REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

on whether culpable insider dealing took place

in relation to the ordinary shares of

LAFE HOLDINGS LIMITED

between

1st MARCH 1989 and 5th MAY 1989

Presented and published pursuant to

section 141I(4) of the Securities Ordinance

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THE SECURITIES ORDINANCE

(Cap. 333)

INSIDER DEALING TRIBUNAL

To the Honourable Sir Piers Jacobs, K. B. E., J. P.

Financial Secretary

Hong Kong

On the 7th November, 1989, in exercise of your powers under section 141H(2) of the Securities Ordinance (Cap. 333) you required this Tribunal "to inquire into and determine -

(a) whether culpable insider dealing in relation to ordinary shares of Lafe Holdings Limited has taken place in the period between 1 March 1989 and 5 May 1989; and

(b) the identity of any persons involved in such insider dealing and the extent of their culpability".

We the undersigned members of Tribunal have duly conducted such inquiry in accordance with the provisions of that Ordinance, and hereby furnish to you this Report pursuant to section 141I.

2. For present introductory purposes, it is sufficient to say that the events that led to the requirement for this inquiry were the sale by Mr. Clifford Lun Kee Pang ("Mr. Pang"), the

principal shareholder and also Chairman and Managing Director of Lafe Holdings Limited ("LHL"), of a very large number of LHL ordinary shares ahead of an announcement by LHL on 5th May 1989 of drastically reduced profits.

INSIDER DEALING - RELEVANT STATUTORY PROVISIONS

3. These were set out and reviewed in both the Reports of the Tribunal prepared under the chairmanship of Mr. Justice Barker in 1982 ("the Barker Report") and of Mr. Justice Clough in 1986 ("the Clough Report"). We respectfully agree with the views expressed in those Reports in relation to the relevant statutory provisions in so far as they relate to the matters considered in this Report. It is convenient to set out those provisions and views in the way in which they appear in Chapter II of the Clough Report :

> "2.1 In the preliminary paragraphs of its report the Barker Tribunal set out the provisions of the Ordinance relevant to its inquiry and made observations on the interpretation of some of those provisions. The same provisions are relevant to the present inquiry. Subject to the comments in paragraphs 2.2 to 2.10 below, we respectfully adopt the relevant observations of the Barker Tribunal which are contained in the following paragraphs of the Barker Report :-
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> "4. The preamble to the Securities Ordinance reads as follows :-
>
> > To establish a Securities Commission and a federation of stock exchanges, to make provision in relation to stock exchanges and dealers in securities, to control trading in securities and the business of making investments, and to provide for the protection of investors and associated matters.

Part XII A of the Ordinance which is headed "Insider Dealing" and which was brought into force on the 17th day of February 1978 was clearly enacted for the purposes of the protection of investors.

"5. The mischief with which Part XII A of the Ordinance is concerned is the practice of insider dealing which is detrimental to an orderly market in securities because

(a) it gives to insiders such as the paid servants of listed companies and to the professional associates of those companies an unfair advantage over the investing public at large and over the shareholders who may be paying them; and

(b) it undermines confidence in the integrity of the market place.

"6. (i) Section 141B of the Ordinance provides as follows :

(1) Insider dealing in relation to the securities of a corporation takes place and, pursuant to section 141C, may be culpable for the purposes of this Part -

(a) when a dealing in the securities is made procured or occasioned by a person connected with that corporation who is in possession of relevant information concerning the securities;

(b) when relevant information concerning the securities is disclosed by a person connected with that corporation directly or indirectly to another person and the first mentioned person knows or has reasonable grounds for believing that the other person will make use of the information for the purpose of dealing or procuring another to deal, in those securities.

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

(ii) Section 141D(1) provides :

For the purposes of this part -

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

(iii) Section 141C(3) provides :

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

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

A person is connected with a corporation for the purposes of section 141B if being an individual -

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

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

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

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

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

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

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

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

2.2 Section 141B which defines insider dealing, provides that insider dealing may, pursuant to section 141C, be culpable for the purposes of Part XIIA of the Ordinance. As indicated in paragraph 7 of the Barker Report, section 141C does not contain any exhaustive definition of what constitutes culpable insider dealing. Subsections (1) to (4) of section 141C merely specify a number of eventualities where insider dealing is not culpable and subsection (5) requires the Tribunal to have regard, in arriving at its determination regarding the culpability of a person in relation to insider dealing, to whether or not such person has disclosed the dealing promptly or otherwise to the Commissioner of his own initiative and to the reasonableness of any explanation offered by such person if he has made no disclosure to the Commissioner of his own initiative.

2.3 Subject to the provisions mentioned in paragraph 2.2 it is left to the Tribunal to determine the culpability of any person in relation to insider dealing pursuant to section 141C(6) and 141H(3). Section 141C(6) provides :-

" (6) Subject to this section, the culpability of any person in relation to an insider dealing within section 141B is a matter for the Tribunal to determine under section 141H(3)."

2.4 The Tribunal consists of a Chairman who is a judge of the Supreme Court and 2 other members appointed by the Governor under section 141G(2) of the Ordinance and section 141G(3) stipulates that the 2 other members shall not be public officers. Whilst the Chairman determines all questions of law, paragraph 14 of the Third Schedule provides that all other questions are to be determined by the opinion of the majority of the members of the Tribunal. It is therefore manifest that the 2 non judicial members of the Tribunal, who are selected for their expertise and high standing in the commercial community, have a vital role to play in determining the issue of culpability. This issue is

to be considered in the light of the spirit and intendment of Part XIIA of the Ordinance which is primarily intended to protect the investor by maintaining the integrity of and hence confidence in the market place by prohibiting any insider dealing which does not fall within any of the exonerating provisions of section 141C and which is determined by the Tribunal to be culpable under section 141C(6) and 141H(3) after consideration of all the circumstances of the dealing in question.....

2.5 Whilst we accept that the helpful working definition of "insider dealing" in paragraph 8 of the Barker Report was sufficient for the purposes of the Barker Tribunal (which did not find that there had even been any insider dealing because it concluded that none of the persons whose dealings it inquired into had dealt with relevant information) we have preferred to use the expression "relevant information" (as defined in section 141D(1) of the Ordinance) in this report rather than "confidential price-sensitive information" which has undertones of the expression "unpublished price sensitive information" occurring in section 68 of the English Companies Act 1980 (1980c.22).

2.6 The definition of "relevant information" in section 141D(1) is concerned, not with information which is merely price sensitive but information in relation to securities which is not generally available but, if it were, would be likely to bring about a material change in the price of those securities. Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of sufficient degree in any given circumstances to amount to a material change.

2.7 One of the crucial provisions of Part XIIA set out above in paragraph 6(iii) of the Barker Report is section 141C(3). The effect of that provision is that a person who has entered into a transaction which is an insider dealing within section 141B(1)(a) may be held to be not culpable for the purposes of Part XIIA".... if his purpose is not, or is not primarily the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information."

2.8 The Barker Report uses the expression "conscious use" in this context. We find this expression a helpful guide. It is clearly not sufficient for a finding of culpability in relation to a person who is an insider dealer within section 141B(1)(a) that he is a person connected with a corporation for the purposes of section 141B who has dealt in the securities of that corporation when in possession of relevant information concerning those securities. Such a dealer

merely brings himself within the definition of insider dealing under section 141B(1)(a) which may or may not be culpable.

2.9 Furthermore the Tribunal is required by section 141C(3) to inquire into such a dealer's motivation at the time of his insider dealing and if the Tribunal is not satisfied that at the time of the dealing he was consciously making use of relevant information for the purpose or primarily for the purpose of making a profit or avoiding a loss for himself or another, then the Tribunal should find that dealer not culpable. Another way of approaching the all important question of the use of relevant information is to enquire and determine whether the evidence satisfies the Tribunal that the relevant information was a factor in the insider's participation in the dealing transaction either by inducing him to enter into it or by assisting him or otherwise influencing him in the manner in which he performs the transaction. This was the approach of the trial judge and expressly approved by Arnup J.A. delivering the judgment of the Ontario Court of Appeal in Green v Charterhouse Group Canada Ltd. 68 DLR (3d) 592 at pp. 618 and 619 where, in civil proceedings for compensation arising out of alleged insider dealing, the court was considering the effect of the words "make use of" which occurred in section 113 of the Securities Act, 1966 (Ont.) c. 142 in relation to specific confidential information.

2.10 Mr. Leslie Wright submitted to the Tribunal that the test of culpability to be adopted is whether confidential price sensitive information has in fact been improperly used, whether by an individual or a corporation for the purposes of the share dealing under inquiry. His emphasis on improper use or "actual misuse" of such information is, in our view, the correct approach because it emphasises the nature of the motivation required to establish culpability, as does Green's case cited above. Mr. Wright further submitted that making use of relevant information in dealing in securities (as distinct from merely dealing in securities when in possession of relevant information) was the touchstone of culpability. We agree.

2.11 .....Section 141D(2) provides as follows :-
"(2) Without limiting the meaning of the phrase "dealing in relation to securities" in section 141B(1) and notwithstanding sections 2 and 3, a person deals in securities for the purposes of this Part if (whether as principal or agent) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or acquires or disposes of, or agrees to acquire to dispose of, the right to buy, sell, exchange or subscribe for, any securities."

