

REPORT OF THE INSIDER DEALING TRIBUNAL
OF HONG KONG

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

YANION INTERNATIONAL HOLDINGS LIMITED

between

January 1st to May 12th 1993 (inclusive)

and on other related questions

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CHAPTER 1
BACKGROUND

(a) The Company

Yanion International Holdings Limited (“Yanion”) became a listed company on the Hong Kong Stock Exchange on October 25th 1991. Prior to being listed it had operated as a private company in Hong Kong since 1966. It has always been a closely-knit family run business. In recent years its principal business has been the development and manufacture of components such as cassette mechanical drives, compact disc mechanisms and more recently compact disc players and laser disc products.

The “Initial Public Offer” for the company’s listing in October 1991 was an offer for subscription of 75 million new shares at a price of \$1 each, together with one warrant for every five shares. The issue was 8.43 times oversubscribed. After listing there were 300 million shares. A resumé of the total shareholding is as follows:-

(i)	Mr. LEUNG Wah-chai, the Company Chairman held by way of personal interests	86,602,500
	and by way of corporate interests (through a company called Kamga Investments Limited which was jointly owned by LEUNG Wah-chai and his wife)	9,945,000
(ii)	Mdm. BUTT Wing-han, the wife of LEUNG Wah-chai and a Director of the company	21,217,500
(iii)	Mr. LEUNG Tai-shing, the brother of the Chairman and a non-executive Director	57,735,000
(vi)	Voger Company Limited	49,500,000
(v)	Offer to the Public	<u>75,000,000</u>
		<u><u>300,000,000</u></u>

In percentage terms the above interests are:-

(i)	LEUNG Wah-chai	32.18%
(ii)	BUTT Wing-han	7.07%
(iii)	LEUNG Tai-shing	19.25%
(iv)	Voger	16.50%
(v)	The Public	<u>25.00%</u>
		<u>100.00%</u>

Kamga Investments Limited and Voger Co. Limited have played no significant role in this inquiry.

Much of our inquiry has however focused on the events prior to, at the time of and subsequent to Yanion's listing in 1991. Although the listing was approximately 18 months prior to the dates referred to in our terms of reference, the events surrounding the listing have direct relevance to the issue we have had to resolve. Its relevance will become clear in the following paragraphs of this Introductory Chapter.

(b) The 3 "offshore" Companies

3 offshore companies are central to this Inquiry. They are Danbridge Investments Limited ("Danbridge"), Langer Services Limited ("Langer") and Golden Key Investments Limited ("Golden Key"). Danbridge and Langer were incorporated on September 24th, 1991. They are both British Virgin Islands (BVI) companies. The original incorporation of Golden Key, which is a Liberian company, goes back to 1988. It was dormant until early 1992. As will be seen from the more detailed analysis of the evidence which follows in this report the 5 fundamental facts which relate to all 3 companies are:-

- (i) LEUNG Wah-chai paid for the expenses arising out of their acquisition.
- (ii) The "raison d'être" of each company was to trade in securities.

- (iii) The nominated Directors and shareholders of each company were all “family” members.
- (iv) Each of the companies were managed by BUTT Ching-han in the sense that she and only she placed all the orders for purchases and sales of shares with brokers by these companies.
- (v) With one or two minor exceptions, which are not relevant to our inquiry, all the shares bought and sold by these 3 companies were Yanion shares.

Whether or not the true controller of the companies was in fact not BUTT Ching-han but her boss at Yanion (she being an employee) and brother-in-law, Yanion’s Chairman LEUNG Wah-chai, is a crucial and fundamental issue to which we have carefully addressed our minds.

(c) The Family

In relation to Yanion we have already used the expression a “closely-knit family run” business. The relevant members of the family who are involved in (a) Yanion and (b) the offshore companies (which we shall for ease of reference refer to as the BVI companies, even though Golden Key was in fact Liberian) are as follows:-

- (i) Mr. LEUNG Wah-chai and Mdm. BUTT Wing-han - man and wife and their adult daughter Ms. LEUNG Sum-ching.
- (ii) Mr. LEUNG Wah-chai’s elder brother Mr. LEUNG Tai-shing.
- (iii) Mdm. BUTT Wing-han’s 2 sisters - The 2 sisters are Mdm. BUTT Ching-han and Mdm. BUTT Shiu-han. Mdm. BUTT Ching-han is also an employee of Yanion. Her role in Yanion has been described in the course of the Inquiry in many different ways. Her true working relationship with Mr. LEUNG Wah-chai is a matter of considerable significance, to which we shall refer later in the Report.
- (iv) Mdm. BUTT Wing-han’s 2 brothers - They have played no material part in our inquiry but the roles of their respective wives, Mdm. TSANG Wan-ying, Lolita and Mdm. NG Shuet-king do have significance.

The nominated Directors and only shareholders of the BVI companies are as follows:-

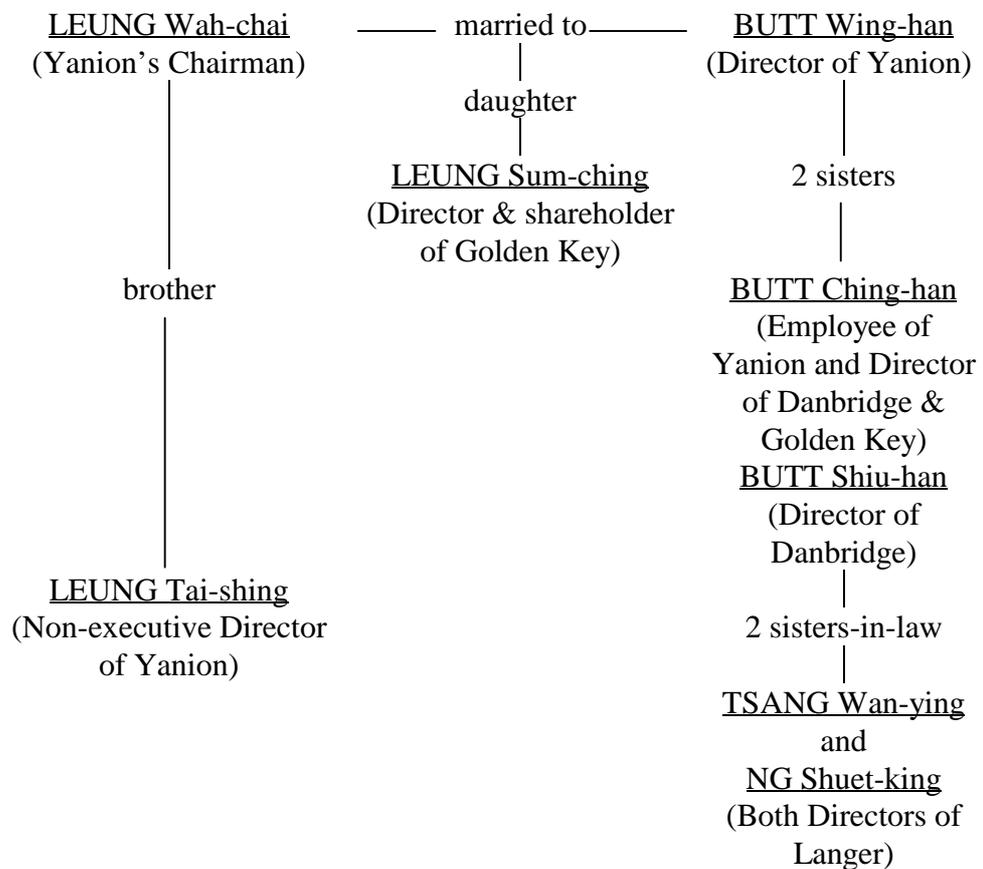
Danbridge - BUTT Ching-han and BUTT Shiu-han

Langer - TSANG Wan-ying, Lolita and NG Shuet-king

Golden Key - BUTT Ching-han (Director)
LEUNG Sum-ching (Director and only shareholder)

It should be noted that BUTT Ching-han is a Director of Danbridge and Golden Key but not of Langer.

The family tree, in so far as it relates to this Inquiry, therefore looks like this:



(d) The Allegations

It is alleged that the 3 BVI companies were created to enable LEUNG Wah-chai to trade in Yanion shares which should have been in public hands. It is alleged that he paid for the companies and financed their trading and controlled them. The purpose of their trading immediately after Yanion's listing was market support for Yanion. The creation of a false market and continuing market support were the motivating factors for subsequent trading by these companies.

It is alleged that although all transactions by the BVI companies were done by BUTT Ching-han, the irresistible inference is that she was operating them at all times under the direction of LEUNG Wah-chai.

It is alleged that in the 3 months prior to Yanion's announcement of its 1992 results (on May 12th 1993) and more particularly in the 1 month prior to that announcement BUTT Ching-han sold over 95% of the BVI companies' Yanion shareholding at that time (namely approximately 22.4 million shares). The motive behind the sales was to avoid the loss that was likely to occur after the announcement of the 1992 results which showed a profit for the year of \$2.43 million compared to over \$39 million for 1991.

It is alleged that BUTT Ching-han, because she was acting on LEUNG Wah-chai's directions, had advance knowledge of the final results and was also privy to other related financial information which constitutes "relevant information" for the purposes of the Securities (Insider Dealing) Ordinance CAP 395 and it was with such knowledge that she traded in Yanion shares. It is alleged that those sales constitute insider dealing.

The above paragraph (d) is but an outline of the allegations made and issues to be resolved. It should not be regarded in any way as comprehensive. The purpose is merely to give a broad overview and set the scene.

(e) The SFC Investigation

Following and as a result of the above events the Securities and Futures Commission (SFC) conducted an investigation pursuant to its powers under s. 33 of the Securities and Futures Commission Ordinance CAP 24. The investigation was thorough and spanned several months. The documents accumulated include 35 statements or records of interviews and 3 arch files of

exhibits which grew to 5 during the course of the Insider Dealing Tribunal Inquiry.

The SFC report, statements and exhibits were sent to the Financial Secretary who by a notice pursuant to s. 16(2) of CAP 395 dated March 2nd 1996 required this Tribunal to conduct an Inquiry, the terms of which appear at the beginning of this Report.

CHAPTER 2

PROCEDURE

We shall deal with the question of procedure under 2 headings:

- 1) Procedure prior to the start of the evidence being heard.
- 2) Procedure of the hearing itself and afterwards.

1. Pre-hearing Procedure:

Following the s. 16(2) Notice the Tribunal was duly appointed as follows:-

Mr. Justice Michael Burrell	- Chairman
Mr. Felix CHOW Fu-kee (Executive Vice President and Chief Financial Officer of First Shanghai Investments Limited)	- Lay Member
Mr. Michael SZE Tsai-ping [Managing Director of NSC Securities (Asia) Ltd]	- Lay Member

The Tribunal appointed as its counsel, Mr. Daniel Marash, Barrister-at-law who was assisted by Miss Beverly Yan, Crown Counsel from the Civil Division of the Attorney General's Chambers.

One of our first tasks in conjunction with counsel was to identify those persons or corporations who may be affected by the Inquiry. To complete this task each member of the Tribunal and counsel considered the statements and exhibits which the SFC had collated and read its report. The report was a useful document in that it summarized the considerable volume of information that the SFC had gathered. We emphasize however that is not evidence and has never been treated as such.

The purpose of our task to identify those persons who may be affected by the Inquiry was in order to decide to whom counsel should send "Salmon" letters. "Salmon" letters are so called after Lord Justice Salmon who chaired the Royal Commission on Tribunals of Inquiry in the U.K. in 1966. After careful consideration we decided to send out 2 different types of Salmon letters -

Salmon “A” and Salmon “B” letters (examples of which can be found at Annexure A).

Salmon “A” letters, as can be seen from its text, were sent to those persons or corporations who, in our opinion based on the material available at the time were at risk of having a finding of insider dealing made against them.

Salmon “B” letters were sent to persons who were, in our opinion based on the material available at the time not suspected of insider dealing but who may be concerned in the subject matter of the Inquiry.

As a result counsel served 7 Salmon “A” letters on the following persons and corporations:-

LEUNG Wah-chai,
BUTT Ching-han,
LEUNG Sum-ching,
BUTT Shiu-han,
Danbridge,
Langer, and
Golden Key.

Salmon “B” letters were served on:-

Albert KWAN Ching-fun,
Allen AU Kim-fung,
Percy LAU Fong-ping,
BUTT Wing-han,
NG Shuet-king,
LEUNG Tai-shing,
Robert CHUI Chi-yun, and
TSANG Wan-ying.

In the course of the Tribunal’s opening statement at the 1st preliminary hearing it was stated that because of the Inquiry’s inquisitorial nature it is possible that new allegations and new parties may emerge as the Inquiry progresses. It could become necessary therefore to issue further Salmon “A” letter during the course of the hearing.

The rationale of the Salmon letter is to be fair. Anyone against whom an allegation of insider dealing is to be made is entitled to advance notice. We also emphasized that the mere making of an allegation is not evidence of the

truth of the allegation but nonetheless the making of an allegation can cause damage to reputations.

We stressed therefore that the duty of counsel to the inquiry was to present the evidence objectively regardless of which way the evidence falls - whether it is for or against any suggestions of insider dealing.

The result of the Salmon letters being sent was that at our 1st preliminary hearing all 7 recipients of the Salmon "A" letter were legally represented. None of the recipients of the Salmon "B" letters sought representation but all, with one exception, gave evidence before the Tribunal. The one exception was Mdm. Lolita TSANG Wan-ying, a director of Langer and a sister-in-law of Mdm. BUTT Wing-han. She has been resident in the U.K. for some time. In such circumstances there are no powers to compel her to give evidence in Hong Kong. We decided that the Inquiry could properly proceed without her evidence. We ignored her statement to the SFC. Her attendance was neither requested nor desired by any of the other parties to the Inquiry.

The legal representation was as follows:-

LEUNG Wah-chai was represented by Mr. Anthony POON Kin-sum, a partner with the firm of Iu, Lai & Li. He was assisted by Ms. Alice Choi.

BUTT Ching-han, LEUNG Sum-ching, BUTT Shiu-han and Danbridge, Langer & Golden Key were all represented by Mr. Terry C.W. Wong, a solicitor with the firm of F. Zimmern & Co.

It is appropriate to refer to a peripheral matter concerning Mr. Anthony Poon at this stage. We make no criticism of Mr. Poon's conduct at the Inquiry itself. He was the model of courteousness and thoroughness and is duly acknowledged at the conclusion of our report. It came to our attention during the course of the inquiry, during the 4th week, that Mr. Poon was not only representing Mr. LEUNG Wah-chai but was also a non-executive director of Yanion.

We discovered this not as result of being informed by Mr. Poon but by chance. We were somewhat surprised and a little concerned. Surprised because in our opening statement we had stated that legal representatives and also the Tribunal should carefully consider whether any conflicts of interest did or might arise. We felt that Mr. Poon should have taken this opportunity to inform the Tribunal of his Yanion directorship coupled with a statement that he was

confident that it would not affect his representation of Mr. Leung and gave rise to no conflicts.

Our concern was that, given the fact that he was not representing Mdm. BUTT Wing-han and Mr. LEUNG Tai-shing (2 other Directors who were also witnesses) he could find himself in a position of having to cross examine his fellow directors.

We notified Mr. Poon of our surprise and concern and discussed the matter in open court. It transpired that Mr. Poon had only become a non executive director after the SFC investigation and was confident that he could properly represent his client and that no conflicts had arisen or would be likely to arise.

Having accepted his apologies and having stated that we would have preferred to have been informed at the outset we let the matter rest.

Two preliminary hearings were held on May 13th and May 27th 1996. Apart from delivering the Tribunal's opening statement and dealing with a variety of housekeeping matters the main purpose of the preliminary hearing was:

- i) to encourage the parties to agree as much evidence as possible and
- ii) to deal with any matters of law which might require a ruling prior to the hearing.

We are happy to report that the parties were able to agree on abundance of evidence and no contentious matters of law were raised.

It is to Mr. Marash's, Mr. Poon's and Mr. Wong's credit that all evidence which could have been and in our opinion should have been agreed was in fact agreed. The final document headed "Agreed Facts" consists of 14 pages itemizing 91 agreed facts which, in effect, agrees the vast majority of the volumes of documentary exhibits and is annexed to this report at Annexure B.

2. Procedures in the Hearing Itself

In Lord Justice Salmon's Report of 1966 he lists 6 cardinal principles pertaining to Public Inquiries. Principles 4-6 are :-

- “4. (The accused person) should have the opportunity of being examined by his own counsel and of stating his case in public at the inquiry.
5. Any material witness he wishes called at the inquiry should if reasonably practicable, be heard.
6. He should have the opportunity of testing by cross examination conducted by his own solicitor or counsel any evidence which may affect him.”

These principles were followed.

32 witnesses gave evidence. Of these, 27 gave oral evidence on affirmation and 5 witness statements were read as agreed evidence. Of the 27 “live” witnesses the 4 individuals (as opposed to corporations) who had received Salmon “A” letters gave evidence last. They were called and examined in chief by their own solicitors. Counsel of the Tribunal cross examined them. All the other witnesses including Salmon “B” recipients were called and examined by counsel to the Tribunal and cross examined by the solicitors for the Salmon “A” recipients, Mr. Poon and Mr. Wong. Generally speaking questions from the members of the Tribunal were left to the end of each witness’s evidence. The legal representatives were not bound by strict rules of evidence. It is the view of the Chairman that a flexible approach and a liberal interpretation to the rules of evidence is beneficial in inquisitorial proceedings.

