K. owned 80% of its shareholding (40% each) and Taylor Ho owned 4%. The remaining 16% was held by 3 other persons largely unconnected with this inquiry.

After it became listed the executive directors held 75% (150 million shares) and the remaining 25% (50 million shares) were in public hands. (A more detailed breakdown appears on p. 26.)

On July 21st 1995 Taylor Ho purchased 1 million Ngai Hing Hong shares at a total cost of $2,137,358.40. These were shares that had been previously disposed of in the market by a fellow director Mr. Peter Liu May Kwan. Consequently the number of shares in public hands did not fall below the 25% limit.

The involvement of Hui S.C. and Hui K.K. in this purchase stems from the admitted fact that they loaned him the money to buy the shares.

At the time of his purchase Taylor Ho was the financial controller, company secretary and an executive director of the company. In that capacity he had first hand knowledge of the company's finances.

When he purchased the shares he knew that the company's profits for 1994/5 were going to be approximately double the 1993/4 profits. However, the persons who were accustomed to or were likely to buy Ngai Hing Hong shares only had access to the first six months profits from the interim report published on March 15th 1995. That profit, multiplied by two to estimate the profit for the whole year, would have been much the same as the 1993/4 profit. Thus, whereas the ordinary investor would, on July 21st 1995, predict an annual report in September 1995 similar to the previous year, Taylor Ho knew it was going to be a surprisingly good year of which there were no hints in the 6 month interim report which had been published four months earlier.

The full extent and effect on the information in his possession at the time of his purchase is more closely examined in Chapters 4 and 5.

Further examination of the involvement of Hui S.C. and Hui K.K. in Taylor Ho's dealing and their statutory declarations is contained in Chapters 6 and 7.

CHAPTER 2

PROCEDURE

Sections 17(h) and (i) of CAP. 395 state as follows:-

> "The Tribunal may, for the purpose of an inquiry under this Ordinance -
>
> (h) subject to any rules made by the Chief Justice under section 36, determine the procedure to be followed at an inquiry;
>
> (i) exercise such other powers as may be necessary or ancillary to the carrying out of its functions under this Ordinance."

In this inquiry, once we were informed that Taylor Ho intended to admit the alleged insider dealing the Tribunal had, first of all, to determine the appropriate procedure to be followed in the light of his intended course of action. The situation was not unique, a similar situation having arisen in one previous inquiry conducted by this Division of the Insider Dealing Tribunal.

(a) Procedure prior to notice of admissions

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 May 6th 1998, pursuant to his powers under s. 16 of CAP. 395, the Acting 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. Peter Davies as counsel to the inquiry. He was assisted by Miss Winnie Ho. Mr. Davies and Miss Ho are both from 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. Taylor Ho was represented by Ms Katina Levy instructed by Messrs Charles S.C. Yeung & Co.
>
> Mr. Hui S.C. and Mr. Hui K.K. were represented by Mr. Josiah Lee Hin-kee instructed by Messrs K.M. Lai & Li.

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 who would be implicated or concerned in the subject matter of the inquiry.

The persons so identified were those mentioned in the Acting 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 three 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 Ngai Hing Hong 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 implicated parties' legal representatives were given access to all unused material. Counsel to the Tribunal was made aware of what material, if any, was taken by the implicated parties from the unused material and the Tribunal was also informed.

The Salmon letters were sent out on May 13th 1998. Contained in the letter was the date on which all implicated parties or their lawyers should attend court for a preliminary hearing.

4. Preliminary hearing

The preliminary hearing was held on May 22nd 1998. 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 judgement 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) <u>Procedure followed as a result of being given notice of Taylor Ho's admissions</u>

On July 6th 1998 Ms Katina Levy informed the Tribunal that her client wished to admit the alleged insider dealing. Taylor Ho was in court at the time and orally confirmed his intentions to the Tribunal. After hearing brief submissions on procedure the Tribunal made the following directions:-

"1. As stated in our opening statement at the preliminary hearing, any admission of insider dealing must be in writing and signed. It should be signed both by the person making the admission and also his legal representatives.

2. Provided the statement of admitted facts contains full and frank admissions of all the necessary ingredients of, in this case, section 9(1)(a) of CAP. 395 and admissions of all those facts which go to prove those ingredients, and provided that the Tribunal is satisfied that the admissions are sufficient in the context of the allegations made, then the Tribunal will make a

finding of insider dealing against that person based on that statement of admitted facts and without the necessity of hearing any live evidence in court.

3. We will then invite submissions on the two issues of, firstly, how to calculate the profit gained by that person by his admitted insider dealing, and (2) what penalties and other consequential orders should follow the Tribunal's findings of insider dealing and profits gained.

4. On the question of a timetable, we direct that Mr. Taylor Ho's statement of admitted facts be served on the Tribunal by mid-day on Wednesday, July 8. We hope this provides you with sufficient time. It is obviously necessary for the Tribunal to give careful consideration to the contents of the statement of admitted facts and satisfy itself that it does constitute an admission in law of insider dealing before the matter does proceed. So provided we have that statement of admitted facts in good time and we have had sufficient time to consider it on Wednesday afternoon we will then reconvene on Thursday morning at 9:15.

5. We can say now that provided the statement of admitted facts does constitute a full and frank admission of insider dealing then the Tribunal will give full credit to Mr. Taylor Ho for his admissions when we decide what penalties and consequential orders should follow."

On July 6th the position regarding Hui S.C. and Hui K.K. was less clear. To assist their legal representatives we made the following remarks:-

"The Tribunal is required by the Ordinance to continue its inquiry into the alleged insider dealing by the two Mr. Huis. However we will not embark on that inquiry today. We will commence it in whatever form we subsequently decide on Thursday after we have completed the procedures in relation to

Mr. Taylor Ho as outlined above. The Tribunal will decide what evidence it now wishes to hear concerning the two Mr. Huis in the light of Mr. Taylor Ho's admissions. We cannot say at this stage whether or not we will be able to have a paper inquiry in relation to them or not - the two reasons being that that decision may be affected, firstly, by what Mr. Taylor Ho says, and, secondly, by further consideration on matters of procedure by the Tribunal between now and Thursday.

Further matters which may influence our decision as to how to proceed in relation to the two Mr. Huis are, for example (and these are only examples), Mr. Taylor Ho himself may wish to give evidence in that inquiry; secondly, the two Mr. Huis may wish to submit written statutory declarations concerning their involvement in the alleged insider dealing by Mr. Ho.

Whatever procedure we do decide to follow in relation to the two Mr. Huis we are confident that because of Mr. Taylor Ho's admissions, which we hope will be sufficient, the issues overall will have been further crystallized and the proceedings overall will have been further shortened."

Both Taylor Ho's statement of admitted facts plus two statutory declarations from Hui S.C. and Hui K.K. were served on the Tribunal prior to noon on Wednesday July 8th. The Tribunal met in Chambers later on July 8th to consider their contents (they are fully set out in Chapters 4 and 6 hereafter). The Tribunal sat on July 9th and stated as follows:-

"The Tribunal has received a statement of admitted facts signed by Mr. Taylor Ho Tai-loi and his solicitors. We have also received two statutory declarations, one signed by Mr. Hui Sai Chung and other signed by Mr. Hui Kwok Kwong.

The Tribunal has had an opportunity of reading those documents and considering their effect on these proceedings. To ensure that these proceedings are open and fully recorded, we propose to adopt the following procedure this morning.

Firstly, we will invite Mr. Davies to deliver his opening to the inquiry.

Secondly, we will then invite Mr. Davies to read Mr. Taylor Ho's statement of admissions.

Thirdly, the Tribunal will then hear any submissions from the relevant parties as to the effect of the written admissions on the course the Tribunal should follow.

Fourthly, if we consider it necessary, we will require Mr. Taylor Ho to give some additional evidence on affirmation before the Tribunal this morning.

Fifthly, if the Tribunal is satisfied that the written submissions and Mr. Taylor Ho's evidence constitute a full and frank admission of insider dealing, as outlined in counsel's opening, we will give an oral finding to that effect in open court.

