

REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

appointed to inquire into and determine (a) whether culpable insider dealing took place between the 1st January and the 30th June 1984 in relation to the ordinary shares of International City Holdings Limited or any related companies and (b) the identity of any persons involved in such insider dealing and the extent of their culpability.

Presented pursuant to the Securities Ordinance (Cap. 333),
section 141I(4)(a)

VOLUME II

DEALINGS, COMMENTS AND RECOMMENDATIONS AND APPENDICES

Ordered to be printed and caused to be published by
the Insider Dealing Tribunal pursuant to the Securities
Ordinance, section 141I(4)(b)(i)

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CHAPTER IX

DEALINGS AHEAD OF THE GENERAL AVAILABILITY
OF INFORMATION OF THE NEGOTIATIONS
RESULTING IN THE CITY GARDEN TRANSACTION

(A) CULPABLE INSIDER DEALERS

9.1 There were a number of suspected dealings under this Chapter but none of them were held to be culpable.

(B) DEALERS HELD TO BE NOT CULPABLE

9.2 The persons named in this part of the report as furnished to the Financial Secretary under section 141I(4)(a) of the Ordinance have exercised their right under section 141I(5) not to be named in this published report in respect of their dealings in ICH shares, which were the subject of the Tribunal's inquiry and in respect of which those persons have been found to be not culpable.

CHAPTER X

DEALINGS IN JANUARY, FEBRUARY AND MARCH 1984
AHEAD OF THE GENERAL AVAILABILITY OF
INFORMATION OF THE BREAK CLAUSE

(A) CULPABLE INSIDER DEALERS AND OTHER CULPABLE PERSONS

(1)(a) CHEUNG KONG (HOLDINGS) LIMITED

(b) STARPEACE LIMITED

(c) CHOW CHIN-WO

(d) LI KA-SHING

(e) GEORGE ZANG CHON-SHENG

(f) ALBERT CHOW NIN-MOW

(g) GEORGE COLIN MAGNUS

(i) The corporate background

(a) CKH and the CKH Group

10.1 Cheung Kong (Holdings) Limited ("CKH") was incorporated as a private company on the 8th June 1971 under the name of Cheung Kong Real Estate Company Limited. The company adopted its present name on the 14th August 1972 and in October 1972 it offered 10.5 million shares of \$2 each to the public at \$3 per share. Originally the company and its subsidiary and associated companies acted as property owners and developers but through the years the group expanded rapidly and by the end of 1983 it had acquired additional interests in investment holdings and hotel ownership.

10.2 The 1983 Annual Report dated the 6th April 1984 indicated that as at the 31st December 1983 the Group's interests included effective shareholdings in 27 associated companies including indirect holdings in Green Island Cement Company Limited ("Green Island Cement") (32.4 per cent), Hutchison Whampoa Limited ("Hutchison") (35.1 per cent), ICH (32 per cent) and Lee Hing Development Limited ("Lee Hing") (43.9 per cent). The same Report listed 35 principal subsidiary companies in the Group whose functions included nominee services, investment holding, share dealing, property development, property investment, property management and hotel ownership. As at the 31st December 1983 the authorised share capital of CKH was 600 million shares of \$2 each of which 394,395,680 had been issued. The value of the group's total net assets given in the group balance sheet as at the 31st December 1983 was \$5.148 billion. It is hardly surprising that the vernacular stock market nick name for this highly successful group, which Mr Litton described aptly as the flagship of K S Li's property empire, is "cheong kei sat chan" meaning "long term sure win".

10.3 The Chairman and Managing Director of CKH during the relevant period was K S Li and the executive directors were George Zang, C W Chow, Magnus and Albert Chow. In the prospectus for the issue of shares to the public in October 1972 George Zang was described as a director of CKH who had assisted K S Li in the property field over the previous fifteen years and as having had wide experience of all forms of property development and management. C W Chow was referred to in the prospectus as having been associated with K S Li for 10 years.

(b) The functions of the executive directors of CKH

10.4 During the relevant period the division of functions amongst the executive directors of CKH was as follows. C W Chow's evidence was that he carried out functions akin to those of the Financial Controller of the company. George Zang described C W Chow as handling the finance department, concentrating on finance, and he said of C W Chow - "Actually he looks like a finance director". K S Li gave evidence in the same vein and at one stage agreed with Mr Wright that C W Chow was the Financial Controller of CKH. When Mr Wright asked him to confirm that C W Chow had nothing to do with the property dealing side of the company, K S Li answered:-

"No, he is only interested in when he can get the money from the sales, and he is only concerned about the occupation permit and how much money he can receive, and also the building fees, the construction fees because he needs to pay."

John Ho, who was the Chief Accountant of the Group and in charge of the accounts section on the 20th floor of the CKH office in China Building, spoke in similar terms of C W Chow as being responsible for finance.

10.5 Both K S Li and C W Chow deposed in their declarations, in almost identical terms, that four to five years previously K S Li had given C W Chow oral authority to deal on behalf of CKH in shares of associated companies in the CKH Group up to a limit of shares to the value of \$100 million in any one such company within a reasonable period of time. This authority was said by both witnesses to be subject to the qualification that no dealing was to be made in contravention of the Take-over Code or any ordinance or regulation.

10.6 K S Li gave oral evidence to the Tribunal before C W Chow. When examined by Mr Wright he qualified his evidence regarding the associated companies of CKH whose shares C W Chow was authorised to deal in. He said that the relevant associated companies were ICH, Hutchison, Green Island Cement and Lee Hing. A few days later, when C W Chow gave oral evidence he said under examination by Mr Wright that he had dealt during the period of his authority in the shares of the above mentioned companies. He added that his dealings in Hutchison, Green Island Cement and Lee Hing had not been very substantial and he produced a record of his dealings in various listed associated companies of CKH between May 1981 and June 1984. Under examination by Mr Wright C W Chow also said that during the relevant period nobody gave him any instructions or advice regarding his dealings in ICH shares.

10.7 K S Li confirmed that C W Chow was given complete discretion to deal in shares within the ambit of his oral authority. Under examination by Mr Wright he said that C W Chow had served him for over 20 years. He trusted him and C W Chow was 100 per cent trustworthy. He had put him in sole charge of the share dealing and did not interfere with him except in special circumstances such as requests for information regarding a holding before the sale of a company or where a company had a new issue or a rights issue. More particularly K S Li said he never gave C W Chow instructions or advice about his share dealings during the relevant period and no one else advised or instructed C W Chow who had full power. Under cross-examination by Mr Litton, K S Li said that C W Chow could also deal in small amounts in shares of companies which were not associated with CKH but that for amounts of say \$30-40 million he had to consult K S Li.

10.8 George Zang and Albert Chow (the son of C W Chow) were both concerned with CKH's property development and sales activities. Albert Chow was junior in age and service to George Zang but he said that he was not subordinate to him. He was appointed a director of CKH in September 1983 after serving the company since 1974 when he had joined as a junior clerk. Both these directors were independently answerable to K S Li as were both the other executive directors. The evidence of George Zang and Albert Chow and a diagram supplied by CKH to the Tribunal showed that whilst these two directors bore a common responsibility to K S Li for the property development projects of CKH, in practice their actual functions were different. George Zang was more concerned with the actual project planning which was carried out by the project planning section of CKH on the 20th floor of the China Building. He had been actively concerned with the planning of the City Garden project from the beginning and had had discussions concerning it with the project managers and, in relation to more important matters, with K S Li.

10.9 George Zang described Albert Chow as being more concerned with the sales side of the company's projects in conjunction with Katherine Hung who was the company's Group Sales Manager. Albert Chow had been concerned for some years with the legal documentation relating to the property transactions of CKH and he was responsible for liaising with the company's solicitor, Ivy Chan, regarding the legal documentation of the City Garden transaction. He said in evidence that there were no routine meetings of the executive directors. However liaison regarding property development projects was achieved by weekly project managers meetings held on Wednesday mornings which were attended by K S Li, George Zang, Albert Chow, Katherine Hung and the project managers and others.

10.10 Magnus's evidence was that he was not normally involved in CKH's property developments save for the Silvercord development in Tsim Sha Tsui. Under cross-examination by Mr Litton he said that at the beginning of 1984 his principal function in CKH was to look after their associated companies, mainly Green Island Cement, Hutchison and their activities in North America. Although he was a non-executive director of ICH he had, he said, no particular contact with or knowledge of Lee Hing or associated companies of CKH which were predominantly property companies. Apart from being an executive director of CKH he had no other formal title in relation to that company.

10.11 We referred at paragraph 3.11 in Chapter III above to the management agreement dated the 15th May 1981 under which CKH was serving as the project manager and sales manager of the eight properties held at the date of the agreement by subsidiaries of ICH. The City Garden project held by Zangforce was one of those eight properties. George Zang acknowledged under cross-examination by Mr Litton that although the City Garden project was an ICH project, CKH in fact handled its design, construction and sales. There was nothing left for ICH itself to handle but, as appears from the evidence considered in Chapter V above, C P Man and K S Tso, the two executive directors of ICH, were actively concerned in the negotiations leading up to the City Garden transaction and with the subsequent cancellation. ICH's office was on the 7th floor of the China Building within easy reach of CKH's office on the 20th and 21st floors of the same building where the CKH directors functioned with their supporting staff.

10.12 There was thus a very close liasion between ICH and CKH as a result of the operation of the management agreement and two of the CKH directors, namely K S Li and George Zang, who were actually concerned with the City Garden transaction were also the Chairman and a non-executive director respectively of ICH. Albert Chow was the only one of the three directors of CKH actively concerned with the transaction who was not also a director of ICH.

10.13 The Tribunal was supplied with floor plans of the offices of CKH on the 20th, 21st and 22nd floors of the China Building and Albert Chow gave evidence under cross-examination by Mr Litton regarding the location of the offices of various directors and sections of the company. It appeared from this evidence that K S Li, all the executive directors, Katherine Hung and the sales and property department had their offices on the 21st floor where there were also two conference rooms. The 20th floor accommodated the accounts department of which John Ho was the Group Chief Accountant, and the computer, development and quantity surveyor's department. The penthouse on the 22nd floor comprised a conference room, sitting room and dining room.

10.14 All the directors' offices on the 21st floor were within easy reach of each other at the same end of the office area. K S Li's office was in one corner of the office area separated by a conference room and the office of a manager from the office of C W Chow which adjoined the office of Magnus situated in the opposite corner of the office area to that in which K S Li's office was situated. Adjoining the office of Magnus was the office of Albert Chow and adjoining that was George Zang's office.

(c) Starpeace Limited and other relevant subsidiaries of CKH

10.15 Starpeace Limited ("Starpeace") was a wholly-owned subsidiary of CKH. Its principal activity was described in the 1983 and 1984 Annual Reports as investment holding. Its directors during the relevant period, as indicated in the company's accounts for the years ending the 31st December 1983 and 1984, were K S Li and the four executive directors of CKH, namely George Zang, C W Chow, Magnus and Albert Chow. Other wholly-owned subsidiaries of CKH included Wynncor Limited ("Wynncor"), Conestoga Limited ("Conestoga") and Megaron Limited ("Megaron"). The principal activities of Wynncor were stated in the 1983 and 1984 Reports of CKH to be investment holding and in the same Reports the principal activities of Megaron were stated to be share dealing. Conestoga was not mentioned in the 1983 Annual Report but the 1984 Annual Report stated its principal activities to be property investment and share dealing.

(ii) CKH's holdings of ICH shares before the relevant period

10.16 As indicated in paragraph 3.3 of Chapter III above, CKH held 1,052,250,000 shares in ICH when that company became a public listed company on the 15th June 1981. John Ho, the Group Chief Accountant of CKH produced a table showing the balance of ICH shares held by the CKH Group at the time of the flotation of ICH on the 21st May 1981 (1,052,250,000 shares), on the 31st December 1981 (1,058,374,000 shares), 31st December 1982 (1,095,440,000 shares), 31st December 1983 (1,119,628,000 shares) and 31st December 1984 (1,119,988,000 shares). These figures show that the CKH Group's holding of ICH shares had increased every year by a small amount. The total increase between the 21st May 1981 and the 31st December 1983 (immediately before the relevant period began) was 67,378,000 shares, a modest amount relative to the group's total holdings in

ICH. By the 31st December 1984 the holding had increased by a further 360,000 shares. The restrained growth in the holding was due to its strategic nature and to the 35 per cent voting right threshold referred to in paragraph 3.4 of Chapter III above. C W Chow told the Tribunal that he was concerned, on K S Li's instructions to maintain the Group's holding of ICH shares at 29 to 35 per cent of that company's issued share capital.

10.17 John Ho's table of the CKH Group's holdings of ICH shares over the years showed that Wynncor had been used throughout as the main vehicle for the beneficial ownership of the Group's shares. By the end of 1981 Starpeace was also the beneficial owner of a very modest number of ICH shares and the number increased each year until the 31st December 1983. The shares of both Wynncor and Starpeace were held in the names of various nominees including banks with whom substantial numbers of the shares had been deposited. The relevant beneficial holdings of Wynncor and Starpeace over the years were as follows:-

	<u>21.5.81</u>	<u>31.12.81</u>	<u>31.12.82</u>
Starpeace	-	32,204,000	68,020,000
Wynncor	<u>1,052,250,000</u>	<u>1,026,170,000</u>	<u>1,027,420,000</u>
	<u>1,052,250,000</u>	<u>1,058,374,000</u>	<u>1,095,440,000</u>
	<u>31.12.83</u>	<u>31.12.84</u>	
Starpeace	80,868,000	70,498,000	
Wynncor	<u>1,038,760,000</u>	<u>1,049,490,000</u>	
	<u>1,119,628,000</u>	<u>1,119,988,000</u>	

10.18 C W Chow produced particulars of all dealings in ICH shares carried out by him on behalf of the CKH Group between the 20th May 1981 and the 31st December 1984. Under cross-examination by Mr Litton concerning these particulars he agreed that in a number of instances recorded sales took place before ICH became a listed company, and thereafter some transactions recorded as sales were book keeping transactions. He further agreed that since ICH had become a listed company there had been no sales of ICH shares by the CKH Group which were motivated by market considerations until he began selling ICH shares on the 16th January 1984.

(iii) Connection of CKH, Starpeace and C W Chow with ICH

10.19 CKH and Starpeace were connected with ICH during the relevant period by virtue of the combined effect of section 141E(1)(a) and (2) of the Ordinance because five of the directors of ICH, namely K S Li, Charles Lee, George Zang, C W Chow and Magnus were also directors of CKH and all of those individuals except Charles Lee were also directors of Starpeace. C W Chow was connected with ICH during the relevant period by virtue of section 141E(1)(a) of the Ordinance because he was a director of ICH during that period.

(iv) Relevant dealers and dealings

(a) Dealers

10.20 Starpeace was the vehicle by which CKH held part of its strategic holding of ICH shares. It was a wholly owned subsidiary of CKH and the directors of Starpeace were the executive directors of CKH so that the management of both companies was in the hands of the same directors. When C W Chow procured Starpeace to deal in ICH shares during the

relevant period he was exercising the oral authority of K S Li, who was the Chairman of CKH and a director of Starpeace, granting the authority with the implied approval of the other executive directors of CKH who were also directors of Starpeace. In exercising that authority as a director of Starpeace and procuring that company to deal in ICH shares C W Chow represented not only the directing mind of Starpeace in effecting the dealings but also the directing mind of CKH in procuring Starpeace to effect the dealings. Accordingly, on final analysis, each dealing was a dealing effected by Starpeace and procured by CKH (acting by C W Chow as the delegate of the board of CKH) and by C W Chow (acting as the delegate of the board of Starpeace).

(b) Suspected dealings

10.21 As we have indicated in paragraphs 8.13 and 8.14 of Chapter VIII above, we were concerned with dealings made by dealers with relevant information regarding the break clause between the 16th January and about the 28th March 1984 when the Jardines announcement was made. During part of that period, between the 16th January and the 1st March, Starpeace sold 55,634,000 ICH shares which represented 68.79 per cent of Starpeace's holding of 80,868,000 ICH shares on the 31st December 1983. There was a break in the dealing between the 1st March and the 15th March 1984. On the latter date Starpeace bought 3,746,000 ICH shares. There were no further dealings thereafter until the 15th May 1984. We examined the pattern of Starpeace's dealings during the relevant period and beyond when considering the question of culpability. Suffice it to say at this stage that the dealings we suspected of being culpable insider dealings ("the suspected dealings") were the sales of 55,634,000 ICH shares effected by Starpeace between the 16th January and the 1st March 1984.

(v) Possession of relevant information

10.22 In accordance with the principles enunciated by Lord Denning in H.L. Bolton (Engineering) Co. Ltd. v T.J. Graham & Sons Ltd. [1957] 1QB159 (C.A.) at p.172 and by Lord Reid in Tesco Ltd. v Nattrass [1972] AC153 (H.L.) at p.171, the state of mind of CKH and Starpeace is to be identified with the state of mind of the directors of those companies at the time of the suspected dealings. Clearly K S Li, George Zang and Albert Chow, who took part in the negotiation of the City Garden transaction, were fully aware of the proposed or actual break clause at the time of Starpeace's suspected dealings. C W Chow admitted to having knowledge of the clause from the ICH Board Circular No. 3/84 which was dated the 7th February and was vetted by him before being submitted to K S Li. Magnus admitted receiving the same circular on or about the 10th or 11th February 1984.

10.23 The possession at the time of the suspected dealings of relevant information in the form of information of the proposed break clause during the negotiations and of the actual break clause after the 23rd January 1984 by K S Li, George Zang and Albert Chow means that all the suspected dealings of Starpeace procured by CKH were insider dealings for the purposes of section 141B(1)(a) of the Ordinance but the terms of that provision make it clear that it does not follow that such dealings were necessarily culpable. The dealings may or may not be culpable and it becomes highly relevant for the purposes of section 141C(3) to determine whether at the time of the suspected dealings, or any of them, C W Chow, who procured the dealings and whose state of mind at the time of the dealing is to be identified with that of CKH and Starpeace, had the relevant information

before he saw the ICH Board Circular No. 3/84 and, if so, whether he made use of it when procuring Starpeace to enter into any or all of the suspected dealings.

10.24 C W Chow himself denied that he had any knowledge of the break clause before he saw ICH Board Circular No. 3/84. In his declaration he pointed out that his functions were akin to those of a financial controller of CKH and that he had authority to deal in shares for CKH and its subsidiaries but that CKH's property developments or sales were not part of his duties and he had therefore not been involved in any of the negotiations leading up to the City Garden transaction.

10.25 However C W Chow made certain important admissions in his declaration. He admitted that he often visited his fellow director George Zang's office for general discussions and that during one of these visits, around mid-January 1984 at a time when press reports of a sale had already appeared, he had heard George Zang talking to his son Albert Chow about the possibility of Ever Bright purchasing a substantial part of the remaining blocks in City Garden, there being, he deposed, no mention of the exact number of blocks to be purchased. He further deposed that on a later occasion, in George Zang's office, he heard that all eight of the remaining blocks in City Garden were to be sold to Ever Bright.

10.26 In his declaration he deposed that he had not asked about the terms of the purchase and that it was not until he received ICH Board Circular No. 3/84 dated the 7th February 1984 that he became aware of the terms of the

transaction, including the break clause. He said under examination by Mr Wright that he was not sure when he had received the circular, it could have been the 7th or 8th February 1984. He also deposed that around the middle of June 1984 he learned from George Zang in the latter's office of the possibility of cancellation of the City Garden transaction and that on the 27th June he had received ICH's Board Circular No. 10/84 informing the directors of the cancellation. He added that he had not been aware that Yam Wong or Wang Mi had approached George Zang to discuss price reduction prior to the cancellation. Later under examination by Mr Wright he modified his evidence about the date on which he had heard from George Zang of the possibility of cancellation of the transaction. He said this could have happened later, maybe a week or 10 days later.

10.27 Under cross examination by Mr Litton, C W Chow said the transaction was not CKH's business but that of ICH. When it was put to him that the price at which a very large slice of City Garden was being sold would have considerable impact upon the financial position of the CKH Group, he first gave a negative answer, then said it had nothing to do with CKH's cash flow. When pressed again to indicate if he was saying that the price in question would have no impact on the financial position of the CKH Group he answered - "Some, I should say". He denied that, as Financial Controller, he would be concerned with the activities of CKH acting as project manager and sales manager for projects of associated companies.

10.28 As regards the income earned by CKH from project and sales management in relation to projects of associated

companies, he said such income would come within his cash flow projections but that the amounts would be negligibly small. Later under re-examination by Mr Wright, he produced monthly cash flow projections for CKH for January, February and March 1984 which had been prepared by him at the end of December 1983, January 1984 and at the beginning of March 1984 respectively. These projections made no reference to the relevant eight City Garden blocks. Likewise John Ho, the CKH Group Chief Accountant, who was responsible for preparing a monthly updated profit and loss budget for the CKH Group, provided a copy of the budget he had prepared in February 1984 and revised from time to time. It referred to the loss sustained on the sale of ICH shares up to the end of June 1984 but contained no reference to the eight City Garden blocks or any future management fee in respect of those blocks.

10.29 It emerged in the course of C W Chow's cross-examination by Mr Litton that he had not received ICH Board Circular No. 3/84 for the first time when he was sent it as a director of ICH for signature by him. He had, he said, seen the draft of the circular which was for signature by K S Li. It had been shown to him by K S Li's secretary. K S Li had not discussed it with him. He again said he saw the circular on the 7th or 8th February 1984. The following exchange of questions and answers took place when Mr Litton questioned C W Chow about this incident:-

"Q. Is that something which was fairly routine, that you should vet a document like that before it was actually presented for Mr Li's signature?

A. Yes.

Q. With a view to your approving its contents.

A. Yes."

10.30 Other important matters emerged during C W Chow's oral evidence. When he was under examination by Mr Wright regarding the events preceding the dealings in ICH shares which he had ordered in the name of Starpeace between the 16th January and the 1st March 1984, he said that on Friday the 13th January 1984 he had heard the rumours of some sort of a deal between ICH and Ever Bright, he had read newspaper reports of a sale on Saturday the 14th January, and that he had considered the rise of 8/9 cents in the price of ICH shares on Friday the 13th January to be unusually high.

10.31 When C W Chow was cross-examined by Mr Litton he was asked to elaborate on the events occurring between Friday the 13th and Monday the 16th January. He acknowledged that he was aware on Saturday the 14th January that some of the newspapers had reported that Wang had confirmed that the City Garden transaction had been clinched and that this had been followed by further newspaper reports to the same effect on Sunday the 15th January. He admitted that he thought when giving evidence that the newspaper reports would have had a considerable impact on share prices for the week commencing on Monday the 16th January 1984. However he said that when he read the newspaper reports to the effect that the deal was clinched he did not realise immediately that the statements were exaggerations. When Mr Litton asked him if he, too, had therefore been misled that week-end he replied - "I was not because I did not pay much attention to these press reports".

10.32 Later in his cross-examination by Mr Litton, C W Chow explained that the rumours he had heard on Friday the 13th January about a deal between ICH and Ever Bright were "Possibly from the stock market". He went on to say that some brokers had called him on the telephone and that maybe they thought the deal concerned the CKH Group. He could not remember how many brokers called him, maybe it was only one or two. He said that the brokers who called him were not the brokers with whom he had regular dealings; from time to time brokers would call him to discuss the Hong Kong stock market but this occurred very irregularly, sometimes once in months. On this particular occasion, he said, the brokers told him there were rumours in the stock market to the effect that ICH had sold Phases II and III of the City Garden project to Ever Bright for a considerable sum. C W Chow said there was no discussion about this information, the brokers were just letting him know. He said that they might or might not know that he was responsible for dealings in the shares of associated companies of CKH and they asked him if he knew of the information they imparted to him.

10.33 K S Li acknowledged that C W Chow and George Zang were probably his oldest business associates and employees who had since become directors and shareholders of his companies. K S Li also acknowledged that C W Chow looked after K S Li's personal dealings as well as CKH's affairs and said that he knew more about K S Li's personal accounts than anybody in the world. He would not have it that C W Chow and George Zang were friends but said in answer to Mr Litton - "They know each other". When it was put to him that C W Chow had said in his declaration that he often visited George Zang's office, K S Li replied - "I don't know. You need to ask Mr Chow Chin-wo". The substance of

his evidence was that C W Chow and George Zang were very busy men with completely different duties and K S Li did not think they would tell each other about their respective dealings. K S Li said he regarded C W Chow as the most honest man in the whole company who was only interested in finance. It was, he said, ICH who had made the transaction and C W Chow was only a non- executive director of that company as was George Zang who was acting on CKH's behalf in the deal. K S Li added that there was no link of duty between George Zang and C W Chow to make it likely that there would be discussion between them about the City Garden transaction.

10.34 Albert Chow deposed in his declaration that he had never disclosed details of the City Garden transaction other than to the persons directly involved. Under cross-examination he pointed out that CKH was only responsible under the management agreement for the property development and sale of ICH projects and it was not responsible for financing such projects which were the financial responsibility of ICH itself. The ICH developments were, he said, nothing to do with CKH's cash flow. It was put to him that Tonroe who was the Group Finance Director of HKE (which, like CKH was a substantial shareholder in ICH) had seen fit to request C P Man to supply him with cash flow projections relating to ICH. He replied that he was not clear about this but as far as he knew CKH would not ask C P Man for such projections. He said that as far as he knew C W Chow never needed information concerning ICH projects for financial projections and he had never asked Albert Chow for such information for such purposes. It was, he said, common knowledge in the business world that ICH's property development had nothing to do with CKH's cash flow.

10.35 Albert Chow was cross examined by Mr Litton regarding his contacts with C W Chow and his fellow executive directors. He agreed that C W Chow as Financial Controller of CKH must talk on a regular basis to him as one of the persons in overall management of CKH's property developments. He said that they lived quite close to each other in the North Point area but that C W Chow only talked to him about business matters at the office where they sometimes met in each other's offices and in the conference room with others. He emphasised the different functions of the directors, he and George Zang being responsible for property development and sales, and Magnus being responsible for CKH's associated companies and overseas investments. He said that he met George Zang most frequently because their functions were very close to each other and that he met C W Chow and Magnus less frequently or only when the need arose. Under re-examination by Mr Wright he said the executive directors and other senior management personnel did not eat regularly in the penthouse dining room. The executive directors, he said, normally worked eight, nine or even ten hours a day and they had no time for getting together over coffee or a meal. Albert Chow himself claimed to be too busy to chat and said he was unable to stop working for one or two minutes during the day.

10.36 He agreed under cross examination that his and George Zang's responsibilities regarding property development necessarily involved financial planning and cash flow and that the person in overall charge of financial predictions and cash flow for CKH was C W Chow. There were, he said, no internal rules regarding what he could properly discuss with the Financial Controller of CKH. As far as he knew, Albert Chow said, cash flow projections were prepared by C W Chow for CKH. He agreed that information for this

had to be derived from him and George Zang, as would information for calculation of actual and forecasted management fees.

10.37 Under examination by Mr Wright, George Zang presented a picture of C W Chow as quiet, not very sociable, preoccupied only with financial matters and not touching any development or sales. He said he had been with him for over twenty years but he did not have much to do with him socially outside office hours and their jobs were quite different. He added:-

"Occasionally he may come to see me, maybe once a month or sometimes one or two times in a day, asking for the cash flow problems, talking about the finance problems."

George Zang supported Albert Chow in saying that it was very rare for the executive directors of CKH to have time for chit chat and coffee, particularly with C W Chow.

10.38 In contrast to C W Chow's evidence in his declaration that he often visited his fellow director George Zang's office for general discussions, George Zang, when asked by Mr Litton if C W Chow often visited his office for general discussions, replied - "No". When it was put to him that he was being asked to confirm what C W Chow himself had said in his declaration George Zang gave a long answer the substance of which was that C W Chow did visit his office sometimes but not frequently and only when he needed information such as the date for the issue of any occupation permit or for the completion of a building which was relevant to the collection of money.

10.39 It was put to George Zang by Mr Litton that on one of C W Chow's visits to his office George Zang may have been discussing the City Garden transaction with Albert Chow or Katherine Hung and that there would have been no need to discontinue the discussion when C W Chow came in. He replied:-

"... because of that deal very often everybody came to my office so when we talking about that deal, maybe Mr Chow just walk in, he heard something maybe, but he is very quick, he such a character. For example, George, when my money will be received. I say maybe in a week or something. Then he left. That is Mr Chow. He not come to my office every day, never."

