REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

CHEE SHING HOLDINGS LIMITED
(now renamed as Tysan Holdings Limited)

between

June 1st and July 5th 1993 (inclusive)

and on other related questions

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CHAPTER 1

INTRODUCTION

Between November 17th 1997 and February 13th 1998 the Insider Dealing Tribunal has heard evidence and submissions on 37 days pursuant to a notice under s. 16(2) of the Securities (Insider Dealing) Ordinance (CAP. 395). The notice was served on the Tribunal on April 21st 1997 and required it to inquire and determine whether insider dealings took place between June 1st 1993 and July 5th 1993 inclusive in relation to the listed securities of Chee Shing Holdings Limited. Paragraph (a) of the notice required the Tribunal to investigate the dealings in those securities by six named individuals.

Our assessment of the evidence and our findings in relation to it commence in Chapter 4 of this report. In this chapter we will set out non-contentious facts and figures, list the witnesses whose statements and testimony we have considered and summarize the key issues in the inquiry. Chapters 2 and 3 will deal with matters of procedure and law.

Background and key events

1. The implicated parties

The six individuals whose conduct has been the subject of the Chee Shing inquiry are:-

(a) Mr. LEUNG Chee-hon. Prior to July 5th 1993 Mr. LEUNG Chee-hon (who we shall hereafter refer to as Leung CH) was the Chairman of Chee Shing Holdings Limited (referred to as "Chee Shing"). He sold the whole of his controlling interest in Chee Shing (approximately 116 million shares representing about 39% of the total shareholding) on July 2nd 1993.

(b) Mr. Francis CHEUNG Nim-chee (who we shall refer to as Francis Cheung hereafter). He was the prime mover behind the purchase of Leung CH's shares - the "take-over". He had

known Leung CH for about 6-7 years. After the take-over Chee Shing was renamed Tysan Holdings Limited. Francis Cheung is now Vice Chairman of Tysan Holdings. Leung CH stayed on after the take-over as a director of the new company until July 1994.

(c) Ms. Cammie PANG Kam-chi (who we will refer to as Cammie Pang hereafter). Cammie Pang was an employee of Francis Cheung's group of companies. The exact description of both her working and personal relationship with Francis Cheung was a subject of sensitive debate in the course of the inquiry. As this chapter deals with only non-contentious matters we will merely describe it as very close.

(d) Mr. Henry Lai. Henry Lai and Francis Cheung had been business partners for many years. He became Chairman of Tysan after the take-over. His involvement in the take-over itself was not as great as Francis Cheung's.

(e) Madam ZHANG Xiao-zhu. Madam Zhang is Henry Lai's wife. Her involvement in the inquiry arises out of a purchase by her of 800,000 Chee Shing shares on June 18th and June 21st 1993.

(f) Madam WONG Mui. Wong Mui is Cammie Pang's mother. 750,000 Chee Shing shares were purchased in her name on June 21st 1993.

The purchases at (e) and (f) above are relatively minor transactions which we have endeavoured to consider as separate issues. The main transaction which has been the subject of this inquiry was the sale of 10,874,000 Chee Shing shares on June 23rd 1993. The beneficial owner of these shares was Mr. Robert Law. Mr. Law was a director of Chee Shing until August 1993. However he had emigrated to Australia in April 1991 and had not been involved in the management of the company since then. He and Leung CH had been close business partners and friends for many years.

The Chee Shing inquiry has primarily been concerned with the involvement of Leung CH, Cammie Pang and Francis Cheung in this transaction. However because of the central role played by Cammie Pang there has been some inevitable overlap in our consideration of this transaction and (f) above. We have nonetheless considered them as separate issues.

2. The structure of the "take-over"

On July 5th 1993 an announcement was published by Chee Shing that a conditional sale and purchase agreement had been entered into on July 2nd. The seller was Leung CH who had agreed to sell all his Chee Shing shares at $1.20 per share. The purchaser was Power Link Investments Limited. This company was incorporated purely as a vehicle for the purposes of the offer. It was a British Virgin Island company and Francis Cheung was its sole director. It acquires 116,500,000 Chee Shing shares as a result of the agreement.

Power Link Investments was a wholly owned subsidiary of Golik Metal Industrial Company Limited. Leung CH's shareholding, once purchased by Power Link Investments was initially split as to 51% to China Metallurgic (H.K.) Limited, a wholly owned subsidiary of China Metallurgical Import and Export Corporation (CMIEC), 40% to PANG Tak-chung, a director of Golik Metal and 9% to Bofield Holdings Limited, a company owned by Francis Cheung and Henry Lai.

At a later date, July 26th, it was announced that Power Link's shareholding structure had been changed. Instead of CM(HK), PANG Tak-chung and Bofield owning 100% of Power Link, the new structure gave them 40%. The remaining 60% was taken up by Eastern Glory Development Company, a company owned by Bofield Holdings Limited. The effect of this change was that whereas at July 5th CMIEC's interest was in 51% of the shares sold, from July 26th its interest was in 20.4%. Bofield Holdings' interest, on the other hand rose from 9% to 63.6%.

The structure is illustrated by the chart at Annexure C.

Prior to July 5th the first piece of official public information concerning the take-over was an announcement by the SEHK on June 25th which merely stated that an approach had been made by an independent third party to Chee Shing's major shareholder and that negotiations were taking place but no agreement had been reached. No further clues as to the identity of the parties involved or the price or quantity of the shares involved were given.

The four announcements of June 25th, July 1st, July 5th and July 26th are included in this report at Annexure B.

3. Witnesses before the Tribunal

In addition to the six implicated parties the Tribunal received evidence from 17 witnesses.

(a) Brokers

(i) Mr. Samson Li: Mr. Li was a dealing director with Tung Shing Securities Limited. Robert Law was a client of his. His firm was holding the 10.874 million Chee Shing shares (of which Robert Law was the beneficial owner) in the name of Rapid Gain Limited which were transferred out by placement on June 23rd 1993 to 2 other securities firms into the name of Cammie Pang. The actual agreement was clearly before this date because the transfer was recorded at 10:01 a.m. on June 23rd at the Hong Kong Stock Exchange. At that moment it was a "done deal".

(ii) Mr. KWAN Tat-yung: Mr. Kwan was a dealing director of Win Wong Securities Limited. Cammie Pang became a client of his in June 1993. His firm was one of the two firms who received the Robert Law shares on June 23rd from Tung Shing Securities. He received 5.874 million of them.

(iii) Mr. Anthony Fan: Mr. Fan was a trader with Paul Fan Securities Limited. Cammie Pang had been a client since

April 1992. His firm received the remaining 5 million Robert Law shares on June 23rd 1993.

(iv) Mr. SHUM Cham-chi: Mr. Shum was a retired broker with Yardleys. He was a close friend of Henry Lai's.

(v) Ms AU-YEUNG Wing-yee: Ms Au-yeung was not a broker but a manager with Standard Chartered Bank Limited. Madam Zhang was her client. She bought and sold the 800,000 CSHL shares for Madam Zhang which are the subject of this inquiry.

(vi) Mr. YIP Kwok-kay: Mr. Yip was a dealing director of Wing Yip Securities Limited. Both Cammie Pang and Francis Cheung had been clients for some years prior to 1993. Transactions in the name of WONG Mui were done through his firm as a result of Cammie Pang's instructions.

(b) <u>The Robert Law shares</u>

(i) Ms SHIU Lai-fong: Ms Shiu was Robert Law's sister-in-law. She had nominally become a director of Rapid Gain after Mr. Law had gone to Australia. This was simply because the company held the Chee Shing shares in Hong Kong and she had remained here after Mr. Law had gone to Australia. There was no dispute that Robert Law remained the beneficial owner of the shares.

(ii) Mr. Robert Law: Mr. Law was a director of Chee Shing when it was floated in 1991. He became a non-executive director after he emigrated. After floatation he owned 21 million Chee Shing shares. By June 1993 his remaining shareholding was 10.874 million which he wanted to dispose of. He was persuaded to sell all his shares at $1.20 per share on June 21st. Over the next week the price rose dramatically reaching a high of $2.95.

(c) The "take-over"

(i) Mr. Theodore Liu: At the material time Mr. Liu was the Hong Kong representative of Skaddens, a US law firm. CMIEC was a major client of his. It was he who first contacted Francis Cheung and Henry Lai in connection with his client's wish to target a Hong Kong listed company so as to get a Hong Kong listing. CMIEC had already acquired Golik Metal on May 7th 1993. Golik was not listed. It was during meetings in Beijing between June 17th and June 19th 1993 that formal discussions first took place between Francis Cheung and CMIEC and others about an offer being made for Leung CH's major shareholding in Chee Shing.

(ii) Mr. PANG Tak-chung: Mr. Pang was a director of Golik Metal Industrial Company. It was immediately after the Beijing meetings that he was first approached about the possible purchase of the Leung CH shares being done by Golik through a wholly owned subsidiary, Power Link as the take-over vehicle.

(d) Mr. LEUNG Pak-ming:

Mr. LEUNG Pak-ming is Leung CH's brother. After the Chee Shing floatation he owned 45 million Chee Shing shares. On June 1st 1993 he sold 10 million of his shares. The relevance of this disposal was challenged by counsel appearing for Francis Cheung and Cammie Pang. The Tribunal decided that the circumstances of this sale should be investigated as being potentially relevant within our terms of reference. We also decided however (and informed all parties at an early stage) that we would not, in the Chee Shing inquiry, make any finding of insider dealing in relation to the LEUNG Pak-ming sale on June 1st. The unusual circumstances of the way in which the sales were disposed of and to whom are dealt with later in our report.

(e) The implicated parties

(f) The expert witnesses:

The Tribunal heard evidence from four experts. In total their evidence spanned six days and was primarily directed to the issue of whether or not, information, if known by an individual, qualified as relevant information, as defined by s. 8 of CAP 395.

(i) Mr. Alex PANG Cheung-hing: Mr. Pang has given evidence in a number of insider dealing inquiries. He is a qualified accountant and has a diploma in Advanced Securities Markets Analysis. He has been employed by the Securities and Futures Commission ("SFC") or its predecessor ("OCS") since 1983. In April 1997 he became a Director of Enforcement in the SFC.

(ii) Mr. Thomas E.F. Heale: Mr. Heale was called to give evidence on behalf of Leung CH. He has over 30 years' experience in varying aspects of the securities business. His present company, Investor Information was set up in Hong Kong in 1992. It specializes in advising Far Eastern companies of who the actual and potential investors in their companies are.

(iii) Mr. Richard Arthur Witts: Mr. Witts was also called on behalf of Leung CH. He is a chartered accountant by profession and is now the managing director of a member firm of the SEHK, United Mok Ying Kie Limited. He has previously been a director of Jardine Fleming Securities and Schroder Securities.

(iv) Mr. Clive D.C.L. Rigby: Mr. Rigby's attendance as a witness was arranged by counsel to the Tribunal. He has over 30 years' experience in the futures and securities industry in both Europe and Hong Kong. He is now the Managing Director of Lippo Securities Limited.

(g) SFC search

Two witnesses were called at the end of the inquiry to deal with a peripheral issue which had arisen in relation to the search of Francis Cheung's and Cammie Pang's offices.

(i) CHING Khei-cheong - an SFC officer
(ii) LUI Tat-kwan - an accountant employed by Keep Rich Consultants

We deal with the expert evidence as a whole in Chapter 4.

4. Key events:

April 1991	-	Robert Law emigrated to Australia.
August 1991	-	Chee Shing borrowed HK$40.5 million from a Cheung Kong subsidiary through a convertible note. The note was redeemable for Chee Shing shares at a price between $1.35 and $1.68.
7 May 1993	-	CMIEC acquired Golik Metal.
May 1993	-	Leung CH told Francis Cheung that his brother LEUNG Pak-ming was interested in selling his shares.
May 1993	-	Francis Cheung became a partner in Golik Metal.
1 June 1993	-	LEUNG Pak-ming sold 10 million Chee Shing shares to a joint venture at $1.12 per share.
17 June 1993	-	Leung CH agreed to sell 116.5 million Chee Shing shares at $1.20 per share. Francis Cheung would be part of the buying group.

17-19 June 1993	-	Francis Cheung, Henry Lai, PANG Tak-chung and representatives of CMIEC and CM(HK) Limited met in Beijing, primarily to discuss Golik's business. The possible acquisition of Chee Shing was discussed at the end of these meetings.
21 June 1993	-	At 8:32 p.m. after a number of phone calls that day, Robert Law agreed to sell his 10.874 million Chee Shing shares at $1.20 per share. His agreement to sell was by telephone to Leung CH.
23 June 1993	-	The sale of Robert Law shares was executed through the SEHK at 10:01 a.m.
25 June 1993	-	SEHK announced that an approach had been made to Chee Shing's major shareholder and negotiations were taking place. Chee Shing share price rose to $2.575.
1 July 1993	-	Chee Shing shares suspended by SEHK (at company's request).
2 July 1993	-	Sale and purchase agreement between Power Link and Leung CH for purchase of 116.5 million Chee Shing shares at $1.20. Chee Shing price closed at $2.60.
5 July 1993	-	The sale and purchase agreement was officially announced. Chee Shing closed at $1.95.
6-15 July 1993	-	Chee Shing traded between about $1.80 and $2.40 on July 15th.
25 July 1993	-	Further announcement altering the share structure of Power Link which reduced the interest held by CMIEC's subsidiary CM(HK)

Limited. Share price dropped to $1.80 (from $1.95) and thereafter traded within a very narrow band on low turnover.

The timings of the key events in relation to the suspect trading is illustrated in Annexure E.

5. The Key issues

A significant proportion of the time spent hearing evidence in this inquiry was in relation to matters which were peripheral but nonetheless relevant to the key issues. The most obvious example is the sale of 10 million Chee Shing shares by LEUNG Pak-ming on June 1st 1993.

This report will concentrate on the key issues and only deal with the peripheral matters in so far as they are relevant to answering the questions posed in our terms of reference.

The issues are :-

In relation to

(i) Robert Law's 10.874 million shares.

(ii) Madam Zhang's purchase of 800,000 shares.

(iii) The 750,000 share purchased in the name of WONG Mui.

does the evidence prove to the required standard that:-

(a) The alleged insider dealer or a person counselling or procuring a deal was a connected person as defined by s. 4 of CAP. 395 (where sections 9(1)(a), (c) and (e) are being considered)?

(b) In relation to sections 9(1)(b)(d) and (f) was a take-over offer of Chee Shing being contemplated at the material time?

(c) The alleged insider dealer either "dealt" as defined by s. 6 CAP. 395 or alternatively counselled or procured others to deal?

(d) At the time of the deal or counselling or procuring the alleged insider was in possession of relevant information as defined by s. 8?

(e) The alleged insider knew he or she was in possession of relevant information at the material time?

Further issues which must be addressed before any person can be identified as an insider dealer are:-

(i) What is the meaning of "contemplating" in s. 9(1)(b), (d) and (f) of CAP. 395?

(ii) Does the information which the evidence may prove to be in an alleged insider's possession qualify as relevant information as defined? In outline it must be proved that such information was specific about Chee Shing, not generally known to people who were accustomed or would be likely to deal in Chee Shing shares and would have materially affected the price if it had been generally known to such people.

(iii) What is the relevant time of the alleged dealing or counselling or procuring? The definition of dealing includes buying and selling shares and also agreeing to buy and sell shares. This issue is relevant to the "Robert Law" shares. In particular, what Leung CH actually knew and when is critical?

(iv) If the ingredients of insider dealing are proved, do the defences in sections 10(3), 10(4) and 10(6) apply? For an alleged insider dealer to rely on section 10 he or she must discharge the burden of proving that the defence does apply on a balance of probabilities.

CHAPTER 2

PROCEDURE

1. The Tribunal

The constitution and operation of the Insider Dealing Tribunal is governed by Part III of the Securities (Insider Dealing) Ordinance CAP. 395. The Tribunal is established under s. 15 of that Ordinance.

Pursuant to s. 15 the Tribunal was duly constituted as follows:-

Chairman: The Hon. Mr. Justice Burrell

Member: Mr. Charles CHAN Wai-dune. Mr. Chan is a Chartered Certified Accountant and is the managing partner of Messrs Charles Chan, Ip and Fung.

Member: Mr. John WU Chi-tso. Mr. Wu is also a Chartered Certified Accountant and is the senior partner of John Wu and Co.

