

REPORT OF THE INSIDER DEALING TRIBUNAL
APPOINTED BY THE
FINANCIAL SECRETARY
PURSUANT TO HIS POWERS UNDER
SECTION 141H OF THE SECURITIES ORDINANCE (CAP. 333)
TO INQUIRE INTO POSSIBLE INSIDER DEALING
IN THE ORDINARY SHARES OF
HUTCHISON WHAMPOA LIMITED
AT SOME TIME PRIOR TO 11.30 p.m. ON 25 SEPTEMBER 1979

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Preliminary

1. By notice dated the 12th day of July 1980 the Financial Secretary pursuant to his powers under section 141H of the Securities Ordinance Cap. 333 required the Insider Dealing Tribunal to meet and to inquire whether (a) culpable insider dealing in relation to ordinary shares in Hutchison Whampoa Limited had taken place either on the 25th September 1979 or before that date and (b) the identity of the persons (if any) involved in such insider dealing and the extent of their culpability.
2. The Insider Dealing Tribunal is established under section 141G of the Securities Ordinance. The present Chairman is Mr. Justice Barker. The other two members appointed for the purposes of this enquiry were Michael John Roberts, a director of Lazard Brothers & Co., Limited, and Mrs. Maisie Wong, Barrister-at-Law.
3. Since this is the first occasion upon which the Tribunal has been called upon to make an inquiry, we are of the view that it would be helpful if we set out the relevant statutory provisions involved.
4. The preamble to the Securities Ordinance reads as follows:-

To establish a Securities Commission and a federation of stock exchanges, to make provision in relation to stock exchanges and dealers in securities, to control trading in securities and the business of making investments, and to provide for the protection of investors and associated matters.

Part XII A of the Ordinance which is headed "Insider Dealing" and which was brought into force on the 17th day of February 1978 was clearly enacted for the purposes of the protection of investors.
5. The mischief with which Part XII A of the Ordinance is concerned is the practice of insider dealing which is detrimental to an orderly market in securities because
 - (a) it gives to insiders such as the paid servants of listed companies and to the professional associates of those companies an unfair advantage over the investing public at large and over the shareholders who may be paying them; and
 - (b) it undermines confidence in the integrity of the market place.
6. (i) Section 141B of the Ordinance provides as follows:
 - (1) Insider dealing in relation to the securities of a corporation takes place and, pursuant to section 141C, may be culpable for the purposes of this Part -
 - (a) when a dealing in the securities is made procured or occasioned by a person connected with that corporation who is in possession of relevant information concerning the securities;
 - (b) when relevant information concerning the securities is disclosed by a person connected with that corporation directly or indirectly

to another person and the first mentioned person knows or has reasonable grounds for believing that the other person will make use of the information for the purpose of dealing or procuring another to deal, in those securities.

- (2) A dealing in the securities of a corporation is occasioned by a person connected with that corporation for the purposes of subsection (1)(a) when a person who has obtained relevant information in the circumstances described in (1)(b) actually makes use of that information for the purpose of dealing or procuring another to deal in those securities.

- (ii) Section 141D(1) provides:

For the purposes of this part -

"relevant information" in relation to securities means information which is not generally available, but, if it were, would be likely to bring about a material change in the price of those securities.

- (iii) Section 141C(3) provides:

A person who enters into a transaction which is an insider dealing within section 141B(1)(a) may be held not culpable if his purpose is not, or is not primarily, the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information.

- and (iv) Section 141E(1) provides:

A person is connected with a corporation for the purposes of section 141B 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 securities of the corporation by virtue of -
 - (1) 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 or a substantial shareholder in either of such corporations.

7.. These sections are unhappily drafted. It is not, for example, clear whether section 141B(2) refers back only to section 141B(1)(a) and not to section 141B(1)(b), though we think that this must be the case, since section 141B(2) is seeking to define when a dealing in the relevant securities

is "occasioned" and subsection 1(b) does not mention "occasioned".

Moreover, although section 141B purports to define when culpable insider dealing takes place there is no exhaustive definition of what is "culpable" insider dealing. Section 141C merely lists a number of eventualities in which insider dealing is not culpable.

8. For our purposes it is sufficient to define "insider dealing" as the conscious use for the purpose of profit or of the avoidance of loss of confidential price-sensitive information to buy or sell shares to which that information relates or the disclosure of confidential price-sensitive information to a person likely to use the information for that purpose.

It is, however, important in this definition to stress the confidentiality of the price-sensitive information. Once the information becomes generally available it ceases to be "relevant information" within the meaning of section 141C(3) and thereafter there can be no "insider dealing" for the purposes of Part XIII A of the Ordinance.

9. The enquiry has arisen out of the sale by the Hongkong and Shanghai Banking Corporation ("the Bank") through a wholly owned subsidiary (Carlingford N.H.) of 90,000,000 shares in Hutchison Whampoa Limited ("HWL") to Continental Realty Limited, a wholly owned subsidiary of Cheung Kong (Holdings) Limited ("CKH") on the 25th day of September 1979.

10. The basis for suspicion that insider dealing may have occurred was that:-

- (a) on the 25th day of September 1979, at the close of trading on the four Hong Kong stock exchanges the ordinary shares of HWL stood at HK\$5.85 per share, the highest price that day, and the volume of shares traded was substantially higher than on any previous day that month;
- (b) at approximately 11.30 p.m. (Hong Kong time) on that day both the Bank and CKH announced that the Bank had sold its holding of 90,000,000 ordinary shares in HWL to a wholly owned subsidiary of CKH at a price of HK\$7.10 per share;
- (c) the reported volume of trading in HWL shares in London on that day was believed to be higher than normal and the price showed an upward trend;
- (d) various persons, including the then Chairman of the Directors of HWL, Mr. W.R. Wyllie, suggested that insider dealing may have occurred in HWL shares on the 25th day of September 1979 prior to the release of the press announcement that evening at 11.30 p.m.; and
- (e) a preliminary investigation conducted by the Commissioner for Securities and his staff led to the belief that news of the sale of the Bank's shareholding in HWL had been leaked prior to the aforesaid press release and this may have caused heavier than normal trading in HWL shares in London on that day.

11. Our terms of reference were wide in that we were required to investigate as far as possible the entire trading in HWL shares during the relevant period. It soon became apparent to us that the relevant period was from the 3rd day to the 25th day of September 1979.

12. The starting point in our enquiry was to determine who had access to the confidential and price-sensitive information. To this end we had to consider in detail each stage of the events leading up to the sale of its HWL shares by the Bank (at a premium over their current trading value) and the public announcement of that sale at 11.30 p.m. on the 25th day of September 1979. We had further to consider the behaviour of HWL shares on the stock markets during the relevant period to find out whether there were any anomalous trading patterns suggestive of abnormally heavy trading in the shares at any particular time. Finally we had to obtain from all the Hong Kong stockbrokers and some London stockbrokers details of all dealings in HWL shares during the relevant period.

13. We had the great advantage of being able to obtain the services of Superintendent Paul Bailey, who was seconded to us from the Commercial Crimes Bureau of the Royal Hong Kong Police. With his help, and with the able assistance of the staff of the Commissioner for Securities, we have been enabled to carry out a thorough investigation in Hong Kong. Furthermore, because of our policy of insisting that written statements be taken from every potential witness, it has been possible drastically to reduce the number of witnesses whom it was necessary to call to give evidence, thereby lessening the length of the enquiry and substantially reducing its costs. Nevertheless, it should be said at the outset that at all times the Tribunal's investigators have laboured under the considerable difficulty of conducting inquiries into events, which occurred a long time earlier. For those people engaged in the securities business in particular, the recollection of events surrounding HWL shares in September 1979, whilst such events may have been of some interest to them at the time, soon became lost in the usual pattern of busy trading, so that the finer details, if not committed to paper, were gone beyond recall.

The Bank's shareholding in HWL

14. In 1975, the Bank, through a wholly owned subsidiary, subscribed for 150,000,000 ordinary shares in Hutchison International Limited ("H.I.L.") when that company was facing a severe financial crisis. It was stated at that time by the Bank that it was not the Bank's intention to hold the shares forever, but that it intended to dispose of them in an orderly manner at the appropriate time. In that year the Bank appointed Mr. W.R. Wyllie to be chief executive of H.I.L. Under his leadership H.I.L.'s financial position improved, and in 1977 H.I.L. merged with the Hong Kong and Whampoa Dock Company Limited to form HWL. This merger resulted in the Bank's 150,000,000 shares in H.I.L. being partly converted into 90,000,000 ordinary shares in HWL, a holding which represented about 22% of the ordinary shares of HWL. Consequently, after the merger HWL's dependence on the Bank was substantially reduced and the Bank relinquished its right to appoint the chief executive.

15. By 1979, both the profitability and the financial position of HWL had materially improved. It was Mr. Wyllie's view (a view shared by people closely connected with the securities business and with whom Mr. Wyllie dealt) that the Bank's 1975 statement referred to in paragraph 14 supra constituted a drag on the shares of HWL, depressing their value in the market, since the Bank could at any time unload a large number of shares on to the market.

16. On several occasions in 1979, Mr. Li Ka-shing, Chairman of CKH had suggested to Mr. Michael Sandberg, Chairman of the Bank, that the Bank should sell its shares in HWL to CKH, a proposition which Mr. Sandberg did not entertain until September 1979. The Bank had also been approached by other buyers, including American companies, who wished to buy the Bank's HWL shareholding. The Bank's concern was that before it sold its shares in HWL, not only should that company be on a permanent road to recovery but also that the prospective buyer should be both reputable and suitable.

The Negotiations Between the Bank and CKH

17. These began in earnest on the 25th day of August 1979, when Mr. Li Ka-shing spoke to Mr. Euan Launder, the Chief Executive of the Bank's wholly owned merchant banking subsidiary Wardley Limited (Wardleys). Mr. Li Ka-shing having told Mr. Launder of CKH's interest in buying the Bank's shareholding in HWL, asked him if he would approach Mr. Sandberg on the matter, which Mr. Launder did on the 31st day of August 1979, having particular regard to the fact that it was the Bank's stated intention to sell their HWL shares at the appropriate time. No decision as to the possible sale was taken on that day.