10.40 Under further cross-examination George Zang admitted that he very often discussed the City Garden transaction with Albert Chow but he denied that the break clause was one of the topics of such discussions. He said that he thought the transaction was "a genuine buy" and he still did not know, at the time he was giving evidence, why Wang had cancelled the transaction. He emphasised that the question of the break clause had been raised suddenly by K S Li in the negotiations and very little was said about it internally. After the internal meeting of ICH and CKH personnel held on the 3rd or 4th January before P C Chan's first visit to begin the negotiations there had, he said, been no further internal meetings of such personnel. According to George Zang his discussions about the transaction were about the details of the memoranda and arrangements with the solicitors. As he put it - "Option is option we don't have to repeat and repeat".

10.41 The accounts for the CKH Group closed on the 31st December 1983. George Zang admitted under further cross-examination that from January 1984 onwards the finance department, for which C W Chow was responsible, would be concerned with the preparation and submission to the auditors of the accounts of the Group for the year ending the 31st December 1983. When asked by Mr Litton if C W Chow would have to come to George Zang's office for information relevant to the audit of the accounts, George Zang replied that "we" supplied information to the accounts department about the number of projects, the amount of money and about the building contracts and C W Chow sometimes got his information from the accounts department and sometimes went to Albert Chow. George Zang said that he himself very seldom handled the accounts. He agreed that commitments of the CKH Group would be relevant to the question of audit. When asked if these would include commitments of the character of the memoranda signed on the 23rd January 1984, he replied that the commitment was there and "If any commitments should be there" but emphasised that he never touched accounts and he was not the right person to answer that question.

10.42 However he admitted without qualification that C W Chow, being responsible for the accounts, would sometimes need information from him and that when C W Chow visited him there was no reason why George Zang should cease his discussions concerning the affairs of the group just because C W Chow was there. When reminded by Mr Litton that C W Chow had deposed in his declaration that around the middle of June 1984 he had learned from him in his office of the possibility of cancellation of the transaction, George Zang first said he himself did not know about this possibility until around the 22nd June when Yam Wong held the lunch meeting with Wang Mi. He went on to say :-

".... must be after 22nd or after the lunch. Maybe we come back and Albert Chow is still in my room so we discussing this cancellation. Maybe he heard it, yes."

He insisted, however, that he did not have to tell C W Chow about Wang Mi's proposal to cancel the transaction and he had not done so. Mr Litton put it to him that it was possible that after he and Albert Chow returned from Yam Wong's lunch meeting on the 22nd June 1984 they had been discussing the cancellation in George Zang's office and C W Chow happened to be in the office and learned of the possible cancellation from this discussion. He agreed that must be the case.

10.43 After this admission of what C W Chow had already admitted in clear terms, save for the date, in his declaration, Mr Litton put it to George Zang that it was equally possible, although George Zang had no specific recollection of it, that in January he could have been discussing the terms of the memoranda, including the break clause, with Albert Chow and that C W Chow overheard their discussion. George Zang replied:-

"January, only occurred. If he heard, it must - I cannot remember that we are talking about it at the meeting but he only come for a few minutes sometimes. He very quick this man, he asking question, then he left."

10.44 At an earlier stage of his cross-examination George Zang had admitted that when he and Albert Chow discussed CKH affairs with people in the finance department

there was no reason to conceal anything from them and they talked freely. Shortly before that he said that in the case of the City Garden transaction entered into by ICH, an associated company of CKH, it would be only when the contract was signed and a deposit paid that they would have told C W Chow who would not have wanted to know about the transaction earlier. They would not, he said, have talked freely to the people in CKH's finance department about the transaction because it was a special case and they did not have to talk to them about the "option clause". When it was put to him by Mr Litton that there was no reason for him to recollect one way or the other whether or not he had actually done so he replied:-

"This case mostly handled by Albert Chow. Only I know is we receive after some contract we received the other 50 million dollars. At that time I think we let Mr Chow know that a few days later we will get some deposit or after we received the deposit we just inform him because our company is very big, 50 million dollars is not important, you see".

10.45 Mr Wright submitted to the Tribunal that there was not sufficient evidence to satisfy it beyond doubt, in accordance with the stringent evidential standard adopted by it, that C W Chow received information of the break clause before the 7th or 8th February 1984 when he admittedly saw ICH Board Circular No. 3/84. Mr Wright relied on the absence of any direct evidence on this question and upon the denials of C W Chow supported by those of Albert Chow and George Zang. As regards the relevant circumstantial evidence he emphasised the different functions of the executive directors of CKH. He also contended that there were too many uncertainties to permit the inference that

C W Chow had any particular information of the break clause at any particular time from any particular person or source. He rightly emphasised that the existence of mere opportunity of possession of information through the propinquity of the offices or homes of the CKH directors did not serve as proof of possession of such information.

10.46 As regards the relevance or otherwise of the City Garden transaction to the cash flow projections of the CKH Group, Mr Wright reminded the Tribunal that C W Chow had produced his own cash flow projections for CKH prepared by himself for January, February and March 1984 and they made no reference to the relevant eight City Garden blocks or to the City Garden transaction. Likewise John Ho, the Chief Accountant of CKH, had produced his monthly updated profit and loss budget (prepared by him in February 1984 and revised from time to time) which contained no reference to the eight City Garden blocks or to any future management fee to be earned by CKH in respect of those blocks.

10.47 Mr Wright also stressed the futurity of any management fee to be expected by CKH arising out of the City Garden transaction. This was evident from the fact that the eight City Garden blocks were still at the planning stage in January 1984 and the provisions of clause 10 and Schedule II of the management agreement provided for the first 35 per cent of CKH's management fee (being 1.5 per cent of the gross proceeds of sale of the units and parking spaces to be developed in Phases II and III of the City Garden project) when the necessary consent to start the superstructure was issued. Mr Wright also relied on Albert Chow's denial that there was any need to mention the City Garden transaction

to C W Chow, the reason being, according to Albert Chow's evidence, that ICH's property developments had nothing to do with CKH's cash flow.

10.48 As to any suggestion that it was to be inferred that C W Chow had overheard Albert Chow and George Zang discussing the break clause, Mr Wright relied on the denials of George Zang that the break clause was discussed between them and on his evidence that the break clause was the brain child of K S Li, offered and varied spontaneously by him without previous discussion with CKH or ICH personnel. The clause was, Mr Wright submitted, obviously recognised by George Zang and Albert Chow as exclusively within K S Li's domain and there was no reason or necessity for them to discuss or consider the clause, particularly when everyone was convinced it would never be invoked.

10.49 Mr Wright pointed to what he called the exclusively financial functions of C W Chow, who was not involved in the negotiations for the City Garden transaction, and he submitted that there was no reason why C W Chow should discuss the details of the transaction with George Zang or Albert Chow or concern himself with prying out details of the negotiations. The Tribunal was invited to consider C W Chow's personality and to accept that he was not loquacious or inquisitive. Mr Wright relied on the evidence of K S Li and George Zang which, he submitted, pointed to C W Chow being a reserved man of few words who was not likely to indulge in regular chit chat in George Zang's office concerning matters outside the sphere of his responsibility.

10.50 After anxious consideration of the evidence as a whole and of Mr Wright's able submissions we considered that we were being invited to accept a wholly unrealistic interpretation of the evidence and we declined to do so. We were satisfied that C W Chow was in possession of information of the break clause by the 16th January, for the following reasons.

10.51 C W Chow was, together with George Zang, a long serving business associate of K S Li. As K S Li himself put it, he knew more about K S Li's personal dealings than K S Li himself. K S Li put a very high degree of trust in him. He was at the very heart of the management of CKH as its Financial Controller and K S Li had given him wide oral authority to deal in shares of associated companies of the CKH Group. We accepted that C W Chow gave the impression of having a quiet and reserved disposition but he also gave the impression of high intelligence. Indeed, having seen the powerful character and intellect of K S Li displayed for some hours in the witness box, we could not conceive that C W Chow could have survived a business association for over twenty years with him or that he could have survived since 1972 as an executive director of the CKH Group if he had not been good at his job. The confidence and trust reposed in him by K S Li, both as Financial Controller of a very big group of companies and as an unsupervised dealer in shares of associated companies, was the best evidence of that confidence.

10.52 As Financial Controller of the CKH Group, C W Chow was a key man in the management of the group. We were invited to accept the evidence of George Zang and Albert Chow that he functioned in a blinkered fashion, preoccupied

with the dates when specific occupation permits or payments would be due or received and coming into George Zang's office from time to time in a detached way to ask for items of financial information while his son Albert Chow and George Zang were talking over his head about their property development and sales functions in circumstances where gobbets of their conversation might impinge on his disinterested ears before he rushed off quickly with his financial information to his own office. However this was wholly inconsistent with C W Chow's admission in his declaration that "I often visit my fellow director George ZANG's office for general discussions."

10.53 At the centre of the evidence is the fact that C W Chow was the Financial Controller of the CKH Group. Mr Wright very properly stressed that C W Chow and John Ho had demonstrated that the City Garden transaction and the prospective management fees that might have resulted to CKH from this transaction of ICH did not feature in C W Chow's cash flow projections or in John Ho's profit and loss budget. However we had no difficulty in accepting Mr Litton's submission that this evidence did not dispose of the real point which was whether, in his daily work generally, C W Chow as Financial Controller of the CKH Group expected to be told ahead of the market of matters affecting the group such as the City Garden transaction which he himself admitted would have some impact on the financial position of the CKH Group. It was after all a very substantial transaction involving a possible ultimate cash inflow to ICH of a sum approaching \$1 billion.

10.54 We did not believe the evidence of the CKH witnesses to the effect that C W Chow was not interested

to know the details of the negotiations or the City Garden transaction. An attitude of disinterest would have been wholly inconsistent with his role of Financial Controller of the CKH Group. A financial controller's role is generally understood to cover not only control of funding and share dealing but responsibility for both the statutory and management accounts of the group, the audit of the group's annual accounts and the financial strategy of the group. He was thus one of the Chairman's right hand men responsible for all the finances of the group. He was not a blinkered accountant shut away in his room and concerned with only one or two aspects of the group's finances. It was a sine qua non of his responsibilities that he had to know what was going on in the CKH Group, including information in relation to ICH's City Garden transaction which C W Chow admitted would have some impact on the financial position of the group.

10.55 Furthermore it appears from the evidence of George Zang and the annual reports of CKH that January was the month when the Finance Department, for which C W Chow was responsible, was concerned with the audit of the group's annual accounts. The partner of the firm that carried out the audit would have the right to know everything that might affect the group financially and C W Chow as the Financial Controller would have to be in a position to tell him.

10.56 Although there was no evidence of a fixed procedure whereby C W Chow was required to be informed of ICH's property transactions, there was no suggestion in the evidence of the CKH witnesses that any attempt was made to insulate C W Chow from relevant information concerning shares of associated companies and they spoke freely in his

presence about the affairs of the CKH Group. On his own admission, C W Chow picked up information from George Zang about the City Garden transaction, during the negotiations when he heard George Zang talking to Albert Chow about the possibility of the transaction, on a subsequent occasion which he heard that eight blocks were involved and shortly before the cancellation when George Zang told him it was a possibility.

10.57 Both K S Li and C W Chow said that they were unaware at all material times that a corporation could be a culpable insider dealer. It is therefore not surprising that C W Chow who was both Financial Controller and responsible for dealing in the shares of associated companies of CKH was left in the position where he could obtain any information about CKH's activities he required. On their own evidence such information would not have been denied him by George Zang or Albert Chow who worked very near to him and the whole corporate set up was such that it would be surprising if C W Chow did not see to it that he knew exactly what was going on in relation to the City Garden transaction.

10.58 Indeed the minutes of the ICH board meeting on the 8th August 1984 record K S Li meeting charges made by Davies by saying, on the question of disclosure of information, that "every effort had been made by the Executive directors to inform other directors of the deal". When the Chairman asked K S Li if he meant on that occasion to include C W Chow, he answered in the negative and added that Chow was not concerned with property deals.

10.59 However K S Tso, one of the executive directors of ICH, deposed in his declaration that the directors of ICH should have been aware of the break clause and details of the transaction on or about the 16th January 1984. He added that he assumed that the directors who were informed, representing the major corporate shareholders in ICH, would also have informed their co-directors around the same time. He gave oral evidence to the Tribunal some days after K S Li. When Mr Wright examined him he told the Tribunal that his assumptions related to both executive and non-executive directors of ICH. When Mr Wright asked him if he had any direct knowledge that everyone of the ICH directors had the relevant knowledge, he replied:-

"No, because Mr Li informed Mr Keswick and I informed John Cheung, and I assume Mr Li or George Zang informed the rest of the Cheung Kong directors. I assumed Mr Keswick would inform the Electric directors and John Cheung would inform the Wheelock Marden directors".

K S Tso's evidence was all based on assumption and clearly not in itself proof of actual knowledge on the part of C W Chow but the evidence was significant in relation to corporate communication concerning ICH.

10.60 Mr Wright pressed us with George Zang's evidence to the effect that George Zang and Albert Chow were never concerned to discuss the break clause proposed by K S Li because that clause was the brain child of K S Li who never consulted his subordinates and fellow directors about it and because George Zang and his colleagues believed the clause would never be invoked. It may be that George Zang adopted

this attitude towards the break clause but we were concerned to determine whether we were satisfied by all the primary facts that it was irresistibly to be inferred that C W Chow had obtained information of the break clause from one or other of his colleagues within CKH by the 16th January 1984 and we were not confining the scope of our inquiry to whether or not C W Chow had casually overheard George Zang and Albert Chow talking about the break clause.

10.61 Cogent evidence that C W Chow was not left uninformed about the City Garden transaction emerged when he was under cross-examination and admitted that K S Li's secretary had actually given him ICH Board Circular No. 3/84 to vet before K S Li signed it. This seemed a very strange procedure to adopt if C W Chow, who was not an executive director of ICH, was in fact not told previously of the terms of the City Garden transaction. Moreover C W Chow said that it was fairly routine for him to be required to vet documents of this character and he told the Chairman that he approved the last paragraph of the circular (containing the requirement of secrecy regarding the break clause) because Wang had wanted the break clause kept secret. He must have acquired that knowledge before he approved the circular if that was in fact the reason for his approving the last paragraph.

10.62 Another matter which emerged when George Zang was cross-examined was that he admitted, in nebulous terms, that "we" had informed C W Chow, either a few days before or after its receipt, about the deposit of nearly \$50 million which was received by Zangforce under the City Garden transaction. Any efficient financial controller

like C W Chow, who was informed of such a deposit received on behalf of an associated company, would want to know all about the transaction behind it. It would be absurd to contemplate otherwise.

10.63 Finally there was the all important admission by C W Chow when under cross-examination that he had received calls from brokers on Friday the 13th January, the day that ICH shares rose by 8/9 cents which he regarded as an unusually high rise. The brokers had told him about the market rumours of a sale by ICH to Ever Bright of Phases II and III of the City Garden project for a considerable sum. He admitted reading the newspaper reports on Saturday the 14th and Sunday the 15th January in some of which the transaction was reported as having been confirmed by Wang and he also admitted that such reports would have had a considerable impact on share prices for the trading week that was to begin on Monday the 16th January. He claimed that he did not realise immediately that the press reports were exaggerations and he was not misled by them because he did not pay much attention to the reports.

10.64 This was the evidence of the highly experienced Financial Controller of one of the major and highly successful conglomerates in Hong Kong who had wide and unsupervised authority to deal in the shares of associated companies including ICH, whose shares had soared by 8/9 cents on the strength of market rumours of a very big property sale by ICH and were almost certainly going to continue to rise further on the strength of press reports of the transaction.

10.65 We were left in no doubt whatsoever that in such circumstances the only realistic conclusion is that, unless he already was in possession of the information from his colleagues, C W Chow would have made it his business to find out what the true position was about the so-called sale by ICH to Ever Bright of City Garden property for a considerable sum. He had every reason to do so in his capacity as the Financial Controller of the CKH Group and as the director responsible for dealing in the group's ICH shares. It was his duty to find out what was going on. We were satisfied that he must have done so, and at the earliest opportunity, after he received the calls from the brokers on Friday the 13th January 1984 if he had not already received the information at a prior date. It is not possible to identify which of his colleagues gave him the information but we were satisfied after careful consideration of the evidence as a whole, that from not later than the 16th January 1984 C W Chow was fully informed of the true nature of the negotiations and the subsequent transaction including the break clause and we did not believe the evidence to the contrary given by C W Chow and the other CKH witnesses nor did we think it might reasonably be true. (v

10.66 It followed from the above findings that the suspected dealings of Starpeace procured by CKH were insider dealings within the meaning of section 141B(1)(a) of the Ordinance by virtue of the fact that at the date of the dealings four common directors of those companies, namely K S Li, George Zang, Albert Chow and C W Chow were in possession of relevant information concerning ICH shares. Magnus was also in possession of relevant information concerning ICH shares on or about the 10th or 11th February

1984. Accordingly the suspected dealings of Starpeace procured by CKH after that date were insider dealings by reason also of Magnus's possession of relevant information when those dealings were effected.

(vi) Culpability

10.67 The critical factual issues in relation to the possible culpability of CKH, Starpeace and C W Chow are:-

- (1) Whether, in terms of section 141C(3) of the Ordinance, the purpose of C W Chow when ordering the suspected dealings in ICH shares in the name of Starpeace between the 16th January and the 1st March 1984 was or was primarily the making of a profit or the avoiding of a loss for CKH and Starpeace; and, if the determination of the Tribunal on that issue is in the affirmative
- (2) Whether C W Chow's purpose or primary purpose was to make such profit or avoid such loss on behalf of CKH and Starpeace by the use of relevant information, namely information relating to the proposed break clause prior to the 23rd January 1984 and thereafter information of the existence of the actual break clause.

If the findings of the Tribunal had been in the negative in relation to either of the above issues of fact, then it would, in the circumstances of this inquiry, have held CKH, Starpeace and C W Chow not culpable under section 141C(3) in respect of the suspected dealings.

10.68 As regards issue (1) above, C W Chow admitted that the suspected dealings were motivated by market considerations. He deposed in his declaration that between the 16th January and the 1st March 1984 he sold 55,634,000 ICH shares at the average price of 70 cents "because I considered the price was unusually high at the time". When he was examined by Mr Wright before the Tribunal he said that he considered the price rise of 8/9 cents in ICH shares on Friday the 13th January was an unusually high increase in the market price. Under cross-examination by Mr Litton he said he did think the press reports on Saturday the 14th and Sunday the 15th January about the City Garden transaction would have a considerable impact on share prices for the week commencing on the 16th January. He was then asked by Mr Litton if he based his decisions upon market expectations when he bought or sold and he replied that he sold when the price was high and bought when it was low. He said that when he commenced selling the price was very high. Later in his cross-examination by Mr Litton he said the price was unusually high compared with ICH prices one or two months before.

10.69 As to 5 million of the shares sold by him on the 9th February 1984 on behalf of Starpeace he confirmed the evidence in Magnus's declaration. That evidence was that on the 9th February 1984 Magnus, who knew Mr Nigel Johnson-Hill ("Johnson-Hill") of Hoare Govett (Far East) Limited personally, received a telephone call from him asking if CKH had 5 million ICH shares to dispose of at a price of 82 cents as he had a client wishing to purchase the shares. Magnus had deposed that he referred the request to C W Chow who confirmed that CKH would sell the shares at the price offered, whereupon Magnus confirmed this to Johnson-Hill and requested him to send the contract note to C W Chow.

10.70 K S Li, who gave evidence before C W Chow, insisted that, since December 1983 when K S Li had had a rift with Davies, C W Chow had been under orders from K S Li to take counter measures in his dealings if there was any sign of HKL or Jardines or their brokers purchasing ICH shares and strengthening their voting powers. It was put to him by a leading counsel that his rift with Davies did not occur until the 14th February 1984 but he would not have it, and went so far as to say that Davies was lying if he said the rift leading to C W Chow's instructions to watch HKL's dealings had occurred on the 14th February 1984. Albert Chow supported K S Li's evidence on this matter on the same day when he was examined by Mr Wright.

10.71 C W Chow had deposed in his declaration that K S Li had given him what came to be called in our sittings "power struggle" instructions in December 1983 but when he was examined orally by Mr Wright two days after K S Li and Albert Chow had given their evidence, he said it was possible that the "power struggle" instructions were given to him by K S Li some time in February 1984. Three days later Mr Wright informed the Tribunal that he no longer wished to object to the fixing of the date of the rift between K S Li and Davies at the 14th February 1984.

10.72 Although the "power struggle" instructions were given to C W Chow on the 14th February 1984 and some of the suspected dealings were ordered by C W Chow subsequently on the 20th (220,000 shares), 28th (1,134,000 shares) and 29th February (3 million shares) and on 1st March 1984 (2.5 million shares), there was never any suggestion from C W Chow that any of the suspected sales were strategic

sales motivated by fears that another dealer was manoeuvring to upset the balance of control of ICH. He said that some subsequent dealings fell into this category but he did not include any of the suspected dealings. Accordingly we were satisfied by C W Chow's own evidence that the suspected dealings were motivated by market considerations.

10.73 The balance sheet in the Annual Report of Starpeace for the year ending the 31st December 1983 showed the cost of the company's holding of ICH shares at \$75,173,281.75 and its market value as at the 31st December 1983 (the price of ICH having closed at 47 cents on Friday the 30th December 1983) at \$38,007,950.00. This represented a loss of 49 per cent as at that date. The implication from C W Chow's evidence in his declaration was that he ordered the suspected dealings in order to reduce the overall losses which were being faced in January 1984 by Starpeace and, indirectly, by CKH in respect of Starpeace's holding of ICH shares. Thus in his declaration he deposed that between the 9th February 1982 and the 13th September 1983 he had purchased 62,254,000 ICH shares at prices ranging from 40 cents to \$1.10 averaging at 75 cents and that he had sold 1 million shares at 47.7 cents on the 4th November 1983. He then went on to depose that he sold 55,634,000 shares (these were the suspected dealings) between the 16th January and the 1st March 1984 (when he deposed that he stopped further sales) at an average price of 70 cents because he considered the price was unusually high at the time.

10.74 Looking at the suspected dealings in the way that C W Chow described them by reference to average prices, comparing the average price (75 cents) of the acquisition of

the 62,254,000 shares comprising Starpeace's holding with the average price (70 cents) of the disposal of 55,634,000 shares effected by the suspected dealings, the overall result was an average loss of 5 cents per share. Having satisfied ourselves that the suspected dealings were sales motivated by market considerations, we were therefore also satisfied that the purpose of the sales effected by those dealings was to avoid further prospective loss on the shares and to do so while the price of ICH shares was unusually high.

10.75 As regards issue (2), C W Chow deposed that his dealings in ICH shares before and after the signing of the memoranda on the 23rd January 1984 formed part of the trading in ICH shares starting from the flotation of ICH as a limited company. As we have already mentioned in paragraph 10.18 above, he produced particulars of his dealings on behalf of Wynncor and Starpeace between the 20th May 1981 and the 31st December 1984. He deposed that before and after the signing of the memoranda he did not act on any insider information but used his discretion in conformity with the authority given to him by K S Li.

10.76 We examined the overall pattern of C W Chow's dealings during 1984 on behalf of Starpeace and Wynncor, who held the CKH Group's ICH shares. The data provided by C W Chow showed that after the sales effected by the suspected dealings C W Chow effectively restored the aggregate holdings of the CKH Group at average prices appreciably below the average price of 70 cents at which the disputed dealings were effected.

10.77 Having, as he deposed, stopped further sales on the 1st March 1984, C W Chow bought back 3,746,000 shares on the 15th March because, he deposed, he suspected at the time that an unfriendly co-shareholder in ICH might be buying. Under examination by Mr Wright he said that he had been told by brokers that someone was buying actively in the market and he suspected hostile buying and effected his purchases in accordance with his "power struggle" instructions from K S Li. His evidence was that he did not continue the buying because he found there was no hostile buyer. The purchases effected on the 15th March when the price of ICH shares was still high were therefore not motivated by market considerations.

10.78 There was then an interval of two months until C W Chow sold 5 million ICH shares on the 15th May and another 5 million shares on the 17th May on behalf of Starpeace at an average price of 49/50 cents. He said he ordered these dealings because the political atmosphere regarding the future of Hong Kong was bad at that time. This was the time when Chinese leaders made a series of pronouncements which are mentioned in paragraph 7.22 of Chapter VII above. Under cross-examination by Mr Litton C W Chow admitted that there had been good political news on the 16th May but he said that it was not good enough. He deposed in his declaration that he did not sell much at this time because the price was too low. He said he began to buy back ICH shares on the 23rd May 1984. Between that date and the 29th June (the day after the cancellation of the City Garden transaction) he bought back 14,126,000 shares at an average price of 50 cents. There was however a break in his dealings between the 6th June and 29th June when he resumed purchases of the shares in a weak market in the wake of the news of the cancellation.

10.79 The data provided by C W Chow indicated that between the 1st July and the 31st December 1984 Starpeace bought a further 47,392,000 shares for \$25,944,329.60 at an average price of 54.74 cents per share. During the same period Starpeace sold 10 million shares (on the 5th and 10th October 1984) at an average price of about 53 cents per share. Accordingly, between the 1st March 1984 when the suspected dealings (at an average price of 70 cents per share) ended and the 31st December 1984, Starpeace had bought 65,264,000 ICH shares for \$35,642,189.10 at an average price of 54/55 cents, but as it had also sold 20 million shares it had increased its holding by only 45,264,000 shares after the sale of 55,634,000 shares had been effected by the disputed dealings between the 16th January and the 1st March. The overall diminution of Starpeace's holding during the year was therefore 10,370,000 shares. Whereas on the 31st December the holding had been 80,868,000 shares it had fallen to 70,498,000 shares by the 31st December 1984.

10.80 However, so far as the aggregate holding of the CKH Group was concerned, the shortfall in the Starpeace holding of ICH shares was more than covered by the purchase by Wynncor of 10,730,000 ICH shares on the 8th November (8,750,000 shares) and 9th November 1984 (1,980,000 shares) for \$6,789,743.60 at an average price of 63/64 cents per share. On the 31st December 1984 the aggregate holding of ICH shares held for the CKH Group by Wynncor and Starpeace together had thus risen by 360,000 shares to 1,119,988,000 shares from the figure of 1,119,628,000 shares held by the Group on the 31st December 1983. The overall result of the 1984 dealings in the CKH Group's ICH shares by C W Chow was that the increase of 360,000 shares in the aggregate holding

had arisen from the group selling 75,634,000 shares for \$49,649,215.75 and purchasing 75,994,000 shares for \$42,431,932.70, thereby improving its position to the extent of \$7.2 million.

10.81 The foundation for these beneficial results had been laid by the suspected dealings whereby 55,634,000 ICH shares in the name of Starpeace had been sold between the 16th January and the 1st March 1984 for an average price of 70 cents per share at a time when the market was unusually high. Mr Wright very pertinently pointed out in his helpful submissions that selling shares into a strong market is not necessarily a suspect or sinister operation and the investment strategy, which C W Chow said he employed, of buying on weakness and selling on strength, is well recognised. This approach, Mr Wright observed, is a perfectly comprehensible and sensible share dealing approach in the volatile Hong Kong stock market which thrives on rumour, and frequently on incomplete or incorrect information. He contended that during the relevant period C W Chow had displayed a general pattern of dealing confirming and compatible with his evidence to the Tribunal that he had just looked at the market prices of ICH.

10.82 Mr Wright submitted that after the market had been fuelled by the rumours of a sale by ICH on the 13th January and by the newspaper articles on the 14th and 15th January 1984, C W Chow required no confidential information to induce his decision to embark on a course of steady sales. He further submitted that C W Chow had taken no advantage before the 16th January and by that date the City Garden transaction had received widespread publicity. There had,

Mr Wright contended, been no change in C W Chow's pattern of dealing after he saw ICH Board Circular No. 3/84. Mr Wright also relied on the absence of any indication that C W Chow had shown any propensity to insider dealing during the period immediately preceding the cancellation of the City Garden transaction.

10.83 We considered that we were being invited to take too simple and naive a view of the evidence before us. We have already determined that from not later than the 16th January 1984, when he began the suspected dealings, C W Chow was in possession of relevant information concerning ICH shares and that the information related to the break clause. That finding necessarily involves our being satisfied that if the information concerning the break clause had become generally available to the investing public at any time during the period when C W Chow was carrying out the suspected dealings in the name of Starpeace, the likely effect would have been to bring about a material fall in the price of ICH shares.

10.84 We found it a disturbing factor in his evidence that, whilst C W Chow was prepared to admit that there was a fairly substantial danger of a leak of the information regarding the break clause, he persisted in denying that if the truth had got out and the public had realised that Wang had not told them the whole truth about the proposed transaction during the negotiations or the actual transaction thereafter, then the public would have felt grievously let down and there would have been a general loss of confidence. Under cross-examination by Mr Litton on this point, he said if the truth had got out that the deal was not concluded it would not have made much difference because

the rumours would have continued to go on. He also said that it would not have made any difference to the market if the break clause had been revealed. This denial by a highly intelligent financial controller, entrusted with very wide and unsupervised power of share dealing in the shares of ICH and other associated companies of CKH, seemed to us to be altogether unbelievable.