By a notice dated the 21st April 1997, pursuant to his powers under s. 16 of CAP. 395, the Financial Secretary requested the Insider Dealing Tribunal to hold an inquiry. The terms of reference contained in that notice were as follows:-

> "Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Chee Shing Holdings Limited (now renamed as Tysan Holdings Limited) has taken place or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and determine -
>
> (a) whether there has been insider dealing in relation to the company arising out of the dealings in the listed securities of the company by Messrs Leung Chee Hon, Cheung Nim Chee

Francis, Henry Lai, Ms Pang Kam Chi Cammie, Zhang Xiao Zhu and Madam Wong Mui during the period from 1 June 1993 to 5 July 1993 (inclusive);

(b) in the event of there having been insider dealing as described in paragraph (a), the identity of each and every insider dealer; and

(c) the amount of any profit gained or loss avoided as a result of such insider dealing."

2. Legal Representation

The Tribunal appointed Mr. Peter Davies as counsel to the inquiry. He was assisted by Miss Cynthia Tang. Both Mr. Davies and Miss Tang are from the Department of Justice.

Clause 16 of the Schedule to the Ordinance states:-

> "A person whose conduct is the subject of an inquiry or who is implicated, or concerned in the subject matter of an inquiry shall be entitled to be present in person at any sitting of the Tribunal relating to that inquiry and to be represented by a barrister or solicitor."

Before we heard any evidence applications for legal representation were made and granted. As a result all the implicated parties were legally represented as follows:-

> Francis Cheung and Henry Lai were represented by Mr. Clive Grossman, SC, assisted by Ms Judy Chan Catton, instructed by Messrs Szeto & Yeung.
>
> Leung CH was represented by Mr. Daniel Marash instructed by Jewkes Chan & Partners.
>
> Cammie Pang, Madam Zhang and Madam WONG Mui were all represented by Mr. Graham Harris instructed by Messrs Szeto & Yeung.

3. “Salmon” Letters

The Tribunal’s first task was to determine pursuant to paragraph 17 of the Schedule to CAP. 395 those persons whose conduct would be the subject of the inquiry or would be implicated or concerned in the subject matter of the inquiry.

The persons so identified were those mentioned in the Financial Secretary’s s. 16 notice. In keeping with the procedure adopted in previous inquiries counsel to the Tribunal then drafted and served Salmon letters on each of the six persons. The purpose of the Salmon letter is to give the persons advance notice that they may be affected by the inquiry. The letter contains an outline of the allegations which will be made together with a summary of the evidence which it is intended to call. A sample of the Salmon letters sent in the Chee Shing Inquiry is at Annexure A of this report.

It should be emphasized that a Salmon letter is not akin to a charge or a pleading. One of the difficulties with inquisitorial proceedings is that there is no plaintiff or defendant, no prosecutor or accused; the issues to be investigated are not narrowly defined by pleadings, charges, indictments or depositions. The only procedural mechanism for remedying these inherent difficulties is the Salmon letter. However, its content does not restrict the ambit of the inquiry nor does it restrict the persons who may be implicated as a result of the inquiry. If, during the inquiry, evidence was given which caused suspicion to fall on a person who had not been originally suspected, then he could be served with a Salmon letter at any stage. We would then entertain his application for legal representation and he would become an implicated party. Likewise, if in his opening address counsel to the Tribunal suggests that the evidence shows that a particular person has contravened a particular sub-section of s. 9 it is always open to the Tribunal to consider if other sub-sections have also been contravened should the evidence suggest it. The requirement is that the implicated party has been forewarned at the outset that allegations of insider dealing will be made and the available evidence in support of those allegations has been disclosed. On a number of occasions during the Chee Shing inquiry

counsel for the implicated parties made objections and complaints based on the fact that they did not know the exact details of the allegations being made against them and had not been notified, for example, which sub-section of s. 9 of CAP. 395 it was being suggested they had breached. Whilst each objection was considered on its own merits and a brief ruling given in open court on each occasion it is fair to say that generally speaking the objections were misconceived given the nature of inquisitorial proceedings. On other occasions the admissibility and relevance of certain evidence was challenged. Again, these challenges were difficult to sustain because whereas they might have succeeded in adversarial litigation they failed to take account of s. 17(a) of CAP. 395 which provides that:-

> "The Tribunal may, for the purpose of an inquiry under this Ordinance -
>
> (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;"

So for example a Tribunal could admit hearsay evidence. However, caution would be exercised when deciding how much weight to attach to it, if any.

In principle an implicated party should have access to all material within the possession of the SFC. Any disputes on the question of disclosure are resolved by the Tribunal Chairman.

The Salmon letters were sent out on June 27th 1997. Contained in the letter was the date on which all implicated parties or their lawyers should attend court for a preliminary hearing.

4. Preliminary hearings

Two preliminary hearings were held. The first was on July 10th 1997 at which applications for legal representation were made and

granted. As a number of people involved in the inquiry were due to be out of Hong Kong at various times in August and September. A second preliminary hearing was scheduled for October 14th 1997 at which the Tribunal made its opening statement.

In so far as the opening statement dealt with procedural matters we emphasized the following:-

i) The Tribunal's function is inquisitorial rather than adversarial. This is a fundamental distinction between an inquiry by a Tribunal and conventional litigation. The distinction gives rise to a number of consequences. For example, the Tribunal directs the inquiry - it is empowered to investigate new matters should they arise, provided they are relevant to the terms of reference. Also, the Tribunal may adopt flexible procedures as it sees fit. Rules relating to, for example, leading questions, hearsay, examination on previous statements and the scope of re-examination need not be applied with the same strictness as in conventional litigation.

ii) The role of counsel to the inquiry is to present the evidence objectively, regardless of which way the evidence falls. He does not however have to remain neutral throughout. If he considers the evidence provides proof of insider dealing he should employ his skills of advocacy in the usual way to that end.

His role also involves a high degree of administration. For example, he is responsible for the attendance of witnesses, drafting notices to secure the attendance of witnesses, drafting notices to require the SFC to carry out further investigation, disclosing all relevant information to solicitors and counsel involved in the inquiry, and generally ensuring that the inquiry progresses as smoothly and fairly as is reasonably practicable. To this end, it is sometimes necessary for counsel to the Tribunal and the members of the Tribunal to meet in Chambers. Prior to the commencement of the inquiry this is inevitable. After the start of the evidence however, although it is necessary

from time to time for administrative reasons, it should be kept to a minimum.

iii) We emphasized also that we were conscious of the fact that the mere making of an allegation in a Salmon letter could adversely affect a person's reputation. We stressed that the making of an allegation is never evidence of the truth of the allegation. A person against whom an allegation is made may have a complete answer to it. There is no burden of proof on such a person (except by virtue of s. 10 CAP. 395) and the Tribunal will make no judgment until all the evidence has been heard and submissions made.

iv) We noted that the costs of inquiries such as this can become very high. We stated that a balance between expediency and focussing on the main issues on the one hand and not proceeding at a pace which might prejudice the parties on the other was a balance to be aimed for. We asked for evidence to be agreed and put in writing whenever possible.

In addition to i) above we wish to add that the Tribunal is always conscious of the danger that an excess of flexibility could disadvantage an implicated person. Although it is important that the Tribunal retains its inquisitorial function and its inquisitorial powers, it should not lose sight of the fact that the recipient of a Salmon letter is a person against whom serious allegations of wrongdoing have been suggested and against whom findings of such wrongdoings may be made. Accordingly, should counsel to the inquiry form a view that the evidence points to insider dealing by one or more persons then, inevitably, the proceedings take on the characteristics of adversarial litigation. When this happens the Tribunal would not wish to restrain counsel from conducting the case with skills that had been developed and honed in an adversarial atmosphere but on the other hand would not permit an excess of flexibility to be utilized to such an extent as might be regarded as unfairly prejudicing the implicated person. The need to be fair overrides everything.

5. The substantive hearing

(i) All questions of fact are decided by the opinion of the majority of the members of the Tribunal. It may be taken in the report that every finding of fact made has been unanimous unless it is specifically stated to be otherwise. All questions of law are decided by the Chairman alone. Any reference in the report to a decision on law being "the Tribunal's" decision should be taken as a decision made on the Chairman's direction.

(ii) Hearing in Public

The Ordinance requires that every sitting of the Tribunal should be held in public, unless we consider it to be in the interests of justice that a sitting, or part of it, shall be held in private. On the 23rd day of the inquiry an application was made by Mr. Clive Grossman, S.C. on behalf of Francis Cheung and supported by Mr. Harris on behalf of Cammie Pang to hear part of Mr. Cheung's evidence in camera pursuant to paragraph 14 of the Schedule to CAP. 395. In order to give proper consideration to the application, the application was heard in camera. The application was refused and all the evidence was heard in open court.

(iii) Production of Evidence

On the first day of the substantive hearing, counsel to the Tribunal made an opening address. Any individual whose conduct is the subject matter of the inquiry, or in respect of whom an adverse allegation has been made, or who is concerned in the subject matter of the inquiry also had the opportunity to make an opening address. The written opening by counsel to the inquiry should be served on all the implicated parties at least 7 days prior to the commencement of the inquiry. An opening statement is not to be regarded as a pleading and does not restrict the way in which any solicitor or counsel chooses to conduct his or her case.

The evidence was called before us in the following way. Generally speaking there are three categories of witnesses. Firstly

those who had made statements to the SFC and had not received Salmon letters. Secondly those whom we refer to as implicated parties, they being persons who had made statements to the SFC and who had also received Salmon letters and thirdly persons who may be called by an implicated party as his or her witness.

Counsel to the inquiry called all the first category of witnesses first in as helpful an order as possible. He examined them in chief. In order to save time they simply adopted their SFC statement or statements when it was accepted by them as a true and accurate account. The witness could then be further examined by both counsel to the inquiry and counsel for the implicated parties.

The implicated parties gave evidence after the first category of witnesses had all been heard. They were called in-chief by their own counsel, and were then cross examined by other counsel and counsel to the inquiry. This procedure was adopted in order to be fair to the implicated parties. It should be remembered however that they were still witnesses of the Tribunal and were subject to the same rules as any other witnesses. In the Chee Shing inquiry all the implicated parties produced witness statements which had been prepared in the days and weeks prior to their giving evidence, as their evidence in chief. This procedure was accepted by the Tribunal. Naturally, it did not prevent other counsel, including counsel for the Tribunal, from cross examining the maker of the witness statement on his or her previous statements or records of interview made to the SFC.

In the case of every witness the Tribunal could ask questions at any time. However the Tribunal endeavoured to ask such questions as it had after cross examination but before re-examination. Each witness's evidence concluded with re-examination, in the case of the first category by counsel to the inquiry and in the case of the implicated parties by their own counsel.

Three of the expert witnesses, Mr. Heale, Mr. Witts and Mr. Rigby gave evidence after the implicated parties had finished their evidence.

CHAPTER 3

LAW

The helpful and carefully prepared submissions which were made to the Tribunal at the conclusion of the evidence raised a number of matters of law. Our decisions on these matters are dealt with later in our report when we report our findings in relation to the particular issues to which they relate. In this chapter we merely set out the more important provisions of the Securities (Insider Dealing) Ordinance which have fallen for our consideration in this inquiry. We also set out some fundamental legal principles which we have followed in our assessment and evaluation of the evidence and in the application of our findings of fact to the legal framework.

1. The Ordinance: CAP. 395

Insider dealing is defined in s. 9(1) of the Ordinance. It specifies six circumstances in which dealing in securities constitutes insider dealing. We recite them as they were in June 1993 that being the time which is material to this inquiry.

> "(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) when a person who is contemplating or has contemplated making (whether with or without another person) a take-over offer for a corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to that corporation, 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, otherwise than for the purpose of such take-over;

(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) when a person who is contemplating or has contemplated making (whether with or without another person) a take-over offer for a corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to that corporation, discloses that information, directly or indirectly, to another person and the first-mentioned person knows or has reasonable cause for believing that the other person will make use of the information for the purpose in dealing, or in counselling or procuring another to deal, in the listed securities of that corporation (or in the listed securities of a related corporation);

(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,

(f) 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;

(g) when a person who has received (directly or indirectly) from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating a take-over offer for a corporation, information to that effect and knows that such information is relevant information in relation to that corporation, 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."

As can be seen sub-sections (b), (d) and (f) refer to the situation where a take-over offer is being contemplated. Sub-section (b) is where the person contemplating the take-over offer deals himself, sub-section (d) is where the person contemplating the take-over offer discloses the information to others and sub-section (f) is where a person receives information that a person is contemplating a take-over offer.

The ingredient common to all three sub-sections, namely the contemplation of a "take-over offer" is defined in s. 7 of the Ordinance:-

> "In this Ordinance, "take-over offer for a corporation" means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire those shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of those shares to acquire the shares of that class or a specified proportion of them."

Sub-sections (a), (c) and (e) have as their common ingredient the part played by a "connected person" to the corporation whose shares are bought or sold. Sub-section (a) envisages the situation where a connected person himself deals on inside information, sub-section (c) is where the connected person discloses the information to another and sub-section (e) where another person receives the information from a connected person.

The ingredient common to these three sub-sections, namely "a connected person" is defined in s. 4 of the Ordinance, Section 4(1) states:-

> "(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;"

For the purposes of this report we highlight 2 further ingredients because they have been of significance in this inquiry. They are ingredients which are common to all six of the sub-sections.

Firstly, "relevant information". Before any finding of insider dealing can be made the Tribunal must be satisfied that the information which the dealer is in possession of is relevant information. This is defined in s. 8:-

"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."

Secondly, "counsels or procures". Again in all six sub-sections a person may be identified as an insider dealer if he does not actually deal in the securities himself but he counsels or procures another to do so. Counsels or procures is not defined in the Ordinance. To counsel is to order, advise, encourage or persuade. If the evidence does not support

"counselling" then, in the alternative, to "procure" means to produce by endeavour. You procure a thing by setting out to see that it happens and to take the appropriate steps to produce that happening.

2. General principles of law

(a) Standard of proof

In our opening statement in this inquiry we stated that the standard of proof to be applied, unless we heard submissions to the contrary, would be proof to a high degree of probability. In their closing submissions all counsel for the implicated parties submitted that the proper standard of proof to be adopted in insider dealing inquiries is the criminal standard, proof beyond reasonable doubt.

We do not think it necessary to set out the arguments in full in this report. Previous insider dealing reports have made rulings on the subject. This is not to say that the issue is closed. Far from it, no one Tribunal is bound by the decisions of another. In particular the gravity of the allegations made may differ from one inquiry to another. In this inquiry it is argued that the allegations made are grave, involving allegations of dishonesty, the sanctions are penal and the possible consequences are very serious.

Many authorities were cited. This Tribunal takes issue with none of the following passages which were quoted to us -

> "In every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for."
> (Bhandari v Advocates Committee [1956] 1WLR at p. 1445)

> "The degree of probability depends on the subject matter. In proportion as the offence is grave so ought the proof be clear."

> "The court should not be satisfied with anything less than probability of a high degree."
> (Kharwaja v Secretary of State [1984] 1AC at p. 113 and p. 1240)

> "Where what is alleged is tantamount to a criminal offence the Tribunal should apply the criminal standard of proof."
> (In Re a Solicitor [1992] 2WLR at p. 562)

> "The standard of proof commensurate to the gravity of such a charge was, if not proof beyond a reasonable doubt, proof to a degree of probability which fell short of proof beyond reasonable doubt by so small a margin as made no practical difference."
> (Lai-King Shing v The Medical Council of Hong Kong [1995] 2HKLR at p. 468)

These and other cases cited were appeals from the decisions of disciplinary hearings by professional bodies where it was alleged that the appellant had in fact committed a criminal offence (such as theft or indecent assault).

In Hong Kong insider dealing is not a criminal offence. If it were the criminal standard would apply. This Tribunal is very conscious that a genuinely high standard of proof is required. However, even after re-considering the arguments in the light of the facts of this case and the submissions made, the standard we shall apply will be proof to a high degree of probability. We repeat the observation made in the Parkview Report:-

> "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. "A high degree of probability" refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy."

(b) Circumstantial evidence and the drawing of inferences

More often than not, proof of insider dealing will depend to some extent on circumstantial evidence. A Tribunal investigating evidence of alleged insider trading will inevitably have to make crucial decisions as to whether an inference of wrongdoing can be properly drawn from proven facts or not. A Tribunal frequently has to decide if a person knew something when they claim they did not. Proof of such knowledge regularly depends on circumstantial evidence.