In all Insider Dealing Inquiries it is stressed and rightly so that the proceedings are inquisitorial rather than adversarial. Insider dealing in Hong Kong is penal but not criminal. In these circumstances the framework must remain inquisitorial. Two observations or riders to this basic principle, should, in our opinion, be made:-

(a) Adversarial Characteristics:

It is almost inevitable, by the very nature of the issues which arise from an allegation of insider dealing, that different parties adopt opposing stances. If counsel to the Inquiry takes the view that one or more persons have insider dealt and that there is evidence which is capable of proving the same, it is his duty to use his best endeavours to achieve such a finding. If he has no case or even a poor case he should say so. Mr. Marash very properly and helpfully adopted such an approach. It is

unrealistic to pretend that the advocacy in an insider dealing hearing is not akin to conventional adversarial advocacy.

The function of the Tribunal however is investigative and it has wide powers to direct its own proceedings. It is not bound by the original terms of reference. These are all features of inquisitorial proceedings which are entirely appropriate to insider dealing hearings and which enable the Tribunal, amongst other things, to adopt a flexible approach to the rules of evidence.

(b) The Investigative Function:

The 2nd rider follows on from the previous paragraph. ss 16-18 of CAP 395 provide the Tribunal with wide powers - powers which demonstrate that its function is to investigate not merely adjudicate. If necessary, it will investigate beyond those matters investigated by the SFC. A truly inquisitorial hearing could not properly function without such powers. We feel however that it should not be forgotten that an insider dealing inquiry is not an inquiry such as Coroners inquest or an inquiry into a riot or a Government leak. Inquiries such as those conclude with a report containing recommendations. The purpose of this report however is to make findings of wrong doing against individuals. Because of this difference, given the competent and thorough nature of the SFC investigation, there should be an initial reluctance by the Tribunal to open new doors and sail into uncharted waters. We have been fortunate in our inquiry that it never became necessary to look beyond the scope of the SFC investigation in order to carry out our task properly. This is not to say that occasions will arise when it does become necessary to widen the scope of or change the direction of an inquiry but bearing in mind that a Salmon "A" recipient in reality comes to court to defend himself against allegations which have been particularized, it should be the exception rather than the rule of a Tribunal to invoke its powers under s. 18 and thereby tread new ground. The power is important and absolutely necessary but should be exercised with caution.

The Report

Contrary to the Chairman's initial provisional indication made at the conclusion of the hearing our report will be drafted in 2 stages. The bulk of it containing our findings and the answers to the questions posed to us in our Terms of Reference will be sent to the Financial Secretary and the parties as the first stage.

After a reasonable time for the parties to read and consider the first part of the report we will reconvene to hear the parties on the question of what consequential orders should follow our findings. We shall then draft the 2nd and final part of our report.

In adopting this approach we have noted s. 23(2) and s. 24(2):-

- S. 23(2) “The Tribunal shall not make an order in respect of any person under subsection (1) [disqualification as a directors etc. and financial penalties] without first giving the person, and in the case of a person that is a corporation, an officer concerned in the management of the corporation, an opportunity of being heard.”
- s. 24(2) “The Tribunal shall not make an order in respect of an officer of a corporation under subsection 1 [Finding against a corporation] without first giving such officer an opportunity of being heard.”

The Chairman’s interpretation of these sections is that the person or officer’s opportunity to be heard should be, not during the hearing itself but after its findings have been made.

As to the Report generally we have endeavoured to keep it succinct. The evidence is contained in 1954 pages of transcript and 5 Arch files of exhibits. To rehearse it all would be an endless and unnecessary task. We have considered it all. The fact that a piece of evidence is not referred to in the course of this Report is not to be taken as an indication that that evidence has been regarded as immaterial or irrelevant.

CHAPTER 3

THE LAW

Again this chapter can be dealt with under 2 headings:

1. The Ordinance
2. Applicable Legal Principles

1. The Ordinance:

The primary issues which fall to be resolved are:-

- (a) Was LEUNG Wah-chai the real controller of Danbridge, Langer and Golden Key?
- (b) What constitutes “relevant information”?
- (c) If there was relevant information, who used it and whether it was for the avoidance of loss?

The most important sections of the Securities (Insider Dealing) Ordinance CAP 395 as they apply to our inquiry are as follows:-

s. 9 When insider dealing takes place

- (1) Insider dealing in relation to the listed securities of a corporation takes place -
 - (a) when a person connected with a corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;
 - (b) [... not relevant to our inquiry]
 - (c) when relevant information in relation to a corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and the first-mentioned person knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of

dealing, or counselling or procuring another to deal, in the listed securities of that corporation (or in the listed securities of a related corporation);

- (d) [...not relevant to our inquiry]
- (e) when a person who has information which he knows is relevant information in relation to a corporation which he received (directly or indirectly) from a person-
 - i) Whom he knows is connected with that corporation; and
 - ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,

deals in the listed securities of that corporation (or in the listed securities of a related corporation) or counsels or procures another person to deal in those listed securities;

- (f) [... not relevant to our inquiry]

Important words and phrases contained in s. 9 are defined elsewhere in the Ordinance. They are:-

- (i) “connected with a corporation”. this is defined by s. 4:-

4. “Connected with a corporation”

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

- (a) he is a director or employee of that corporation or a related corporation; or
- (b) he is a substantial shareholder in the corporation or a related corporation; or
- (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of -
 - i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
 - ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or
- (d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them

and the listed securities of the other or to the fact that such transaction is no longer contemplated; or

- (e) he was at any time within the 6 months preceding any dealing in relation to listed securities within the meaning of section 9 a person connected with the corporation within the meaning of paragraph (a), (b), (c) or (d).

(2) A corporation is a person connected with a corporation for the purposes of section 9 so long as any of its directors or employees is a person connected with that other corporation within the meaning of subsection (1).

(3) In subsection (1), “substantial shareholder” in relation to a corporation means a person who has an interest in the relevant share capital of that corporation which has a nominal value equal to or more than 10% of the nominal value of the relevant share capital of that corporation.

(ii) “related corporation” means:-

- (a) any corporation that is that corporation’s subsidiary or holding company or a subsidiary of that corporation’s holding company
- (b) any corporation a controller of which is also a controller of that corporation;

(iii) “controller” in relation to a corporation means any person-

- (a) in accordance with whose directions or instructions the directors of the corporation or of another corporation of which it is a subsidiary are accustomed to act; or
- (b) who, either alone or with any associate, is entitled to exercise or control the exercise of, more than 33% of the voting power at general meetings of the corporation or of another corporation of which it is a subsidiary.

(iv) “Relevant information” is defined in s. 8

8. “Relevant information”

In this Ordinance “relevant information” in relation to a corporation means specific information about that corporation which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities.

What constitutes “relevant information” is a central issue in this inquiry. Mr. Marash has submitted a number of matters which constitute “relevant information” and should be treated as such. Mr. Poon and Mr. Wong on the other hand argue that nothing in this case has been proved to be

“relevant information” within the definition. We accept that the information has to be “specific or precise”. The use of the word “or” here implies that information could have a non-precise or even vague quality about it but nonetheless still be “specific”. Also, the information must not generally be known to those who would be likely to deal in those shares and if it were known would be likely materially to affect their price.

In their respective submissions counsel have analyzed each piece of information e.g. the final announcement of the 1992 results, LEUNG Wah-chai’s remarks at the executives meeting on January 18th, 1993, the monthly financial statements, the discussions with Ernst and Young, Yanion’s auditors, the provisional annual results and so on, and submitted whether or not each piece is capable of being regarded as relevant information or not.

We do not criticize this approach which is necessary and helpful. However as it will be seen from chapter 4C we have also felt it appropriate to look at the information as a whole. Individual bits have varying degrees of relevance but one cannot overlook the cumulative effect. A crucial element in the case is whether BUTT Ching-han was trading secretly on LEUNG Wah-chai’s behalf. If so, an element of the secrecy must involve her being privy to, if not all, then certainly most of the information which is the subject of debate. In such circumstances it is unrealistic only to consider each piece of information in isolation. In addition, common sense demands that the overall picture is brought into focus.

- (v) Defences to insider dealing are set out in section 10. In particular we cite subsection (3) and (4):

10. Certain Persons not to be held insider dealers

(3) A person who enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction otherwise than with a view to the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information.

(4) A person who, as agent for another, enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction as agent for another person and he did not select or advise on the selection of the securities to which the transaction relates.

- (vi) Also relevant to the inquiry are:-

13. Duty of officers of corporation

It shall be the duty of every officer of a corporation to take all such measures as may from time to time be reasonable in all the circumstances for the purpose of ensuring that proper safeguards exist to prevent the corporation from perpetrating any act which would cause it to be identified by the Tribunal as an insider dealer.

16. Inquiries into insider dealing

(4) Where the Tribunal identifies a corporation as an insider dealer under subsection 3(b) the Tribunal may also identify any officer of that corporation to whose breach of the duty imposed on him by section 13 the insider dealing in question is directly or indirectly attributable.

(6) Where the Tribunal identifies a corporation as an insider dealer under subsection 3(b), if the insider dealing took place with the knowledge, consent or connivance of any officer of the corporation then such officer as well as the corporation shall be regarded as having been so identified.

2. Applicable Legal Principles

As stated in the Tribunal's opening statement on May 13th, 1996 all matters of fact would be decided by a majority of the Tribunal members. Unless otherwise stated it may be assumed that our decision have been unanimous. Matters of law are to be decided upon by the Chairman alone. Legal representatives were invited to raise any contentious matters of law at the preliminary hearing. None were raised neither did any arise in the course of the evidence.

In the course of their final submissions, Mr. Poon and Mr. Wong sought to "firm up" the standard of proof applicable in these types of proceedings. Under the heading of "applicable legal principles" the question of the standard of proof will be dealt with first.

(i) Standard of Proof

Since the decision of Mr. Justice Stock in the "Success Holdings Limited" Report the standard of proof adopted in subsequent inquiries has been proof "to a high degree of probability". We stated in our opening statement that this would be the standard that would be applied in the Yanion Inquiry. The SHL ruling adds that the degree of probability has to be "commensurate with the occasion" or "Proportionate to the subject matter".

The standard of proof should be simply stated and remain the same throughout. It is a high standard of proof - not the highest reserved for criminal allegations - but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the higher the standard should be. The standard at all times is high. It is not particularly helpful to add further adjectives to “high” in order to emphasize the point. Mr. Wong submitted the standard should be to a “very high degree” or even a “very very high degree”. Mr. Poon used the expression of the “highest end of the civil standard”. It is meaningless to make distinctions between “the highest” and “very high”. It is an inevitable feature of our system that evidence may “satisfy” one judge but not another.

The use of the expression “to a high degree of probability” is intended to refer to the top end of the civil standard. Put the other way around once a finding of fact has been made on the evidence the decision maker or makers should have complete confidence in its correctness.

If a statutory defence is raised under section 10, CAP 395 then there is an onus of proof on the person raising it. That burden is discharged on a balance of probabilities.

(ii) Circumstantial Evidence and Inferences

Decisions in this inquiry depend to a very high degree on the making of inferences and circumstantial evidence. If, as is the allegation, there was an underlying secret arrangement between, in particular, LEUNG Wah-chai and BUTT Ching-han then common sense dictates that they would not have spoken about it openly in public or reduced the arrangement to writing so that there would be any direct or primary evidence of the arrangement.

We have therefore directed ourselves carefully on the proper approach when evaluating such evidence. We have directed ourselves in the following terms:

We may infer from any of the facts which have been agreed or proved before us the existence of some further fact. Such an inference will be a compelling one - the sort of inference that no reasonable man would fail to draw. It should be the only reasonable inference, which is not the same thing as the only possible inference, which may be drawn from the facts already agreed or proved to the required standard.

Circumstantial evidence is not to be regarded as second class evidence. On the contrary it can be as compelling and as probative as any other piece of direct evidence.

(iii) Lies

Our approach to the significance of “lies” in our decision-making process has been to follow to the letter the observations made at 4-28 (page 30) of the Public International Investments Limited Report which we cite herein in full:-

“To the extent that we may decide that lies have been told to the SFC or to this Tribunal we are conscious of the fact that there may be reasons for lies consistent with absence of any wrongdoing, or of the particular wrongdoing alleged, and that it is only if we exclude such reasons that lies may support the allegation of that particular wrongdoing. We are also conscious of the fact that although a lie of itself proves nothing, save that the lie has been told, “lies can in conjunction with other evidence tend to support an inference of guilt in the sense that they can confirm or tend to support other evidence which of itself is indicative of guilt. ... we have ... borne well in mind the question whether a lie may have been motivated not by a realization of guilt of insider dealing, but by a realization of guilt of some other wrongdoing or by a conclusion or fear (whether justified or not) that certain conduct would be viewed by others as improper, or by a feeling that the truth was unlikely to be believed ... also that before a lie may be used to support a particular allegation, we have first to be satisfied that the lie was deliberate, and that it is material to the issue we have to decide”.

(iv) Demeanour

The opportunity that only we, the Tribunal, have to watch and listen to witnesses as they give their evidence or affirmation in court and thereby assess their demeanour is fundamentally important in the fact finding process. A Tribunal is expected to, if and when necessary, take into account a witness’s demeanour when assessing his or her credibility. Demeanour includes the manner in which evidence is given, the choice of words and expressions and the body language which goes with it. It is an imprecise concept and used with caution. It should not for example be used as a convenient catalyst to speed up the conversion of a dubious statement into a dishonest one. With this caveat in mind we state however

that there have been many occasions in this inquiry, when we, the Tribunal members, have commented amongst ourselves about one or another witnesses' demeanour in the witness box and it has played a significant role in the decision we have made and our judgments of different witnesses' credibility.

(v) Loss Avoided

Our inquiry has been solely an issue of "loss avoided" as opposed to "profit gained" as a result of alleged insider dealing.

By section 23(1)(b) of CAP 395 we may order a person to pay to the Government the amount of the loss avoided.

By section 23(1)(c) we may impose a penalty up to 3 times the amount of the loss avoided.

We accept that the "loss avoided" is the difference between the actual sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the non public information.

(vi) SFC Statements

What witnesses said to the SFC in their statements or records of interview is not evidence for the purpose of our inquiry unless a witness specifically adopts it or part of it as his or her evidence in court. Where a witness's evidence in court has, in some way, been inconsistent with his or her statement we have taken the inconsistency into account only in relation to our assessment of the witness's credibility. We have nonetheless given counsel and solicitors considerable latitude in examining and cross examining witnesses about their SFC statements and records of interview. They have been permitted to refer to them, enlarge upon them, qualify them and clarify them.

(vii) Counsel or Procure

"Counselling or procuring" insider dealing is specifically mentioned in s.9 CAP 395. We have had to consider whether or not LEUNG Wah-chai counselled or procured BUTT Ching-han to deal in Yanion shares. To prove LEUNG Wah-chai counselled BUTT Ching-han the evidence must prove that he ordered or advised or encouraged or

persuaded her to deal and she did deal. To prove, in the alternative, that he “procured” her, the evidence must prove that he deliberately set out to cause her to deal (directly or indirectly) and she did deal.

The matters referred to under this chapter heading are not intended to be comprehensive but are intended to highlight the main matters of law which have been relevant to this inquiry.

CHAPTER 4

REVIEW OF THE MOST SIGNIFICANT PARTS OF THE EVIDENCE
AND THE ROLES PLAYED BY THE KEY PLAYERS

(A) Events before and after the listing of Yanion in October 1991

Under this heading we shall examine the events surrounding the listing of “Yanion” on the Stock Exchange of Hong Kong in October 1991 in so far as it is relevant to our terms of reference.

Its relevance is simple. We take the view that it is fundamental to our task to decide if LEUNG Wah-chai was the “real owner” and controller of Danbridge, Langer and Golden Key. If we decide that he was the “real owner” since their incorporation in September/October in 1991 (Danbridge and Langer) and early 1992 (Golden Key) we will then go on to decide whether he was still the true owner during the months referred to in our terms of reference and if the trading by the BVI companies during that time was, in truth, controlled and directed by him.

Mr. Marash in his final submission to us suggested that the Tribunal should consider this issue first of all. Put bluntly, if the evidence does not prove that he was the controller of the BVI companies in 1993 then there is no case against him.

Mr. Poon, on the other hand, in his final submission suggested that the Tribunal need only consider the issue at the end of our deliberations. He submitted that the first issue to be decided was whether or not there has been any “relevant information” proved. If not, it doesn’t matter if LEUNG Wah-chai was in control or not.

We, unhesitatingly, accept and agree with Mr. Marash’s approach. We take the view that LEUNG Wah-chai’s degree of control and influence in the trading by the BVI companies is inextricably linked to his conduct and activities in relation to them when they were formed.

Under this heading we will primarily be reviewing the activities of 3 banks: the Belgian Bank, Unibank and NMB Bank, and 2 stock broking firms: Seapower and Chintung. First of all however the facts concerning how and when the “BVI” companies came into existence are as follows:-

The prospectus for Yanion’s I.P.O. was published on October 8th, 1991. The deadline for lodging applications for shares was October 18th and the company was in fact listed on October 25th.

Danbridge was purchased from a firm of solicitors called Jennifer Cheung & Co. (Jennifer Cheung's statement was read as agreed evidence) on September 24th, 1991 with two issued shares, one to BUTT Ching-han and one to BUTT Shiu-han (LEUNG Wah-chai's sisters-in-law). On October 10th they were appointed as the only directors.

Langer was purchased from the same firm on the same day, September 24th. Its only shareholders were NG Shuet-king and Lolita TSANG Wan-ying (LEUNG Wah-chai's wife's sisters-in-law). They were appointed as the only directors on October 24th. (A 4th offshore company called Parway Services Limited was purchased on the same day with the same directors and shareholders. There will be references to "Parway" in the course of this report.)