PROCEDURE ADOPTED BY THE TRIBUNAL

4. This is largely regulated by the Third Schedule to the Securities Ordinance. There is also some helpful guidance in paragraphs 2.30 to 2.43 in the Clough Report, which we adopted to the extent applicable. In so far as possible, the facts had by and large already been investigated by officers of the Securities and Futures Commission prior to the commencement of this inquiry by the Tribunal. Their evidence and the evidence they obtained has accordingly been presented substantially by means of statutory declarations. That evidence indicated that if any insider dealing had taken place, Mr. Pang might be involved. Accordingly he was served with a "Salmon letter" informing him that the Securities and Futures Commission had conducted a preliminary investigation, and disclosing to him the nature of the allegations and the evidence against him in the context of insider dealing. He was provided with copies of all statements and documents placed before the Tribunal. In addition he and his legal representatives were afforded every opportunity to contest the allegations and evidence, to cross-examine the deponents, to adduce evidence and to make oral and written submissions. Indeed the Tribunal adjourned this inquiry, not without some inconvenience and delay, to enable senior counsel of Mr. Pang's choice to attend having been detained overseas by proceedings that had overrun.

THE STANDARD OF PROOF

5. The Tribunal chaired by Mr. Justice Clough ("the Clough Tribunal"), chose to apply the highest standard of "proof beyond doubt by the most cogent evidence" as they considered it the safest and fairest course. They explained their reasons in the following way :

> "2.44 The combined effect of section 141J(1) of the Ordinance and section 11(1) of the Commissions of Inquiry Ordinance is that our inquiry is deemed to be a judicial proceeding. However, as indicated above, our proceedings are inquisitorial or investigative. Our leading and junior counsel are not prosecutors, their role is to advise and assist the Tribunal in conducting the inquiry. All questions are determined by the Tribunal save that the Chairman determines questions of law. The witnesses are the Tribunal's witnesses and the function of the Tribunal is to determine, by arriving at the truth if it can on the evidence before it, whether or not culpable insider dealing has taken place and to determine the other matters for determination under section 141H(3) of the Ordinance. The inquiry is not ordinary civil or criminal litigation where there are established rules concerning onus and standard of proof and where, if the evidence adduced on behalf of the contending parties is inconclusive and uncertain, the rules as to onus must decide the question.
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> 2.45 As Lord Diplock observed in Mahon v Air New Zealand [1984] A. C. 808 (P.C.) at p. 814E :-
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> > "An investigative inquiry into facts by a tribunal of inquiry is in marked contrast to ordinary civil litigation the conduct of which constitutes the regular task of High Court judges in which their experience of the methodology of decision making on factual matters has been gained."
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> 2.46 Leading counsel representing one of the interested parties cited to us the recent decision of the English Court of Appeal in R v Hampshire County Council [1985] 1 All ER 599 (C.A.) applying Hornal v Neuburger Products Ltd. [1957] 1 Q B 247 (C.A.) and Reg. v Home Secretary, ex p. Khawaja [1984] A C 74 (H.L.) and holding that the tribunal of a fire authority entertaining an appeal under relevant regulations by an officer of a fire brigade against a finding of guilt against him by his chief officer on disciplinary charges was

by its nature a tribunal concerned with civil and not criminal matters and that the appropriate standard of proof was therefore the civil standard, although that burden varied according to the nature and seriousness of the allegation in issue.

2.47 The difficulty we feel about the learning in the cases cited above is that they are all cases in which the burden was undoubtedly on one party to prove certain matters. It being common ground that there was a burden of proof on one party or the other, the issue (or one of the relevant issues) was as to the requisite standard of proof, that is to say the degree to which the proof must be established. Such proceedings are not investigative proceedings as are our proceedings in this inquiry. For our part we have preferred to follow the observations of the Salmon Commission in paragraph 134 of their Report where they were considering the question whether there should be any appeal from the findings of Tribunals of Inquiry :-

> "134. .....It is true that whether or not there is any evidence to support a finding is a question of law. Having regard, however, to the experience and high standing of the members appointed to these Tribunals and their natural reluctance to make any finding reflecting on any person unless it is established beyond doubt by the most cogent evidence, it seems to us highly unlikely that any such finding would ever be made without any evidence to support it. Any adverse finding which a Tribunal may make against any persons will depend upon what evidence the Tribunal believes."

2.48 We considered the safest and fairest approach for us to adopt was that we should find no dealing to be a culpable insider dealing for the purposes of the Ordinance unless we were satisfied that it was so established beyond doubt by the most cogent evidence resulting from our inquiry in which no persuasive or evidential burden of proof was placed on any affected party. Any expression of satisfaction that follows in this report in relation to a finding of fact by the Tribunal is expressed on that underlying basis.

2.49 This evidential test is very close to the standard of proof in criminal proceedings save that the Tribunal is not affected by the technical rules of evidence. In adopting it with the support of our leading counsel we consider that we are rightly requiring the highest degree of proof to establish culpable insider dealing which the Financial Secretary is reported in the Hong Kong Hansard for the 12th October 1977 as describing (when introducing Part XIIA of the Ordinance) as "essentially fraudulent behaviour".

6. Mr. Clive Grossman, counsel for this Tribunal submitted first of all that there was no such standard of proof as proof "beyond doubt" known to the law, and that such a standard was in any event unattainable. Mr. Michael Thomas Q.C. for Mr. Pang appeared to agree in suggesting that what the Clough Tribunal had meant was proof beyond reasonable doubt i. e. the standard that applies in criminal proceedings as opposed to that of a balance of probabilities that applies in civil proceedings.

7. Mr. Grossman went on to submit that the proceedings in this Tribunal's inquiry are not criminal proceedings but rather civil proceedings and that the standard in civil proceedings of a balance of probabilities should apply. He relied first of all upon the judgment of Kempster J.A. sitting as an additional Judge of the High Court in Re Applications by Chow Chin-wo and Others for Judicial Review (1987) HKLR 73. In that case unsuccessful application was made for the judicial review of the findings in the Clough Report. In his judgment at page 76 Kempster J.A. said

> "Following a comment in the 1966 Report of the Royal Commission on Tribunals of Inquiry (Cmnd. 3121) the Tribunal adopted for itself, as it made known to the applicants and their legal advisers in the course of oral hearings, a more rigorous standard of proof than the applicants could, as a matter of law, have demanded of them. "We should find no dealing to be a culpable insider dealing for the purposes of the Ordinance unless we were satisfied that it was established beyond doubt by the most cogent evidence." (2.48, 2.52). As Lord Diplock explained in Mahon v. Air New Zealand [1984] A C 808 :
>
> > "The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below ...What is required by the

> first rule is that the decision to make the finding must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory."
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> The adoption of a higher standard, upon which the applicants must be deemed to have relied when deciding whether or not to seek adjournments or to adduce further evidence, can only have redounded to their advantage and was but one example of the Tribunal's conspicuous concern to act fairly in the conduct of its investigations."

Mr. Thomas for his part suggests that the more rigorous or higher standard referred to is that of proof beyond doubt which is more rigorous and higher than the standard of proof beyond reasonable doubt.

8. For our part, we say only that the passage seems equally consistent with either contention. Accordingly we do not find that judgment of assistance in resolving the competing submissions. However, as apparent from the passages from its Report reproduced above, the Clough Tribunal derived the standard it adopted from paragraph 134 of the Report of the Salmon Commission. We ourselves do not regard the Salmon Commission in that passage as defining a standard but rather describing briefly and in convenient terms what members of Tribunals of Inquiry would by experience and standing tend to achieve. Furthermore, from the opening words of paragraph 2.48 of its Report, it seems to us clear that the Clough Tribunal was merely adopting for itself in their particular Inquiry the standard of proof beyond doubt without suggesting that was the standard the Tribunal should adopt generally, notwithstanding its reference to "essentially fraudulent behaviour".

9. We think it more likely than not, that if the higher standard of proof beyond reasonable doubt, afortiori proof beyond doubt, was the requisite standard, it would probably have received some mention in Re Application by Chow Chin-wo and Others for Judicial Review, in Mahon v. Air New Zealand and certainly in some discoverable authority; but counsel have assured us that their exertions and the efforts of those instructing them have failed to turn up any.

10. We think it is pertinent to consider first the nature of the standard in civil proceedings. In reference to it, Denning L.J. in the Court of Appeal in Hornal v Neuburger Products Ltd. at page 258 said that the trial judge in a civil claim for fraudulent misrepresentation :

> "held rightly that the standard of proof depends on the nature of the issue. The more serious the allegation the higher the degree of probability that is required; but it need not in a civil case, reach the very high standard required by the criminal law."

Hodson L.J. (at page 262) agreed with Denning L.J., adding that -

> "There is in truth no great gulf fixed between balance of probability and proof beyond reasonable doubt. Although when there is a criminal prosecution the latter standard is securely fixed in our law, yet the measure of probability is still involved in the question of proof beyond reasonable doubt".

He went on to quote from the judgment of Denning L.J. in Bater v Bater :

"The difference of opinion which has been evoked about the standard of proof in recent cases may well turn out to be more a matter of words than anything else. It is of course true that by our law a higher standard of proof is required in criminal cases than in civil cases. But this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. As Best C.J., and many other great judges have said, 'in proportion as the crime is enormous, so ought the proof to be clear.' So also in civil cases, the case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion."

Morris L.J., too, agreed.

11. In 1984 the House of Lords considered the question of the standard of proof in relation to a disciplinary tribunal in R. v. Home Secretary, Ex. p. Khawaja (1984) 1 A C 74. Lord Scarman having reviewed the authorities said at page 112F :

"I have come to the conclusion that the choice between the two standards is not one of any great moment. It is largely a matter of words. There is no need to import into this branch of the civil law the formula used for the guidance of juries in criminal cases. The civil standard as interpreted and applied by the civil courts will meet the ends of justice."