We recognize on the one hand that some circumstantial evidence can be as powerful or even more powerful than direct evidence and, in appropriate cases, conclusive against an implicated party. It derives its strength from a combination and accumulation of facts and circumstances. As stated by Pollock C.B. in R v Exall (1866) 4F&F 922:-

> "In circumstantial evidence - there may be a combination of circumstances, on one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

We recognize also, on the other hand that inferring a fact from evidence must be done with caution and only in accordance with the established directions on the subject which we cite as follows:-

> "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 must 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."

The "caution" to which we refer is best described by the oft quoted passage of Lord Wright in Caswell v Powell Duffryn Associated Collieries Ltd. [1940] AC152:-

> "Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture."

(c) Lies

It is impossible for us to carry out our task without assessing and forming opinions on the credibility of the witnesses who have given evidence. In order to establish a fact we must be satisfied that a piece of evidence is reliable, which means that it is both accurate and honest evidence. Conversely we may conclude in respect of other pieces of evidence that it is unbelievable, unreliable, inaccurate or dishonest. That is part of our function.

As a matter of general principle the question of the proper weight to be attached to evidence we regard as dishonest is important. The approach is contained at page 30 of the Public International Investments Limited Report:-

> "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." (See R v Harris [1991] Hong Kong Law Review 389.) ... 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 of 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".

(d) Demeanour

The opportunity that only we, the Tribunal, have to watch and listen to witnesses as they give their evidence on affirmation in court and thereby assess their demeanour is an important part of 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, however, an imprecise concept and should be 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. Nonetheless experience has shown, and this inquiry is no exception, that a witness' demeanour can be a contributory factor in assessing credibility. It works both ways - it can enhance a witness' honesty on the one hand but it can also demonstrate dishonesty on the other.

(e) Tribunal members

In deciding matters of fact the Tribunal acts as a jury of three. One purpose of a Judge sitting with two members of the business and professional community of Hong Kong is for the two members to bring their experience and expertise into the decision-making process. Juries in criminal trials are often directed to use their common sense as men and women of the world. Tribunal members have the added dimension of being men and women of the financial and business world. We quote from Phipson on Evidence

14th Edition page 32:-

> "where a tribunal is composed of or includes specialists in the field wherein the litigation arises, and that situation is brought about by legislation specifically directed to that end, it may act on its own knowledge. Thus, the lay members of an industrial tribunal may use their own experience in assessing the evidence given by witnesses. If that leads them to take a different view to that of a witness, the witness should be given an opportunity of dealing with the view of the tribunal: but the tribunal are entitled to prefer their own opinion."

We add one caveat to this extract citing also the words of Mr. Justice Talbot in Hammington v. Berker Ltd. E.A.T. 1980 I.C.R. at P. 252:-

> "The essence therefore of the use of such specialized knowledge and information and experience is that it is to be used, as can be seen from all these authorities, for the purpose of weighing up and assessing the evidence and if necessary interpreting it. What must not be done is to use that knowledge to substitute for the evidence given in Court, that derived from that knowledge; nor must it be used for producing some factor of evidence which is not evidence before the Court, with which the parties have not had an opportunity of dealing."

The knowledge and expertise which Tribunal members bring to an inquiry is considerable and, used judicially, is invaluable. Members can and should use their knowledge and expertise provided the use to which it is put is in evaluating the evidence not giving it.

(f) SFC statements

Many witnesses agreed the contents of their SFC statements to be true and accurate. Each witness was given the opportunity to clarify or amend his/her statement once it had been adopted.

Likewise the statements of each implicated party was, on Mr. Davies' application, put into evidence. By this procedure they became documents which recorded what they had said to the SFC subject to any live evidence given by way of clarification or amendment. On the other hand summaries of interviews prepared after the interview by the SFC have been disregarded and excluded from our consideration when it was submitted that the summary was not fair or accurate. In such circumstances our attention has been directed to a verbatim transcript of the taped interview instead.

Once they had been put into evidence in this way the Tribunal has attached such weight to their contents as it considered fair and proper to do so when determining issues of fact. The Tribunal has not made any findings of fact in relation to one implicated party based on the contents of an SFC statement made by another implicated party or witness.

(g) Good Character

For the sake of completeness and because counsel have referred to the question of good character in their final submissions we state as follows. Any person against whom an allegation of wrong doing is made, who is of good character, is entitled to rely on that good character in two ways. Firstly it supports his or her credibility and secondly such a person is less likely to offend in the manner alleged than a person who could not boast a good character.

CHAPTER 4

THE EXPERT EVIDENCE

The evidence from expert witnesses has played an important part in this inquiry. In this chapter we summarize the opinions of the experts on the particular issues they addressed. We emphasize it is only a summary. It is an attempt to highlight the thrust of each of the experts' opinion. To refer to all the detail, statistics and argument contained both in their reports and in their evidence to the Tribunal would be unnecessarily time consuming.

1. Mr. Alex Pang

Mr. Pang firstly noted the relative movements of the Chee Shing share and the Hang Seng Index (HSI) between May and August 1993. His exhibits illustrating the statistics in both table and graph form are at Annexure D.

They show that between June 18th and June 23rd Chee Shing shares rose from $1.22 to $1.91 on a dramatic increase in turnover. All the purchases which form the subject of this inquiry were either made or agreed between Friday June 18th and the evening of Monday June 21st. The price continued to rise to $2.875 on June 28th still on high turnover. During the same period the HSI moved down and up within a narrow range.

The biggest surge in the Chee Shing was therefore prior to or around the time of the June 25th (a Friday) announcement. After the July 5th announcement the price fell back to $1.95. Mr. Pang suggested this might be due to the fact that the news of CMIEC's involvement had already been discounted plus the fact that in the lead up to the announcement the share had been over bought.

Secondly, he examined statistics relating to 24 listed companies which were take-over targets between July 1992 and June 1993. On average the share price of the target company went up by 16% in the two

days following the announcement. Of the 24 only 2 went down in price.

Thirdly, he did a similar exercise where the bidder contained a PRC element. Between October 1992 and July 1993 there were 15 such take-overs. Within two days of the announcement the share price went up in all 15 cases. The average increase was 36.77%. We have quoted Mr. Pang's comment on this issue in relation to Chee Shing in Chapter 5 (Relevant Information) at page 42.

Fourthly he examined the trading patterns of certain implicated parties.

Fifthly he computed the profits which flowed from the transactions which are the subject of this inquiry.

In addition to producing and explaining his statement and analyses Mr. Pang was cross examined at some length. In general terms his evidence supported a number of propositions including:-

(i) In the atmosphere which was prevailing at the time Chee Shing was the type of company which was bought by speculators and small investors on the strength of rumour about a take-over involving any PRC connection.

(ii) The speculator would not be concerned with analytical detail about the identity of the PRC party or the terms of the take-over. It merely provided an opportunity to make a significant short term profit.

(iii) In reality any purchaser of a listed company in Hong Kong would comply with the take-over code and make a general offer to the other shareholders if and when he acquired over 35% of the total shares. To suggest that the take-over code in this regard could be simply by-passed did not accord with the reality of the situation.

2. Mr. Toby Heale (called on behalf of Leung CH)

It should be stated at the outset that Mr. Heale's opinions are based on the assumption that Francis Cheung was involved in both the purchase of the LEUNG Pak-ming shares and the Robert Law shares contrary to Francis Cheung's own case which was that he was not involved.

It was Mr. Heale's opinion that Francis Cheung clearly wanted to take over Chee Shing. His original intention would have been to acquire Leung CH's shares plus LEUNG Pak-ming's (30 million) plus Robert Law's (10.874 million). He described the "LEUNG Pak-ming" joint venture of June 1st as a mechanism to give Francis Cheung control of these shares as well.

Mr. Heale's evidence is primarily directed towards what information Leung CH had at the time he persuaded Robert Law to sell his shares (namely at about 8:30 p.m. on June 21st). He makes the point that at that time he had only made an offer to sell his own shares at $1.20, as yet there was no firm offer to buy them by Francis Cheung. At the time Francis Cheung was in the process of getting a buying group together. As to who that buying group might be it is said that Leung CH knew no more than a mere possibility of Chinese corporate involvement. It was Mr. Heale's opinion that if Leung CH did not know if his shares were going to be bought and even if they were, by whom, he cannot have been in possession of inside information when he was talking to Robert Law. His argument was that the earliest time when Leung CH would have confidently assumed there was a buyer for his shares was when he and Francis Cheung spoke on the evening of June 22nd when Francis Cheung told him that a deal at $1.20 per share would be "no problem".

Mr. Heale criticizes Mr. Pang's observation about the reaction in the market to news of Chinese enterprises targeting Hong Kong listed companies. He says Mr. Pang does not compare like with like. He notes certain differences which distinguish the Chee Shing case from others. He says that the Chee Shing take-over was not by a mainland enterprise - the Chinese element was only the Hong Kong subsidiary of a

PRC enterprise. He also notes that the share price fell on the announcement and there was no change in Chee Shing's business as a result, only a change in management.

Mr. Heale finally gives an opinion about Francis Cheung's strategy and how the Robert Law shares fit in the overall picture. He says there is evidence (which is correct) that Francis Cheung considered Chee Shing as a possible target in October 1992 which was unfulfilled. In the early summer of 1993 he appears to have identified and gained control of a large number of Chee Shing shares - firstly 10 million via the LEUNG Pak-ming joint venture, and secondly the 10.874 million Robert Law shares. These together with Leung CH's 116.5 million shares total over 137 million. Up until June 22nd he also entertained the hope of buying or acquiring LEUNG Pak-ming's remaining 30 million which would have brought the total up to 167 million or 55% of the total number of shares in Chee Shing. It was, Mr. Heale suggests, desirable for Francis Cheung to control the Robert Law shares to consolidate his position and also to prevent the Law shares being sold in the market which might cause a stir.

3. Mr. Richard Witts

Mr. Witts was also called on behalf of Leung CH and his report was based on the same assumptions as that of Mr. Heale.

He comments on those factors which Leung CH did not know when he spoke to Robert Law. He did not know the identity of the proposed buyer. Even if he guessed the identity of the mainland interest he did not know the degree of interest in percentage terms. He did not know whether there were any plans for asset or capital injections after the acquisition. He notes that Chee Shing was a 3rd line stock mainly traded by small investors, not major institutional investors. Such stocks, of which Chee Shing was just one, underwent significant price rises in June 1993. He stated that such price rises were usually due to speculation in anticipation of possible PRC interest in the companies. Such speculation was usually fuelled by rumour. He opined that if the ordinary Chee Shing investor had known what Leung CH knew on the evening of June 21st the price would not have been materially affected.

He further notes that when the full facts emerged on July 5th the share actually dropped in price. He surmised that this might be due to a combination of "leaks" and the investing public perceiving the news as not specially good. In evidence he said that at the end of June China fever was at its height again. "Maybe", he said "there was a perception that the austerity measures (China's 16 point austerity plan to cool down the economy announced in April 1993) would not bite". In his report he pointed to the fact that in April 1993 there were two instances of share prices falling (albeit very slightly) after the announcement of a PRC based approach. He stated "This clearly indicates that the announcement of PRC interests being involved in companies listed on the SEHK by itself by no means automatically resulted in substantial gains in share value". After consideration of all the evidence the Tribunal did not accept this appraisal.

He suggested that Leung CH may have been unaware of the "China fever" phenomenon at the time. The last source of evidence as to Leung CH's awareness was Leung CH's own evidence. In his statement to the Tribunal he did not deal with this issue.

The Tribunal did agree with Mr. Witts when he said that Leung CH would not have been particularly concerned as to whether or not a "general offer" would be made to the minority shareholders following the sale of his majority shareholding. His primary objective was to sell his major asset and retire. The "general offer" was not his problem, it was purely a matter for the buyer, not the seller.

4. Mr. Clive Rigby

Mr. Rigby's attendance as an expert witness was arranged by and on the advice of counsel to the Tribunal. His opinions differed from those of Mr. Heale and Mr. Witts in some important respects and thus provided the Tribunal with a balance of expert opinion for its consideration. He has 30 years experience in the securities and futures industry. He first came to Hong Kong in 1977. He is now the Managing Director of Lippo Securities Limited. His experience has been gained primarily by dealing with private investors as opposed to

institutional clients.

His report and evidence in court concentrated on how market players might have reacted to news of a possible take-over or "buy-in" of Chee Shing involving mainland China partners bearing in mind the market conditions which were prevailing at the time.

He commented that Chee Shing, like all the other take-over targets at the time, was a lowly capitalized third liner whose price movement was affected, not so much by general market trends, but by considerations peculiar to itself. He said the market was highly receptive to rumours of possible acquisitions. Knowledge of a take-over was all one needed to know.

By way of background and comparison he examined in some detail three other 1993 take-overs - Tung Wing Steel, Public International Investments Limited and Hong Kong Worsted Mills Limited.

It was his opinion that in such instances it was the investing public's feeling that if there was a China connection it must be good news for the company which moved the share price. He added that such investors paid little regard to fundamentals or the details of announcements. He said they treated announcements with a pinch of salt - if they read them at all.

He noted the actual Chee Shing price at the time of the announcements of June 25th, July 5th and July 26th in order to comment on the fact that the price actually dropped after the July 5th announcement. The likely explanation, he said, was that "the share price had risen too sharply ahead of the announcement on uninformed and over enthusiastic speculation and the market was simply adjusting to that fact". At the end of July, once all the speculation and full disclosure of the take-over was out of the way the share price was significantly higher than previously, namely $1.80 as opposed to the $1.20 (approximately) at which it had been trading throughout April, May and most of June.

Mr. Rigby and Mr. Heale both commented on the other's opinion in relation to what Leung CH actually knew at the material time and its relevance. In this chapter we merely record the fact that there were difference of opinion, we do not enter into the debate. When a Tribunal is faced with starkly different opinions from experts whose expertise is equal and unchallenged the Tribunal must, at the end of the day, simply choose one rather the other.

Not in relation to any particular implicated party, but generally, Mr. Rigby's bottom line can be crystallized by the following comments from both his evidence and his report - The public looks at the flavour, not the details. The price varies as the perception changes. Even though the degree of Chinese involvement was reduced (in late July) it does not mean that the price sensitivity of the information was also reduced. Prior knowledge of a take-over or buy-in was price sensitive information. Prior to June 21st 1993 inside information existed that mainland Chinese corporate involvement in a take-over bid for Chee Shing was a distinct possibility.

Mr. Rigby was cross examined on the accuracy of the word "distinct" as opposed to "mere" when describing the "possibility" of the take-over. The Tribunal considers in all the circumstances that the use of the word "distinct" more accurately and realistically describes the situation at the material time. It was a serious intention and a real possibility.

CHAPTER 5

RELEVANT INFORMATION

Having summarized the differing opinions expressed by the expert witnesses we now turn to an issue which is central to this inquiry, namely, what constitutes relevant information. It is defined by s. 8 of the Ordinance which we have already set out at p. 23. In the same way that it is often said that "every case turns on its own facts" so, in insider dealing inquiries the information which it is claimed constitutes relevant information is different in every case. Moreover, its relevance does not only depend on its intrinsic content but also on the time, place and circumstances in which it is received.

In this inquiry what might or might not be relevant information must be considered in the context of the circumstances prevailing in Hong Kong in mid 1993. The last seven inquiries which the Insider Dealing Tribunal has heard have centred around events from about that time. It was an unusual time. Phenomena known as "China fever" and "treasure hunting" were significantly affecting the market.

Counsel for the implicated parties have submitted that the information which was available to the alleged insider dealers at the material times fails the test of relevance. The definition requires three ingredients to be proved. In short, they are that it is (a) specific (b) not generally known and (c) material. In particular they submit that the information fails both the tests of specificity and materiality.

The Tribunal addressed the same problem but on different facts in the Parkview inquiry. Similar authorities from various jurisdictions and different times were cited. On the one hand, the authorities are helpful, interesting and worthy of the most serious consideration. On the other hand, they are from different places and times, based on different, sometimes very complex, facts and are persuasive but not binding.

"Specific"

The first ingredient to be proved is that the information is specific. Some definitions of relevant information from other jurisdictions require it to be specific or precise. Ours does not. Preciseness connotes exactness and detail. If the legislation uses only the word specific and chooses not to add the word precise it follows that it is contemplated that relevant information can still be specific without being exact or detailed. It must relate to the corporation and be about that corporation specifically. In other words information can retain its element of specificity even when it is not precise and detailed. Non precise specific information can be even vague provided it is not mere rumour.