Sixthly, if such a finding is made, we will then invite submissions from counsel on the profits gained by Mr. Ho arising from his insider dealing and what mitigation the Tribunal should consider prior to making its decisions on penalties and consequential orders under sections 23 and 27 of CAP. 395.

Seventhly, we will then move on to consider the position of Mr. Hui Kwok Kwong and Mr. Hui Sai Chung. We will make no further directions about the two Mr. Huis until we reach that stage."

This procedure was followed. Taylor Ho gave brief oral testimony to supplement his written admissions (in answer to concerns expressed by the Tribunal). He answered questions put to him by his own counsel as follows:-

"Q. Mr. Ho, on 8 July 1998 you have signed a statement of agreed facts and that has been submitted to the Tribunal, right?

A. Right.

Q. In paragraph 19 of that statement of agreed facts you have stated that you accept and agree all the evidence as contained in the document bundle and exhibits AP 1 to AP 10 to the statement of Alex Pang contained in the bundle of expert documents?

A. Right.

Q. In the same bundle, in the bundle of expert statements, it also contains a statement of Alex Pang Cheung Hing, dated 27 March 1997, contained in that bundle from page 1 to page 9. Have you read this statement?

A. I have read that.

Q. Do you confirm and accept the content of that statement?

A. I confirm and accept the content of that statement.

Q. Mr. Pang had also come to a certain conclusion as contained in the same statement. Are you prepared to accept the said conclusion as arrived by him?

A. I accept his conclusion without any challenge.

Q. Mr. Ho, I would like to ask you another question, as contained in paragraph 35 of the statement of agreed facts. You have been explained by me the defence contained in section 10 subsection (3) of the Insider Dealing Securities Ordinance?

A. Right.

Q. And that section is about the dealings concerning with a view to profit?

A. Mmm.

Q. Do you confirm that you no longer seek to rely on the said sections as your defence?

A. I confirm.

Q. Do you also confirm that on the date of the purchase on 21 July 1995 you did have such a view to profit?

A. Correct.

Q. Mr. Ho, one final matter. I would like to take you through the various figures of Ngai Hing Hong. At the time of the purchase on 21 January 1995 of the 1 million Ngai Hing Hong shares, did you know the profit for the previous year, that is, 93/94, for Ngai Hing Hong was in the region of approximately 35 million?

A. I know it.

Q. Also, at the time of the purchase did you know the net profit, the interim net profit for Ngai Hing Hong for 94/95 is at the region of 20.8 million?

A. I know it.

Q. In fact in the statement of admission at paragraph 22, the figure is stated as 20.6 million. Which one is correct? 20.8 or 20.6?

A. I think they are very close to it. It is not very material.

Q. It is around that region?

A. Yes.

Q. Also, at the time of the purchase have you seen the consolidated accounts for Ngai Hing Hong group for the first nine months, up to 31 March 1995, showing a total profit of approximately 47.1 million?

A. Correct. I have seen it.

Q. Further, at the time of the purchase, do you confirm that you have seen the management accounts for the past 11 months of Ngai Hing Hong up to the end of May 1995, which indicates a profit in the region of about 71.4 million, before adjustment?

A. I confirm I see it.

Q. Which actually shows, by rough calculation, an increase of profits for April and May 1995, an increase of profit of about 24 to 25 million, is that correct?

A. I confirm that figure."

Further, in answer to questions from counsel to the Tribunal he gave the following evidence:-

"Q. You are confirming that you have seen the management accounts showing a profit of 74.1 million?

A. For the 11 months?

Q. Yes?

CHAIRMAN. 71.4 million.

Q. 71.4 million?

A. I have seen that figure.

Q. With the information you had in mind, as at 21 July 1995, did you appreciate that that latest information you had was not known to the general public?

A. That information is not known to the general public, I agree.

Q. As at 21 July 1995, did you appreciate that if the public had known the information which you had, then they would have started buying shares and the price of the shares would have substantially increased? Did you know that at the time?

A. The share price will increase if they know .. if the public domain know that the profits for the 11 months is 71 million?

Q. Yes, and it would have a material increase?

A. It would be a material increase."

The Tribunal then made the following statement:

> "The Tribunal when it drafts its report on the Ngai Hing Hong inquiry will make a finding that Mr. Taylor Ho's purchase of 1 million Ngai Hing Hong shares on 21 July 1995 constituted an act of insider dealing and we will identify Mr. Taylor Ho as an insider dealer arising out of that transaction."

The Tribunal then heard submission from counsel on the question of the method of calculating the profit gained from insider dealing and finally Taylor Ho, through his counsel, was given an opportunity of being heard on the question of penalties and consequential orders. All these matters are dealt with in Chapter 8 of this report.

Following our finding against Taylor Ho the Tribunal then turned its attention to the situation surrounding Hui S.C.'s and Hui K.K.'s involvement. We had considered the contents of their statutory declarations but we adjourned to July 10th to allow Mr. Lee to take further instruction from his lay clients.

On July 10th Mr. Lee informed the Tribunal as follows:-

> "My lay clients agree to the accuracy of the contents of the - or rather most of the contents of (Taylor Ho's) statement of admitted facts. As to a very minor portion they have no personal knowledge, but they do not intend to dispute the accuracy of those paragraphs."

Following further submissions and consideration the Tribunal made the following statement in open court:-

> "The Financial Secretary has required us to inquire into and determine whether Mr. Hui Kwok Kwong and/or Mr. Hui Sai Chung should be identified as insider dealers arising out of a purchase of one million Ngai Hing Hong shares by Mr. Taylor Ho Tai Loi on 21 July 1995.
>
> Their involvement in that purchase is in their provision of funds to Mr. Ho which he used to buy the stock. The facts and circumstances of the funding were originally described by our counsel in his opening as 'suspicious and unusual'. The Tribunal has now read and considered statutory declarations made by each Mr. Hui. Also, further admissions of fact have been made by them which are consistent with the admitted facts made by Mr. Taylor Ho insofar as they relate to each Mr. Hui.
>
> In addition, we have heard and accepted evidence from Mr. Taylor Ho himself in which he admits the insider dealing in question, and he further states that he acted alone and was not aided or assisted or counselled or procured by either Mr. Hui.
>
> We have now heard and considered the submissions also made by Mr. Lee on their behalf. And, finally, the view now taken by the Tribunal's counsel, Mr. Davies, is that in view of Mr. Taylor Ho's admission to make further investigations would serve no useful purpose. We agree. We have looked at and considered the SFC statements of witnesses who might have

been called before us, and we have decided that there is no available evidence which could lead the Tribunal to conclude that the involvement of Mr. Hui Sai Chung and Mr. Hui Kwok Kwong was anything more than suspicious.

In addition, we have evidence on oath from the parties themselves, and Mr. Taylor Ho, which purports to answer those suspicions. The Tribunal is therefore prepared to state now that in its report to the Financial Secretary on the Ngai Hing Hong Insider Dealing Inquiry no findings of insider dealing will be made against Mr. Hui Sai Chung or Mr. Hui Kwok Kwong."

Thus because of all the above matters the Tribunal was able to discharge its obligations and make oral findings in answer to questions (a) and (b) of the section 16(2) notice by holding what counsel described as a "paper inquiry".

CHAPTER 3

LAW

1. General matters of law

We mention a number of general principles of law which have relevance to this inquiry.

(a) Standard of proof:

We stated in our opening statement at the preliminary hearing that, subject to any submission to the contrary, the standard of proof to be applied in this inquiry would be proof to a high degree of probability. No submissions were made and accordingly that was the standard of proof applied.

(b) Findings:

Paragraph 13 of the schedule to CAP. 395 states:-

> "Every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the Chairman."

All questions of fact determined by this Tribunal were made unanimously. Any reference in this report to a question of law being a decision made by the Tribunal, may be taken as a decision made on the Chairman's direction.

(c) Tribunal members

In deciding matters of fact the Tribunal acts as a jury of three. One purpose of a Judge sitting with two members of the business and professional community of Hong Kong is for the two members to bring their experience and expertise into the decision-making process. Juries in criminal trials are often directed to use their

common sense as men and women of the world. Tribunal members have the added dimension of being men and women of the financial and business world .... 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 of which it is put is in evaluating the evidence not giving it.