At page 114B he added that :

> "The strictness of the criminal formula is unnecessary to enable justice to be done : and its lack of flexibility in a jurisdiction where the technicalities of the law of evidence must not be allowed to become the master of the court could be a positive disadvantage....."

12. The Clough Tribunal in their Report took the view that the learning in the Hornal and Khawaja cases, and in R. v. Hampshire County Council, ex parte Ellerton (1985), All ER 599, to which it also referred, was inapplicable because in all those cases there was a burden of proof on one party. We are not persuaded that merely because the burden of proof is placed upon a particular party or because the proceedings concerned are investigative, a finding of criminal or even culpable conduct should be established to a different standard. Indeed a curious result, and one we think to be avoided where possible, would be produced if, for instance, misconduct which is not penalised, had to be established upon the higher criminal standard, while a claim for damages would only have to be established on the civil standard notwithstanding that in addition to possibly very substantial damages vastly exceeding a fine, an implicit finding of the same misconduct might be involved.

13. In the latter context Mr. Thomas submitted that a person's reputation may be far more precious that his purse. That aspect did not escape Morris L.J. in Hornal. At page 266 he said :

"In some criminal cases liberty may be involved; in some it may not. In some civil cases the issues may involve questions of reputation which can transcend in importance even questions of personal liberty. ..... But in truth no real mischief results from an acceptance of the fact that there is some difference of approach in civil actions..... no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities...Issues...which affect character and reputation ....will not be forgotten by judges and juries when considering the probabilities in regard to whatever misconduct is alleged. There will be reluctance to rob any man of his good name : there will also be reluctance to make any man pay what is not due or to make any man liable who is not or not liable who is."

14. We conclude, therefore, that the civil standard of the balance of probabilities is the standard of proof required in law in this inquiry. We think that the way in which the Judicial Committee in Mahon v. Air New Zealand framed its reference to" material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it was disclosed, is not logically self-contradictory" is better accommodated by the apparently wider, more flexible and less technical standard of proof in civil proceedings.

15. Nevertheless, having regard to the seriousness of the allegations against Mr. Pang and the circumstances revealed by the evidence we have chosen to apply the higher criminal standard of proof beyond reasonable doubt. Where, therefore, we have expressed ourselves to be satisfied, that refers to satisfaction beyond reasonable doubt. Where we have drawn inferences adverse to Mr. Pang, we have first satisfied ourselves that the primary facts from

which the inferences are drawn, have been proved beyond reasonable doubt, and likewise the inferences are logical and are the only inferences that can be drawn beyond reasonable doubt.

16. It is convenient to add here that our views and conclusions recorded in this Report are the unanimous views of the undersigned; and that where they concern questions of law, they represent the determination of the Chairman in which the other two members concur.

THE UNDISPUTED FACTS

17. The business of LHL is the manufacture and sale of magnetic heads for computer drives, and the assembly of computer boards. In this Report it is not necessary to go back into the origins of LHL beyond the 10th May 1985 when it was incorporated. It became a listed company on the Hong Kong Stock Exchange and dealing in its shares commenced on the 9th July 1987. At that point Mr. Pang, who founded LHL, owned approximately 75% of the issued share capital, i. e. some 238.38 million shares, through two of his wholly owned companies.

18. The shares opened on 9th July 1987 at $1.50, and prior to the stock market collapse on "Black Monday", the 19th October 1987, reached a peak of $4.90. Following the collapse the price dropped to about $1.00 in November 1987, then made a long albeit

fluctuating climb to about $2.30 in June 1988, dropping back to below $1.00 in October 1988, and ending the year at a low of $0.76. In 1989 the price opened at $0.77, rose to a peak of $1.10 in mid-February and then dropped over the next few months to $0.24 in early June, since when it has not risen above $0.45.

19. For the half years ending 30th June 1987 and 31st December 1987, respectively, LHL made profits of $12.124 million and $22.923 million. For the half year ended 30th June 1988 LHL made a profit of $22.133 million which was reported in its interim report issued on 22nd September 1988. According to LHL's internal management accounts, the accumulated net profit for 1988 continued to rise to reach a peak of $28.7 million on 31st August 1988. However beginning with September 1988 to the end of that year, LHL incurred losses, for September 1988 : $2.78 million; for October 1988 : $5.9 million; for November 1988 : $2.35 million, and for December 1988 : $7.77 million, making a total loss of $18.8 million for the 4 months. The effect of these losses was that LHL's net profits for the year dropped dramatically from the accumulated total of $28.7 million at the end of August, to $9.9 million at the end of December. According to Mr. Pang, the LHL management accounts for December 1988 reached him by about the middle of March 1989. However the results for 1988 were not available to the public until 5th May 1989.

20. Meanwhile having purchased a further 4 million shares, and received 55.04 million bonus shares in the first half of 1988, Mr. Pang disposed of 75.44 million shares in the same period, leaving him with a balance of 221.98 million shares on 30th June 1988. He then disposed of 7.15 million shares between 24th November and 31st December 1988; 6.16 million shares between 1st January and 28th February 1989; 161.82 million shares between 1st March and 5th May 1989; 45 million shares on 8th May 1989 to Mr. Kenneth Chuck Chow ("Mr. Kenneth Chow") as a gift he says; and finally 0.33 million shares on 9th May 1989. Mr. Pang was thus left with approximately 1.52 million shares. At the time of listing in July 1987 he held approximately 75% of the total LHL issued share capital. As at 28th February 1989 he held 48.7% of the issued share capital. Then in just over 2 months he disposed of 99.3% of that shareholding (including the 45 million shares which he said he had committed to Mr. Kenneth Chow in March or April 1989). That left him with 0.35% of the LHL issued share capital. The sales between 1st March and 5th May 1989, which were effected by his personal secretary Miss Catherine Lui, rose to a peak rate during the 3 weeks preceding the 5th May, with the sale of 52 million shares in the first 5 days of May.

21. During that period there was a fall in the price of LHL shares as a result of which the Stock Exchange of Hong Kong and the Office of the Commissioner for Securities (which was succeeded by the Securities and Futures Commission on the 1st May 1989) sought

an explanation. In response the Board of IHL, including Mr. Pang, issued a statement on 27th April 1989. It included the following sentence "The directors have noted the recent decrease in the price of the Company's shares although they are not aware of any reasons for such decrease".

22. Mr. Pang did not divulge the sales of his shares made between 6th July 1988 and 5th May 1989 until an IHL announcement on 25th May 1989 in response to a press report on the previous day that he had sold most of his holding. Speculation that he had done so with inside knowledge led to investigations by the Securities and Futures Commission and ultimately to the present inquiry.

THE ALLEGATIONS AGAINST MR. PANG

23. The allegations against Mr. Pang are conveniently summarized in the Salmon letter sent to him and, as amended during the course of the inquiry, are stated in the following way :-

> It is "alleged that between 1st March 1989 and 5th May 1989, you sold 161,822,000 IHL shares in circumstances which amount to insider dealing. It is alleged that prior to March 1989 you became aware that IHL had suffered losses during the period September 1988 to year's end. It is alleged that in March 1989 you became aware that those losses amounted to approximately $18.8 million but that information did not become generally or publicly available until 5th May 1989. It is further alleged that being aware that the aforesaid loss when known would materially affect the share price, you took advantage of your insider knowledge to sell the shares before the material change took place.

It is alleged that you sold the shares in tranches for a total realization of $111,965,240 before the public announcement of the aforesaid loss was made on 5th May 1989. Had you sold your shares on the 8th May 1989, the first trading date after the public announcement when the shares stood at 55 cents you would have realised $89,057,100. Thus, it is claimed, you made an improper profit from your own insider dealing of $22,908,140."

MR. PANG'S EVIDENCE

24. To view Mr. Pang's evidence in perspective it should be known that his defence to the allegations in substance is that the sales of his shares in question had nothing to do with knowledge of the losses and their total amount but were for other legitimate reasons; that those sales were effected by his secretary Catherine Lui without reference to him solely upon his instruction to sell given for those other reasons; that the information of losses and their total amount, even if generally known, was not likely to bring about a material change in the LHL share price; and that in any case, it was generally known.

25. Turning then to Mr. Pang's evidence, this was to the following effect. He obtained his Masters degree in Canada in civil engineering, and after a few years of work there returned to Hong Kong in 1969. He then worked for Goodyear Estates for three years in sales, in development and as General Manager of a subsidiary property company. Thereafter he started up a new property development company with three other partners. They did not do well initially and he continued alone when the other

partners left, but ultimately made good and got out of that venture before the recession in 1981. He then went into manufacturing and having identified computer components as the most promising field, started up the LHL subsidiary manufacturing companies with the help of Kenneth Chow. The high technology involved was so successfully mastered that LHL became a supplier to leading American manufacturers of disc drives, and earned the high profits already mentioned.

26. Nonetheless, Mr. Pang says he decided to dispose of all his shares. His reasons, set out in his written statement made with the assistance of his solicitors and furnished to the Securities and Futures Commission in July 1989, were :

(i) He had set up the LHL manufacturing facilities as an investment and he started to sell his shares in February 1988 when his undertaking to the listing underwriters not to sell expired. It had always been his intention to sell all the LHL shares on the open market when there was a demand.

