

Following is a summary of the Tribunal's report –

**Introduction**

By notice dated 6 May 2005 and an amendment notice dated 17 November 2008, the Financial Secretary required the IDT to institute an inquiry in relation to the listed securities of Founder Holdings Limited to inquire into and determine –

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation and Super Highway Limited between 18 May 2001 and 28 August 2001 (both dates inclusive);
- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

The Tribunal under the chairmanship of the Honourable Mr Justice Saunders completed its inquiry in respect of liability, that is to identify those persons who did or did not commit acts of insider dealing, and submitted a report in that regard to the Financial Secretary on 5 November 2009.

**Background**

Founder Holdings Ltd (Founder) has been listed on the Hong Kong Stock Exchange (HKSE) since 1995. The company, together with its subsidiaries, (collectively, “the Group”) was principally engaged in the business of the development of computer software, the integration of computer systems, and sales of information products.

A wholly-owned subsidiary of Founder was Beijing Founder Order Computer System Company Limited, (Founder Order).

As at 31 December 2000, Peking University, through a wholly owned subsidiary, Peking University Founder Group Corporation, (PUF) held 393 million shares in Founder, that shareholding constituting 34.01% of the issued share capital of Founder. PUF was the only substantial shareholder, that is holding more than 10% of the issued share capital in Founder, at that time.

In 1998 and 1999 respectively, Founder had recorded net losses of \$165.7 million and \$223.1 million. Despite these very substantial losses Founder had returned to profit in 2000, reporting a net profit of \$181 million for the calendar year ended 31 December 2000.

In the year 2000, the turnover increased from the 1999 year turnover of \$1,583 million, to \$2,088 million. The most significant contributor to the increased turnover and profit was the non-media sector, which comprised principally Founder Order. The contribution of Founder Order to the gross profit of Founder increased from \$50 million in 1999, 25% of the gross profit, to \$251,000,000, 58% of the gross profit.

At all relevant times Alan Cheung Shuen Lung, (Alan Cheung), was a member of the board of directors of Founder, and held the title of President of the company. Alan Cheung was based in Hong Kong, and was responsible for overseeing the overall operation of Founder, the management of its overseas subsidiaries, and reporting on the business performance of Founder to the board of directors. In addition, during the relevant period he was a director of PUF, and held a position as a Research Fellow of the Enterprise Research Institute at Peking University. He was one of the founders of the Group, and, according to the 2000 annual report of Founder, had extensive experience in the information technology industry.

Founder had a number of subsidiaries in the PRC. The usual practice was that that at monthly, or quarterly, intervals these subsidiaries, including Founder Order, would send management accounts to Sammy Fung who was the Group Financial Controller, based in Hong Kong. Sammy Fung would review, adjust and consolidate these accounts and report to the board of directors of Founder. If a subsidiary had incurred unexpected or exceptionally large losses Sammy Fung would report the position to Alan Cheung and the Board of Directors of Founder.

On 18 April 2001, Founder Order's April 2001 accounts, showing a pre-tax loss of \$41 million, were sent to Sammy Fung. On the same day, Sammy Fung sent those accounts, by e-mail, to Wang Hui Min in Beijing, one of Alan Cheung's assistants, and an assistant financial controller of Founder. Wang Hui Min immediately sent the accounts, by e-mail, to the executive directors of Founder in Beijing.

On 21 May 2001, Sammy Fung sent the Founder Order accounts to Alan Cheung by e-mail. On that day a directors meeting was held, at which Alan Cheung was present, to discuss the unexpected loss.

A further meeting was held on 2 June 2001, at which Alan Cheung, Wei Xin, a Founder director based in Beijing, and two directors of Founder Order met the four-month result of Founder Order. Also discussed in the meeting was the Founder Order target for the first six months of 2001, which was to achieve a turnover of RMB140 million, with a gross profit of 30% and a profit of RMB10 million. Against that forecast, Founder Order was showing a loss of RMB41 million after the six months.

Sammy Fung received the management accounts of Founder Order for the first six months of 2001 on Friday 13 July 2001. He forwarded that information to both Wei Xin and Alan Cheung on the afternoon of Monday 16 July 2001. Those management accounts revealed an unaudited operating loss of RMB61 million.

Before trading on the HKSE commenced on 28 August 2001, Founder issued a profit warning (the 1<sup>st</sup> Announcement), stating that it expected to record a substantial loss for the six months ended 30 June 2001. After the release of that announcement, Founder's share price plunged 18.52%, from \$1.35, to close at \$1.10 on that day. On the same day, the Heng Seng Index (HSI) rose slightly, by 66 points, or 0.6%, to 11,301.

The next two days saw a further reduction in the share price, by 14.6% on 29 August 2001, to \$0.94, and by 4.3% on 30 August 2001 to \$0.90. On 29 August 2001, the HSI rose by 59 points, and on 30 August 2001, it dropped 74 points.