10.85 C W Chow's son Albert Chow acknowledged when cross-examined by Mr Martin Lee that if the public had come to know the truth about the break clause it would have had an adverse effect on the property market. George Zang when giving his reasons, under cross-examination by Mr Litton, for approving the final paragraph of ICH Board Circular No. 3/84 dated the 7th February 1984, said he agreed with it and that it was an accurate statement of his view at the time. He said:-

".... suddenly if you leak the option, I think the people will misunderstand the word, say, harm the confidence of Hong Kong or affected the property market. So I agree with what Mr Li said here."

10.86 When the evidence of these two witnesses was put to him, C W Chow said he disagreed with it. Asked by Mr Litton to give his reason for his views being so radically different from those of two executive directors of CKH he replied:-

"Because the people would want to believe that Wang Guang-ying would not exercise an option, so it makes no difference whether the option was there or not."

In the light of his foregoing evidence, C W Chow who not only signed, but actually vetted and approved ICH Board Circular No. 3/84 before it was submitted to K S Li for signature, found himself in a difficult position when asked to confirm (as the last paragraph of the circular had asserted) that any leak of information about the break clause would have affected the property market and confidence in the economic revival of Hong Kong. He replied:-

"No, not in the particular case."

There was then the following exchange of questions and answers between Mr Litton and C W Chow in which it became clear to us that C W Chow was lying and that the truth of the matter was that he had approved and signed the circular at a time when the contents of its last paragraph were in accord with his own views of the likely consequences of a leak to the public of the existence of the break clause:-

"Q. Then why if that was so, did you approve a paragraph which you knew when you approved it that it might have misled the directors of ICH?

A. I don't think it would.

Q. But there in that paragraph your fellow directors were being told that any leak would adversely affect the property market and confidence in the economic revival of Hong Kong. If that was not a truthful statement, why did you approve it?

A. Normally it is true to say that.

Q. Because the existence of such an option could lead to the view that Mr Wang had grievously misled the public by suggesting that he had made an outright purchase, isn't that right?

A. He was not misleading the public if he had no intention to exercise the option.

Q. But he had not told the public the whole truth had he, Mr Wang Guang Ying.

A. No.

Q. So wouldn't the public have been grievously let down if they realised the truth?

A. No.

Q. Wouldn't they have lost considerable confidence?

A. No.

Q. If it mattered not whether or not the clause was made public, why wasn't Mr Wang's misleading statements corrected?

A. Mr Wang was a customer of ICH."

10.87 Again we simply did not believe that a man of the experience of C W Chow as a financial controller and share dealer in Hong Kong would not regard it as an important part of his job to assess market conditions in making share dealing decisions. We did not believe his evidence when he

said under cross-examination by Mr Litton that he simply looked at the prices. He demonstrated his stubborn inconsistency in the following exchange of questions and answers between Mr Litton and him:-

"Q. Surely Mr. Chow, it is your job, isn't it, to assess market reactions?

A. Yes, but you know, it is very difficult to assess very correctly.

Q. But isn't it your job in making decisions to deal in shares, to assess market reactions?

A. I do not care much about the reactions. I just look at the prices.

Q. But when you told this Tribunal that you exercised a decision to sell in May last year, it was upon what you call 'political atmosphere'. Isn't that another way of saying 'market reaction to news'?

A. Yes.

Q. Isn't it therefore your job to assess market reaction to news when you make a decision to buy or sell?

A. When I make a decision to buy or sell, I just look at the prices not the reactions."

10.88 The "simple dealing" approach which Mr Wright invited us to accept as the philosophy of C W Chow when ordering the suspected dealings in the name of Starpeace

seemed to us to be inconsistent with the actual circumstances. It was accepted by C W Chow that since ICH began trading as a public listed company on the 15th June 1981 there had never been any previous dealings by the CKH Group in ICH shares which were prompted by market considerations. The group's ICH shares were held by Wynncor and Starpeace whose principal activities were stated in the CKH Annual Reports for 1983 and 1984 to be investment holding. A note in the accounts of Starpeace for the year ending on the 31st December 1983 referring to that company's holding of ICH shares stated that:-

"As these shares are held for long-term investment purposes and as in the opinion of the Directors the market value of these shares does not reflect the value of their underlying assets, no provision is made in the accounts to reflect the effect of temporary fluctuations in their market prices."

A similar (but not identically worded) note appeared in the accounts of Wynncor for the same accounting year.

10.89 At the end of 1983 the ICH shares of Wynncor and Starpeace were stated in their annual accounts to represent 29.7 and 2.31 per cent respectively of the total issued shares of ICH. These shares constituted the CKH Group's strategic holding of ICH shares which C W Chow had been instructed to maintain at between 29 and 34 per cent of the total issued shares of ICH.

10.90 We emphasise that we fully accepted Mr Wright's assertion that the Memorandum and Articles of Association of

Starpeace were sufficiently wide to permit Starpeace to deal in ICH shares at any time. We also accepted that the fact that the CKH Annual Reports for 1983 and 1984 described the Starpeace's principal activities as investment holding and the fact that the accounts for 1983 declared the company's ICH shares to be held for long term investment, did not preclude it from dealing in ICH shares in 1984 if its management deemed it expedient to do so. However the initiation of a sequence of dealings on the 16th January and the disposal by the 1st March 1984 of 55,634,000 shares representing over 68 per cent of Starpeace's holding of ICH shares manifested an actual change of activity by Starpeace which was unprecedented. Furthermore the annual reports for 1983 and 1984 indicated that the CKH Group owned other subsidiaries whose principal activities were share dealing. Thus in the 1983 and 1984 Annual Reports Megaron's principal activities were stated to be share dealing and in the 1984 Annual Report the principal activities of Conestoga were stated to be property investment and share dealing.

10.91 The suspected dealings by Starpeace, and its dealings which followed subsequently in 1984, could not realistically be described as routine dealings based on a simple price watching philosophy. They represented a departure in the activities of Starpeace whose principal activities were described in the CKH 1983 Annual Report as investment holding by reference to the year ending on the 31st December 1983 before the suspected dealings took place. Furthermore the principal activities of the company were again described as investment holding in the 1984 Report by reference to the year ending on the 31st December 1984, during which Starpeace had in fact been active in dealings in ICH shares. The suspected dealings and the

dealings which followed, resulting in the restoration of all but 10 million shares of Starpeace's holding and a slight increase in the combined holding of Starpeace and Wynncor, were out of character with the consistent description of the principal activities of Starpeace in the Annual Reports for 1983 and 1984 as investment holding. The suspected dealings were also out of character with the previous activities of Starpeace and Wynncor who had never before dealt in ICH shares by reason of market considerations.

10.92 Mr Litton invited us to give weight to the failure of C W Chow and the CKH Group's Chief Accountant John Ho to make a post balance sheet entry in the 1983 Accounts (for the year ending the 31st December 1983 and dated the 6th April 1984) in respect of the sale by Starpeace of over 68 per cent of the company's holding of ICH shares which a note to the accounts declared to be held for long term investment purposes. He also emphasised the oddity of an investment holding company being employed to sell shares at a loss instead of a dealing company which would be entitled to carry its losses forward for tax purposes. We took a more cautious view of these matters because we considered that they were not necessarily only consistent with the use of relevant information when the suspected dealings were effected. We add however that we were unimpressed by attempts on behalf of CKH to get John Ho, the CKH Group's Chief Accountant, to say that Starpeace was intended to be a dealing company when he had to admit under cross-examination that the accounts for 1983 and 1984 showed the company to be an investment holding company and not a share dealing company.

10.93 We also considered that it would be unsafe to give adverse weight to the fact that during the period that C W Chow was effecting the suspected dealings he did not also sell any of the CKH Group's other shares in associated companies. He had sold 22 million Hutchison Preferred shares at 94 cents realising \$20.566 million between the 3rd and the 9th January 1984 and, between the 25th January and the 1st March 1984 (when he was selling ICH shares) he bought 28,182,797 Hutchison Preferred shares for \$28.760 million at an average price of \$1.02 per share. He said that his dealings in ICH shares and the shares of other CKH associated companies were two different things. We did not enquire into the background of C W Chow's dealings in the shares of CKH's other associated companies and, as we were not in a position to make an informed decision regarding C W Chow's motivation inducing such dealings, we considered it prudent and fair to disregard such dealings when considering the question of culpability in relation to the suspected dealings in ICH shares.

10.94 We have already determined at paragraph 10.65 above that C W Chow must have made it his business to ascertain the true facts regarding the negotiations for the City Garden transaction and that he must have been fully informed of the break clause when it was a proposed clause in the course of negotiations and after the 23rd January 1984 when the memoranda were executed. The events occurring at the weekend beginning with the rumours on Friday the 13th January and the very sharp rise of 8/9 cents in the price of ICH shares followed by the newspaper reports on Saturday the 14th and Sunday the 15th January misrepresenting the pending transaction as a sale had made it abundantly clear to C W Chow by the 16th January that the price of ICH had been stimulated, with Wang's acquiescence, by misleading reports

of a property deal of considerable magnitude that was going to result in the ultimate influx of nearly \$1 billion of Chinese confidence inspiring capital into the coffers of ICH.

10.95 The difference between C W Chow and any person dealing in ICH shares without relevant information between the 16th January and the 1st March 1984 was that C W Chow knew that for all practical purposes Cheery Bright had not become the purchaser of Phases II and III of the City Garden project but had obtained what amounted to a view of the market for six months, virtually without cost. He also knew that Wang had allowed the true character of the negotiations and then the transaction itself to be misrepresented fundamentally to the public by the media and that as the days went on after George Zang's and K S Tso's utterances published in the press on the 15th, 16th and 17th January 1984, his colleagues in CKH had failed to enlighten the public regarding the true nature of the negotiations and the transaction.

10.96 He admitted that there was a fairly substantial danger of a leak of information of the break clause to the public. Such a risk was clearly also in the mind of K S Li when he issued ICH Board Circular No. 3/84. C W Chow denied that if such a leak had occurred the public would have felt let down by Wang and that this would have adversely affected the property market and confidence in the future of Hong Kong. Coming from the Financial Controller of the CKH Group who had vetted and approved and signed ICH Board Circular No. 3/84 which contained in its last paragraph the proposition he was now denying, this denial was an obvious and crude lie.

10.97 Accordingly we were satisfied that when he began dealing on the 16th January and throughout the period ending on the 1st March 1984 when C W Chow was ordering the suspected dealings, he knew full well that he was dealing in ICH shares at a time when their price was unusually high and, for much of the time until the 6th February continuing to rise, as a result of misinformation given to the public and he also knew that at any moment there could be a material drop in the price of the shares if the truth about the negotiations for, and later the City Garden transaction, was made public. Furthermore the part he played in vetting and approving ICH Board Circular No. 3/84 provides the clearest evidence that he was selling ICH shares in the name of Starpeace into an artificially stimulated market he had agreed to keep alive for the benefit of Wang by not disclosing the break clause to the public. He was thus selling into an artificial market he was helping to sustain.

10.98 In such circumstances we were satisfied that in making his dealing decisions during the period that he ordered the suspected dealings C W Chow must have been motivated by his knowledge that the unusually high price of ICH shares was unjustifiable because it had been caused by misrepresentation and that there was a real risk that news of the break clause would leak out to the investing public and bring the price of ICH shares down. We were also satisfied that in a very real sense the suspected dealings were made in anticipation of such a risk materialising, the bulk of the shares having been sold between the 16th January and the 10th February in the course of a steady selling pattern that was only interrupted on two available trading days during the period.

10.99 The suspected dealings were made in the course of about 6 weeks. ICH shares could not be sold in very substantial lots without disturbing the balance of the market and C W Chow's pattern of selling was consistent. His decisions to sell were made on a daily basis, there was no question of a blanket order to Starpeace's brokers to sell a stipulated number of shares as and when a required price could be reached. During the period between Monday the 16th January and Wednesday the 1st February 1984 (which was the last trading day before the Chinese Lunar New Year holiday) he ordered sales of ICH shares on all but one of the available trading days and 33,780,000 shares were sold. During the trading week after the holiday between the 6th and the 10th February, C W Chow ordered sales on every trading day except Monday the 6th February and a further 15 million shares were sold. Thus between the 16th January and the 10th February 1984 C W Chow had sold ICH shares on all but two of the trading days and he had ordered the sale of not less than 48,780,000 shares. The remaining 6,854,000 shares comprised in the suspected dealings were ordered to be sold at greater intervals, on the 20th February (220,000 shares), 28th February (1,134,000 shares), 29th February (3 million shares) and 1st March 1984 (2,500,000 shares).

10.100 Accordingly we were satisfied that when C W Chow ordered the suspected dealings the relevant information in his possession was a very material factor and gave him an advantage in what he did and he was therefore motivated by and made use of that relevant information. Our answer to issue (2) raised in paragraph 10.67 above is therefore in the affirmative.

10.101 We mention that the CKH witnesses all claimed that they believed that (as K S Li asserted in ICH Board Circular No. 3/84) Wang would never, for political reasons, invoke the break clause. This did not prevent K S Li telling the media after the cancellation of the City Garden transaction that he had always realised that the transaction might be cancelled, nor did it prevent him from telling P C Chan during the negotiations that if he were a purchaser he would be prepared to pay \$50 million for the benefit of the break clause. C W Chow, who ordered the suspected dealings, would have had us believe that he never had any knowledge of the break clause until he saw ICH Board Circular No. 3/84 not later than the 7th February 1984. He did not therefore say that he believed before that date that Wang would never invoke the break clause. However we considered that whether or not C W Chow had this belief when ordering the suspected dealings it was neither here nor there in relation to the basis upon which we have determined that he is a culpable insider dealer.

10.102 Mr Wright submitted that special considerations applied to the 5 million shares which (as indicated in paragraph 10.69 above) Johnson-Hill had bought on his own initiative on behalf of a client from Starpeace through Magnus on the 9th February 1984 at a price of 82 cents. Mr Wright cited Green v Charterhouse Group Canada Ltd (referred to in paragraphs 2.9 and 2.10 of Chapter II above) for the proposition that "the first approach" is an important factor for the Tribunal to consider. We accepted that the fact that Johnson-Hill actually offered to buy the relevant shares on the 9th February 1984 was a relevant factor. However the degree of importance to be attached to such a factor must depend on the facts of each case. In the

circumstances of Green's case it was clearly important but that was a case where one transaction was involved and on the complex facts of the case Green had a nuisance value to the purchasers of his shares who had to decide whether to exercise a right of pre-emption in respect of Green's shares.

10.103 In the present situation there was a straight forward offer by Johnson-Hill, a broker, to purchase 5 million shares at a high price at a time when C W Chow was in the process of a steady pattern of selling of Starpeace's ICH shares. On the same day as he sold 5 million ICH shares to Johnson-Hill's client in the name of Starpeace he also ordered the sale of 2,662,000 shares on his own initiative. He had ordered the sale of 4,782,000 ICH shares on the previous day and he ordered the sale of 2,338,000 ICH shares on the next day. In such circumstances we were satisfied that the fact that Johnson-Hill had made the initial approach that led to the sale of 5 million shares by Starpeace to his client on the 9th February 1984 was not sufficiently weighty to justify the Tribunal concluding that the dealing was not culpable insider dealing on the part of C W Chow.

10.104 We gave careful consideration to the fact that C W Chow had instructions not to contravene the Ordinance and to the fact that the suspected dealings ordered by him in the ICH shares held by Starpeace were of modest value in relation to the magnitude of the CKH Group's assets and volume of business. This was material because ordinarily the culpable insider dealer can reasonably be expected to make as big a profit from his insider dealing as is within his power.

10.105 However in the present case there was a severe limit on the number of ICH shares available to be dealt in by the CKH Group because the group's holding was a strategic one and C W Chow had instructions from K S Li to maintain the combined holding of Wynncor and Starpeace at not less than 29 per cent of the issued shares of ICH. Another very important factor which explains this unfortunate matter was that although K S Li was very jealous of his reputation and told us that he would not countenance insider dealing, neither K S Li nor C W Chow was aware at the material time that a company could be held liable for culpable insider dealing. C W Chow was therefore left to employ his own experience and shrewdness in the course of his dealings, resulting in a breach of the law relating to insider dealing.

10.106 As C W Chow had no knowledge of the provisions of section 141C(5) of the Ordinance, nor did he know that a company could be a culpable insider dealer, he could not have obtained the benefit of the provisions of section 141C(5)(a) by reporting the suspected dealings to the Commissioner when they took place or promptly thereafter. We considered that for the purposes of section 141C(5)(b) of the Ordinance, C W Chow's ignorance of the provisions of section 141C(5) was a reasonable explanation (as distinct from a reasonable excuse) for his failure to disclose the suspected dealings to the Commissioner on his own initiative. We did not regard such an explanation as being of any significant weight, one way or the other, in relation to the issue of culpability. As C W Chow's mind was the mind of CKH and Starpeace when he ordered the suspected dealings and as there was no evidence that any of the executive directors other than C W Chow knew about the

actual dealings (apart from the 5 million shares sold on the 9th February to Johnson-Hill's client through Magnus who had not yet received ICH Board Circular No. 3/84), the above observations in this paragraph regarding the operation of section 141C(5) in relation to C W Chow apply to CKH and Starpeace as they apply to C W Chow.

10.107 For the reasons given above we determined that C W Chow, having procured the suspected dealings (being insider dealings) on behalf of CKH in the shares held in the name of Starpeace, he and CKH are culpable in relation to those insider dealings under sections 141B(1)(a), 141C(6) and 141H(3). We considered the extent of the liability of C W Chow to be of a high degree because he was an experienced Financial Controller of CKH who realised he was dealing in an artificially stimulated market which gave him an undoubted advantage over other members of the investing public. There was the clearest evidence in relation to the part played by him in approving ICH Board Circular No. 3/84, that he agreed to play his part in maintaining the secrecy of the break clause for the benefit of Wang. We make no comment about the propriety of such conduct which was not within our terms of reference to inquire into, but we emphasise that we considered that once C W Chow was in possession of relevant information it became his duty not to procure Starpeace or Wynncor to deal in their ICH shares for any purpose that would involve a contravention of the Ordinance. He failed in that duty.

10.108 A mitigating factor is that the insider dealings were modest for a conglomerate of the size of the CKH Group and, in fairness to C W Chow, it seems highly improbable

that the dealing would have taken place had he known that such dealings infringed the Ordinance or had K S Li or the other executive members of the board of CKH instructed him not to procure any dealings by the CKH Group in its ICH shares when he was in possession of relevant information. However, after making due allowance for these mitigating factors, we considered that the degree of culpability to be attributed to C W Chow is high and that senior officers of public limited companies which deal in the shares of associated or other companies in Hong Kong should make it their business to be fully conversant with the practical application of the law relating to insider dealing. As C W Chow acted for and represented the minds of CKH and Starpeace at all material times they are also stamped with his high degree of culpability.

10.109 There remains the important question of the possible involvement and culpability of other individuals who exercised control in the management of CKH and Starpeace at the time of the culpable insider dealings. This question arises under section 141H(3)(b) and (4) of the Ordinance which we have applied to the question in accordance with our understanding of those provisions as expressed in paragraphs 2.24 to 2.26 of Chapter II above.

10.110 At all material times the individuals exercising control in the management of CKH were K S Li (Chairman and Managing Director), George Zang, C W Chow, Magnus and Albert Chow. The same individuals were the directors of Starpeace which was the wholly owned subsidiary of CKH. For the reasons given below we were satisfied that, apart from C W Chow who actually procured the dealings, K S Li and

all the other executive directors of CKH (who were also directors of Starpeace) are in varying degrees culpable in relation to the culpable insider dealings of Starpeace procured by C W Chow and CKH.

10.111 K S Li was the Chairman and Managing Director of CKH and a director of Starpeace, a wholly owned subsidiary whose function was to be the vehicle by which CKH held a small part of its strategic holding of ICH shares. K S Li, a dynamic figure, had taken it upon himself to authorise C W Chow as Financial Controller of CKH and a director of Starpeace, to deal in ICH shares subject to the limitation and qualifications mentioned in paragraphs 10.5 and 10.6 above. He said he did not discover until July 1984 that C W Chow had dealt in ICH shares during the relevant period. However he knew throughout that period that C W Chow had his authority to deal in ICH shares and that he might therefore do so.

10.112 K S Li was at the centre of the negotiations on behalf of ICH which led up to the City Garden transaction. He admitted having seen newspaper reports about the negotiations and noted that Wang was being reported as having confirmed that there was a sale, in anticipation of the parties having come to terms. He must have realised, as did George Zang and Albert Chow, that the City Garden transaction was being misrepresented in the media as a sale and purchase on the strength of purported reports from Wang. He did nothing to reveal the break clause and the true nature of the transaction to the public.

10.113 On the contrary, he was very sensitive indeed on the subject of Wang and Ever Bright. It would, as he told P C Chan, have given him sleepless nights if Ever Bright, through its subsidiary Cheery Bright, were to lose Chinese capital as a result of entering into the City Garden transaction. By the 7th February, the day after the price of ICH shares had risen to its peak of 83 cents on the strength of the so-called sale of Phases II and III of the City Garden project by ICH to Ever Bright, he issued ICH Board Circular No. 3/84 to all ICH directors including C W Chow. That circular contained relevant information in relation to ICH shares. We have already found that C W Chow was already in possession of relevant information concerning the break clause by the time he saw the circular but the existence of the circular, directed inter alia to C W Chow, demonstrates that not later than the 7th February K S Li had himself given relevant information in relation to ICH shares to C W Chow. Moreover K S Li knew at all material times that C W Chow was the only person in the CKH management who had authority to deal in ICH shares.

10.114 In such a situation we considered that within the spirit and intendment of Part XIIA of the Ordinance it was the duty of K S Li to instruct C W Chow not to deal in ICH shares, whilst he was in possession of the relevant information imparted to him by K S Li, in such a manner as to infringe the Ordinance. Put another way, if K S Li intended to take it upon himself to require the directors of ICH, including C W Chow, to assist him to actively conceal the break clause from the public so as to preserve the property market and confidence for the benefit of Wang and Ever Bright who were the prospective purchasers of Phases II and III of City Garden from ICH, then it was K S Li's duty to ensure that C W Chow did not procure either Wynncor or Starpeace to deal in ICH shares in breach of the Ordinance.

10.115 No attempt was ever made to insulate C W Chow from information relating to the negotiations for or the actual City Garden deal, with a view to ensuring that if he had ordered dealings in Starpeace's ICH shares without being in possession of relevant information and in compliance with all the requirements of section 141C(2), a finding of culpability would have been precluded under that provision in the case of Starpeace and under section 141C(3) in the case of CKH and C W Chow.

10.116 The unfortunate truth of the matter is that K S Li, on his own admission, did not realise until long after these events that a company could be held responsible for culpable insider dealing and, although he is a very experienced, astute and successful business man who told the Tribunal he would not tolerate insider dealing by his associates, he demonstrably fed relevant information relating to ICH shares to C W Chow who was the director of CKH and Starpeace who had authority to deal in ICH shares held by Starpeace as the vehicle for the CKH Group. K S Li was the principal individual exercising control in the management of CKH and Starpeace who was in a position to insulate C W Chow from relevant information and to prevent him from dealing in ICH shares when in possession of relevant information and endowed with his authority to deal in those shares. In the event he did neither of these things between the 16th January and the 1st March 1984.

10.117 We were accordingly satisfied that K S Li was culpable pursuant to section 141H(3)(b) and (4)(b) in relation to the culpable insider dealings of C W Chow, CKH and Starpeace. As in the case of C W Chow, K S Li was ignorant of the provisions of section 141C(5) and we did not

consider that any of the matters to which the Tribunal was required to have regard under that provision could be of material weight one way or the other. As to the degree of culpability to be attributed to K S Li, we considered that it was high, having regard to the position occupied by K S Li. Although the insider dealings were modest in size and primarily the result of the ignorance of insider dealing law on the part of C W Chow and K S Li, the latter should have made it his business to ensure that he, or at least those he entrusted with share dealing on behalf of the CKH Group, were conversant with the practical application of the law relating to insider dealing.

10.118 George Zang and Albert Chow were fully aware of all the details of the negotiations for and the actual City Garden transaction. They were likewise fully aware from the beginning that the true character of the pending and the ultimate City Garden transaction was being misrepresented in the media with the apparent approval of Wang. They were clearly aware that information regarding the break clause was relevant information and that the price of ICH shares had risen very substantially as a result of the representation of the City Garden transaction as a sale by ICH to Ever Bright, through their respective subsidiaries, of a substantial parcel of property for nearly \$1 billion of Chinese capital. They both admitted that if the public had got to know about the break clause it would have had an adverse effect on the property market and George Zang said that the last paragraph of ICH Board Circular No. 3/84 reflected his own views.

10.119 George Zang and Albert Chow were also fully aware that C W Chow had been given authority for some years by K S Li to deal in ICH shares held by the CKH Group through the vehicle of Wynncor and Starpeace. However they both admitted that they would not have held back any information about their activities as executive directors of CKH in connection with the management and sale of property. No attempt was made to screen C W Chow from relevant information and, on C W Chow's own evidence, he often visited George Zang's office for general discussions. The relationship between these executive directors was a casual one and we have determined that it was a relationship that was conducive to C W Chow making himself fully informed regarding the true character of the City Garden transaction and the negotiations leading up to it.

10.120 In such circumstances we considered that, as executive directors of CKH, George Zang and Albert Chow bear a measure of responsibility for the culpability of CKH and Starpeace in relation to the insider dealings of those companies procured by C W Chow. There was no evidence to identify the specific source from which C W Chow obtained the relevant information by the 16th January but we considered that once George Zang and Albert Chow were themselves in possession of the relevant information (thereby vesting CKH and Starpeace with that information) they were in a position to raise and should have raised with K S Li, as Chairman of CKH and a director of Starpeace, and with their fellow executive director Magnus, the desirability of taking measures to publish the truth so that their companies would be above suspicion or, if (rightly or wrongly) Wang's interests were to be treated as paramount, the desirability of either insulating

C W Chow from all information regarding the City Garden transaction or directing him not to deal in ICH shares during the vulnerable time.

10.121 Neither George Zang nor Albert Chow did any of these things and George Zang was fully aware that C W Chow had seen ICH Board Circular No. 3/84. As executive directors of CKH and directors of Starpeace they were therefore to some degree responsible, by their inaction and apparent indifference or unawareness of the risk of insider dealing taking place, for the culpable insider dealing of CKH and Starpeace procured by C W Chow. In their case there was no question of their deriving any benefit from section 141C(5)(a) of the Ordinance and they volunteered no explanation under section 141C(5)(b) but we did not consider that this omission was a matter of any significant weight one way or the other under the circumstances.

10.122 We gave anxious consideration to whether we should absolve these two executive directors of CKH and directors of Starpeace from culpability because the central controlling figure in these companies was K S Li who had authorised C W Chow to deal in the ICH shares held by Wynncor and Starpeace. However, as we have already indicated in paragraph 2.26 of Chapter II above, we consider, as a matter of principle, that executive directors of a public listed company who are implicated or concerned in events which lead up to or induce insider dealing and who are aware or ought to be aware that a situation has risen where their company might embark or has embarked on culpable insider dealing, should take whatever action is in their

power to prevent or stop such dealing. It will not do in such circumstances for directors, who have done nothing to prevent or stop insider dealing by their company, to assign all the responsibility to a dominant chairman or to their colleague to whom authority to deal in shares has been delegated.

10.123 In the case of George Zang and Albert Chow we did not assign a high degree of culpability in relation to the relevant culpable insider dealing as we did to K S Li, but we assessed the degree of culpability as appreciable.

10.124 As appears from paragraph 10.10 above, Magnus was not normally involved in CKH's property developments and associated property companies. His function as an executive director of CKH was to look after various associated companies of CKH and their activities in North America. When examined by Mr Wright he said these functions kept him very busy and the share dealings of CKH were no part of his functions. He was a non-executive director of ICH. In his declaration he deposed that in mid January 1984 he had read press articles concerning a possible deal whereby Ever Bright would purchase blocks in City Garden from ICH but he did not hear anything about this from CKH personnel because such a transaction did not fall within his responsibilities.

10.125 Under cross-examination by Mr Litton he said that he was aware in general terms of the dramatic rise in the price of ICH shares from the first few days of January to the beginning of February but in what he called the general

terms that one read about it in the press. The associated companies of CKH whose share prices he was specifically interested in were Hutchison, Green Island Cement and, very specifically, the investments the CKH Group had in North America.