(ii) During the middle of 1988, he became extremely pessimistic about the future of Hong Kong manufacturing industry as the result of a continuing shortage of labour which was particularly acute in high technology industries including manufacture of

products for computers. He was concerned that the Government did not assist manufacturers to solve the labour problem and indeed exacerbated that problem by its labour policy. Also the Government failed to support high technology industry in contrast to Hong Kong's Asian competitors.

(iii) There was a major downturn in the computer and electronics industries from August 1988.

(iv) By the second half of 1988 he had been involved in IHL's manufacturing business for a total of 6 years and required a new working challenge. He had found the previous 12 to 18 months extremely wearing; while in Hong Kong he had to work all hours of the night and early morning to speak to customers in the United States. This placed a very great strain on his personal life.

(v) During October 1988, he formed the view that political unrest might be looming in the People's Republic of China. At the same time, he heard stories of possible political instability. All this came from the senior Government contacts he had made in Guangzhou and in the course of his business dealings in China.

27. As a result he says he came to a decision to sell all his LHL shares as soon as possible and as long as there was a demand for them in the market. He reached that decision in October 1988 and in the following month instructed Catherine Lui to sell all his shares. She was surprised and asked him if he was joking. He confirmed that he was not. He did not tell her when or at what price to sell. He trusted her and he was busy with his other investments. He left it all to her. She presented him with piles and piles of blank transfer forms which took him hours to sign. She placed the proceeds in one of his bank accounts. Ultimately about the 5th May 1989, she told him she had sold his company.

28. Meanwhile the monthly internal management accounts used to come to him from Patrick Lam, the LHL accountant, about 60 days after the end of the month concerned. He was surprised when he saw the loss for September 1988 because although he was aware of a downturn in orders he had not expected the loss to appear so soon. The loss for October 1988 was also a surprise because he had expected a return to profitability. For November 1988 there was an improvement so he was only a little surprised because there was still a loss and not a small profit.

29. In early March 1989, Patrick Lam had the December 1988 accounts ready for discussion but Mr. Pang put him off because he, Mr. Pang, had to prepare for a meeting of the Guangzhou People's Political Consultative Conference and also had to attend to

visitors in Hong Kong. He went to Guangzhou for the meeting from 10th to 14th March 1989. There, the stories he had earlier heard in September and October of political instability were confirmed. He thought the implications extremely serious for Hong Kong generally and became determined to liquidate his Hong Kong investments which at the time consisted principally of his remaining LHL shareholding. On the way back to Hong Kong the best thing, he thought, was to hold on to cash and wait and see. On his return that evening when handing over files to Catherine Lui he just made a comment to her to sell the remaining shares as fast as she could. Again he left it to her and did not after that check with her or talk to her about it. Two or three days later when he called in Patrick Lam and saw the December accounts, he was shocked by the loss of $7.8 million.

ASSESSMENT OF EVIDENCE

30. Mr. Pang's evidence, in so far as she was involved, was confirmed in essentials by Catherine Lui. But there were discrepancies between them. They both referred to his instruction not to oversell but differed significantly in what that meant. Also Catherine Lui made no mention of being asked to hold back the 45 million shares given to Kenneth Chow. Indeed Mr. Pang himself did not mention that they were not to be sold until the point was put to him by the Tribunal. On the contrary, his original emphatic evidence that everything was to be sold and that only 1 million

odd shares were left unsold, casts serious doubt on this aspect of his evidence. Catherine Lui, too, mentioned only the sale of the entirety of Mr. Pang's shareholding. In his statement to Officers of the Securities and Futures Commission he stated that he had sold the shares himself, which we recognise could be a form of shorthand or made in reliance on agency. But he went on to say he could not trust anyone to sell in his absence from Hong Kong. This discrepancy is not so easily explained, particularly as sales of his shares did tend to dry up in his absence, contrary to the thrust of his and Catherine Lui's evidence at the inquiry. We do not find convincing Mr. Pang's explanation that he meant he did not trust anyone to sell other than Catherine Lui.

31. Catherine Lui confirmed that Mr. Pang told her on 22nd or 23rd November 1988 to sell and we think that that evidence may be true since sales by her commenced on the 24th November. However, having carefully reviewed the volume of daily transactions on the exchange throughout the subsequent period, the actual sales made by her including a significant lack of sales when there was clearly a high volume of trading, and her explanation, we are in all the circumstances unable to accept her evidence that after the 22nd/23rd November 1988 sales proceeded without any reference to Mr. Pang and were dictated solely by the availability of signed transfer forms, the demand for shares on the market and how busy she herself was. We are also unable to believe she would have sold millions of shares in the way recorded without seeking some

approval or guidance from Mr. Pang, particularly in the last days of unrestrained selling, culminating with sales of 14 and 22 million shares on the 4th and the 5th May 1989 respectively. It is inconceivable that in the circumstances, including her close and constant contact with Mr. Pang as his personal secretary, Catherine Lui would have effected all the sales, in particular sold such huge amounts and above all, have completed the sales by the day the 1988 results were released, without the regular instructions, guidance or approval of Mr. Pang. In that regard we observe that Mr. Pang in his written statement stated that "I sold less shares in some months when the market was not so active and a greater number in those months when the market was more active and could absorb more LHL shares." While we would ordinarily be inclined to accept the explanation that he regarded sales through the agency of Catherine Lui as effected by him, that is not so easy to reconcile with his attempt to distance himself from the sales by claiming that they were in fact entirely dealt with by her once he pushed the computer button, so to speak. That defence emerged only at the inquiry and even Catherine Lui's statement was not taken by Mr. Pang's solicitors until the 12th December 1989, the day we commenced our sittings. We think it is not without significance that Catherine Lui tacitly admitted that Mr. Pang did enquire as to the progress of and did show some interest in sale of his shares in stating that he rarely did so; and likewise that she is a personal secretary of exceptional loyalty to him.

32. Mr. Thomas submitted strongly that since no contrary version was put to her, Catherine Lui's evidence must be accepted. We reject that submission. However appropriate such a procedural convention might be in ordinary legal proceedings we do not think it can have the same place in an inquiry of the present sort. Mr. Grossman, counsel for the Tribunal, very properly took the view that he was assisting the Tribunal in its inquiries and not contending for any particular version that could otherwise have been put to Catherine Lui. Further we think also that the procedural convention accords neither with the informal nature of this inquiry, which is not only prescribed but, we think, helpful; nor does it seem to us to accord with the non-application of the technical rules of evidence expressly provided in section 4(1)(a) of the Commissions of Inquiry Ordinance (Cap. 86), which is applied to inquiries conducted by this Tribunal by section 141J(1) of the Securities Ordinance. Finally we do not see what essential purpose of our inquiry has been defeated or materially undermined by not putting to Catherine Lui the falsity of her evidence or some contrary version which we had not at the time established or identified, notwithstanding that that would have been fairer to her and therefore desirable. Had there been any likelihood of the object of our inquiry being prejudiced we would have recalled Catherine Lui when Mr. Thomas raised the point in his final address.

33. Mr. Patrick Lam's loyalty to Mr. Pang was even more palpable. Not content with evading questions, he voluntarily sought to advance Mr. Pang's contentions. His obvious concern to establish that Mr. Pang could not have seen the accounts for December 1988 until the 16th or 17th March 1989, we think was not unconnected with Mr. Pang's claim to have told Catherine Lui on 14th March 1989 to sell off his remaining shares as fast as possible. Mr. Lam's evidence had therefore to be treated with considerable reservation. But in the end, it is of limited importance, for on Mr. Pang's own evidence, he saw the December 1988 accounts no later than the 16th or 17th of March 1989, well before a very substantial proportion of the sales took place.

34. To return to Mr. Pang and his evidence, he is clearly an intelligent, articulate individual, and an able entrepreneur with a record of success in property investment and development, in construction and in manufacturing. That he should in effect have handed over the sale of LHL, which he regarded as his principal investment in Hong Kong, to a young personal secretary with little knowledge of stocks and shares and given her discretion as to when and at what price to sell, is nothing short of incredible. Given the volatile market value of his shares, which in October 1987 almost reached $1.2 billion (238.38 million x $4.90) only to drop to about $170 million (214 million x $0.79) in November 1988, it is inconceivable that he would have dealt with their total disposal in that disinterested manner. And it is compounded by his claim that

he did not know the value of his LHL shareholding at the time he decided to sell. Moreover, on his own evidence, that was no lightly taken decision. It took him from October to the 22nd of November 1988 to reach it. He says he thought it over and decided Catherine Lui should be the most suitable person to sell the shares. He just could not decide whom he could trust to sell such a large number of shares worth millions. He kept thinking and considering. His reasons for deciding on Catherine Lui were that he trusted her, she was loyal and seldom made mistakes. He did not think a stockbroker or merchant bank would do; they might manipulate the market. It was not an easy decision to trust someone to do it for him, and make sure that the person would not take his money away.

35. Mr. Pang asserts that the massive sales of his shares had no effect upon the price of LHL shares. Those sales, we repeat, amounted to 161.82 million shares between 1st March and 5th May 1989, nearly 40% of the LHL issued share capital, and were of shares previously not traded. Much evidence including graphs of LHL, general and electronic/computer share price movements, and volume of LHL share sales, coupled with submissions by Mr. Thomas, were directed to the question of whether the sales by Mr. Pang depressed the LHL share price. We do not think it necessary or appropriate to detail those matters which would entail disproportionately lengthy descriptions and explanations, given the limited relevance and importance of the question. We content

ourselves with saying that having given careful consideration to all those matters we are satisfied that the large sales of his shares on every single trading day (bar two) for more than 2 months must have had a material, depressing effect on the share price, which dropped 45% from $0.93 on 1st March 1989, to $0.51 on 5th May 1989. We do not, however, consider ourselves in a position to assert that the sales were primarily responsible for that drop in price.