18. On the 4th day of September 1979, Mr. Launder, who had dined with Mr. Li Ka-shing on the previous evening, again raised the subject of the sale of HWL shares with Mr. Sandberg, at which meeting Mr. Sandberg appeared to be more receptive to the idea, though no decision was then taken. In the following days a paper on the proposed sale was prepared by Mr. Launder and Mr. Quentin Baer, an assistant director in Wardley's corporate finance department. This paper was based on Mr. Launder's discussion with Mr. Li Ka-shing and Mr. Sandberg and on data obtained from Wardley's corporate finance department. The strictest security attached to this exercise. Only Messrs. Launder and Baer were aware of the nature of the proposal. Code names were used in place of the names of HWL and CKH on all drafts of the paper which were typed by Mr. Launder's secretary and were generally shredded after use, although it must be admitted that anyone familiar with the Hong Kong Stock Market who saw the paper would have no difficulty in deducing the names involved. The data obtained from Wardley's corporate finance department were obtained without the knowledge of the other personnel of that department.

19. The Launder-Baer paper was dated the 8th day of September 1979. It gave an outline of the proposed terms of sale, discussed the proposed price, dealt with the pros and cons of selling to CKH and attached various appendices to show comparative data for shares of companies similar to HWL. This paper was shown to Mr. Sandberg on or about the 8th day of September 1979. Mr. Sandberg did not accept the proposed price. Mr. Li Ka-shing wanted to buy the shares at a price of \$6.00 to \$6.50 per share, whereas Mr. Sandberg wanted \$7.50 to \$8.00 per share. On the 10th day of September 1979, before leaving Hong Kong on business, Mr. Sandberg told Mr. Launder that no final decision could be reached because of the question of price, and at about the same time he informed Mr. Boyer, the Deputy Chairman of the Bank (who was also Chairman of Wardleys and a Director of HWL) that the Bank might sell its holding of HWL shares. Between the 10th and the 15th days of September 1979 Mr. Boyer had further discussions with Mr. Launder on the proposed sale. Mr. Sandberg arrived back in Hong Kong on the 15th day of September 1979.

20. Wardleys had prior to August 1975 acted as CKH's merchant bankers, and were in fact so engaged in September 1979 in respect of a totally unrelated matter. Their role in the negotiations between the Bank and CKH was that of the middleman. It was Mr. Sandberg's policy that in transactions of this kind he did not become personally involved in the negotiations - these being left to Wardleys. He kept two final decisions for himself, namely (a) whether to sell to CKH at all and (b) the price at which the shares would be sold. Mr. Li Ka-shing did not seek Wardley's advice on the deal at all. He saw it basically as a property transaction, on which he would not need and did not ask for the advice of merchant bankers.

21. On the 17th day of September 1979 Mr. Launder again met Mr. Li Ka-shing, but no agreement on the price was forthcoming. However, on the 19th day of September 1979 Mr. Sandberg and Mr. Li Ka-shing dined together alone at Mr. Li Ka-shing's pent-house suite in the China Building. On this occasion

and for the first time, Mr. Sandberg intimated to Mr. Li Ka-shing that the Bank agreed in principle to sell their HWL shares to CKH subject to agreement being reached as to the price. However, Mr. Sandberg would not and did not discuss details and made it clear that these would have to be ironed out with Mr. Launder.

22. In the days that followed, further negotiation took place between Mr. Launder and Mr. Li Ka-shing. These were based on the Launder/Baer paper of the 8th day of September 1979. This paper had included proposals for deferred payment terms at the request of Mr. Li Ka-shing. In that paper a base price of \$6.50 per share was proposed; the purchaser would be required to buy 20% of the price forthwith, a further 40% within 18 months and the total consideration within 2 years with the base price being increased for the deferred settlement. It was further proposed that the purchaser would forthwith be entitled to all rights and dividends except the interim dividend for the 6 months ending the 30th day of June 1979.

23. Agreement on the price per share was reached on the 21st day of September 1979; the agreement being based on the understanding that the Bank would receive all dividends on shares that had not been paid for. On that day, Mr. Frame, the Bank's Group Legal Adviser was informed of the proposed transaction, and on the following day Mr. Shaw of Norton, Rose, Botterell and Roche who were to act as the Bank's solicitors was given an outline of the deal, and was instructed to consider the necessary documents. It was not until the 24th day of September 1979 that Mr. Shaw was given full details of the proposed transaction by Mr. Frame. On that day there were discussions between Mr. Shaw, Mr. Baer, Mr. Launder and Mr. Frame and thereafter Mr. Shaw began to prepare a draft agreement between Carlingford N.H., which company held the shares in HWL and was a wholly owned subsidiary of the Bank, Continental Realty Ltd. (a wholly owned subsidiary of CKH which was to hold the HWL shares if and when purchased) and CKH. However it soon became apparent that it would prove exceedingly difficult and complex to formulate the terms of the agreement of the 21st day of September 1979, mainly because of the understanding between the parties that the Bank would receive the dividends as long as the shares had not been fully paid for. To obviate this difficulty it was agreed that the proposed agreement would provide for a higher price per share, and for all dividends to go to CKH.

24. On the afternoon of the 24th day of September 1979, Mr. Shaw enlisted the aid of one of his partners, Mr. Colliver, to assist in the preparation of the schedules to the agreement. This was the first time Mr. Colliver knew anything of the proposed agreement and these two were the only persons in the Bank's solicitors who knew anything of its details.

25. A draft agreement was not ready until the 25th day of September 1979.

26. Meantime, on the morning of the 24th day of September 1979 Mr. Sandberg, Mr. Boyer and Mr. Launder met to discuss how best to present the proposed agreement to the Bank's Board at its regular meeting on the following day. It was Mr. Frame who, after consultation with Mr. Sandberg, prepared the Board paper, to which was added a draft press release.

27. Mr. Li Ka-shing on the other hand had kept his own counsel completely. It was he alone who had conducted negotiations on behalf of CKH. He had informed nobody of them and had committed nothing to paper in respect of them. On the 24th day of September 1979, Mr. Li Ka-shing did ask Mr. Ronald Arculli, Solicitor of Woo, Kwan, Lee and Lo to be available the following day - a request for which no reason was given.

The Agreement to sell HWL Shares

28. The agreement which was prepared (and in due course signed) consisted of -

- (a) an agreement for the sale of shares;
- (b) a charge or security in respect of shares representing the unpaid purchase monies; and
- (c) a letter of instruction to the Hong Kong and Shanghai Banking Corporation (Nominees) Ltd.

It was to be a tripartite agreement between Carlingford N.H. as vendor of the shares, Continental Realty Ltd. as purchaser thereof and CKH as guarantor. By its provisions the vendor agreed to sell 90,000,000 ordinary shares in HWL to the purchaser for a total consideration of \$639,000,000, i.e. at a price of \$7.10 per share. The agreement provided that all dividends (including the aforementioned interim dividend) would enure to the purchaser; 20% of the consideration was to be payable immediately but there was a provision that the balance was to be paid within 2 years, and a further provision that the price of each share was to increase for the balance of the total consideration (calculated on a "per share" basis) remaining unpaid after one year with a further increase for the balance remaining unpaid after 18 months. The agreement further provided for the completion and delivery of the documentation relating to the share transfers, purchasers' and guarantors' warranties of authority to contract and provisions for contingent events. There was also a guarantee by CKH that the payments would be made when due and the other conditions of the agreement met. The Charge, which was incorporated into the agreement as a schedule to it, provided that the vendor should have a charge over the 90,000,000 shares as long as any part of the purchase price and other sums payable under the agreement remained unpaid. The agreement provided that on completion there would be provided to the purchaser executed transfers in favour of the Hong Kong and Shanghai Banking Corporation (Nominees) Ltd. which it would hold as nominee for the purchaser.

29. The letter of instruction was also attached to the agreement as a schedule to it, and by this letter the purchaser directed The Hong Kong & Shanghai Banking Corporation (Nominees) Ltd. to register the shares in its own name and to execute a charge over the shares in favour of the vendor as a continuing security for the payment of the "deferred shares".

30. The agreement was signed on behalf of all parties on the late afternoon of the 25th day of September 1979, after having received the approval and agreement of the Bank's Board, which had an ordinary meeting that afternoon.

The Steps taken to Protect Price-Sensitive Information in the period prior to the 25th day of September 1979

31. Mr. Li Ka-shing's approach to preserving secrecy was straightforward and simple. He told no one in his organisation what he was doing and committed nothing to paper. The first time that he discussed the transaction with anyone other than the Bank personnel with whom he was negotiating was on the 25th day of September 1979 at 3.30 p.m. (i.e. after the close of trading on the Hong Kong Stock Exchanges), at which time he consulted his Solicitor, Mr. Arculli. The idea that CKH should purchase the Bank's holding of HWL shares was his alone and was not discussed with his fellow directors or advisers until shortly before the signing of the agreement with the Bank. Mr. Li Ka-shing was most concerned to ensure that there should be no leak of his proposal to buy these shares. Mr. Li Ka-shing said to us in evidence "Once the market rose ten cents per share, I would have to pay nine million more. Once there is a leakage, not only would it tremendously affect the price; it might even render this deal a failure".
32. For its part, the Bank was equally concerned to maintain complete secrecy in relation to the proposed transaction. With one exception, the only persons who were made party to the information were those who were actually involved in the negotiations and preparation of the relevant documents. The exception was H.E. the Governor, whom Mr. Sandberg thought it right to inform of the proposed deal because of the political importance attendant on the Bank's original purchase of the shares in H.I.L. It was Mr. Sandberg's view, expressed in evidence to us, that any leak would have immediately invalidated any negotiations that had taken place and that the Bank would have had to call off the deal. As he put it "One only has to have a leak coming from a bank and this to be common knowledge to happen once and your whole credibility is gone. Anyone who was suspected and found to have leaked information of this sort whether he be an employee or a director would be immediately asked to hand in his resignation."
33. The evidence which we heard satisfied us that the Bank was careful to restrict the number of persons who were involved to the absolute minimum, as the following sequence of events shows.
- Mr. Sandberg himself held the effective power of decision on the proposal (subject to Board endorsement). Because it was and is his policy not to become personally involved in such negotiations, they were handled by Mr. Launder. Mr. Launder brought in Mr. Baer to prepare the analysis paper on the proposal. Mr. Boyer was informed because of his position as Deputy Chairman of the Bank. With the exception of H.E. the Governor, no other person was informed of the proposal deal during the period of negotiations. When the terms of the proposed agreement were finally settled it was necessary to have the requisite legal documents drawn up, for which purpose Mr. Frame was briefed and in turn he instructed Mr. Shaw of Norton Rose Botterell and Roche. Mr. Shaw prepared the legal documents himself, but needed the assistance of a partner Mr. Colliver to deal with the schedules to the agreement. All the draft legal documents were typed without the names of the companies involved to minimise the risk of accidental leaks.
34. With the exception of Mr. Sandberg's secretary who typed the Board paper and Mr. Richard Bennett (see paragraph 41), the persons mentioned in the previous paragraph were the only persons privy to the proposed transaction or its details prior to the Board meeting on the 25th day of September 1979.
35. Code names were used, data obtained secretively, documents were shredded after use and information about the proposed transaction was imparted only on a

need to know basis. We can and do find no fault with the Bank's arrangements to protect the confidentiality of the proposed transaction up to the 25th day of September 1979. Furthermore, we are satisfied from the statements we have read and from the evidence we have heard that none of the persons mentioned in paragraph 33 made use of the information which they possessed either by purchasing HWL shares or by passing on that information to third parties.