The authorities cited (see below) have been considered not only by the Tribunal and the counsel who have appeared before it but also by the relatively small number of academic works which have been written on the subject. With the same caveat in mind, namely that they are considering different facts in different jurisdictions, we refer to the following passages as examples of the approach which this Tribunal considers it right to adopt.

In the 1985 UK legislation specificity is defined as relating to "specific matters relating or of concern (directly or indirectly) to that company, that is to say, is not of a general nature relating or of concern to that company". After reviewing the various authorities the authors of "Insider Trading" 2nd Edition (Ashe & Counsell) say as follows:

> "It is considered that the information referred to in the (U.K. Act) is intended to be broadly based. Its focus is on specific matters relating to or of concern to the company but it may comprise facts, opinions, intention or other data relating to these matters."

Green v Charterhouse Group Canada (1973) 35 D.L.R. 161 and (1976) 68 D.L.R 592.

Ryan v Tiguboff (1976) 1A.C.L.R. 337.

Commissioner for Corporate Affairs v Green (1978) V.R. 505.

In 1993 new UK legislation introduced the ingredient of "specific or precise" into the definition. In a commentary on this section Rider and Ashe in "Insider Crime - The New Law [1993]" say:-

> "information may still be specific even though as information, it has a vague quality ... information as to the possibility of a take-over may be regarded as specific information and will certainly rank as precise, given that it is more than mere rumour"

In Brenda Hannigan's 1st edition of her work "Insider Dealing" published in 1988 she deals with the 1985 definition. Of the earlier definition she says:-

> "The distinction lies between 'day to day knowledge' and 'knowledge of important factors which, when revealed to the market, will shift the price of the shares' "

Later, when considering the specificity of knowledge of the existence of preliminary steps prior to a take-over offer she poses the questions: -

> "Will knowledge of preliminary steps be sufficiently specific? What if ... an individual is found to know of a chain of events, the most probable consequence of which is a take-over bid? Will that suffice?"

Her answer is :-

> "Both instances would seem to be within the legislation, for while unfounded rumour and the vaguest hopes would not be sufficient to amount to unpublished price sensitive information, contemplated acts as well as actual events are certainly within the legislation .... After all, the whole point of insider dealing frequently is to deal while the transaction is only contemplated, for once it has actually occurred the market is likely to be aware of it and will move to reflect that price, thereby preventing any profiting by insiders. Certainly the clearest example of specific unpublished price sensitive information ... is knowledge of an impending take-over bid."

The amendment to the definition in the 1993 legislation does not change the position. In the 2nd edition of her book at p. 63 she states again "The clearest example of specific or precise information is knowledge of an impending take-over bid". To distinguish between specific and precise she quotes from Hansard - "In general, specific information might typically be that a bid was going to be made. Precise information would be the price at which that bid was going to be made."

We pause here to address an issue raised by Mr. Grossman, S.C. He poses the question "what does 'contemplated' or 'contemplating' mean?" It means - think about, ponder, regard as possible. The word is not difficult to define. The significance comes from who is contemplating what. It must be serious as opposed to fanciful contemplation. A hawker sitting on a park bench who is thinking about making a bid for Cable & Wireless is of no significance. However if the man on the park bench has a genuine intention to make a bid and has the resources or reasonable prospects of gathering the resources and is a media mogul then it would be serious "contemplation" as envisaged by the legislation. In our case it cannot be overlooked that the person or persons contemplating the acquisition had themselves been the key parties in the sale of Tung Wing Steel only a few months earlier in very similar circumstances. In the period from late 1992 to mid 1993 during which the "China fever" phenomenon prevailed and significantly affect share prices the sale of Tung Wing Steel was, if not the first, one of the early and most dramatically successful take-overs.

Materiality

Does the evidence prove that if the information were generally known to those persons who were accustomed or would be likely to deal in the shares, the price of the shares would be materially affected? The usual shorthand expression used is - was it price-sensitive? It must be information which would cause more than a mere fluctuation, it must be a change of "sufficient degree to amount to a material change".

Much of the evidence from the expert witnesses concentrated on this issue. This Tribunal adopts the evidence of Mr. Clive Rigby where

he states in his report:-

> "The climate throughout 1993, especially during the first half of the year, was not dissimilar to that existing throughout the summer of 1997, where most investors' favourite topic was the latest red chip story or better still what was likely to be the next. Following upon the acquisition of Tung Wing Steel Holdings Limited in late 1992, and its sharp run up in price, the market was highly receptive to rumours of approaches to or possible acquisitions of listed Hong Kong companies by Mainland Chinese interests. Such was the impact of such rumours on the market that the terms "China fever" and "treasure hunting" became common expressions. Knowledge of a takeover was all one needed to know because in the optimistic climate of 1993 the downside was limited and the upside was substantial."

And later -

> "In conclusion it is my opinion that if anybody possessed information concerning the takeover of or buy-in to a listed company in Hong Kong by a PRC enterprise during the period from November 1992 to August 1993 prior to either such information being made public or the share price rising in speculative expectation of such, and then purchased the company's shares, that person could anticipate a significant re-adjustment upwards of the share price of the company subject to the takeover or buy-in, when the information was made public. Prior knowledge of a takeover or buy-in was price sensitive information."

Mr. Alex Pang's report stated as follows:-

> "In the absence of any unexpected corporate news in the market or any significant corporate activities relating to Chee Shing during the relevant period, I am of the view that the announcement of the take-over of Chee Shing by a consortium comprising CMIEC, a state-owned enterprise of the PRC, was the major factor that caused a rally in the share price of Chee Shing from its pre-rally price level of around $1.15 to around $2.00 level.

> This tremendous gain in the share price of Chee Shing was attributed to investors' expectation that the acquisition of Chee Shing by CMIEC and others would bring good prospects to the future of Chee Shing, and therefore its share price."

The point has been made, by counsel for the implicated parties that it was not CMIEC who provided the finance for its involvement in the bid but its wholly owned Hong Kong subsidiary CM(HK) Ltd. We find there to be no real significance in this distinction. It is the perception of the buying public which counts. The perception, in this case, that there was a PRC involvement would be present in the minds of the people accustomed to buying Chee Shing shares regardless of whether it was CMIEC or CM(HK) who actually wrote the cheque.

The fact that the perception is imprecise is because the average Chee Shing buyer was not particularly sophisticated or analytical. In the Parkview inquiry the Tribunal described the persons "accustomed to" or "likely to" buy the shares in question as the ordinary reasonable investor. The emphasis in that definition should be on the word ordinary rather than reasonable. Very often the ordinary investor is not reasonable in the sense that the purchases are not made after reasoned and considered research. Clearly the market in Chee Shing shares was not driven by institutional buyers and fund managers. An improved definition would be the ordinary average Chee Shing investor. Chee Shing was a 3rd line stock. Many of its buyers, in mid-1993 would be people who were treasure hunting and would respond to any strong smell of China fever without detailed analysis.

<u>What information constitutes relevant information about Chee Shing?</u>

On June 25th 1993 the public was informed that negotiations were taking place between an independent third party and the major shareholder of Chee Shing. On July 2nd the public was updated with the news that negotiations were continuing. On July 5th the public was told that a conditional sale and purchase agreement had been entered into between the offeror company, Power Link Investments (51% of which, at that time, was controlled by CMIEC) and LEUNG Chee-hon. The

effect of these pieces of public information on the share price is dealt in Chapter 4 and Annexure D and E.

Any prior knowledge (prior, that is, to June 25th) that a serious buying group was being gathered by Francis Cheung and Henry Lai with a firm intention to acquire the whole of Leung CH's shareholding in Chee Shing upon his express willingness to dispose of them at $1.20 per share and that that buying group would include a significant PRC involvement would constitute relevant information in this case. The earliest date of such a contemplation (in very general terms) being made public was June 25th. On June 15th or 16th 1993 when Leung CH expressed his willingness to sell all his shares at $1.20 the contemplation was in an embryonic state. All the transactions we are considering as possible insider dealing in this case fall between June 16th and June 25th 1993, more particularly on the 18th (Friday) and at 10:01 a.m. on the 23rd.

In the following chapters we will decide who possessed such information and when and whether they knew it was relevant information at the material time.

CHAPTER 6

MADAM WONG MUI

In this chapter we report, with appropriate brevity, on whether the evidence supports a finding that Madam WONG Mui be identified as an insider dealer. WONG Mui is Cammie Pang's mother.

The basis upon which she was served with a Salmon letter and named as an implicated party is that on June 21st 1993 750,000 Chee Shing shares were purchased at $1.21 per share through accounts in her name. To be more detailed, 650,000 were purchased under a WONG Mui named account with Chia Tai Securities Limited and 100,000 were purchased under a similarly named account with Wing Yip Company. Between June 29th and July 1st they were all sold at prices between $2.45 and $2.925.

WONG Mui and her husband ran a shop in Nathan Road for approximately 30 years up until 1995. They had six children, including Cammie. She was an elderly lady of good character who had not had the benefit of any formal education.

According to her evidence her experience in the financial world was limited to occasional trading in currencies. Her knowledge of the securities market was virtually non-existent. Her explanation for the share accounts being in her name was that several years earlier she had agreed to let her daughter Cammie trade in shares for her, using her money and through accounts which Cammie had opened in her name. She said that she gave her daughter cheque books with all the blank cheques signed by her. She said Cammie had a free hand to buy and sell whatever she wanted through those accounts. Her only interest was whether or not a profit was being made which she was able to see from her bank statement. Periodically Cammie went through the bank statement with her but she was never aware what shares had been purchased or sold or at what prices. She had no particular recollection of signing the documents to open the trading accounts but accepts she must have done when Cammie requested her to.

Cammie had not lived at home with her parents since 1990 or even earlier. Madam Wong said she knew little or nothing of her business affairs. She did not even know where she worked or what she did. She had never heard of Chee Shing.

Whatever information existed at the time the 750,000 Chee Shing shares were purchased in the WONG Mui accounts on June 21st it is plain that there is no evidence that she possessed it. Whether her accounts were used by Cammie Pang to insider deal is of course another matter with which we deal in Chapter 9.

Madam Wong was a simple hardworking elderly mother and housewife. Her modest but significant successes in the currency market caused the Tribunal to conclude that she was very probably more shrewd than the impression she endeavoured to give when giving evidence. However the evidence could not and did not support any finding that the relevant purchases done in her name were done with her knowledge. Our finding therefore is that any allegation or suspicion of insider trading between June 1st and July 5th 1993 in Chee Shing shares by WONG Mui is not proved.

CHAPTER 7

MADAM ZHANG XIAO ZHU

Madam Zhang is also known as Mrs. Lisa Lai, the wife of Henry Lai. The suspect trading which has been the subject of this inquiry in so far as it relates to Madam Zhang is the purchase of 800,000 Chee Shing shares on the 18th and 21st June 1993. There is no challenge to the fact that the purchases were indeed made by Madam Zhang and that she became the owner of them. A summary of her trades in Chee Shing are at Annexure F.

On June 18th 500,000 were purchased in four separate lots at prices varying from $1.18 to $1.24. On June 21st a further 300,000 were bought at $1.20 - $1.22. Between June 28th and July 1st they were all sold at prices between $2.40 and $2.95. Evidence relating to the sales and purchases was given by Miss AU YEUNG Wing-yee, Madam Zhang's broker who was, at the time, the Customer Services Manager with Standard Chartered Bank.

Such a large purchase of Chee Shing shares just prior to a dramatic increase in their value by the wife of a party to the upcoming take-over of the company required an explanation. The fact of, the size of, the timing of and the circumstances of the purchases make it, in insider dealing terms, a classic "case to answer".

Madam Zhang's explanation

Madam Zhang produced a 12 page statement which she adopted as her evidence. She had come to Hong Kong from Shanghai in 1979. She had business interests independent of her husband. In particular she had interests in property in Shanghai.

Prior to 1993 her interests or involvement in the Hong Kong securities was sparse. The only documentary evidence she produced was in relation to some relatively minor and inconsequential share transactions in and around 1988. In addition she did some Forex trading.

She said that she and her husband kept their financial affairs separate. She said she never involved herself with her husband's business affairs; she had little or no knowledge of them and did not ask him about them.

She said that at the time she made the purchases of the Chee Shing shares she was considering a long term investment. The investment she decided on was to spend approximately $1 million dollars on shares. The shares she chose were all the same - Chee Shing Holdings Limited. She told the Tribunal that there was no connection between the fact that on the first day she bought shares (June 18th) her husband was at a meeting in Beijing at which the possible Chee Shing take-over was being discussed and on the second day (June 21st) the Beijing trip and meetings had finished, Leung CH had agreed to sell his shares and her husband and Francis Cheung were actively putting a buyer together. She did not know any of this.

She said that her only reason for choosing Chee Shing as the company to invest in was because during the days prior to her husband going to Beijing she overheard him speaking on the telephone at home on several occasions saying that Chee Shing was "a good company". She heard no further details than this, merely a "general impression of favourability". She did not know to whom he was speaking. The language he spoke in was sometimes Cantonese and sometimes Mandarin.

She said she did not ask her husband for any further information or advice about Chee Shing before placing her purchase orders. He did not know about her decision. Neither did she ask her broker to provide any information about the company. She merely instructed her to place orders to the value of about $1 million. Also, when she sold her shares about 10 days later making over $1 million profit she did not tell her husband anything about it.

<u>The Tribunal's findings</u>:

The Tribunal rejects the explanation given. In short, the

explanation amounts to a most fortunate coincidence. Fortunate that the price shot up about 130% in the days after the purchase and a coincidence that it was her own husband who was involved in the take-over of a company about which she knew nothing.

Putting together the following facts:-

(i) that she had never seriously involved herself in share buying before,

(ii) that she had not bought any shares for several years,

(iii) that Chee Shing was a little known third-line share,

(iv) that she allotted all the money she wanted to invest at that time in this one company,

(v) that she did not ask her broker for any information or advice about the share, save its price,

(vi) that her husband was in Beijing discussing the possible take-over on the very day of her first purchase. (We find that the meeting in Beijing was on June 18th, not June 19th. June 18th was the first full day of their short visit. The diary entry at Annexure Q shows that Francis Cheung was waitlisted for a return flight to Hong Kong on the morning of June 19th. A meeting would not have been scheduled for a time which clashed with Francis Cheung's first choice of times to fly back),

(vii) that her husband had been speaking on the phone at home about Chee Shing several times before his trip to Beijing,

(viii) that even for a wealthy housewife $1 million is a not insignificant amount to spend on a little known third line stock,

(ix) that she knew Leung CH socially,

the Tribunal draws the inference that her profitable share dealing which we are investigating was not a lucky coincidence.

Having decided what it was not, we must go on to decide what it was. The fact that the explanation given does not reveal the whole truth does not automatically lead to the conclusion that it was insider dealing. However we do not merely find a negative, we also find the corresponding positive.

We are satisfied on the evidence that she would not have bought the particular shares she bought, at the time she bought them, in the quantity she bought them and in the manner she bought them if she had not been in possession of information that take-over of Chee Shing, involving a Beijing connection, was being contemplated and that she knew and understood the relevance (as defined by s. 8) of such information.

The fact of her relationship to a take-over party, i.e. the wife of Henry Lai, plus her own business related background added to the very circumstances of the purchases provides proof to a high degree of probability that she knew the relevance of the information she possessed which caused her to act. It is not necessary to identify the source or sources of the information nor it is necessary to detail exactly what the information was. It may have been that type of specific information which has a quality of vagueness to which Chapter 5 refers. The information may have come either wholly or partly from her husband. It may have been innocently conveyed to her, it may have been deliberate. It is not necessary to answer these questions once we are satisfied that the ingredients of s. 9(1)(f) have all been proved. That they have all been proved is the only possible consequence of the compelling inferences that we have drawn from the facts.

For the sake of completeness before we move on to our next chapter in which we consider the evidence in relation to Henry Lai, there are two final matters to which we should refer in relation to Madam Zhang.

1. Subsequent share dealings in Chee Shing

Madam Zhang informed the Tribunal that subsequent to her initial purchases on June 18th and 21st she continued to trade in Chee Shing shares until December 1994. At the present time she owns almost 3 million. She has not traded since December 1994 because she has not had any spare money to buy or invest with.