36. Of more importance is Mr. Pang's claim that the fall in profits revealed by the 1988 results, which can only be categorised as dramatic, were not likely to bring about a material fall in the share price because that information had already been discounted by the market. We will return to this point later.

37. Mr. Pang also maintains that the massive sale of his shares ending with the two largest totals of 14 million shares on the 4th May and 22 million shares on the 5th May, the day on which the 1988 results were made public, was a pure coincidence. There is no evidence or suggestion that Catherine Lui had advance knowledge of the accounts or their likely effect upon the share price. On the contrary, the evidence and what we saw of her suggest that she did not. Mr. Pang on the other hand knew the entire position very well and indeed was in a position to control

it. We are unable to accept his contention that the sales and their completion on the day of publication of the 1988 results were a coincidence.

38. To turn to another aspect of Mr. Pang's evidence, from his own and other evidence, it is plain that he maintained direct and close involvement in the IHL manufacturing and sales operations. Whenever he was in Hong Kong, he spent most of the time in the IHL factories beginning very early each morning, personally supervising sales and himself dealing with and showing around visiting customers and personally telephoning others in the United States during the night. Mr. C. F. Lam, the Vice President in charge of production, reported to him daily. Mr. Patrick Lam, who was not only IHL's accountant but also its financial controller, says his relations with Mr. Pang were very formal despite having worked for Mr. Pang from his early days in the property business. He says, for instance, that he never gave Mr. Pang any indication of what the accounts revealed, but waited until he was asked by Mr. Pang. As already indicated we think the value of Mr. Patrick Lam's evidence is undermined by his loyalty to Mr. Pang.

39. Mr. Pang maintains that he did not know the final results for 1988 until 16th or 17th March, 1989. Even if this were true, which we do not believe, he must have had a good idea of what the results would be and, most importantly, he would certainly have known by the end of February 1989 that in the absence of a

substantial turnaround the result for the second half of 1988 would be a loss. The following is a summary of the monthly and cumulative results for the second half of 1988 together with the earliest dates when these results could have been known by Mr. Pang according to his written statement :-

	1988 Results		Dates management accounts available for discussion
	Monthly HK$ 000's	Cumulative HK$ 000's	
1988			
Six months to 30th June		22,132	
July	4,522	26,654	
August	2,026	28,680	
September	(2,776)*	25,904	Sometime in December 1988.
October	(5,903)	20,001	Sometime in January 1989.
November	(2,351)	17,650	Sometime in February 1989.
December	(7,773)	9,877	Sometime in early March 1989.

In his evidence Mr. Pang said he was shocked at the results for December because the results for November had shown some improvement over the losses for September and October. He said that he had hoped that the December result would have been breakeven or perhaps a profit of $1 million. Even if this had

*These brackets denote losses.

been so, it would not have been sufficient to turn the second half loss into a profit. Therefore, at some time in February 1989, when he says he received the results for November, he would have concluded that the result for the second half of 1988 would be a loss and therefore that the profit for the whole of 1988 would certainly be less than the half year's result of $22 million profit.

40. In view of the losses in September, October and November, coupled with the indication of possibly a recovery in November, it is difficult to believe Mr. Pang would not have been anxiously awaiting the December results. Yet, if he is to be believed, he was not very interested or concerned. He put off Patrick Lam until he (Mr. Pang) returned from Guangzhou on the 14th March 1989, and then he delayed seeing Patrick Lam for a further 2 or 3 days.

41. We do not believe him. We are satisfied that his incredible story of giving over the sale of his shares entirely to Catherine Lui and his disinterest in the monthly accounts is untrue including the astonishing degree of naviety claimed, which ill-befits a successful entrepreneur who conducts business internationally, holds his own in manufacturing top-end high technology computer components and has previously dealt in stocks and shares even if that was years ago, as he says.

42. It is not without significance that the attribution totally to Catherine Lui of disposal of the shares in her own discretion would tend to destroy any link those dealings would otherwise have to him in relation to any relevant information he had. Likewise his claim that he did not have knowledge of the December 1988 accounts until after the 14th March 1989 appears to be designed to rebut any inference that his instructions to sell the remaining shares as fast as possible were given in the light of the dramatic fall in the 1988 profits revealed in authoritative terms by the December accounts.

43. In addition we are unable to reconcile his professed optimism and pessimism about future prospects for LHL albeit at different times and for different reasons. They, and even more the factors which he says caused them, appear to us to be consciously selected in hindsight to explain away behaviour that points towards culpable insider dealing. Nor are we able to accept his professed lofty disregard for the millions he could have lost in the way he contends he arranged for the sale of his shares. It is inconsistent with the concern he expressed at the same time to ensure that he did not suffer loss e. g. from manipulation. We are satisfied that disregard is irreconcilable with his business experience and sophistication. Having put so much time and personal effort into building LHL from virtually nothing into an outstanding personal achievement which also represented an asset of

enormous value, it is incredible, even if he was exhausted and needed some different challenge, that he would dispose of it in such a hazardous and unsophisticated manner.

44. For all the foregoing reasons and also having regard to his demeanour particularly under cross examination, we do not believe his evidence that in effect he simply relinquished control of the disposal of his shares to Catherine Lui, and that knowledge that losses had occurred in the last 4 months of 1988, and of the amount of those losses, did not prompt the accelerated and massive sales of his shares between 1st March and 5th May 1989. For the reasons indicated, we also reject the related evidence of Catherine Lui and Patrick Lam.

45. But that, as we were reminded by Mr. Thomas, does not mean that Mr. Pang was involved in insider dealing, or was culpable. On the other hand we do not accept Mr. Thomas' submission that there is no other evidence upon which those conclusions could be reached and that all the evidence points to the contrary. The primary facts, for instance, are in general not disputed and indeed are established beyond reasonable doubt by the evidence, which is largely documentary.

CULPABLE INSIDER DEALING

THE REQUIREMENTS AND QUESTIONS

46. We turn now to determine whether culpable insider dealing took place. We think it is helpful to identify the requirements which are easily extracted from the relevant provisions of the Securities Ordinance contained in the passages from the Clough Report that we have reproduced at pages 5 to 10. We propose to set them out in the following questions framed in terms of the circumstances that confront us :

A. Was Mr. Pang at the time a person connected with LHL?

B. Were the dealings i. e. by the definition in section 141D(2), the sales of LHL shares between 1st March and 5th May 1989, procured by Mr. Pang?

C. At the time of procuring the sales between 1st March and 5th May 1989, did Mr. Pang have in his possession and make actual or conscious use of information -

(i) that LHL had suffered losses during the period September to December 1988, and

(ii) that those losses amounted to approximately $18.8 million?

D. Was such information relevant information in that at the time the sales were procured -

(i) it was confidential information not generally available, and

(ii) if it was generally available, it would have been likely to bring about a material change in the price of LHL shares?

E. Did insider dealing take place, and was it culpable?

F. If so, was Mr. Pang involved and what is the extent of his culpability?

A. Was Mr. Pang a person connected with LHL?

47. Under section 141E a person is connected with a corporation if he is a director of that corporation, or he is a substantial shareholder i. e. for practical purposes the holder of more than 10% of the equity share capital.

48. Mr. Pang does not deny, and we are satisfied, that he was a director of LHL at all material times. The evidence of that fact is overwhelming. We are accordingly satisfied that

he was a person connected with IHL upon the basis that he was a director at all material times. It is accordingly not necessary to rely upon the extent of his shareholding.

B. Were the sales of the shares procured by Mr. Pang?

49. It is perfectly clear and we are satisfied that Mr. Pang procured all the sales in question, and also those that took place between 24th November 1988 and 28th February 1989. Mr. Pang does not dispute that he did procure them. What he contends is that he did so for purposes other than avoiding loss and without use of the information in question.

How the sales were procured

50. What is more crucial and complicated a question is when Mr. Pang procured the sales. This is because his acquisition of the information in question and its potential use progressively increased between November 1988 and May 1989. Obviously a sale can be procured in many different ways. As to when it is procured by a person in the context of whether and what information he used, we are of the view that the answer must be when that person's acts that bring about the sale take place. Any other view would produce illogical and, in our view, unintended results, besides being less than fair to Mr. Pang. It was not suggested to us that any other view should be

adopted. On the contrary, it was contended on Mr. Pang's behalf that the sales were all procured by the instructions Mr. Pang gave to Catherine Lui on the 22nd/23rd November 1988, and presumably the 14th March 1989.

51. On the evidence, in our view the acts or factors that might have procured the sales are as follows :

(i) Mr. Pang's instructions given to Catherine Lui on or about 22nd/23rd November 1988 to sell shares;

(ii) Mr. Pang's control over Catherine Lui's duties including the sale of his shares;

(iii) Mr. Pang's signing of the share transfer forms concerned;

(iv) Mr. Pang's instructions given to Catherine Lui on 14th March 1989 to sell the remainder of his shares as fast as possible; and

(v) instructions to sell given by Mr. Pang to Catherine Lui at other times substantially contemporaneous with the sales concerned.