Golden Key was incorporated in September 1988 in Liberia and purchased by LEUNG Wah-chai in July 1989. It was inactive until 1992. Its two directors, LEUNG Sum-ching (LEUNG's daughter) and BUTT Ching-han were appointed in April 1992. LEUNG sum-ching held the only share. The facts surrounding the birth of Golden Key some 4 years after its conception are more complex and will be referred to in more detail later in the Report.

It is not disputed that the expenses incurred in the acquisition of all these companies were paid for by LEUNG Wah-chai. It is his evidence that the purpose of purchasing them was to enable various of his family members to embark on their expressed wish to trade in shares. It is, in effect, his evidence that apart from that he knew nothing about them or their trading. It is of significance that we have heard no evidence of any of the shareholders/directors of the companies repaying or re-imbursing LEUNG Wah-chai for the expenses he incurred in acquiring them and maintaining them.

We will now highlight the activities of five institutions in relation to Yanion's listing.

(1) The Belgian Bank

Mr. SO Cheung-wing, the manager of the Belgian Bank gave evidence before the Tribunal. Yanion had been a customer of his Bank prior to its listing and he knew LEUNG Wah-chai was "the boss". When dealing with Yanion affairs his usual contact person was BUTT

Ching-han who was in charge of Yanion's banking matters and who he also regarded as Leung's personal secretary.

In November 1991 BUTT Ching-han applied to the Belgian Bank to open an account in the name of Danbridge. A similar account in the name of Langer had been opened on October 24th 1991. Mr. So had written on the account opening documents the words "related to Yanion Group". These words were written as a result of what BUTT Ching-han said to him at the time of the applications. He also recalled that BUTT Ching-han told him that Danbridge was "within the group". In evidence he further stated that he considered Danbridge to be owned by Yanion. He confirmed that words and comments to this effect were not made by LEUNG Wah-chai but by BUTT Ching-han. By "related to" he meant that the two accounts, Yanion's and Danbridge's, were operated by the same group of people.

The questions which flow from this evidence are - Did BUTT Ching-han say words to this effect? If so why?

We are satisfied that, in particular the words written on the documents "Related to Yanion" were written as a result of comments made by BUTT Ching-han and that they were uttered to provide a true background of the company to the Bank and thereby facilitate the opening of the account.

Details of the use of Danbridge's and Langer's accounts with the Belgian Bank are produced and agreed via Agreed Facts 44-48 and 50-54. The significant facts which emerge therefrom are that:

- the major deposits into Danbridge's account were either proceeds of sales of Yanion shares or proceeds of a large loan taken out by LEUNG Wah-chai with Unibank [see this Chapter section (5)]
- all deposits into Langer's time deposit accounts with the Bank also came from sales of Yanion shares by Langer

When considering the relationship between Yanion and the Belgian bank it is worthy of note that about 13 members of the Bank staff applied for shares in Yanion's I.P.O. Although the evidence concerning the details of and, more particularly, the method of the share allocation to Bank staff is not entirely clear, we are satisfied that BUTT Ching-han indicated to Mr. SO Cheung-wing that 100,000 shares could be allotted to the Bank staff. This was before the oversubscription was known. Individual cheques were collected. They received the full amount of the shares they applied for. This is an indication that BUTT

Ching-han knew in advance what Danbridge would be doing immediately after listing namely buying millions of Yanion shares as part of a market support exercise. That she was able to commit a specific number of shares to Bank employees was a part of, albeit a small part of, that exercise.

Further details of the market support exercise emerge in sections (2) to (5) infra.

(2) Chintung Limited

Chintung Limited was a firm of stock brokers. Since Yanion's listing it has been renamed Standard Chartered Securities Limited. For ease of reference we shall refer to it as "Chintung" throughout the Report.

Chintung was the principal sub-underwriter of Yanion's I.P.O. A related company, Standard Chartered Asia Limited was the sponsor and manager of the offer and was also one of the three underwriters - the other two being Hoare Govett (Asia) Limited and NMB (Hong Kong) Finance Limited.

The key witness from Chintung who gave evidence to the Tribunal was Mr. Percy LAU Fong-ping. His job title was Manager, Corporate Services Department of Chintung.

Omnibus Account - Danbridge

Danbridge opened a share trading account with Chintung on October 8th, 1991 (the day Yanion's prospectus was issued and 2 days before BUTT Ching-han and BUTT Shiu-han were appointed as directors). The opening of the account was organized by Percy Lau and BUTT Ching-han. When considering this account's activity prior to listing, it has been referred to as "the omnibus account". Mr. Lau stated in evidence that the purpose of the omnibus account was to enable friends, relatives, customers etc. to apply for Yanion shares all through one account. He stated that such an account would be easier to administer.

Through this account Danbridge applied for 112 million Yanion shares and was allocated 11.2 million. These shares were paid for by a number of different cheques paid into the Chintung Danbridge account. Some were from the Belgian Bank staff, as already referred to, and one, in the sum of \$5,746,878 was drawn on LEUNG Wah-chai's Belgian Bank account. Thus there is clear evidence that from the first day of its

existence Danbridge is solely concerned with Yanion shares and is directly linked with LEUNG Wah-chai's money. More significant however is the use of the Danbridge account immediately after Yanion listing.

Before moving on to the post listing trading, however, we consider it necessary to make the following comment. We investigated the working of this particular omnibus account in some detail. Although the use of an omnibus account, per se, is not wrong we found that in this case its effect and purpose was an inequitable share allocation among the general public and it further obscured non-compliance with the "25%" listing rule. As is clear from this Chapter we have found as a fact that a market support operation was carried out and a false market created. Shares allocation had been manipulated in such a way that the desired number of shares were acquired by Danbridge which we find to be a "related corporation" as defined by s. 2(1) CAP 395. The use of Mr. Percy Lau's "omnibus account" was a contributory factor in the creation of the false market and share allocation manipulation because the real buyer was the controlling shareholder.

Danbridge initial trading

Danbridge applied for and was granted margin trading facilities on October 22nd 1991. The application was signed for by Danbridge directors BUTT Ching-han and BUTT Shiu-han. The facility was guaranteed by LEUNG Wah-chai. Percy Lau's signature on the same document purports to witness LEUNG Wah-chai's signature. In fact Mr. Lau stated in evidence that LEUNG Wah-chai did not sign in his presence but there is no dispute that it is his signature. [We note in passing that this was one of three instances in this inquiry when signature which purport to witness other signatures were not done at the same time and place and therefore do not, in truth, witness the signature. Such practices are sloppy and should never be allowed to happen. In each case those responsible for appending a witnessing signature to a document which had in fact already been signed at an earlier time and not in the presence of witness appeared not to regard such a malpractice with the same seriousness as the members of the Tribunal.]

The margin facility initially guaranteed was \$5 million.

Immediately after Yanion shares started trading Percy Lau, on BUTT Ching-han's instruction, bought furiously. During the three days after October 25th 1991 he purchased for the Danbridge account over 31 million Yanion shares. Two questions arise?

i) What were BUTT Ching-han's instructions?

In his statement to the SFC he stated that BUTT Ching-han had instructed him to buy at any price to maintain its trading price above its subscription price. Such instructions would make Mr. Lau a knowing party to market support and contravention of the listing rules. Given his knowledge of the close link between Danbridge and Yanion he would have been aware that all Danbridge's purchases were reducing the number of shares that should be in public hands.

In his evidence to the Tribunal he sought to distance himself from what he was alleged to have said to the SFC. His evidence before us was that his instructions were to "buy at around \$1" (the subscription price). He said that he received no specific instruction about the volume of purchases to be made nor did he ask or was made aware how they would be paid for over and above the margin facility. He rejected the suggestion that the motive behind the purchases was to maintain Yanion's opening price so that the flotation would appear a success. We have concluded that Mr. Lau's reluctance to adopt the remarks made in his SFC statement (which he agreed he signed but said he was careless in so doing) is due to the fact he knew he was conducting market support for Yanion through Danbridge. Whether the instructions were in fact "buy above \$1" or "buy around \$1" makes little difference when placed in the context of 31 million shares being purchased against a credit facility of \$5 million.

(ii) Why did he exceed the margin?

In short, his evidence on this question was that it was because of his client's instructions, albeit, he knew that he was trading beyond the margin facility. On any view he was taking a considerable risk by so trading. The internal system at Chintung which permitted such trading is a matter we specifically criticise. The internal control over an account officer's trading appeared very weak. Even when the Credit Committee were later alerted to the overtrading the response seemed to be to remedy the situation in a matter-of-fact way i.e. by increasing the margin facility rather than by an investigation into the reason for Mr. Lau's trading with a view to possible disciplinary action.

As we have said the risk was considerable "on any view". We have considered the extent of the risk on two different views. Firstly, if he knew his trading was truly only guaranteed up to \$5 million and that

above \$5 million his client was no more than a secretary earning about \$15,000 a month then his risk was unthinkable. On the other hand, if he knew or believed or even strongly suspected that Yanion or LEUNG Wah-chai was the power behind Danbridge then the risk, albeit still great, was not as bad.

We are satisfied that the correct view is the latter one. Four factors contribute to this conclusion.

Firstly, by the very nature of the operation. Common sense demands that no broker would overstretch himself to the tune of \$27 million for a new individual client, earning \$10,000 - \$15,000 a month who had never dealt in shares before.

Secondly, Mr. Lau did concede in his evidence before us that he thought that the Danbridge account was “something to do with Yanion”.

Thirdly, the margin facility was in fact trebled without any difficulty on November 2nd. This was as a result of a Credit Committee meeting. A director of Chintung, Mr. Dickson Ho, was present at that meeting and gave evidence to the Tribunal. He produced a memo that he had written at the time when the increase was being considered. It states “The above account (Danbridge) is controlled by Mr. LEUNG Wah-chai, Chairman of Yanion This amount is used to provide liquidity for the shares of the listed company after listing. Mr. Leung is asking for a financing of HK\$15 million” This memo was sent to Mr. Patrick Yeung, the finance director of Chintung - who approved the increase. A copy was sent to Mr. Percy Lau who made no attempt to dispute its contents by, for example, contacting Mr. Ho after he had received it.

Fourthly, we note how the debt to Chintung up to (a) the new margin of \$15 million and (b) up to the actual spending of \$31 million was met.

It was met in part by a cheque for approximately \$4.3 million from a Bank loan with Unibank (see section (5) *infra*) which as we shall see was a loan requested by LEUNG Wah-chai and in part, guaranteed by him. It was further met in part by a cheque for \$11 million from proceeds of a similar loan with NMB Bank [see section (6) *infra*] and partly by a pledge of 20 million Yanion shares into the account. The shares were registered in LEUNG Wah-chai’s name and he signed the letter of pledge.

The Agreed Facts in relation to Danbridge account with Chintung during this period are at Agreed Facts 14-17.

Langer's account with Chintung

It should be remembered that, on paper, BUTT Ching-han had nothing to do with Langer. She was neither a shareholder nor a director. There is no doubt however, and it is not seriously disputed, that BUTT Ching-han "ran" Langer's trading and its directors, Mdm. Ng and Mdm. Tsang did not.

Langer's main trading was through "Seapower" [see section (3)] but in mid November 1991 Langer opened an account with Chintung. Its application for margin facilities was turned down and so it never traded. The proposed guarantor of the margin facilities requested was again LEUNG Wah-chai. On this occasion he was apparently willing to guarantee trading by the two shareholders and directors, both wives of his own wife's brothers. Chintung was not willing to accept LEUNG Wah-chai as guarantor of both accounts. It is of interest to note that once credit was refused the account appeared to serve no function. As we shall see, it did not stop Langer trading through another brokerage house - again all by BUTT Ching-han and almost exclusively in Yanion shares.

(3) Seapower Securities Limited

The three "Seapower" witnesses who gave evidence before the Tribunal were Mr. Stephen HUI Chiu-chung (the senior executive of the Seapower group), Mr. Tony LEUNG King-yuen (a director of Seapower Financial Services) and Mr. Allen AU Kim-fung (a dealing manager with Seapower Securities).

All three BVI companies had trading accounts with Seapower. After the initial surge of buying by Danbridge in late October 1991 through Chintung, most trading by these companies was done by Seapower. The details of the three accounts are at Agreed Facts 21-26.

In short, Langer's account was opened on October 26th, 1991. On November 2nd 1991 margin facilities were granted in the sum of \$1 million which were increased to \$3 million in February 1992. Danbridge's account was opened on December 5th, 1991 and was granted \$0.5 million margin facilities. Golden Key's account dates from April 20th, 1992 with a \$1 million trading margin facilities subsequently approved.

None of the documents relating to these accounts discloses a link between them and LEUNG Wah-chai and/or Yanion. However all trading instructions on their behalf were placed by BUTT Ching-han and they were all basically single stock accounts - the single stock being Yanion.

Seapower's role in our inquiry takes on greater significance when we consider the BVI companies' trading during 1992 and more particularly 1993. This is dealt with later in our Report.

(4) Other accounts

Thus far we have considered the accounts opened only by Danbridge, Langer & Golden Key. The overall picture of the events at the time of Yanion's listing would not be complete without reference to a number of other accounts which were opened at the same time. We have concluded that these accounts provide further evidence, the cumulative effect of which is that the inference that these accounts were used in a market support exercise under the overall control of LEUNG Wah-chai can be safely drawn. The further accounts which were opened during the time were:-

- (i) Parway Financial Services (another BVI company whose directors and operating dates are identical to Langer) had an account with Seapower
- (ii) Parway also had an account with Wardley Thompson Securities Limited
- (iii) An account in the name of Robert Chui (Yanion's financial controller) was opened with Peregrine Brokerage Limited
- (iv) A "Robert Chui" account was also opened with Hoare Govett (Asia) Limited
- (v) BUTT Shiu-han (a Danbridge director) had an account in her own name with Wardley James Capel (Far East) Limited

We will see in due course that the Robert Chui accounts with Hoare Govett and the BUTT Shiu-han account were clearly "fronts" for further trading by BUTT Ching-han in Yanion stock. At this stage in our report it will suffice to note the general direction of these accounts' transaction in late 1991 and early 1992 (in round figures):-

Danbridge : By January 1992 it had a net holding of just under 13 million Yanion shares [approximately 33 million bought (of which 31.5 million were bought between October 25th and October 29th) and 20 million sold by a placement to a Singapore Government Agency].

Langer : By February 1992 it had a net holding of 14 million Yanion shares [24 million bought and 10 million sold].

Parway : By early 1992 Parway had acquired 8.5 million Yanion shares and sold 1 million.

BUTT Shiu-han : This account purchased 12 million and sold 3 million Yanion shares up to June 1992 of which almost 9 million were purchased between October 25th and October 31st 1991.

Robert Chui :In October 1991 his accounts bought 1.5 million and sold 860,000 Yanion shares.

(5) Unibank

This section and the following section deal with certain loans which LEUNG Wah-chai arranged at the time of or soon after Yanion's listing and what the loans were used for.

We heard evidence from Mr. Albert KWAN Ching-fun (the Deputy General Manager of Unibank HK) and Miss Concepta Wong (the Manager of the Bank's corporate section).

We are concerned with two Unibank loans.

The first was arranged in October 1991. As a result of an approach by LEUNG Wah-chai and his brother LEUNG Tai-shing a revolving loan facility in the sum of \$15 million was granted to LEUNG Tai-shing. The Bank accepted the pledge of Yanion shares as security for the loan. A total of 50 million shares were pledged as security. 48 million were shares owned by LEUNG Tai-shing and 2 million by LEUNG Wah-chai. The loan was also personally guaranteed by LEUNG Wah-chai and BUTT Wing-han.

Mr. Kwan was questioned closely about what the purpose of the loan was. The loan was negotiated over the last few days before Yanion was listed. He stated in evidence that the reason given by the Leung brothers was to cover the expenses incurred in the I.P.O. According to

the Bank's documentation the purpose in the Credit Proposal was "to provide the controlling shareholder group (i.e. the Leung family) working capital to support initial share listing of (Yanion) ...". Mr. Kwan stated that he understood this to mean that the Bank was providing financial support to the company in order to meet expenses incurred in the listing. He rejected the suggestion put to him by Mr. Marash that it could mean that the Bank thought the money would be used to support borrowers to buy shares. However he did agree that the expression was ambiguous.

He also rejected the suggestion put by Mr. Poon on behalf of LEUNG Wah-chai that no express purpose for a loan was ever made. Mr. Poon suggested that the Leung brothers simply requested a \$15 million loan for which they would be willing to pledge Yanion shares, merely to utilize as another credit line with no specified purpose. Mr. Kwan stated that the Bank would never loan money on this basis and we accepted his evidence. Mr. Kwan stated that the Bank would only consider a loan if it knew:-

- (a) its purpose
- (b) what security was available
- (c) the applicant's reputation and association with the bank

In reality this was LEUNG Wah-chai's loan not LEUNG Tai-shing's. We were satisfied by the evidence that LEUNG Tai-shing allowed the loan to be in his name and provided 96% of the security because his brother asked him to. LEUNG Tai-shing played no further role in the repayment of the loan or the payment of interest or in whose favour the draw downs should be.

Turning to the evidence of the draw downs Mr. Kwan stated in evidence that when he learnt (as a result of the SFC inquiry in late 1993) that the draw downs were all in favour of stock brokers he was surprised. He also learnt that \$10 million of it was paid out 3 days after it was approved. On October 28th 1991, from this loan, \$5.6 million was paid to Wardley Thompson and \$3.9 million to Seapower Securities. Not long after \$4.34 million was paid to Chintung (as part payment of Percy Lau's excessive buying for Danbridge) and \$1.08 million to Hoare Govett (for the so-called "Robert Chui" account run by BUTT Ching-han) (Agreed Facts 71-72).