10.126 In his declaration Magnus deposed that he received ICH Board Circular No. 3/84 probably 3 to 4 days after its date and in the course of his cross-examination he said that he had taken no part in the drafting of the circular. He also said under cross-examination by Mr Litton that he had no recollection whether he signed the circular before or after he received the telephone call from Johnson-Hill which resulted in C W Chow agreeing to sell 5 million ICH shares to Johnson-Hill's client at 82 cents per share on the 9th February 1984. When asked by Mr Litton if he regarded the information contained in the circular as price sensitive information in relation to the price of ICH shares he said:-

"I honestly didn't really consider it at all because as I said before, my main function is really directed in other directions than ICH; it is one of many pieces of paper that would pass my desk, and was not something I considered in that sense."

He had, he said, noted the circular and passed it on.

10.127 Earlier in his cross-examination Magnus said he had been aware on the 9th February 1984, when Johnson-Hill telephoned him, that the price of ICH shares had gone up and was in the order of 80 cents. He said he was aware of statements attributed to Wang, the Chairman of Ever Bright,

to the effect that Wang had made a \$1 billion purchase of City Garden and that Wang had come to instil confidence in the people of Hong Kong. He acknowledged that the somewhat dramatic rise in the price of ICH shares to the price of 82 cents mentioned by Johnson-Hill could have been at least partly as a result of such bullish statements on the part of Wang.

10.128 Magnus explained in his declaration and when examined by Mr Wright that he had, in effect, acted as a mere conduit between Johnson-Hill and C W Chow when Johnson-Hill's client had acquired 5 million ICH shares from Starpeace through C W Chow at 82 cents per share on the 9th February 1984. He further deposed in his declaration that on several previous occasions during a period of three years prior to the 30th June 1985 (sic) (evidently a slip for the 30th June 1984) Johnson-Hill had telephoned him to make enquiries about shares, presumably for convenience, and when he did this Magnus simply relayed his message to C W Chow who would make the decision.

10.129 There can be no doubt therefore that Magnus knew at all material times that C W Chow was responsible for dealing in the shares of ICH on behalf of the CKH Group. It was for that reason that, on the 9th February 1984, he relayed to him Johnson-Hill's offer to purchase 5 million ICH shares at 82 cents per share. On the footing that, on his own evidence, Magnus did not have any relevant information or know the details of the City Garden transaction on the 9th February when Johnson-Hill called him about the sale of 5 million ICH shares, the position when he received ICH Board Circular No. 3/84 a day or two

after the 9th February was that he had been required as a director of ICH by K S Li, as Chairman of ICH, to note the actual terms of the City Garden transaction (which was not in fact a sale and purchase as it had been misrepresented by Wang and the media) and requested to keep the break clause confidential as any leak would adversely affect the property market and confidence in the economic revival of Hong Kong.

10.130 By the time he received and signed the circular without demur Magnus must have known that C W Chow had been dealing in ICH shares a matter of one or two days previously because Magnus had acted as the conduit when C W Chow had sold 5 million of the shares to Johnson-Hill's client at the high price of 82 cents on the 9th February. Magnus must have known that C W Chow, as a director of ICH would also be receiving the circular which contained relevant information and requested the directors not to disclose it for the reasons stated. As an executive director of CKH and therefore one of the individuals responsible for the management of that company and as a director of Starpeace, Magnus was now in a position to and should have raised with K S Li and his fellow executive directors, George Zang and Albert Chow, the desirability of the alternative courses of action mentioned in paragraph 10.120 above.

10.131 In the event Magnus did nothing. Primarily because, as he put it in evidence, the ICH circular was one of many pieces of paper that would pass his desk and he didn't really consider the circular in the sense that it contained price sensitive information in relation to the price of ICH shares. As a result of the inaction of Magnus (and others) after he saw ICH Board Circular No. 3/84 on

or about the 10th or 11th February 1984, C W Chow went on dealing in ICH shares held in the name of Starpeace. As we have indicated in paragraph 10.99 above, he ordered sales of the shares on the 20th February (220,000 shares), 28th February (1,134,000 shares), 29th February (3 million shares) and on the 1st March 1984 (2,500,000 shares). The total number of shares sold on the instructions of C W Chow between the 20th February and the 1st March was 6.854 million.

10.132 We were satisfied that if Magnus had applied his mind to the significance of all the information that had undoubtedly come into his possession by about the 11th February 1984 in relation to the very real risk of C W Chow and CKH procuring Starpeace to sell ICH shares in circumstances amounting to insider dealing, he would have been in a position to raise with K S Li, George Zang and Albert Chow the question of the need to take measures to ensure that C W Chow was inhibited from dealing after the 11th February 1984 so as to avoid putting CKH and Starpeace in peril of being held to have engaged in culpable insider dealing. It will not do for an executive director of a public listed company to plead indifference to the information he received as Magnus has done, nor is it any excuse that he may have been ignorant of the law relating to corporate insider dealing.

10.133 We were accordingly satisfied that Magnus should bear some measure of the responsibility for the culpability of CKH and Starpeace in relation to the insider dealings of those companies which took place between the 20th February and the 1st March 1984. His culpability is mitigated to a

substantial extent by the fact that his functions as an executive director of CKH were related to matters other than the property development and sales projects of, or managed by, CKH. Because of this we considered that he was culpable to a modest degree compared with his colleagues George Zang and Albert Chow in respect of the above mentioned dealings but that his culpability was more than minimal. In arriving at our determination we had regard to the matters mentioned in section 141C(5) of the Ordinance but, as in the case of George Zang and Albert Chow, there was no question of his deriving any benefit from section 141C(5)(a) and he volunteered no explanation under section 141C(5)(b), but we did not consider that this omission was a matter of any significant weight one way or the other under the circumstances.

(vii) Summary of determination

10.134 The Tribunal accordingly determines pursuant to sections 141H(3) and (4) of the Ordinance that it is satisfied that:-

- (1) Culpable insider dealing took place when Starpeace sold 55,634,000 ICH shares between the 16th January and the 1st March 1984.
- (2) The persons involved in that culpable insider dealing were:-
 - (a) C W Chow and CKH who procured the relevant dealings;
 - (b) Starpeace which effected the relevant dealings; and

- (c) K S Li, George Zang, Albert Chow and Magnus who were individuals who exercised control in the management of CKH and Starpeace at all material times and were involved in the relevant dealings, save that Magnus was only involved in the dealings in 6.854 million ICH shares which took place between the 20th February and the 1st March 1984.
- (3) The extent of the culpability of C W Chow, CKH, Starpeace and K S Li is of a high degree and that of George Zang and Albert Chow is less than high but of an appreciable degree. The culpability of Magnus relates only to the dealings in 6.854 million ICH shares which took place between the 20th February and the 1st March 1984 and is of a modest degree, being less than the appreciable degree we have determined for George Zang and Albert Chow but it is of a more than minimal degree.

(2) JOHN GERARD TONROE

(i) Connection with ICH

10.135 Tonroe was at all material times a person connected with ICH by virtue of section 141E(1)(a) of the Ordinance because he was a director of that company. He was also connected with ICH by virtue of section 141E(1)(c)(i) because he was the Group Finance Director of HKE and there was a business relationship between HKE and ICH, so that his position of Group Finance Director of HKE might reasonably be expected to give him access to relevant information concerning ICH shares.

(ii) Relevant dealing

10.136 The Tribunal was concerned with the sale by Tonroe on the 9th March 1984 of 12,000 ICH shares at a price of 70 cents per share, realising \$8,400. Tonroe had subscribed for these shares at the time of the flotation of ICH as a public listed company. He had done this, he said, as he had had quite a lot to do with the formation of ICH and was a founding director. His evidence was that he had decided to buy the shares for his wife and four minor children as a little nestegg. He emphasised that this was a unique thing for him to do. The shares in question were, he said, the only ICH shares he had had and the only other shares he had had in companies he was involved with were shares in HKE which he had acquired on staff and rights issues. He had always made it a policy to sell such HKE shares immediately. In his declaration he deposed that he gave 4,000 of the ICH shares to his wife and 2,000 of the ICH shares to each of his four children.

10.137 Tonroe deposed that he had sold the shares directly to the Group Chief Cashier of HKE who had offered to buy the shares when Tonroe had requested him to obtain transfer forms to enable Tonroe to sell them. Evidently the market price for ICH shares shown at the time in HKE's Reuter Monitor Screen was 70 cents and the Group Chief Cashier was willing to pay that price. Tonroe deposed that he subsequently gave the Group Chief Cashier transfer forms signed by his wife in respect of 4,000 ICH shares and signed by himself "on behalf of my children" in respect of the balance of 8,000 shares against a cheque for \$8,400 from the Group Chief Cashier. He said that he gave his wife a cheque for the same amount.

10.138 Having regard to the fact that Tonroe's wife signed transfers in respect of 4,000 of the ICH shares sold by him it seems that he must have agreed to sell those shares as his wife's agent. However, whether he agreed to sell any of the shares to the Group Chief Cashier as principal or agent is not of any significance for the purposes of determining whether he made a dealing in ICH shares within the meaning of section 141B(1)(a) of the Ordinance because section 141D(2) makes it clear that a person deals in securities for the purposes of Part XIIA of the Ordinance if he sells or agrees to sell any securities, whether as principal or agent.

(iii) Possession of relevant information

10.139 As we have indicated under rubric (ii) in Chapter VIII above, we were satisfied that by the 16th January and until about the 28th March 1984 information relating to the proposed and the actual break clause was relevant

information concerning ICH shares. Tonroe first learned in general terms of the existence of the proposed break clause on the 16th January 1984 from C P Man and K S Tso, the executive directors of ICH, when Tonroe and Mr David Steadman ("Steadman"), the HKE Group Chief Accountant, met the two executive directors of ICH for lunch. He obtained more detailed information regarding the break clause when he received ICH Board Circular No. 3/84 on or about the 23rd February 1984. Accordingly, when he sold the 12,000 ICH shares on the 9th March 1984, Tonroe was in possession of relevant information concerning ICH shares and, as Mr Lewis representing him rightly conceded, the sale was an insider dealing for the purposes of section 141B(1) of the Ordinance.

(iv) Culpability

10.140 The crucial issues in relation to the culpability or otherwise of the relevant dealing by Tonroe were:-

- (1) whether, for the purposes of section 141C(3) of the Ordinance, his purpose at the time of the relevant dealing was or was primarily the making of a profit or the avoiding of a loss for his wife and children; and, if so
- (2) whether his purpose or primary purpose was to make such profit or to avoid such loss by the use of relevant information, namely information of the break clause.

If the Tribunal had determined either of these issues in the negative, then the Tribunal could have held Tonroe to be not culpable in relation to the relevant dealing, and in the circumstances of his case it would have done so.

10.141 Both in his declaration and in his oral evidence under examination by Mr Lewis, Tonroe described how the ICH shares had initially done well and reached a peak of about \$1.90 after he had acquired them for \$1.00 per share. Thereafter they fell steadily and the price was down to 50 cents by the beginning of 1984, and even below that at times. He described in his declaration how the price of the shares rose to about 80 cents in February and, in his oral evidence under examination by Mr Lewis, he said that the shares improved quite considerably after the "Ever Bright deal" as had the stock market generally. When asked by Mr Lewis if he had kept an eye on the price of the shares to any extent after acquiring them, Tonroe replied:-

"No quite extent.(sic) I was obviously interested in the share prices as a matter of business rather than a matter that my family had shares in them, although, of course, we did--my wife particularly kept a weather eye on the share price, yes."

He added under further questioning by Mr Lewis that these were the only shares his wife had ever owned and that this might account for her interest in their price.

10.142 Tonroe deposed in his declaration that at about the beginning of March 1984 his wife had urged him to sell and criticised him in a light hearted way for having made a poor investment. He further deposed that she wanted to put the children's money into their savings accounts and he had therefore agreed to sell the shares. In his oral evidence before the Tribunal he amplified this evidence when Mr Lewis asked him to tell the Tribunal exactly what happened. He replied:-

"The family shareholding, if you like, of ICH was something of a sort of family joke, if you like. There was Dad buying the family a lovely nestegg and the shares had gone down to half the value that I bought them at so my wife had been saying for some time, in fact, that it would be better to sell the shares and put the saving in the children's saving accounts. At least they could then see the money for it in their own saving accounts rather than have them in ICH as they were performing rather badly. It had been the subject of family banter for some considerable time. When the share price did improve in '84, my wife then became rather keen to sell. She said she would prefer to sell them and she got very anxious missing the opportunity at peaking out at 80¢; and when they started moving down again, they urged me to sell them now before they went back down to below 50 again, so that's exactly the circumstances. I then agreed, okay, we would sell them."

10.143 Mr Lewis referred, in his written submissions, to this passage of Tonroe's evidence and acknowledged that it therefore appeared that at least one of the purposes motivating the sale was to avoid a loss. There was no evidence to suggest that the sale was motivated by any consideration other than market considerations in the minds of Tonroe and his wife and children. It is clear from the end of the passage of Tonroe's evidence cited in paragraph 10.142 above that, after the shares had been the subject of family banter for some time, "they urged" Tonroe to sell the shares "before they went back down to below 50 again". Tonroe's evidence was that, after having been thus urged to sell the shares, he "then agreed, okay, we would sell them".

10.144 In the light of this evidence we were satisfied that the purpose of Tonroe in selling the shares on the 9th March was to obtain the prevailing price (the closing price of the shares had fluctuated at between 68 cents and 73 cents between the 1st and the 9th March 1984) "before they went back down to below 50 again". This purpose was clearly the family purpose of avoiding further loss on shares which had originally been subscribed for by Tonroe at a price of \$1.00. We were therefore satisfied that issue (1) raised in paragraph 10.140 above should be determined in the affirmative sense and that the purpose of Tonroe when effecting the relevant dealing was to avoid further loss for his wife and children.

10.145 As regards issue (2) raised in paragraph 10.140 above, Tonroe deposed in his declaration that at the time of the relevant dealing he certainly did not have in mind or make use of the City Garden transaction. He further deposed that the holding of ICH shares which he sold had been small and the sale price was only \$8,400 which he regarded as a very small one compared to his annual income as Group Finance Director of HKE which exceeded \$750,000.

10.146 Having deposed that the City Garden transaction was certainly not in his mind at the time of the relevant dealing, Tonroe added the hypothesis that even if the transaction had been in his mind at that time he would not have taken into account the existence of the break clause because, in his view, the prospect of the "option" being exercised by Ever Bright was negligible. He referred to K S Li's reference in ICH Board Circular No. 3/84 to Ever Bright's repeated assurance that it was most unlikely that

the break clause would be invoked, and deposed that it was his own view that, for political reasons, it would have been very inopportune to have invoked the clause.

10.147 When Tonroe was under examination by Mr Lewis he gave oral evidence in a similar vein to that summarised in the foregoing two paragraphs. He said that there had been more than one conversation in his home about the ICH shares and that they had taken place over a period of time. There then ensued the following exchange of questions and answers between Mr Lewis and Tonroe:-

" Q. When these conversations took place, did you have in your mind what was going on in ICH and, in particular, what you then knew about the City Garden transaction?

A. No, I didn't. Really didn't enter my head. It was a separation of business and family, really.

Q. You feel quite sure about that?

A. Absolutely.

Q. Are you able to say what you would have done had the position been different and had you had in your mind your then knowledge of the City Garden transaction?

A. I don't think I'd have acted any differently at all. I think knowledge of the transaction--with hindsight and even if it's put that I did have the--I wouldn't have acted any differently than I did.

Q. However, you are quite clear in your own mind that you did not have it in your mind?

A. Absolutely."

10.148 Under cross-examination by Mr Litton, Tonroe accepted that, as far as the public was aware at the material time, the City Garden transaction was a purchase and trumpeted as such by Wang. He agreed that if the public had realised that Wang, who had come to instil confidence in the people of Hong Kong, had given himself a safety net, in the form of the break clause enabling him to resile from the transaction and recover his deposit with interest at 10 per cent, the market would have been grievously disappointed. He also agreed that it was a fair assumption that that was probably why K S Li was at pains in ICH Board Circular No. 3/84 to request the directors of ICH to keep the break clause confidential, as any leak would adversely affect the market and confidence in economic revival. He further accepted that the information contained in ICH Board Circular No. 3/84 was price sensitive but he reiterated that when he effected the relevant dealing, about two weeks after seeing the circular, he was motivated purely by family considerations.

10.149 He acknowledged to Mr Macwhinnie, a member of the Tribunal, that the price of ICH shares was held at 70 cents when he effected the relevant dealing because the public were aware of the City Garden transaction but were not aware of the break clause. But he said that when he dealt he did not consider this at all at the time and that he now thought that the situation was one where he was aware of a clause

the invocation of which seemed inconceivable, whereas the situation would have been entirely different had there been a much stronger possibility of the break clause being invoked. Mr Macwhinnie put it to him that the point was not whether the clause was going to be invoked or not but it was the fact that there was a special clause at all which was not revealed to the public which kept the price up at the level at which Tonroe had sold. To this Tonroe replied, reverting to his original theme, that he thought "that" was not using special information and that the price of the share was where it was. He added that if the deal had gone through it would have had no effect on the share price whatsoever and the public had the same information that he had. He concluded his answer to Mr Macwhinnie by saying:-

"If the deal had gone through as I genuinely believed it would go through, I don't see that I had any more information than a member of the public."

10.150 Under further questioning by Mr Macwhinnie, Tonroe again said that at the time he dealt he did not consider the City Garden transaction to be relevant to the sale of the shares, and he knew that he did not think about it. He said that if he had thought about it he would certainly have remembered it and what his thought processes were at the time. He went on to say that he did not consider the shares were his. It was a unique situation where he had bought the shares for his family so he did not consider it was a transaction of his, it was their decision, it was:-

"....my wife's decision if you like on behalf of the children, so I know that I didn't think about the transaction as being relevant at all."

He concluded a long answer by saying that if he had thought the break clause would be exercised, then clearly he would have thought very differently about it, but his own assessment of the situation based on a lot of evidence was that it was most unlikely that the break clause would ever be exercised.

10.151 Questioned by the Chairman, Tonroe agreed that by signing ICH Board Circular No. 3/84 without complaint it could fairly be said that he and his fellow directors of ICH were agreeing to keep secret the existence of the break clause and thereby to maintain the stimulus of the market which Wang's pronouncements to the media on the City Garden transaction as a sale had brought about. He accepted that when he came to sell on the 9th March he was in a position where he had an advantage over others dealing in the market because of his knowledge of the transaction and because of the realisation that if the public had come to know of the break clause the likelihood was that the market would go down, but he said these matters were not in his mind when he dealt.

10.152 As to his signing the circular and agreeing to keep the break clause confidential, Tonroe said, under further questioning by the Chairman, that he did not think this was something he would personally advocate but he went along with it. The Chairman put it to him that it seemed odd to the Chairman that Tonroe should have signed the circular on the 23rd February and that on the 9th March the matter should have been out of his mind, bearing in mind that his wife was nudging his elbow about selling the ICH shares before they went down further. Tonroe replied:-

"You may find that difficult to believe but it happens to be true. One splits responsibilities if you like, and we are all a bit of a Jekyll and Hyde at times, one is a father, a finance director, a husband and so so (sic)(?on), and I now think I did compartmentalise it like that. I know for a fact what my feelings were at that time, I think you can look with hindsight and say, should I have thought in this way, and yes perhaps I should have thought in this way but I think there are two things that had to have been necessary and one was for it to be leaked out and for the information to be generally known and secondly, for the deal to have fallen through. Now it happened that I didn't think either of those possibilities, either of those things, would happen."

When the Chairman asked him if he agreed that, if on the 24th February, the day after he had signed the circular, the news of the break clause had leaked out, the price of the ICH shares would very probably have gone down considerably, he said that he imagined they would have done so.

10.153 His evidence was complicated by his initial and continued propounding of his hypothetical reactions to his having hypothetically thought about the City Garden transaction at the time that he effected the relevant dealing in ICH shares. It was further complicated by his being questioned on these hypotheses by Mr Macwhinnie and the Chairman. However we bore in mind that the substance of his explanation for the relevant dealing was that he was motivated by family considerations alone and that he did not think about the City Garden transaction at all at the time he sold the ICH shares.

10.154 In his written submissions Mr Lewis submitted on Tonroe's behalf that the Tribunal should accept what he called Tonroe's unchallenged evidence that in effecting the relevant dealing he did not make use of his knowledge of the break clause. Mr Lewis also relied on the fact that the transaction was a very small one in relation to Tonroe's substantial earnings and that, apart from Tonroe's unique sale of the 12,000 ICH shares, there had been no other dealing by Tonroe or his family in ICH shares. Earlier in his written submissions Mr Lewis had submitted that neither Mr Litton nor Mr Macwhinnie had challenged Tonroe's evidence regarding his motivation at the time of the relevant dealing. He acknowledged that the Chairman had pressed Tonroe on this crucial matter but submitted that Tonroe's evidence was quite clear that he did not have the City Garden transaction in mind.

10.155 We heard argument from Mr Litton and Mr Lewis on whether or not it was appropriate in the Tribunal's investigative proceedings to draw favourable inferences from the fact that particular evidence was not challenged by cross-examination and whether or not it was open to the Tribunal to disbelieve Tonroe's evidence by reason of its being of a self serving character, without actually concluding that he was a dishonest witness.

10.156 We do not propose to pursue those matters because it was accepted by both Mr Litton and Mr Lewis that at the end of the day the Tribunal had to decide whether Tonroe's evidence was to be believed or whether it might reasonably be true. In this connection Mr Lewis rightly stressed that, although the Tribunal was conducting investigative

proceedings, when a witness gave evidence before it on oath, it was necessary for the Tribunal to assess that evidence properly and to seek to test its veracity. He invited the Tribunal to accept that Tonroe was a witness who was doing his best when giving evidence, although not always a completely coherent or articulate one. He further submitted that he was not a witness who might take colour from what he thought would be likely to be a favourable result to him.

10.157 Mr Lewis did not seek to rely on the provisions of section 141C(4) of the Ordinance on behalf of Tonroe because, he said, this was not a case where the selection of the securities dealt in arose. In his submission, the only point for the Tribunal on Tonroe's evidence arose under section 141C(3), and that point was whether the sale of ICH shares in question was made by the use of relevant information. Mr Lewis stressed that Tonroe's evidence was to be believed because, he submitted, the decision to sell the relevant ICH shares was not that of Tonroe but that of his wife.

10.158 The determination of issue (2), raised in paragraph 10.140 above, clearly turned on the credibility of Tonroe. If, applying the stringent evidential standard it had adopted, the Tribunal considered that his explanation for the relevant dealing was true or that it might reasonably be true, it was the duty of the Tribunal to hold that the relevant dealing was not culpable insider dealing. After careful consideration of the evidence as a whole we were satisfied, for the reasons given below, that Tonroe did make use of the relevant information in his possession at the time he effected the relevant dealing.

10.159 In his declaration, and when being examined by Mr Lewis before the Tribunal and asked to tell the Tribunal exactly what happened, Tonroe made it clear that his wife and children "urged" him to sell the ICH shares. He never suggested that he was told to sell them or given instructions to do so without being consulted. His wife and children submitted him to banter. On a fair consideration of his evidence he, as the head of the family who had acquired the shares for the family, was a party to the decision to sell them. In his own words, in his declaration and in his oral evidence to the Tribunal when purporting to describe the exact circumstances, he said that when he was urged to sell the shares he agreed to do so.

10.160 Tonroe was an articulate witness and some of his evidence had a ring of advocacy about it. Thus, after he had described the exact circumstances of the decision to sell the shares, when he was being questioned by Mr Macwhinnie about the need for him in his position to be very careful about dealing in ICH shares at that time, he said that he did not consider the relevant dealing was a transaction of his and that the decision was his wife's decision "if you like" on behalf of the children. In the light of his previous evidence about the circumstances of the decision to sell the relevant ICH shares, we were satisfied that, whilst Tonroe may have been prepared to allow the wish of his wife and children to sell the shares to prevail at the end of a succession of attempts to persuade him to sell them, he undoubtedly had the last word and took his part in the process of decision making that led to the sale. He agreed to implement their wishes and he was not in the position of a broker or agent being given instructions without consultation.

10.161 Having determined that Tonroe shared in the family decision to sell the ICH shares, there remains the all important question whether he made use of the relevant information in his possession when he agreed to the sale and effected it. The holding was unique for Tonroe and his family and it was very modest in size. It only realised \$8,400 when sold. According to Tonroe he did not consider the transaction to be his but that of his family and he did not think about the City Garden transaction as being relevant at all. Considered in the light of the matters mentioned below we did not believe this evidence of Tonroe, nor did we believe his evidence that at the time his mind was divided into compartments which segregated his role as "a father, a finance director, a husband and so so(sic) (?on)" thereby enabling him to split his responsibilities. He may have been able to persuade himself about this by the time he gave evidence because he said when giving evidence about split responsibilities that "I now think I did compartmentalise it like that" but we were satisfied by reason of the matters mentioned below that this was not the truth.

10.162 Tonroe was at the material time in the very important position of Group Finance Director of HKE which was one of the major partners in the consortium of companies which were the controlling shareholders of the issued shares of ICH. He was therefore actively interested in the affairs of ICH. This was evidenced by his letter dated the 13th January 1984 addressed to C P Man (who was the executive director of ICH responsible for finance) requesting information about ICH to enable HKE's Finance Department staff working under Steadman to prepare a five year profit and cash flow forecast for the HKE Group.

10.163 Because of his position Tonroe was also very interested in the City Garden transaction and, on the 16th January 1984, when he first read newspaper articles reporting the possibility of the transaction he was naturally concerned. When he was examined before the Tribunal by Mr Lewis he said that he was mainly concerned about two things. His first concern was that the agreements had reached such a state without reference to the board of ICH, and this was not the first time this sort of thing had happened as a result of K S Li's way of doing business. His other concern was to find out what the actual financing arrangements were proposed to be for the City Garden transaction because there had been trouble in connection with the financing of a previous transaction of ICH.

10.164 Tonroe's evidence was that he had been able to obtain information about the pending City Garden transaction on the 16th January 1984 when he read the press articles about it, because he and Steadman had arranged, for other reasons, to have a lunch meeting with K S Tso and C P Man, the two executive directors of ICH. At this meeting he obtained what information he could about the pending transaction from K S Tso but the information about the break clause was confined to a general statement, without any time scale, that the agreement provided for Ever Bright to be able to withdraw from the transaction. He said his line of questioning of K S Tso about the pending transaction was much more concerned with the method of financing the transaction than with "this rather strange condition of a break clause".

10.165 Having obtained what information he could about the pending City Garden transaction Tonroe returned to his office and passed on the information to Peacock, the Deputy Chairman and Group Managing Director of HKE. Peacock had also read newspaper reports about the pending transaction on the 16th January 1984. His evidence was that he had spoken to his Chairman, Keswick, and arranged to meet him on the 18th January 1984 for lunch to discuss the matter because Peacock did not know what was going on, felt he was entitled to know, and was concerned that he did not.

10.166 Thus the City Garden transaction had become a matter of active concern for Tonroe and his colleagues by the 16th January 1984. Since the 14th January it had been bruited abroad in the media as a \$1 billion property transaction involving Wang's Ever Bright as a purchaser employing confidence inspiring Chinese capital. Tonroe was kept informed of other developments. His evidence was that Peacock had told him about his conversation with Keswick concerning the transaction. Tonroe said that Peacock had also told him about Keswick's telephone conversation with K S Li (in Peacock's presence) on the 18th January 1984 concerning the transaction.

10.167 On or about the 23rd February 1984 Tonroe received ICH Board Circular No. 3/84 which contained important relevant information about the City Garden transaction. The circular did not take him by surprise. His evidence was that it was unusual for circulars to take so long to reach him. He said that he knew it was to be circulated but he understood there was a certain amount of difficulty with it. When Mr Lewis asked him what his reaction was to

the last paragraph of the circular (referring to the break clause and requiring it to be kept confidential), he replied that the situation had been discussed without knowing full details of the circular. He also said that he had been aware "more or less of the contents of this circular by discussions with Mr Peacock over the period".

10.168 He went on to say that he felt that the City Garden transaction was not a normal commercial transaction because Ever Bright had a connection with the Chinese Government. As to the break clause he observed:-

"Certainly Mr. Peacock and myself discussed it quite a lot and we both formed the view that although it was a strange condition because a more--more particularly because of the publicity of the deal involving the Chinese and Ever Bright themselves, that it would be quite inconceivable that they could use this special clause and, therefore, that was the view that we took about it."