36. The time when insider dealing is likely to have taken place, if at all, is the period between the 10th and the 25th days of September 1979, since it was on or about Saturday the 8th day of September 1979 that a price was ascribed to Mr. Li Ka-shing's offer, namely \$6.50 a share. During this period the price of HWL shares ranged from \$5.05 to \$5.65. With \$6.50 as a minimum price for the deal an insider dealer might well have purchased in the belief that an agreement would eventually be reached at a price of \$6.50 per share or even higher.

37. Yet if in fact there was any insider dealing during that period (and we have no evidence that there was) it appears to have had little, if any, effect on the trading in HWL shares. The closing prices for HWL shares between the 10th and 19th days of September 1979 ranged from \$5.05 to \$5.30, a rise of only 5%. The rises in the shares of other companies unconnected with the transaction between the same dates were: Jardines about 10%; Hong Kong and Kowloon Wharf about 3% and Swire Pacific 5%. The Hang Seng Index itself moved up about 2%.

38. Between the 20th and the 24th days of September 1979, there were three trading days, namely the 20th, 21st and 24th. On those three days the closing prices for HWL shares ranged between \$5.40 and \$5.65, a fluctuation of about 4.6%. In the same period the Hang Seng Index went from 607 at the close of trading on the 19th, to 633, a movement of about 4.25%. The number of HWL shares traded in Hong Kong on the 21st day of September 1979 was considerably higher than the numbers for the trading days earlier in September 1979. At the same time there was an increased volume of trading overall, albeit at a lower rate of increase, but trading in HWL shares may also have been stimulated by the interim results announced that day. The figures for Stock Exchange turnover for September 1979 show that the average four exchange turnover for the period the 10th to the 19th days of September (inclusive) was \$76,775,000 whereas the four exchange turnover for the 21st day of September 1979 was \$126,380,000. On the 24th day of September 1979 the volume of HWL shares traded in Hong Kong was lower by about a third than that of the 21st. Yet the four exchange turnover for the 24th was \$165,000,000.

39. In our judgment there is nothing in the trading patterns for the relevant period to suggest insider dealing on any significant scale. All the persons possessed of the price-sensitive information are persons whose positions involve their handling such information on a regular basis, which means that their employers must repose in them a high level of trust. There is no reason for us to believe, and we do not believe, that any of those persons abused that trust.

The Events of the 25th day of September 1979 : The Bank

40. A draft agreement was ready on the morning of the 25th day of September 1979. No doubt as a result of the discussion of the previous day, this had to be amended, and the amended draft was delivered to Mr. Frame and Mr. Baer during the afternoon. At approximately 5.00 p.m. the names of all the parties were inserted into the agreement. Before that there had been blanks in order to preserve confidentiality.
41. At about 11.00 a.m. Mr. Frame gave a copy of the original draft agreement to his assistant Group Legal Adviser, Mr. Richard Bennett, who was to check a technical point relating to stamp duty. Mr. Bennett was warned to treat the matter in the strictest of confidence, which he did. He was present at the signing ceremony.
42. Mr. James Dreaper, the Bank's public relations manager, was called by Mr. Sandberg in the afternoon and was told that there would be a press announcement from the Bank to be released at 11.30 p.m. In consequence, Mr. Dreaper contacted the public relations company which the Bank normally use, Michael Stevenson Ltd., and spoke to Mr. William Fish, a director and principal of that company. He told Mr. Fish that the Bank would be issuing a press statement that night for release at 11.30 p.m. but he said nothing as to its contents, because he knew nothing.
43. Mr. Frame had worked on the preparation of the Board paper, and draft press release on the 24th and 25th days of September 1979. These were approved by Mr. Sandberg and on the afternoon of the 25th handed to his secretary, Miss Vanessa Jolly, for inclusion in the agenda of the Board meeting due to take place at 4.00 p.m. that afternoon. This was a normal and regular meeting of the Board. She personally made eleven copies of the paper - ten for the Directors and one for filing. In accordance with the Bank's normal practice she put a copy of the paper (to which was attached the draft press release) into each of the Directors' folders, which were then placed in the office of Mr. Sandberg's personal assistant Mrs. Veronica Dickinson. No person had access to these folders prior to their being distributed to the Directors as they arrived for the meeting. They were in fact handed to the Directors by Miss Jolly and Mrs. Dickinson. After the meeting, these papers were collected by Mrs. Dickinson and shredded by Miss Jolly the following morning.
44. The Directors of the Bank who attended the meeting were:-
- Mr. Sandberg
 - Mr. Boyer
 - Mr. A. Moseley
 - Mr. P.G. Williams
 - Sir Y.K. Pao
 - Mr. Hui Sai-Fun
 - Mr. N.S. Thompson
 - Mr. J.L. Marden
 - Mr. G.R. Ross
- Mr. F.J. Knightley was also present as Consultant to the Board.
45. The Board meeting began at 4.00 p.m. and ended shortly after 6.00 p.m. The Board agreed to the proposed sale of the Bank's HWL shares and also approved, with slight amendments, the draft press release. This was to be released at 11.30 p.m. a time which was deliberately chosen by Mr. Sandberg to coincide with the closing of the London Stock Exchange. The meeting, of course, began after the close of trading on the Hong Kong Exchanges. Mr. Sandberg was careful to point out that the matter was strictly confidential until the press release. With the exception of Mr. Sandberg and Mr. Boyer, the Directors were not aware of the

proposed agreement before they arrived at the Bank.

46. The positions of Messrs. Boyer and Marden require further consideration. But, these directors apart, we are satisfied that none of the other Directors either bought HWL shares that day, in Hong Kong or through the London Stock Exchange or imparted any information about the deal to any third party. Nor did Miss Jolly or Mrs. Dickinson.

47. After the Board meeting, the agreement was signed at about 6.30 p.m. at a ceremony which took place in Mr. Frame's office at the Bank. Present were:-

Mr. Li Ka-shing
Mr. Arculli
Mr. C.W. Chow (Director CKH)
Mr. Hammond (the Bank)
Mr. Shaw
Mr. Colliver
Mr. Frame
Mr. Bennett

The ceremony took about ten minutes. The two schedules to the agreement were not signed at that time. Indeed no one from the Hong Kong and Shanghai Banking Corporation (Nominees) Limited was at that time aware of the transaction, even though that Nominee Company was involved in the documents in the Schedule.

48. Meanwhile, at 6.15 p.m. Mr. Sandberg called Mr. Dreaper to his office and told him the nature of the press release. A copy of this release is annexed hereto - Appendix 1. At that time Mrs. Dickinson was typing the final draft, which she completed at 6.40 p.m. Mr. Dreaper made one photocopy in Mrs. Dickinson's office and left the original with her. He placed the photocopy in an envelope and sealed it; and took it to the office of Michael Stevenson Ltd. in On Lan Street, arriving there at approximately 6.50 p.m.

49. At about 8.25 p.m. a scrambled telex was sent from the Bank headquarters to the London office of the Bank, containing the details of the press release. Although it was headed "Mills from Dreaper" (Mr. Mills then being the manager of the London Branch of the Bank) Mr. Dreaper did not personally send the telex, since he did not have the authority to do so. It was sent from the Chairman's office, but despite exhaustive enquiries, it has not been possible to identify the person who was responsible for its transmission in Hong Kong, its receipt in London or its transmission to the Stock Exchange there. However, even though its despatch and receipt are shrouded in mystery, this is not of any great moment, because of the time at which it was sent (see "Trading in HWL shares in London on the 25th day of September 1979" paragraph 17 below).

The events of the 25th day of September 1979 - Cheung Kong (Holdings) Limited

50. On the 24th day of September 1979, Mr. Li Ka-shing arranged a personal loan from the Bank of \$200,000,000, which he then lent to CKH in order to finance the initial 20% of the purchase price of the shares. Mr. Li Ka-shing dealt with Mr. Moseley, a director of the Bank, who was not then aware of the reason why the loan was wanted. The loan, which was secured against shares in a company owning the China Building (in which the offices of CKH are situate), was approved by Mr. Sandberg personally.
51. On the morning of the 25th day of September 1979 Mr. Li Ka-shing and Mr. C.H. Chow, a fellow director of CKH collected from the Bank the letter confirming the loan. Mr. Chow did not then know the purpose of the loan.
52. Just before or after lunch on the 25th day of September 1979, Mr. Li Ka-shing telephoned his Solicitor, Mr. Arculli and asked him to come to his office at 3.30 p.m. that afternoon, but said nothing of the nature of the business involved. This time was chosen deliberately; it was the time at which the Hong Kong Stock Exchanges cease trading. At this meeting, Mr. Li Ka-shing informed Mr. Arculli about the proposed agreement, Mr. Arculli being the first person to be told about the deal. Their discussions lasted about an hour. According to Mr. Li Ka-shing, no one else was present; his briefing was from memory as up to this point no documentation existed, at least on the CKH side.
53. At approximately 4.30 p.m. Mr. Li Ka-shing summoned his fellow directors, Mr. C.W. Chow and Mr. George Zang (who together with Mr. Li Ka-shing and his wife formed the Board of Directors of CKH) to his office. An employee of CKH, Mr. Alan Johnson-Hill was also called in. Mr. Johnson-Hill was general assistant to the Board which in effect meant to Mr. Li Ka-shing. Mr. Li Ka-shing informed those present of the agreement, and told them that it was "pending ratification by the Board of the Bank and that the matter was strictly confidential". They were also told that no press statement would be made until after 11.00 p.m. Mr. Alan Johnson-Hill had been asked to be present to discuss the question of CKH's representation on the Board of HWL. Mr. Li Ka-shing considered this meeting to be a Board meeting of CKH and Continental Realty Ltd., as a quorum was present, and later minutes were prepared approving the proposed transaction.
54. At about 5.00 p.m. Mr. Shaw arrived with a copy of the proposed agreement, accompanied by Mr. Launder and Mr. Baer. Mr. Arculli considered the draft for about 1 hour, made certain comments on it, but did not insist on any amendments. At about 6.00 p.m. a telephone call was received from the Bank stating that the Board had approved the transaction, whereupon the assembly, with the exception of Mr. Johnson-Hill and Mr. Zang, went to the Bank for the signing ceremony, which was to take place at 6.30 p.m.
55. After this ceremony, Mr. Li Ka-shing went back to the offices of CKH, arriving at approximately 7.00 p.m. and very shortly thereafter he received a telephone call from Mr. Wyllie. He then went to see Mr. Wyllie at the offices of HWL, Mr. Zang and Mr. Chow staying behind to prepare CKH's press release. It was while Mr. Li Ka-shing was in Mr. Wyllie's office that the latter received a telephone call regarding Mr. Mang's story (see below). Mr. Li Ka-shing returned to his office about 8.00 p.m. and stayed there until about 11.30 p.m. Mr. Li Ka-shing's secretary, Psyche Leung Kau-mui and CKH's Chief Accountant Mr. John Ho Kai-wah were informed of the agreement at about 8.00 p.m. Both stayed working that night, until after 11.00 p.m. and both of them have stated that they did not disclose the information thus vouchsafed to them to any person. We have discovered nothing to suggest that they did.
56. In our view, Mr. Li Ka-shing's security cannot be faulted. He remained until 3.30 p.m. on the 25th day of September 1979 an island of secrecy, not even mentioning the deal to his wife. He clearly maintained his principle of not discussing proposed deals with other members of his Board until they