Mr. Kwan stated, and we believed him, that he was not aware of the identity of these payees at the time of the draw downs. He described it as "deviation from the purpose of the loan". He accepted that he nonetheless allowed the loan to continue - and granted many extensions

for it during 1992, 1993 and thereafter because he did not think it appropriate to interfere in 1993, when he learnt the facts, and because the credit limit had been gradually reduced and the account had always been properly serviced.

The second Unibank loan was arranged in February 1992. This loan, which was another revolving facility, was offered and accepted on February 13th, 1992. Once again it was suggested by Mr. Poon on behalf of LEUNG Wah-chai that no specific purpose for the loan was mentioned by LEUNG Wah-chai when he initially applied for it. It was to be, it was suggested, just another non-specific credit line. Mr. Kwan's evidence concerning the second loan was that it was asked for so as to meet LEUNG Wah-chai's investment requirements in China. LEUNG Wah-chai was the borrower of this loan and he pledged 43 million of his own shares as security. His wife and brother were the guarantors. Again the actual draw down was very soon after it was approved and not for the stated purpose. On February 25th the entire amount was drawn down in favour of Danbridge's account with the Belgian Bank.

In respect of both loans LEUNG Wah-chai made further pledge by way of Yanion shares, at the Bank's request (later in 1992 when the value of Yanion on the SEHK went down). A total of a further 26 million shares were pledged. The servicing of the loans was to a significant extent by LEUNG Wah-chai himself.

We take the view that Unibank was more interested in the credit-worthiness of LEUNG Wah-chai and in expanding into new business than in the real purpose of the loans. Once granted the Bank's primary concern was that they were properly serviced. Both Mr. Kwan and Ms. Concepta Wong rejected any suggestion that they knew the loans were necessary to carry out a market support exercise for the Yanion shares.

Whether they realized or not we deem it appropriate to observe that the Bank did not supervise whether the proceeds were drawn down in accordance with the stated purpose. We regard this as a weakness in the Bank's internal control system.

Agreed Facts 56-59 deal with the Unibank loans.

(6) NMB Bank

No witness from the NMB Bank was necessary because their loans to LEUNG Wah-chai were not in dispute. The details are in Agreed Facts 60-62. On October 30th, 1991 NMB lent LEUNG Wah-

chai \$10 million. This sum was immediately drawn down in favour of Chintung and credited to Danbridge's account.

The loan was actually arranged before Chintung made a margin call following Percy Lau's excessive buying. It was exclusively used towards payment of those purchases.

On November 12th, 1991 NMB also lent LEUNG Wah-chai \$870,000. In varying amounts this sum was divided between payments to Wardley Thompson (who then credited sums to their accounts with Parway and BUTT Shiu-han) and Seapower (who credited the Langer account).

The matters we have reviewed in Chapter 4A disclose, in general terms, the following situation.

Around the time of Yanion's listing a plethora of stock trading accounts came into existence - six through BVI companies (2 each for Danbridge, Langer and Parway) and three (there might have been more) in individual names (two for Robert Chui and one for BUTT Shiu-han).

LEUNG Wah-chai paid for the incorporation of the BVI companies.

With minor exceptions they only purchased Yanion shares. The Yanion share purchases ran into the tens of millions.

LEUNG Wah-chai was a guarantor of finance required to support the share trading through the BVI companies.

LEUNG Wah-chai gave misleading information to Unibank when securing extensive credit which was immediately used to pay for the share trading accounts.

The accounts were ostensibly managed by BUTT Ching-han. We shall enlarge upon the closeness of the working relationship between BUTT Ching-han and LEUNG Wah-chai later in our report. BUTT Ching-han even managed companies and kept accounts with which, on paper, she had no connection.

If the true reason for the purchase of Yanion shares in 1991 was one individual's desire to make money for herself or her sisters etc. on the stock market then there was no need for BVI companies in the first place. Personal accounts would have achieved the same purpose.

None of our decisions on the major issues have been made before hearing the whole of the evidence. More particularly, none of our decisions on the major issues have been made before carefully considering the evidence of all the members of the family who were witnesses in the inquiry. However, subsequent chapters must be both written and read in the context of our finding in relation to the “1991 issues” which therefore will be stated at this point in our Report. It is that - the totality of the evidence proves that Danbridge, Langer and Golden Key were acquired with the intention that they be under LEUNG Wah-chai’s control and from the time of their acquisition onwards they were, in fact, under his control.

(B) 1992: Did anything change?

In Chapter 4A we examined events in 1991 connected with Yanion’s listing. In Chapter 4C we will examine the events leading up to “the announcement” of Yanion’s 1992 results which was made on May 12th 1993. Chapter 4C will primarily be concerned with what was relevant information, who had it and to what use it was put.

In this section - Chapter 4B - we will highlight some features of the evidence which provide a link between the findings made in Chapter 4A and the events to be considered in 4C. The underlying question being addressed throughout Chapter 4B is - did LEUNG Wah-chai remain in control of the BVI companies after they had been set up and after they had achieved their original purpose of market support at the time of Yanion’s listing?

We consider that 3 features of the evidence provide assistance in answering that question.

- (i) An examination of BUTT Ching-han’s role within the structure of Yanion Company Limited.
- (ii) An examination of the exhibits seized by the SFC during searches under warrant in August 1993.
- (iii) An examination of the trading by the BVI companies during 1992.

(i) BUTT Ching-han’s role

Seven non-family members of staff from Yanion gave evidence to the Tribunal. They were:-

Shirley CHAN Suet-ling	- an account clerk
Monex LI Kin-man	- a management accounting officer
Ms. TANG So-shan	- an assistant accountant
Simon CHAN Tim-kuen	- audit manager
Ms. TSANG Yun-ching	- receptionist
Annie CHEUNG	- the Group's Chief Accountant and Finance and Administration Manager
Robert CHUI-Chi-yun	- Yanion Financial Controller

It is necessary at the outset to clarify the distinction between Yanion Company Limited and Yanion International Holdings Limited. The latter is the listed vehicle and a holding company of a group of subsidiaries and associated companies. Yanion Company Limited is a wholly owned subsidiary contributing approximately 90% of the Group's business. Two PRC companies made significant contributions to the Group's consolidated profit. They were Well Sound in which Yanion held a 50% interest and Well Bond in which it held a 38% interest. This factor becomes more important in Chapter 4C.

When considering BUTT Ching-han's role at Yanion we are referring to Yanion Company Limited whose offices and manufacturing centre were situated in Tsuen Wan. Yanion employed approximately 70 people in Tsuen Wan. The company was divided into about 10 departments e.g. purchasing, sales, personnel, accounting, engineering and so on. BUTT Ching-han was not a department head but her role at Yanion was more significant and more important than her salary of \$10,000 - \$15,000 a month might initially suggest.

Her role was described in a number of different ways by different witnesses. The following are some examples. Shirley Chan said she was LEUNG Wah-chai's secretary who also calculated the wages and did the banking. She understood that documents from the accounts department would be sent to LEUNG Wah-chai via BUTT Ching-han. Similarly she told us that if a fax came in for LEUNG Wah-chai it was BUTT Ching-han who would put it on his desk. One of the four fax machines in the offices at Tsuen Wan was in BUTT Ching-han's room.

Monex Li described BUTT Ching-han as a figurehead who was in charge of general affairs. He told the Tribunal that LEUNG Wah-chai's in-tray was in BUTT Ching-han's office and that she would be responsible for passing documents and faxes to him. TSANG Yun-ching presented a similar picture. BUTT Ching-han's office was next door but one to LEUNG Wah-chai's and was similar in size but not in decor as it was also used to store things. It was noted by a number of witnesses that BUTT Ching-han was in possession of all the keys to the offices, including LEUNG Wah-chai's, at Yanion.

Annie Cheung stated that BUTT Ching-han never participated in the preparation of the monthly management accounts but nonetheless described her as part of the accounts department. She had regular contact with her and she was primarily concerned with treasury and banking matters.

Robert Chui's evidence concerning BUTT Ching-han's role is dealt with more fully in the following section Chapter 4B(ii).

It was finally common ground and stated by a number of witnesses (and accepted by BUTT Ching-han herself) that she had lived with Mr. and Mrs. Leung at their flat in Shatin for many years. The three of them travelled to work by car together each day and frequently went home together as well.

The picture therefore is of a very close working relationship within a very close family run business. It is simply not realistic to attach any credence to the suggestion that it was no more than professional arm's length relationship in which she had no access to confidential information about the company's finances.

We have already stated our finding that BUTT Ching-han was in charge of the BVI companies and their various accounts on behalf of LEUNG Wah-chai. It was clearly because of their close relationship in Yanion affairs that caused LEUNG Wah-chai to entrust her with this task. The closeness of the relationship is also a factor we have taken into account when deciding if the BVI companies remained under LEUNG Wah-chai's control up to and including May 1993.

(ii) Significance of exhibits seized by the SFC

On August 26th 1993 a search was conducted under warrant at Yanion's premises and LEUNG Wah-chai's residence. The evidence relating to the documents seized and their locations was not disputed. It is not necessary to list them all. Before dealing with the two most important seizures (which are annexed to our Report at Annexure C), we mention some of lesser significance:-

- In BUTT Ching-han's bedroom the originals of documents relating to Danbridge, Langer and Golden Key were found. There is nothing surprising in this in so far as it related to Danbridge and Golden Key, both of which she was a director. However, on paper, she had no connection with Langer at all.

- In LEUNG Wah-chai's office were found invoices to Golden Key.
- In BUTT Ching-han's office were found all the documentation in relation to LEUNG Wah-chai's Unibank loans.
- In BUTT Ching-han's office a document dated August 25th 1993 (the date before the search) which purported to be receipt for the sum of \$1,980,000 signed by LEUNG Wah-chai was found. It is claimed to be evidence of a repayment of monies loaned by LEUNG Wah-chai to BUTT Ching-han. It was part of LEUNG Wah-chai's and BUTT Ching-han's evidence that LEUNG Wah-chai loaned very large sums of money to BUTT Ching-han to enable her to trade in shares of her choice through the BVI companies. Documentary evidence of repayments was extremely limited. It included this document which is dated after BUTT Ching-han's first interview with the SFC and the day before it was seized. It is for all these reasons a highly suspicious document.

Of greatest significance, however, in relation to LEUNG Wah-chai's continuing control of the BVI companies, are the documents at Annexure C to which we now turn. Two copies of the same documents, which in all material respects were identical, were recovered. One set with LEUNG Wah-chai's name written in Chinese on the front page was recovered from his office and a second set with BUTT Wing-han's name on the front page was recovered from BUTT Wing-han's office at Yanion.

LEUNG Wah-chai, BUTT Wing-han, BUTT Ching-han, Robert Chui and Monex Li were all questioned about these exhibits. We will refer to them as the BVI financial statements.

The evidence shows that the BVI financial statements were prepared by Robert Chui, assisted by Monex Li on BUTT Ching-han's instructions. Page 1, which is the "Income and Expenditure of Shareholders" is dated March 20th 1992.

Robert Chui was Yanion's financial controller. He worked only part-time for Yanion (the rest of his time being spent running his own practice) between August 1991 and February 1992. He became full time for Yanion for most of 1992 but later reverted to his part time arrangement.

He had never heard of the BVI companies, Danbridge, Langer and Parway, until BUTT Ching-han asked him to prepare the BVI financial

statements. BUTT Ching-han gave him the necessary documents and he prepared the full bundle which comprises:-

- "Table1 - Income and Expenditure of Shareholders (together with "The Report on the Operations of the BVI Company")
- Table 2 - Explanatory notes on Income and Expenditure
- Table 3 - Distribution of Dividends
- Table 4 - Detailed Breakdowns of BVI Company Expenditures
- Table 5 - The Profit and Loss Accounts of the BVI Company (plus the Robert Chui and BUTT Shiu-han accounts) for the period from its commencement of business to the end of February (1992)
- Table 6 - The Balance Sheet of the BVI Company (again, plus Robert Chui and BUTT Shiu-han) as at the end of February"

His evidence in chief was strong evidence against LEUNG Wah-chai and BUTT Ching-han and was largely in accordance with the information he had given to the SFC when he made his statements. For example he confirmed that he was told by LEUNG Wah-chai that Danbridge, Langer and Parway were used to support the turnover and price of Yanion. He said he knew this was their exact purpose which is why they had to be kept secret. He said he was asked to keep them confidential. When the drafts were completed he gave them to BUTT Ching-han as she had requested him to prepare them and had provided him with the basic data. A few days later however he was asked to go and see LEUNG Wah-chai and they discussed them. LEUNG Wah-chai then instructed him to make some amendments. For example in Table 1 the items "Repayment by shares" (to LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing) and "Re-allocation of percentage of shares" were provided directly by LEUNG Wah-chai to Robert Chui. Also he was asked about the item "Repayment by cash and shares". By way of explanation he agreed that money advanced by LEUNG Wah-chai to buy shares through the five accounts (Danbridge, Langer, Parway, Robert Chui and BUTT Shiu-han) was to be repaid by dividends received by LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing plus shares from BVI accounts. It was as a result of such discussions that the documents exhibited in this inquiry (Annexure C) came into existence. He confirmed that it was his understanding that LEUNG Wah-chai and BUTT Ching-han wanted him to make a summary of how the profits from the BVI companies could be allocated between LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing. "It was obvious" he said " their money had been spent on those transactions".

In cross-examination he was occasionally willing to accept suggestions put to him which had a mildly diluting effect on his otherwise damning evidence. The statements themselves were the subject of close scrutiny by counsel to the Tribunal, solicitors for the implicated parties and the Tribunal itself. We are satisfied that BUTT Ching-han initiated their preparation so as to provide LEUNG Wah-chai with up to date details of the funding by LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing for the BVI companies trading in Yanion shares and to inform LEUNG Wah-chai what was due to them from such trading. LEUNG Wah-chai's evidence about them (which is reviewed more fully in Chapter 6) that he first saw them when they appeared on his desk in about March 1992 but as he did not understand them and they had nothing to do with him he put them in a drawer and did not see them again until the SFC found them in August 1993 simply does not stand up. He also denied any discussion with Robert Chui about them.

We are satisfied that Robert Chui's examination in chief tells an accurate and acceptable account. We are enforced in this view by the evidence of Monex Li who was recalled to give evidence on one matter. He confirmed what Robert Chui had alluded to, namely that the BVI financial statements produced to the Tribunal were not the only ones of their type. He recalled being involved in preparing updated versions, initially on a monthly basis. At first he would give the statements to Annie Cheung but later he gave them to BUTT Ching-han. It demonstrates that LEUNG Wah-chai's financial interest in and control of the BVI companies was a continuing thing. It also demonstrates that the BVI companies were administered in Yanion time, by Yanion staff at the Yanion offices.

Before leaving the issue concerning the BVI financial statements we consider it necessary to comment on a particular feature of them, namely, that one of the accounts trading in Yanion shares was in Robert Chui's own name.

The evidence shows that, at the time of listing, BUTT Ching-han, at the same time that the BVI companies were being set up, approached Robert Chui and asked him if he also would lend his name to a share trading account. He agreed and two accounts in his name, with Peregrine and Hoare Govett, were opened. He told us that he did not ask why the accounts were required and his money was not used to open them and trade through them. He felt under some pressure to agree to this because the request was from BUTT Ching-han. His next knowledge about the performance of the accounts came when BUTT Ching-han provided him with all the statements from which he was requested to prepare the BVI financial statements. His only personal dealing in Yanion shares was at the time of listing when he, like many other of the Yanion staff applied for shares in the I.P.O. He sold his soon afterwards at a profit through another broker.

He effectively conceded that his passive acquiescence to BUTT Ching-han's request was somewhat reckless. He could have been liable to losses on the accounts over which he had no control. His explanation was that he "trusted them". It subsequently transpired that his accounts were used in breach of the listing rules to trade in Yanion shares.

Thus we have a "\$10,000 - \$15,000 a month secretary" influencing the group's chief financial officer, a qualified accountant, to lend his name to two accounts over which he had no knowledge or control.

(iii) Trading by the BVI companies in 1992

BUTT Ching-han admits that she alone placed the buy and sell orders for these companies throughout their existence. It is her case that she was trading on behalf of her fellow directors in Danbridge and Golden Key and on behalf of the Directors of Langer. Bearing that in mind, in this section we refer briefly to a number of matters which we consider to be inconsistent with the contention that BUTT Ching-han's sole objective was to make some money for herself, her sister, her sisters-in-law and her niece by buying and selling shares on the Hong Kong Stock Exchange.

- a) If she was trading conscientiously for 5 people one might expect a trading policy or pattern to emerge which was likely to be beneficial to all. However after its initial purchases of over 30 million shares in 3 days, Danbridge's purchases declined. There was sporadic buying in mid-February and early June 1992 but apart from that it was non-existent. Langer on the other hand bought steadily during 1992. Golden Key, when it came onto the scene in May, purchased over a million shares initially, then did not trade at all for the rest of the year except on one day in June 1992 when it bought 12,000 Yanion shares and sold them later the same day at the same price!
- b) If her fellow directors and fellow investors were truly interested in their own company's performance they would not have consented to the funds of Langer and Danbridge being mixed up. However:-
 - In the latter part of 1992 Danbridge accounts received transfers totalling about \$4.5 million from Langer's Belgian Bank account,

- From December 1991 to August 1992 Langer's account at Seapower received over \$20 million from Danbridge's Belgian Bank account.
- c) There is no serious dispute that all the BVI accounts were basically dealing in a single stock - Yanion. BUTT Ching-han's explanation for not buying anything else for her fellow directors was that she "knew Yanion well" and felt confident about it. We find her trading pattern in 1992 to be wholly inconsistent with that of being a fund manager and wholly consistent with that of being LEUNG Wah-chai's front.
- d) The documentation of Golden Key's incorporation and acquisition in 1992 provides further evidence of the continuing role of the BVI companies.