10.169 In reply to further questions from Mr Lewis, Tonroe explained (as he had already done in his declaration) that he considered at the time that after Ever Bright had received so much publicity, at a politically sensitive time, about the transaction which they wanted to show as a mark of confidence, it would have been a major step backwards in that philosophy if they pulled out of the deal. He said that he had accepted the assurances in ICH Board Circular No. 3/84 expressed to have been given by Ever Bright to the effect that it would be most unlikely for them to invoke the break clause. K S Li had, Tonroe said, given assurances that the break clause was a requirement "of the Chinese of

Ever Bright" and that they wanted it as a matter of face but had assured K S Li that they would not invoke it. However, when asked subsequently by Mr Litton to elaborate on the circumstances under which K S Li himself had given such assurances other than what appeared in the circular, Tonroe said the assurances were given at an ICH Board meeting. He was vague about identifying the board meeting in question, but said it could not have been the August meeting. There was only one other board meeting in 1984 prior to the August meeting. It was held on the 14th March 1984, after Tonroe had sold the relevant shares. Tonroe said he thought the assurances could only have been given at that meeting.

10.170 The importance of the transaction to Tonroe and Peacock, as Group Finance Director and Group Managing Director respectively of HKE, was demonstrated months later when the cancellation was announced. Tonroe deposed in his declaration that he had received a telephone call from K S Tso on the 27th June 1984 informing him of the pending cancellation. He said that he was astonished by the news as he had believed this would never happen. On receipt of the news of the cancellation Tonroe called Peacock, who was in England, and passed on the news of the cancellation. He said that Peacock was very surprised and they talked for a long time about the effect of the cancellation. Peacock gave evidence on similar lines and said he was astonished by the news because he never expected the break clause to be invoked.

10.171 We have dwelt on the evidence outlined in paragraphs 10.162 to 10.170 above because it reveals the extent to which Tonroe, in the key position of Group Finance

Director of HKE, was involved, together with Peacock, in giving active consideration to the City Garden transaction, with particular reference to the break clause. This activity was greatest between the 16th January, when Tonroe first read about the pending transaction in the press, and about the 23rd February when he received ICH Board Circular No. 3/84. Prior to his receiving the circular, he and Peacock were, according to Tonroe's own evidence, discussing the transaction, including the "strange" break clause and they discussed it "quite a lot", eventually satisfying themselves that, for political reasons and "more particularly because of the publicity of the deal involving the Chinese and Ever Bright themselves", it was quite inconceivable that Ever Bright would invoke the clause.

10.172 We were invited to give credence to Tonroe's evidence that in spite of the degree of his understandable preoccupation with the transaction and the break clause as Group Finance Director of HKE, he never gave a thought to the City Garden transaction and to its effect on the price of ICH shares when he sold the family holding of ICH shares on the 9th March, about two weeks after he had seen and signed ICH Board Circular No. 3/84 at the end of the period when he was actively engaged in enquiries and discussions about the City Garden transaction and the break clause.

10.173 He had admitted that his wife had been watching the price of ICH shares and that, as Group Finance Director of HKE, he had been interested in the price of the shares at the time. He also admitted that the price had improved quite considerably after the City Garden transaction, as had the stock market generally. We were accordingly satisfied

that he knew full well that the price of ICH shares was being sustained at its relatively high price at 70 cents on the 9th March 1984 by the news of the substantial City Garden transaction which he clearly knew was being misrepresented by the media as a sale and purchase when in fact it really gave Cheery Bright a virtually gratuitous view of the market for six months.

10.174 He had insisted that he believed that the break clause would never be invoked but admitted that if the public had come to know that Wang, the bringer of confidence through the instrumentality of the City Garden transaction, had provided himself with a safety net in the form of the break clause, virtually free of cost, the market would have been grievously disappointed. He also said, in answer to Mr Litton, that it was a fair assumption that that was why K S Li was at pains to request the directors of ICH to keep the break clause confidential in ICH Board Circular No. 3/84.

10.175 When Tonroe signed that circular (albeit, he said, believing that the break clause would never be invoked) on or about the 23rd February 1984 he was, as he admitted, going along with the requirement of confidentiality contained in the last paragraph of the circular, although the conduct requested of him and his fellow directors of ICH was not something he would advocate. The terms of the last paragraph of the circular were as follows:-

"Directors are requested to note this transaction by signing at the appropriate spaces provided hereunder and keep the Special Condition confidential as any leak would adversely affect the property market and the confidence in the economic revival of Hong Kong".

10.176 Tonroe admitted that it could fairly be said that, by signing the circular without complaint, he was agreeing to join with his fellow directors of ICH to keep secret the existence of the break clause and thereby to maintain the stimulus of the market which Wang's pronouncements to the media about the City Garden transaction had misrepresented as a sale and purchase. He also admitted that when he came to sell the family's ICH shares on the 9th March 1984 he had an advantage over others dealing in the market because of his knowledge of the transaction and the realisation that if the public came to know of the break clause the likelihood was that the market would go down.

10.177 On final analysis it comes to this. When Tonroe sold the family's ICH shares on the 9th March 1984 he had the advantage, on his own admission, that he was selling into a market which he knew to be artificially stimulated by the misrepresentation of the character of the City Garden transaction to the investing public as a sale and purchase when that was not its true character. Furthermore, he knew that he was helping to keep the market artificially stimulated because about 2 weeks before he sold the family's ICH shares he had signed the circular and thereby agreed to keep the break clause confidential.

10.178 Accepting that he believed the break clause would never be invoked, he nevertheless had the advantage, when selling the family's ICH shares, of knowing that, as he admitted in evidence, if the news of the break clause had got out to the investing public, the likelihood was that the market would go down.

10.179 He would have us believe that although he dealt on behalf of his family in an artificial market two weeks after he had agreed in writing to take steps designed to preserve that market for the benefit of a potential purchaser from ICH of a very substantial parcel of property for nearly \$1 billion, he never applied his mind at the time of his dealing to these matters or to the effect of the City Garden transaction on the price of ICH shares, and that he never even contemplated that there was a possibility of a leak of the existence of the break clause to the public. Coming from the Group Finance Director of HKE who had reasonably been preoccupied with these matters in the manner and to the degree indicated in the evidence reviewed above, we did not believe his evidence about his motivation at the time of the relevant dealing, nor did we think it might reasonably be true.

10.180 Apart from section 141C(4), the provisions of Part XIIIA of the Ordinance do not distinguish between the insider dealer who deals on his own behalf and the insider dealer who deals as an agent. We have already dealt with the question whether the real decision to deal in this case was made by Tonroe's wife and determined that we were satisfied that Tonroe participated in the decision to sell. After careful consideration of the evidence on a subjective basis we were satisfied that, by reason of the matters mentioned in paragraphs 10.176 to 10.179 above and in the light of Tonroe's previous preoccupation with the City Garden transaction and the break clause, he did make use of relevant information when he sold the family's ICH shares, and that, notwithstanding his denial, he knowingly sold into an artificially stimulated market which he had assisted to maintain. We were also satisfied that, notwithstanding

his denial, he knew and had in mind when he sold the shares that there was a real risk of a leak to the public of the existence of the break clause and a consequential fall in the price of ICH shares. We were accordingly satisfied that the relevant information in his possession at the time of his dealing gave Tonroe an advantage which assisted him in effecting the relevant dealing on behalf of his family.

10.181 We gave due weight to the fact that the relevant holding of ICH shares was very modest and that the family had had no previous dealings in ICH shares or in the stock market generally. However, in the light of the evidence reviewed above we were unable to give any degree of credence to Tonroe's evidence that he was a man who, as he said he thought when giving evidence, had "compartmentalised" his mind at the time he effected the relevant dealing.

10.182 In arriving at our determination that Tonroe is readily recognisable as a culpable insider dealer we have derived no significant assistance from the matters to which we are required to have regard under section 141C(5). Tonroe did not make any disclosure that was material for the purposes of section 141C(5)(a) and no explanation was volunteered by him under section 141C(5)(b).

10.183 In assessing the extent of the culpability of Tonroe we considered that the modest size of the holding of shares disposed of by him for a mere \$8,400, in contrast to his substantial annual earnings in excess of \$750,000, should be given due weight. He was clearly not a person who made use of relevant information to obtain substantial

profit or avoid substantial loss for the benefit of his family. However we did not consider that his dealing was so insignificant as to justify an exculpatory determination on the de minimis principle. But for the fact that the number of shares and the amount of money involved in the dealing was modest, we would have assessed Tonroe's degree of culpability as high by reason of his position. In view of the mitigating factor mentioned above we determined his degree of culpability as being less than high but nevertheless more than minimal.

(v) Summary of determination

10.184 The Tribunal accordingly determines pursuant to section 141H(3) and (4) of the Ordinance that it is satisfied that :-

- (1) Culpable insider dealing took place when Tonroe sold 12,000 ICH shares on the 9th March 1984.
- (2) Tonroe, and no other person, was involved in that culpable insider dealing.
- (3) The extent of Tonroe's culpability is less than high but more than minimal.

(B) DEALERS AND OTHER PERSONS HELD TO BE NOT CULPABLE

10.185 The persons named in this part of the report as furnished to the Financial Secretary under section 141I(4)(a) of the Ordinance have exercised their right under section 141I(5) not to be named in this published report in respect of their dealings in ICH shares, which were the subject of the Tribunal's inquiry and in respect of which those persons have been found to be not culpable.

CHAPTER XI

DEALINGS AHEAD OF THE GENERAL AVAILABILITY OF INFORMATION
OF THE CANCELLATION OF THE CITY GARDEN TRANSACTION

(A) CULPABLE INSIDER DEALERS

(1) CHRIS TSE CHUEN-CHOW

(i) Connection with ICH

11.1 Prior to January and until the 1st June 1984 Chris Tse was employed by Sino Realty and Enterprises Limited ("Sino Realty") as a Project Development Manager. Sino Realty and the Ever Bright interest had entered into two joint ventures and Chris Tse had occasion to visit the Ever Bright premises on several occasions. He would normally contact Wang Mi. He read of the City Garden deal in the press. On the 1st June 1984 he was appointed Deputy General Manager of the Real Estate Division of Vielight and became responsible for property developments and investments in Hong Kong and China. He had no executive powers. His role was to advise.

11.2 As early as March 1984 he had had contact with Wang Mi and her colleague Mr Yeung Ling-tung ("L T Yeung") and had given them advice on an unofficial basis. He found that the Ever Bright people did not have adequate knowledge of the Hong Kong real estate and property market. Between early March and the 1st June 1984 when he joined the Ever Bright organisation he had been actively involved on several

occasions on behalf of Ever Bright in relation to the City Garden deal. On the 19th March 1984 he accompanied Wang Mi and her colleague L T Yeung to a meeting at the offices of CKH with George Zang, Albert Chow and one or more others to discuss sales strategy in relation to the flats comprised in the City Garden transaction and to enquire whether the plans for the eight blocks had been approved. At some time in March, after he had seen the correspondence that had passed between Wang and Larry Tam of Debenham Tewson and Tam in February 1984, Chris Tse either went to see or telephoned Larry Tam at the instigation of L T Yeung to find out if there had been any developments arising out of Debenham's agency to find buyers in the Middle East for the flats.

11.3 In April or May Chris Tse accompanied Wang Mi to a second meeting with ICH officers and Albert Chow to discuss sales strategy and the thorny question of the 15 flats which K S Li was to allocate to the Ever Bright interest as part of the City Garden transaction. By this time Mr Yam Wong had come on the scene and was making his unsuccessful efforts to negotiate a reduction of the price for the City Garden deal, alternative propositions were emanating from Wang Mi and Chris Tse was advising her against accepting the suggestions made by Katherine Hung of CKH on behalf of ICH that Ever Bright might purchase industrial property from ICH instead of the eight City Garden blocks.

11.4 By the time he was appointed to be Deputy General Manager of the Real Estate Division of Violight on the 1st June 1984 Chris Tse was thus already actively conversant with and actively involved on behalf of Violight, in an advisory capacity, with the City Garden transaction. On

joining Violight he looked into the City Garden transaction as it became his responsibility and he advised Wang Mi that the price to be paid was far too high.

11.5 In his declaration Chris Tse described himself as the Deputy General Manager of the Real Estate Division of Ever Bright Industrial Company. However the evidence of Mr Gu Shirong, a Deputy General Manager of Violight, was that Chris Tse was the Deputy General Manager of the Real Estate Division of Violight who paid his salary. This apparent conflict is clearly reconciled by the fact that, as mentioned in paragraph 5.4 above, Ever Bright Industrial Company was one of the registered names under which Violight traded and the firm registered under the name Ever Bright Industrial Company in Hong Kong under the Business Registration Regulations was at all material times dormant. Violight used notepaper headed Ever Bright Industrial Company and for all practical purposes during the relevant period Ever Bright Industrial Company in Hong Kong meant Violight.

11.6 We were satisfied, in the light of the above facts and of the matters mentioned below in this paragraph and in paragraphs 11.7 and 11.8 that by early June 1984 and at all material times thereafter Chris Tse was a person connected with ICH for the purposes of section 141B of the Ordinance by virtue of section 141E(1)(c)(i) of the Ordinance because he occupied a position which might reasonably be expected to give him access to relevant information concerning the securities of ICH by virtue of the business relationship existing between his employer Violight and ICH. Although the City Garden transaction had been made between Zangforce,

a subsidiary of ICH, of the one part and Cheery Bright a subsidiary of Violight of the other part, the two subsidiary companies were merely the vehicles for the transaction resulting from the business relationship between Chris Tse's employer Violight acting by its Chairman Wang and his subordinates and the Chans, on the one hand and ICH acting by its Chairman K S Li and his subordinates on the other hand.

11.7 As regard Cheery Bright, Wang himself deposed that he had sufficient funds available to him through an account at the Bank of China to conclude the transaction and that it was as late as the 23rd January 1984 before the signing of the memoranda that he was advised that a separate corporate entity should be used as Violight's vehicle for the transaction. He had then picked Cheery Bright from a list of shelf companies shown to him. Gu Shirong supported Wang's evidence and deposed that Cheery Bright had no employees and no other business activities apart from the City Garden transaction. Cheery Bright's directors were Wang, Gu Shirong and Wang Mi. It was the subsidiary and instrument of Violight.

11.8 After his appointment on the 1st June 1984 Chris Tse continued to play an active part on behalf of Violight in relation to the City Garden transaction together with Wang Mi and they were both subject to the ultimate control of Wang himself. Thus Chris Tse attended the lunch meeting arranged at the Landmark by Yam Wong on the 22nd June 1984 when the Ever Bright interest led by Wang Mi sought a reduction in the price of the City Garden blocks or the adoption of alternative transactions and was turned down by

the ICH interest led by George Zang. Accompanied by Wang and Wang Mi he also attended the lunch given by K S Li on the 25th June 1984 at the CKH penthouse at which Wang finally decided to exercise the right to cancel the transaction and K S Li urged Wang to lose no time in procuring the despatch of the necessary two day notice of cancellation. After the lunch on the 25th June Chris Tse telephoned Johnny Mak, the solicitors' clerk and asked him to attend a meeting at the Ever Bright offices the next morning. At the subsequent meeting in the morning of the 26th June Chris Tse gave Johnny Mak instructions to cancel the City Garden transaction and on the same day Johnny Mak settled the necessary letters for cancellation of the deal which were dated the 26th June and signed by Johnny Mak's principal Robert Wang.

(ii) Relevant dealings

11.9 Having bought 50,000 ICH shares at 82 cents per share on the 7th February 1984, Chris Tse sold 20,000 of his holding on the 26th June at 54 cents and the remaining 30,000 on the 27th June at 53 cents. He thereby incurred a loss of \$14,673.25 being the difference between the sum of \$41,225.50 which he paid to acquire his holding and the total sum of \$26,552.25 which he realised when he sold the shares on the 26th June (20,000 shares for \$10,740.00) and on the 27th June (30,000 shares for \$15,812.25).

11.10 He sold his shares ahead of the announcement to the public of the cancellation of the City Garden transaction. He made a substantial loss but if he had not sold his holding when he did his loss would have been greater. He effected his two sales at 54 cents and

53 cents respectively. On the 29th June ICH shares closed at or about 48 cents in the three principal exchanges. By the 11th July the same shares were down to a closing price of 37 cents.

(iii) Possession of relevant information

11.11 The Tribunal has already determined under rubric (iii) of Chapter VIII above that information that Wang had decided to cancel the City Garden transaction was relevant information for the purposes of section 141D(1) of the Ordinance between the time Wang made his decision to cancel at the lunch given by K S Li on the 25th June 1984 and about 3 pm on the 28th June when the joint press announcement of the cancellation was issued by Ever Bright and ICH.

11.12 The news of the cancellation or the decision to cancel was not generally available on the 26th June when Chris Tse sold 20,000 ICH shares at 54 cents nor was that news generally available on the 27th June when he sold 30,000 ICH shares at 53 cents. On the other hand he knew of Wang's decision to cancel at the time that decision was made on the 25th June and on the same day he arranged the meeting with Johnny Mak at which, on the morning of the 26th June he was to give him instructions on behalf of Wang to cancel the City Garden transaction on behalf of Cheery Bright by giving the necessary two day notice. He sold his shares at the crucial time, on the two consecutive days preceding the expiration of the two day notice and the announcement of the cancellation.

11.13 Chris Tse himself admitted under cross-examination by Mr Litton that he knew almost for certain on the 25th June that Ever Bright was backing out of the transaction but was obliged to give two day notice. He also admitted that he knew almost for certain that the price of ICH shares would fall when the public got wind of the news of the cancellation. We were satisfied in the light of the above findings of fact and admissions that he was in possession of relevant information when he dealt in ICH shares on the 26th and 27th June.

(iv) Culpability

11.14 Chris Tse's explanation for his dealings under the circumstances outlined above was that the two sales had not been made by him personally, they were made on his behalf and without his knowledge by his "broker" Mr David Au Hon-man ("David Au") of Wall Street Securities Company ("WSSC"). He deposed that he was only told of the sales by David Au after the event.

11.15 Chris Tse's evidence was that he had been employed for about 3 years as a securities analyst by Sun Hung Kai Securities and concerned with Hong Kong shares prior to joining Sino Realty. He regularly dealt in shares. All his dealings after he joined Sino Realty had been conducted through WSSC. Chris Tse's sales of Hysan Development Company Limited ("Hysan") shares on the 25th (40,000 shares), 26th (40,000 shares) and 27th June 1984 (20,000 shares) and his sales of ICH shares on the 26th (20,000 shares) and 27th June 1984 (30,000 shares) had been effected by his "broker" David Au of WSSC without his knowledge and in exercise of a mandate given to him orally by Chris Tse to

oversee the stock market on his behalf and to sell Chris Tse's shares to cut losses if those shares showed signs of bearishness. It was submitted on his behalf that the above mentioned trading pattern on the 25th, 26th and 27th June 1984 was consistent with a broker gradually unloading shares for his client over three days.

11.16 Although originally described in Chris Tse's declaration as a "broker" David Au was in fact not a broker but an authorised clerk of WSSC and his principal role was that of manager of an estate agency called Wall Street Estate Agency belonging to a company called Wall Street Enterprise (Holdings) Limited. Mr Thomas Hui Kam-wor ("Thomas Hui") was a director of the last named limited company and the sole proprietor of WSSC. He had a seat in the Kam Ngan Stock Exchange of which he was a member. The estate agency, the limited company and WSSC all carried on business at the same premises at Room 1603-4, Car Po Commercial Building 37 Pottinger Street, Central. David Au himself deposed that although he was mainly responsible for the estate agency he also referred orders for shares and stocks from his friends to WSSC of which he was an authorised clerk at the Kam Ngan Stock Exchange.

11.17 The reasons given by Chris Tse for entrusting David Au with the authority to sell Chris Tse's shares on his behalf at David Au's discretion were that David Au was a friend of his family whose market experience and business judgment he trusted and Chris Tse himself could not participate actively in watching the stock market because he often travelled on business when he worked for Sino Realty and subsequently for Ever Bright and his work with Ever Bright often took him out of his office.

11.18 David Au supported Chris Tse's evidence regarding this arrangement and deposed that he met Chris Tse 5 years ago. He became one of his best friends and their families foregathered from time to time. For the past 3 years Chris Tse had placed orders with WSSC through David Au. In his declaration David Au confirmed the existence of the oral mandate allegedly given by Chris Tse to him "some time in the first half of 1984" and explained that "because Tse changed his employment and became more busy, he gave me standing instruction to sell his shares and stocks upon my own judgment. I remember that I had on occasions sold his shares in the manner aforesaid."

11.19 More specifically David Au deposed in his declaration that in early June 1984 Chris Tse had instructed him to keep Chris Tse's shares in Hysan and in Conic Investment Company Limited and to sell them in reliance on his own judgment "if anything went wrong with the stock market". David Au added that "Around that time" Chris Tse also gave him 50,000 ICH shares together with 25 signed instruments of transfer for the same purpose.

11.20 In his declaration David Au deposed that on the 25th June 1984 he sold 40,000 of Chris Tse's Hysan shares when the market was weak before consulting Chris Tse and that on the 26th June he sold 20,000 of Chris Tse's ICH shares and 40,000 of his Hysan shares because the market continued to be weak. His evidence was that after these orders were executed he tried to contact Chris Tse by telephone but failed. He went on to depose that on the 27th June 1984 "the stock market slid again" and he therefore sold Chris Tse's remaining 30,000 ICH shares and 20,000 Hysan shares.

11.21 Both Chris Tse and David Au were cross-examined with pertinacity, but fairness, by Mr Litton. After seeing and hearing them for some hours in the witness box we did not believe their evidence of the mandate alleged to have been given orally by Chris Tse to David Au to sell ICH shares at David Au's discretion nor did we think such evidence might reasonably be true. We were satisfied that the truth of the matter was that Chris Tse had himself given instruction to David Au for the sale of the ICH shares in question on the 26th and 27th June 1984.

11.22 Chris Tse himself explained his regular dealing in shares by reference to his having been a securities analyst for 3 years. He admitted to knowledge of share dealings and only claimed to be ignorant of stock broking procedures. He was manifestly a person of much higher intelligence and intellectual powers than his friend David Au whose market experience and business judgment he would have the Tribunal believe he trusted to the extent of allowing him to sell Chris Tse's shares at a loss at his discretion.

11.23 David Au, on the other hand, claimed to have had a secondary education and 10 years experience of dealings in the stock market, 3 of them as an authorised clerk of WSSC. Any pretensions he may have had of expertise in the trends of the stock market were demolished when he was cross-examined by Mr Litton. He was given every opportunity to specify the criteria upon which he acted when selling Chris Tse's shares in ICH at a substantial loss on the 26th and 27th June 1984 but he was quite incapable of doing so. He repeatedly retreated from one generality to the next and finally took refuge in truculence.

11.24 Having conceded to Mr Litton that during the week commencing on the 19th June (the week before he sold 20,000 of Chris Tse's ICH shares on the 26th June at a substantial loss) there was nothing exceptional in the movement of the price of ICH shares to cause him to sell part of Chris Tse's holding of those shares, David Au added that it was only that he felt that "the market generally was not good" and he was not particularly selling out ICH shares. He explained that "the market generally was not good" meant that prices would fall. Asked for the criteria for this judgment he said it was "based on our experience, our view of the market" after looking at the turnover, volume and trend of the market and speaking to friends who were not optimistic.

11.25 Invited by Mr Litton to give the Tribunal the criteria which he applied when deciding to sell 20,000 of Chris Tse's ICH shares on the 26th June 1984 at a substantial loss, David Au replied that he was acting on the movements of the stock market a few days before and also on his own experience. He felt that the stock market was unstable during the few days before he sold the shares. He aimed to reduce Chris Tse's losses because he felt the stock market would still go down further. He was taken through the Hang Seng Index statistics for the period between the 19th and the 22nd June in the Hong Kong Monthly Digest of Statistics to demonstrate that during that period the Index was not unstable. This resulted in his asserting that "Because the trend could not attain a goal so it was unsteady" and the market "trend would not break through". By this he meant that if the market would not rise then on the contrary it might be going downward.

11.26 At this stage Mr Litton put to him that the market might equally well go upwards. To this proposition he answered - "That is my decision. It might be wrong or it might be correct. I would not know. But according to my decision at that time we should unload ourselves." He added that he was acting on his experience and he felt that in that market they should unload. He also pointed to the fact that the market had in fact fallen subsequently. Asked again by Mr Litton to identify any indication in market movements leading him to sell Chris Tse's 20,000 ICH shares on the 26th June David Au became querulous and replied - "It was a year ago. How am I able to remember this so clearly? At that time I felt there was something wrong with the market. I cannot tell you what the market movements were."

11.27 It was contended by Mr K H Suen, counsel for Chris Tse, that David Au's decision to sell had been based on his experience and his feel for the trend of the market which Ada Yeung, the market analyst, had herself described in her evidence as having been steady in the first half of June but as having "..... in the lack of substantive bullish factorslipped back to the 930 level in featureless trading ahead of the UMELCO members' visit to Peking in late June". However from start to finish of his cross examination David Au was unable to give any reasoned explanation for selling Chris Tse's ICH shares at a substantial loss on the 26th and 27th June 1984. We did not believe any of his attempts to explain the sales in generalities and by reference to his experience. This was the man whom Chris Tse alleged he treated as his broker. He had dealt with WSSC through David Au for three years in an active share trading account. We were satisfied that during that time he would have had ample

opportunity to assess David Au's knowledge and experience concerning matters beyond the mere machinery of share dealing and that Chris Tse never entrusted this authorised clerk of WSSC with a mandate to sell his shares at a loss in reliance on his own judgment.

11.28 Further we did not believe the evidence of Chris Tse's non-availability which was claimed by Chris Tse and David Au to have occasioned the alleged mandate to David Au and ultimately the sale of Chris Tse's ICH shares on the 26th and 27th June without the knowledge of Chris Tse. Both the witnesses were taken through Chris Tse's ledger of dealings with WSSC and it became clear that Chris Tse had been available on many occasions to give instructions for purchases of shares and he admitted that most of the many transactions put to him by Mr Litton had been carried out on his instructions.

11.29 Moreover Thomas Hui the sole proprietor of WSSC supplied the Commissioner with a list of the persons from whom WSSC received instructions to deal in ICH shares between the 20th February and the 29th June 1984. This list indicated when instructions had been given by David Au. In the case of the sales of ICH shares by Chris Tse on the 26th and 27th June the list recorded Chris Tse as the client giving instructions for the dealings.

11.30 Chris Tse had provided travel documents which recorded the occasions when he travelled to and from Hong Kong. The only occasion when he left Hong Kong in June 1984 was on the 12th June when he went to the People's Republic

of China and returned on the same day. Chris Tse himself did not allege that he was out of Hong Kong on the 26th or the 27th June and it was admitted by both Chris Tse and David Au that they had met on the 27th when Chris Tse was given cheques which included a cheque for the proceeds of sale of 20,000 ICH shares on the 26th. It was also admitted by Chris Tse and David Au that they communicated by telephone on the 29th June when Chris Tse gave instructions to David Au regarding the payment to Chris Tse's bank of the proceeds of sale of the 30,000 ICH and 20,000 Hysan shares which David Au had sold on the 27th June. On the same date Chris Tse instructed David Au to buy back into ICH to the extent of 100,000 shares and he admitted that he consented to the sale of those shares on the 12th July at a substantial loss.

11.31 Chris Tse was in Hong Kong on the 26th and 27th June, the crucial days when the relevant sales took place and he admitted seeing David Au on the 27th when he received cheques from him. Chris Tse's evidence explaining why David Au was unable to get in touch with him on the 25th, 26th or 27th June before selling Chris Tse's shares was very nebulous. He said nothing in his declarations about his activities on the 26th or 27th June. When it was put to him by Mr Litton that David Au had no difficulty in speaking to him on the 27th June, Chris Tse observed "He located me on the 27th. I knew that I was rather busy during that period of time, during those few days."

11.32 In his declaration David Au deposed that he had been given a mandate to sell the ICH shares in exercise of his own judgment. He accordingly said nothing about trying

to get in touch with Chris Tse on the 26th June before selling 20,000 of Chris Tse's ICH shares but he deposed that he tried unsuccessfully to get in touch with Chris Tse after the sale. He said nothing about trying to get in touch with Chris Tse before or after the sale on the 27th June but in his supplementary declaration he mentioned that he handed over cheques to Chris Tse on the 27th June and that he was able to speak to him on the 29th June.

11.33 When he was questioned by Mr Litton regarding the number of occasions when he had admittedly dealt in Chris Tse's shares on instructions from him, David Au observed that normally if he could find Chris Tse he would have his instructions or, in case he could not find Chris Tse, he would exercise his discretion and sell. He claimed to have a better impression of the transactions effected on the 25th, 26th and 27th June because of the Commissioner's inquiries. He said for the first time when cross-examined by Mr Litton that he had tried unsuccessfully to get in touch with Chris Tse by telephone before selling the ICH shares on the 26th June in order to ask him to sell the shares. He then sold part of Chris Tse's holding to protect Chris Tse's interest and continued to look for him, without success until the 27th after he had made the second sale. He said that he had made several unsuccessful attempts to find Chris Tse. He had his home telephone number and knew his wife but he did not telephone Chris Tse's home on the evening of the 26th June - "Because I myself was rather busy and sometimes I have some functions to attend."