52. Before proceeding to consider these individual factors and their operation, in the light of our terms of reference and the evidence of when Mr. Pang acquired the information in question, it is helpful to divide the sales into the following 3 phases -

(a) between 24th November 1988 and 28th February 1989;

(b) between 1st March 1989 and 17th March 1989;

(c) between 18th March 1989 and 5th May 1989.

The first of these phases does not fall to be considered under our terms of reference, but it facilitates consideration of the latter two which followed it.

(i) 22nd/23rd November 1988 instructions to sell

53. We have already recorded our rejection of Mr. Pang's and Catherine Lui's evidence that the sales after the instruction of the 22nd/23rd November 1988 were carried out entirely by her, in her discretion and without any sort of intervention by Mr. Pang (other than that on the 14th March 1989). However, as we have said, the documentary evidence clearly shows that sales by Catherine

Lui recommenced on 24th November 1988 and for that reason we think that it is possible that Mr. Pang did on or shortly before 24th November 1988, give Catherine Lui instructions to sell. But we do not believe, even on a balance of probabilities, that the instruction was to sell all his shares. The pattern of her sales and particularly the lack of them at certain times when heavy trading indicates there was demand, is notwithstanding her explanations, inconsistent with such an instruction.

(ii) Control of sales

54. Likewise, we do not believe that the November 1988 instructions were for Catherine Lui to sell independently, in effect in her discretion. Whatever he said, we have no doubt control of sales remained with Mr. Pang. That was inevitable from the nature of their relationship, he as her employer and she, his personal secretary of exceptional loyalty who attended to his business and personal affairs. It is inconceivable that he could not at any time have intervened in relation to the price or ordered a variation of the pace, pattern, or volume of sales. It is equally inconceivable that he did not know how the sales were progressing. Catherine Lui, as his personal secretary, would in our view, have certainly mentioned them to him; it would be unnatural for

her not to do so. Moreover the share transfer forms that she gave him to sign would also have enabled him to monitor the sales.

55. It is of significance that the share transfer forms used were each for 2,000 shares. For the not infrequent daily sales of 2 to 4 million shares, 1 to 2 thousand forms would have to be signed for each day; and for the 36.33 million shares sold on the 4th and 5th May 1989, no less than 18,165 forms! There is no evidence that forms were signed in advance and stockpiled. The sales tended to dry up when Mr. Pang was not around to sign. Likewise Catherine Lui's reference to the unavailability of transfer forms to explain why there were no sales at times, also points to transfer forms not being stockpiled. Quite apart from the information on progress, that the signing of forms provided Mr. Pang, the necessity for his signature also gave him control of sales of his shares. Had he really meant to leave the sale of his shares entirely to Catherine Lui, it is difficult to see why he did not appoint her to be a director of his wholly owned companies that owned the shares, or otherwise authorised her to sign.

56. Having regard to Mr. Pang's background and the related circumstances, as we have said, we are satisfied he would not have assigned what was in effect the sale of his company to Catherine Lui without being quite sure that he was in a position to control the process. The laborious, burdensome and time-consuming task of signing thousands of transfer forms, of which he spoke with feeling, and which in our view he could easily have avoided in ways not uncommonly resorted to, suggest that he had no intention of relinquishing control.

57. Finally he demonstrated his control of the process of sale by getting Catherine Lui to dramatically change the pace and volume of sales and to dispose of the huge balance of his shares between 14th March and 5th May 1989, in enormous lots of up to 14 to 22 million shares a day. As he himself put it, he simply made the "comment" to Catherine Lui on 14th March 1989 to sell all his remaining shares as fast as possible.

(iii) Signing of transfer forms

58. We are satisfied in the particular circumstances that Mr. Pang's signing of share transfer forms was a material and major element in procuring the sale of shares concerned. Mr. Pang was not a nominal

signatory but in fact the beneficial owner of the shares. Moreover, the person dealing with the sale and putting up the transfer forms for signature by him was his own personal secretary to whom he himself had assigned that task. We recognise that in the ordinary sort of case, a sale may be procured first, by instructions to a stockbroker to sell and second by delivery to him of the signed transfer form. In that sort of case the instructions to sell are likely to be the dominant factor in procuring the sale. However, in our view, the unusual circumstances that confront us are very different. Given Mr. Pang's control over Catherine Lui's duties and the process of sale, the huge amount of shares sold and the extended period over which they were sold, we are satisfied that Catherine Lui's instructions to the brokers to sell were given in the context of Mr. Pang's control. In those circumstances, we are satisfied that if there were no substantially contemporaneous instructions, it was his signing of the transfer forms that progressively became the predominant factor following his November instructions to sell, and effectively the sanction for the sales that had been and were about to be made.

(iv) 14th March 1989 instructions to sell

59. In line with the indications we have already given, we are satisfied that only substantially contemporaneous instructions from Mr. Pang can account for the sales made after the 14th March 1989. We have already commented upon the nature of these sales in more than one context. Moreover we do not believe that Mr. Pang gave the instructions he claims to have given on the 14th March 1989. We think that must follow from the very same reasons for which we have rejected his claimed decision to liquidate his Hong Kong investments; from the necessity to disassociate the final flurry of sales from knowledge of the December 1988 results that he could not possibly deny receiving before they were released on 5th May 1989; from his obvious need to explain away the completion of the sales by 5th May 1989; and from his failure to liquidate his other Hong Kong assets and indeed from his subsequent investments in Hong Kong which were on a significant scale. We would, however, add that if he did give such instructions on 14th March 1989, then he did so with knowledge of the September 1988 to November 1988 results, and, most likely also of the December 1988 results which by then he probably had already learned.

(v) Other instructions to sell

60. Mr. Pang's and Catherine Lui's evidence, which we do not necessarily accept, is to the effect that there were only the two instructions to sell between 22nd November 1988 and 5th May 1989. As we have indicated we think that in all the circumstances there must have been some other approval, guidance or instructions. In particular, we are satisfied that the sales between 18th March and 5th May 1989, upon the nature of which we have already commented, could only have been procured by substantially contemporaneous instructions given by Mr. Pang to Catherine Lui.

C. At the time of procuring the sales, did Mr. Pang have and make actual or conscious use of the information?

(a) 24th November 1988 to 28th February 1989 sales

61. We turn now to consider whether the information in question was consciously used to sell shares during this period for the purpose of avoiding loss. It is necessary, as already noted, to first of all determine the time at which these sales were procured by Mr. Pang. We are satisfied that they were procured by instructions given and the signing of transfer forms by Mr. Pang during a period commencing shortly before the

24th November 1988 (when these sales recommenced) and ending on the 28th February 1989 (the end of this phase) i. e. that they were to all intents and purposes procured during that period.

62. As to the information Mr. Pang had during that period, it can be seen from page 36 that he himself admitted to having seen the management accounts for September, October and November 1988 by sometime in February. It can also be seen that we are satisfied that he would by then have known the actual losses for those months of 1988, and concluded that the result for the second half of 1988 would be a loss, and that the profit for the whole of 1988 would be less than the first half year's result of $22 million profit.

63. We believe Mr. Pang received the foregoing information somewhat earlier than he was prepared to admit. For instance, notwithstanding the explanations that Catherine Lui was busy with the Lunar New Year staff bonus calculations, that Mr. Pang was away, that there was limited market demand and so on, it seems most likely to us that the recommencement on 20th February 1989 of share sales that had ceased on 10th January 1989 was prompted by

the substance of the November results reaching Mr. Pang by the 20th February, on his return to Hong Kong after an absence of nearly 3 weeks.

64. Nevertheless, it is difficult to identify the precise date on which he would have received that information (although the difficulty could be overcome by settling on a later date). Moreover there is also a similar difficulty about when the signing of transfer forms superseded Mr. Pang's instruction of 22nd/23rd November 1988 as the dominant factor that procured sales. We therefore do not think the sales in this phase and the information that might have been used in procuring them could safely be used as the basis of a finding that insider dealing has taken place. Moreover, as we have indicated, our terms of reference relate to insider dealing in the period between 1st March 1989 and 5th May 1989.

(b) <u>1st March 1989 to 17th March 1989 sales</u>

65. We are satisfied that the dominant factors that procured the sales during this phase were Mr. Pang's control of the sales and his signing of the transfer forms. Our reasons are primarily those given in discussing the factors at pages 45 to 48. We are

satisfied that by this phase the November instruction as a dominant factor, would have been superseded by these two factors, and that in relation to these sales, the two factors would have been substantially contemporaneous (as would any instructions that conceivably may have been given). It follows that we are satisfied that the sales were procured in that same period of time i. e. 1st to 17th March 1989.

66. It is convenient to add here that we are satisfied that throughout this period Mr. Pang had knowledge of the November 1988 management accounts and of the losses and effect that we have mentioned. For the reasons we rejected his explanations as to why he sold, particularly because by this time he would already have concluded that the result for the second half of 1988 would be a loss and that therefore the profit for the whole of 1988 would be less than the half year's result of $22 million profit, and because there is no other reasonable explanation, we are satisfied in the circumstances, that he made use of that information to procure the sales in this phase for the purpose of avoiding a loss.