have been finally concluded.

57. However, it is clear that, well before 11.30 p.m. the details of the deal were widely known and when Mr. Johnson-Hill spoke to the South China Morning Post and the Standard at about 9 - 9.30 p.m. to reserve space for the announcement they knew of the story and he probably confirmed the details to them then.

58. The preparation and photocopying of the CKH press release was completed at about 11.00 p.m. and shortly thereafter it was distributed to the press.

59. On the 26th day of September 1979, Continental Realty Ltd. did purchase shares in HWL in the market.

The Events of the 25th day of September 1979 - Hutchison Whampoa Limited

60. The Board of HWL was not consulted about the proposed sale of the Bank's HWL shares to CKH. At some time between 3.00 p.m. and 4.00 p.m. on the afternoon of the 25th Mr. Sandberg telephoned Mr. Wyllie and asked him if he would be available later as he would need to reach him after office hours. At or shortly after 6.00 p.m. Mr. Sandberg again telephoned Mr. Wyllie, telling him that the Bank had agreed to sell its shares in HWL to CKH at a price of \$7.10 each and that there would be a press release later that evening timed to coincide with the closing of the London Stock Exchange.
61. Between 6.30 p.m. and 7.00 p.m. on the 25th, Mr. Mang, a public relations executive employed by HWL who had previously been a journalist received a telephone call from Mr. Patrick Wong, a reporter with the Hong Kong Economic Journal, who was an old acquaintance. Mr. Wong said that the Bank had sold its HWL shares to CKH at a price of \$7.10 per share, that the agreement included deferred payment terms, and that he had called to "get a follow up or confirmation from HWL management." Mr. Wong did not disclose the source of his information. Mr. Mang thereupon telephoned a former colleague, Miss Dende Montilla of the South China Morning Post (SCMP) to check whether any press release concerning the Bank was expected. She said that there was but that Mr. Jim Walker was dealing with it. Thereupon Mr. Mang spoke by telephone to Mr. Walker and gave him some of the details of which Mr. Wong had spoken, including the price per share.
62. The news of an impending Bank press release appeared to Mr. Mang to confirm Mr. Wong's story and so Mr. Mang called his superior in HWL, Mr. Barry Haseldine, the Corporate Communications Executive (i.e. Public Relations Officer) of HWL and told him what he had heard. Mr. Haseldine thereupon telephoned Mr. Peter Wight, HWL's Company Finance Director, who already knew of the deal, having been informed of it by Mr. Wyllie at about 6.30 p.m. In turn, Mr. Wight telephoned Mr. Wyllie.
63. After he had received Mr. Sandberg's second telephone call, Mr. Wyllie telephoned Mr. Li Ka-shing and asked to meet him. Mr. Li Ka-shing arrived at HWL's offices at about 7.30 p.m. and the question of representation for CKH on the Board of HWL was discussed. Whilst this discussion was taking place, Mr. Wyllie received Mr. Wight's telephone call, and a call from Mr. Haseldine on the same subject. After speaking to Mr. Wyllie, Mr. Haseldine telephoned Mr. Mang and told him to take his telephone off the hook for the evening. Mr. Mang made one more call, namely to Mr. Wong as he had promised he would, but said merely that he was unable to confirm the information which Mr. Wong had given to him.
64. Mr. Li Ka-shing left Mr. Wyllie's office at about 7.45 p.m. and not long afterwards Mr. Walker of SCMP telephoned Mr. Wyllie, for the purpose of getting the latter's comments on the change of shareholding in HWL. Neither Mr. Wyllie nor Mr. Walker can now clearly remember the exact details of this conversation, which is not surprising in view of the time which has elapsed since it took place. According to Mr. Walker he already knew that the Bank's press release scheduled for that evening concerned the sale of the Bank's HWL shares at \$7.10 per share and was fishing for more information. He says he therefore told Mr. Wyllie all he knew in an effort to elicit a response - a response which was forthcoming in that Mr. Wyllie told him that it was CKH which was buying the Bank's HWL shares. Mr. Wyllie's recollection is somewhat different. He said that he did confirm the parties involved, but that there was a press release coming out later and therefore he could give no further information.
65. Following upon and as a result of those telephone calls Mr. Wyllie at about 8.00 p.m. telephoned Mr. Sandberg and told him that there had obviously been a leak - information which upset Mr. Sandberg.

66. At around 8.15 p.m. Mr. Wyllie telephoned Mr. Jonathan Hubbard-Ford, Director of Corporate Planning for HWL to inform him of the deal and later authorised Mr. Hubbard-Ford to telephone Mr. John French, HWL's United Kingdom Managing Director, so that he would not be caught by surprise when the story was printed in the U.K. press on the next day.

67. There was no evidence before us to suggest that any Director or employee of HWL either profited or sought to profit from possession of the price-sensitive information by buying HWL shares in London or elsewhere on the 25th day of September 1979. We are satisfied that they did not.

The events of the 25th day of September 1979 - Michael Stevenson Limited

68. Michael Stevenson Ltd. (Stevensons) are a public relations company. Its chairman is Mr. Michael Stevenson and its managing director Mr. William Fish, and between them they own all the shares in the company. Stevensons are the external public relations consultants to the Bank and to a number of other companies and at the material time were responsible for putting out something like 20 news releases a week.

69. At sometime in the afternoon of the 25th day of September 1979, probably about 3.00 p.m. Mr. Fish received a telephone call from Mr. Dreaper to the effect that there would be a press release from the Bank that evening. This was normal procedure because (a) Stevensons would need to arrange to keep their staff in the office beyond the usual working hours and (b) since the English language papers normally close their business sections early it was necessary to warn them of the forthcoming press release so that it would be featured in the business columns.

70. Mr. Fish therefore informed certain members of his staff that they would be required to work late on a press release. He said nothing as to its contents because at that stage he did not know what they were. The staff involved were:

Faye Langton (Mr. Fish's secretary)
Mr. Henry Law (translator and supervisor of messengers)
Mrs. Wong Chow Seck-kwan (translator)
Mr. Lam Kam-yuk (translator)
Miss Jean Chan (account executive and skilled calligrapher)
and Mrs. Winnie Roots (account executive and skilled calligrapher).

71. When Mr. Dreaper arrived at the offices of Stevensons at approximately 6.50 p.m. he saw Mr. Stevenson and left his copy of the press release with him. The two men discussed the release and its distribution which was to be at 11.30 p.m. They agreed that the two main English language newspapers, the SCMP and the Hong Kong Standard should be asked to hold space as normally releases would not be accepted after 8.00 p.m. No such request was necessary to the Chinese press, since their deadlines are more flexible. They further agreed that when the press were informed of the impending release, they were to be told nothing of its contents. Mr. Dreaper left Mr. Stevenson's office at about 7.00 p.m.

72. Thereupon, Mr. Stevenson telephoned Mr. Fish, told him that the release had been received and the nature of its contents. Mr. Fish then telephoned persons at the SCMP, the Standard and the Asian Wall Street Journal to tell them to hold space for a late release. When he called the SCMP he spoke to Miss Dende Montilla, the business news editor, who commented "You mean the Hutchison thing?" a question which received no answer from Mr. Fish. Mr. Stevenson asked Mr. Law to make a photocopy of the release so that it could be translated by Stevenson's translation staff and this photocopy was taken by Mr. Stevenson or Mr. Law to the translators who were on the fourth floor and who began translating it into Chinese for release to the Chinese press. Once that had been done Mr. Stevenson put the original copy into a drawer of Mr. Fish's desk and went out for a meal at about 7.30 p.m. Nobody was on the fifth floor at that time.

73. The translators who received the photocopy of the press release were Mrs. Wong Chow Seck-kwan and Mr. Lam Kam-yuk. As the matter was urgent, and as they were anxious to get off duty as soon as possible, they cut it into two with a pair of scissors and each worked on one half. Mr. Lam worked on the latter half and Mrs. Wong Chow Seck-kwan on the first half. The first half contained details of the parties, the shares sold, the price per share and the deferred payment terms. It was the usual practice to check each other's work. After the

two translators had finished translating their respective halves they passed these to Miss Jean Chan and/or Mrs. Winnie Roots for checking. The translation was finished at about 8.00 p.m. and the translators left the office. Miss Chan put the translation on Mr. Stevenson's desk, locked the fourth and fifth floor offices and herself left. Mr. Henry Law and Sunny Tse (a messenger) had been present earlier, but left before the translators.

74. Mr. Fish returned to his office at about 8.30 p.m. It was then locked and in darkness. He took the English copy of the press release from his desk drawer and read it. Shortly before 9.00 p.m. his secretary Faye Langton returned to the office and she retyped the English language release into a more suitable format for publication. Mr. Law took the Chinese translation from Mr. Stevenson's desk and made sufficient copies for distribution. Once the retyped English language copy of the release was finished Mr. Fish made ten copies for distribution and one for his file; and at approximately 9.15 p.m. he put all the copies in a drawer of his office desk.