11.34 We did not believe the evidence outlined above given by Chris Tse and David Au regarding Chris Tse's

non-availability to give instructions on the 26th and 27th June nor did we think that evidence might reasonably be true. We were satisfied that both the alleged oral mandate and the alleged non-availability of Chris Tse on the material dates were part of a false explanation for Chris Tse's conduct.

11.35 The 50,000 ICH shares belonging to Chris Tse which David Au sold on the 26th and 27th June had been registered in Chris Tse's name. Mr C H Wilken, the General Manager of Central Registration Hong Kong Limited, the registrar for the ordinary shares of ICH, deposed that his records showed that on the 1st May 1984 Chris Tse's wife Madam Li Lai-yuk had collected the 25 share certificates (relating to Chris Tse's 50,000 ICH shares) on Chris Tse's behalf. David Au deposed that on the 27th June he gave a settlement clerk the share certificates in respect of the 20,000 ICH shares he had sold on behalf of Chris Tse on the 26th June and that on the 28th June he delivered to WSSC the share certificates in respect of the 30,000 ICH shares he had sold on behalf of Chris Tse on the 27th June. He insisted under cross-examination by Mr Litton that Chris Tse had given him all these share certificates in early June together with transfers executed by Chris Tse in blank and that Chris Tse had not executed any transfers on the 26th or 27th June to enable David Au to deliver the ICH shares to the purchasers after the two sales.

11.36 Although, according to his evidence, David Au had been put in possession of the relevant share certificates by Chris Tse complete with transfers executed in blank, David Au said that he gave Chris Tse no receipt and he did not

receive these items from Chris Tse as a representative of a stock broker but "purely on a basis of good friendship that he trusted me and he handed those to me for me to keep them." He added that he did not give receipts to his other friends who entrusted him with their share certificates and blank transfers which he kept in individual named envelopes.

11.37 By the time he gave this evidence seeking to explain the absence of a receipt for Chris Tse's ICH share certificates and executed blank transfers at the end of his cross-examination his credibility had already been demolished but we add that we did not believe David Au's explanation for the absence of a receipt and we were satisfied that the true reason was that the share certificates and blank transfers were not received by David Au in early June but around the time when the shares were actually sold.

11.38 In weighing the evidence we gave careful consideration to Chris Tse's contention that he would not have risked losing his job with Violight and the financial consequences of dismissal by Violight for the sake of cutting his losses on a holding of 50,000 ICH shares which realised only \$26,552.25 when sold at a loss of \$14,673.25. The point was also taken that he in fact only cut his loss by less than \$3,000.00 because he bought back into ICH on the 29th June 1984 and thereafter made a substantial loss when he sold again on the 12th July 1984. His salary with Violight was \$22,400 per month plus double pay and bonus and Violight had promised to give him a housing loan of \$390,000 at a fixed 10 per cent interest rate because he was obliged

to repay Sino Realty's housing loan of \$430,000 when he changed jobs. If he were dismissed by Violight and forced to sell his flat he would incur an immediate loss of \$100,000.

11.39 When giving evidence to the Tribunal on the 25th June 1985 he did not inform the Tribunal that he had already resigned from his post with Violight. He had done so by a letter dated the 9th April 1985 stating that he was resigning with effect from one calendar month of the date of the letter on purely personal grounds - "prompted in the main by my decision to start my own business." A copy of this letter was exhibited to a supplementary declaration of Gu Shirong made on the 8th November 1985.

11.40 Assuming that Chris Tse would be or might be dismissed by Violight if he were detected in culpable insider dealing we accepted that his awareness of the risk of such a consequence of detection would be an important factor tending to deter him from such activities but we were satisfied that he took the risk nevertheless and thereafter relied on an untruthful cover story with the support of his friend David Au.

11.41 The fact that in the event Chris Tse's overall effective reduction of loss on ICH dealings could arguably be said to have been less than \$3,000 because he had bought back two lots of 50,000 shares on the 29th June 1984 at 47/48 cents and thereafter incurred a heavy loss of \$9,476.00 when he sold both lots of shares at 38/39 cents on the 12th July 1984, was not a matter which we considered

exculpated Chris Tse or mitigated his culpability. We were satisfied that, having sold his 50,000 ICH shares on the 26th and 27th June to avoid an expected further loss, Chris Tse thereafter misjudged the market and the extent of the fall in the price of ICH shares which the news of the cancellation and any other material factors were likely to cause.

11.42 According to his own evidence he instructed David Au to buy back 100,000 ICH shares on the 29th June 1984 because he and David Au thought the stock market might be dropping too drastically and that there might be some rebound of the ICH shares. However he got it wrong and by the 12th July 1984 when he sold his new holding of 100,000 ICH shares the price had slumped to 38/39 cents. This demonstrates that Chris Tse bought back too early. If he had not done so he would, by having sold his earlier holding of 50,000 ICH shares ahead of the bad news of the cancellation, have saved himself a substantial loss by the 12th July 1984 when ICH shares were down to 38/39 cents. The fact that Chris Tse squandered the advantage he had obtained by selling ahead of the bad news when in possession of relevant information is therefore neither here nor there when assessing the credibility of Chris Tse who would have the Tribunal believe that he is not a culpable insider dealer because David Au effected the dealings on Chris Tse's behalf without his knowledge.

11.43 We also gave careful consideration to the fact, seemingly in his favour, that although Chris Tse was fully informed of and indeed involved in the efforts of Wang Mi to negotiate various arrangements as alternatives to or

variations of the City Garden transaction, he did not sell his holding of ICH shares at an early date in anticipation of ultimate cancellation of the original transaction if such efforts were unsuccessful.

11.44 However Chris Tse's evidence under questioning by Mr Martin Lee on behalf of the Ever Bright interest was to the effect that when he went to the lunch meeting hosted by K S Li on the 25th June 1984 his impression was that the Ever Bright interest did not yet want to resile from the City Garden transaction. Mr Lee asked Chris Tse about his impression while he was on the way to the lunch meeting on the 25th June and whether it was his understanding that once there Wang would try to negotiate for better terms with the CKH group, or whether Chris Tse understood the position to be that Wang would simply go there and cancel the deal. Chris Tse's answer was:-

"My impression was that, together with Mr Wang Guang-ying, we went there to wait for a reply from Mr Li Ka-shing as regards our alternatives proposed. My theory was that Everbright did not want to withdraw completely."

This evidence of Chris Tse himself satisfied us that, until the 25th June 1984 when Wang decided to cancel the City Garden transaction with the approval of K S Li, Chris Tse's view was that Wang did not want to withdraw completely from the transaction. The imminence and reality of pending cancellation did not therefore become apparent to Chris Tse until the lunch meeting on the 25th June.

11.45 We were accordingly satisfied after consideration of the evidence as a whole that Chris Tse's dealings in ICH shares on the 26th and 27th June 1984 were effected on his instructions and with his knowledge and that David Au was not exercising his own discretion but carrying out Chris Tse's instructions when he sold the shares in question on Chris Tse's behalf.

11.46 As to Chris Tse's motivation when selling the ICH shares on the 26th and 27th June 1984 we were satisfied that his purpose was wholly or primarily to avoid further loss for himself when the expected fall in the price of ICH shares occurred upon the publication of the news of the cancellation of the City Garden deal. He had been in the thick of the cancellation operations and he took the opportunity to make use of the relevant information to reduce his prospective loss before the news of the cancellation broke.

11.47 In arriving at our determination as to the culpability of Chris Tse in relation to his insider dealing we have had regard, as we are required to do by section 141C(5)(b) of the Ordinance, to the fact that Chris Tse did not of his own initiative disclose his dealings in ICH shares on the 26th and 27th June 1984 to the Commissioner. His explanation for not disclosing his dealings to the Commissioner at the time they were effected or promptly thereafter was that he had never looked at the provisions of the Securities Ordinance relating to insider dealing and he did not realise it might have been in his interest to disclose his dealings to the Commissioner at the time they took place.

11.48 Under section 141C(5)(b) the Tribunal was also required to have regard, in arriving at its determination, to the reasonableness of any explanation offered by Chris Tse for the fact that his dealings were not disclosed by him of his own initiative to the Commissioner. We considered that ignorance of the relevant provisions of the Ordinance regarding disclosure in the case of a person with Chris Tse's background and experience did amount to a reasonable explanation (as distinct from a reasonable excuse) for his failure to disclose his dealings to the Commissioner on his own initiative when they were made or promptly thereafter. We did not consider such an explanation to be of significant weight one way or the other in relation to the issue of culpability. However, when he was invited by Mr P R Bailey ("Bailey"), a Senior Securities Officer, on the 17th December 1984 to disclose his dealings in ICH shares during the relevant period he saw fit to disclose only his purchase of 100,000 ICH shares made on the 29th June 1984 after the news of the cancellation was out and the sale of those shares at a loss on the 12th July 1984 together with the relevant contract notes.

11.49 He did not say anything about the dealings effected on the 26th and 27th June, nor did he mention any mandate granted by him to David Au to authorise those dealings at David Au's discretion. The record of the interview between Bailey and Chris Tse was approved by Chris Tse after requiring amendments to be made which did not include any reference to the dealings on the 26th and 27th June or the mandate allegedly given to David Au. Bailey was therefore satisfied that Chris Tse had made no other dealings in ICH shares during the relevant period other than the purchase of 100,000 shares on the 29th June

1984 which Chris Tse had disclosed. It was not until the 14th January 1985 when he received a return dated the 10th January 1985 from WSSC under the hand of its sole proprietor Thomas Hui that Bailey became aware of Chris Tse's dealings in ICH shares on the 26th and 27th June 1984.

11.50 The first explanation Chris Tse gave for not disclosing his dealings in ICH shares on the 26th and 27th June 1984 to Bailey when he was given the opportunity to do so at the interview on the 17th December 1984 was given to Bailey on the 5th March 1985 at the Ever Bright offices when, in the presence of Fang Zhengping of Violight, Bailey confronted Chris Tse with the dealings in question and asked him why he had not declared his dealings. Chris Tse replied that he had produced the only contract notes he could find and that he had only dealt through WSSC. He went on to say to Bailey that at their meeting on the 17th December 1984 he had requested Bailey to check Chris Tse's dealings with his broker.

11.51 We were satisfied that this explanation was not truthful. Both David Au and Chris Tse admitted under cross-examination that they were frequently in telephone communication with each other. There was ample opportunity for Chris Tse to have obtained from David Au or WSSC detailed information of his dealings during the relevant period as recorded in the ledger of Chris Tse's dealings which was kept up to date by WSSC. Chris Tse admitted under cross-examination by Mr Litton that prior to being interviewed by Bailey on the 17th December 1984 he was aware that the Securities Officers were investigating suspicions of insider dealing in ICH shares, that he was aware that the Tribunal had been appointed and that the Securities Officers

were coming to see him in relation to their investigation. It was clearly within his power to obtain from WSSC all the relevant data and documents concerning his dealings in ICH shares which occurred a matter of days before the announcement of the cancellation of the City Garden deal on the 28th June 1984. At the very least he could easily have obtained the relevant information by a telephone call to David Au or WSSC before he was interviewed on the 17th December 1984.

11.52 As to Chris Tse's asserting on the 5th March 1985 that on the 17th December 1984 he had requested Bailey to check his dealings with WSSC through whom he had told Bailey that he had dealt exclusively, that assertion was demonstrably untrue as Bailey pointed out to him at the time by reference to the record of the interview on the 17th December 1984 which Chris Tse himself had approved in its amended form.

11.53 In the course of his cross-examination Mr Litton asked Chris Tse to explain his failure to disclose to Bailey on the 17th December 1984 the sales made on the 26th and 27th June and the mandate allegedly given to David Au to effect those sales without Chris Tse's knowledge. This time his explanation for the non-disclosure was that during the interview on the 17th December 1984 he was of the opinion that he was not involved in any insider dealing and therefore he could not remember when he had dealt in the shares or the exact amount of the shares sold except for the dealing in the 100,000 ICH shares on the 29th June and 12th July 1984 which he had disclosed because he had the relevant bought and sold notes in hand.

11.54 His evidence was that he therefore gave the name of David Au and WSSC to the Securities Officers in the hope that they would themselves get the accurate information which was not available to him. When pressed by Mr Litton to say whether he was alleging that by the 17th December 1984 he had forgotten that he had also sold ICH shares before the bad news broke he became evasive and said he could not remember whether the shares were sold at the beginning, the middle or the end of June. He meant, he said, that he could not remember the exact dates. He hoped Bailey would get the information and as the shares were traded in his own name he did not feel it was possible for him to conceal any facts from Bailey. There was here a clear admission that he remembered that he had sold ICH shares some time in June which was during the relevant period referred to in Bailey's original inquiry at the interview on the 17th December 1984.

11.55 Later in his cross examination by Mr Litton Chris Tse was asked why, when on the 5th March 1985 Bailey confronted him with his dealings on the 26th and 27th June, he had not told him about David Au's discretionary power to sell on his behalf. To this question he gave the following answer:

" At that time the main thing that I was concerned with was which time I sold the shares, and the number of shares sold. Moreover I was not asked that question."

11.56 We considered the extent of Chris Tse's culpability to be of a high degree. The relevant ledger

of WSSC shows that he was a small dealer. The cost of his share purchases during the relevant period ranged between a maximum of \$80,239.50 and a minimum of \$26,143.00. If his dealings are considered between January and September 1984 the pattern is similar, the maximum cost of his share purchases remaining \$80,239.50 and the minimum being \$16,291.50. His holding of 50,000 ICH shares which he sold on the 26th and 27th June had been acquired for \$41,225.50 and was an average dealing in terms of cost. His was a case of blatant insider dealing. He knew it, hence his crude attempt to conceal his dealing from Bailey and, when that attempt failed, his attempt to concoct a cover up story. These attempts do him no credit.

(v) Summary of determination

11.57 The Tribunal accordingly determines pursuant to section 141H(3) and (4) of the Ordinance that it is satisfied that:-

- (1) Culpable insider dealing took place when Chris Tse sold 50,000 ICH shares on the 26th and 27th June 1984.
- (2) Chris Tse was the person involved in that culpable insider dealing. We emphasise that no other person is determined to have been involved in that culpable insider dealing.
- (3) The extent of Chris Tse's culpability is of a high degree.

(2) LAU CHI-LEUNG

(i) Connection with ICH

11.58 Lau Chi-leung ("C L Lau") is an architect and was at all material times a project manager employed by CKH. He had held his position since 1980. During the relevant period he was supervising a number of projects on behalf of CKH, including the City Garden project. His office was on the 20th floor of China Building. The same floor was occupied by the Accounts Section on one side and the Development Department, to which he belonged, was on the other side. Senior staff in his department occupying offices on the 20th floor of China Building included Miss Shirley Lai ("Shirley Lai"), the CKH quantity surveyor, Mr Chow Shui-man, the Chief Engineer and other project managers of CKH.

11.59 C L Lau deposed, in the second of his two declarations, that his duty as a project manager was to ensure that the building work progressed according to schedule and that it met with the required standard. In the City Garden project he was, he deposed, acting as the co-ordinator between the "authorized person", the engineers and the building contractors. Under cross-examination by Mr Litton, C L Lau said that project managers would never touch anything concerning administration and selling of properties because it was not their job. He said that CKH had a sales department which was responsible for sales and repeated that the project managers were only responsible for construction matters on site.

11.60 In his second declaration, C L Lau deposed that he was responsible to the Tender Committee of CKH, comprising George Zang, Albert Chow, Katherine Hung and Shirley Lai. He deposed that the Tender Committee held meetings attended by him about twice a week on operational matters, apart from the weekly project managers' meeting with K S Li every Wednesday morning. He further deposed that, other than those meetings, he had occasional contacts with each of the members of the Tender Committee whose offices were on the 21st floor of the China Building, except in the case of Shirley Lai. Such contacts were, he deposed, concerned with such matters as complaints and disputes concerning contractors relating to building work. In his submission he relied on the evidence of K S Li and Albert Chow to the effect that normally only technical matters pertaining to development were discussed at project managers' meetings.

11.61 Under cross-examination by Mr Litton it was put to him that during project managers' meetings there were also matters other than technical matters to discuss. He replied that this happened very occasionally and that most of the matters would relate to building construction. Mr Litton put it to him that an example of information concerning non-technical matters being given occurred in the minutes of the project managers' meeting held on the 18th January, at which, according to the minutes, the project managers had been told of the decision of CKH to sell the development at Jardine's Lookout and not to "collect rent". C L Lau replied that project managers were only responsible for construction matters on site. He added that he thought that, for that particular issue, the minutes (which mentioned both the relevant project manager's name and

the name of Katherine Hung, the Sales Manager) meant that Katherine Hung and not the project manager was responsible for "that part of the work".

11.62 When it was put to him by Mr Litton that, as far as access to information was concerned, a project manager would probably have as much information on matters such as sale as would Katherine Hung, who was in charge of sales, C L Lau replied:-

"Yes, if Mr Li decided that the selling or renting of properties will affect the construction, then most probably that particular issue will be discussed in the project managers' meeting otherwise that sort of matter will not be raised in the project managers' meeting. Take, for example, if it affects the quality of the construction, affect the programme of the construction."

He acknowledged that the minutes of the project managers' meeting on the 18th January 1984 indicated that the project managers had been told at that meeting that Phases II and III of the City Garden project had been sold. We bore in mind that the news of the pending City Garden transaction had become generally available by the date of this project managers' meeting.

11.63 Under cross-examination by Mr Litton concerning figures of estimated development cost of Phases II and III of the City Garden project which C P Man, one of the

executive directors of ICH, had prepared in January 1984 for Tonroe, the Group Finance Director of HKE, C L Lau was asked if he had ever been consulted in relation to the square footage of the development or in relation to the construction cost. He replied in the affirmative in relation to the floor area because, he said, he would normally be asked what was the total floor area in accordance with the latest design of the development. However, he added that development cost was normally not his job, but that of the quantity surveyor, and he said that although he met Shirley Lai, the CKH quantity surveyor, at least twice a week, they only talked about complaints or disputes with contractors in relation to payments or variations of work. He added that estimates of construction costs were not a matter for the Tender Committee or the project manager but were the responsibility of "Mr Kar-po Yeung" (sic)(?Mr Kapor Yang).

11.64 In determining whether or not C L Lau was a person connected with ICH for the purposes of section 141B of the Ordinance we had to consider the application of section 141E(1)(c)(i). There was clearly, at all material times, a business relationship between ICH and C L Lau's employer CKH. Such a relationship existed under the management agreement which applied to the City Garden project of which C L Lau was the project manager for CKH. The management agreement applied to both the construction and the sale of the development comprised in the project. The further question arising under section 141E(1)(c)(i) of the Ordinance was whether, as the project manager responsible for the City Garden project, C L Lau occupied a position at the time of his suspected dealing (on the 27th June 1984) which might reasonably be expected to give him access to

relevant information concerning the securities of ICH by virtue of the business relationship subsisting between his employer CKH and ICH.

11.65 Although C L Lau was himself directly concerned with matters relating to the construction of the City Garden project, the evidence outlined above indicates that he was in regular contact with Katherine Hung, the Sales Manager of CKH and he met her and the other members of the Tender Committee about twice a week at least. The other members of the Tender Committee included George Zang and Albert Chow who were together responsible for supervising both the construction and sale of CKH's development projects, including projects such as the City Garden project which CKH was responsible for on behalf of ICH under the management agreement.

11.66 In terms of physical proximity, C L Lau had his office on the 20th floor of the China Building and all the members of the Tender Committee except Shirley Lai (whose office was also on the 20th floor) had their offices on the 21st floor, and C L Lau had occasional contacts with them all. He also attended the regular weekly project managers' meetings presided over by K S Li and he admitted that matters raised at those meetings would include decisions regarding sales of property if they affected the construction of the development.

11.67 Furthermore, if the relevant CKH personnel were preparing an estimate of the development cost relating to a particular project, the architect project manager was, in the case of the City Garden project, the logical person to

consult about the size of the floor area of the current design of the development. C L Lau admitted that he had been consulted about, and that he would normally be asked for data concerning, floor area. Mr Litton submitted, and we agree, that the amount of the gross floor area would be a very relevant and important factor concerning the profitability of a project of the size of Phases II and III of the City Garden project, and that profitability or otherwise would indirectly be reflected in the share price of ICH.

11.68 Accordingly we were satisfied that the evidence relating to C L Lau's central position as project manager of the City Garden project of ICH, and the evidence relating to his necessary regular liaison with and physical proximity to personnel of CKH responsible for the costing and sale of the City Garden project was sufficiently cogent to establish that, in terms of section 141E(1)(c)(i) of the Ordinance, he occupied a position which might reasonably be expected to give him access to relevant information concerning ICH shares by virtue of the business relationship existing at the material time between ICH and his employer CKH.

(ii) Relevant dealings

11.69 The Tribunal was concerned with the sale by C L Lau on the 27th June 1984 of 100,000 ICH shares at 54 cents. The Tribunal was also concerned that he did not own any ICH shares at the time of this dealing and that he had purchased 100,000 ICH shares at 48 cents on the 29th June 1984 in order to complete his previous sale. We emphasise that it was not within our terms of reference to enquire or determine whether C L Lau committed the offence of short

selling within the meaning of section 80 of the Ordinance when he effected the relevant dealing on the 27th June 1984; and we made no enquiry or determination in that respect. The factual position was that these transactions produced a windfall of \$5,439 for C L Lau because the relevant bought and sold notes show that he realised \$53,703 on the sale on the 27th June 1984 and paid \$48,264 on the purchase of the 100,000 ICH shares on the 29th June 1984.

(iii) Possession of relevant information

11.70 We have determined under rubric (iii) of Chapter VIII above that possession, between the 25th and 3 pm on the 28th June 1984, of information of the pending cancellation of the City Garden transaction was relevant information concerning ICH shares. C L Lau denied that he was in possession of any such relevant information at the time of the relevant dealing.

11.71 There was no direct evidence that he did have such information at the relevant time. The evidence outlined under rubric (i) above had satisfied the Tribunal that C L Lau was a connected person under section 141E(1)(c)(i) of the Ordinance. However, for the purposes of determining whether he was in fact in possession of relevant information within the requirements of section 141B(1)(a), that evidence, although relevant, was by itself wholly insufficient. The question therefore arose whether the special circumstances of the relevant dealing provided cogent indirect evidence to satisfy the Tribunal, in accordance with the stringent standard of proof it has adopted for this inquiry, that C L Lau was in possession of information of the pending cancellation at the time he effected the relevant dealing.

11.72 C L Lau effected the relevant dealing through his broker Mr Peter Lam Man-leung ("Peter Lam"). When he made his first declaration on the 10th September 1985 C L Lau gave evidence about a number of matters in addition to the relevant dealing. As regards the relevant dealing, he deposed that he had known Peter Lam since 1980 and that during 1984 he was maintaining a margin account with his firm Kam Sang Securities Company ("KSS") which allowed C L Lau credit to the extent of 70 per cent of the value of the shares pledged by him. He deposed that Peter Lam would contact him from time to time with investment advice.

11.73 C L Lau further deposed that his stake was generally limited to \$100,000 which, with the benefit of his margin account, would allow him to purchase shares to the value of some \$300,000. He produced a schedule of his share dealings during the relevant period. The schedule indicated that he had dealt actively in CKH shares until the 7th June 1984. On that date he ceased to have a holding in CKH after selling his last 30,000 CKH shares. On the 27th June he was shown to have sold another 11,000 CKH shares. The schedule also showed the purchase and sale of 50,000 Hong Kong TVB shares on the 27th and 30th January 1984 respectively and the sale of 30,000 Far East Consortium shares on the 14th June 1984.

11.74 As regards his dealings in ICH shares, the schedule of dealings showed the following transactions during the relevant period:-

<u>Date</u>	<u>Buy/Sell</u>	<u>No. of shares</u>	<u>Price (cents)</u>
18.1.84	Buy	200,000	68
24.1.84	Sell	150,000	66
10.2.84	Buy	50,000	81
19.3.84	Sell	100,000	74
27.6.84	Sell	100,000	54
29.6.84	Buy	100,000	48

Commenting on his dealings in ICH shares during the relevant period, C L Lau deposed that they were just among the normal course of his share investment and were based on "the following considerations:-

- (a) financial reports in the press,
- (b) advice and recommendation from Mr Peter Lam, and
- (c) the need to adjust my investment portfolio."

He denied that he was privy to any price sensitive information which would otherwise have influenced his dealings.

11.75 A different picture of the relevant dealing was presented when Peter Lam made his declaration on the 7th November 1985. He confirmed that C L Lau had had a margin account with his firm KSS for about four years and described the machinery of that account which was maintained through a finance company called Kinoble Limited ("KL") associated

with KSS. He deposed that C L Lau's share dealings were mainly handled by him or his office manager, and that Peter Lam and C L Lau had maintained regular telephone contact during 1984. As regards the circumstances of C L Lau's dealings, Peter Lam deposed that he would inform C L Lau of the market situation and that he would at times make recommendations to him concerning market trend and stock to be bought or sold. He deposed that they also had general chat about common friends and business matters, but rarely about C L Lau's job, because it was too technical for him, and he had never been privy to any insider information from C L Lau about the City Garden transaction.

11.76 Peter Lam produced account statements in respect of C L Lau's account with his firm dated the 15th, 19th and 28th June and 2nd July 1984. He deposed that every time C L Lau dealt through KSS, using his margin account, the relevant contract notes would be sent to him and KL would send him an account statement, dated the next trading day, showing him his stock position and his outstanding balance.

11.77 As to the relevant dealing on the 27th June 1984 and the subsequent purchase of 100,000 ICH shares on the 29th June 1984, Peter Lam deposed that he was unable to recall the exact circumstances in which those dealings had been effected by C L Lau. He further deposed that he had examined the relevant account statements which he had produced and he confirmed in his declaration that no ICH shares were deposited with C L Lau's account on the 27th June 1984 which C L Lau could sell. He added that on the 27th June 1984 there were no securities deposited in C L Lau's account with KL. This was relevant in relation to the 11,000 CKH shares sold by C L Lau on that date.

11.78 Having deposed that he could not recollect the exact circumstances of these transactions, Peter Lam then went on, in his declaration, to depose what he believed, with the contract notes and account statements to aid his memory, had happened. He deposed that he believed that on the 27th June 1984 C L Lau had instructed him to sell 100,000 ICH shares and 11,000 CKH shares and that he had complied with those instructions by selling 11,000 CKH shares at \$8.35 and 100,000 ICH shares at 54 cents. He said that it was not necessary for him to check C L Lau's account before the sales because C L Lau might have had shares in his possession which were available for settlement.

11.79 Having deposed that daily account statements of KL for a particular trading day would normally arrive at his office on the afternoon of the next day, Peter Lam continued in his declaration with his account of what he believed to have happened after reference to the relevant documents. He deposed as follows:-

"I believe on the afternoon of 28 June 1984, I realised that Mr. LAU had no securities in KL to settle the sales when I checked through the account statements for 27 June 1984. I then contacted him by telephone and managed to speak to him, either on the afternoon of 28 June 1984 or the morning of 29 June 1984, requesting him to let me have the CK shares and ICH shares in order to settle the sales. I believe Mr. LAU then informed me that he had no stock in hand and requested me to buy 11,000 CK shares and 100,000 ICH shares to cover the sales. I do not remember him mentioning that he had made a

mistake about his stock position with KL. Accordingly, I bought back 11,000 CK shares at \$7.85 and 100,000 ICH shares at \$0.48 on 29 June 1984 for Mr. LAU for settlement of the previous sale. In our trade, a period of up to four days is normally allowed for the settlement of transactions."

11.80 Peter Lam produced a bought note indicating that C L Lau had also purchased 20,000 CKH shares, on the 29th June 1984, in addition to the 100,000 ICH shares and 11,000 CHK shares purchased on the same date. He deposed that the 20,000 CKH shares were subsequently deposited in C L Lau's account with KL.

11.81 In his declaration Peter Lam explained that his firm did not accept short selling by their customers but that very often there was no way that they could ascertain the stock position of their customers before they complied with the customers' instructions. There were also, he deposed, occasions when a customer could make a genuine mistake about the quantity of stock which he held. He further deposed that if a customer were to ask him to check the amount of stock held on his behalf it would take Peter Lam no more than several minutes to do so.