Having considered her subsequent dealings we find that it has no helpful bearing on our investigation into the true reasons for her initial dealings.

2. A payment of $700,000 to Henry Lai on August 12th 1993

On August 12th 1993 Madam Zhang gave to her husband a cashier order for $700,000. The funds for the cashier order came from the bank account which she had used to finance the purchases of her Chee Shing shares. The reason that this transfer of funds from wife to husband by cashier order was investigated was because of the suspicion that it may have represented a share of the profit arising from her insider dealing. The explanation given by both spouses was that it represented a loan. It was said that Henry Lai needed the money urgently to respond to a request from his bank to reduce his overdraft which at that particular time had exceeded its limit. Answers to questions such as why was it necessary to transfer the money by a cashier order or why was the Bank bothering Mr. Lai, who was a very wealthy man, so urgently were not satisfactorily answered. We deal with this evidence in a little more detail in the following chapter.

However, at the conclusion of the evidence on this issue whilst the suspicion remained it could not be said that it was anything more than a suspicion. Accordingly it played no part in our findings in relation to Madam Zhang.

In conclusion, having found that her suspect trading does constitute insider dealing we go on to identity her as an insider dealer as none of the s. 10 defences arise in her case.

CHAPTER 8

HENRY LAI

Mr. Henry Lai was served with a Salmon letter and thereby made an implicated party in this inquiry on the basis that he may have tipped his wife about the forthcoming take-over of Chee Shing. It is not suggested that he dealt in any shares himself or that he could be identified as an insider dealer in relation to the Robert Law shares.

The Tribunal concentrated on two aspects of his evidence. Firstly, what information he possessed which he could have disclosed to his wife or others at the material time. Secondly, the reason his wife gave him $700,000 in August 1993.

1. What information did he possess?

Henry Lai was Francis Cheung's partner in the proposed acquisition although it is fair and correct to say that he was not the prime mover. He accompanied Francis Cheung to Beijing on June 17th to attend the meetings with CMIEC and Theodore Liu. It is also fair and correct to say that the proposal to CMIEC that they participate in the contemplated acquisition was not the first item on the agenda at the meeting. It was nonetheless on the agenda and Henry Lai was fully aware of that when they left for Beijing. The evidence showed that Francis Cheung was briefed and ready to give a presentation about Chee Shing to CMIEC at the meeting on June 18th. He also knew that Leung CH was agreeable to the sale of all his shares at $1.20 each. He appreciated that he was not merely agreeable but was also keen to sell. Thus he knew of, because he was a party to, negotiations concerning the contemplated take-over involving a PRC connection and that there was a willing seller.

Further evidence of the fact that he was in possession of relevant information comes from the phone calls which he admitted he made from home. He conceded that he made many business phone calls from home. He admitted that prior to the trip to Beijing he had made a number of calls, maybe 10, to people in China specifically about Chee

Shing. He acknowledged that his wife could have overheard these calls but he denied that anything he said on the phone was intended for his wife's ears or that he deliberately disclosed any information to her or gave her a tip about Chee Shing.

Bearing in mind our findings in relation to the LEUNG Pak-ming shares in Chapter 9 it can be seen that we are satisfied that the strategy concerning the contemplated acquisition of Chee Shing was formulated significantly in advance of the time frame suggested by Francis Cheung. It follows, and we so find, that Henry Lai was in possession of substantially the same relevant information before June 18th. Although it was Francis Cheung who was the prime mover in this deal, we are satisfied that he would have discussed relevant matters and progress generally with Henry Lai on a regular and detailed basis. Henry Lai was by all accounts Francis Cheung's mentor. Of the two, Henry Lai was the elder statesman, Francis Cheung his groomed successor. They would have embarked on this venture as a team.

These findings of course do not answer the question as to whether he passed on the information to his wife. We answer that question at the conclusion of this chapter.

2. Cashier order for $700,000

As we know from the preceding chapter Henry Lai received a cashier order from his wife for $700,000 on August 12th. He gave some evidence about the financial relationship between them. He gave her about $100,000 a month for housekeeping. He also gave her lump sums from time to time. A particularly large lump sum he gave her was $1 million when the sale of his former company, Tung Wing Steel was completed. From time to time, also, if he was in need of cash his wife would lend him sums of money. The $700,000 he said, was such a loan.

The Tribunal's assessment of his evidence in relation to this matter was that it was unsatisfactory. He said the money was needed to bring his overdraft below its limit of $1.5 million. However an examination of the bank statement revealed the following:-

(i) On August 7th the overdraft was $1.1 million i.e. within limit. It only appeared to be over the limit on August 11th when it was $1.6 million. Nonetheless he said that over these days he had been contacted by a relatively junior member of the bank staff to deposit some money into the account to reduce the overdraft as a matter of urgency. This we find to be an improbable scenario.

(ii) Furthermore, between June 22nd and August 6th the account was consistently overdrawn by a significantly higher amount, namely between $2 million and $2.9 million. It seems the bank had not responded to this worse situation in the same way.

(iii) By August 17th the overdraft was again over its limit which remained until the end of the month. During that period the overdraft ranged between $1.6 million and $1.9 million. Again no measures were taken to reduce it during this period.

The Tribunal were also not satisfied with the explanation given as to why a cashier order was used when a simple interbank transfer would have sufficed and served the same purpose. The answer given was that a cashier order was quicker. The Tribunal remained dubious that husband and wife went to the personal inconvenience of arranging, collecting and transferring a cashier order when an appraisal of the bank statement suggests that, in truth, there was no such urgency as claimed.

In short, we concluded that Henry Lai was being less than frank when giving the reasons for being given a large sum of money by his wife.

However, we are unable to infer any facts adverse to Mr. Lai arising from our rejection of his testimony on this issue. His credibility as a witness was undoubtedly dented but this alone cannot result in a finding of fact that the money was a share of profits from his wife's insider dealing.

Our conclusion in relation to Henry Lai is that the evidence does not prove to the required standard that he insider dealt by being a tipper

of inside information. This of course begs the question of whether he caused his wife to come into possession of insider information. As already explained in the previous chapter this is a question we need not address.

CHAPTER 9

FRANCIS CHEUNG AND CAMMIE PANG

We have decided to deal with Francis Cheung and Cammie Pang together in this chapter because in reality they stand or fall together in relation to the Robert Law shares. Cammie Pang's case is that she bought them on her own. Francis Cheung says he had nothing to do with it. We nonetheless have given separate consideration to the evidence in relation to each of them.

The first and key issue to be addressed is an examination of what was their relationship, both in business and in private. Our conclusions and findings in this regard are of fundamental significance in our later findings as to whether either of them should be identified as insider dealers in relation to the purchase of Robert Law's 10.874 million Chee Shing shares.

1. Their relationship

In endeavouring to describe accurately their relationship we have considered and attached due weight to the cumulative effect of the following factors.

(i) Personal affection

Cammie Pang started as an office assistant in Francis Cheung's employ in the early 1980's. She became an office manager in 1988. A physical relationship developed. Cammie Pang was questioned about this at great length by the SFC. In her evidence to the Tribunal she said she had given correct answers to the SFC on this issue. Little was to be gained therefore in embarking on a detailed examination of their affair in our inquiry. It was a fact. We find also that at the material time in 1993 the trust and affection between them was no less than it had been in the late 1980's when, it seems, the physical relationship had started. Francis Cheung had complete trust in her. Cammie Pang's loyalty to him was unflinching.

Francis Cheung himself, in his evidence to the Tribunal, described the relationship in this way, "there was a general assumption that in her own business dealings she was in reality acting for me. Whilst Cammie and I never actively fostered this assumption, it was convenient not to puncture it".

Further, less important but nonetheless telling pieces of evidence concerning their relationship can be found in the terms of endearment on cards sent by one to the other and attached as exhibits to statements taken by the SFC.

(ii) Gifts

The inquiry revealed that some companies and properties had been transferred into Cammie Pang's name. Their evidence was that this stemmed from Francis Cheung's generosity to her. In approximately 1987 she became the owner of two companies named Multiports Development Company Limited and Portmark Investments Limited. At the time Multiports owned a property in South Bay and Portmark owned a property in Tai Koo Shing. Cammie Pang's evidence was that she was reluctant to accept these gifts but realized that it was his way of thanking her for her assistance at a time when he was planning to emigrate to Australia. She said it was her intention at that time to transfer the properties back to Mr. Cheung some time in the future. In fact this never happened. It is highly probable that it never happened because it was never intended.

In 1989 Portmark purchased a further property in Kornhill. In the early 1990's the three properties were sold for a combined net profit of approximately $12.5 million. In addition Portmark had purchased two further properties in 1990 costing approximately $5 million (together) which had a combined value of approximately $18 million at the time of the inquiry. Another company called Polo Fox Limited, also in Cammie Pang's name, owns a $12 million property in Robinson Road.

There is no doubt that Cammie Pang has become a wealthy woman in her own right. Furthermore there is no doubt that she became a very knowledgeable woman in matters of corporate finance. She started off as an enthusiastic learner in the employ of Francis Cheung and matured into a capable businesswoman in her own right. This started with Francis Cheung's generosity. However it was not one-sided generosity on his part, in return he got an employee and intimate friend whose loyalty he could depend on absolutely.

(iii) Motor vehicles

Francis Cheung had acquired at least three vehicle registrations with the letters "FC". The most prestigious was FC11 which at the material time was on a BMW vehicle. Any suggestion that such a vehicle with such a registration was, in reality, anybody's other than Francis Cheung's was fanciful. It had been purchased by and was registered in the name of Portmark. Portmark was nominally owned by Cammie Pang but to conclude therefore that BMW FC11 was owned and controlled by her flies in the face of common sense. It was Francis Cheung's vehicle and registration mark because he ultimately had control of Cammie Pang's companies. This becomes clearer upon an examination of certain documents which we do in sections (iv) - (vii) below.

(iv) Charts setting out company structure

Three documents marked CP3, CP8 and CP9 are included in our report at Annexure H. In evidence Cammie Pang admitted that she had drawn up CP8 but denied any knowledge of CP3. Both were seized during the SFC search of the premises. The significant difference between the two is that on CP3 there is a line connecting the name of Francis Cheung and Cammie Pang which suggests that Francis Cheung's control of all the companies under Cammie Pang's name is through her. Whereas on CP8 there is no such line indicating there is no such connection. For three reasons we find that these charts provide compelling support (when considered along with the other matters we review under this section) for the

proposition that Cammie Pang's share transactions at the material time should in truth be regarded as Francis Cheung's. The three reasons are:

(a) If when preparing CP8 Cammie Pang wanted to set out two different organization charts which were unconnected she would have used two pieces of paper. There is simply no reason to prepare it as it appears on CP8 if her intention was to produce charts which showed no connection between her companies on the one hand and Francis Cheung's on the other.

(b) An examination of the original of CP8 shows clearly that a pencil line had been drawn between the name of Francis Cheung and the name of Cammie Pang but had been erased. Submissions made by counsel that this may have been an innocent crease mark or that in any event no weight should be attached to it fall on stony ground.

(c) The Tribunal rejected Cammie Pang's evidence that she had no knowledge of CP3. She suggested it may have been erroneously prepared by an office junior. Given our overall assessment of the evidence presented on this particular issue we concluded that this particular surmised explanation lacked credibility.

In short, we conclude that CP3 and CP8 purport to set out in chart form, Francis Cheung's empire. Similarly the next document we considered, CP5, put all the companies on one list.

(v) CP5 (Annexure J)

CP5 is a document entitled "company structure" which was prepared on April 4th 1993. It lists 45 typed names of companies in alphabetical order and a further 6 company names written in Cammie Pang's own handwriting. The shareholders and directors of each company are also listed. No evidence was given which satisfactorily explained why companies owned by her and

companies owned by Francis Cheung should be listed together on one piece of paper in alphabetical order.

Of particular significance on this list were the references to Bridging Finance and Investment Limited and World Network Development Limited. As we shall see later in this chapter Bridging Finance provided funds for the purchase of both the LEUNG Pak-ming shares on June 1st and the Robert Law shares on June 23rd. It was Cammie Pang's and Francis Cheung's case that Bridging Finance was solely Cammie's company and Francis Cheung had nothing to do with it.

The shareholders of Bridging Finance are listed as "SY1(trust to CP to FC) and SY2 (trust to CP to FC)". On the face of it this clearly indicates that SY1 and SY2 (which was an abbreviation for Szeto & Yeung, Francis Cheung's solicitors) were nominee shareholders holding on trust for Cammie Pang who was in turn holding on trust for Francis Cheung.

In evidence Cammie Pang said this entry on the list was a mistake. She said it was originally written in that way to reflect the fact that in due course it was her intention to return Bridging Finance (which originally had been called "Kenward" and had been a "gift" from Francis Cheung) back to Francis Cheung. It was not at all clear how such an intention could be inferred from such an entry on the list. However more difficult for her to explain was why the mistake still appeared on the list which was dated April 1993. She merely explained that the mistake had not been rectified. The Tribunal did not find this to be credible given the fact that her handwriting appears on the document, in part to correct mistakes which appeared lower down the page. Thus, after its preparation she amended it in handwriting but omitted to amend the Bridging Finance entry. In short the Tribunal was satisfied that it was a true and correct entry.

An identical entry under "shareholders" [i.e. "SY1 (trust to CP to FC) and SY2 (trust to CP to FC)"] appears near the bottom of

the page in relation to the company called "World Network Developments Limited". This was the company to which the shares in Multiports and Portmark had been transferred. In support of her contention that this company was also solely her company and not connected to Francis Cheung, she said that this entry was also a mistake. Again it was unfortunately a mistake which had not been corrected or altered.

We note also that the directors of both these companies were the same "CP, ML and SH". ML and SH were trusted employees or former employees of Francis Cheung's.

(vi) Bank signatories in Bridging Finance

It transpired that for part of Bridging Finance's operations Francis Cheung was the only person who could sign cheques and operate the account generally on his own. Cammie Pang's signature on its own was not enough. She could only sign jointly with another signatory. This is plainly inconsistent with a contention that the company was wholly and solely Cammie Pang's. Further evidence of this inconsistency is found in the fact that Francis Cheung provided a $20 million guarantee to the Bank for Bridging Finance.

In support of the contention that it was wholly Cammie Pang's it was said that its business was primarily money lending and that the money lender's licence was in her name and it was always she who made the annual application. This was of little significance when balanced against the fact that the majority of the money lending done by the company was to Francis Cheung's friends and business associates. It never lent to unknown members of the public.

(vii) Bridging Finance and Billionway

Billionway was a company owned by Francis Cheung's Family Trust, which, according to CP3 held a group of companies including investment companies. The Tribunal examined a

document which recorded transfers of money between Bridging Finance and Billionway and vice versa (Annexure K). The document was a detailed statement of account between the two companies. It recorded the interest on intercompany transfers, by way of loans and repayments between them. We shall refer to it again in connection with the funding of the share purchases on page 65. At entry no. 00123 it shows that Billionway paid to Bridging Finance the sum of $4.75 million on June 1st 1993. The evidence shows that this was the lion's share of the cheque for $5.6 million which Leung CH had made out to Francis Cheung in respect of the LEUNG Pak-ming shares sales. The next two entries (numbered 00147 and 00148 and dated June 3rd) record that two sums for $3.85 million and $6.8 million were advanced by Bridging Finance to Billionway. This was the money used to purchase the 10 million LEUNG Pak-ming shares in the joint venture (50% of which Leung CH had financed by the $5.6 million cheque referred to above).

Further down the page at entry no. 00202 a sum of $19.9 million is recorded as being paid to Bridging Finance from Billionway on September 1st 1993. This sum represents the proceeds of sale of 10 million Chee Shing shares in the name of Cammie Pang. The record therefore indicates that this was treated as a deposit from Francis Cheung's Family Trust company, Billionway. Cammie Pang said this was a mistake.

A further point to note is that these transfers between Billionway and Bridging Finance, which are directly related to the Chee Shing share transactions, are recorded at 4% interest. This was not a commercial rate. They were not arms length transactions. In addition to the matters already referred to they provide further evidence of Francis Cheung's involvement in both the LEUNG Pak-ming and Robert Law share purchases.

Before moving on to report on the share purchases themselves we conclude this section of Chapter 9 with the following finding of fact. The evidence satisfies the Tribunal to a high degree of probability that in relation to the particular Chee Shing

purchases under investigation Cammie Pang was not an independent purchaser. The purchases in her name were at the behest of Francis Cheung and were part of his overall strategy leading up to the Chee Shing take-over.