75. At about the same time Mr. Stevenson came back and he and Mr. Fish were in Mr. Fish's office when shortly after 9.30 p.m. Mr. Dreaper arrived, dressed in a dinner jacket, having just left a function at the Arts Centre. He told them that he had received a telephone call from Mr. Sandberg to the effect that the press knew all about the release. At that time the release had not been distributed and none of them could understand how the news could have leaked out.

76. At approximately 10.55 p.m. Mr. Dreaper telephoned the Bank's London office from Mr. Fish's office and spoke to Mr. Peter Hutson, the Bank's resident director in London, the purpose of the call being to confirm that the Bank's telex had been given to the Secretary of the Stock Exchange, London. Mr. Hutson has no recollection of this call, but according to Mr. Dreaper's evidence before us Mr. Hutson confirmed that the telex had been so given and added that the main points of the transaction seemed to be known around the floor of the exchange.

77. At approximately 11.20 p.m. telex messages containing the release were sent out to the SCMP, the Hong Kong Standard, the Asian Wall Street Journal and Reuters. The Chinese translations were distributed to the Chinese press by messengers who left the offices at the same time.

78. The translator, Mrs. Wong Chow Seck-kwan, who worked on the translation of the release was also employed on a part-time basis at the Hong Kong Economic Journal, a Chinese language financial daily newspaper. This fact was known to Mr. Stevenson, but he did not consider it a danger. He said "We handle many sensitive press releases and there is always a possibility for staff to leak it. One has to trust staff to treat the matter in confidence."

79. It is, however, clear to us that Mrs. Wong Chow Seck-kwan or one of the other members of Stevensons' staff had the opportunity to make telephone calls out of the building on the evening of the 25th day of September 1979. As will appear hereinafter, we are satisfied that this is what occurred.

The events of the 25th day of September 1979 - The Hong Kong Economic Journal

80. The Hong Kong Economic Journal is a paper which is circulated in the morning and is primarily concerned with financial matters. It employs a staff of about 90 people, of whom about ten are reporters on financial affairs. Its editor (since 1973) is Mr. Lam Shan-mu (also known as Lin Sam-mu) and the publisher is his wife Mrs. Sally Lam (or Lin).

81. On the 25th day of September 1979 one of the Journal's reporters was Mr. Patrick Wong Wai-tak. This was the man who spoke to Mr. Mang of HWL at about 6.30 p.m. on that day, disclosing details of the transaction. He did not disclose the source of his information to Mr. Mang, but quite clearly he became aware of the essential terms of the agreement long before the 11.30 p.m. embargo expired.

82. Mr. Wong was first interviewed by the Commissioner for Securities on the 28th day of January 1980, having called at the Securities Commission Office with Mrs. Sally Lam. At that meeting he denied that he had given information to Mr. Mang on the 25th day of September 1979, although he admitted that he had telephoned Mr. Mang at about 6.30 p.m. on that day, allegedly to obtain Mr. Wyllie's telephone number. At that interview he stated that he did not know the terms of the agreement. He then gave a written statement on the 29th day of November 1980 in which he stated, inter alia, (a) that on the morning of the 25th he heard a rumour in the market that there may be an announcement from the Bank later; (b) he later heard, after 3.30 p.m. that CKH was to make an announcement that evening; (c) he telephoned Stevensons who confirmed that there would be a Bank announcement that night; (d) it seemed most likely to him that any announcement involving the Bank and CKH would relate to the Bank's selling its HWL shares to CKH, and (e) he telephoned Mr. Mang and speculated on the price being between \$6-8 per share and asked him to get somebody in authority to confirm this.

83. When Mr. Wong gave evidence before us on the 9th day of July 1981 he disavowed this statement saying "I am not in a position to say that it is all true and correct because I was still working with the Economic Journal and I had certain pressure upon me."

84. In evidence he gave a different account of events. He said that he heard a rumour in the broker's dealing room in the morning of the 25th to the effect that there would be an announcement by the Bank that evening. We did not believe this part of his evidence. Prior to Mr. Sandberg's call to Mr. Dreaper sometime after 3.00 p.m. no one apart from the persons directly concerned with the documentation for the agreement was aware that there was to be a Bank release that evening. It was not until Mr. Dreaper called Stevensons that the latter knew of the release. No other witness spoke of this rumour circulating on the morning of the 25th day of September 1979.

85. Mr. Wong went on to say that after lunch he followed up the rumour by telephoning his colleague Mrs. Wong Chow Seck-kwan at Stevensons to ask her about the rumoured Bank release, and that after making enquiries herself she told him that there would be a Bank announcement that evening, though she did not know its contents, and that he assumed the announcement related to the Bank's takeover of the Marine Midland Bank in the United States. Mr. Wong's estimate of the time of this conversation was imprecise and varied, and it was denied by Mrs. Wong Chow Seck-kwan, who indeed said that she did not speak to Mr. Wong at all on the 25th. We do not accept her denials. We are satisfied that such a conversation did take place at some stage during the afternoon.

86. Mr. Wong further said that at some time in the afternoon Mr. Lam told him that he had received a telephone call from CKH asking him to make

arrangements for someone to go to CKH to interview Mr. Li Ka-shing. Later, Mr. Wong said, Mr. Lam decided to carry out the interview himself. He added:-

"Then immediately prior to my leaving the office for dinner, as well as prior to Mr. Lam's leaving the office - he (Mr. Lam) told me that indeed Cheung Kong was going to purchase Hutchison Whampoa shares from the Hong Kong Bank. Under such circumstances I again rang up Mrs. Wong - the time of my telephoning her was about 7 p.m. I said to her on the phone that I had become aware of the contents of the news and I asked her if she could tell me more about it, since we were colleagues, and at that time she told me that she had not received the release as yet, and that when she did she would let me know. Shortly afterwards I received a telephone call from her, telling me the details concerning the deal."

The details she gave him, according to Mr. Wong, were confirmation of the parties, the sale of the HWL shares, the price and the fact that the sale involved deferred terms, and it was shortly after this telephone call that he rang Mr. Mang.

87. Mr. Wong was asked what pressures had been put on him and he alleged that both Mr. & Mrs. Lam repeatedly requested and advised him as to what he should say and that CKH would not like their telephone call to be disclosed. He further said that Mrs. Lam arranged for a Solicitor to be present when Mr. Wong was interviewed by Superintendent Bailey.

88. The Lams deny those parts of Mr. Wong's evidence concerning them, and there is good reason to suspect it, especially as Mr. Wong now owns and operates a rival Chinese financial newspaper. Yet there can be no doubt that Mr. Wong knew, at sometimes between 6.30 p.m. and 7.30 p.m. on the 25th day of September 1979 of the important terms of the agreement between the Bank and CKH. This is corroborated by the evidence of Mr. Mang, which evidence we accept.

89. The difficulty lies in deciding which parts of Mr. Wong's evidence should be believed and which rejected. We have already noted that we do not accept his evidence of the so called market rumours allegedly circulating on the morning of the 25th September. Both Mr. & Mrs. Lam deny having put pressure on Mr. Wong, but Mr. Lam's evidence itself was unsatisfactory. He spoke of having gone to the offices of CKH on the evening of the 25th and having a private interview with Mr. Li Ka-shing, and indeed the Hong Kong Economic Journal of the 26th day of September 1979 carried a front page report of this alleged interview in the form of quoted questions and answers. Both Mr. Li Ka-shing and Mr. Zang deny that any such private interview took place, and we accept their evidence although Mr. Lam did spend some time that evening at CKH's office waiting for the press release and they may have exchanged some brief words with him. We do not know, and do not have to speculate as to why Mr. Lam should publish a fabricated interview with Mr. Li Ka-shing, but that it was fabricated or grossly exaggerated we entertain no doubt. But we are also satisfied that Mr. Wong did not get his information as to the deal from Mr. Lam. We are of the view that Mr. Wong obtained this information from Stevensons. But two further questions then arise; first, from whom did he get the information and secondly did he solicit it or was it volunteered to him.

Mr. Wong himself has said his source was Mrs. Wong Chow Seck-kwan. But Mrs. Lam gave evidence that Mr. Wong had told her that it was another employee of

Stevensons whose name was "Eva" or "Evanda" and that she had called Mr. Wong to seek his advice on the translation of the title for Mr. Wyllie to be used in the release viz. chief executive. Miss Chan said in her statement that Eva Tsang did work on checking the release. Miss Tsang herself whilst not recalling if she worked at all that night, was adamant that she would not and did not reveal any confidential information.

90. We are not satisfied that either of the Lams put pressure on Mr. Wong. We consider that his initial failure in his earlier statements to tell anything like the truth, and his subsequent failure in giving evidence before us to tell the whole truth were induced by motives of which we are unaware. Nevertheless and despite her denials, we hold that Mr. Wong obtained the details of the agreement from Mrs. Wong Chow Seck-kwan who was the one he remembered who translated that half of the agreement which contained its major details. We do not have the material before us to arrive at any conclusion as to whether the information arrived from Mrs. Wong Chow Seck-kwan was totally unsolicited, or if it was requested by Mr. Wong. But whatever be the true position, we are satisfied that Mrs. Wong Chow Seck-kwan did not pass on the details with a view to profit for herself, or that Mr. Wong should himself profit from the news. It was simply a case of one journalist, albeit part time, passing on a "scoop" to a colleague.

91. Once Mr. Wong had obtained the details of the agreement from Mrs. Wong Chow Seck-kwan, he telephoned Mr. Mang of HWL in order to seek Mr. Wyllie's reaction, and told Mr. Mang of its terms. From Mr. Mang, Mr. Walker got information as to the price per share and from Mr. Wyllie the name of the purchaser. In the course of a very busy evening Mr. Walker spoke to various stockbrokers, inter alios, and imparted the news to them - news which would have travelled fast. Moreover, once Mr. Wong obtained the information it soon became common knowledge amongst the reporters in his paper's newsroom. Consequently, the inference is irresistible that long before the embargo expired there was an indeterminate but appreciable number of informed persons, some of whom purchased HWL shares on the Stock Exchange in London or elsewhere.

92. We reiterate what we said in paragraph 8. Insider dealing only takes place when the person dealing or disclosing information is possessed of "relevant information" which is defined by section 141D(1) of the Ordinance as "information which is not generally available but, if it was, would be likely to bring about a material change in the price of the relevant securities". Relevant information thus means price-sensitive information which is actually confidential. And so information known to an indeterminate but appreciable number would not be "relevant information" for the purposes of the subsection. It follows that persons who received this information from those persons who had obtained it from Mr. Wong and who thereafter bought HWL shares on the strength of that information would not be insider dealers, since what they acted on was not "inside" information.