Agreed Facts 32-36 inclusive set out the facts concerning the original acquisition of Golden Key in 1988. LEUNG Wah-chai does not dispute that his funds were used to pay the original expenses incurred.

LEUNG Sum-ching, the sole shareholder and co-director with BUTT Ching-han, became involved with Golden Key in 1992, when, for the first time since its acquisition in 1988, it became active and opened securities accounts with a view to share trading. Her evidence, (which is dealt with more fully in Chapter 6) was that the financing for Golden Key's trading was monies loaned by LEUNG Wah-chai. Her claimed intention was to make money in the early days of her recent marriage.

However the purpose of mentioning Golden Key's commencement of activity in 1992 at this stage of our Report is because of two "minutes of meetings" of the company.

Firstly, in the exhibits, there is a "Golden Key Investments Limited" minutes of meeting (at page 357A attached to Statement 27). It is headed:- "Minutes of the First Meeting of the Directors of the Company held at Flat A, 6/F, 32 Nassau Street, Mei Foo Sun Chuen, Kowloon, Hong Kong at 9:00 a.m. on 3rd October 1988. Present: Ms. BUTT Ching-han (Chairman) and Ms. LEUNG Sum-ching." The address is LEUNG Sum-ching's residential address where she started to live in 1992.

Secondly (at page 357F) is a similar minutes of meeting recording the presence of the same two ladies, at the same address on April 23rd 1992.

The first meeting purported to propose the use of LEUNG Sum-ching's Mei Foo address as Golden Key's correspondence address and that one share in the company be transferred to her.

The second meeting authorized the opening of a bank account in Golden Key's name with the Belgian Bank.

Clearly a meeting in October 1988 in Mei Foo never took place. LEUNG Sum-ching and BUTT Ching-han suggested it was a typing mistake. The Tribunal however concluded that both documents were created at the same time in 1992 and were designed to give the impression that LEUNG Sum-ching had been involved with Golden Key since 1988, which she had not, and more importantly, that LEUNG Wah-chai had not been behind Golden Key at all, which he had.

Furthermore we shall see later in the Report that Golden Key, between May 1992 and May 1993 did little more than buy 1 million shares in 1992 and sell 2 million in 1993 at a much lower price. The extra million shares came from a transaction by BUTT Ching-han about which LEUNG Sum-ching was unaware. She was equally unaware of any details of BUTT Ching-han's trading. Again, this is inconsistent with a young woman embarking on personal investments after her marriage but consistent with Golden Key being another LEUNG Wah-chai owned vehicle with BUTT Ching-han at the wheel.

e) Correspondence addresses

BUTT Ching-han did not use her own address as the correspondence address for any of the 3 companies. The address for Golden Key was LEUNG Sum-ching's home address. The address for Langer was, even more surprisingly, BUTT Shiu-han's home address. BUTT Shiu-han had nothing to do with Langer, she was neither a director nor a shareholder. Langer's directors were Mdm. Ng and Mdm. Tsang. Mdm. Ng also did not know why her company's mail was sent to BUTT Shiu-han. Both ladies said that whenever they received any mail for BVI companies they simply handed it to BUTT Ching-han. BUTT Shiu-han went further and told the Tribunal that even the mail for the account in her own name (including the monthly statements) with Wardley was given directly to BUTT Ching-han to deal with.

She did not open them, she did not read them and she did not understand them.

Conclusion:

The question posed at the beginning of Chapter 4B is answered in the negative.

(C) Relevant Information

In this section we will review the evidence relating to Yanion's performance as a company in 1992 and its finances. We shall decide:-

- (1) What constitutes "relevant information" in the context of our terms of reference and
- (2) Who had it and when

We start by reminding ourselves of the statutory definition of "relevant information". It is "specific information ... which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities".

The SFC investigation was, as we know, sparked off by dramatic selling by the BVI companies in 1993. The selling accelerated from February to May 12th 1993. We look at it in more details in Chapter 5. We answer questions (1) & (2) above in the context of our findings that at all material times LEUNG Wah-chai was the real owner and controller of the BVI companies.

(1) What constitutes relevant information in this case?

We are concerned primarily with financial information. It has been necessary to examine closely many documents relating to Yanion's month by month financial position. It has been necessary also to distinguish between the monthly management statements of Yanion Company Limited and the consolidated statements of the Yanion Group. Probably, the four key dates and information relating to those dates are:-

- (i) May 13th 1992:
Yanion announced its results for the year ended December 31st 1991 which disclosed a profit attributable to shareholders of

\$39.43 million. This exceeded the figure estimated at the time of the I.P.O. which was \$38 million.

(ii) October 23rd 1992:

Yanion announced its interim results for the period January to June (inclusive) 1992 which showed a profit attributable to shareholders of \$2.04 million.

(iii) January 18th 1993:

At an internal meeting of all Yanion department heads (which included LEUNG Wah-chai, BUTT Wing-han and LEUNG Sum-ching but not BUTT Ching-han) LEUNG Wah-chai said that the profit for the year 1992 would be around \$5 million. The evidence shows this was an estimate by LEUNG Wah-chai.

(iv) May 12th 1993:

Yanion announced their final 1992 results which disclosed a profit attributable to shareholders of \$2.43 million for the year.

There were many meetings between January 18th 1993 [(iii) above] and May 12th 1993 [(iv) above]. Some were internal Yanion meetings, some were meetings with Ernst and Young the auditors. The monthly management accounts and the consolidated accounts changed month by month. New figures had to be taken into account, new factors had to be put into the equation, different treatments of year end adjustments were discussed and adopted by both the management and the audit team.

We consider it unnecessary in this Report to recite all the detailed evidence behind the changing figures during the run-up to the final announcement in May 12th 1993. The important facts which provide sufficient flesh on the bones of (i) - (iv) above are as follows:-

- (a) It is important to have in mind at the outset what was said to the public in the Group's statement at the time of the interim half yearly results. There was much questioning and debate in the course of evidence as to what message the words were intended to convey and how the public would have interpreted them.

The document, published on October 23rd 1992 under the heading "Review of Operations and Prospects" stated:-

"During the six months ended June 30th 1992, the Group's turnover was similar to last year despite the general economic downturn in the world-wide electronics industry. However, in order to accommodate the present market

conditions, the Group adopted certain corresponding action and the Group's profit decreased significantly.

Since June 1992, the Group successfully started commercial production of compact disc players, which received considerable demand from overseas customers. In addition, the Group intends to develop a series of laser disc products. At the same time, the Group will continue to consolidate and streamline existing operations to achieve better efficiency.

The Group believes that the expansion into new products and new markets will provide a good basis for future growth.”

In such an announcement any company will want to give to its shareholders as good a picture as possible. Wherever possible it will concentrate on the good news. This statement mentions successful new products, plans for more new products and plans for efficient management. It is an optimistic statement.

(b) Yanion Company Limited management accounts

- On February 12th 1993 the first draft of the Yanion Company Limited management accounts for 1992 were produced. They show a loss by Yanion Company Limited of \$1.81 million.
- On March 6th 1993 a new set of figures for the company showed a profit of \$619,000.
- On March 23rd 1993 the figure had been revised slightly upwards again to \$766,000

The witness in charge of preparing the statements which resulted in these figures was Annie Cheung, the Group's Chief Accountant, Finance and Administration Manager. She was a helpful and impressive witness.

(c) The Yanion Group's consolidated accounts

These accounts include the remainder of the Yanion Group which is not Yanion Company Limited. The remainder is mainly represented by (as already referred to) a 50% holding in the PRC company called Well Sound and a 38% holding in the PRC

company called Well Bond. It also includes interests in other subsidiaries.

During February and March 1993 the Group's auditors, Ernst & Young, were engaged in full audit of the PRC companies. We had the benefit of evidence from three of the Ernst & Young team. They were Ms. Rosa Yeung who was head of the audit team doing the 1992 Yanion accounts; Mr. Dennis KO Kwok-fai who was a senior level I accountant in the team who was particularly involved in the audit of the PRC companies in China and Mr. Bon HO Ka-kui. Mr. Ho was the Ernst & Young partner in overall charge. His statement was read as agreed evidence.

The preliminary results of the PRC audit disclosed worrying information. Ernst & Young advised and recommended that a number of provisions should be included in the consolidated accounts. We only refer to the two most important ones. They were the provisions for bad debts and aged stock in the PRC companies. The first figures mentioned (in round terms) were RMB11 million for bad debts and RMB4.5 million for old stock. Annie Cheung notified LEUNG Wah-chai and BUTT Wing-han about these figures as soon as she received them by sending them a memo. She also expressed her concern about them by writing at the end of the memo "these two items will seriously affect the profit for the year 1992".

A number of meetings took place between Ernst & Young and the Yanion management. Proposals and counter proposals were made as to how the provisions should be incorporated into the consolidated accounts. Those meetings took place in April 1993. The significant facts and figures are:-

- April 13th. Draft consolidated accounts (not including the PRC "provisions") show a profit to shareholders of \$4.19 million.
- April 16th. An adjusted draft account made in preparation for the closing meeting for the final accounts show a profit of \$4.15 million.
- April 16th was the date of the final meeting at Ernst & Young's offices. Adjustments to be made for the PRC companies provisions were discussed but not agreed upon at the meeting. A few days later agreement was reached and Ernst & Young were able to sign the final statement without

a qualification. In short, Mr. Dennis Ko's final audit stated that Well Bond's profit should be reduced from \$1.17 million to a loss of \$110,000 and Well Sound's profit of \$1.62 million into a loss of \$1.87 million. The final effect on Yanion's 1992 figure would be a profit of \$2.777 million. In the end, due to further discussions and some further matters to be taken into account the agreed figure was \$2.434 million.

- (d) LEUNG Wah-chai expected the second six months to show some improvement on the first six months. However it was clear that during the material period the 1992 profit would have a dramatic drop from the 1991 profit of \$39 million and LEUNG Wah-chai's optimism in the half yearly statement was not going to be fulfilled. His estimate of "around \$5 million" in January 1993 although somewhat vague is nonetheless specific. It is the first statement which officially, but not publicly, predicts poor results for 1992. From January 18th to May 12th 1993 it was a question of fine tuning. The writing was on the wall - but on an inside wall not an outside wall.

Subsequent information about the ultimate size of the drop in profits, which the public are not going to hear about until May 12th, is prima facie relevant information. The closer it is to May 12th the greater its relevance is likely to be. If a person decides to off load a large volume of shares to avoid an almost inevitable loss based on inside information, timing becomes important. The sales would be spread over a certain period of time. The seller would need to ensure that the buyers of his over valued shares remained in the market and he would not want to be seen to be dumping at any cost. There is therefore no substance in the argument that because there was no selling on a particular day after a piece of information came to light then it suggests the information was not relevant or price sensitive. The events have to be viewed as a whole.

In conclusion we consider the key pieces of information which were specific, not generally known and likely to affect the price were:-

- (i) LEUNG Wah-chai's statement on January 18th 1993 that the 1992 profit would be around \$5 million.
- (ii) The first Yanion Company Limited draft figures for 1992 showing a \$1.81 million loss on February 12th 1993.

- (iii) The adjusted figure on March 6th showing a \$619,000 profit.
- (iv) The discussion concerning the provisions for bad debts and old stock in Well Sound and Well Bond and Annie Cheung's memo about them dated March 20th.
- (v) The first consolidated annual statement showing a profit to shareholders of \$4.19 million dated April 13th.
- (vi) The final announcement on May 12th 1993 revealing the 1992 profit at \$2.434 million.

(2) Who knew what and when?

(a) LEUNG Wah-chai

Over almost 30 years LEUNG Wah-chai had built up Yanion from very humble beginnings to a publicly listed company with a turnover of approximately \$1/4 billion with 300,000,000 shares which were worth between (approx.) \$1.50 and 50 cents each during 1991-3. We have no doubt that hard work and astuteness combined to produce this successful growth. He is not the sort of man to sit back and reap the rewards of his company by delegating. Yanion was, and still is, his life.

He is the undisputed head of the family and regarded at Yanion, by the staff, as a somewhat revered, slightly remote figure - but very much a "boss" rather than a figurehead.

Evidence from the staff, the family and Mr. Leung himself shows him to be a man who is involved in all important Yanion matters. It would be fanciful to suggest otherwise. There are many instances from the evidence of witnesses describing how they explained things to LEUNG Wah-chai and kept him abreast of and up to date with financial matters. For example Annie Cheung testified that she prepared the Yanion Company Limited management accounts on a monthly basis and she explained them to LEUNG Wah-chai each month. Sometimes the accounts were late but she always explained and discussed them with him. Annie Cheung's memo dated March 20th 1993 concerning the effect of the bad debt etc., provisions for the PRC companies on Yanion was also handed to LEUNG Wah-chai. A copy of it was found in his office during the SFC search in August 1993. She also testified that she explained the consolidated accounts to him and added that "he would definitely want to know about the accounts so as to take corrective action".

Monex Li, the accounting officer, who reported to both Robert Chui and Annie Cheung at different times, testified that one of his responsibilities was to explain documents written in English to LEUNG Wah-chai (Monex Li having got a degree in Business Administration from the University of Hawaii). He added that he would not explain legal documents as that was done by LEUNG Wah-chai's lawyer. When asked about his translating responsibilities he said that when you work for a Chinese family run company you simply do as you are asked. This comment enhanced the notion of a separation not so much between management and staff but between family and non-family.

In short we are satisfied that none of the specific information we have highlighted in Chapter 4, section C(1) would have escaped LEUNG Wah-chai's notice - or more accurately his careful attention.

His "hands on" approach to running the company also satisfies us that the times he would have become aware of the information was almost as soon as it became available. There is simply no evidence or suggestion that any important information was delayed on its way from its source to LEUNG Wah-chai's desk.

(b) BUTT Ching-han

The evidence concerning LEUNG Wah-chai as a recipient of relevant information is direct. There is no direct evidence however of BUTT Ching-han being a recipient. She did not have the title of a head of department, she did not attend senior management meetings and she was not directly involved in the preparation of accounts. However the evidence of her being privy to the information is no less compelling albeit largely circumstantial. We note:-

- (i) LEUNG Wah-chai needed someone to run BVI companies for him to trade in Yanion shares which should have been in public hands. Ideally such a person would be:-
 - (a) a member of the family whom he could trust
 - (b) a member of the Yanion staff with whom he would be in regular contact and
 - (c) someone other than a department head because someone too close to the top could not pretend that he or she did not have access to confidential information.

BUTT Ching-han is the only person who fits these criteria.

- (ii) BUTT Ching-han's role at work and her domestic arrangements. We have already outlined the evidence on this matter. Given its cumulative effect it is wholly improbable to imagine that she would have been religiously kept away from information relating to the company's performance and finances.
- (iii) Finally, simple logic persuades us that a man who (as we have found to be the case in Chapters 4A & 4B) sets up BVI companies as a front for dealing in his own company's shares would keep his "dealer" fully apprised of information relevant to her dealings. Not to do so would defeat the very object of setting them up in the first place.

The final issue, the use to which the information was put by LEUNG Wah-chai and BUTT Ching-han is dealt with in Chapter 5.

CHAPTER 5

AN ANALYSIS OF THE MOVEMENTS IN THE YANION SHARE PRICE IN RELATION TO THE HANG SENG INDEX AND TRADING BY DANBRIDGE, LANGER AND GOLDEN KEY

The Inquiry's first witness was Mr. Alex PANG Cheung-hing. Mr. Pang is a qualified accountant and has been employed by the SFC since 1983. His present position was that of an Associate Director of the Surveillance Department of the Enforcement Division in the SFC. He stated that he was not a stock analyst but rather a stock watcher. He did not predict future movements of stocks - he analysed past movements. He was a specialist witness in the field of stock movements.

He explained that Yanion was a 3rd or 4th liner stock. The 1st liners being the blue chip stocks and the 4th liners being those companies with the smallest capitalization. He agreed that such stocks do not always follow the trend of the market. They can be more volatile. They can be more difficult to dispose of because there is not always a buyer available and vice versa.

He told us that there were over 50 I.P.Os of 3rd and 4th liner stocks during this period, namely 1991 and early 1992. It was his opinion that market support exercises were prevalent at the time. His research showed that on October 25th 1991, the first day of trading in Yanion shares, purchases by Danbridge and Langer represented 75% of all trading. On October 28th their purchases represented 83% of all trading and on October 29th, 61% of all trading.

At the other end of the period, namely the days immediately before the May 12th 1993 announcement we see the mirror image. On May 10th sales by Danbridge represented 32% of all trading, on May 11th, 60% of all trading and on May 12th, 71% of all trading.

After the announcement the share of all trading by the BVI companies was 2% on May 13th and 0% thereafter for 2 months.

In relation to the Hang Seng Index (HSI)

(i) October 25th 1991 - May 13th 1992:

This period is from the day of listing to the announcement of the 1991 results.

The HSI rose by 45%. Yanion rose by 47%. Its highest price during this period was \$1.48 cents on May 8th.

The average monthly turnover was 8.2 million shares. Danbridge bought heavily at first and then Langer took over as a steady buyer. During this period Langer placed approximately 300 purchase orders in varying volumes, usually in the tens of thousands per transaction. On most days its purchases represented over 50% of all trading in Yanion shares and on 40 occasions it represented 100% of all trading.

(ii) May 14th 1992 announcement:

On this day the 1991 profits were published. The profits were \$39.5 million. The price of the Yanion share was unaffected because the projected figure at the time of listing had been \$38 million.

(iii) May 15th 1992 - October 23rd 1992:

This period is from the announcement of the 1991 results to the interim announcement of the results of the first six months of 1992.