(d) Admissions:

Where an implicated party makes admissions of fact by which he purports to admit the unlawful act of insider dealing the Tribunal must exercise caution and satisfy itself that the admissions of fact constitute insider dealing in law to the required standard of proof.

2. **The Ordinance**

The only type of insider dealing which was alleged in the inquiry was that described in 9(1)(a) of CAP. 395:-

S. 9(1)(a)

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

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

The ingredients of insider dealing about which the Tribunal had to be satisfied before it could make a positive finding were therefore as follows:-

(i) "Person connected"

Was Taylor Ho a person connected with Ngai Hing Hong as

defined by s. 4 CAP. 395:-

s. 4(1)

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

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

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

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

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

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

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

Taylor Ho was an executive director of Ngai Hing Hong at the time of his dealing and therefore a connected person.

(ii) "Who is in possession of relevant information"

Was Taylor Ho in possession of relevant information as defined by s. 8 of CAP. 395:-

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."

As with almost every inquiry held by this Division of the Insider Dealing Tribunal this was the central issue to be determined. Our analysis and reasons for our finding that Taylor Ho was in possession of relevant information are set out in Chapter 5.

(iii) "Deals in any listed securities of that corporation"

Did Taylor Ho deal in Ngai Hing Hong shares on July 21st 1995 as defined by s. 6 of CAP 395:-

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."

It has always been an undisputed fact that he purchased, albeit with borrowed money, 1 million Ngai Hing Hong shares on that day.

CHAPTER 4

MR. TAYLOR HO TAI LOI'S ADMISSIONS

We here set out in full Taylor Ho's signed statement.

Statement of admitted facts of Taylor Ho Tai Loi

"For the purpose of this Inquiry only, I, Taylor Ho Tai Loi, admit the following facts and matters. I have been advised by my counsel and understand that the admissions contained herein are governed by section 19 of the Securities (Insider Dealing) Ordinance, Cap. 395 ("the Ordinance").

The Inquiry

1. The two questions contained in the "Salmon" letter dated 13th May 1998 and the terms of reference of the Tribunal as stated in the opening statement on 26th May 1998 are:

   (a) Whether there has been insider dealing in relation to Ngai Hing Hong Company Limited ("NHH") arising out of the dealing in the listed securities of NHH on 21st July 1995 by or on behalf of Taylor Ho Tai Loi, Mr. Hui Sai Chung ("S.C. Hui") and Mr. Hui Kwok Kwong ("K.K. Hui") (they are jointly referred thereinafter as "the Huis");

   (b) In the event of there being insider dealing as described in paragraph (a), the identity of each and every insider dealer.

2. My answers to the two questions above are:

   (a) Yes, by me;

   (b) Taylor Ho Tai Loi

Background of Ngai Hing Hong Company Limited

3. Since graduating from the University of Hong Kong with a Bachelor of Science degree in 1976, I became an associate member of the Institute of Chartered Management Accountants and of the Hong Kong Society of Accounting respectively in 1983 and 1984 and have remained a member of these two professional bodies since.

4. Before jointing NHH, I was a financial controller of a private limited company which became a public company of which I was a company secretary.

5. On or about 15th July 1993, I joined NHH as the financial controller. I expressed my wish to acquire 5% of the NHH shares on joining NHH. However, the Huis only agreed to sell 4% of their shares to me as they wished to retain 80% of the NHH shareholding. The agreed percentage of shareholding of each director before it was listed on the Stock Exchange of Hong Kong Limited ("SEHK") was as follows:

The Huis	80%
Nelson Ng Siu Kuen	12%
Peter Liu May Kuen	3%
Ivy Liu Sau Lai	1%
Taylor Ho Tai Loi	4%
	100%

6. In or about end of March 1994, when the planning of the floatation of NHH was under way, a BVI company called Good Benefit Limited ("Good Benefit") was formed for the purpose of holding some of the NHH shares after NHH was listed at SEHK. The shareholders of Good Benefit and their respective shareholding are set out in paragraph 14 below.

7. Shortly before the floatation of NHH, I purchased 6,000,000 shares of NHH at an agreed unit price of HK$0.8 per share from the Huis. The consideration was therefore in the total sum of $4.8 million. I paid $1 million to the Huis and the remaining balance of $3.8 million

was by way of a loan advanced to me by the Huis. The loan agreements with S.C. Hui and K.K. Hui for the two loans each in the sum of $1.9 million dated 28th March 1995 is respectively in "HSC-13" and in "HTL-12".

8. Of the said 6,000,000 NHH shares I had acquired 2,940,000 of which were under my own name and 3,060,000 under that of Good Benefit's.

9. NHH was listed on the SEHK on 25th April 1994 by offering 50 million new shares to the public at $1.36 per share. NHH was principally engaged in the manufacture and sale of plastic colorants and the trading of plastic raw materials.

10. S.C. Hui, K.K. Hui, Peter Liu May Kuen, Nelson Ng Siu Kuen and Ivy Liu Sau Lai and myself were all executive directors of NHH when it became a listed company.

11. S.C. Hui is chairman while K.K. Hui is deputy chairman and managing director. I was the executive director, financial controller and company secretary of NHH.

12. Peter Liu May Kwan is responsible for the purchase of plastic resins and for the marketing of plastic colorants and plastic resins. Ng Siu Kuen is in charge of the production department and factory operations. Liu Sau Lai takes charge of personnel, office administration and customs clearance matters.

13. When NHH was listed with the SEHK, the interests of the above directors in the shares of NHH as disclosed in its 1994 annual report were as follows:-

Numbers of Shares Held

Name of Director	Personal Interests	Corporate Interests	% Shareholding
S.C. HUI	16,650,000)		33.825
K.K. HUI	16,650,000)	102,000,000*	33.825
NG SIU KUEN	-	8,820,000	4.41
LIU MAY KWAN	-	2,205,000	1.1025
LIU SAU LAI	735,000	-	0.3675
TAYLOR HO	2,940,000		1.47
TOTAL	150,000,000		75.00
PUBLIC	50,000,000		25.00

N.B.

* 102,000,000 shares of these are held by Good Benefit, a company in which Ever Win Limited ("Ever Win") and Evergrow Company Limited ("Evergrow") each respectively holds a 42.5% interest. In addition 16,650,000 shares are held by Ever Win and 16,650,000 shares are held by Evergrow directly.

14. The beneficial interest of the directors in the share capital of Good Benefit at June 30th 1994 as shown in the 1994 Annual Report were as follows:

Name of Director	No. of Shares	% of holding
S.C. HUI	4,250	42.50
K.K. HUI	4,250	42.50
NELSON NG SIU KUEN	900	9.00
PETER LIU MAY KWAN	225	2.25
IVY LIU SAU LAI	75	0.75
TAYLOR HO	300	3.00
TOTAL	10,000	100.00

15. Seven subsidiaries make up the NHH group ("the Group") as follows:

    (a) Ngai Hing Hong Plastic Materials Limited ("NHH Plastic");

    (b) Hong Kong Colour Technology Limited ("Hong Kong Colour");

    (c) Landpool Industrial Limited ("Landpool");

    (d) Safeway Development Company Limited ("Safeway");

    (e) Foment Company Limited ("Foment");

    (f) Ngai Hing (International) Company Limited ("NH International") and

    (g) Dongguan Ngai Hing Plastic Materials Limited ("Dongguan Ngai Hing").

16. NHH Plastic, Hong Kong Colour and Landpool are the only three of the seven subsidiaries which make any real contribution to the Group's turnover and profit. Although Safeway generates book profits, it only supplies fellow subsidiaries and therefore any profits carried are eliminated for the purposes of final consolidation and therefore its activities can be ignored for the purposes of assessing profitability of the Group.