The events of the 25th day of September 1979 - The South China Morning Post

93. After the Bank's Board meeting, Mr. Boyer telephoned the editor of the SCMP Mr. Robin Hutcheon to inform him that there would be a press announcement from the Bank coming out at 11.30 p.m., saying that "it was something to do with the Bank's holding in HWL" but nothing more. Mr. Hutcheon asked if he could have an early copy of the press release, but Mr. Boyer declined to accede to this request. Mr. Boyer had telephoned Mr. Hutcheon because he was Chairman of the Board of Directors of the SCMP company - the Bank owning a significant stake in that company - and as such he had been unhappy over the fact that in the preceding few weeks the Hong Kong Standard had featured on its first page Bank announcements whilst the SCMP had not. He did not wish this to happen with the SCMP issue of the 26th day of September 1979.

94. When Mr. Hutcheon made his written statement, he was of the view that Mr. Boyer had said that the announcement concerned the sale of the Bank's HWL shares; but in evidence before us he could not recall whether or not the word "sale" was used. Indeed, the impression he formed was that the announcement was perhaps concerned with a sale by the Bank of its HWL shares back to HWL for cancellation (an idea favoured by Mr. Wyllie at the time). Mr. Hutcheon however acknowledged that this was pure conjecture on his part. What is clear however is that Mr. Boyer gave no details whatsoever to Mr. Hutcheon of the proposed transaction with CKH. He did not even mention CKH.

95. Miss Dende Montilla, the Business News Editor of the SCMP was either present when Mr. Hutcheon took Mr. Boyer's call or spoke to Mr. Hutcheon shortly thereafter about the call. About 7.00 p.m. Mr. Fish of Stevensons rang up and advised her of the press release, at which point Miss Montilla said "you mean the Hutchison thing." However, Mr. Fish made no mention of the contents of the press release, and when asked by her if it would require any follow up, merely replied "possibly from the other side," which Miss Montilla took to be a reference to HWL. A little later Mr. Mang of HWL telephoned Miss Montilla and asked whether a press release was expected - to be told that one was. Mr. Mang did not tell her anything about what he had heard in relation to the matter.

96. This kind of story did not come within Miss Montilla's usual province of business affairs but rather within that of financial news, for which Mr. Jim Walker was responsible. He was out of the office at the time when the events referred to in paragraphs 93, 94 and 95 supra occurred. But when he returned, Miss Montilla told him what little she knew. Mr. Walker is a very experienced financial reporter, who had been reporting on financial and business matters for upwards of ten years. From what Miss Montilla told him, he assumed that the Bank was going to dispose of its HWL shares; and was naturally anxious to get to the heart of the matter so that he could write a story for the paper to be published on the following day. He tried to reach Mr. Haseldine by telephone but he did manage to speak to Mr. Mang who was Mr. Haseldine's assistant. Mr. Mang told Mr. Walker that he had been informed that the Bank had sold its HWL shares at \$7.10 per share. Mr. Walker gave evidence to the effect that Mr. Mang may have mentioned deferred terms but he considered it unlikely that CKH was mentioned as the buyer.

97. Mr. Walker then telephoned Mr. Wyllie whom he knew personally (see paragraph 64). Thus by about 8.00 p.m. Mr. Walker was aware of the crucial points of the impending announcement. But his interest lay not in any financial gain that this knowledge might present to him but in obtaining as far as he could the full details of the story. To this end he telephoned many people. He tried, unsuccessfully, to get comments from CKH. Between 8.00 p.m. and 9.00 p.m. he spoke to at least two and probably more Hong Kong stockbrokers, telling them what he knew of the deal - information which in each case was new to them. The effect of these telephone calls on trading in HWL shares in London cannot now be gauged. But since Mr. Walker's information was culled from various people,

few (if any) of whom were insiders, any resultant London trading could not be described as insider dealing.

98. At 11.30 p.m. that night the SCMP received the telex Bank release from Michael Stevenson Ltd. Mr. Alan Johnson-Hill of CKH delivered a copy of CKH's press release a little later.

Leaks to Journalists

99. Thus, well before 11.30 p.m.:-

- (a) Mr. Wong of the Economic Journal obtained information as to the details of the deal from Mrs. Wong Chow Seck-kwan at Stevensons, which he fed both to his newsroom and to Mr. Mang;
- (b) Mr. Walker of the SCMP was put on to the scent following Mr. Boyer's call to Mr. Hutcheon, and during the course of his enquiries got information from Mr. Mang (which Mr. Mang had got from Mr. Wong of the Economic Journal) and from Mr. Wyllie, which information he disseminated widely, to inter alios, the investing community; and
- (c) Mr. Johnson-Hill confirmed various details to the SCMP and to the Standard at about 9 - 9.30 p.m.

Trading in HWL shares in Hong Kong on the 25th day of September 1979

100. Returns should be made to the Commissioner for Securities of transactions in shares on the Stock Exchanges of Hong Kong. According to such returns, the total number of HWL shares traded on the 25th day of September 1979 was 2,346,240. However, the then Commissioner for Securities Mr. UisdeinMcInnes gave evidence before us that there is a disparity between the reported and the actual turnover of all the Stock Exchanges, such disparity normally being higher in times of a high turnover. Such has proved to be the case in the present instance. We caused very thorough enquiries to be made into dealing in Hong Kong between the 19th and the 26th days of September 1979. Letters were sent out to over 925 registered dealers asking for details of their trading in HWL shares during that period. It should be said at once that these dealers were co-operative. 490 of them reported that they did not trade in HWL shares at all. But the returns from the others revealed transactions in over 3,666,000 HWL shares on the 25th day of September 1979. However, the total turnover on the four Exchanges for that day was \$267,670,000 which was higher than any preceding days' trading for that month, but lower than that recorded for the 26th, 27th and 28th days of September 1979. On the 25th day of September 1979 the closing price for HWL shares on the three exchanges where they were traded was \$5.85 per share, as compared with the closing prices the previous day of \$5.60 and \$5.65. In our judgment the price movement for HWL shares and the volume of trading in them on the 25th day of September 1979 are not consistent with any widespread knowledge in Hong Kong of the impending agreement before 3.30 p.m.

101. Furthermore, a breakdown of all purchases of lots of 40,000 shares or over shows that apart from one very active broker the pattern of trading was diffuse, comprising a variety of individual and institutional sales and purchases to be expected on any day of a little better than average trading.

102. The stockbroking firm which was very active on the 25th day of September 1979 was that of Vickers da Costa (Hong Kong) Ltd. (Vickers da Costa). On that day they bought a total of 520,000 HWL shares. According to Mr. Philip Tose, the Managing Director of Vickers da Costa, part of the firm's business involved the operation of discretionary accounts, i.e. accounts operated by the firm with total discretion as to what shares should be bought or sold and when, up to certain limits. The relevant shares would be bought in substantial numbers and then distributed by the firm among the discretionary clients. There were about 20 such clients in September 1979. The firm also operated another kind of account, a semi-discretionary account, whereby the client would normally, but not always, be consulted before shares were bought or sold on his account.

103. Between the 3rd and 24th days (inclusive) of September 1979 Vickers da Costa had only one transaction in HWL shares, namely on the 7th, when they bought 15,000 shares for a client. However, Mr. Tose in evidence before us stated that in the week before the 25th day of September 1979, there were rumours in the market, about HWL shares, which were steadily increasing in price, indicating that "something was brewing". Mr. Tose said he did not act immediately on these rumours, but continued to keep a close eye on HWL shares. On the morning of the 25th Mr. Tose, Mr. Henry Cheong (a fellow Director of Vickers da Costa) and Mr. Daniel Pang (the firm's research analyst) met for their daily pre-trading conference and after discussion which included a technical analysis of the trading pattern in HWL shares, decided to buy HWL shares on the market. It was contemplated on that morning that over the next three or four days the firm would buy about two million HWL shares.

104. Consequently on the 25th day of September 1979 Vickers da Costa entered the market in Hong Kong for HWL shares and were buying throughout the day. In the morning a client, Mr. Frederick Tong, telephoned Mr. Cheong and had a discussion as to buying shares. Mr. Cheong recommended HWL shares, a recommendation which Mr. Tong accepted, and, instructed Vickers da Costa to buy 100,000 HWL shares for him, which they did. Mr. Tong's evidence as to the reasons for his purchase was (a) that Mr. Cheong advised it; (b) that he (Mr. Tong) considered HWL shares to be undervalued compared with the market overall; and (c) he bought because of his view of the "fundamentals", by which he meant the value of a share because of its assets or earnings. Mr. Tong was and is clearly a substantial and sophisticated investor who regularly bought and sold large quantities of varying shares. We are quite satisfied that he did not receive any advance information concerning the proposed agreement between the Bank and CKH.

One other client, namely Mr. William Lee, instructed Mr. Cheong to buy 20,000 HWL shares on the 25th. This was an ordinary transaction with no overtones.

105. On the 25th day of September 1979 Mr. Johnson-Hill instructed Mr. Tose to buy 170,000 HWL shares. In evidence Mr. Tose was unable to recall exactly when he received these instructions, but he believed it was during the day. At that time Mr. Johnson-Hill and Mr. Tose would normally speak to each other on the telephone three or four times a day. When he was in the Colony Mr. Johnson-Hill would make his own decisions on what shares to buy or sell or when to do so but when he was outside the Colony, he allowed Mr. Tose to buy or sell for him at his, Mr. Tose's discretion. Mr. Johnson-Hill was at the material times a large and regular investor in Hong Kong shares, with a turnover of shares in 1979/80 of HK\$44,000,000.