11.82 When he gave oral evidence to the Tribunal and was questioned by Mr Litton, Peter Lam said that the KL account statements were sent to his customers by hand. He said that the system was that usually the next day after the dealing he would receive the statement and he would send a note by hand to the customer. Under cross-examination by C L Lau,

Peter Lam said that, usually, after receiving the statement, he would check it and give it to his messenger for delivery to the client. That, he said, was his normal practice, but if it was too far away he would send the account by post. In the Central area, he said, he would give out the accounts by hand.

11.83 Asked by C L Lau if the messenger occasionally made a mistake so that the statement did not reach the customer, Peter Lam said this did happen and the messenger might drop something, but not very often. He said he sometimes received a call from a client saying that there was a series number in the accounts missing and he would then usually make another copy and give it to the client. He observed that normally this did not happen very often.

11.84 In a supplemental declaration, made on the same date (the 7th November 1985) as that of Peter Lam, C L Lau gave his account of the circumstances under which he had effected the relevant dealing on the 27th June and purchased 100,000 ICH shares on the 29th June 1984.

11.85 He deposed that during 1984 he and Peter Lam had maintained telephone contact virtually on a daily basis. According to him, every time he dealt through his margin account with KSS he received an account statement two to three days later by mail or despatch summarising his stock position and the outstanding balance in his account. However, he deposed that he did not have the habit of keeping these statements once he had read them.

11.86 In his supplemental declaration C L Lau gave the following account of his dealings on the 27th June 1984:-

"On the morning of Wednesday, 27 June 1984, I was advised by Mr. Peter LAM during a telephone conversation that the market was going down and consequently I decided to sell all my stock, because I also observed from reading the newspaper during the previous days that the Hang Seng Index was not holding grounds. Believing I had 11,000 CK shares and 100,000 ICH shares held in my account with KSS, I told Mr. LAM to sell these shares as soon as possible. I did not bother to ask him to check my stock position in KSS."

11.87 As to the circumstances under which he came to purchase 100,000 ICH shares and 11,000 ICH shares on the 29th June 1984, C L Lau deposed as follows:-

"On Thursday, 28 June 1984, Mr LAM contacted me on the telephone and informed me that he had executed the two selling orders of 11,000 CK shares and 100,000 ICH shares. He further told me that I had no stock held in my account and requested me to forward 11,000 CK shares and 100,000 ICH shares to his office for settlement. Only at that time did I realise I did not have these CK and ICH shares held with KSS. I made it known to Mr. LAM that I did not have any ICH and CK shares in my possession and asked him to cover the sale by buying 11,000 CK shares and 100,000 ICH shares from the market. Mr. LAM replied that he would sort it out on my behalf."

11.88 As to C L Lau's purchase on the 29th June of an additional lot of 20,000 CKH shares, he deposed that he was unable to recall why he had bought those shares. He also deposed that he was unaware, on the 27th June 1984, that the City Garden transaction would be cancelled, and added that the first he knew about the cancellation was when he read about it in the newspapers, he believed, on the 29th June 1984.

11.89 He went on to depose that even if he had known of the cancellation prior to its being publicised he would not have considered it would have had any adverse effect on the price of ICH shares or any other shares. His supplemental declaration included further evidence about his position and duties as a project manager which has already been outlined under rubric (i) above.

11.90 When C L Lau appeared before the Tribunal it was apparent, from the evidence contained in his declarations and in the declaration of Peter Lam, that the crucial factual issue to be determined by the Tribunal, in relation to the matter under consideration under rubric (ii), was whether it was true or whether it might reasonably be true that he had effected the relevant dealing in genuine ignorance of the fact that he did not at the time hold 100,000 ICH shares in his account with KSS and KL or in any other account.

11.91 When he came to be cross-examined by Mr Litton, he was reminded, by reference to the schedule of his dealings in ICH shares during the relevant period, that, after his

sale of 100,000 ICH shares on the 19th March 1984, C L Lau no longer held any ICH shares. He was also reminded of his evidence in his supplemental declaration that every time he dealt through his account with KSS he had received an account statement two to three days later. He was further reminded of Peter Lam's evidence to like effect. Mr Litton then took him through the copies of the relevant account statements which Peter Lam had exhibited to his declaration.

11.92 Mr Litton put it to him that the account dated Friday the 15th June 1984 (serial number 166) would probably have reached him by the 19th June and that it showed that he had a credit balance of \$177,765.11 and no securities in hand. C L Lau replied that he could not remember the exact date when he received that account. It was put to him that if his evidence in his supplemental declaration was true, he would have received the account two or three days later by mail or despatch and it would have been received some time during or after the weekend. He said the account would come by messenger or by post and so he could not remember exactly on what day he recieved it.

11.93 Mr Litton then put to him the next account dated the 19th June 1984 (serial number 167) which showed that he had previously had a credit balance of \$177,765.11 but had drawn \$100,000 on the 15th June 1984 by cheque. The following exchange of questions and answers then took place between Mr Litton and C L Lau:-

" Q. So you must have known your position with the brokers before you drew out \$100,000?

A. Well, when I drew out \$100,000 most probably I needed the money because as far as I can remember normally I will deposit something like round about \$100,000 in my margin account for investment purposes, so it doesn't mean when I drew the \$100,000 I knew exactly how much money I got in my margin account.

Q. You may not have known exactly how much money you had, but you must have had a pretty good idea, wouldn't you?

A. Yes.

Q. And where would you get the idea if not from the account statement?

A. I have to emphasise it, for that sort of statement I didn't receive it regularly. I only receive it once I have dealings. In other words, my stock position change, my credit position change, I got that sort of statement. Normally, I did not have the habit of keeping that sort of statement. After I read it normally I didn't keep it. Every time I prefer to make a telephone call to Peter Lam to check my credit balance or my stock position. That's my habit. Most probably on that particular day maybe I checked with Peter Lam on the credit balance of my account and then maybe I need the money so I decided to withdraw \$100,000 out from my account."

11.94 Mr Litton reminded him, and he accepted, that the schedule of his dealings produced by him showed that on the 14th June 1984 he had sold the last of his share holdings,

namely 30,000 Far East Consortium shares, and that after the proceeds of that sale had been credited to his account he drew out \$100,000 on the 15th June, so that there would have been two changes in his account at that time. Mr Litton then put it to him that he would have received the account dated the 19th June 1984 (serial number 167) some time after the 19th June, and he replied "Yes". When it was put to him that it would probably have been around the 21st June he replied "Maybe, yes".

11.95 C L Lau admitted that these "records" showed that he had no shares in his portfolio and that if he had checked with Peter Lam he would have given him the same information. Mr Litton put it to him that he did not need to check with Peter Lam because at that time he had the statement of account which showed clearly that he had no shares in his portfolio. He replied:-

"Not necessarily. Because that sort of statement, sometimes two or three statements came to my office together. In other words, for the convenience of despatch, sometimes, you know, Peter Lam did not always send the statements to us on time. I mean immediately after the transaction. Sometimes for the convience (sic) (?convenience) of despatch, they may hold it for one or two days."

11.96 Asked why the account dated the 15th June (serial number 166) should not have been received by him within a few days he said that he had to explain that "up to now" he had not got it and that that particular account statement had been obtained from his broker by the Securities

Officer. He said he had not himself produced it and he had explained to the Securities Officer that he did not have the habit of keeping statements. That, he said, was why he did not have statement of account number 166. He went on to say that he could not remember seeing either of the accounts numbered 166 (15th June 1984) and 167 (19th June 1984). His exact words were:-

"....so if you ask me the exact time I read that statement or did I really receive that statement, I cannot confirm. Because for my memory I haven't seen these two statements and as a matter of fact these two statements were not produced by me, was produced by the securities officer."

11.97 Mr Litton put it to C L Lau that he had not produced these statements of account because they would have given the lie to his assertion in his supplemental declaration that he believed he had 100,000 ICH shares in his portfolio when he effected the relevant dealing. To this question C L Lau gave a long answer in which he gave his explanation for selling, on the 27th June 1984, 100,000 ICH shares, when he had not had any ICH shares in his portfolio or at all since the 19th March 1984. His exact words were:-

"Yes, for my general recollection the reason I make a mistake in my -- to sell 100,000 ICH shares, most probably because I had a transaction on the 19th of March, which I sell 100,000 ICH shares. Most probably, I forgot that transaction. In other words, I believe I still got 100,000 shares of ICHL in my account. Most probably that is the reason why on the 27th of

June I made that decision to sell 100,000 shares of ICHL, because totally from my record I made during the period from January to June, totally I made for ICHL I made, I think, five transactions during that period. The first transaction is, I believe, I bought 200,000 shares of ICHL and then later on I sell 150,000 shares of ICHL. In other words, leaving 50,000 shares and then later I bought 50,000 shares of ICHL leaving my account having totally 100,000 shares of ICHL. In other words, from February my account have had 100,000 shares of ICHL and then one month later in March from the exhibit, I sold 100,000 shares. Most probably I make confusion, you know, I forgot that transaction in March. That's the reason why in July, at the end of June, I still believe I got 100,000 shares of ICHL."

11.98 Mr Litton put it to him that there was no room for his alleged belief about having 100,000 ICH shares in his portfolio at the date of the relevant dealing because he would have received a statement of account shortly after the sale of his 100,000 ICH shares on the 19th March showing the crediting of his account with the proceeds of sale of 100,000 ICH shares and showing thereafter that he had no ICH shares in his portfolio. To this C L Lau replied - "If I had read the statement, yes". Asked why he would not have read the statement of account, he replied:-

"Because as I have said, I cannot remember at the present time, did I really receive that statement? Because that statement was not produced by me. It was produced by the securities officer. Because I actually if you ask me about any other statement of last year, I did not have the habit of keeping them."

11.99 He went on to say that the schedule of his dealings during the relevant period indicated that he had effected more than forty transactions so that he could not remember his dealings. Each dealing would, he said, affect his stock position and credit balance, and so he could not remember what his stock or credit position was at any particular time. Mr Litton then put it to him that he did not need to remember these things because from time to time he received account statements which showed him without any possibility of mistake what his position was with his broker. C L Lau replied that the account statements were not sent by registered mail but by ordinary mail so there was a possibility that he might not be able to "take a look at it".

11.100 Mr Litton put it to him, and he agreed, that after the 19th March he only had CKH and 30,000 Far East Consortium shares in his portfolio, and that he would have received a series of account statements showing the position of those shares. However, he explained that his 30,000 Far East Consortium shares were not deposited with KL in his margin account, and that they were a separate holding which he had sold on the 14th June 1984 without checking about his position with Peter Lam because he knew from memory that he had them. Mr Litton then put it to him that the position would therefore have been simpler after he had sold out his ICH shares on the 19th March 1984, because the only shares shown in his KSS portfolio would have been CKH shares. He agreed that this was so from the record but he did not agree that he knew perfectly well from the 7th June 1984 (when he sold his last CKH shares) that he had no shares in his portfolio.

11.101 Asked by Mr Litton if he was saying that there was a failure in the system and that he had not received the statements of account exhibited to Peter Lam's declaration, C L Lau gave the following reply:-

"Because as I have mentioned, if you ask me exactly my stock position on a particular day during January to June, I cannot remember because from that period I got more than forty transactions. If I read the statement, of course, I will know instantly my stock position because I have to emphasise this, I cannot remember whether I have received that statement because you know that statement will be delivered to my office a few days, sometimes even longer, depends on the delivery, whether there are messengers available. Sometimes even by ordinary mail. Personally I prefer to check with Peter Lam on the telephone rather than to look at those statements. Or if I need to check my stock position, I prefer to make a phone call and check with him."

11.102 Mr Litton's cross-examination of C L Lau regarding his knowledge of the subject matter of his portfolio concluded with the following questions and answers:-

"Q. Did you know that it was an offence to sell short?

A. Yes.

Q. So wouldn't you have been careful to check with Peter Lam before you gave orders to sell?

A. Normally I didn't have the habit. Normally, I make decision from my memory, believing that I got so many shares in my account. I make that direction and instruction.

Q. Would you look at your paragraph 5. The first sentence. Paragraph 5 of the second declaration of the 7th November. Top of page 2. Is that a truthful statement or is that not where you say, "Every time that I dealt through my margin account with Kam Sang Securities I received an account statement." Is that a truthful statement or not?

A. Yes."

10.103 As regards his dealings in the stock market, C L Lau insisted, under cross-examination by Mr Litton, that he did not really make a very close study of the share market because he did not have the time. When he was asked if he took a daily interest in the share market he said that normally, before 9 am every morning, he read the financial news in the newspaper concerning the markets and the Hang Seng Index of the previous day, but that he did not have the time or the knowledge to analyse or investigate the details.

11.104 However, he admitted that during 1984 he maintained telephone contact with Peter Lam on virtually a daily basis and that he had taken an interest in the stock market not only during the relevant period but during the four years that he had a margin account with KSS and KL. He said that although he had a margin account (which incurred heavy interest) he did not necessarily have to keep in very

close touch with the market because he always controlled his holdings in shares. He added:-

"In other words, if I feel there is too many shares in terms of money, then I will dispose of them. In other words, I will control my investment portfolio very carefully."

11.105 He said he sometimes made very frequent purchases and sales but sometimes, depending on the situation, he might keep stock for a few months. He agreed that he would only keep stock for a few months if he was reasonably sure that the price was going to go up, and he would sell stock, even at a loss, if he thought it was not holding ground. It was put to him by Mr Litton that the fact that his schedule of dealings indicated that he had sold 20,000 CKH at \$10.10 on the 15th February and then bought back 20,000 of the same shares on the next day at \$9.45, suggested that he kept a very close eye on the share movements in the Exchanges. He replied that this was not necessarily so because sometimes he would be advised by his broker. He emphasised that normally in the morning he had to attend site meetings which could last a whole day or half a day, and he did not have time to have a very close look at the stock market every day.

11.106 As to the City Garden transaction he said that his personal opinion was that the news of the alleged purchase by Ever Bright, a China related concern, for \$1 billion, had no stimulating effect on the market because he considered that a higher price could have been obtained by ICH if Phases II and III of the City Garden project had been

sold off in individual lots. He said that he consequently did not feel that the cancellation of the City Garden transaction would have an adverse effect on the stock market because ICH would be able (as they had in fact done subsequently) to sell the development in the open market at a higher selling price to individual purchasers. He conceded that the fact that Ever Bright was linked with the Chinese Government had a politically stimulating effect but he said he did not think the cancellation would have a very damaging political effect.

11.107 As regards the circumstances of the relevant dealing and the events of the 27th June 1984, C L Lau said under cross-examination that at 9.15 am on that date he had attended the routine Wednesday morning project managers' meeting at the office of CKH which would normally have lasted one and a half hours and would not have broken up much before 11 am. He said that after the meeting he had most probably had a telephone conversation with Peter Lam who would have been in his office and not on the floor of his exchange. C L Lau said he knew that Wednesday was a half day on the Exchanges and that the morning session ended at 12.30 pm. He accepted that he therefore had barely an hour to give instructions to Peter Lam before the market closed for the day. However he insisted that he did not have information of the pending cancellation of the City Garden transaction and that his position as an architect and project manager did not entitle him to have such knowledge.

11.108 Mr Litton reminded him that in his supplemental declaration he had deposed that Peter Lam had advised him during their telephone conversation on the 27th June 1984

that the market was going down. Asked if this evidence had been given as a matter of specific recollection on his part, C L Lau replied- "I don't remember exactly". Mr Litton then asked him if he was telling the Tribunal that, in the course of the first hour of trading on the 27th June 1984, Peter Lam was telling C L Lau that the market was going down, and that was what caused him to sell his shares. He replied:-

"I don't remember exactly whether Peter Lam had advised me the market is going down but most probably Peter Lam made a comment that the market was not holding ground."

When asked by Mr Litton why he had said in his supplemental declaration that Peter Lam had given him such advice, C L Lau replied- "Maybe I overlook that point". He was pressed further about this matter and eventually he said that maybe he did not remember the exact conversation he had had with Peter Lam on that particular morning.

11.109 Mr Litton then asked him about his evidence in his supplemental declaration to the effect that he had observed, from reading the newspaper on the previous day, that the Hang Seng Index was not holding ground. He explained that he meant to refer to the performance of the Hang Seng Index between about the 21st and the 26th June 1984. He was shown the relevant data and asked to elaborate on his evidence that the Hang Seng Index was not holding ground. He explained that between the 22nd June (when the Index stood at 937 points) and the 26th June 1984 (when the Index stood at 927 points), it had lost 10 points, and that was why he said the Index was not holding its ground.

11.110 The 22nd June 1984 was a Friday. On the next trading day, Monday the 25th June 1984, the Index registered 936 points, so that the drop of about 10 points occurred between the 25th and the 26th June. Asked by Mr Litton if in C L Lau's view a movement of 10 points in the Index within a day was of any significance, he replied:-

"Sometimes it may be a sign because when the Hang Seng Index lost 10 points it may have a good sign of the market may not be holding ground."

11.111 After C L Lau had said that he did not examine the volume of turnover on the Exchanges when he glanced at the Hang Seng Index, Mr Litton asked him what he said was the motivating force for his decision to sell on the 27th June 1984. C L Lau replied:-

"Well, from my record, on the 22nd of June when the Hang Seng Index closed at 937 the ICHL share closed at 56 cents, but on the 26th of June when the Hang Seng Index closed at 927 - it lost 10 points - the ICHL share closed at 53 cents, representing more than 5% decrease, so I make that decision on the next day, on the 27th, to get rid of my ICHL shares."

11.112 When he was pressed about his decision to sell his ICH shares being so precipitate that he did not even check to see if he had 100,000 ICH shares to sell, C L Lau said- "Yes. Normally I did not have the habit." He said likewise that he did not check to see if he had 11,000 CKH shares to sell. He denied he intended to sell short. He insisted that on the morning of the 27th June 1984, when he sold the

100,000 ICH and 11,000 CKH shares, he was not aware of the pending cancellation of the City Garden transaction and that he made the decision to sell motivated only by looking at the Hang Seng Index and the closing price of ICH shares.

11.113 C L Lau said that when he was informed by Peter Lam that he did not have shares to cover his previous dealings on the 27th June 1984, he asked Peter Lam to recover the shares for him, no matter what the price because he had to do that. He insisted that he did not know, when he gave instructions to Peter Lam to make the purchases on the 29th June, that he had made a profit. As far as he was concerned, he said, the profit was a pure windfall. He said he did not associate the news of the cancellation with his profit on this transaction because he did not think the news would have an adverse effect on the stock market. He pointed out in his evidence, and later in his submissions to the Tribunal, that previously he had bought up to 200,000 ICH shares and up to 100,000 CKH shares, and he made the point that if he had intended to indulge in insider dealing he would not have sold such a small amount of the shares. He had, he said, made a very small profit and he did not do it on purpose.

11.114 The Chairman asked him if he could think of any other instance where, by accident, he had sold shares which he did not have. He gave a number of rather vague answers and eventually, when asked by the Chairman if such a thing had or had not happened, he said he did not know. At the conclusion of C L Lau's oral submissions, the Chairman asked him if he could explain the reason for his selling 11,000 CKH shares on the 27th June 1984, because it seemed to the

Chairman to be a strange figure in the light of the amounts in which C L Lau had been dealing in CKH shares during the relevant period. C L Lau said that at the time he believed he had 11,000 CKH shares and pointed out that he had made more than 30 dealings during the relevant period in CKH shares, including a dealing in 3,000 and a dealing in 7,000 shares. His only explanation was, he said, that he had made numerous dealings in CKH shares which were not necessarily confined to 10,000 or 20,000 shares and were sometimes in amounts as small as 3,000 shares.

11.115 Unfortunately C L Lau was not legally represented. However, he is an architect and he appeared to the Tribunal to be articulate and intelligent. He produced written submissions which he amplified orally before the Tribunal. As to the question whether he knew that he did not own the ICH (and CKH) shares which he sold on the 27th June 1984, he made the following points in his submissions. He said that his share dealing was only an insignificant part-time hobby compared with his career in a leading property development company which imposed a very heavy work load on him.

11.116 As to the statements of account from KL, he said more than once that, having regard to his heavy commitments as a project manager of CKH, it was reasonable for him not to regard the statements of account as important. He would only receive them two or three days after transactions and by then they might be out dated because his trading was very frequent, there having been, he said, 44 transactions during the relevant period. This was, he said, an average of one transaction every two or three days.

11.117 He also relied on the admission by Peter Lam that there had been occasions when a statement of account did not reach a client of Peter Lam. As to his own evidence, he maintained that he had always said that he did not know whether he had received the accounts dated the 15th and 19th June 1984, and he had said this to the Tribunal's investigating officers when they produced them. As a layman, he should not, he submitted, be prejudiced by his failure to say early in his evidence, or suggest to Peter Lam, that the accounts might not have reached him. Furthermore, he contended, Mr Litton had not re-examined Peter Lam to rule out the possibility that the two statements of account had not reached C L Lau. He relied on the fact that no evidence of delivery of the account statements or of any relevant chit book had been adduced before the Tribunal.

11.118 The Chairman reminded him that he had said in his supplemental declaration that, after dealings, he had received a statement of account two or three days later "by mail or despatch" and suggested that if there was no chit book involved, as C L Lau was contending, it should be assumed by the Tribunal for the purposes of the inquiry that there was none. Eventually C L Lau stated that he was challenging the existence of a chit book relating to the delivery of KL's statements of account. He was also asserting that there were occasions when the statement of account did not reach a client of KL. His last words about the two relevant accounts were:-

"But, I am not sure whether I have received these two statements because number one, I did not have the habit of keeping them, so as a matter of fact I did not know whether these two statements I mean

serial no. 166 and 167 would be missing, because actually if you ask me what is my latest serial number I did not know, because one can only know if they have a habit of keeping the statement of account, otherwise if two statements missing, serial no. 166 and 167 it is very difficult to trace if you do not have a habit to keep them."

11.119 As to Mr Litton's suggestion that when he made the relevant dealing he knew of the pending cancellation of the City Garden transaction, C L Lau relied on the following factors. He pointed out, as he had done in evidence earlier, that the 100,000 ICH shares and 11,000 CKH shares, which he sold on the 27th June 1984, represented only about 10 per cent of his share dealings in January 1984, because between the 12th and 13th January 1984 he had dealt in 100,000 CKH shares whilst at the same time holding 30,000 Far East Consortium shares. These dealings were, he said, worth well over \$900,000. He went on to say that if he had been aware of the pending cancellation of the City Garden transaction and that there was a sure profit to be made by selling ICH or CKH shares, he should have sold up to 100,000 CKH shares and a million ICH shares on the 27th June 1984.

11.120 As to Mr Litton's suggestion that he had kept his dealings down to avoid detection by the Tribunal, he said that in June 1984 the Tribunal had not yet been set up nor had there been any recommendation to the Financial Secretary to set it up. When he dealt on the 27th June 1984 he was not, he said, aware that there would be an Insider Dealing Tribunal set up in connection with the City Garden transaction.

11.121 He reiterated in his submissions that, as he had said when giving oral evidence, he had been solely motivated, when effecting the relevant dealing, by the fact that (1) the Hang Seng Index had lost ten points between the 22nd and 26th June 1984 and (2) ICH shares had performed even worse than the general market because the shares had lost three cents, representing a drop of more than 5 per cent in share price.

11.122 As to the suggestion that he might have had information of the pending cancellation of the City Garden transaction when he effected the relevant dealing, he stressed the nature of his job as an architect and project manager for CKH. He was, he said, only responsible for construction, and was not entitled to know any details regarding the sale of properties. He said that K S Li had said nothing about the cancellation of the transaction at the project managers' meeting on the 27th June 1984 and there was nothing in the minutes of the meeting to suggest that he had done so, and if he had done so about 15 persons who attended the meeting would have been given the information. Moreover, he stressed that the evidence given to the Tribunal by K S Li and Albert Chow had confirmed that only technical matters regarding site construction were discussed with project managers, so there was no source from which he could have obtained information of the pending cancellation.

11.123 C L Lau had dealt in the shares of CKH, ICH, HK TVB and Far East Consortium during the relevant period. He pointed out that, whilst he had made a handsome profit on his dealing in HK TVB shares, he had made no profit out of

ICH shares prior to the relevant dealing which had only produced a net profit of less than \$6,000. He relied on this as indicating that his dealings in ICH shares were not insider dealings inspired by relevant information. He concluded by contending that the relevant dealing on the 27th June 1984 was purely a mistake on his part which resulted in his being compelled to recover 100,000 ICH shares on the 29th June 1984 to complete his sale at a profit which was made by coincidence.

11.124 As to the crucial question whether C L Lau genuinely believed that he had 100,000 ICH shares in his portfolio on the 27th June 1984, we regret that, although he is a professional man who has strenuously asserted that he did believe he had the shares in question on that date, we did not believe his evidence on this matter, nor did we consider it might reasonably be true. Our reasons for this determination are as follows.

11.125 On his own evidence, he had been dealing on a margin account with KSS and KL for four years and, in 1984, he was in touch with Peter Lam by telephone virtually daily. As appears from his evidence mentioned in paragraph 11.104 above, the fact that he was dealing on margin meant that he had to control his investment portfolio very carefully. Also the situation was sometimes such that he had to make frequent purchases and sales. This was borne out by the schedule of his dealings which indicated that during the relevant period and prior to the 27th June 1984 he had dealt in the stock market, mostly in CKH shares, on 41 occasions on 32 trading days. He had dealt 15 times in 10 days in January, 8 times in 6 days in February, 11 times

in 9 days in March, 4 times in 4 days in April and 3 times in 3 days in June. He had dealt 4 times in ICH shares and 34 times in CKH shares.

11.126 There was no evidence that he was a muddler or that he had ever inadvertently sold short in the course of the four years that he had maintained his margin account with KSS and KL through Peter Lam. It followed that he had managed to run a busy account on margin and to make numerous dealings until the 27th June 1984 without error. This was not surprising because the evidence of Peter Lam, which the Tribunal accepted, and the initial evidence of C L Lau in his supplemental declaration was that whenever C L Lau dealt on margin in his account with KSS and KL, Peter Lam would send him a statement of account within a matter of a few days, as a matter of routine.

11.127 C L Lau pressed us with his evidence that he was a very busy man and it was only reasonable for him to treat these statements of account as unimportant once he had read them. He also pressed us with Peter Lam's admission that there were occasions when a client of his did not receive a statement of account which had been despatched by messenger. Assuming, but by no means deciding, that one or more of the statements of account sent to C L Lau may have gone astray from time to time, the inescapable fact is that C L Lau had sold out his last ICH shares as early as the 19th March 1984 and he had dealt no less than 12 times after that. Each time he dealt after the 19th March his account would have altered and Peter Lam would have had to send him a statement of account which would have indicated that he no longer held any ICH shares. C L Lau admitted

this in the passage of his evidence mentioned in paragraph 11.98 above where he took refuge in his alleged inability to remember if he had received statements of account.

11.128 An equally if not more cogent item of C L Lau's own evidence was his assertion (referred to in paragraph 11.101 above), when giving oral evidence explaining his inability to remember what statements of account he had received, that he preferred to check with Peter Lam on the telephone rather than to look at the statements of account, and that if he needed to check his stock position he preferred to make a telephone call and check with Peter Lam. C L Lau had made the same point in the passage of his evidence mentioned in paragraph 11.93 above where he also said that he had most probably checked on his credit balance with Peter Lam before withdrawing \$100,000 from his account on the 15th June 1984.

11.129 Peter Lam himself had deposed in his declaration that it would have taken him no more than several minutes to carry out such a check of stock at the request of a customer. C L Lau's evidence was that normally Peter Lam was in his office and not on the floor of his exchange when C L Lau called him by telephone. As this happened virtually every day during 1984 we were satisfied that C L Lau had ample and efficient means of checking his stock position, partly by means of the statements of account received by him, but chiefly by his telephone calls to Peter Lam. Moreover the fact that C L Lau had managed to control a busy account for four years without mishap demonstrates that he had made use of the means at his disposal to verify his stock position when necessary.

11.130 Accordingly we did not believe that C L Lau, who knew that it was an offence to sell short, would not, as he alleged, normally have the habit of checking with Peter Lam before giving orders to sell, or that normally he would make a decision from memory, believing that he had the shares in his account. Having regard to the fact that he had conducted his margin account for four years without error and to the complex pattern of his dealings as shown in his schedule of his dealings during the relevant period, we were satisfied that C L Lau must have relied on either his statements of account or a telephone call to Peter Lam to ascertain his true stock position from time to time before effecting previous dealings.

11.131 We were also satisfied that the real reason why C L Lau, who had sold out his ICH shares as early as the 19th March 1984, did not make any enquiry with Peter Lam on the 27th June 1984 regarding his holding of ICH shares was that he must have known that Peter Lam would have told him that he held no ICH shares. The same applied to the 11,000 CKH shares because the last of the CKH shares had been sold out on the 7th June 1984. Moreover the last dealing C L Lau had effected in odd numbers of CKH shares was the purchase of 33,000 shares as far back in time as the 12th January 1984 and thereafter there had been 28 dealings in CKH shares in multiples of ten.