Events Leading to the Commission of Insider Dealing

(A) Circumstances leading to the possession of the relevant information

17. Despite of strong advice from counsel that I may have an arguable defence on the question of relevant information under section 8 of the Ordinance and that I can rely on section 10(3) of the Ordinance by way of defence, I however is prepared to admit that the dealing of 1 million NHH shares by me on 21st July 1995 is an act of insider dealing. It is therefore admitted that there has been insider dealing

in relation to the said listed securities of NHH arising out of the dealings in the listed securities of NHH by me on 21st July 1995 within section 9(1)(a) of the Ordinance. I set out below the circumstances leading to the act of insider dealing.

18. I refer and adopt the chronology of events set out in the Document Bundle.

19. I accept and agree all the evidence contained in the Document Bundle and the exhibits marked "AP-1" to "AP-10" to the Statement of Alex Pang Cheung Hing in the Bundle of Expert Statements.

20. I accept that I was a person connected with NHH for the purposes of section 9 of the Ordinance, being a director of NHH within the meaning of section 4(1)(a) of the Ordinance.

21. Since the flotation of NHH, I usually prepared consolidated management accounts for NHH twice a year for the interim and final result announcements and supervised the accounts department. In my capacity as the executive director of NHH, I formulate the company's policies and strategies and works with other directors on individual projects. Further, the monthly management accounts of NHH Plastic, Hong Kong Colour and Landpool were submitted to me after they were completed.

22. On or about 20th May, 1995, for the purpose of negotiations with a U.S. company called M.A. Hanna ("Hanna") which was interested in acquiring a controlling stake in NHH, I, assisted by Karen Fung, prepared financial statements and a consolidated financial statement for the 9 months to 31st March 1995. The unaudited Group profit to 31st March 1995 was HK$47.1 million which was subject to various adjustments such as provisions for bad debts, bad stocks, deferred taxation and inter-company current account debit balance adjustment of HK$11 million. The unaudited interim profit for the Group for the first 6 months was $20.6 million.

23. On or about 24th May 1995, I informed the Huis and Ng Siu Kuen of the 9 month profit of $47.1 million before dispatching a covering

letter on or about 26th May 1995 enclosing a consolidated financial statement of the Group and profit and loss accounts as well as the balance sheets of NHH Plastic, Hong Kong Colour and Landpool to Hanna. The financial statements of the other subsidiaries were not given to Hanna because the amounts of these subsidiaries were too small.

24. In the first week of July 1995, I received from the two accountants, Miss Fung Lai Kuen and Miss Lo Wan Kam the management accounts of Hong Kong Colour, NHH Plastic and Landpool for the 11 months to 31st May 1995. These were submitted to Deloitte Touche Tohmastue ("Deloitte") for audit planning on or about 10th July 1995.

25. On or about 1st August 1995, I submitted to Deloitte accounts of Hong Kong Colour and NHH Plastic for the 12th month ending 20th June 1995 and those of Landpool on or about 8th August 1995.

26. To my knowledge, the gross profit margin ratios of NHH Plastic, Hong Kong Colour and Landpool were quite stable. I had stated in my statements given to the Securities and Futures Commission ("SFC") that I did not deliberately calculate the profit and that the overall performance for 94/95 would still have to take into account performance of the remaining three months and that there were still adjustments to be made by the auditors and the board's approval.

27. On reflection, I now accept and agree the information in the form of books and accounts of the Group as set out in paragraphs 21-24 was specific information which fixed me with knowledge of a very profitable year for NHH for the year 94/95.

28. I did not appreciate at the time that the said information I came to be in possession might constitute relevant information within the meaning of section 8 of the Ordinance. Despite of my counsel's advice that I might have an arguable defence in the issue of whether the said pieces of information might come within the meaning of section 8 of the Ordinance, I now realise that what I did was wrong by virtue of the said dealing and I am prepared to admit that the

aforesaid pieces of information constituted relevant information and that I knew such information to be relevant information in that I knew the aforesaid pieces of information were likely materially to affect the price of NHH shares if it had been generally known to those persons who were accustomed to or dealt in NHH shares.

(B) Circumstances leading to the dealing

29. By 15th July 1995 when it was clear that the acquisition deal by Hanna fell through, I issued an announcement on behalf of NHH to that effect.

30. On the date or shortly after the date of the said announcement, Peter Liu May Kwan told me that he wished to sell his NHH shares and he asked me for advice if an executive director could trade NHH shares. I advised him to wait for 1 or 2 days to let the price sensitive information be disseminated before he should sell. As the directors of NHH were holding 75% of the total issued share capital, he could only sell but not purchase.

31. On 18th July 1995, I learnt that Peter Liu May Kwan had disposed of 1 million NHH shares. As I was interested to buy more NHH shares, I asked in an informal board meeting of all the executive directors including the Huis if they were interested or wanted to buying 1 million NHH shares disposed by Peter Liu May Kwan. All the executive directors said that they were not interested, I informed them of my interest in doing so.

32. Before I purchased the 1 million NHH shares, I had in fact taken careful steps in ensuring all the price-sensitive information which I thought at the time was only referrable to the acquisition by Hanna was disclosed and published. I refer the bundle of correspondence with SFC and HKSE containing in exhibit “HTL-29”.

33. As an abundance of caution, I further sought advice from the company solicitor, Miss Gloria Lam of Messrs. Jennifer Cheung & Co on the acquisition by an executive director of the one million NHH shares. I was advised that since the intended purchase did not

fall within one month of the announcement of the final results of the Group and that Peter Liu May Kwan had already completed the selling of one million shares, there was nothing improper for me to do the purchase so long as a declaration of interest could be made.

34. After taken the steps as aforesaid, on 21st July 1995, through China Everbright Securities ("China Everbright"), I bought 1 million NHH shares. I made a declaration of interest to the SEHK. Contract notes of the purchase can be found in the Document Bundle. I acquired the said shares at a price range of $2.050 to $2.175 per share at a total cost of $2,137,358.40. I paid China Everbright two sums of $139,358.40 and $2 million. I realized that I had paid China Everbright too much during the interviews with SFC.

35. Despite of the advice given by counsel that I might have an arguable defence under section 10(3) of the Ordinance, I am however prepared to accept that I bought the said 1 million shares on 21st July 1995 with the knowledge of relevant information referred to herein.

36. I deal in the said shares in my own account and not on behalf of the Huis or anyone else. Apart from the legal advice I had been given from the company solicitor aforesaid, I had neither been encouraged, counselled or procured by the Huis or any one else in the purchase of the shares.

<u>Funding of the shares</u>

37. Apart from the loan in the sum of $3.8 million I had obtained as mentioned above for the purchase of the 6 million NHH shares, I had also been provided with a further loan in the sum of $6 million from the Huis. A schedule of loan and repayment amount is at Statement Bundle I.

38. During the period of 24th, 25th and 26th July 1995, I had obtained altogether a loan in the total sum of $6 million from the Huis. I had used $2 million to purchase the said NHH shares. The remaining sum of $4 million of the loan was intended to fund a joint venture project with China Association for Peaceful Use of Military

Industrial Technology ("CAPU"). I refer to the Cooperation Agreement dated 21st September 1995 signed between a company called Hung Wai International Limited, a company solely owned and controlled by me and CAPU.

39. Before the signing of the said Cooperation Agreement, I had already started very active negotiations with CAPU in early July 1995. The said loan of $6 million was requested from the Huis as a stand-by investment capital in the event that an agreement could be reached at any stage.

40. The agreement for the said loan in the sum of $6 million was oral and it was provided that the interest rate was calculated according to the Hong Kong Bank HKD prime interest rate. I only requested the Huis to deposit the said loan into my Hang Seng Bank account no. 226-059376-001. It was during the interviews by the investigator of the SFC that I came to realise that the said three sums in $2 million each were deposited into my account by a company called First International Resources Limited ("FIRL"). It was only after I had read the statements of the Huis given to the SFC that I came to know how the said three sums of $2 million each were deposited into my Hang Seng Bank account.

41. On 4th August 1995, I made repayments of the first loan in the sum of $3.8 million to the Huis by drawing two cheques each in the sum of $1,893,994.41 in favour of Evergrow and Ever Win.