106. At the time of our inquiry, Mr. Johnson-Hill had permanently left the Colony, and did not give evidence before us. We had no power to compel him to do so. He did, however, give a full and detailed written statement. In this, he asserted that his instructions to Vickers da Costa to buy HWL shares were given in the morning and prior to his being told of the agreement by Mr. Li Ka-shing at 4.30 p.m. on the 25th day of September 1979. We are satisfied that he knew nothing of the agreement before that time. It has not been possible to test the accuracy of Mr. Johnson-Hill's statement in cross-examination. Nevertheless, Mr. Cheong said in evidence that the HWL shares which Vickers da Costa bought on the 25th were allocated to the various accounts by him after the close of the Hong Kong market and before 8 p.m., and Mr. Johnson-Hill's shares came from those purchased by Vickers da Costa in Hong Kong. It is theoretically possible that Mr. Johnson-Hill telephoned Mr. Tose shortly after 6.30 p.m. when Mr. Li Ka-shing and Mr. Chow left for the signing ceremony, and instructed him then to buy the shares; which could then have been allocated to Mr. Johnson-Hill. But both Mr. Tose and Mr. Cheong in evidence were adamant that this was not the case, and we have no reason to and do not disbelieve them. It is our view that Mr. Johnson-Hill who was a sophisticated and well informed investor in Hong Kong share market instructed Mr. Tose to buy HWL shares during the operation of the Hong Kong stock market on the 25th day of September 1979 and at a time when he knew nothing of the impending deal. This view is to some extent strengthened by the fact that, for Mr. Johnson-Hill, the value of the shares purchased was not out of the ordinary so as to suggest insider knowledge.

107. On the 24th day of September 1979 Mr. Chan Wai-Kam (now deceased) gave instructions to his younger brother Mr. Chan Wai-Lim to buy 150,000 HWL shares. On the following day, the 25th, Mr. Chan Wai-Kam asked the same brother to buy a further 150,000 HWL shares using a margin account of a family company, Watten Enterprises Ltd. with Sun Hung Kai Finance Company Ltd., and 420,000 HWL shares through his, Mr. Chan Wai-Lim's, brokers. These instructions were carried

out, so that on the 25th Mr. Chan Wai-Kam held 720,000 HWL shares. On the 26th, Mr. Chan Wai-Kam told his brother to sell these HWL shares, and on that date 611,000 of his HWL shares were sold at a profit of over \$1.00 per share, the balance being sold on the 10th day of October 1979. Mr. Chan Wai-Kam and Mr. Chan Wai-Lim were at the time directors of Island Peninsula Realty and Enterprises Ltd. (Island Peninsula Company) and Mr. Li Ka-shing was also a director. The Island Peninsula Company held a board meeting, followed by a luncheon, on the 24th day of September 1979, at which both Mr. Chan Wai-Kam and Mr. Li Ka-shing were present. The size of the purchase of HWL shares by Mr. Chan Wai-Kam were much larger than his other purchases through Mr. Chan Wai-Lim, but Mr. Li Ka-shing when asked about the matter steadfastly denied that he would have said or that he did say anything to Mr. Chan Wai-Kam of the proposed deal. We accept Mr. Li Ka-shing's evidence, since as we have mentioned earlier, and as he pointed out, any noticeable fluctuation in the market, which such a leak might well have caused, might have had the result of the deal being called off altogether or competitors might have offered a better price to the Bank, and if the deal continued any rise in the price of the shares would have cost him a great deal of money.

108. Our conclusion, arrived at from the trading statistics for the 25th day of September 1979, from the returns from brokers, from the statements which have been taken and from the evidence we heard, is that it is unlikely that there was any leak of the price-sensitive information in Hong Kong prior to the close of the Hong Kong Stock Exchanges at 3.30 p.m. There is furthermore no evidence to link any of the 'insiders' who were privy to such information before 3.30 p.m. with anyone who bought shares in Hong Kong on that day. We think Mr. Li Ka-shing was correct when he said in answer to the question 'Do you think there had been a leak?' he replied 'No. I think the only thing, the people who buy on the 25th on the Hong Kong market, just luck only. I don't think they really had information. But the people who bought that evening in the London market, really they have information - but not in Hong Kong.'

Trading in HWL shares in London on the 25th day of September 1979

109. Our efforts to investigate trading in HWL shares in London on the 25th day of September 1979 have been materially hampered by two factors. First the Tribunal's jurisdiction is limited to the Colony of Hong Kong and it has no power to enforce process abroad. Secondly, there has been a disappointing lack of co-operation from the Council of the Stock Exchange, London. That Council conducted its own investigation shortly after this Tribunal was convened. We do not know the purpose of this investigation, but it is abundantly clear that it was not to assist the Hong Kong inquiry. We have not been provided with a copy of its report, nor of the returns made to it by London stock brokers and jobbers, even when a particular stock broker or jobber consented to our seeing them: Such information as the Council did vouchsafe to us was meagre and of such a quality that we can place little reliance on it. Thus the Council wrote that for the 16 trading days between the 3rd and 24th days of September 1979 the reported volume of the average number of HWL shares bought was 34,362 and the average number sold was 37,691, whereas the figures for the 25th day of September 1979 were 651,300 bought and 707,518 sold, and for the 26th day of September 1979 1,093,500 bought and 1,244,052 sold (these latter figures include overnight transaction booked to the 26th). Vickers da Costa Ltd. of London informed us that on the 25th and 26th they bought 811,000 HWL shares, of which 430,000 were bought for their associate company. But T.C. Coombs & Co. of London bought 380,000 HWL shares (and sold 100,000) on the 25th, and so the combined total purchases of Vickers da Costa (HK) and T.C. Coombs & Co. is 900,000, which far exceeds the reported total purchases mentioned above. Why the Council took its figures from reported volume rather than from stock brokers return is not known, and is unfortunate.

110. Mr. Mok Ying-Kie, stock broker and Chairman of the Hong Kong Stock Exchange told us that orders from London for HWL shares began to flow in at the beginning of trading there, i.e. 6.00 p.m. Hong Kong time as a result of which he sold 92,000 HWL shares to T.C. Coombs & Co., 20,000 HWL shares to W.I. Carr Sons & Co. (now Carr Sebag & Co.) and 20,000 HWL shares to Strauss Turnbull & Co. in the early period of London trading. But unless there was another leak to London, which we have failed to uncover, we are of the view that Mr. Mok must be mistaken as to his times, and that he in fact sold the HWL shares to the London stock brokers not earlier than 7.00 p.m. Stevensons only received the Bank's press release at about 6.50 p.m. and it was handed to their translators about 7.00 p.m.

111. Mr. Tose did tell us that he had commenced buying HWL shares on the London market at about 6.30 p.m. and managed to acquire approximately 150,000 shares at \$6.33 and below. At the time he thought that Vickers da Costa had the market in HWL shares to themselves for half an hour, but at 8.15 p.m. Hong Kong time he spoke to someone in his company's London office, who of his own motion mentioned the \$7.10 price and added "You have a competitor in the market". His reaction was to tell his London office to buy as many HWL shares as possible. We are satisfied that Mr. Tose's actions were not prompted by any inside knowledge of the deal.

112. There was a body of evidence before us, not only from Mr. Tose and Mr. Mok but also from London stockbrokers and jobbers that knowledge or at least rumours of the sale (though not necessarily the price) of HWL shares by the Bank to CKH were widespread round the Stock Exchange during the hours of trading in London and before the official Bank announcement. However, without the assistance of the Council to the Stock Exchange in London, which has not been forthcoming, we have not been able thoroughly to investigate trading in London on the 25th day of September 1979 because this Tribunal has no power to compel disclosure of details of trading from London stock brokers and jobbers. It has therefore not been possible for us to draw many definite

conclusions from such enquiries as we have been able to make. Quite clearly the volume of dealing in HWL shares in London was far higher than usual, but differing people attached differing importance to the above-mentioned rumours, some in fact discounting them altogether.

113. Vickers da Costa London Ltd. bought 430,000 HWL shares for their Hong Kong associated company on the 25th day of September 1979 and a further 100,000 HWL shares in America at 1.00 a.m. on the 26th day of September 1979.

114. Of the HWL shares Vickers da Costa bought through London, 150,000 were allocated to Bank Julius Baer of Switzerland; who were regular clients. According to Mr. Tose's evidence that Bank had by telephone during the 25th day of September 1979 instructed him to buy HK\$1,000,000 of HWL shares and HK\$1,000,000 of CKH shares - instructions which were confirmed by a telex which arrived shortly before midnight. Mr. Tose said that the CKH shares were bought in Hong Kong on the 26th day of September 1979 and that both purchases were done in the normal course of business and were not particularly large for this client. We see no reason to disbelieve Mr. Tose and do not do so. Since the buyer was a Swiss Bank we have no means of knowing whether it bought as a principal or, if it did not, who the beneficial owner really was. We add for the sake of completeness that we are satisfied that at all material times Mr. Quentin Baer of Wardleys had no connection nor communication with Bank Julius Baer, and that the similarity of names is pure coincidence.

115. The remainder of the HWL shares bought by Vickers da Costa were allocated by Mr. Tose at his discretion to the firm's discretionary clients. One of such clients to whom he allocated HWL shares was Fowlers Ltd., which received 45,000 shares. This company is an investment holding company for Mr. J.L. Marden, a Director of the Bank. Both Mr. Marden and Mr. Tose are adamant that this allocation was entirely discretionary, that Mr. Marden had given no instructions to buy HWL shares and that he had no knowledge of the purchase until at the earliest the 26th day of September 1979. Had Mr. Marden wished to do so, he could have bought a far greater number of HWL shares than 45,000. We accept their evidence.

116. Mr. Tose also allocated 25,000 HWL shares to a family trust company of the Tose family, and 40,000 HWL shares to a Corporation, which is also a kind of trust for the Tose family. A further 50,000 HWL shares were allocated by Mr. Tose to various members of the staff of Vickers da Costa. We see nothing remarkable or sinister about these allocations. The remainder of the allocations do not call for mention.

117. It seems likely that many HWL shares were purchased in London on the 25th day of September 1979 on the strength of the knowledge or rumours (the distinction between the two being only a value judgment of the credence to be attached to the information) of the Bank's sale of its HWL shares. The knowledge/rumours were widespread by 8.00 p.m. Hong Kong time (noon London time) and by that time available sellers were probably becoming somewhat scarce.

The Timing of the Announcements

118. The reason why the Bank's and CKH's announcements were delayed until 11.30 p.m. Hong Kong Time was that because they concerned three important Hong Kong companies, the Bank, CKH and HWL, they were likely to affect the share prices of these companies and the Bank wanted the Hong Kong market to be the first to trade after the announcements. The decision was Mr. Sandberg's own.

119. Various witnesses expressed differing views as to the best timing for announcements of this kind. The then Commissioner for Securities Mr. McInnes said that the timing would depend on the nature of the information but that the Securities Commission preferred announcements to be made either prior to the opening of Hong Kong trading or just after close of trading here. Mr. Mok Ying-kie, the Chairman of the Hong Kong Stock Exchange favoured the period between the close of Hong Kong trading and the opening of the London Stock Exchange (that being the time when the Bank's dividend announcements are normally made). Mr. Wyllie favoured the weekend when all Exchanges are closed. Mr. Tose and Mr. Walker both favoured 9.00 a.m. Hong Kong Time.