This finding clearly involves our rejection of her evidence that the purchases were her own investment. We have set out our reasons for rejecting this evidence based on our assessment of her true relationship with Francis Cheung. In addition however her evidence by which she sought to justify and explain the size and timing of the purchases was not credible. It is true that she had acquired personal wealth through the sale and purchase of residential properties. It is also true that she had acquired business acumen. However, in June 1993 she said she bought either through joint ventures or in her own right over 20 million Chee Shing shares. The total cost was approximately $24 million. In the previous two years she had only bought a total of 230,000 Chee Shing shares usually at prices below $1. In the previous 4 years she had never (with one exception) before bought more than 1 million shares at one time for considerations in excess of $1 million. The one exception was a busy period at the end of May 1992 when she spent a total of about $3 million on five different blue chip stocks. Also, since she started her share portfolio in 1989 her investments were almost exclusively in blue chip stocks and for an average investment of under $100,000 per time. A summary of her trading is shown at Annexure P.

An additional departure from her usual pattern is to be found in her method of trading after her June 1st acquisitions and prior to the take-over. During this period and contrary to her previous practice she traded Chee Shing shares by buying from one broker and transferring them to another broker for selling. The differences in purchase and sale prices were usually negligible. Moreover it would have been unnecessarily troublesome to use different brokers to buy and sell at that time.

In view of all the matters above (and to matters still to be dealt with in this chapter) we attach no credence to the contention

that Cammie Pang had no knowledge of the forthcoming take-over of Chee Shing and traded entirely on her own account.

2. The LEUNG Pak-ming joint venture

In evidence a considerable amount of time was spent on this issue. As already mentioned, applications were made that the Tribunal should hear no evidence in relation to it because it was irrelevant to our terms of reference. The Tribunal however did investigate the matter. In this chapter we will refer to it and report our findings relatively briefly.

In short, its relevance (and relevant it clearly was) is that it shows Mr. Francis Cheung to be involved as a purchaser of LEUNG Pak-ming's shares at the end of May and beginning of June. It shows his desire to acquire and control large blocks of Chee Shing shares in addition to those which were the subject of the take-over. We are satisfied that he recruited Cammie Pang's participation to effect this.

(a) Francis Cheung's account is simply that Leung CH approached him at the end of May to see if he was interested in buying 10 million Chee Shing shares. He said that he was not interested and that was the end of the matter as far as he was concerned. He suggested he asked Cammie Pang. Why he thought Cammie Pang might be interested in spending $11 million on a third line stock was not made clear. Particularly as it was a stock that he had rejected. Neither was it made clear why he thought Leung CH would even consider his secretary as a likely or realistic buyer of the shares.

(b) Cammie Pang's version was that she was approached by Leung CH with a view to her buying the 10 million. Leung CH was acting on his brother's behalf. At first she did not want to buy such a large amount but she did find Chee Shing an attractive buy. It was ultimately agreed that she would buy the 10 million and Leung CH would provide half the purchase price. After the purchase she could sell the shares. If she could not sell them all she could return half the shares to Leung CH at the

same price - if she did sell them all she would refund the money for half of them back to him.

The most telling piece of evidence which contradicts Francis Cheung's and Cammie Pang's versions is that Leung CH paid for his brother's half of the shares in this joint venture with a cheque for $5.6 million made out to Francis Cheung (Annexure O). We find there to be no substance in Cammie Pang's explanation for this as set out in her statement to the Tribunal - "I suppose the reason Leung CH made out the cheque in favour of Mr. Cheung was because they had a long standing business relationship as well as a friendship and by giving the cheque to Mr. Cheung, Leung CH could be assured that a third party in whom he had trust knew about the agreement between him and myself." A simpler explanation and one we find to be highly probable is that Francis Cheung was in truth LEUNG Pak-ming's joint venture partner and not Cammie Pang. We have already noted in the previous section to this chapter that in Bridging Finance's records the money used to purchase the shares is entered as an advance from Bridging Finance to Billionway, the Cheung Family Trust company.

Further evidence of Francis Cheung's involvement is to be found in his own diary entry for May 31st 1993 (Annexure L). On that page there are five entries in his handwriting numbered (1) to (5) in a list. Item number 4 notes the names of the two brokers who were used to buy the 10 million shares the next day. The Chinese characters for "execute tomorrow" appear alongside. The Tribunal found it impossible to accept Francis Cheung's explanation for this entry. He said he often used his diary as a note book and item No. 4 in this list is merely the notation of a telephone message that he received at his office on behalf of Cammie Pang. He made the note to remind himself to tell Cammie to contact those brokers. It was her business, not his.

(c) Leung CH's evidence:

Leung CH told the Tribunal that the true version of this deal is the one he told the SFC by his statement to them dated June 29th 1994. The Tribunal accepts that this version substantially reflects the truth. Leung CH acknowledges and we accept that his first account of this deal to the SFC was untrue. When a witness gives two versions of one event and a judge or a jury or a Tribunal is not sure which is true then the witness's credibility has been adversely affected and his testimony is unreliable. The mere fact however that a second version has been given does not automatically lead to this conclusion. Where, in all the circumstances, the judge, jury or Tribunal is satisfied that the second version is given in order to set the record straight and is true then the witness's credibility is restored and the testimony can be relied on. Clearly the reason for the original false account and the reason for setting the record straight must be considered. Leung CH's evidence to the Tribunal was that the direction of his written statements was from falsehood to truth. Francis Cheung and Cammie Pang say the direction was the other way round, from true to false. If this latter direction is correct it means that Leung CH decided to depart from the truth and place Francis Cheung in a lot of trouble by telling lies for reasons of spite and malice. Having seen and heard Leung CH we do not accept this scenario. If the former direction is correct, i.e. false to true, then the explanation for the original account was to protect Francis Cheung. This we do accept. Whether the original untrue account was out of his own misguided sense of loyalty or whether it was because he was asked to do so, is an issue we need not address.

So, our findings in relation to the LEUNG Pak-ming deal in so far as they are relevant to the issues to be determined concerning whether or not insider dealing took place with the Robert Law shares are as follows. Francis Cheung was involved. The seed had been sown in his mind to target Chee Shing for a possible take-over at some indeterminate time which was significantly earlier than the time frame averred to in his evidence. With this mind he instigated the LEUNG Pak-ming purchases and the Robert Law purchases. As far as the

LEUNG Pak-ming shares were concerned the purchase money from Bridging Finance was under his control. He was paid $5.6 million by Leung CH for his brother's half share. Leung CH was acting on his brother behalf. Leung CH regularly attended to his brother's business affairs. LEUNG Pak-ming repaid Leung CH the $5.6 million. These transfers of money can be found in the relevant bank statements.

It is agreed by all that the joint venture itself was unusual in its terms. The expert witnesses were somewhat perplexed as to why it was agreed in those terms. In view of the fact that the relevance of it to our terms of reference is somewhat peripheral (but nonetheless important) it is not necessary to make specific findings about the reasons for the unusually complex nature of the deal. However, we do note that given our findings as to Francis Cheung's involvement it had the effect of giving him control of a reasonably large block of Chee Shing shares with a relatively small financial outlay during the run up to the Chee Shing take-over. We adopt Mr. Heale's expert opinion in this regard at page 18 of his report where he says:-

> "FC's approach appears to have been to identify and "control" shares in CSHL. He achieved this by:
>
> a) agreeing the joint venture with LPM for 10,000,000 of his 40,000,000 shares on 1/6/93;
> b) by obtaining a right of first refusal on the balance on or about 17/6/93;
> c) by agreeing a joint venture with LCH for the 10,874,000 RL shares and;
> d) by obtaining on open ended fixed price option from LCH for his holding 116,500,000 shares.
>
> This totals 167,000,000 CSHL shares under "control" (55.66%) for which he had paid for 5,600,000 at HK$1.12 and for 10,874,000 at HK$1.20, a total of about HK$16.5m.
>
> In my opinion, FC's objective was not to take unnecessary risks. He wanted to take over CSHL, but he did not have the resources to

do so himself. Even if he had the resources to buy, without having a committed buyer himself, he would expose himself to unnecessary risk. He manoeuvred himself into a position where, if he made a buyer, he could supply control, and if he failed to make a buyer, he was not over-extended."

3. The Robert Law shares

In this chapter we concentrate on the roles played by Francis Cheung and Cammie Pang in this transaction. Leung CH's role is considered in Chapter 10.

(A) Robert Law's evidence:

Mr. Law travelled from his home in Australia to give evidence in the inquiry. He, like Leung CH, admitted that his original account of what had happened did not reflect the truth, but that his revised version and his evidence to us were true and correct. Also like Leung CH he was roundly criticized by various counsel for being dishonest and unreliable. The Tribunal was satisfied that, as with Leung CH, the direction of his evidence was from false to true. He impressed us as a man who, in the first instance, gave a false account for reasons of misguided loyalty and to protect people who he perceived might get into trouble if he did otherwise. Soon afterwards, however, and consistently thereafter he was motivated by a desire to set the record straight and tell the truth.

Mr. Law had been a director of Chee Shing. In 1991, at about the same time that Chee Shing was floated, he emigrated to Australia and became a non-executive director. At that time he owned 21 million Chee Shing shares which were held by a company he owned called Rapid Gain Corporation.

In June 1993 Rapid Gain still owned 10.874 million shares which Mr. Law wanted to dispose of. Leung CH telephoned him in Australia on June 21st 1993 with a view to persuading him to sell his shares. Leung CH was successful in so persuading him and there is no doubt that as part of the persuasion he misled Mr. Law.

As a result of what Leung CH said to him over the phone Mr. Law believed that the sale of his 10 million odd shares was crucial to the deal involving the sale of Leung CH's own shares. Mr. Law was led to believe that Leung CH's own shares were insufficient for the deal to go through and that it would only go through if Mr. Law agreed to sell his as well at the same price. Mr. Law asked him if there was any mainland Chinese involvement on the buyer's side. Leung CH said he was not sure. Mr. Law asked if Francis Cheung was involved. Leung CH said he did not know. After discussing the matter with his wife, Mr. Law phoned back during the evening and said that he agreed to the sale of his shares. He knew the price would be about $1.20, no less.

Mr. Law made the necessary arrangements with his broker the next day, June 22nd. The same evening, in the course of another telephone conversation Leung CH informed Mr. Law that the "middleman" in the deal "probably had some Chinese background". The sale of his shares went through as soon as the market opened on June 23rd.

Mr. Law then had the uncomfortable experience of seeing his shares increase in value by 130% during the next week. On June 25th Leung CH confirmed to him that Francis Cheung was involved and that there was a Chinese party involved as well. Mr. Law had suspected Francis Cheung's involvement but still did not know its extent.

Mr. Law told the Tribunal, and we accepted his evidence, that it was not until after the SFC investigation was under way that he discovered that his shares had been transferred into the name of Cammie Pang and that they had not formed part of the take-over transaction. As soon as he heard that Cammie Pang was involved he realized that Francis Cheung was "part of it" because of their "relationship". The Tribunal noted that the first thing Robert Law did when he learnt of Cammie Pang's involvement was not to contact Cammie Pang but to contact Francis Cheung. Mr. Law agreed that Francis Cheung's reaction was to say that he did not

know who had bought his shares neither did he know whether or not Cammie Pang had acquired any. However, given our findings as to which version of events is the true and reliable one this reaction does nothing to advance his case.

He was cross-examined at length by counsel for all implicated parties. At the conclusion of his evidence the Tribunal was satisfied that Leung CH had not told him everything he knew at the time and it was partly because all the known facts were not revealed to him that he agreed to sell. The Tribunal believed his reasons for not giving a true account originally.

The Tribunal accepts however that the fact that Leung CH misled Robert Law is not, of itself, probative of insider dealing by Leung CH. In Chapter 10 we decided whether or not insider dealing has been proved against him.

(B) Who purchased the Robert Law shares

On the totality of the evidence the Tribunal is satisfied that the role played by Francis Cheung in the purchase of the Robert Law shares was very similar to his role in the purchase of the LEUNG Pak-ming shares on June 1st and was motivated by the same strategy i.e. to control as many Chee Shing shares as possible in the knowledge that he intended and was confident that he would be the prime mover in acquiring Leung CH's 116 million (approx.) shares. We will now list the main factors which taken together with our findings about the Francis Cheung/Cammie Pang relationship, have caused us to come to this conclusion.

i) Francis Cheung's prior interest in Chee Shing

It is fundamental to Francis Cheung's case that the plan to target Chee Shing and recruit some mainland funding was formulated in mid-June and that Leung CH's shares were the only ones he was targeting. The Tribunal however considers that his previous knowledge of and interest in Chee Shing is consistent with a wider and earlier involvement than the narrow one which

is at the basis of his case to the Tribunal. For example:-

(a) Document "FC6" was attached to Francis Cheung's statement to the SFC. It had been discovered in his office premises during the SFC's search. It was a report dated October 30th 1992 about Chee Shing. It covered, inter alia, the financial position of the company, its earning power, its asset base and a comparison between it and Golik. (The first 3 pages are at Annexure M)

(b) Francis Cheung had, in 1992 proposed injecting a property in Tianjin into Chee Shing Holdings in return for Chee Shing shares but this had been rejected.

(c) Mr. Ted Liu, who was generally acknowledged to be an impressive witness, gave evidence that Francis Cheung had told him, in about March or April of 1993, that he knew Leung CH and suggested approaching him to see if he wanted to sell his Chee Shing shareholding. At this time, Ted Liu's client, CMIEC, decided to buy Golik, instead.

(d) It is a fact also that Francis Cheung was aware of Robert Law's shareholding also from an early date. He had known Robert Law for many years and on his evidence knew that Robert Law had wanted to dispose of them for some time.

(ii) <u>Leung CH's account</u>

Having seen and heard the witnesses the Tribunal is firm in the view that it is safe to proceed on the basis that the version of events given by Leung CH is substantially correct. In particular we accept the following:-

(a) The initial approach to buy Leung CH's shares was made by Francis Cheung to Leung on or before June 16th 1993. Bearing in mind our findings above and in particular in relation to the LEUNG Pak-ming deal Francis Cheung's

overall strategy was already under way at this time. Before Francis Cheung went to Beijing on June 17th Leung CH had indicated his willingness to sell all his shares at $1.20 per share.

(b) After his return from Beijing Francis Cheung again approached him specifically to ask him about the Robert Law shares. It is clear from the totality of the evidence that Leung CH's subsequent phone calls to Robert Law were at someone else's bidding. The only logical inference is that happened because Francis Cheung asked him to try and persuade Robert Law to sell, which we know he, in fact, succeeded in doing. We do not accept that Francis Cheung said he would only be interested in them if they formed part of the overall deal and that when he thought there was a risk of this not being done in time he decided to take no further part in the Robert Law shares and that Leung CH then approached Cammie Pang to see if she might be interested.

(c) Leung CH agreed to approach Robert Law because he did not want his refusal to do so to adversely affect the sale of his own shares.

(d) After Leung secured Robert Law's agreement to sell he gave the details of Robert Law's stock brokers to Francis Cheung. Francis Cheung said he would pay for them. Leung CH was unaware and remained unaware that they were transferred into the name of Cammie Pang.

(iii) <u>The Funding of the purchase of the Robert Law shares</u>

We note first of all that the brokers who were used to acquire the Robert Law shares were Paul Fan Securities Limited and Win Wong Securities Limited. The two brokers that were used were the same two brokers that had been used for the LEUNG Pak-ming shares at the beginning of June. They dealt with approximately 50% of the shares each, on both occasions.

Cammie Pang had never used either of them before. She did have her own broker, Chia Tai Securities, but she did not use them. From the beginning of 1992 up to the material time in 1993 she had conducted 178 transactions in her name through stock brokers and 166 of them had been with Chia Tai Securities Limited.

The total purchase price for the Robert Law shares was made up by two cheques to the two brokers, one for $6,027,900 and one for $7,081,172. These were cheques from Cammie Pang's account with the Shanghai Commercial Bank. That account had been credited, on the same day, with two cheques from Bridging Finance and Investment Limited for $8.2 million and $4.4 million. Our findings on Bridging Finance have already been made. Thus the connection with Francis Cheung is apparent from that source alone. In addition however, also on the same day, the Bridging Finance account was itself credited with two cheques, one for $5 million from Francis Cheung and one for $6 million from Polo Fox Limited. Cammie Pang was the sole director of Polo Fox Limited. It appears in the alphabetically listed companies on CP-5 which the Tribunal is satisfied is a list of companies under Francis Cheung's control. Francis Cheung accepted in evidence that his personal guarantee to the Bank in relation to Bridging Finance also covered Polo Fox Limited (and Portmark in which the vehicle FC11 was registered).