42. The said repayment sum of $1,893,994.41 was calculated on the basis of the prevailing Hong Kong Bank prime interest rate at the relevant periods. I enclose herewith a letter dated 19th June 1998 to Messrs. S.C. Yeung & Co. from Hong Kong and Shanghai Bank marked "Annexure A", setting out the prime interest rate of the period between 29th March 1994 and 4th October 1995. I further enclose a table marked "Annexure B" showing how the amounts of various partial repayments of the said loans were calculated.

43. On 19th September 1995 after NHH announced its final result, I sold 2 million NHH shares realising a total sum of $8,165,391.00. A

declaration of interest was filed with the SEHK. Contract note for the sale can be found in the Document Bundle.

44. With the money I had obtained from the sale, I repaid to the Huis further sums for the said two loans. I refer to the said table showing the loan and repayment amounts and Annexure B.

45. I have no clear recollection as to how the rest of the money was spent. I can categorically state that most of the remaining proceeds would have been used to fund the said joint venture project.

46. At the time of the dealing, although I was a "person connected" to NHH as defined by section 4 of the Ordinance, I did not abuse of my position. I thought I had duly discharged all the duties imposed on me as an officer and director of NHH. On careful reflection, I come to realise that I was wrong and am prepared to shoulder full responsibilities for the mistake I made. I whole-heartedly apologise for the mistake I made. I whole-heartedly apologise for my wrongful act and regret what I have done.

47. I hope and trust that the Tribunal, after having heard my counsel's mitigation on my behalf will be lenient to me. I am prepared to offer full cooperation and assistance to the Tribunal in relation to the Inquiry."

Some of the documents referred to in this statement together with further information relevant to our inquiry are listed as Annexures to this report. Chronologies of corporate events and price movements are at Annexures B, C and D. Extracts from the company's financial reports are at Annexures F, H and J. Taylor Ho's trading in shares and borrowing are at E and K respectively.

CHAPTER 5

THE TRIBUNAL'S FINDINGS IN RELATION TO MR. TAYLOR HO TAI LOI

The factual basis on which the Tribunal considered Taylor Ho's conduct was those facts as set out in Chapter 4 together with his unchallenged oral testimony as set out on pages 13-16 in Chapter 2.

The sole issue to be determined was - did his admissions constitute an admission that he knew he was in possession of relevant information at the time he dealt?

(A) "Relevant"

In a nutshell the information he possessed on July 21st 1995 which the public did not possess was that:-

(i) Ngai Hing Hong's consolidated accounts for 9 months up to 31st March 1995 showed a total profit of approximately $47.1 million and

(ii) Ngai Hing Hong's management accounts for 11 months up to 31st May 1995 showed a profit before adjustments of approximately $71.4 million.

He was further aware that the information in the public domain at that time was limited to knowledge that:-

(i) The interim results for the first 6 months of the year showed a profit of approximately $20.8 million (Annexure F).

(ii) The annual result for the previous year 1993/4, showed a profit of approximately $35 million (Annexure H).

Thus, in simple terms he knew that if the public wanted to estimate the final profit for 1994/5 they would probably double the

half yearly figure and arrive at a figure of about $40 million which represents an improvement over the 1993/4 figure of about 14% whereas he knew that the unaudited accounts for 11 months of the year represented an improvement over the previous year of about 105%. He also knew the final figure would not be this high because adjustments for tax and other provisions would have to be made. Nonetheless the annual figure which was subsequently published on September 18th 1995 showed a profit of $60.9 million. This was an improvement of over 70% (Annexure J).

No issue arose as to whether Taylor Ho was in possession of this information. He was the company's financial controller who was responsible for the preparation of the consolidated and management accounts. He had all the figures at his fingertips. He specifically admitted as such.

To qualify as "relevant" information for the purpose of insider dealing the information must be:-

(a) "specific" about Ngai Hing Hong

(b) "not generally known" to people likely to deal in Ngai Hing Hong shares and

(c) information which would cause the price of the share to be "materially affected" if it were generally known.

In coming to the conclusion that Taylor Ho's information did constitute relevant information we wish to emphasize one matter at the outset. It is not our conclusion that mere knowledge of the likely annual or interim results in advance of their publication would constitute possession of relevant information in every case.

Such information would clearly be both "specific" and "not generally known". In Insider Dealing 1st Edition the author states:-

> "Other examples (of specific, unpublished) information would include knowledge of ... the annual and half yearly results ...."

and in the 2nd Edition:-

> "Equally specific would be knowledge of substantial losses (*and therefore profits also*) made by a company even though the precise magnitude of the losses (*or profits*) is not yet clear."

However the facts and figures in every case will be different and every case turns on its own facts. To constitute relevant information the difference between the results which the public might predict and the results which the insider knows must be significant. If it were not significant the share price would not be materially affected. To arrive at a decision in each case the Tribunal must make a judgement from the combined effect of the figures themselves, the expert evidence concerning those figures and the insider's own testimony either admitting or explaining those figures.

Dealing in turn with each of the 3 ingredients of relevant information (above):-

(a) Knowledge of management and consolidated account is plainly information which is specific to the company.

(b) and (c) Whether it is information which is "not generally known" and "material" and therefore price sensitive.

In addition to Taylor Ho's admissions in relation to each of these ingredients the Tribunal also had the benefit of considering the unchallenged expert evidence from Mr. Alex Pang Cheung Hing.

Mr. Pang is a qualified accountant and has worked for the SFC and its predecessor for 15 years. He presently holds the office of Director of Enforcement in the SFC. His written evidence before the Tribunal in this inquiry contained the following statements:-

> "Coupled with the news of intended acquisition by an independent third party released on 29 June 1995, the rapid re-

rating of the stock in early July to around $2 was quite reasonable, as the stock was still trading on an expected price/earnings ratio of 10. However, the Final Results announcement on 18 September 1995 of a net profit of $60.9 million, which meant a doubling of profit for the six months ended 30 June 1995 when compared to the six months ended 31 December 1994, came as a surprise to many. The market clearly reacted to the good news of a $60.9 million profit for the full year to 30 June 1995, and despite a steep rise prior to the announcement the price on 19 September 1995 moved against a downward market (HSI dropped 124 points from the previous day) by jumping another 5.8% to close at $4.10 per share. The re-rated price level of $4.10 lasted throughout the rest of the week following the announcement. As such news of the $60.9 million profit was price sensitive information ..." (see Annexures C and D).

".... I think knowledge of the 11 months' profit of approximately $71.4 million gave a clear indication of what the final would be. The reason for the decline from $71.4 million to $60.9 million can be explained by the fact that the 12th month was not as successful and various audit adjustments needed to be made. I have also examined the audit adjustments and note that they were consistent with adjustments in the prior year. I was also informed that Ho was aware of both the sales and administrative charges for the 12th month. Accordingly I take the view that Ho, as financial controller, would have been capable of accurately estimating what the final results would be.

On the basis of the aforesaid information I am led to believe that Ho had before him at the time he purchased the 1 million NHH shares on 21 July 1995:

(a) knowledge of the 11 months' profit of approximately $71.4 million; and

(b) the sales and administrative charges of the 12th month of the fiscal year ended 30 June 1995.

I tend to believe that Ho bought the aforesaid 1 million NHH shares whilst in possession of price sensitive information."

Mr. Pang's statement was made before he learnt that Taylor Ho admitted knowledge of the consolidated and management accounts. Consequently, for example, his statement "Accordingly, I take the view that Ho, as aforesaid controller, would have been capable of accurately estimating what the final results would be." is now supplemented by Taylor Ho's own evidence - in particular at paragraphs 17, 27 and 28 of his statement and his evidence on pages 15 and 16 in this report.

Therefore, based on the totality of the evidence coupled with the absence of any submissions to the contrary the Tribunal was satisfied that the difference between what Taylor Ho knew and the likely Ngai Hing Hong investors knew at the material time was sufficiently significant and material to constitute relevant information.

(B) Knowledge

The only remaining ingredient to be considered was whether the evidence proved that he knew that the information in his possession was relevant information as defined by s. 8.