The HSI continued to rise. On October 22nd it reached an all time high of 6300 points. Yanion however drifted slowly downwards. The average monthly turnover also dropped significantly. Only 3.3 million shares were traded on average each month. In cash terms this represents an average daily investment in Yanion stock barely in excess of \$100,000. The price of the share on October 23rd 1992 was 78 cents.

(iv) October 26th 1992 Announcement:

Yanion's half yearly figures were announced. They showed a considerable fall in profits to shareholders. The unaudited figure was \$2.04 million (the half yearly figure in 1992 had been \$17 million). In the same announcement LEUNG Wah-chai gave his optimistic statement for the 2nd half of the year. The next day the shares lost 4 cents to 74 cents. 50,000 shares changed hands. During the whole of the following week there was no trading in Yanion shares at all. In other words trading in Yanion at this time was very thin indeed and the half yearly figures had no significant effect on the price. This was partly due to the thin trading, partly due to the optimistic statement and partly due to the fact the figures were only interim.

(v) October 27th 1992 - May 12th 1993 :

Thin trading continued until the end of the year 1992. The HSI fell 22% between October and December. Yanion fell 19%.

1993 however saw a different picture. The market picked up significantly. The HSI reached another all time high of 7003 on May 12th. However the value of the Yanion share did not respond. It continued to fall and then drift at a low price.

The increased activity in the market generally contributed to a substantial increase in turnover of Yanion shares. The average monthly turnover was over 30 million shares. Mr. Pang suggested that an additional reason for the increase in turnover generally during 1993 may have been that Yanion was one of the many small Hong Kong companies which was being targeted for a possible take-over by China enterprises. He said this was only speculation on his part but there were many such rumours in the market place at that time.

(vi) May 12th 1993 announcement:

Before the announcement Yanion stood at 67 cents. The HSI was 7003.

The next day Yanion dropped to 57 cents or 15%. The HSI went up by over 100 points. In answer to questions put to him by Mr. Poon, Mr. Pang stated that the drop was due solely to the announcement. We accepted his answer.

Over the next 10 days Yanion's average price was 60 cents; the HSI continued to rise to 7350. In percentage terms Yanion lost 10% and the market gained 5%.

Graphs illustrating Yanion's price and turnover are at Annexure D.

A schedule of all trading by Langer, Danbridge and Golden Key is at Annexure E.

Selling by BVI companies: January - May 12th 1993:

(i) Sales by Langer:

13th January	830,000
27th January	142,000
29th January	480,000
1st February	320,000

12th February	560,000
15th February	692,000
5th March	80,000
8th March	172,000
9th March	1,924,000
10th March	1,154,000
11th March	60,000
12th March	70,000
18th March	50,000
24th - 31st March	2,386,000
16th April	90,000
19th April	456,000
20th April	256,000
26th April	70,000
27th April	114,000
28th April	760,000
29th April	<u>780,000</u>
	<u>11,446,000</u>

Up to the end of February Langer also continued to make some purchases. Between January 13th and February 25th it purchased a total of 1,414,000. Thereafter it only sold, except for 128,000, for the whole of March, April and May.

(ii) Sales by Danbridge

30th April	1,298,000
3rd May	204,000
10th May	1,004,000
11th May	3,320,000
12th May	<u>4,834,000</u>
	<u>10,660,000</u>

(iii) Sales by Golden Key

3rd May	720,000
4th May	860,000
5th May	<u>500,000</u>
	<u>2,080,000</u>

The heaviest selling is summarised as follows:-

- In the 3 working days after the last Yanion Company Limited management accounts were known (namely March 6th) 3.3 million shares were sold by Langer.
- In the week following Annie Cheung's memo stating the PRC company figures would seriously affect the 1992 results (namely March 20th) 2.9 million shares were sold by Langer.
- In the 2 weeks between the final figure being known by LEUNG Wah-chai and BUTT Ching-han and it being published to the public (namely between April 28th and May 12th) 13.5 million shares were sold by Danbridge and Golden Key.

Reasons for the selling:

Put simply the issue here is - was the selling to avoid the losses which would be incurred as a result of the May 12th announcement or could they have been for some other reason?

The reasons given in evidence by BUTT Ching-han are dealt with in Chapter 6. Briefly, she repeated her explanation originally given to the SFC investigators that she wanted to raise cash to embark on an idea of investing in property in China. This reason was supported by LEUNG Sum-ching and BUTT Shiu-han. In addition she gave more reasons not mentioned in her statement to the SFC. As will be seen from the following chapter we have rejected all but one of the reasons advanced in evidence.

Therefore by a process of elimination coupled with common sense we are driven to the conclusion that the only true reason for the heavy selling was to avoid the inevitable loss that was looming on May 12th. It is only in relation to trading that was solely motivated by an intention to avoid loss that a finding of insider dealing can be made (given of course that the other ingredients have also been proved).

Erring on the side of caution we have decided that all sales after March 6th 1993 could only have been motivated by an intention to reduce losses. Sales prior to that may have been motivated by a mixture of reasons.

Calculation of the loss avoided:

Mr. Pang explained to the Tribunal the method he adopted. It was the subject of careful examination by both legal representatives and the Tribunal. We are satisfied that the method used was both fair and in line with previous inquiries in Hong Kong.

The first stage is to arrive at a base price. The base price is the value - for the purpose of this calculation - of the Yanion share after the May 12th announcement of the 1992 results. The immediate effect was a drop from 67 cents to 57 cents. Mr. Pang informed us - and we accepted his evidence - that a generally accepted method of calculating its value after the market had assimilated the news was to take an average over the next 10 days. This produced a figure of 60 cents as a fair re-rated price.

In answer to suggestions put to him that it might take months rather than days for a share like Yanion to settle down after May 12th, Mr. Pang answered that, in selecting 10 days, he had erred in Yanion's favour. He said that a 3rd or 4th liner would re-rate quite quickly (although not as quickly as a blue chip) and 10 days was more than long enough in order to set a fair picture. He pointed out that had he made the same calculation using 3 days rather than 10 days, the result would have been the same.

Using the base rate of 60 cents the loss avoided is then calculated by taking each transaction since the key date (March 6th) and multiplying the number of shares sold by the difference between 60 cents and the actual sale price above 60 cents.

The BVI companies executed 64 sell orders between March 6th and May 12th at prices ranging from 62 cents (March 8th) and 75 cents (May 4th).

The total of all 64 sell orders:-

Shares sold x (sale price - 60 cents) = \$1,464,180

The breakdown between each company is:-

Langer (March 6th - April 29th)	=	\$404,300
Danbridge (April 30th - May 12th)	=	\$788,200
Golden Key (May 3rd - May 5th)	=	<u>\$271,680</u>
		<u>\$1,464,180</u>

(A full breakdown of the relevant transactions is at Annexure F.)

CHAPTER 6

THE FAMILY'S RESPONSE

In deciding to call this section of our Report “The Family’s Response” we, first of all, remind ourselves that there is no burden of proof, as such, on any particular person. Obviously however, the evidence we have heard, prior to any member of the family giving evidence, threw up many questions which were begging to be answered. Those questions all had one thing in common namely that they were the sort of questions which could only be directed towards “the family”.

We stated on page 1 that Yanion was a “closely knit family-run business”. One feature of that closeness has been that, broadly speaking, the evidence from the seven family members who gave evidence was consistent. In general terms the thrust of their evidence was the same.

There was no serious departure in their evidence as a whole from the following three standpoints:-

- (i) That the BVI companies were set up in 1991 and 1992 (Golden Key) to enable BUTT Ching-han and her sister, her two sisters-in-law and her niece to embark on a new venture of buying and selling shares in order to make money for themselves. Apart from generous financing by LEUNG Wah-chai he was not aware of their activities.
- (ii) The reason for the heavy selling in 1993 was not to avoid losses which were likely to be incurred after May 12th 1993 but were for completely different and totally unrelated reasons.
- (iii) At no time did LEUNG Wah-chai play any role, directly or indirectly in the trading by Danbridge, Langer or Golden Key. Any monies paid out by him either to acquire the BVI companies or to finance their trading were loans to family members the repayments of which were undefined and informal.

The consistency of their combined evidence is due either to the fact that it is the truth or to a united desire to present a picture which absolves LEUNG Wah-chai, in particular, and BUTT Ching-han also, from any wrongdoing. It will be apparent from this Chapter that the latter explanation is the only inference that can be properly and reasonably drawn from all the evidence. Such a picture has been created by a combination of evidence, some

of which was plainly false and some of which was of witnesses claiming to know little or nothing of what was happening.

We do not propose to summarise the evidence of each of the seven family witnesses one by one. The witnesses we heard were (but not in this order) BUTT Ching-han and her fellow directors and shareholders of the BVI companies namely BUTT Shiu-han, NG Shuet-king and LEUNG Sum-ching. In addition we heard from the three major shareholders of Yanion namely LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing. We will review separately and in some detail the evidence of LEUNG Wah-chai and BUTT Ching-han later in this Chapter. Prior to that we will illustrate by reference to all the witnesses the features of the evidence as a whole which have caused us to come to our conclusions.

1. Ignorance

It was a striking feature of the evidence from BUTT Ching-han's fellow BVI Directors and also from BUTT Wing-han and LEUNG Tai-shing how often they said that they "didn't know" something or were unaware of something.

- (i) NG Shuet-king (Langer Director) and BUTT Shiu-han (Danbridge Director) were each asked questions about similar issues:-
 - (a) Experience: Neither of them had any experience in trading on the stock exchange beforehand. Neither knew what, if any, experience BUTT Ching-han had. NG Shuet-king added that she did not know that Langer was a "BVI company", she did not know which shares were to be bought or where the money would come from to pay for them. She did not know how much money she had made or lost. BUTT Shiu-han said she knew nothing about the management of Danbridge or who had paid for it in the first place.
 - (b) Addresses: NG Shuet-king could offer no explanation for the fact that "her" company's correspondence address was her sister-in-law's flat (BUTT Shiu-han). Equally she did not know why mail for Danbridge was sent to her. Equally BUTT Shiu-han did not know why Langer mail was sent to her. Whatever she received she handed it to BUTT Ching-han unopened.
 - (c) Trading Procedures: These ladies were unaware of applications for margin facilities to enable their companies to trade. NG Shuet-king did not know that normally shares had to be paid for within 48 hours unless there was a margin facility and she did not

know that Langer had applied to Chintung for a \$5 million facility. BUTT Shiu-han did not know what her signature on the Danbridge opening forms signified. NG Shuet-king did not know who Langer's brokers were and could not explain how BUTT Ching-han could trade on Langer's behalf when she was neither a director nor a shareholder.

- (d) Trading Details: Neither witness could say they knew at any one time what their company was buying or selling or whether they were making money or losing money. BUTT Shiu-han did not know that she had bought 30 million shares in October 1991 or why she had sold 10 million in May 1993. She did not know that that sale would result in a substantial loss on the Danbridge account. Neither knew that the accounts were trading in Yanion shares almost exclusively. In addition, BUTT Shiu-han's ignorance about her account in her own name at Wardley's was just the same.
- (ii) A separate but brief appraisal of LEUNG Sum-ching's evidence in relation to Golden Key provides further examples of ignorance. When Golden Key was set up she did not know how much money had been provided by LEUNG Wah-chai, nor could she give any details about the Seapower customer trading agreement which she had signed. She did not know why her home address which was acquired in 1992 was used as the registered address even though BUTT Ching-han did all the trading nor could she give a satisfactory explanation for why that address appeared on company minutes dated 1988. She did not know that Golden Key sold over 2 million Yanion shares in two days in May 1993. She did not know the state of account i.e. what sales and purchases had taken place so as to result in an account with 2 million shares in it. She did not know if the sale would be at a profit or a loss. She was unaware what was done with the proceeds of the sale of those 2 million shares.
- (iii) Yanion's shareholders, BUTT Wing-han and LEUNG Tai-shing, also lacked knowledge about a number of matters. LEUNG Tai-shing was LEUNG Wah-chai's elder brother. He ran his own tailoring business and had interests in property in both Hong Kong and U.S.A. in addition to his substantial share holding in Yanion. He agreed to 48 million of his shares being pledged against a \$15 million loan from Unibank in his name. He did not know why the money was needed or what it was used for. He had never heard of Danbridge, Langer or Golden Key even though his name appears as a beneficiary in the BVI financial statements (Annexure C). He could not say what that exhibit was about and he did not know exactly what dividends he had received either by cash or shares.

BUTT Wing-han who was a major shareholder, a director, the general manager of Yanion and the chairman's wife did not know that her husband had lent her sister \$40 million to start trading in shares or that her daughter, elder sister and sisters-in-law were also involved. She was not able to explain why most of these people wanted to start trading at the same time or why BVI companies were required for the purpose. As for Annexure C she knew nothing about it nor did she know what she had received or was entitled to receive, according to the document. She was not aware of BUTT Ching-han's daily trading in Yanion shares through the BVI companies.

2. Reasons for Ignorance

Having quoted many examples of ignorance stated by family witnesses in evidence we must go on to give our findings for why so much ignorance has been claimed. We are satisfied that all the ignorance is explained by a combination of three reasons - (i) trust, (ii) protection of LEUNG Wah-chai, (iii) protection of themselves.

If a particular example of ignorance is in fact real and genuine ignorance, it arises because of one family member's trust in another. An outsider might describe it less charitably as blind trust or naivety. For example NG Shuet-king and BUTT Shiu-han really were ignorant about BUTT Ching-han's trading. They did not know because it was not their business to know. They were willing without question to let their names be used. They knew that they would never be held personally liable for any losses which might occur (there were losses and they never have been held liable) because they trusted BUTT Ching-han to do whatever was necessary to run the family business.

We find however that the closer a witness is to the head of the family the less genuine the claimed ignorance becomes and the less it is explained by the trust factor and the more it is explained by the desire to protect LEUNG Wah-chai or themselves. Take for example BUTT Wing-han's ignorance of Annexure C or LEUNG Sum-ching's explanations of her address appearing on 1988 company minutes. In both instances the witness knew that the truth would be potentially damaging to LEUNG Wah-chai and therefore avoided telling it. They became evasive, simple questions would be avoided by claiming not to have understood them. Their evidence became vague and lacked credibility.

Whether the evidence of ignorance is explained by the trust factor or the protection factor really does not matter. They are the two features which permeate throughout the whole of the family's evidence which cause us to

conclude that their united front - or consistency of evidence is a factor which reduces their credibility rather than enhances it.

3. BUTT Ching-han

As indicated earlier we think BUTT Ching-han and LEUNG Wah-chai merit separate consideration of their evidence. They were the last two witnesses in the inquiry. We can conveniently deal with BUTT Ching-han's evidence under four headings:-

(a) Reasons for creating the BVI companies:

We had no difficulty in rejecting her claim that all the companies and their related accounts were set up to trade in shares generally. She said BVI companies were used rather than accounts in personal names because Percy Lau of Chintung advised her to do this. Her explanation for creating a multiplicity of accounts within the BVI companies was so as to maximize the credit facilities to trade with. When asked why it was necessary to get credit facilities at all when LEUNG Wah-chai appeared willing to lend whatever she wanted she said she "hadn't thought about that thoroughly". She rejected the explanation put to her that it was because LEUNG Wah-chai was borrowing money from various sources to maximize his trading in Yanion shares through herself.

She accepted that she managed all the accounts and that her trading was rarely if ever discussed between her and her fellow directors. Her explanation for the confusing choices of addresses for the 3 companies was that addresses did not matter and she did not always have the correct address available. This does not explain why she did not use her own. Her explanation for LEUNG Sum-ching's Mei Foo address appearing on minutes dated 1988 was that it must have been a typing error.

When asked specifically about the Danbridge account she denied that she had said anything to Mr. So at the Belgian Bank which could have caused him to write "related to Yanion" on the opening documents. Once opened, she did not tell LEUNG Wah-chai that she was only buying Yanion shares. Also LEUNG Wah-chai did not know that the Danbridge account was used, prior to listing, to facilitate subscriptions by customers, friends, bank staff, Yanion staff etc. In fact, BUTT Ching-han herself said that she only became aware that the Danbridge account had been used for this purpose at a later date. She suggested that, at the time, Percy Lau was using the account in this way of his own volition.

The fact that a cheque for \$5.74 million dated a week before the listing and signed by LEUNG Wah-chai was paid on this account to Chintung was explained by BUTT Ching-han in evidence-in-chief as simply “more borrowing” by her to do share trading. In cross examination however she described it as “a gift to the staff” and “it was up to us to decide how to spend it and everybody decided to spend it on buying Yanion shares”. She said she did not know why LEUNG Wah-chai had decided to make such a gift.

As well as shielding LEUNG Wah-chai, BUTT Ching-han was forced to shield herself from time to time. One example was when she was asked to explain the excessive buying of Yanion shares by Percy Lau on the Danbridge account. She said that her instructions to Percy Lau were to buy at “around \$1 or slightly above”. Her evidence again conflicted with Percy Lau’s evidence. She said she had given him no instructions as to the volume of shares that could be bought and only learnt later that 32 million had been purchased. Percy Lau had said that he confirmed every purchase with her immediately afterwards.

(b) Loans from LEUNG Wah-chai

We also had no difficulty in rejecting her claim that all the financing and funding for her trading through the BVI companies was money loaned by LEUNG Wah-chai to her. On the contrary we were satisfied that at all times it was LEUNG Wah-chai’s money being utilised on his behalf by BUTT Ching-han.

She accepted that the initial funding from LEUNG Wah-chai was in the region of \$40 million. She said that there was nothing in writing to suggest this was a “loan” and nothing was either written or said about how and when it should be repaid. She re-iterated that LEUNG Wah-chai had no idea and never asked about her plans to spend the money. When Danbridge over traded in the first few days after listing and LEUNG Wah-chai pledged a further 20 million Yanion shares with Chintung she said he did not ask what shares she had bought.