(iv) Settlements

The Tribunal examined and heard evidence about two documents which purported to set out the terms of settlement in relation to both the LEUNG Pak-ming shares and the Robert Law shares. They are at Annexure N in this report. Our findings in relation to them reveal an involvement by Francis Cheung which is inconsistent with his claim that the purchases had nothing to do with him.

Before elaborating on our findings it is necessary briefly to refer to an issue which was called "the Cheung Kong convertible note" because it is relevant to the evidence concerning the settlements. In broad terms, Chee Shing had issued a convertible note in 1991 in favour of a company in the Cheung Kong Group for $40.5 million. It was repayable on or before April 1994. Cheung Kong had the right to convert the outstanding amount into Chee Shing shares at $1.35 per share at any time. In the latter half of 1993, after the take-over, Cheung Kong requested repayment of the principal plus interest plus premium rather than exercising its option of converting the outstanding amount into shares. Francis Cheung was anxious that this should not happen and ultimately an agreement was reached whereby Cheung Kong took the shares which Leung CH then bought back from Cheung Kong at a price equivalent to the amount of Cheung Kong's total entitlement under the original terms of the note. This method enabled Francis Cheung to avoid recording a $10 million loss in the annual accounts of Chee Shing which would have had to be included had the repayment to Cheung Kong been by cash. Francis Cheung agreed to repay Leung CH for half of them at a later date.

The Tribunal accepts that the document at Annexure N(i) is a document presented to Leung CH from Francis Cheung at the end of April 1994 and sets out Francis Cheung's assessment of what he owed Leung CH in relation to their agreements both in respect of the Robert Law shares and the Cheung Kong convertible note. Leung CH had always acknowledged in his statement and in evidence that Francis Cheung had said to him at the outset that if he persuaded Robert Law to sell his shares at $1.20 they could go 50/50 on purchasing them. Leung CH accepted that he did not argue with this proposal at the time. Francis Cheung had said that he would pay for them and we have found that indeed the funds did emanate from resources under his control. The point was made on behalf of Leung CH that between June 1993 and April 1994 no request was made to be re-imbursed for his half share. Thus it is argued, and we

accept, that they were treated as entirely Francis Cheung's until April 1994 by which time there had been a falling out between them and Leung CH wanted to terminate both his and his brother's connections with Tysan Holdings, which it then was. In May 1994 Leung CH finally resigned as a director. It is worthy of note also that after the Robert Law shares had been transferred into the Cammie Pang account Leung CH played no part in nor was he consulted about any of the subsequent disposals of them through that account.

As can be seen the final settlement reduces what was owed by Francis Cheung to Leung CH under the Cheung Kong convertible note agreement, by an amount equivalent to half the Robert Law shares. Even though Leung CH had had nothing to do with those shares since Robert Law sold them he accepted the settlement because he had verbally agreed to the "50/50" proposal in June 1993. We find that his agreement to the "50/50" proposal was motivated by a desire not to "rock the boat" and ensure the sale of his shares would go through and his acceptance of the April 1994 settlement was motivated by a desire to "cash in" all his interests prior to resigning from Chee Shing.

Similarly, we are satisfied that the earlier document which records the LEUNG Pak-ming settlement was presented to Leung CH at a meeting in March 1994 between himself and Francis Cheung and Cammie Pang. To avoid repetition we simply state that we are satisfied that this was the first time that Leung CH learnt that these shares had been transferred into the name of Cammie Pang and that Francis Cheung was present at this meeting.

The Tribunal was presented with considerable evidence concerning the SFC search of Francis Cheung's and Cammie Pang's offices and premises and what was seized as a result. There is no need to rehearse it in detail in this report. We fully accept the evidence of the witnesses from the SFC from which it can be safely concluded that the settlement account was

retrieved from the hard disk of a computer in Cammie Pang's office.

(C) Do our findings amount to proof of insider dealing?

(I) Against Francis Cheung

In view of our findings the two sub-sections of section 9 of CAP 395 which we must consider are sub-sections (a) and (b).

s. 9(1)a
Insider dealing would have taken place within the terms of this section if the evidence proves to a high degree of probability that Francis Cheung, when being a person connected with Chee Shing Holdings was in possession of relevant information which he knew to be relevant information, counselled or procured Cammie Pang to buy Robert Law's Chee Shing shares.

The ingredient in this section which we have not yet considered is whether, at the time the sale of the Robert Law shares was agreed, namely June 22nd 1993, Francis Cheung was a "connected person" within the meaning of s. 4 of CAP 395. The relevant provisions of s. 4 are :-

> "4. "Connected with a corporation"
>
> (1) A person is connected with a corporation for the purposes of section 9 if, being an individual -
>
> (a) ....
> (b) ....
> (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;

(ii) ....

(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 their derivatives or to the fact that such transaction is no longer contemplated;"

It has been submitted that prior to the take-over Francis Cheung was a person connected with Chee Shing by virtue of his business relationship with that company being one which would reasonably be expected to give him access to relevant information about Chee Shing. His relationship and dealings with Leung CH, a Chee Shing director, in the weeks prior to the take-over (and indeed earlier as we have already referred to) is the sort of relationship which is relied on in support of this submission that s. 4(1)(c)(i) applies to Francis Cheung. Additionally, and more specifically, it is submitted that s. 4(1)(d) also applies by virtue of the fact that Francis Cheung was a director of (and therefore connected to) "another corporation" (namely Bofield Holdings Limited) which gave him access to relevant information about Chee Shing. As Bofield was one of the group of companies gathered which together formed Power Link, the vehicle for the acquisition of Leung CH's shares, he would have access to relevant information.

The Tribunal finds favour with both limbs of the submission and finds Francis Cheung to be a "person connected" as defined by s. 4 of CAP 395.

s. 9(1)b

We find that it is section 9(1)(b) which more accurately reflects the conduct which we find proved against Francis Cheung. By that section an individual who is contemplating making a take-over offer may be identified as an insider dealer. We specify each ingredient as follows (which include s. 9(1)(a) ingredients):-

i) "Contemplating"

We have already referred to this ingredient in Chapter 5. The moment when a vague thought turns into a contemplated fact as envisaged by the legislation is a question of fact in each case. We have already found that what was in Francis Cheung's mind before going to Beijing was by no means a vague thought and it was in fact within his contemplation (and reasonably and realistically so) to make an offer in due course.

ii) "The offer"

Francis Cheung does not suggest that a general offer might not have been made after the acquisition of Leung CH's shares. We are satisfied that the terms of the take-over code would have been automatically followed (even though it may not have been strictly required) and that Francis Cheung never entertained any other course.

iii) Possession of relevant information and knowledge of its relevance

We have already defined what constitutes relevant information in this case in Chapter 5 on page 44. Francis Cheung himself forms part of the definition. It must follow that both when Robert Law agreed to sell his shares on June 21st and when the agreement was finalized on June 22nd Francis Cheung was in possession of information as defined and that he knew it was relevant information. In short, there can be no doubt that he knew that if the average Chee Shing buyer knew what he knew at that time they

would buy the shares in the realistic expectation of a significant profit being made.

iv) Counsel or procure

We find insider dealing to be proved on the basis that he utilized the participation of his faithful and trusted employee and friend Cammie Pang. The companies and accounts used were in her name and under his control. She was a willing and knowing party to the transaction. He counselled and procured her in the sense that he brought about the result he wanted in the way he wanted with her willing participation. She would not have done it on her own.

v) "Otherwise than for the purpose of such take-over"

It is implicit in our findings that the acquisition of the Robert Law shares were a part of Francis Cheung's strategy which was separate and distinct from his acquisition, through Power Link, of Leung CH's shares. It was never suggested that the Robert Law shares ever formed part of the negotiation with CMIEC or Golik or were referred to when Francis Cheung made his "presentation" to CMIEC in Beijing on June 18th.

(II) Against Cammie Pang

Each alleged insider dealer is entitled to have the evidence for and against them considered separately. This we have done although the circumstances of this particular case are such that the realities do not permit a finding against one but not the other.

i) The Robert Law shares

As it is we find the allegations proved on the basis that Francis Cheung counselled and procured her to deal which she did.

The basis, therefore upon which the allegation of insider dealing is proved against her is within the term of s. 9(1)(f).

To go through each ingredient again would be repetitive. Given the closeness and nature of their personal and business relationship it would be meaningless to suggest there were any real differences between the status and relevance the information which they both possessed at the material time. The only difference is that the actual dealing was done by her because of the knowledge and information which came from him. A person identified as an insider dealer under s. 9(1)(f) would normally be described as a "tippee" in the sense that he or she received relevant information and then dealt for his or her own benefit. Cammie Pang's situation is slightly different. She dealt on information received and knew what she was doing. However it was not solely for her own benefit because she was at all times working in concert with Francis Cheung.

ii) <u>The 750,000 shares traded in WONG Mui's name</u>

We have already found that these transactions had nothing to do with WONG Mui. It is arguable that because they were done by Cammie Pang it must follow that they were under Francis Cheung's control. However we find that we cannot draw that particular inference without some further evidence in support. Not only have we given each alleged insider dealer separate consideration but we have also given each alleged inside deal separate consideration.

The WONG Mui shares were purchased on June 21st. Francis Cheung had been back from Beijing for two days. The relevant information as defined was in existence. No other reasonable inference can be drawn than that Cammie Pang was in possession of it and knew its sensitivity when she embarked on the WONG Mui purchases. A summary of these trades are at Annexure G.

We therefore find s. 9(1)(f) also proved against her as a separate finding. We find it unnecessary to consider

Francis Cheung's role in this particular transaction.

(D) Defences

S. 10 of CAP 395 sets out six circumstances in which a person shall not be identified as an insider dealer regardless of the fact that all the ingredients constituting an inside deal have been proved to the required standard. The onus of proving that a s. 10 defence applies rests on the person who seeks to rely on it and the standard of proof which must be achieved before it can said to be proved is the normal civil standard i.e. proof on a balance of probabilities.

Those parts of s. 10 which have been raised and been the subject of submissions in this inquiry have been sub-sections (3), (4) and (6). They read as follows:-

> "(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.
>
> (6) A person who enters into a transaction which is an insider dealing in relation to a listed corporation shall not be held to be an insider dealer, other than as a person who has counselled or procured another person to deal in listed securities or their derivatives, if he establishes that the other party to the transaction knew or ought reasonably to have known that he was a person connected with that corporation."

The fact that Francis Cheung's and Cammie Pang's "defences" to the Tribunal were not those available by virtue of section 10 is not fatal to their being able to rely on them.

They are entitled to say, which they do, that if the Tribunal rejects their contentions that (a) Cammie Pang was merely making a personal investment without the benefit of inside information and (b) Francis Cheung was wholly unconnected with it, which contentions the Tribunal has rejected, that, in the alternative, the totality of the evidence shows that one or other of the available defences does apply to them on the balance of probabilities. Logic determines that to pray in aid a s. 10 defence when it has not formed part of their case before the Tribunal presents increased difficulties for the person relying on it than if it had formed part of their case. We must nevertheless consider them.

s. 10(3)

It is submitted on behalf of Francis Cheung that if, as Mr. Heale opined (and as the Tribunal has found) Francis Cheung was, by acquiring the Robert Law shares, seeking to maximize his control of Chee Shing shares leading up to the take-over then he did not acquire them with a view to making a profit by the use of the relevant information. This Tribunal has found in previous inquiries and we are not persuaded to depart from its previous ruling that in order to rely on s. 10(3) a person must show that the making of a profit or the avoidance of a loss must have formed no part at all in his intentions. If he knew or ought to have known that the making of a profit would be a consequence and that that knowledge contributed to his decision to buy, s. 10(3) cannot apply even though such an intention was secondary. Thus a person whose genuine primary motive is unrelated to the profit or increase in value which will follow may not come within the terms of s. 10(3) if he realizes that he will nonetheless benefit as a result.

In any event the Tribunal's findings on the evidence are such that any submission that Francis Cheung has discharged the burden on him to prove on the balance of probabilities that he entered into the

transaction otherwise than with a view to the making of a profit, simply cannot be sustained.

Francis Cheung would not have acquired control of the shares without knowing that the inevitable consequence would be an increase in their value. Thus even though his primary motives or intentions or strategy may not have involved a desire to take advantage of that increase, he cannot rely on s. 10(3).

s. 10(4)

The sub-section absolves the simple agent who deals on behalf of his principal. Counsel for both Leung CH and Cammie Pang have invited the Tribunal to consider its application to the conduct of their clients. In view of our findings in Chapter 10 its application to Leung CH is academic.

As far as Cammie Pang is concerned the totality of the evidence does not satisfy the Tribunal on a balance of probabilities that Cammie Pang merely acted as Francis Cheung's agent.

i) It was never her case and so there is no evidence from her that that was or might have been the situation.

ii) Our findings, as already stated, are not consistent with such a relationship. Her involvement was that of an active participant. They played their separate role in carrying out a common objective. In addition Cammie Pang acquired a further 750,000 for herself.

s. 10(6)

This sub-section does not apply to those who counsel or procure and thus cannot be relied by Francis Cheung. (In fairness he did not seek to rely on it.)

As far as Cammie Pang is concerned it is again wholly inconsistent with her stated case and neither was it relied on in argument. For the sake of completeness we find it does not apply in her case.

CHAPTER 10

LEUNG CHEE HON

We have left our findings concerning the conduct and involvement of Leung CH to the end of our report because the evidence in relation to him has caused us the greatest anxiety and difficulty.

We think it is important at the outset to emphasize the differences between him and the other principal players in this inquiry.

Firstly, as far as the take-over was concerned he was the selling party. Everyone else were buyers. As to the allegation that he was in part a buyer of the Robert Law shares we examine and distinguish his true state of mind at the time later in this chapter.

Secondly, the allegation against him is that he counselled or procured Robert Law to sell but not to sell to himself, to sell to another person.

Thirdly, he was not part of the take-over team nor was he privy to the negotiations. On the contrary he was the subject of them. There must have been significant differences in what he actually knew and what Francis Cheung actually knew at the material time.

Fourthly, his background was very different from Francis Cheung's background. Leung CH was not an experienced share trader or investor. Francis Cheung was. Leung CH knew very little about the Stock Exchange of Hong Kong. The only shares he owned were his own Chee Shing shares. Both he and Francis Cheung can justifiably claim to be Hong Kong success stories and both can point to hard work as a key component in their success. However Leung CH's story is of a man who built up a successful business from scratch having come from humble origins. As one newspaper article about him put it - "Leung typifies a different type of Hong Kong business man: down-to-earth, reserved, systematic and strongly believes that hard work is the key to success". Chee Shing was his "baby". The Tribunal accepts this

picture but is cautious to overstate his glowing character references because it was his willingness to mislead Robert Law in the first place which "lit the blue touch paper" and resulted in the insider dealing investigation.

Keeping these important differences in mind we have reached the conclusion, upon which we shall briefly elaborate in the following paragraphs, that the evidence does not satisfy us to a high degree of probability that LEUNG Chee-hon should be identified as a person who insider dealt within the provisions of s. 9 of CAP 395 arising out of the sale of the Robert Law shares on June 23rd 1993. The fact that our elaboration of this conclusion will be brief does not reflect the volume of evidence which we have heard in relation to him nor does it reflect the depth of the Tribunal's consideration of that evidence. The Tribunal's view is that if an allegation is not proved that fact should be stated simply and briefly. It does not follow that strong suspicions were not rightly held, reasonable allegations were not properly made or detailed investigations not correctly held. It is certainly a sustainable argument that his activities in mid-June 1993 contributed to the investigation being brought about. At the end of the day however it is simply a case of the totality of the evidence falling short of the high standard of proof required.

The following matters have contributed significantly to our conclusion.

i) <u>The fundamental differences</u> to which we have referred above which set Leung CH aside and place him in a category of his own as an implicated party.

ii) <u>Demeanour</u>
To label a witness as untruthful because of his demeanour when giving evidence is dangerous. However, a court or Tribunal can be more ready to rely on demeanour when its purpose is the opposite, namely to enhance a witness' credibility. We found Leung CH was being honest when he was explaining why he had told lies to the SFC.