On this issue we did not look beyond his admission that he knew. At page 16 of this report we have quoted his evidence that he knew and appreciated at the time of his dealing that a material rise in the price of the share would result from the non-public information in his possession.

(C) Defences

Once satisfied that the purchase of 1 million Ngai Hing Hong shares on July 21st 1995 constituted insider dealing the Tribunal had to consider the application of the s. 10 defences, if any, before identifying Taylor Ho as an insider dealer.

If a s. 10 defence is raised the burden of proving it rests on the person who seeks to rely on it and the standard of proof is on a balance of probabilities.

A Tribunal should always consider whether or not one or more of the defences in s. 10 might apply even when they are not raised. It is conceivable, for example, that they may not have been raised due to a misunderstanding or an oversight.

Where however, as is this case, they have been specifically brought to the attention of the implicated party who through his counsel states that he does not rely on a defence then it is safe for the Tribunal to make no further investigation. In this case Taylor Ho further gave specific evidence that his purchase of the shares was with a view to gain for himself and not otherwise.

To conclude, all the above matters enabled us to state that we would make a finding in this report consistent with his admission in paragraphs 2 and 17 of his statement of admitted facts. (See page 24 and 27 Chapter 4.) That finding is set out in Chapter 9.

CHAPTER 6

MR. HUI SAI CHUNG'S AND MR. HUI KWOK KWONG'S STATUTORY DECLARATIONS

The 2 statutory declarations are to all intents and purposes identical. We set out in full Hui K.K.'s declaration:-

Statutory declaration of Hui Kwok Kwong

"I, HUI KWOK KWONG, of House 36, Savanna Garden, Tai Po, New Territories, Hong Kong, solemnly, sincerely and truly declared as follows:

1. I am advised by my legal advisers that, so far as it concerns me, the present inquiry is to determine whether I was involved in insider dealing in relation to Ho Tai Loi Taylor's ("Taylor Ho") purchase of one million Ngai Hing Hong Company Limited ("NHHCL") shares on 21 July 1995. I am further advised that there is suspicion that Hui Sai Chung, Taylor Ho and I were a joint enterprise in Taylor Ho's purchase of the one million NHHCL shares on 21 July 1995 and/or that Hui Sai Chung and I have counselled and procured Taylor Ho in dealing with the said one million NHHCL shares.

2. I wish to make this statutory declaration to supplement the earlier statements given to the Securities and futures Commission.

A. Personal Background and relationship with Taylor Ho and Hui Sai Chung

3. I am 49 years old. I am married and have one son and one daughter, aged respectively 27 and 20. My son is working in the mainland and my daughter is studying in a university in Canada.

4. I was educated up to Form 2. I came to Hong Kong from the mainland in 1955. I began my working life at the age of 16. In 1970, Chow Chi Wai, Hui Sai Chung and I founded Ngai Hing Hong. In 1993, Ngai Hing Hong Company Limited ("NHHCL") was incorporated in Bermuda. Since 25 April 1994, NHHCL has been listed in the Hong Kong Stock Exchange Limited. I am the Deputy Chairman and Managing Director of NHHCL responsible for production with in NHHCL. I am aware of the business turnover, performance, income and expenditure of all subsidiary companies of NHHCL.

5. I have known Hui Sai Chung since 1959, when Hui Sai Chung first came to Hong Kong. Hui Sai Chung has been the Chairman and executive director of NHHCL since its listing in Hong Kong Stock Exchange Limited.

6. Taylor Ho was the former Financial Controller and Company Secretary of NHHCL during the period from 15 July 1993 to 18 February 1998. He now remains as an executive director of NHHCL. I first knew him in 1988 when he was working in Luk's Industrial Company Limited as financial controller.

7. Hui Sai Chung and I have been major shareholder of NHHCL. When NHHCL was listed in the Hong Kong Stock Exchange Limited, Hui Sai Chung and I appointed some staff to be directors and sold some shares of NHHCL to them, in order to foster this sense of belonging to NHHCL. Such staff include Liu May Kwan, Ng Siu Kuen, Liu Sau Lai and Taylor Ho. Some of their shares are held under a limited company, Good Benefit Company Limited ("GBCL") and they in turn own a certain percentage of interest in GBCL.

8. The staff mentioned in paragraph 7 hereof did not pay Hui Sai Chung or me in full in the said purchase of the NHHCL shares. So, they were indebted to Hui Sai Chung and me.

B. The Loans to Taylor Ho (see Annexure K)

When NHHCL was listed

9. When NHHCL was listed in the Hong Kong Stock Exchange Limited, Taylor Ho purchased six million shares of NHHCL at a unit price of 80 cents. He borrowed 3.8 million dollars from Hui Sai Chung and me with interest calculated according to the prime rate offered by the Hongkong Bank. Out of his six million shares, 2,940,000 shares were held under his name and 3,060,000 shares were held under GBCL, of which he owned 3% interest.

10. Taylor Ho only paid one million dollars in his purchase of the six million shares. Ho was indebted to Hui Sai Chung and me in the sum of 3.8 million dollars. A copy of the I.O.U. stating that Taylor Ho was indebted to me in the sum of 1.9 million and its English translation can be found in pages 90 and 91 of the Statement Bundle 1 and exhibited hereto "HKK-1". I know that Taylor Ho signed a similar I.O.U. for 1.9 million in respect of his loan from Hui Sai Chung as well.

After NHHCL was listed

11. I recall that on or about 20 July 1995, Taylor Ho raised in an informal directors meeting that Liu May Kwan had sold one million shares of NHHCL in the market. Taylor Ho asked those present, including Hui Sai Chung and me, if anyone would like to purchase the same amount of shares in the market. Nobody was interested and Taylor Ho said that he was interested in buying the one million shares.

12. Taylor Ho then approached me and Hui Sai Chung and asked if we could lend him ten million dollars for the purpose of buying one million NHHCL shares and for his investment in the mainland.

13. After some consideration and discussions with Hui Sai Chung, Hui Sai Chung and I agreed to lend Taylor Ho six million dollars with interest calculated accordingly to the prime rate offered by the Hongkong Bank.

14. Hui Sai Chung asked me to arrange the six million dollars loan. I did not have enough cash at that time and I thought it would be better if the loan was advanced to Taylor Ho by some third party. This was because if Taylor Ho defaulted in repayment, it would be embarrassing for Hui Sai Chung or me to sue him. As a result, I asked Mr. Chung Wing Wah of First International Resources Limited ("FIRL") to deposit six million dollars into the bank account of Taylor Ho, but Mr. Chung informed me that he would leave for U.S.A. on or about 23 July 1995 and that I might contact his colleague Mr. Ngan Kwai Kwok to get the money. On or about 23 July 1995, I rang Mr. Ngan and asked him to deposit six million dollars into Taylor Ho's bank account. I believed Mr. Ngan had deposited the said sum into Taylor Ho's bank account. I took that the loan was from Mr. Chung Wing Wah.

C. <u>Reasons for Advancing Loans Ho Tai Loi</u>

15. Hui Sai Chung and I are not well educated at all. I considered Taylor Ho to be a very competent, reliable and honest financial controller and company secretary. While placing trust and reliance upon Taylor Ho in the areas of finance, accounts and dealings with the Hong Kong Stock Exchange Limited and other regulatory bodies, I took him as a good friend as well. Furthermore, he had 3,060,000 NHHCL shares held under GBCL, which I considered to be good security for the loans, as Hui Sai Chung and I owned more than 80% interest in GBCL.

D. <u>Repayment of the Loans</u>

16. Taylor Ho has made partial repayments together with interest to me and Hui Sai Chung as shown in a table prepared by him. Copies of the table and its English translation are produced and

exhibited “HKK-2”.

E. Any Dealing with the one million NHHCL shares?

17. When Hui Sai Chung and I agreed to lend Taylor Ho the six million dollars, I have been informed by Taylor Ho that he would use portion of the money to buy one million NHHCL shares. At that time, I anticipated the business of NHHCL for the year ending 30 June 1995 would be better than that of last year, but I had no idea as to exactly how much better. This was because I was not in charge of Accounts Department of NHHCL. Anyhow, when Hui Sai Chung and I agreed to lend the six million dollars to Taylor Ho, it did not occur to me that Taylor Ho’s proposed purchase of the one million NHHCL shares could amount to insider dealing. I just thought that Taylor Ho would like to take the opportunity to increase his interest in NHHCL, because directors of NHHCL could only hold a maximum of 75% of the issued shares.