Newspaper reports on 30 August 2001, speculating that the loss suffered by Founder for the first half-year would be in the order of RMB100 million excited a further announcement (the 2<sup>nd</sup> Announcement) from the board of Founder on 31 August 2001.

Notwithstanding occasional share price rebounds, the Founder share price continued to fall, closing at \$0.68 on 14 September 2001, down 24.4% from the closing price on 30 August 2001. In that same period, the HSI fell by 17.9% to 9,308 points. It is worthy of note that on the basis of the published accounts for the year 2000, Founder's net asset value (NAV) was \$0.68.

On the morning of 19 September 2001, Founder published its interim results for the six months ended 30 June 2001. These revealed a net loss of \$119.8 million, compared with a net profit of \$51 million for the same period the year before. Upon publication of that information the share price rose 5.9% to close at \$0.72, the HSI rising by 2.7% to close at 9,558. Notwithstanding that price rise, the closing price of Founder shares at the end of trading on 19 September 2001, was 27.7% lower than the re-rated price of \$0.996 following the profit warning announcement.

Alan Cheung is closely related to a number of persons who, personally, or through entities controlled by them, dealt in Founder shares during the relevant period, i.e. the period between 18 April 2001, on which day Sammy Fung had sent Founder Order's four months accounts to Alan Cheung's assistant, Wang Hui Min, and 28 August 2001, the day on which the 1<sup>st</sup> Announcement was published.

Julie Kennel was Alan Cheung's sister-in-law. Between April 2000 and October 2000, she had accumulated 3,844,000 shares in Founder. Between the end of October 2000 and 3 May 2001, there were no movements at all within Julie Kennel's share broking account. On 3 May 2001, 500,000 shares from the account were sold at \$2.15. On 26 July 2001, the remaining 3,344,000 shares were sold at prices ranging from \$1.73 to \$1.77.

Super Highway Ltd, (Super Highway), is a company incorporated in the British Virgin Islands, (BVI). The sole shareholder and director of Super Highway during the relevant period was Mdm Liu, who is the sister-in-law of Alan Cheung's younger brother, S L Cheung.

Between 10 March 2000, and 19 September 2000, through the various accounts, Super Highway had accumulated 64,898,000 shares in Founder. In October 2000, Super Highway made a net disposal of 1,978,000 shares in Founder. Subsequently, trading in Founder shares by Super Highway became less active, and between 1 November 2000, and 17 May 2001 only 100,000 shares were bought, and 618,250 shares were sold. Consequently, by 17 May 2001, Super Highway held 62,401,750 shares in Founder.

Between 22 May 2001 and 21 August 2001, Super Highway sold 10,818,000 Founder shares. During that period, on three occasions only, Super Highway acquired Founder shares. Those acquisitions, totalling 686,000 shares were on 20 June 2001, 336,000 shares, on the same day 164,000 shares were sold; on 28 June 2001 300,000 shares were acquired, and on 9 July 2001 50,000 shares were acquired. The proceeds of sales was \$17,518,881.02.

S L Cheung used Super Highway's share trading accounts to deal in Founder shares on a personal basis. Between 15 June 2001 and 7 August 2001, S L Cheung bought 280,000 Founder shares, and sold 2,190,000 Founder shares, a net disposal of 1,910,000 shares. Acquisitions were made on 15 June 2001, of 200,000 shares, 27 July 2001, of 20,000 shares, and 3 August 2000 of 60,000 shares. Instructions for all acquisitions and disposals were placed by Mdm Liu, on the instructions of S L Cheung. The sale proceeds from the disposal of shares totalled \$3,992,086.23.

PUF, of which Alan Cheung was a director, also traded in Founder Shares during the relevant period. PUF held a share broking account with Morgan Stanley Dean Witter (Morgan Stanley). There were four signatories to the account, including S L Cheung and Albert Yip, who was also Alan Cheung's brother-in-law. Between 20 July 2001 and 16 August 2001, on the instructions of Albert Yip, PUF sold 5,150,000 shares. The sale proceeds from these disposals totalled \$7,941,597.13.

It was alleged that before Founder's announcement on 28 August 2001, the profit warning stating that it expected to record a substantial loss for the six months ended 30 June 2001, some parties had taken advantage of the relevant information they possessed to deal, counsel or procure another person(s) to deal in Founder shares, thus constituting insider dealing.

## Findings

The Tribunal concluded that it had not been established that there was insider dealing in respect of the listed securities of Founder by or on behalf of Julie Kennel, Cheung Shuen Lung, Cheung Siu Lung, Yip Ka Yeung Albert, Peking University Founder Group Corporation or Super Highway Limited between 18 May 2001 and 28 August 2001.