120. The difficulties which faced the Bank on choosing the best time for the announcements were as follow:-

- (a) The Bank not merely wanted to give the Hong Kong market the opportunity to be the first to digest the news; it also wanted it to be reported in the press as soon as possible after the announcement. This meant that those who knew about the agreement had to do their best to preserve secrecy for the duration of London trading on the 25th day of September 1979; and
- (b) the Bank's board meeting and the agreement were not concluded until after 6.00 p.m. too late to figure in the press that day, and at a time when the London Stock Exchange had just opened. This meant that if the announcement had been made almost immediately thereafter, although it could have been broadcast in Hong Kong, the London market would get any advantage which might accrue from it for almost a whole day's trading.

121. There would have been drawbacks whichever time had been chosen for the announcement and no doubt people who would have disagreed with the decision. We are of the view that no hard and fast rule can be made for announcements of this kind. We are further of the view that no valid criticism can be made of the Bank's choice for the timing, such decision having been taken from the best of motives.

Conclusions

122. The secrecy preserved by the Bank, Wardleys, and CKH during the negotiations leading up to the agreement and during the period between the agreement and the announcements was intense.

123. We are satisfied that there was no insider dealing in HWL shares on the Hong Kong stock market on or before the closing of trading on the 25th day of September 1979.

124. We are satisfied that no director or member of the staff of the Bank, Wardleys, CKH or HWL engaged in insider dealing in HWL shares at any time or passed on price-sensitive information to others for the purpose of insider dealing.

125. We are satisfied -

- (a) that neither Mr. Stevenson nor Mr. Fish of Stevensons revealed any details of the press release before the time came for it to be made public;
- (b) that Mrs. Wong Chow Seck-kwan, one of Stevenson's translators who was also employed on a part time basis for the Hong Kong Economic Journal, did by telephone give details of the agreement, gleaned from that part of the release which she had herself translated, to Mr. Patrick Wong, a reporter of that journal; that she did this not with a view to profit for herself or that Mr. Wong should himself profit from the news, so that her actions did not amount to insider dealing; and
- (c) that Mrs. Wong Chow Seck-kwan's actions were unknown either to Mr. Stevenson or to Mr. Fish.

However, we question the wisdom of Stevensons employing to translate price-sensitive information a person who was to the director's knowledge also employed by an Economic Journal. True it is, Mrs. Wong Chow Seck-kwan had on several previous occasions handled such information with total discretion. But the temptation must always have been there to give a colleague a scoop, and on the relevant occasion she failed to resist it.

126. We are satisfied that on receiving the details of the agreement from Mrs. Wong Chow Seck-kwan, Mr. Wong -

- (a) spoke by telephone to Mr. Mang of HWL and informed him of such details;
- (b) spoke to other fellow reporters about them so that;
- (c) these details became common knowledge in the news room.

127. We are satisfied -

- (a) that Mr. Mang, consequent on receipt of the information set out in paragraph 126(a) telephoned Miss Dende Montilla and thereafter Mr. Walker both of the SCMP;
- (b) that in his telephone call with Mr. Walker, Mr. Mang, acting solely on what Mr. Wong had told him gave to Mr. Walker some of the details of which Mr. Wong had spoken; and
- (c) that thereafter Mr. Walker telephoned Mr. Wyllie, who did no more than confirm the name of the parties involved in the agreement.

128. We are satisfied that then

- (a) Mr. Walker spoke to a number of Hong Kong stock brokers concerning the deal;
- (b) that the details of the deal became common knowledge among the stock broking fraternity; and
- (c) that these details were passed on to London with the result that there was increased trading in HWL shares on the London Stock market.

But none of the foregoing amounted to insider dealing. Once the details became common knowledge they were no longer 'relevant information'.

129. In the result, we have been unable to obtain evidence of any culpable insider dealing.

Recommendations


130. This matter was referred to us some ten months after the events into which we have been required to enquire. At such a remove of time, it is inevitable that the memories of witnesses become dimmed and relevant documentary evidence lost. It is, of course, the fact that the present case is the first to be referred to the Tribunal, and therefore the delay may be understandable, but if future cases are to be referred, the tasks of investigation and decision would be considerably eased if the reference could come much earlier.

131. In view of the fact that speed is essential, it is questionable whether the present constitution of the Insider Dealing Tribunal should be continued. It is an ad hoc Tribunal, with a Standing Chairman who must be a Judge of the High Court, and two members appointed for specific inquiries. It is assisted by counsel. Its proceedings are deemed to be judicial proceedings, and have to be conducted in the manner of a Commission of Inquiry. Although it is not bound by the rules of evidence, formal hearings are necessary at least for part of the evidence. Moreover, one of the difficulties we have experienced has been the problem of co-ordinating the schedules of the various people involved in the Inquiry. For example, although the investigations carried out on our behalf had been completed by the end of April 1981, it was not until July 1981 that we were able to begin to hear oral evidence, and because of the inevitable inavailability of various witnesses in late July and August we had to adjourn until late September. Thereafter we asked for and were supplied with written submissions on behalf of several of the interested parties.

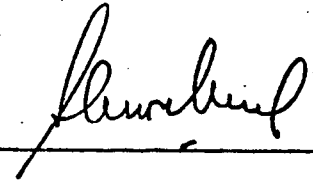
This seems to us to be unnecessarily cumbersome. In England, Board of Trade enquiries take place in which a Queen's Counsel is appointed together with a leading accountant. The inspectors must act judicially and in accordance with the rules of natural justice and if they break those rules their actions can be renewed judicially by the High Court. But they can act speedily, informally, with easily arranged interviews with witnesses who may, of course, be legally represented. In our view, this is a much more efficient system which should be adopted for any further Insider Dealing enquiry, though this would need legislation. It is, however, essential that at any such enquiry there should be Crown Counsel, experienced in commercial affairs, to assist the Tribunal, that the office of the Commissioner for Securities should continue to supply investigators and that an experienced and senior officer from the Commercial Crimes Bureau should be seconded to the Tribunal to assist in the taking of Statements.

132. Future enquiries may involve the London Stock Exchange. We have already adverted to the disappointing lack of assistance which we have received from the Council of that Exchange. We recommend that representations be made at the highest level in an endeavour to persuade the Council to change their policy and, if necessary, their rules.

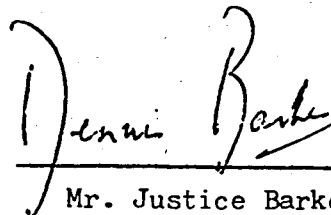
133. We cannot end this report without expressing our deep sense of gratitude to Mr. Barry Barlow, of the Attorney General's Chambers. His skill and assiduity, and his grasp of the matters involved have not only materially lightened our load but also enabled us to save considerable time and expense.



M.J. Roberts



Mrs. Maisie Wong



Mr. Justice Barker

PRESS RELEASE

(For Release at 11.30 p.m. 25 September 1979)

The Hongkong and Shanghai Banking Corporation ("HSBC") announces that terms have been agreed with Cheung Kong (Holdings) Limited ("Cheung Kong") for the sale to its wholly-owned subsidiary, Continental Realty Limited, of 90,000,000 ordinary shares in Hutchison Whampoa Limited ("the shares") beneficially owned by a wholly-owned subsidiary of HSBC.

The purchase price is \$7.10 per share. Cheung Kong will immediately pay 20 per cent of the total consideration and has the option to defer payment of the balance for a period of up to two years subject to the condition that not less than half the balance will be paid on, or before 24 March 1981.

If Cheung Kong exercises its option to defer payment for the shares, the cash consideration payable for the shares paid for after 24 September 1980 but before 25 March 1981, will be calculated on the basis of a price of \$7.60 per share. The consideration payable in respect of those shares paid for after 24 March 1981 will be calculated on the basis of a price of \$8.10 per share.

On the basis of a purchase price of \$7.10 per share, the total consideration payable amounts to \$639,000,000.

The shares will be acquired with all rights attached thereto, including the voting rights and the right to receive the interim dividend of \$0.10 per share in respect of the year ending 31 December 1979, declared on 21 September 1979.

HSBC's shareholding in Hutchison Whampoa Limited ("Hutchison Whampoa") arose out of its earlier involvement with Hutchison International Limited ("HIL"), now a wholly-owned subsidiary of Hutchison-Whampoa following the merger of HIL and Hong Kong and Whampoa Dock Company, Limited ("HWD").

In 1975, when HIL was facing a severe financial crisis, HSBC, through a wholly-owned subsidiary, subscribed for 150,000,000 shares in HIL, which were subsequently converted when the merger took place into 90,000,000 ordinary shares and 90,000,000 Preference Shares of Hutchison Whampoa. It was stated at that time that it was HSBC's intention to substantially reduce its

.../shareholding

shareholding as soon as conditions permitted and that it would be done in an orderly manner.

Under the able direction of Mr W.R.A. Wyllie, the Chief Executive originally appointed by HSBC, there was a substantial improvement in the financial position and profitability of HIL over the next two years and it was agreed at the time of the merger between HIL and HWD in 1977 that HIL would in future not look to HSBC for any support other than that which might reasonably be expected from HSBC as a shareholder in, and the principal banker to, HIL.

The interim statement of Hutchison Whampoa published on 21 September 1979 has confirmed that its growth and profitability have been sustained under Mr Wyllie's continuing leadership.

Recently, an approach was received from Cheung Kong concerning the possibility of HSBC selling its holding of ordinary shares in Hutchison Whampoa. In view of the financial stability and profitability of Hutchison Whampoa, it was considered that, subject to satisfactory terms being agreed, the approach offered a suitable opportunity for HSBC to meet its stated intention of disposing of the shares at an appropriate time and in an orderly manner. In addition, the successful profit record of Cheung Kong and the complementary nature of many of the activities undertaken by Hutchison Whampoa and Cheung Kong led HSBC to believe that Cheung Kong would be able to make a valuable contribution to the growth of Hutchison Whampoa and that the sale of the shares would therefore be in the long term interests of the shareholders of Hutchison Whampoa.

In accordance with normal practice the profits on the sale of the shares, as they arise, will be credited to HSBC's reserves.

It is the present intention of HSBC that its holding of preference shares in Hutchison Whampoa should be retained.

c.c. to VC Cheung / K.H.L

cc Hutchison / W.L.