(c) 18th March 1989 to 5th May 1989 sales

67. Likewise we are satisfied, as already indicated, that the sales during this phase were procured primarily by Mr. Pang's substantially contemporaneous instructions. In our view, that is an irresistible inference from the extraordinary nature of those sales in the context of all the related circumstances. As we have also indicated, we do not believe that he did give to Catherine Lui on the 14th March 1989 the instructions he claims to have given. Even if he did, we are satisfied that further instructions, substantially contemporaneous, would have to have been given; and that such instructions together with his control and his signing of the transfer forms procured the sales. All those acts would have taken place almost entirely between 18th March and 5th May 1989 and we are accordingly satisfied that virtually all the sales during this phase (i. e. with the possible exception of those during the first few days of this phase, which could have been procured during the immediately preceding days) were procured during the period between 18th March and 5th May 1989. On his own evidence Mr. Pang had by the 17th March 1989 received the 1988 results from Patrick Lam. We are satisfied that he had knowledge of those results and of the total loss of $18.8 million for the second half of 1988, by the 17th March 1989 at the latest.

He would certainly have realised that the position was even worse than on the November 1988 results. As we have already stated, we do not believe his explanations for ordering his remaining shares to be sold as fast as possible. The only reasonable explanation for the sales on which we have commented, culminating in the 14 and 22 million shares sold on the 4th and 5th May 1989 to effectively dispose of his shareholding before the release of the 1988 results and its likely effect on the share price, in our view was to avoid the likely losses that could be expected to follow. We are satisfied in all the circumstances that he used the information in question to procure the sales between 18th March and 5th May 1989 for the purpose of avoiding losses.

D. Was the information relevant information?

(i) Was it confidential and not generally available?

68. To be relevant information, the information used must at the time of the sales be "not generally available" under the first requirement of the definition of "relevant information" in section 141D(1) of the Securities Ordinance. We proceed now to address that requirement.

69. On Mr. Pang's own evidence, the accounts were highly confidential. Mr. Patrick Lam, he said, would never leave them in his (Mr. Pang's) office or with his secretary. That accords entirely with the inherent nature of such documents or material. However Mr. Pang contends that as a result of press speculation and reports, and rumours in the market place, the losses were generally known or confidently expected by the trading public, and indeed that it was this general expectation that led to the share price being discounted. There had indeed been unfavourable comment and speculation. But after the end of 1988 it was by no means unmixed, particularly in April 1989, when there were favourable news items of a significant nature e.g. a new order worth US $5 million, and that two large US corporations were seeking a joint stake in LHL. Nor was the comment and speculation necessarily of a convincing nature. For instance on 9th March 1989, Target spoke of a dramatic downturn in LHL's fortunes and claimed that LHL was likely to announce that its net profit for 1988 was less than half of that for 1987 (the 1987 net profit was $35 million). On 7th April 1989, it repeated that same assessment of profits for 1988. Not quite 4 weeks later, on 1st May 1989, Target was stating that according to its very reliable sources the LHL net profit for 1988 was less than $10 million.

70. Not surprisingly, there is no clear related trend discernible from the general LHL share price level. Moreover, it must be said that the press and other comments and reports relied upon by Mr. Pang were of an indirect nature and concerned with labour shortages, production problems in the LHL factory in China, sales of shares by Mr. Pang and the downturn in the American disc drive industry. The more specific speculation and news items in Target that the LHL profit for 1988 would be less than $10 million and between $9 and $10 million, characterised by counsel as uncannily accurate and probably a leak, did not appear until 1st and 3rd May 1989 respectively. That was far too late to bear upon the bulk of the sales of Mr. Pang's shares.

71. Mr. Pang also relied upon unfavourable and depressed short term conditions and prospects for the computer industry, particularly the disc drive sector, in manufacturing components for which LHL was particularly engaged. These received publicity in the American press particularly trade journals, which was picked up and repeated in the Hong Kong press. However we do not accept that the press reports, news items and articles produced at the inquiry, and the rumours mentioned can be equated with the information of the audited LHL 1988 results released on 5th May 1989 or LHL's own accounts. That

seems to us to be too obvious to require evidence or justification. Nor are we of the view that the information published in the Target subscriber service bulletins can be said to be "generally available" in terms of section 141D(1) of the Securities Ordinance, notwithstanding the claims in copies exhibited at the inquiry of readership of one hundred thousand persons. We are satisfied that the information in the LHL internal accounts of the losses for the last 4 months of 1988, and that they totalled approximately $18.8 million was confidential information not generally available until the 5th May 1989, when the 1988 annual results were released.

(ii) Was the information, if generally available, likely to have brought about a material change in the LHL share price?

72. We now turn to the second limb of the definition of "relevant information", i. e. that the information, if generally available, is likely to bring about a material change in the price of LHL shares. In the light of Mr. Thomas' heavy reliance on the point, we confirm our concurrence in the Clough Report's emphasis on the "material" nature of the change and in the following observation in para. 2.6 :

> "Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the

likelihood of change of sufficient degree in any given circumstances to amount to a material change".

73. Mr. Thomas submits that the Securities Ordinance contemplates the sort of change in share prices which is produced by mergers and takeovers and not one of a few cents, even in the context of share prices of the order of $0.50 to $0.60. While we do not necessarily agree, we do not consider the actual change of price that did follow the release of the 1988 results is necessarily a reliable guide to what change was likely to be brought about by the general availability in the different circumstances at the time it was used by Mr. Pang, of that information in the authoritative form it was published on 5th May 1989. We think authoritative information is apt to produce a greater reaction than speculation, the forecasts of analysts of whatever repute, leaks from whatever source and the like. Furthermore, as we have indicated, it may also be that the effect of pessimistic reports and speculation which continued during the material sales period, and of the sale of Mr. Pang's shares, progressively reduced the scope for further depreciation of the price before publication of the 1988 results. In that regard, the IHL share price declined steeply from $0.94 to $0.53, i. e. almost 44%, during the period 1st March to 5th May 1989. It is perhaps not surprising, taking into account the overall decline from

$1.10 in mid-February 1989, that when the results were actually released on 5th May 1989, they did not have a major impact and the price fell some 5 cents in the ensuing week i. e. about 10%, which may nevertheless be thought by no means immaterial. However that may be, had the results come out at the times the sales were procured, particularly during the earlier part of the period between 1st March and 5th May 1989, the fall could have well been greater.

74. A report on IHL dated 23rd September 1988 prepared by the reputable securities organisation, Baring Securities Ltd., was produced at the inquiry on Mr. Pang's behalf. It stated that on 404.704 million shares in issue and projected full year earnings of $45 million (based on the half year profit of $22.1 million), projected earnings per share for the full year would be $0.111. This, together with the then current share price of $1.07, would produce a prospective Price Earning Ratio ("PER") of over 9 times. Comparing this with the PER of other electronic companies shares which it said average about 5 times, it concluded that the then current share price of $1.07 was expensive. In our view that was a reasonable and credible assessment.

75. The 1988 Annual Report discloses earnings per share of $0.024 based upon net earnings of $9.828 million for 1988, and the weighted average of 416.839 million shares in issue.

76. On 14th March 1989, the share price was $0.84. Had the results for 1988 been generally available at that time, and if the share price were maintained, this would represent a PER for the share of a staggering 35 times! This is nearly 4 times greater than the PER of 9, which Baring Securities Ltd concluded made the share expensive, and 7 times greater than the PER of 5 which Baring Securities Ltd said was an average PER for other electronic companies.

77. Applying the more reasonable, but nevertheless generous PER of 9 times to LHL's disclosed earnings per share for 1988 of $0.024, would result in a share price of $0.22, or a reduction of almost 74% from the share price of $0.84. A 5 times PER would support a share price of $0.12 representing a reduction of almost 86%.

78. Target in its issue of 3rd May 1989 (upon which Mr. Pang also relied) commented that "Even at 20 cents per share, the scrip of Lafe (LHL) does not seem to be a

bargain because most industrial scrip in Hong Kong is now trading at less than 10 times their prospective historical Price Earnings Ratios".

79. Having regard to all the evidence and the foregoing considerations we are satisfied that both the information in the monthly accounts for September, October and November 1988 that losses had occurred in those months, and the information that the total losses for the last 4 months of 1988 amounted to $18.8 million, revealed by the December accounts, was each on its own likely to produce a material change, i. e. a substantial fall, in the LHL share price, if it had become generally available during the period ending 5th May 1989 and beginning 1st March 1989 or even earlier.

E. Did insider dealing take place, and was it culpable?

80. To sum up, we are satisfied that dealings in LHL shares were procured by Mr. Pang during the period 1st March to 5th May 1989, and that during that period he was both a person connected with LHL and in possession of relevant information in terms of section 141B(1)(a) of the Securities Ordinance. It follows, and we are satisfied, that insider dealing took place during that period.

81. We turn then to the question of whether such insider dealing was culpable, as apparently required at this point by our terms of reference and section 141H(3) of the Securities Ordinance, upon which they are based. Since section 141C(3) may render insider dealing not culpable if the purpose of the person involved was "not primarily the avoiding of a loss", we think it is with the possible application of that provision that we should begin.

82. We have in the context of the sales between 1st March and 5th May 1989 already recorded our findings that the sales were procured for the purpose of avoiding losses. There is therefore no question of Mr. Pang being held not culpable under section 141C(3) on the ground that his purpose was not primarily the avoiding of a loss.

83. We have already recorded our finding that the relevant information was actually and consciously used by Mr. Pang for the purpose of avoiding a loss. Upon the strength of that itself, we are satisfied that the insider dealing was culpable. There are other reasons in addition; they will become apparent in our consideration of the extent of culpability.

F. <u>Was Mr. Pang involved and if so, what is the extent of his culpability?</u>

84. Needless to say, we are satisfied that Mr. Pang was involved in the culpable insider dealing. We have not been presented with or discovered any evidence that any other persons were also involved.