BUTT Ching-han was questioned in some detail about what repayments had been made to LEUNG Wah-chai. In the absence of any evidence of repayment no credence whatever could be attached to evidence that they were loans. Her description of her repayments was that it had been “continuous”. What little documentary evidence there was in support did not bear this out. She produced two documents (Annexure G). The first [G(a)] had been produced to the SFC when BUTT Ching-han was interviewed by the SFC investigators. It purported to list total “borrowings” of \$47,760,834 and repayments as at

November 27th 1992 of \$8,711,170. November 27th 1992 was the date of the last entry on the document not the date on which the document was written.

When Mr. Marash was questioning her about this document, on the 3rd day of her evidence, Mr. Terry Wong, her legal representative produced the second document [G(b)]. It was a more extensive list of "repayments" which included items she had mentioned when being examined-in-chief by Mr. Wong. Mr. Marash had not seen the document before, it had not been shown to the SFC, it had not been produced during evidence-in-chief. Mr. Wong apologised for its late production and told the Tribunal that his client had given it to him over the summer break. (The Tribunal did not sit between mid-July and the end of August 1996.) BUTT Ching-han had started her evidence before the break and finished it after the break. In any event the Tribunal accepted the document into evidence on the basis that the lateness and circumstances of its production could affect the weight we attached to it.

Whereas G(a) purported to be repayments from Danbridge alone, G(b) purported to be repayments from all three companies. We were not told why no documents for Langer alone or Golden Key alone existed. The additional information contained in G(b) was - additional repayments made by Langer and Golden Key up to November 27th 1992 and further repayments made between November 27th 1992 and the end of 1993. It shows total "borrowings" of \$53,360,834. It shows repayments of \$26,057,800 up to April 1993 and three further repayments between August and December 1993 totalling \$5,480,000 leaving \$21,823,033 outstanding. She was asked about a particular payment of \$1,490,650 on April 14th 1993. She agreed this was a payment from the Belgian Bank to an account in Singapore. Nothing on the face of the documents indicated it was a payment to LEUNG Wah-chai. She said he had property interests in Singapore and making a payment this way was a method of repaying him. Similarly a payment of \$2 million in December 1993 was a payment of money to Unibank. This she explained was done at LEUNG Wah-chai's request because he owed money to Unibank. The ease with which LEUNG Wai-chai was able to make such an arrangement illustrates his closeness to and control of cash.

There was only one repayment made in 12 months from August 12th 1992 (on April 14th 1993) even though the BVI companies had sold all their shares by May 1993. Then approximately \$6 million was paid between August and December 1993. Her explanation was that LEUNG Wah-chai never pressed for payment. A more significant fact

which explains the delay is that the SFC investigation began in August 1993.

(c) BUTT Ching-han's role at Yanion and her involvement with Annexure C

We have already made our findings in relation to BUTT Ching-han's role at Yanion and her close working and family relationship with LEUNG Wah-chai. We simply say at this stage that nothing emerged from her own evidence which caused us to adjust our findings on this issue. One topic however is worthy of special mention and that is her part in the preparation of the documents exhibited at Annexure C - the BVI financial statements.

She agreed that Robert Chui prepared the documents as a result of a request from her. However she claimed that she did not ask him to produce everything that appears in them. She said she did not ask him to prepare the document setting out the respective percentages of the dividend income to LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing. She also claimed no knowledge of the documents detailing the trading by the five named accounts nor the "report on the BVI companies". She added that although it was her initial request to Robert Chui she never saw the result of his work. She denied the suggestion that the whole statement had been instituted by her so as to provide LEUNG Wah-chai with up to date details and progress of the BVI companies' trading.

BUTT Ching-han had to admit some knowledge of the documents because her handwriting appeared on certain pages, on her own admission. She denied however any part of them which might point to LEUNG Wah-chai's involvement. She also denied ever seeing the final result of Robert Chui's work and further denied that she was involved in the preparation of similar updates throughout 1992. We did not believe her.

It was clear to the Tribunal that BUTT Ching-han was fully aware of the whole document, not just part of it and that it was prepared for LEUNG Wah-chai. Robert Chui's evidence was that the shares to be given to LEUNG Wah-chai, BUTT Wing-han and LEUNG Tai-shing were to come from Danbridge, Langer and Parway. Being the "manager" of these companies we are satisfied that she was fully aware of these transfers.

Her knowledge and involvement with the Annexure C documents is a telling example of her role at Yanion as the manager of the BVI companies under LEUNG Wah-chai's control.

(d) BUTT Ching-han's reasons for the selling exercise between March 6th and May 12th 1993

When questioned by the SFC investigators she gave as her main reason for selling off over 20 million shares over the relevant period her wish to raise capital so as to invest in property in China. LEUNG Sum-ching and BUTT Shiu-han also gave some evidence in support that this idea was mentioned to them by BUTT Ching-han. It was accepted by all of them that no particular property was ever considered, no steps were taken to advance the idea, no money was ever spent on PRC property and the idea was never discussed again after the initial general proposal.

She also made reference to the SFC investigators that she had in mind advice given to her by Seapower's Stephen Hui that, at the time of the advice in October - November 1992, anything over 60 cents for a Yanion share would be expensive.

Before the Tribunal she repeated both these reasons (except that she thought Stephen Hui's advice was later than October/November 1992). In addition she added three more reasons:-

- (i) a wish on her part to reduce her outstanding loans to LEUNG Wah-chai
- (ii) her knowledge about a letter from the Sumitomo Bank dated November 19th 1992 and addressed to LEUNG Wah-chai. By that letter the Bank temporarily suspended Yanion's trading facility because of its interim financial statements and a business forecast was requested.
- (iii) the ability of the market to absorb the volume of shares she wanted to sell.

We are satisfied on the whole of the evidence that all these explanations [except (iii)] can be safely rejected for the same reason namely, her desire to conceal the truth. Her first response when first asked for an explanation was to give a vague ill-considered reason which she soon realised would not be believed. The later reasons amount to no more than an attempt to invent more credible explanations. They are easy to dismiss, however, when placed against the volume of evidence which points to the true reason which we have already detailed in earlier

chapters. The property in China explanation is without any substance. Any anxieties caused by the Sumitomo Bank letter in November 1992 had well passed by April 1993. Similarly Stephen Hui's advice (which we find would have been given in or about October 1992) could easily have been acted upon earlier than March/April 1993 when the heavy selling began.

4. LEUNG Wah-chai

LEUNG Wah-chai in his evidence to the Tribunal covered the same issues that we have already dealt with. To rehearse them again would serve no purpose. We will give a brief outline only. It is based on two premises:-

- (i) That he had no control over and very little knowledge about the BVI companies
- (ii) Relevant information which he had was not passed on to BUTT Ching-han for her to utilise in a loss avoidance exercise in March - May 1993.

He said to the Tribunal that:-

- He had no control over Danbridge. BUTT Ching-han never mentioned which shares Danbridge was trading in. His cheque for \$5.7 million to Danbridge on October 18th 1991 was a loan to BUTT Ching-han. He did not know why the Danbridge account with the Belgian Bank was referred as being "related to Yanion". He did not know why the Danbridge account with Chintung was recorded as being "controlled by LEUNG Wah-chai ..." and "to provide liquidity in the shares after listing".
- He did not know who the directors or shareholders of Langer were. He had no control over Langer.
- He gave Golden Key to his daughter in 1992 for her to trade in shares. He did not know about its activities or what shares it traded in. He did not know that BUTT Ching-han was her co-director in Golden Key.
- He had never heard of Parway or BUTT Shiu-han's account with Wardley or Robert Chui's accounts with Hoare Govett and Peregrine.

- He loaned BUTT Ching-han very large sums of money for her to make profits in share trading. He did so because she was a family member. The loans were not documented. He confirmed that Annexure G(b) was an account of the loans made together with partial repayments.
- The two Unibank loans were for personal credit only. No other reasons were given to the Bank for the loans. He denied ever saying that the first one was “to support the initial listing of Yanion”.
- Annexure C was seized from his office during the SFC search on August 26th 1993. He had first seen it in March 1992 when it had appeared on his desk. He spoke to Robert Chui about it but as it had nothing to do with him he put it in a drawer where it remained until August 1993. He did not say to Robert Chui that he wanted the documents to “see where his money was coming and going” or that the five named accounts were “used to support Yanion’s price during listing”.
- He knew the 1992 results would be poor in comparison to 1991. In the interim announcement (October 26th 1992) he wanted to tell the shareholders that the Company would work hard and that prospects were good.
- He frequently discussed the monthly management accounts with Annie Cheung. The figures were explained to him.
- The first information he had about the unusually large amounts of bad debts and aged stock problems in the PRC companies, Well Sound and Well Bond was when he received Annie Cheung’s memo about them on March 22nd 1993.
- He was active in the discussions and negotiations with Ernst & Young leading up to the publication of the 1992 results on May 12th 1993. (There was no dispute about all the relevant dates and figures which have already been set out in earlier chapters.)
- He never gave BUTT Ching-han any confidential information about Yanion’s finances.

Our final conclusions about LEUNG Wah-chai’s evidence were made after certain features of it were highlighted upon closer examination.

For example, we noted that the combined value of the cash advanced and shares pledged in October 1991 was over \$100 million. The cash alone represented approximately 50% of his admitted net worth. We cannot accept that such a sum would be advanced to a family member with no experience in share trading who then recruited other family members to act as directors and shareholders without his knowledge. He had to accept that there was not one documentary exhibit showing any repayment directly from BUTT Ching-han herself or from any account in her name or in the name of any of the family members.

It is also impossible to accept his claim that the two \$15 million loans from Unibank and the \$10 million loan from NMB were for personal credit only and without any specific purpose, such as to assist the trading of Yanion shares, in the face of payments in the sum of approximately \$25 million to brokers in the last 3 days of October from the loans.

His reason for the first Unibank loan being in LEUNG Tai-shing's name also does not bear close examination. He said that it was because it was LEUNG Tai-shing's shares (i.e. 48 out of the 50 million) being pledged. At the time LEUNG Wah-chai could easily have pledged his own shares which he did soon afterwards when he pledged 63 million for another loan. We are satisfied that the reason was to avoid, as far as possible, his own name being attached to the loan which was intended to be used to pay brokers for buying Yanion shares.

His evidence concerning the BVI financial statement (Annexure C) directly conflicts with other evidence (which we accept) and flies in the face of common sense. We are satisfied that Robert Chui and Monex Li gave honest and accurate evidence on these matters and we relied on their testimony. Given that LEUNG Wah-chai's position was that of a blanket denial of any breaches of the listing rules or insider dealing he had no choice but to dispute both the oral testimony and the "incriminating" documents which revealed a close and direct connection between himself and the BVI companies and their activities. However we found his attempts to dispute this compelling evidence to be transparent.

Finally, given the obvious truth that BUTT Ching-han was the "manager" of the BVI companies, which he controlled for the purpose of having control over Yanion shares which should have been in the public domain, his denial that he instructed BUTT Ching-han to sell in 1993 and his claim that he never revealed confidential Yanion information to her is without foundation.

CHAPTER 7

CONSEQUENCES OF THE TRIBUNAL'S FINDINGS
IN RELATION TO ITS TERMS OF REFERENCE

Every loss of 10 cents or so which was avoided as a result of a sale of each Yanion share between March 6th 1993 and May 12th 1993 was borne by an unwitting purchaser. As we know this happened with over 20 million shares.

It has been said many times before and it is worthy of repetition here, that the intention behind all Securities Legislation is to create a "level playing field" for investors. In the particular context of this close family run company, the analogy can be taken one step further: it is also intended to eliminate the "home advantage".

Before the start of the inquiry Salmon letters were sent to four individuals as being "implicated" persons against whom findings of insider dealing may be made. Letters were also sent to the 3 BVI companies. It was open to us, as the inquiry progressed, to reduce that list if we felt any one of the four had been wrongly implicated or extend the list if we decided that more individuals were at risk of a finding being made against them. At the conclusion of the evidence the list had been neither reduced nor extended. Our starting point therefore is to decide if insider dealing has been proved against these four individuals and three corporation and no-one else. Our decision not to extend the list precludes from making findings against anyone else. This will not deter us however from making adverse criticism, later in this chapter, of the use of people as directors of off-shore companies who in reality know little or nothing of the companies' activities, play no part in its management and are unaware of their duties as directors.

In setting out our final decisions we will deal with LEUNG Wah-chai and BUTT Ching-han and BUTT Ching-han's use of the BVI companies first. In so doing we will make no further reference to the evidence which we have fully canvassed in chapters 4-6. Our findings of facts upon which we base our decisions in relation to LEUNG Wah-chai and BUTT Ching-han is all contained therein.

In relation to the two remaining recipients of Salmon letters however (viz. LEUNG Sum-ching and BUTT Shiu-han) we consider it necessary to elaborate somewhat because in our report thus far we have not dealt with the evidence for and against them specifically.

1. We have decided that the evidence proves to the required standard that the conduct of LEUNG Wah-chai amounts to insider dealing within the provisions of both s. 9(1)(a) and s. 9(1)(c) of the Securities (Insider Dealing) Ordinance, CAP 395 of the Laws of Hong Kong.

The evidence proves that he was a person connected with Yanion International Holdings Limited (“Yanion”) and was in possession of information which he knew was relevant information in relation to Yanion and that he counselled or procured BUTT Ching-han to deal in listed securities of Yanion through three off-shore companies known as Danbridge Investments Limited, Golden Key Investment Limited and Langer Services Limited (Danbridge, Golden Key and Langer) knowing that she would deal in them. [s. 9(1)(a)].

The same evidence also proves that he, directly or indirectly, disclosed relevant information to BUTT Ching-han knowing the information was relevant information in relation to Yanion and knew that BUTT Ching-han would make use of it for the purpose of dealing, through Danbridge, Langer and Golden Key, in the listed securities of Yanion [s.9(1)(c)].

2. We have decided that the evidence proves to the required standard that the conduct of BUTT Ching-han amounts to insider dealing within the provisions of both s. 9(1)(a) and 9(1)(e) of the Securities (Insider Dealing) Ordinance CAP. 395.

The evidence proves that she was a person connected with Yanion and was in possession of information which she knew was relevant information in relation to Yanion and dealt in Yanion’s listed securities through Danbridge, Langer and Golden Key [s.9(1)(a)].

The same evidence also proves that she had information which she knew was relevant information in relation to Yanion which she had received (directly or indirectly) from LEUNG Wah-chai, knowing that he was connected with Yanion and knowing he held the information by virtue of that connection, she then dealt in Yanion’s listed securities through Danbridge, Langer and Golden Key [s. 9(1)(e)].

We have been invited by Mr. Poon and Mr. Wong on behalf of the implicated parties to consider the provisions of s. 10 of CAP 395 which contains provisions described as statutory defences. In

particular we have been referred to s. 10(3) and (4). They provide that:-

“10(3) A person who enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction otherwise than with a view to the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information.

10(4) A person who, as agent for another, enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes that he entered into the transaction as agent for another person and he did not select or advise on the selection of the securities to which the transaction relates.”

We remind ourselves that the burden of establishing a defence is on the person who relies on it and that burden is discharged by the Tribunal being satisfied on a balance of probabilities. We have considered these provisions in the light of all the evidence but our findings remain unchanged.

3. Having named Danbridge, Langer and Golden Key as the corporations in whose names the insider dealing transactions were carried out we consider them to be identified as insider dealers for the purposes of this Report.
4. BUTT Shiu-han. Every sub-section of s. 9(1) of CAP 395 contains the word “knows”. In varying contexts the element of “knowledge” is an important ingredient of insider dealing.

The argument that she, like the other directors and shareholders of Danbridge, Langer and Golden Key, was a “person connected” to Yanion is a compelling argument. The argument is that she was a director of a related corporation within section 2. As LEUNG Wah-chai was the controller of both Yanion and Danbridge then a director of Danbridge is a person connected with Yanion.

Where the allegation or suspicion against BUTT Shiu-han falls down is in proving to a high degree of probability that she knew the relevant information and knew that it was relevant information. All the evidence points to her being a mere name at the head of Danbridge. Once set up she had little or no discussion with BUTT Ching-han about its activities, none of her money was involved, she was never made aware of any profits or losses and she never opened or read any of the correspondence

relating to Danbridge or its accounts. Similarly, she was blissfully ignorant about the account in her own name.

We are also mindful of s. 13 of CAP 395 when considering BUTT Shiu-han's role. s. 13 states -

“It shall be the duty of every officer of a corporation to take all such measures as may from time to time be reasonable in all the circumstances for the purpose of ensuring that proper safeguards exist to prevent the corporation from perpetrating any act which would cause it to be identified by the Tribunal as an insider dealer.”

We have already identified Danbridge as an insider dealer we must therefore consider the provisions of s. 16(4) as well -

“Where the Tribunal identifies a corporation as an insider dealer ... the Tribunal may also identify any officer of that corporation to whose breach of the duty imposed on him by section 13 the insider dealing in question is directly or indirectly attributable.”

Thus we ask - was BUTT Shiu-han in breach of s. 13 and if so, was Danbridge's insider dealing attributable to that breach, directly or indirectly?

Whilst it is obvious that BUTT Shiu-han took no measures at all to ensure that Danbridge had proper compliance procedures governing the company's dealings we do not think that, in the particular circumstances of this case, we can go on to say that we are satisfied to the required standard that her breach was a significant cause of Danbridge's insider dealing.