18. I declared that I have never been a party to Taylor Ho’s purchase of the one million NHHCL shares on 21 July 1995 and I have never owned any interest in the one million NHHCL shares. I have never counselled, procured or encouraged Taylor Ho in the buying and selling of the one million NHHCL shares or in committing any form of insider dealing.

And I, having been warned of the consequences of making a false declaration, make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance.”

The only material differences in Hui S.C.’s declaration are under the heading of personal background. In that regard Hui S.C.’s states:

“3. I am 52 years old. I am married and have three sons, aged 25, 23 and 21. They are now studying in Universities in Canada.

4. I was educated up to primary 6. I was born in Singapore and came to Hong Kong from the mainland in 1959. I began my working life at the age of 17. In 1970, Chow Chi Wai, Hui Kwok Kwong and I founded Ngai Hing Hong. In 1993, Ngai Hing Hong Company Limited ("NHHCL") was incorporated in Bermuda. Since 25 April 1994, NHHCL has been listed in the Hong Kong Stock Exchange Limited. I am the Chairman and an executive director of NHHCL responsible for the marketing department. I am also responsible for formulating and supervising implementation of strategies as well as market promotion and sales of NHHCL."

The appropriate declarations and signatures appear at the conclusion of each statement.

In addition both Huis either agreed or accepted or did not dispute Taylor Ho's written admissions.

CHAPTER 7

THE TRIBUNAL'S FINDINGS IN RELATION TO MR. HUI SAI CHUNG AND MR. HUI KWONG KWONG

We have already set out our findings at pages 17 and 18. In this chapter we briefly explain our reasons for making this determination.

The original allegation against Hui K.K. and/or Hui S.C. was that by their loan to Taylor Ho they either counselled or procured his insider dealing or, alternatively, they were a party to a joint enterprise with him to insider deal. In either event they could be identified as insider dealers under section 9(1)(a) of CAP. 395.

Before making its determination the Tribunal considered the following:-

(A) The other available evidence in the form of witness statements to the SFC from those witnesses who would have been called had a full inquiry been held.

(B) The statutory declarations and Taylor Ho's statement of admitted facts.

(C) Submissions made by counsel for the Tribunal, Mr. Peter Davies and counsel for the Huis, Mr. Josiah Lee.

(A) The other available evidence

Nine witnesses had been sent s. 17 notices to attend before the Tribunal to give evidence. They were:-

- two members of the accounting staff of Ngai Hing Hong (Fung Lai Kuen and Lo Wan Kam)

- a senior audit manager of "Deloitte" (Richard Ho Kam Wing)

- two senior employees of First International Resources Limited (Chung Wing Wah and Ngai Kwai Kwok - although the former was resident abroad and had not been located)

- two brokers (Peter Ko of China Everbright Securities and Henry Fung of Pacific Foundation Securities)

- a director of Ngai Hing Hong (Peter Liu May Kwan)

- SFC Director of Enforcement (Alex Pang Cheung Hing)

It is fair to say that most of this evidence was directed towards the issue of Taylor Ho's possession of information.

The mere provision of funds to Taylor Ho on its own is clearly insufficient evidence of counselling or procuring or being a party to a joint enterprise. To establish involvement on any of these bases it would be necessary to establish a reason for doing so. An obvious example would be to participate in the profits. No such evidence exists.

The suspicious or unusual features of the loan, to which our counsel alluded in his opening, related to the lack of documentation or formalities at the time of making the loan.

Whilst those features remain they have to some extent been explained by the statutory declarations and statement of admitted facts. It was not difficult for the Tribunal to decide that an intensive examination of that limited portion of the available evidence which dealt with the circumstances of the loan would not have resulted, either in proof of insider dealing by the Huis, on the one hand, or completely lifted the suspicion, on the other hand. In short, it would have been a fruitless exercise and there was sufficient evidence before us to make the finding we did at the same time as discharging our obligation under s. 16 of CAP. 395.

(B) The Statutory Declarations and Statement of Admitted Facts

The former provided evidence consistent with the submission that the Huis were not insider dealers and the latter provided evidence that Taylor Ho was acting alone when he insider dealt.

(C) Submissions

One of the functions of counsel to the Tribunal is to assess the weight of the evidence and advise the Tribunal accordingly if his advice is sought.

On July 9th 1998 we asked Mr. Davies for his opinion on the case against Hui S.C. and Hui K.K. in the light of their statutory declarations and Taylor Ho's admissions.

The points he submitted that the Tribunal should take into account were:-

(a) to balance "effectiveness against cost",

(b) to treat Taylor Ho as an "honest witness" who had given a "fairly full explanation",

(c) that the evidence gathered might cause the Tribunal to conclude that "we have got to the bottom of this" and that "it was only one dealing on July 21st which Taylor Ho has admitted and, in effect, the Huis had no involvement".

Counsel to the Tribunal's realistic and helpful opinion was crystallized the next day by saying (referring to his observations summarized above) - "If I can just qualify that by these remarks. I am not saying that what the Huis did and the way they behaved left them entirely free from suspicion, but that is another matter, I don't think that further questioning or further evidence would serve us in any way in relation to the offence of insider dealing."

After further consideration the Tribunal then made its oral finding which appears on pages 17 and 18 of this report.

CHAPTER 8

PENALTIES AND CONSEQUENTIAL ORDERS

S. 22(2) of CAP. 395 requires that this report shall contain the Tribunal's reasons for its determinations under s. 16(3) (which are contained in Chapters 5 and 7) and its reasons for determinations under s. 23 and 27.

The relevant parts of s. 23 state:-

s. 23. Orders etc. of Tribunal

"(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 the course of the inquiry Taylor Ho was given an opportunity of being heard on these questions, pursuant to s. 23(2) and Miss Levy made helpful submissions on his behalf.

Our decisions and reasons under each section are as follows:-

s. 23(1)(b) - Payment of profit gained as a result of insider dealing

The Ordinance permits an order of an amount "not exceeding" the profit gained by the insider dealer. Our first task therefore is to decide what was the full amount of the profit gained. The Tribunal must then decide if there are any grounds for reducing or discounting that figure. Reasons for reducing the full amount might include:

(a) Subtraction of transaction costs.

(b) the occurrence of "supervening events" i.e. events occurring between the purchase by the insider dealer and the information being made public which are wholly unrelated to information about that corporation which caused the insider dealer to deal and which had a material effect on the share price. It is arguably unfair that the insider dealer should have to pay for the further increase in the share price caused by unrelated events about which he had no knowledge and could not have foreseen.

(c) Other reasons based on the fact that the section uses the phrase "not exceeding" which implies it could be less.

Our starting point in deciding how to calculate the "profit gained" is to apply the following definition:-

> " 'profit gained' is the difference between the purchase 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 non-public information."

Difficulties can arise in the application of this definition when, for example, the insider dealer disposes of his shares at different times. He may for example, sell some before the news is made public, some as soon as it is made public, some many weeks or months after it is made public and some not at all.

These difficulties do not arise in this case because Taylor Ho bought one million shares on July 21st 1995 and sold two million on September 19th 1995, one day after the relevant information was published.

The only issue which falls for consideration in calculating the full amount of the profit gained is whether the actual price of the share at the time of sale is used (because the trading was on the very next day after the publication) or whether a notional figure should be used which represents the value of share as a result of the publication (by averaging its price over a few days after publication).

Miss Levy submitted to the Tribunal that a notional figure should be calculated and used. Her reason is that after Taylor Ho had sold two million in September he still owned, either in his own name or through "Good Benefit", in excess of one million. Therefore, it is submitted, it is not possible to say that the two million he sold in September included the one million he had bought in July. The one million he bought in July may have formed part of those he still retained after his sales.