85. We turn now to the question of Mr. Pang's culpability and its extent. We do not believe Mr. Pang was in the least bit as naive as he sought to portray. In our view, he was an able, intelligent, highly educated and successful businessman and entrepreneur. With his close involvement in the manufacturing and sales activities of IHL, and in effect as its chief executive, we have no doubt that he was at all times well aware of the business operations of IHL.

86. In accelerating the sales of his shares between 1st March and 5th May 1989, his purpose was to avoid the losses that could be expected to result from publication of the 1988 results and their likely impact on the share price. He succeeded to the tune of many millions of dollars. He was not some impecunious employee of a corporation or stockbroker to whom relevant information was available, but a director and Chairman of IHL. More than that, he was its principal shareholder by far. He procured the continuation of the sales of his shares for more than 2 months after he first acquired knowledge of the cumulative losses for September to November

1988. The shares sold during the period 1st March to 5th May 1989, totalled a staggering 161.82 million shares amounting to nearly 40% of the LHL issued share capital.

87. We are satisfied that the information in question, which he acquired by virtue of his offices as director and Chairman, revealed to him the prospect of substantial personal losses from the likely fall in LHL share prices; and that he used that knowledge to deliberately set about disposing of almost his entire remaining shareholding. Clearly it was a blatant and deliberate case of insider dealing.

88. Mr. Thomas pointed out that even directors have a right to sell their shares. And directors, he submitted, always have some information of some sort that is not generally available. Are they then, he asked, to be placed in a position of being virtually precluded from selling their shares? Some latitude, he submitted, must be allowed to enable them to buy and sell, particularly in the circumstances of Hong Kong in which, he said, 'that is done all the time. Although we feel some sympathy for that view, we do not see how it could go so far as to exculpate insider dealing of the nature we have found. It is nonetheless a matter to be borne in mind in the assessment of the extent of Mr. Pang's culpability.

89. The objects of Part XIIA of the Securities Ordinance (outlined in paragraph 2.4 of the Clough Report, on page 9 above in which we concur) are concerned primarily with the protection of the investor by maintaining the integrity of and hence confidence in the market place by prohibiting insider dealing. We consider that those objects are undermined to a greater degree where the insider dealing is made or procured in relation to the shares of a corporation by its senior officers, particularly directors; and that the degree of their culpability is proportionately greater. In the same context, it should be noted that on Mr. Pang's own version of events, when he ordered Catherine Lui to sell as fast as possible on 14th March 1989, he was already in possession of the management accounts for September, October and November 1988, and of the information that losses had been incurred for those months. Regardless of his explanation and contentions, in our view it was his duty, within the spirit and intendment of Part XIIA of the Securities Ordinance, once he came into possession of that information, to suspend further sales of his shares until the information became generally available.

90. Mr. Pang's huge holding of LHL shares both in absolute terms and relative to the total issued share capital, must have made him aware of the potentially severe damage he could inflict upon the share price and the value of the holdings of other shareholders. The enormous sales he procured manifest

a callous and reprehensible disregard for the consequences of his action. His denial that such sales could affect the market price, which we believe he persisted in simply to bolster his defence, is entirely consistent with that disregard. So is the LHL statement of 27th April 1989 issued at the request of the Stock Exchange and the Office of the Commissioner for Securities by the Board (of which he was Chairman), to the effect that the Board knew of no reason why the price of LHL shares had been decreasing. That was after he had procured the sale of many millions of his previously untraded shares on an almost daily basis for 2 months!

91. Nor did he disclose such sales to the Commissioner for Securities or the Stock Exchange until he was compelled to do so by the Stock Exchange on 25th May 1989, after trading in LHL shares had been suspended on the previous day. In that regard section 141C(5) provides that in arriving at its determination as to culpability, the Tribunal shall have regard, as the case may be, to any disclosure of the dealing to the Commissioner for Securities, or to non-disclosure and to the reasonableness of any proffered explanation for non-disclosure. Mr. Pang, of course, did not make any disclosure. His explanation, such as it is, is that he was not required to make disclosure. That is no explanation, particularly as LHL's Listing Agreement with the Stock Exchange and its undertaking to comply with the Listing Rules, which was signed by Mr. Pang, contained an

obligation to keep the Stock Exchange and shareholders informed as soon as reasonably practicable of any information which would be likely to bring about a material change in the price of LHL shares. His explanation that he did not read the document and also that it was not the sale of his shares that caused the slide in the LHL share price, is in our view unacceptable. We consider that the massive sales of Mr. Pang's shares should in the circumstances have been notified under that obligation.

92. Also of relevance is the public notice issued by the order of the Board of LHL (including Mr. Pang) on 27th April 1989. As we have stated, this was at the request of the Stock Exchange of Hong Kong and the Office of the Commissioner for Securites, made because of a significant decrease in the price of LHL shares. The public notice stated, inter alia, that "The directors have noted the recent decrease in the price of the Company's shares although they are not aware of any reason for such decrease.". By then Mr. Pang's daily rate of disposal of shares had topped 8 million shares; but, of course, he contends that although the price had declined from $0.94 on 1st March 1989 to $0.53 on 5th May 1989 (i. e. a fall of almost 44%), sales of even such magnitude did not affect the share price.

93. We reiterate in the light of the foregoing matters that we are satisfied that the insider dealing was culpable and that Mr. Pang was the person involved. As to the extent of his culpability, in particular in categorising or describing it, we think regard must be had to the manner in which that was done in the Clough Report. That case appears to be the only instance in which culpable insider dealing has so far been established under Part XIIA. We are satisfied that the extent of Mr. Pang's culpability is clearly of a much higher order than that characterised as being of a high degree in the Clough Report. In that light and, more than that, having regard to the serious nature of the insider dealing by Mr. Pang, we consider the extent of his culpability to be at least of a very high degree.

DETERMINATION

94. Accordingly our determination is as follows :

(a) Culpable insider dealing in relation to ordinary shares of Lafe Holdings Limited has taken place in the period between 1 March 1989 and 5 May 1989;

(b) Mr. Clifford Lun Kee Pang was involved in such insider trading. No other person is determined to be involved.

(c) The extent of Mr. Pang's culpability is of a very high degree.

ACKNOWLEDGEMENTS

95. We record our thanks to the Secretary to the Tribunal Mrs. Esther Li kit-lai, and to Miss Blondie Mok Lai-yee, our Personal Secretary for the assistance readily and cheerfully given. We also record our thanks for their assistance to counsel appointed to act for the Tribunal i. e. Mr. Grossman and Mr. Kwok Sui-hay of the Attorney General's Chambers. We are no less indebted to Mr. Thomas, for his courteous and helpful contribution to the expeditious completion of the hearings held by the Tribunal.

96. To ensure that we are not taken to be advocating the higher standard of proof beyond reasonable doubt for general use by the Tribunal, we also wish to acknowledge, in another sense, that our election for that higher standard was made in circumstances in which it was apparent to us that there would be no difficulty in meeting that standard in all our conclusions that were adverse to Mr. Pang.

RECOMMENDATIONS

(i) Sanctions against insider dealing

97. The circumstances we have inquired into demonstrate that very substantial profits can be made and losses avoided by persons in positions of trust, with relative impunity under the present provisions of the Securities Ordinance. Presumably it was thought that a finding of culpable insider dealing would result in a sufficient degree of public censure as to itself provide an effective deterrent. We do not think that can be a realistic view, particularly where substantial profits can be made or losses avoided. We recommend that consideration be given to the introduction of effective sanctions.

98. These we recommend should include measures to compel those who have profited from insider dealing to surrender their ill-gotten gains. We suggest also that in the case of culpable insider dealing, consideration be given inter alia to the disqualification of those involved from being directors of a public company, and also to financial penalties determined as a multiple of the gain made or loss avoided.

(ii) Director's duty to disclose sales

99. We recommend that consideration be given to the introduction of a statutory requirement for directors of a public company to notify the Stock Exchange and the Securities and Futures Commission within a specified period of every sale or purchase of that company's shares by them or on their behalf which individually or in aggregate exceeds a certain percentage of the issued share capital of the company.

(iii) Public sittings

100. We endorse the recommendation in the Clough Report that the Tribunal should sit in public, and have a discretion to sit in camera where the interests of justice so require. We consider that such a practice will be all the more necessary if sanctions are introduced.

The Honourable Mr. Justice G. P. Nazareth
Chairman

Alan H. R. Kemp, F.C.A., F.H.K.S.A.
Member

Dennis H. S. Lam, B.S.E.E., M.B.A.
Member

Mrs. Esther Li Kit-lai,
Secretary
22 February 1990

APPENDIX

財 政 司 辦 公 廳

FINANCIAL SECRETARY'S OFFICE
THE SECRETARIAT,
HONG KONG.

The Chairman of the Insider Dealing
Tribunal established under section 141G
of the Securities Ordinance, Cap 333
of the Laws of Hong Kong.

Notice under section 141H(2) of the
Securities Ordinance of Hong Kong

Whereas it appears to me that insider dealing (as that term is defined in the Securities Ordinance of Hong Kong) in relation to the securities of a corporation, namely Lafe Holdings Limited, has taken place or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and determine -

(a) whether culpable insider dealing in relation to ordinary shares of Lafe Holdings Limited has taken place in the period between 1 March 1989 and 5 May 1989; and

(b) the identity of any persons involved in such insider dealing and the extent of their culpability.

Dated the 7th day of November 1989.

(Piers Jacobs)
Financial Secretary