11.132 Finally, it was significant that Peter Lam, whom we considered to be an honest witness in all respects, deposed in his declaration that he could not remember C L Lau saying to him, at the time Peter Lam told C L Lau about the deficiency in his stock, that C L Lau had made

a mistake; nor did C L Lau suggest in his supplemental declaration that he told Peter Lam at the time that he had made a mistake.

11.133 We had borne in mind and given due weight to C L Lau's contention that if he had intended to sell shares he did not have (or to sell shares as an insider dealer) he would have been able to deal in larger amounts of shares. Accepting that such may well have been the position we were nevertheless satisfied, by reason of the matters mentioned above, that when he effected the relevant dealing, C L Lau had the means of knowing and did know that he did not own the 100,000 ICH shares comprised in that dealing.

11.134 As appears from paragraphs 11.111 and 11.121 above, C L Lau would have us believe that the reason he effected the relevant dealing in ICH shares was that the Hang Seng Index had fallen ten points between the 22nd and the 26th June 1984, and ICH shares had lost three cents representing a drop of more than 5 per cent in share prices. This might conceivably have been a plausible reason for selling ICH shares in his possession. However, having determined that C L Lau sold 100,000 ICH shares which were not in his possession, we were satisfied that, as an intelligent man who had been dealing regularly on margin in the stock market for four years with the assistance and advice of Peter Lam, it is inconceivable that C L Lau would have been induced by a drop of 10 points in the Hang Seng Index and a drop of 5 per cent in the price of ICH shares, to run the risk of selling 100,000 of those shares when he knew he had no ICH shares in his possession.

11.135 What then could be the reason for C L Lau selling the shares in the certain knowledge that, in order to complete the sale, he was going to have to buy back 100,000 ICH shares? There must have been a compelling reason for such a sale. As a matter of common sense no dealer takes the risks inherent in knowingly selling short without being convinced that he is in a position to take advantage of an imminent fall in the market. With the benefit of hind sight, it is now apparent to the Tribunal that a fall in the price of ICH shares had been imminent ever since Wang decided to cancel the City Garden transaction on the 25th June 1984.

11.136 As we have indicated above, there is no direct evidence that C L Lau was given information of the pending cancellation of the City Garden transaction by any personnel of CKH or ICH. The evidence before us indicates that C L Lau was at the centre of the City Garden project and that he frequently met and associated with personnel of CKH who had knowledge of the pending cancellation by the 27th June 1984. He met some of them on the morning of the 27th June at the project managers' meeting and immediately after that meeting he telephoned his broker, Peter Lam, and sold 100,000 ICH shares and 11,000 shares in CKH, an associated property company of ICH. Having determined that, when effecting these sales, C L Lau was knowingly disposing of shares that were not in his possession, we were satisfied that, notwithstanding C L Lau's claim that he thought the price of ICH shares was not affected by the City Garden transaction, the only reason why he took such a course was that he knew that the City Garden transaction was shortly to be cancelled. He therefore knew he would be able to make a profit when he bought in the shares after the price had fallen as a result of the news of the cancellation.

(iv) Culpability

11.137 The Tribunal having determined that the purpose of C L Lau on the 27th June 1984 in selling 100,000 ICH shares at 54 cents per share was to complete the transaction by buying in the same number of shares when the price of the shares fell on the publication of the news of the cancellation of the City Garden transaction, it follows that, for the purposes of section 141C(3) of the Ordinance, his purpose in effecting the relevant dealing was to make a profit. It also follows irresistibly that, notwithstanding his protestation to the contrary, his purpose was to make a profit by the use of relevant information, namely information in his possession of the pending cancellation of the City Garden transaction. C L Lau said he was ignorant of the provisions of the Ordinance relating to insider dealing, including section 141C(5). We did not therefore consider that any of the matters to which the Tribunal is required to have regard under section 141C(5) could be of significant weight, one way or the other.

11.138 This was a case of blatant insider dealing by a professional man who sold short in order to achieve his ends. His schedule of dealings shows that he was usually a dealer on a modest scale and his previous dealings in ICH shares during the relevant period were in amounts ranging between 50,000 and 200,000 shares. His culpable insider dealing in 100,000 ICH shares was in keeping with that scale. We considered the extent of C L Lau's culpability to be high.

(v) Summary of determination

11.139 The Tribunal accordingly determines pursuant to section 141H(3) and (4) of the Ordinance that it is satisfied that:-

- (1) Culpable insider dealing took place when C L Lau sold 100,000 ICH shares on the 27th June 1984.
- (2) C L Lau was the person involved in that culpable insider dealing. We emphasise that no other person is determined to have been involved in that culpable insider dealing.
- (3) The extent of C L Lau's culpability is of a high degree.

(B) DEALERS HELD TO BE NOT CULPABLE

11.140 The persons named in this part of the report as furnished to the Financial Secretary under section 141I(4)(a) of the Ordinance have exercised their right under section 141I(5) not to be named in this published report in respect of their dealings in ICH shares, which were the subject of the Tribunal's inquiry and in respect of which those persons have been found to be not culpable.

CHAPTER XII

COMMENTS AND RECOMMENDATIONS

(i) Substantive law

12.1 We are refraining from making any recommendations on the substantive provisions of the Ordinance relating to insider dealing (apart from our comment on "tippees" at paragraph 2.19 of Chapter II above) in the light of our experience of their operation in our inquiry, because we have been mindful that informed opinions differ regarding the desirability and efficacy of insider dealing legislation, and the Hong Kong legislation is still relatively untried in controlling insider dealing. However we have thought fit to make the comments, contained in paragraphs 12.2 to 12.7 below, arising out of our report.

12.2 When the Bill introducing Part XIIA of the Ordinance was presented to the legislature by the Financial Secretary of the day on the 12th October 1977, he was reported in Hong Kong Hansard to have described insider dealing as "essentially fraudulent behaviour". He was also reported to have gone on to describe the proposal to establish an Insider Dealing Tribunal, without powers to impose any sanction for culpable insider dealing, as "an attempt to grasp the nettle in a way which might produce effective* results." He expressed confidence that those in

*The word underlined appeared in italics in the Hansard report.

a position to impose sanctions, namely "companies of which persons criticized are directors or employee (sic), and/or professional bodies of which they are members", would have regard to the Tribunal's reports and do so. Whether or not the absence of any power available to the Tribunal to impose any penalty on culpable insider dealers will produce the result contemplated by the legislature, remains to be seen when our report is published.

12.3 We add that we trust that if any penalty is imposed upon any culpable insider dealer named in our report, it will be a penalty that is determined with a due sense of proportion in relation to all the relevant circumstances in each case.

12.4 Apart from the question of penalty in relation to culpable insider dealing, we consider that it cannot be over-emphasised that one of the obvious propositions that emerges from our report, particularly in relation to CKH, is that the safe rule of thumb for the director or officer of a listed company in possession of relevant information concerning the shares of that company, is that he must elect to persuade his company to publish the relevant information if that is possible, or to refrain from dealing in the shares of that company if he wants to avoid coming under suspicion as, or being found to be, a culpable insider dealer.

12.5 As to the possible rejoinder that this approach might inhibit connected persons, particularly those who are major shareholders in listed companies, from dealing, and

thereby adversely affect the stock market, we echo the words of the then Financial Secretary reported in Hong Kong Hansard for the 12th October 1977 to the effect that:-

".... all they have to do in order to escape any accusation of insider dealing is to influence their companies to pursue a policy of full and immediate disclosure of all relevant facts of a material nature."

12.6 It was also brought home to us in the course of the inquiry that there appeared to be a lamentable general ignorance, on the part of most of the connected persons who appeared before us, regarding the actual provisions of Part XIIA of the Ordinance. In particular there appeared to be a universal ignorance of the provisions of section 141C(5) which inter alia enable an insider dealer to improve his prospects of being found by the Tribunal to be not culpable in respect of his insider dealing by making prompt disclosure of that dealing on his own initiative to the Commissioner. If this ignorance of the provisions of Part XIIA of the Ordinance is general amongst connected persons in Hong Kong, then the sooner it is remedied the better.

12.7 Finally, we detected no sign of general awareness of the importance of section 141C(2) of the Ordinance which provides the means for a company to safeguard itself from the possibility of being suspected of or found to have engaged in culpable insider dealing. The provisions of section 141C(2) enable the company to establish what is

generally called, in the jargon of insider dealing, a "Chinese wall" to insulate from relevant information any director or officer of the company who is responsible for its share dealing.

(ii) Procedure and powers of the Tribunal

12.8 Our experience in the course of a long and arduous inquiry has not caused us to conclude that the present legislation in Hong Kong relating to insider dealing has proved to be ineffective in providing machinery for the detection of insider dealing. The Tribunal's powers are very wide and we have been mindful of the need to guard against the exercise of those powers in an oppressive manner. However, in our view, the problems arising in the investigation of insider dealing are such that it is essential to endow the Tribunal with the wide powers conferred by the Ordinance.

12.9 The major problem that arose in our inquiry was the inordinate length of our proceedings. The notice from the Financial Secretary requiring the Tribunal to begin the inquiry was dated the 2nd November 1984 and we do not envisage that this report will be published until some time in April 1986.

12.10 One of the reasons for the length of time taken in the inquiry is that we were given very wide terms of reference which necessarily involved a very comprehensive investigation relating to a six months period. We have already dealt with this aspect of the matter in paragraph 1.7 of Chapter I above. We add that one of the problems

facing the Tribunal's investigators was the task of obtaining and scrutinising the returns from registered and other dealers. Such returns require much time and scrutiny to identify the information that is relevant to the inquiry. The dealers were in the main co-operative, but it took from December 1984 until mid August 1985 to get in the relevant returns from the bulk of the dealers.

12.11 The Barker Tribunal also had problems with the time taken in its inquiry. It recommended that the Tribunal should be replaced by inspectors of the kind employed in Board of Trade inquiries in England. It was felt that a pair of inspectors, one being a Queen's Counsel and the other a leading accountant, would be preferable to the present Tribunal because they could act more speedily and efficiently.

12.12 We have given anxious consideration to the possible means of expediting future inquiries notwithstanding that the nature of most inquiries into suspected culpable insider dealing is such that they cannot be conducted in a short period. For our part we do not favour the Barker Tribunal's recommendation that insider dealing should be inquired into by inspectors in Hong Kong to the extent of actually determining issues of culpability.

12.13 The powers conferred on the Tribunal are very wide, and insider dealing is regarded by the legislature as a form of dishonesty. Individuals of considerable standing in the Hong Kong community have appeared before the Tribunal

in both inquiries. In our view the legislature was right in providing for insider dealing to be inquired into by a tribunal with the standing and powers of the Insider Dealing Tribunal.

12.14 However we consider that a substantial amount of time and expense could have been saved in our inquiry, if initially an inspector had been appointed under section 127 of the Ordinance to inquire into and report on the matters which came within our terms of reference. The powers conferred on such an inspector by the Ordinance are very wide. The advantage of the initial use of such procedure would have been that the single inspector could have worked much faster, in a full time capacity, than the more cumbersome Tribunal comprising three members, of whom two were only involved part time. He could therefore have eliminated a number of suspected insider dealers from the inquiry at a relatively early stage. He could also have investigated and clarified the background to and the City Garden transaction itself, which took a very substantial part of the Tribunal's time.

12.15 The further advantage of an initial inquiry and report to the Commission by an inspector under sections 127 to 134 of the Ordinance would be that the inspector could identify in his report the individuals or companies in respect of whose dealings he recommended to the Commission that the Tribunal should be required to hold an inquiry to determine whether or not the relevant individuals or companies were culpable insider dealers. Alternatively, if the inspector were to report to the Commission that there was no sufficient evidence to establish that the relevant

dealings were insider dealings or culpable insider dealings, the matter could rest there if the Commission were to accept the report.

12.16 The application, in relation to insider dealing, of the inspectorate procedure provided for under sections 127 to 134 of the Ordinance was one of the possible procedures for the implementation of Part XIIA of the Ordinance contemplated by Professor Willoughby in his article which appeared in the Hong Kong Law Journal (1978 Vol.8, No.2 at p.246) at the time Part XIIA of the Ordinance was introduced. We consider that there is much to be said for the adoption of such a procedure as the initial measure to investigate suspected insider dealing, particularly where wide terms of reference and a complex investigation are contemplated.

12.17 In this connection the observations of the Financial Secretary of the day, reported in Hong Kong Hansard for the 12th October 1977, when Part XIIA of the Ordinance was introduced, indicate that he contemplated that a case would not be referred by the Financial Secretary to the Tribunal for inquiry under the Ordinance unless he were satisfied that the Commissioner had established "a prima facie case". It appears that it may therefore have been contemplated that the Tribunal would be referred to at a relatively late stage of the investigation and that the bulk of the inquiry time would be taken up with sittings involving the hearing of evidence.

12.18 That has not been our experience. We therefore recommend that consideration be given in future to an

initial inquiry by an inspector appointed under section 127 of the Ordinance. We recognise that a two tiered form of procedure may be inherently conducive to some measure of delay, but, for the reasons given above, we consider that the advantages would outweigh the disadvantages.

(iii) Publicity

12.19 Paragraph 15 of the Third Schedule of the Ordinance requires that the sittings of the Tribunal shall be held in camera. Furthermore, section 141I(5) of the Ordinance provides machinery whereby a person suspected of a culpable insider dealing may elect to require that he be not named in the Tribunal's report in respect of that dealing if the Tribunal holds that he is not a culpable insider dealer. The practical result is that, whereas a person against whom fraud is alleged in civil or criminal proceedings in a court of law is normally exposed to the full glare of a public hearing, a person whose dealings are the subject of inquiry by the Tribunal because he is suspected of culpable insider dealing can avoid publicity altogether if he is not found culpable.

12.20 We therefore respectfully agree with the recommendations contained in Chapter XII of the Salmon Report regarding the desirability of holding hearings of a Tribunal of Inquiry in public, and the underlying reason for those recommendations given in paragraph 115 of that report, namely that:-

"It is only when the public is present that the public will have complete confidence that everything possible has been done for the purpose of arriving at the truth."

As the Salmon Report points out at paragraph 116, investigations conducted behind closed doors:-

"will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up."

12.21 The main purpose of the insider dealing legislation is to preserve the integrity of the market place for the benefit of the investing public at large. We suggest that if inquiries into suspected culpable insider dealings are not held in public, then public confidence in the implementation of the insider dealing legislation, and indirectly in the market place, will be diminished. If a connected person, who is of high standing or a professional man, is found not culpable of insider dealing it may be because his conduct has been wholly vindicated or, at the other extreme, because the finding of the Tribunal was the equivalent of "not proven". As the law stands now, he alone can decide whether or not the public is to know the facts and the reason why the Tribunal has found him not culpable.

12.22 We fully appreciate that there may be circumstances where it could be in the interests of justice that hearings should be in camera. We therefore recommend that consideration should be given to conferring a discretion upon the Tribunal to sit in camera where the interests of justice so require, but subject to that consideration, we think that the public interest would be best served by requiring the sittings of the Tribunal to be in public. If an inspector were to be appointed to conduct an initial

inquiry under sections 127 to 134 of the Ordinance, we can see no objection to that initial inquiry being conducted in camera, because its purpose could only be to report to the Commission whether or not in the view of the inspector the evidence justified a reference to the Tribunal.

The Honourable Mr Justice P G Clough
Chairman

Gordon M Macwhinnie, CBE, FCA, FHKSA, JP
Member

Mrs Barbara M Wong
Member

P K Auyeung,
Secretary
27th March 1986

Abbreviations

David Au	Mr David Au Hon-man, manager of Wall Street Estates Agency and authorised clerk of WSSC
Bailey	Mr P R Bailey, Senior Securities Officer
Barker Report	the report published by the Barker Tribunal
Barker Tribunal	the insider dealing tribunal appointed in 1980 under the Chairmanship of the Honourable Mr Justice Barker to inquire into possible insider dealing in the ordinary shares of Hutchison Whampoa Limited either on 25th September 1979 or before that date
Bedford	Mr Trevor John Bedford, former Managing Director of HKL
Bowring	Mr Philip Bowring, Deputy Editor of the Far Eastern Economic Review
the break clause	a clause contained in the memoranda entitling Cheery Bright to cancel the City Garden transaction and recover its deposits together with interest by giving Zangforce two days notice in writing within six months from the date of the memoranda
Eric Chan	Mr Eric Chan Cho-biu, Chief Reporter of the Economic Journal
Ivy Chan	Miss Ivy Chan Sau-ching, solicitor with Woo, Kwan, Lee and Lo; solicitor acting for Zangforce and ICH

P C Chan	Mr Chan Park-chi who together with his son Raymond Chan conducted negotiations leading up to the City Garden transaction on behalf of Wang
Raymond Chan	Mr Raymond Chan Chi-wai, son of P C Chan
Fidelia Chau	Miss Fidelia Chau Wai-man, reporter of the Economic Journal
Cheery Bright	Cheery Bright Limited
Cheung Lap	Mr Chang Yang-yian, assistant news editor of Sing Tao Wan Pao
Alain Chiu	Mr Alain Chiu Kwok-on, news editor of the Financial Daily
Silenus Cho	Miss Silenus Cho Siu-chun, reporter of the Financial Daily
Albert Chow	Mr Albert Chow Nin-mow, executive director of CKH and director of Starpeace
C W Chow	Mr Chow Chin-wo, executive director of CKH and director of ICH and Starpeace
Thomas Chui	Mr Thomas Chui Kwong-sang , Deputy General Manager, Overseas Business Division of Ever Bright
City Garden transaction	the transaction effected by the memoranda
C K H	Cheung Kong (Holdings) Ltd
Commercial Daily	Hong Kong Commercial Daily
the Commission	the Securities Commission
the Commissioner	the Commissioner for Securities

the comparable
property companies

twelve prominent property based
publicly quoted companies selected by
Mrs Ada Yeung for comparison with ICH,
namely CKH, HKE, Sun Hung Kai, HKL,
Swire Properties Limited, Henderson
Land, Hysan, Hong Kong & Kwoloow Wharf &
Godown Company Limited, New World
Development Company Limited, Hopewell
Holdings Limited, Hang Lung and Tai
Cheung

Compton

Mr Jonathan Compton, director of
Henderson Baring Fund Managers Limited

Conestoga

Conestoga Limited

Conic

Conic Investment Company Limited

Cotillion

Cotillion International Incorporated

Davies

Mr David John Davies, Chief Operating
Officer of HKL and director of ICH and
HKE

Economic Journal

Hong Kong Economic Journal

Ever Bright

term used in the report to describe
Violight Industry Company Limited and
Ever Bright Industrial Company

the Exchanges

the Hong Kong Stock Exchange, Far East
Stock Exchange, Kam Ngan Stock Exchange
and Kowloon Stock Exchange

Fang

Mr Fang Zhengping, Public Relations
Manager of Ever Bright

Green Island Cement

Green Island Cement Company Limited

Guangda	Guangda (Development) Limited, a joint venture between Violight, P C Chan and Raymond Chan
Gu Shirong	Mr Gu Shirong, Deputy General Manager, General Affairs Division of Ever Bright
Hang Lung	Hang Lung Development Company Limited
Harman	Mr David Harman, Financial Adviser, County Asia Securities (formerly known as Watson & Company)
HBHK Fund	Henderson Baring Hong Kong Fund
Henderson Land	Henderson Land Development Company Limited
HKE	Hong Kong Electric (Holdings) Limited
HKL	Hong Kong Land Company Limited
John Ho	Mr John Ho Kai-wah, Chief Accountant of CKH
S K Ho	Mr Ho Sun-kuen, senior partner of Ho and Wong; acted for Cheery Bright
Thomas Hui	Mr Thomas Hui Kam-wor, sole proprietor of WSSC
Katherine Hung	Miss Katherine Hung Siu-lin, Group Manager and Sales Manager of CKH
K F Hung	Mr Hung Kai-fai, part-time financial columnist
Hutchison	Hutchison Whampoa Limited
Hysan	Hysan Development Company Limited

ICH	International City Holdings Limited
Jardines	Jardine Matheson and Company Limited
Johnson-Hill	Mr Nigel Johnson-Hill of Hoare Govett (Far East) Limited
Keswick	Mr Simon Keswick, Chairman and Managing Director of Jardines and HKL and non- executive Chairman of HKE
K L	Kinoble Limited
Cecilia Ko	Miss Cecilia Ko Yuk-kwai, reporter of the Economic Journal
K S S	Kam Sang Securities Company
William Kwan	Mr William Kwan Cheuk-yin, one of the senior partners of Woo, Kwan, Lee and Lo
Shirley Lai	Miss Shirley Lai, quantity surveyor of CKH
T Y Lai	Mr Lai Ting-yiu, reporter of the Economic Journal
Peter Lam	Mr Peter Lam Man-leung, proprietor of KSS
C L Lau	Mr Lau Chi-leung, project manager of CKH
W L Lau	Mr Lau Wai-leung, assistant editor of Economic News Section of the Commercial Daily
Charles Lee	Mr Charles Lee Yeh-kwong, director of CKH

Lee Hing	Lee Hing Development Limited
S J Leung	Mr Leung Shiu-jun, financial editor of the Sing Pao Daily News
Joyce Li	Miss Joyce Li Pik-shan, solicitor with Ho and Wong; acted for Cheery Bright in the City Garden transaction
K S Li	Mr Li Ka-shing, Chairman and Managing Director of CKH and ICH and director of Starpeace
Li Xinshi	Mr Li Xinshi, a Deputy General Manager of Ever Bright
Peter Lo	Mr Peter Lo Chi-lik, partner of Woo, Kwan, Lee and Lo
Y C Lo	Miss Lo Yuk-chun, assistant programme officer of Radio Hong Kong
Magnus	Mr George Colin Magnus, executive director of CKH and director of ICH and Starpeace
Johnny Mak	Mr Johnny Mak Kwok-wing, solicitors' clerk in Robert W H Wang & Company
C P Man	Mr Man Chai-po, executive director of ICH
the management agreement	the management agreement dated 15th May 1981 made between ICH and CKH under which ICH appointed CKH to be project manager for the ICH group in respect of the eight properties then held by the subsidiaries of ICH
McFadzean	Mr Ian McFadzean, Group General Manager, Property Development, HKL

Megaron	Megaron Limited
the memoranda	the two memoranda of agreement each dated 23rd January 1984 executed by K S Li on behalf of Zangforce and Wang on behalf of Cheery Bright in respect of the City Garden transaction
Nash	Mr Peter Nash
Winnie Ng	Miss Winnie Ng Sau-kam, secretary of Wang
Norton	Mr Jerry Norton, business news editor of the Post
the Ordinance	the Securities Ordinance Cap. 333
Peacock	Mr John Peacock, Deputy Chairman and Group Managing Director of HKE and director of ICH
the Post	the South China Morning Post
relevant information	information which is not generally available but, if it were, would be likely to bring about a material change in the price of the shares concerned
the relevant period	1st January - 30th June 1984
Runciman	Mr David Runciman, senior partner in the firm of Richard Ellis

Sacklyn	Mr Raymond Sacklyn, formerly editor of Target
Salmon Commission	the Royal Commission on Tribunals of Inquiry under the Chairmanship of the Rt. Hon. Lord Justice Salmon in 1966
Salmon letter	letter to a witness indicating the reason for his attendance and stating whether he was merely a narrative witness concerned with the subject matter of the present inquiry or whether he was suspected of insider dealing
Salmon Report	the report on the working of the Tribunals of Inquiry (Evidence) Act, 1921 (Cmd. 3121 (1966)) by the Royal Commission on Tribunals of Inquiry under the Chairmanship of the Rt. Hon. Lord Justice Salmon in 1966
M L Shing	Miss Shing Mei-lan, reporter of China News Service
Olivia Sin	Mrs Olivia Cheung Sin Siu-han, reporter of the Post
Sino Realty	Sino Realty and Enterprises Limited
C L Siu	Mr Siu Chok-lee, editor of the Financial Daily
Irene So	Miss Irene So Wai-yin, a registered dealer and director of Mansion House Securities Limited
the Standard	the Hong Kong Standard
Starpeace	Starpeace Limited
Steadman	Mr David Steadman, Chief Accountant of HKE

Victor Su Mr Victor Su Yu-lin, editor of the Post

Sun Hung Kai Sun Hung Kai Properties Limited

Tai Cheung Tai Cheung Properties Limited

Larry Tam Mr Larry Tam Hee-chung, partner of
Debenham Tewson and Tam, briefly
appointed as overseas sales agents for
City Garden by Ever Bright

Target Target Financial Service

tippee person in receipt of relevant
information

the three principal Hong Kong Stock Exchange, Far East
exchanges Stock Exchange and Kam Ngan Stock
Exchange

Tonroe Mr John Gerard Tonroe, Group Finance
Director of HKE and director of ICH

Chris Tse Mr Chris Tse Chuen-chow, Deputy General
Manager, Real Estate Division of Ever
Bright

James Tse Mr James Tse Tang-pao, reporter of the
Sing Tao Jih Pao

K S Tso Mr Tso Kai-sum, executive director of
ICH

Vickers da Costa Vickers da Costa & Company Hong Kong
Limited

Violight Violight Industry Company Limited

Y K Wai	Mr Wai Yiu-kee, columnist of the Sing Pao Daily News
Wang	Mr Wang Guang-ying, Chairman of Ever Bright
J H Wang	Mr Wang Ji-hao, project manager of Glittering Investment Company Limited of the Ever Bright Group
Wang Mi	Miss Wang Mi, daughter of Wang
Robert Wang	Mr Robert W H Wang, senior partner of Robert W H Wang & Company; acted for Ever Bright in the cancellation of the City Garden transaction
Watson	Mr John Watson, proprietor of Watson & Company
Wheelock Marden	Wheelock Marden and Company Limited
Williams	Mr Peter Gordon Williams, director of ICH and HKE
Witton	Mr Peter Witton, reporter of the Post
Y L Wong	Mr Wong Yeung-lit, publisher of the Financial Daily
Y C Woo	Mr Woo Yuk-chun, columnist for the Sing Tao Jih Pao
W S S C	Wall Street Securities Company
Wynncor	Wynncor Limited
Yam Wong	Mr Yam Wong, proprietor of a real estate company, who endeavoured to assist Ever Bright in post-agreement attempts to reduce price of City Garden units

Ada Yeung	Mrs Ada Yeung Tam Nuen-hung, Securities Officer
Ada Yeung's comparison chart	chart produced by Ada Yeung providing means of comparison of the performance of ICH shares against that of the comparable property companies and the Hang Seng Index between the 3rd January and the 31st July 1984
L T Yeung	Mr Yeung Ling-tung, member of staff of Ever Bright
Joyce Yip	Miss Joyce Yip Wai-ching, reporter of the Standard
K P Yuen	Mr Yuen Kwok-pui, reporter of the Economic Journal
Zangforce	Zangforce Limited
George Zang	Mr George Zang Chon-sheng, director of ICH and Starpeace and executive director of CKH

INTERNATIONAL CITY HOLDINGS LIMITED

To: All Directors

7th February, 1984

Board Circular No. 3/84

Agreement on Sales of Eight Blocks of Residential Units
With Commercial Podium in City Garden

Agreement has been reached on 23rd January, 1984 with Cherry (sic) Bright Ltd., a subsidiary of Everbright Industries Ltd. which is strongly influenced by the Chinese Government, on sales of eight blocks (Nos. 7-14) of residential units with commercial podium of the City Garden Development.

The selling price is \$690 per sq.ft. for residential units and \$595 per sq.ft. for commercial podium with a total consideration of \$939,085,590.- which is to be adjusted by the actual gross floor area as certified by the Authorised Person. Terms of payment will be 5% on signing of Agreement, 4x5% progress payments to be made during construction and balance of 75% to be paid one month after issuance of Occupation Permit.

The Purchaser may, within 6 months from the date of the Agreement, give notice to the vendor to withdraw his commitment and have the deposit refunded plus interest thereon at a rate of 10% per annum.

The insertion of the above Special Condition was considered important to give Everbright and its controlling organisation in China enough confidence to enter into a transaction of such magnitude. However, the Company has been repeatedly assured by Everbright that it would be a most unlikely occurrence for them to invoke this special clause and subsequent events appear to confirm their statement.

Directors are requested to note this transaction by signing at the appropriate spaces provided hereunder and keep the Special Condition confidential as any leak would adversely affect the property market and the confidence in the economic revival of Hong Kong.

LI KA SHING
CHAIRMAN

INTERNATIONAL CITY HOLDINGS LTD.

APPENDIX III

DAILY TURNOVER OF 4 STOCK EXCHANGES AND CLOSING PRICE (JAN-JULY 1984)