We think the argument is ingenious but without substance. Taylor Ho admits he bought shares in July with a view to making a profit on inside information. We must assume therefore that the profit he made came from the shares he bought for that purpose.

That being the case the Tribunal considers that, in this case, because all the shares purchased were disposed of almost immediately after the publication of the annual results the only logical figure to use in our calculations is the actual sale proceeds. The full amount is therefore:-

Proceeds of 1 million shares at $4.1 per share on Sept. 19th 1995	-	$4,100,000
Cost of 1 million shares on July 21st 1995	-	$2,137,358
		$1,962,642

As it happens the difference between this figure and a figure using a notional value is only about $25,000.

The next stage is to decide if any deduction should be made.

(a) Transaction costs: These should be deducted. They amount to $17,304 and therefore the adjusted profit would be $1,945,338.

(b) Supervening events: Ms Levy on Taylor Ho's behalf conceded that there were no supervening events which should be taken into account when calculating the profit. The Tribunal was provided with a bundle of press cuttings which had appeared in various local newspaper and journals over the relevant period. We agreed that there were no events of such a nature that would qualify as a "supervening event" for the purpose of calculating the profit gained.

(c) Other reasons: It is the view of this Tribunal that mitigating factors concerning both the insider dealer himself and his act of insider dealing and the issue of his means are matters which should not be taken into account when making an order under s. 23(1)(b) "not exceeding" the profit gained. However, such matters are highly relevant to orders under s. 23(1)(c) and (a).

We find no other reasons to reduce the s. 23(1)(b) order.

Thus our order under this section will be to pay to the Government the sum of $1,945,338.

s. 23(1)(c)

This provides for a penalty of up to three times the amount of the profit gained. The maximum which could be imposed is therefore $5,836,014.

We take into account the following matters before deciding on the appropriate amount.

(a) Mitigation advanced on his behalf

(i) By far the most significant mitigating factor is his admission of insider dealing. In this case the admission was made not at the earliest opportunity but before any witnesses were called or any evidence heard. It was full and frank. Such an admission should and will attract a significant reduction in both the financial penalty and the period of disqualification under s. 23(1)(a).

(ii) Miss Levy has also urged us to accept that the type of insider dealing committed by Taylor Ho is at the lower end of the scale. We do accept this. He did not embark on a scheme of deceit and secrecy. In fact his purchases were made very openly. The quantity of shares he bought was the same as that recently disposed of by a fellow director. All his fellow directors were made aware of his intended purchase and none of the SEHK listing rules were breached.

(iii) His decision to buy was made entirely on his own. Apart from his borrowing he did not recruit the assistance of any other party which might have jeopardized their position and unwittingly got them involved in allegation of insider dealing. It was in short a foolish act which, although in breach of s. 9(1)(a) was not an act of flagrant and deliberate disregard of the law governing securities trading. As with many implicated parties who have been found to be insider dealers by this Division of the Insider Dealing Tribunal, Taylor Ho is more conversant with the stringent provisions of CAP. 395 now than he was in July 1995.

(iv) Taylor Ho has hitherto led an unblemished, industrious and successful life. This case will have a detrimental effect on his future livelihood and professional reputation.

(v) He has expressed remorse for his wrongdoing.

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

(b) Means

The possibility that the penalty may be met by someone other than the insider dealer should not be taken into account when deciding the appropriate penalty. Equally (although not relevant to this case) a penalty should not be increased because of the considerable wealth of the insider dealer.

Some enquiries must be made into the insider dealer's means so that the Tribunal can satisfy itself that the penalties are both fair and can be met. It is not necessary to include in this report the details of his financial circumstances. Our inquiry as to means can be found between pages 69 and 87 of the transcript.

It seems, in short, that Taylor Ho is a professional man who has financial problems which are not insurmountable. To get a guide as to his ability to pay we indicated to his counsel the approximate penalty we had in mind and asked if he would need time to pay. Six month was requested.

(c) Totality

The principle of totality must be taken into account. The combined total of orders under sections 23(1)(b) and (c) together with an order under s. 27 (expenses) is potentially a very large sum. By his very proper admission of insider dealing the total liability has been kept to a minimum. The credit he earns from his admissions is also reflected by the smaller order for expenses under s. 27 which will inevitably follow.

Bearing in mind all of the above matters the Tribunal has decided that, in this case, the appropriate multiplier to be used had he not admitted his insider dealing would have been less than one. A convenient and fair figure would have been $1,500,000. The credit he has earned from his admission, his conduct since the start of this inquiry and the other mitigating factors which have been prayed in aid, will result in a further reduction of one third. We will therefore impose a

penalty of $1,000,000 under s. 23(1)(c).

s. 23(1)(a) - Disqualification

The mitigating factors already referred to have equal consideration to an order under s. 23(1)(a). Taylor Ho remains an executive director of Ngai Hing Hong and is also a director of five private non-listed companies. We have been urged to make no order of disqualification under this section. We repeat in this report as the Tribunal has said in previous reports that whilst it is open to the Tribunal to make no order of disqualification it would only do so in exceptional circumstances.

In this case we do not regard the circumstances as exceptional but the strength of the mitigation persuades us to only disqualify him from directorships of listed companies for a short period. The exact terms of our order are set out in the following chapter. The period will be for one year.

s. 27 - Expenses order

There is no reason not to make an order that a s. 27 order shall follow the event. The specific sums ordered are specified in Chapter 9. The Tribunal's expenses have been kept to a minimum and have been calculated in the same way as in previous enquiries. They will include the fees and salaries of the Tribunal members and staff, the costs of the court interpreters, reporters and other administrative expenses directly attributable to the inquiry. We have not included any expenses incurred by the SFC.

The expenses of the Department of Justice are as requested by them and have not been taxed down by the Tribunal.

CHAPTER 9

SUMMARY OF DETERMINATION IN ANSWER TO THE NOTICE SERVED UNDER S. 16(2) CAP. 395 AND CONSEQUENTIAL PENALTIES AND ORDERS UNDER S. 23 AND S.27

(1) In answer to question (a):-

The dealing in the listed securities of Ngai Hing Hong Company Limited on July 21st 1995 by Taylor Ho Tai Loi constituted insider dealing contrary to s. 9(1)(a) of CAP. 395.

(2) In answer to question (b)

The identity of the one insider dealer is Taylor Ho Tai Loi.

(3) In answer to question (c)

The amount of profit gained as a result of the insider dealing was HK$1,945,338.

(4) No findings of insider dealing are made against either Hui Sai Chung or Hui Kwok Kwong

(5) The Tribunal makes an order under s. 23(1)(a) CAP. 395 that Taylor Ho Tai Loi shall not be a director or a liquidator or a receiver or a manager of the property of a listed company for a period of one year with effect from the date of this order.

(6) The Tribunal makes an order under s. 23(1)(b) CAP. 395 that Taylor Ho Tai Loi shall pay to the Government the sum of HK$1,945,338 being the amount of profit gained as a result of the insider dealing.

(7) The Tribunal makes an order under s. 23(1)(c) CAP. 395 that Taylor Ho Tai Loi shall pay a penalty of HK$1,000,000.

(8) The Tribunal makes an order under s. 27 CAP. 395 that Taylor Ho Tai Loi shall pay to the Government the sum of HK$548,488 being the expenses of Tribunal and HK$536,463 being the expenses of the Department of Justice.

(9) The Tribunal orders that all sums under paragraphs (6), (7) and (8) shall be paid within six months of the date of this order.

ACKNOWLEDGEMENTS

The Chairman has, once again, been given invaluable assistance and support both in the inquiry itself and in the preparation of this report from the two Tribunal members, Mr. Felix Chow Fu Kee and Mr. Michael Sze Tsai Ping.

The inquiry was heard with relative expediency thanks also to the professionalism of all counsel and solicitors involved together with the now familiar efficiency and reliability of the Tribunal staff and verbatim reporters.

The Honourable Mr. Justice Burrell
Chairman

Mr. Felix Chow Fu Kee
Member

Mr. Michael Sze Tsai Ping
Member

July 23rd 1998