We also wish to avoid an unjust outcome to this inquiry. We consider there is little or no difference in the roles played by BUTT Shiu-han, NG Shuet-king or Lolita TSANG. We find ourselves precluded from making any findings against NG Shuet-king and Lolita TSANG and therefore conclude for all the above reasons that it would be unjust to identify BUTT Shiu-han as an insider dealer.

5. LEUNG Sum-ching's position is slightly different. Unlike BUTT Shiu-han, NG Shuet-king and Lolita TSANG, she was an employee of Yanion - in fact she was head of the purchasing department of Yanion - and the Chairman's daughter. Also, she has not been portrayed as an unsophisticated, disinterested housewife. The first question we ask is if it has been proved to the required standard that she knew what the true reason was for

the sale of 2 million shares by Golden Key between May 3rd and May 5th. We have already stated that she was an unimpressive witness when under cross-examination. She prevaricated in her answers and the more she was pressed to give a specific answer the more she became evasive.

Her credibility as a witness was further damaged by the occasions when she sought to qualify or change or put a different gloss on answers she had given to the SFC when she was interviewed by their investigators.

For example, to the SFC she had said that she knew Golden Key was set up to buy Yanion shares. Before the Tribunal she said she meant that she had told BUTT Ching-han that her father would lend them money if they wanted to trade in shares. To the SFC she said that decisions to buy and sell shares were made jointly by BUTT Ching-han and herself. To the Tribunal she said this was untrue and that in fact BUTT Ching-han had made all the decisions alone and her untrue answer to the SFC was because she might look foolish or incredible if she did not say the decisions were joint ones. To the SFC she said that her father and mother knew Golden Key had been set up to trade in Yanion shares. Her evidence in the inquiry was that she did not know if her parents knew or not but had assumed that BUTT Ching-han would have told them.

She gave a corroborative account of BUTT Ching-han's idea to invest in property in China. We have already found that at the material time there was no such plan. We can only conclude therefore that this evidence was more collaboration than corroboration. The fact that she was willing to give evidence in support of a false smoke screen after the event does little to help us decide what she truly knew at the material time.

All the evidence concerning the actual trading by the BVI companies points to BUTT Ching-han acting alone. Witnesses from Seapower and Chintung all referred to the fact that all the orders were placed by BUTT Ching-han. The evidence falls short of proof that LEUNG Sum-ching was a knowing party to Golden Key's selling in May 1993. There is no reliable evidence of them acting in concert. Throughout its existence Golden Key's trading was very sparse. It purchased a million shares in May 1992, it carried out a minor buying and selling exercise in June 1992, an extra million Yanion shares were credited to its account at the beginning of May 1993 and then its entire shareholding was sold

between 3rd -5th May. We feel that any evidence LEUNG Sum-ching gave which suggested she knew about these transactions was an attempt to persuade the Tribunal that Golden Key was given to her by her father so that she could trade in shares generally to make money for herself and she independently engaged the assistance of BUTT Ching-han. By saying this she was trying to protect her father by distancing him from any knowledge of Golden Key's activities. We are sure however that her actual knowledge was much more remote.

In short we are satisfied that the justice of the case is met by a finding that BUTT Ching-han was trading alone when insider dealing during the material time.

As with the directors of all the BVI companies, LEUNG Sum-ching paid scant regard to her duties as a director. We strongly disapprove of the practice of giving directorships to people who have no intentions of acting in accordance with the standards expected. It is unfortunate that the system cannot prevent such directors being appointed. Often, as in this case, they are vulnerable people who are used for purposes beyond their knowledge and comprehension. It is primarily for this reason that we have erred on the side of leniency when considering their roles in this inquiry. We are conscious of the fact that it is outside our terms of reference to make any recommendations concerning the regulation of directors of companies whether they be public or private, offshore or onshore. What is desirable is a procedure whereby someone who is about to become a director acknowledges in writing that he or she has had the responsibilities of being a director professionally explained to them and that he or she understands them. This would make some contribution towards the strengthening of the absolute nature of a director's liabilities in certain areas.

Having said that and upon a careful appraisal of the evidence we cannot say in this case that any failure by LEUNG Sum-ching under the provisions of s. 13 of CAP 395 was attributable to the insider dealing done by Golden Key. In making this finding we acknowledge that we have not specifically addressed the question of how the expression in s. 13 "all such measures as may from time to time be reasonable in all the circumstances" should be interpreted. The key to our finding in relation to LEUNG Sum-ching is that although there is suspicion surrounding her conduct the evidence does not amount to the "knowledge, consent or connivance" as set out in s. 16(6).

6. In answer to the determination requested by the Financial Secretary in his Notice to the Insider Dealing Tribunal dated March 2nd 1996 we find that :-

(a) there was insider dealing in relation to Yanion International Holdings Limited arising out of the dealings in the listed securities of that company by Danbridge Investments Limited, Golden Key Investment Limited and Langer Services Limited between March 8th 1993 and May 12th 1993 (inclusive)

(b) the identity of each insider dealer is

LEUNG Wah-chai
BUTT Ching-han
Danbridge Investments Limited
Langer Services Limited, and
Golden Key Investment Limited

(c) the loss avoided as a result of such insider dealing was \$1,464,180.

7. This does not conclude our report. Our report must include our decisions as to what orders pursuant to s. 23 - 27, CAP 395 should follow our findings. Before making those orders the individuals and corporations against whom findings of insider dealing have been made must have an opportunity of being heard.

We therefore will send Chapters 1 - 7 inclusive to the Financial Secretary and to the legal representatives of those mentioned in paragraph 6(b) above.

We will arrange a date in the near future when the Tribunal will reconvene for the purpose of hearing the parties on the matter of consequential orders.

Following that hearing our orders will be set out in Chapter 8 and the completed report will be sent to the Financial Secretary and published.

CHAPTER 8

PENALTIES AND ORDERS

Having sent Chapters 1-7 of our report to those against whom findings of insider dealing have been made and having given them a reasonable time to read and consider them, the Tribunal reconvened on October 22nd 1996 to hear mitigation and submissions concerning the appropriate orders and penalties to be imposed following our findings.

1. The Ordinance:

We are firstly concerned with s. 23 of CAP 395.

s. 23(1) of the Ordinance provides that:-

- (1) At the conclusion of an inquiry, where a person has been identified in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders -
 - (a) an order that that person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order;
 - (b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;
 - (c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.

When considering whether a penalty should be imposed and if so, in what amount of money [under ss. 23(1)(b) and (c)] or whether there should be an order of disqualification [under s. 23(1)(a)] we have been mindful of the following principles:-

- (i) An admission of insider dealing is a mitigating factor. A denial is not an aggravating factor.
- (ii) A financial penalty should reflect the Tribunal's assessment of the seriousness of the case. Only the most serious cases will

attract the maximum multiplier and only then after (iii) below has been considered.

- (iii) The Tribunal should take into account the insider dealer's ability to pay and should not impose a penalty beyond his or her means. The wealth of the insider dealer is not a reason for increasing the penalty.
- (iv) The possibility or even probability that the penalty will be paid by someone else should not be taken into account.
- (v) When deciding the appropriate quantum of financial penalties under s. 23(1) the Tribunal should take account of the amount of costs the insider dealer will have to pay under a s. 27 order. In other words, the principle of totality applies.
- (vi) It would be only an exceptional case in which no order was made under s. 23(1)(a). In most cases where privileged information has been used for personal gain at the expense of the ordinary investor and where the person or persons have abused their position of trust by using or disclosing confidential information, some orders under s. 23(1)(a) will inevitably follow.
- (vii) The length of the disqualification under s. 23(1)(a) will depend on both the seriousness of the case and the mitigation advanced.
- (viii) S. 25 provides that where a penalty is imposed on more than one person under s. 23(1)(c) the aggregate amount of the penalties imposed shall not exceed three times the profit gained or loss avoided by all persons as a result of the insider dealing.

We are secondly concerned with s. 27 of the Ordinance.

For the purposes of this inquiry it provides that:-

At the conclusion of an inquiry, the Tribunal may order any person who has been identified as an insider dealer to pay to the Government such sums as it thinks fit in respect of the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the purposes of the inquiry.

Prior to hearing submissions on the question of costs the Tribunal made some preliminary observations which we repeat herein.

Firstly, we take the view that it is arguable that the costs incurred by the SFC in carrying out its investigation could be included in the Tribunal's order for costs against an insider dealer. However we have not invited such an

argument because we have decided in this case to exclude those costs - (a) so as to be consistent with decisions made in previous inquiries and (b) in the exercise of our discretion as to costs generally.

Secondly, the Tribunal has not been involved in any way in the calculation of the Attorney General's Chambers' costs. We will simply receive their account and add it to the final costs order.

Thirdly, the costs of the Tribunal have been limited to the fees and salaries of the Chairman, the ordinary members and the Tribunal staff, together with the costs of verbatim reporters and the court interpreters. The costs of machinery, accommodation and stationery have not been included. For each month since his appointment, only a percentage of the Chairman's salary has been included which is intended to reflect the amount of time actually spent on this inquiry.

In addition to these matters we remind ourselves that:-

- (i) costs generally are within the discretion of the Tribunal
- (ii) a costs order should be compensatory not punitive
- (iii) a person's ability to pay is a relevant factor when deciding how to exercise the Tribunal's discretion on the question of costs.

2. The Mitigation

On behalf of LEUNG Wah-chai

Mr. Poon urged a number of points in mitigation on his client's behalf. We summarize them (and comment where necessary) as follows:-

- (i) Mr. Leung has, over the last 30 years, built Yanion into a successful business. Yanion employs over 3,000 people in China. He has been dedicated to his business and his family. He has risen from humble beginnings and little education to a position of a successful, respected and wealthy businessman. The Tribunal accepts this general assessment. As in all cases, hitherto good character is a mitigating factor.
- (ii) Mr. Leung has already been censured by the Stock Exchange for his breaches of the listing rules. They arose, in part, because of his lack of understanding and the fact that they were not adequately explained to him. We do not regard this as a mitigating factor. Firstly, as Chairman of a listed company, it is

his duty to fully understand the rules. Secondly, although there are obvious similarities in the nature of the wrongdoings they are separate matters and require separate penalties.

- (iii) Much time and therefore much cost was saved in the inquiry as a result of considerable amount of evidence and documents being agreed. We accept this and credit is due to all concerned.
- (iv) Compared to the amount of money which Mr. Leung has put into Yanion over the years - for the benefit of minority shareholders as well as majority shareholders - the amount of the loss avoided in this case, namely \$1.4 million, is relatively small. We do not regard this as a mitigating factor.
- (v) It was suggested that a “loss avoided” case is not as serious as a “profit gained” case. We do not agree that such a distinction can be made.
- (vi) It was further submitted that Mr. Leung is highly regarded in the PRC. He is an “honourable citizen” in three cities in Southern China and is an executive member of 10 associations in the same region. Whilst we are impressed with this information we cannot allow our decision on the appropriate penalty to be influenced by the inevitable effect it will have on the person’s reputation. Naturally, however, the information, which we accept, contributes to his good character.
- (vii) It is argued that the Tribunal should take into account the implications on the other shareholders and investors generally when considering the question of disqualification. Mr. Poon expressed concern that any disqualification might have an adverse effect on Yanion business. For example, the confidence of purchasers, on-going joint ventures, credit facilities at Banks and his contacts in China may all suffer. We accept that such factors might persuade a Tribunal to shorten the length of a disqualification but they should not cause a Tribunal to impose no disqualification at all.
- (viii) It was submitted that the Tribunal could consider disqualifying Mr. Leung from directorships in any company or companies except Yanion. We see no logic or merit in this submission.
- (ix) Finally, we agree and note that the inquiry has been “hanging over” Mr. Leung and his family for over 3 years. This has caused understandable anxiety.

On behalf of BUTT Ching-han

Mr. Wong, on BUTT Ching-han's behalf, associated himself with the principles and general mitigating factors advanced by Mr. Poon.

In particular he added:-

- (i) Over the 18 months that BUTT Ching-han traded through Danbridge, Langer and Golden Key she in fact made a loss.
- (ii) Any wrongdoing on her part, which she denies, may have been occasioned by ignorance on her part.
- (iii) The combined effect of the SFC investigation, waiting for the inquiry and the inquiry itself has caused her great anxiety and may be regarded as sufficient punishment.
- (iv) Mr. Wong asked the Tribunal to take into account that much of the evidence against his client was inferential and circumstantial. We do not regard this as a relevant matter in mitigation.
- (v) Mr. Wong said "it is a tradition and culture of Chinese family firms and companies that the maintaining of the family bond is important and we invite the Tribunal not to impose punitive punishment for a fine Chinese tradition". We note that whatever the culture a strong family ethic is to be admired and encouraged. In Chinese culture we agree that it is particularly strong in the business world. Such bonds have many advantages and would never be punished or criticized unless, that is, they are maintained at the expense of honesty. If this happens all their values are instantly extinguished.

3. Orders and Reasons:

The full text of our orders is found at Annexure H. In outline they amount to -

- (a) an order that LEUNG Wah-chai pays the full amount of the loss avoided, namely, \$1,464,180 under section 23(1)(b).
- (b) an order that a penalty of \$2 million be paid by LEUNG Wah-chai and BUTT Ching-han under section 23(1)(c). LEUNG Wah-chai is ordered to pay \$1.7 million and BUTT Ching-han \$300,000.

- (c) an order that both LEUNG Wah-chai and BUTT Ching-han be disqualified from holding directorships for a period of one year under section 23(1)(a).
- (d) an order that LEUNG Wah-chai pays the costs of the inquiry under section 27. (The combined costs of the Attorney General's Chambers and the Tribunal are estimated to be \$3.5 million.)

It will firstly be noted that we have not apportioned the order under section 23(1)(b) or the costs order between LEUNG Wah-chai and BUTT Ching-han. We have taken the view that, as BUTT Ching-han was at all times acting for and on behalf of LEUNG Wah-chai when she insider dealt, the only financial penalty against her should be one under section 23(1)(c). The brunt of the financial penalty is to be borne by LEUNG Wah-chai.

Secondly, we have made no orders against Danbridge, Langer or Golden Key. We have been told and accept that they have been dormant since 1993. We have been told what their present assets are. Danbridge has about \$340,000 in cash and shares, Langer about \$35,000 and Golden Key \$14,000. No purpose would be served by imposing such penalties on them which would strip them of their remaining assets. The mischief perpetrated through them would not be cured by such an order. We have however regarded their assets as LEUNG Wah-chai's assets (he being the true controller of them) when deciding the level of financial penalty to be imposed on him and his ability to pay it.

The penalty of \$2 million represents a multiplier of slightly under 1.5 times the loss avoided. This is intended to reflect our assessment of the gravity of the case. We have also been mindful of the individual's ability to pay. We are satisfied that BUTT Ching-han can and should pay the \$300,000 penalty from sales of her Yanion shares of which she owns a considerable number. We have been provided details of LEUNG Wah-chai's means which are substantial and have no doubt that he is able to pay the penalties and costs which will total approximately \$7 million. To allow a reasonable amount of time to make the necessary arrangements for these payments to be made we grant 6 months' time to pay. All penalties and costs shall be paid on or before May 1st 1997.

Our choice of one year as the length of disqualification under section 23(1)(a) is an attempt to keep it to a minimum bearing in mind the mitigation advanced. We cannot accede to the plea that there be no order of disqualification or that, in LEUNG Wah-chai's case, any disqualification specifically excludes Yanion. In all the circumstances we regard one year to be sufficient, anything less would be manifestly inadequate.

ACKNOWLEDGEMENTS

The Chairman wishes to express his genuine sense of good fortune in being so well served and assisted at every level in the Yanion Inquiry.

The commercial and business community of Hong Kong is fortunate that people such as Mr. Felix CHOW Fu-kee and Mr. Michael SZE Tsai-ping are willing and able to give their time, expertise and experience to sit as members on Insider Dealing Tribunals. They have provided invaluable assistance both in the inquiry itself and to the Chairman in particular. They have put in many many hours' work outside the court sitting times. Their contribution has been highly professional, diligent and conscientious at all times.

The fact that the inquiry has flowed smoothly, virtually without interruption or discord, is due largely to the helpful and sensible approach adopted by the legal representatives. As counsel to the inquiry, Mr. Daniel Marash, assisted by Ms. Beverly Yan, has discharged his duties with commendable skill and thoroughness. Mr. Anthony Poon, assisted by Ms. Alice Choi and Mr. Terry Wong have prepared and presented their cases meticulously and always concentrated on the main issues. Evidence was invariably agreed when it was right and proper to do so. They balanced their duties to their clients on the one hand and to the Tribunal on the other most professionally.

As in all court cases involving specialist terminology the highest standard of interpretation is necessary. Such a standard has been achieved in this inquiry. Equally, the accuracy and expedition of the team of "verbatim recorders" has been most valuable.

The administration of the Inquiry has been in the most capable hands of its Secretary, Mr. Patrick CHUNG Chan-yau. We are indebted to him for his unfailing efficiency and attention to detail. The Chairman's Secretary, Miss Mary AU Lai-chun has also performed her duties to a very high standard. We are grateful also for the important contributions made by the Tribunal's Clerical Officer, Ms. LEUNG Yim-foon and Office Assistant Mr. Michael WONG Kam-chiu.

In this particular inquiry we have not found it necessary to go back to the SFC to require further investigations to be made. This we feel is an indication of the comprehensive nature of their investigative work. A harmonious combination of expertise, thoroughness and fairness characterises their approach to the very important tasks they undertake.

The Honourable Mr. Justice Burrell
Chairman

Mr. Felix CHOW Fu-kee, FHKSA, FCPA(Aust.),
ACIS, FBIM
Member

Mr. Michael SZE Tsai-ping, FCA, FCCA, FHKSA
Member

October 29th 1996