There was evidence, which we accepted, that at the height of the SFC investigation, Leung CH was angry and frustrated. Angry that he was involved in it and frustrated because he did not know why he had become involved or what he should do about it. This was a genuine reaction which pointed to his own belief, honestly held, that he had not done anything unlawful. Of course, his own belief that he had done nothing wrong does not mean that he had in fact done nothing wrong. However his reaction was of a man who had got carried along in a dangerous current.

iii) <u>What information did *he* possess at the material time?</u>

The most important feature of the answer to this question is that it was - less than Francis Cheung had. That being the case it is more difficult for the Tribunal to be satisfied that it was relevant information, as defined in s. 8, to *him* and that he knew its relevance. There is no doubt that this is a borderline issue.

The information which Leung CH possessed on June 21st 1993 when he persuaded Robert Law to sell at $1.20 was probably no greater than the information he had on June 16th (or before) when the approach was made to acquire his own 116 million (approximately) shares. He knew that Francis Cheung had been to Beijing but he did not know what had happened there. More importantly he was not a confidante of Francis Cheung. He did not know what was in his mind. He did not know his level of optimism, confidence or determination about the take-over he was contemplating. Apart from its name Leung CH knew little of CMIEC. Furthermore it was not until the following evening on June 22nd that Francis Cheung said to him that the deal would be “no problem”.

iv) <u>Motivation</u>

In deciding what he knew at the time, i.e. what information he possessed, it is helpful also to look at what his objectives were. What he knew and how he treated that knowledge should be viewed in the context of what his intentions were or were not. A Tribunal would be less ready to accept that a man knowingly

possessed relevant information if his sole objective was to sell out and retire peacefully abroad by lawfully selling his own shares than if he was interested in making profit for himself by being a party to the purchase of his former partner's shares. This Tribunal is satisfied that the former was his sole objective and the latter was not.

Whilst it is true that the question of intention is strictly only relevant to the issue of whether or not the s. 10(3) defence applies it is nonetheless a matter we can attach some weight to when deciding if it has been proved that he knew or appreciated the significance of the information he in fact possessed.

v) Factual disputes

It will be apparent from all our findings thus far that, in most instances, where different versions of events have been given in evidence about a variety of factual matters between Leung CH on the one hand and Francis Cheung and Cammie Pang on the other the Tribunal has found favour with and has decided it is safe to rely on the evidence of Leung CH.

By way of example we refer to two particular matters. We specify the first matter in our report because it is perhaps the most telling piece of evidence against Leung CH. In the final account between Francis Cheung and Leung CH in April 1994, just prior to Leung CH's final resignation from the Chee Shing board, a debit for half the cost of the Robert Law shares appears. Leung CH said he accepted this reluctantly because he had not demurred from Francis Cheung's comment in June 1993 when he had said words to the effect of "we can go 50/50 on them". Leung CH's explanation is accepted and is consistent with the overall picture. Francis Cheung in fact paid for them at the time. Leung CH did not know they all went into Cammie Pang's name. Leung CH played no part in the subsequent trading of them nor in the proceeds of their sale. In fact other than the verbal 50/50 comment by Francis Cheung there is no other evidence of his ownership of any of the shares until the time of the settlement 10 months later. The settlement was

presented as a “fait accomplis” which he accepted. He did not want the balance of shares remaining but he took them nonetheless.

Secondly, Annexure O is a cheque signed by Leung CH made out to Francis Cheung dated June 1st. It is not difficult for the Tribunal to accept Leung CH’s simple and straightforward explanation as to why it was made out to Francis Cheung namely that the money was intended for him and at the same time reject the implausible explanation given by Francis Cheung and Cammie Pang.

To reduce finally a long and complex case concerning Leung CH to one sentence it is that even if the information he had on June 21st 1993, (which was significantly more limited than what Francis Cheung knew) did qualify as being relevant information, the ingredient that he knew that it was relevant has not been proved to the required standard.

SUMMARY OF FINDINGS

1. The following persons are identified as insider dealers in relation to dealing in Chee Shing Holdings Limited shares between June 1st 1993 and July 5th 1993.

   i) The purchase of 800,000 Chee Shing shares by Madam ZHANG Xiao-Zhu on June 18th and June 21st 1993 was insider dealing as defined by s. 9(1)(f) of CAP 395.

   ii) The purchase of 750,000 Chee Shing shares in the name of WONG Mui on June 21st 1993 was insider dealing by Cammie PANG Kam-chi as defined by s. 9(1)(f) of CAP 395.

   iii) The purchase of 10,874,000 Chee Shing shares in the name of Cammie PANG Kam-chi on June 23rd 1993 was insider dealing by Francis CHEUNG Nim-chee, as defined by s. 9(1)(a) and s. 9(1)(b) of CAP. 395 and by Cammie PANG Kam-chi as defined by s. 9(1)(f) of CAP. 395.

2. Madam WONG Mui, Henry Lai and LEUNG Chee-hon are not identified as insider dealers.

3. Chapters 1-10 of our report will now be sent to the Financial Secretary, the Department of Justice and the implicated parties. The Tribunal will reconvene on a convenient date to be fixed to give those against whom findings of insider dealing have been made an opportunity of being heard prior to the preparation of Chapter 11 of our report which will be “Penalties and consequential orders under s. 23”.

The Honourable Mr. Justice Burrell
Chairman

Mr. Charles CHAN Wai-dune
Member

Mr. John WU Chi-tso
Member

March 30th 1998

CHAPTER 11

Penalties and Consequential Orders

The first ten chapters of our report were sent to the Financial Secretary on March 30th 1998. The reason the Tribunal has not considered the penalties issues since then is because a breach of confidentiality was allegedly committed by a member of the Tribunal, Mr. John Wu. As a result of that Mr. John Wu resigned as a member of the Tribunal on May 15th 1998 and judicial review proceedings were commenced by Mr. Francis Cheung. The issues in the Judicial Review proceedings are not relevant to the report. The case was heard in the Court of First Instance in December 1998, in the Court of Appeal in October and December 1999 and in the Court of Final Appeal in November 2000. Thereafter the earliest date the Tribunal, with its new temporary member, Mr. Michael Sze Tsai Ping, and all interested partners, could reconvene to complete the inquiry was May 29th 2001.

The Tribunal has now heard submissions in relation to all matters arising out of our findings in Chapters 1-10 of this report which we now report on under the following 5 headings : -

1. Orders under s.23(1)(b) against Francis Cheung, Cammie Pang and Mdm. Zhang (Lisa Lai) – Disgorgement of Profit

2. Orders under s.23(1)(c) against Francis Cheung, Cammie Pang and Mdm. Zhang – Financial Penalties

3. Orders under s.23(1)(a) against Francis Cheung, Cammie Pang and Mdm Zhang – Disqualification

4. Orders for costs against those identified as insider dealers – Francis Cheung, Cammie Pang and Mdm Zhang

5. Applications for costs by those not identified as insider dealers – Leung Chee Hon, Wong Mui and Henry Lai

1. Disgorgement of Profit s.23(1)(b)

(a) The "Robert Law" Shares

Counsel for the implicated parties have urged us to take July 25th 1993 as the date when all the relevant information had become public (the date of the 4th announcement). The relevant price for calculating the profit made from the insider dealing would then be $1.81 or slightly less if one averages the price over the few days following July 25th. Counsel for the Tribunal however asks us to rely on the expert evidence of Mr. Alex Pang. Mr. Pang takes July 5th 1993, the date of the 3rd announcement, as the key date. The Tribunal accepts his evidence that this was the date on which the relevant information was published to be digested by the investing public. The average price over the next 6 or 7 days is almost exactly same as the price on July 5th.. We take, therefore, $1.95 as the relevant price to determine the notional profit.

The net profit on the "Robert Law" shares is : -

	HK $
Notional sale of 10.874 million shares at $1.95 per share	21,204,300
Less transaction costs (0.42%)	- 89,058
	21,115,242
Less Purchase + transaction costs	-13,103,605
	8,011,637

Mr. Grossman S.C., for Francis Cheung, also urges us to take into account the Tribunal's finding that the Robert Law shares acquired by Francis Cheung were in the nature of a 50/50 joint venture with Leung Chee Hon. 50% of the shares were "accounted for" some 10 months later to Leung Chee Hon. We found this to be a vague arrangement at the time, of which Leung Chee Hon was by no means fully cognizant. However, we found that a 50/50 account was ultimately made. Even if it was made 10 months later it is hard to say that no account should be made of its existence at the time.

The Tribunal does not find that it must give effect to such a contract. We are not bound to do so. However, we accede to the submission, that in view of our finding, it would be fair, when calculating the notional profit made "by that person", under s.23(1)b, to do so.

We find therefore that the notional profit for which Francis Cheung and Cammie Pang are liable arising out of the Robert Law shares is $ 4,005,818.

Counsel invited us to make this order under s.23(1)b against Francis Cheung and Cammie Pang a joint order . The Tribunal accepts that this is appropriate. We have been informed by Mr. Grossman that Francis Cheung will accept responsibility for whatever sum the Tribunal decides on behalf of both himself and Cammie Pang.

(b) Cammie Pang's purchase of 750,000 Shares

Using the same price of $ 1.95 per share the appropriate order under s.23(1)(b) is $ 1,088,721.

(c) Mdm Zhang's purchase of 800,000

By the same calculation the appropriate amount here is $1,175,474

2. Further penalty pursuant to s.23(1)(c)

The Ordinance permits a further penalty of up to 3 times the amount of the profit gained or loss avoided by that person.

(a) Francis Cheung and Cammie Pang in relation to the Robert Law shares

A number of points were advanced by way of mitigation. We have considered them all and attach some weight to the following :

(i) This case was unusual in that it was a one-off, one on one transaction. Robert Law was the victim, not the investing public.

(ii) Prior to the inquiry attempts were made to settle the matter. The Tribunal is not aware what terms of settlements were negotiated or reached. We have been informed that the Financial Secretary was unwilling to endorse any settlement. It is reasonable to opine, however, that a factor which caused him not to endorse a settlement was that the transaction which was being 'settled' involved insider dealing.

(iii) The transaction caused no loss to the market.

(iv) The transaction is now 8 years old. The inquiry was instituted 4 years after the transaction, in April 1997. Francis Cheung's decision to apply for judicial review following Mr. John Wu's extraordinary conduct cannot be criticized. The judicial review application was ultimately unsuccessful but he cannot be blamed for the further delay it caused. The result is that the case is now stale.

(v) Francis Cheung's background and personal circumstances. We deal with these more fully when considering the question of disqualification under s.23(1)(a).

The combined effect of these factors cause the Tribunal to think that this case does contain unusual mitigating factors. We have decided that a fair penalty against Francis Cheung and Cammie Pang in relation to the Robert Law shares is $5 million. In other words the ratio of the penalty to the profit is a factor of just over 1. For the same reasons as set out beforehand this will be a joint order.

(b) Cammie Pang's 750,000 shares

Much of the mitigation already set out applies generally to this transaction and Mdm Zhang's insider dealing as well. We have also read Cammie Pang's personal circumstances as set out in her statements to the SFC. It is said on her behalf that she was a hard working and knowledgeable business woman at the time, and remains one today.

We have decided the appropriate penalty in her case is to multiply the profit by a factor of just under 1. The penalty will be $1 million.

(c) Mdm Zhang's 800,000 shares

Mdm Zhang, better known as Lisa Lai, Herry Lai's wife, had nothing to do with Francis Cheung's plans. It was an opportunistic purchase. Her non-involvement causes us to impose a slightly lesser penalty in her case. She is penalized $750,000 under s.23(1)(c).

3. Disqualification pursuant to s.23(1)(a)

(a) Francis Cheung

By section 23(1)(a) a Tribunal has the power to disqualify an insider dealer for up to 5 years from being a director, liquidator, receiver, manager or from being concerned with a listed company or any other company.

In respect of subsections (a), (b) and (c) of s.23(1) the Ordinance states that the Tribunal may make orders under any or all of the said sub-sections.

After careful consideration the Tribunal has decided, in view of the unusual circumstances of this particular case, to make no orders under s.23(1)(a).

In respect of Francis Cheung the reasons are briefly as follows : -

(i) The mitigation hitherto set out has equal application and merit under s.23(1)(a) as it does under s.23(1)(c).

(ii) Chee Shing is now 'Tysan Holdings'. Mr. Cheung *is* Tysan. He is the body and soul of the company. No purpose would be served in disqualifying him from his private directorships and harm to others would be done by disqualifying him from his sole directorship in this listed company . The "others" to which we refer are the shareholders and staff of Tysan.

(iii) Mr. Grossman puts his lay client forward as "gifted, talented and committed director". He adds, "To remove him from the boardroom would be to the positive disadvantage of all shareholders and to the detriment of the business community". Against this we must balance the fact that wrongdoing in financial markets must be penalized and the integrity of the market maintained. We have concluded that the balance in this case is met by penalties under sections 23(1)(b) and (c) only, being imposed.

(iv) Finally, Francis Cheung has an impressive c.v.. We have considered an 8 page document chronicling his business and community achievements. We will not refer to the details further. Suffice it to say, it is a factor which has weighed in his favour.

In conclusion, we emphasize that normally, any person found to be an insider dealer should expect an order under s.23(1)(a) being made against him or her. There must be occasional exceptions. For all the reasons given, we find this case to be such an exception.

(b) Cammie Pang and Mdm Zhang

In the particular circumstances of this case, Cammie Pang and Mdm Zhang would feel an understandable sense of grievance if they were penalized under s.23(1)(a) when Francis Cheung had not been.

We also take into account that neither have ever been directors of listed companies and we accept what has been said on behalf of both of them, namely that neither "has the slightest

intention of ever becoming directors of a listed company in the future". Mdm Zhang is not a director of any private companies either.

In both their cases the Tribunal is satisfied that the penalties imposed under sections 23(1)(b) and (c) are sufficient to meet the justice of the case.

4. The Tribunal costs

The Tribunal's costs in the sum of HK$ 3,739,461.49 shall be met by those identified as insider dealers. We apportion the costs as follows : -

85% to be paid by Francis Cheung

10% to be paid by Cammie Pang

5% to be paid by Mdm Zhang

We make this order under s.27 of CAP 395

5. Applications for costs by those not identified as insider dealers

(a) Leung Chee Hon

The power to award costs comes from s.26A of CAP 395 :-

"(1) Subject to subsection (5).....the Tribunal may award to -

(a)

(b) any person whose conduct is, in whole or in part, the subject of the inquiry, such sum as it thinks fit.....

Subsection (5) states.....

"This section shall not apply to any person referred to in subsection (1) who -

(a)

(b)

(c)

(d) …….. has by his own acts or omissions caused or brought about (whether wholly or in part) the institution of the inquiry under section 16".

The first issue to determine therefore is whether s.26A(5)(d) applies to Leung Chee Hon. The major criticism of his conduct which is relevant to the issue of costs is the fact that, in 1993, he made two conflicting statements to the SFC. In our report we have determined that his second statement reflected the truth. It was Leung Chee Hon's evidence before us that the first statement was false and the second one was true. The first question to be answered therefore is this - was the fact that Leung Chee Hon made conflicting statements to the SFC, one of which must have been dishonest, an "act which caused or brought about (whether wholly or in part) the institution of the inquiry….." ?

We are of the opinion that it was not. The inquiry would have surely been instituted anyway. We are also of the opinion that, for the purposes of this costs application, the reality is that the investigation was caused or brought about because of Francis Cheung's desire to acquire Robert Law's shares. Bearing in mind the Tribunal's findings as to his state of mind and state of knowledge at the material time, the role played by Leung Chee Hon was not such as to bring him within s.26A(5)(d). We therefore conclude that this section does not apply to him so as to disentitle him from any costs order to be made in his favour. We therefore revert to s.26A(1) which confers on the court a discretionary power to award "such sums as (we) think fit….".

Both counsel for the Tribunal and counsel for Leung Chee Hon have submitted that the most helpful guidance when deciding whether and how to exercise that discretion, can be found in the principles applicable to costs issues in criminal cases. Those principles have recently been considered in the Hong Kong Court of Final Appeal in the case of Tong Cun Lin V HKSAR (1999) 2 HKCFAR 531. In that case at page 535 Litton PJ said this : -

> "In considering whether, despite this general rule, he should be deprived of all or part of his costs, the judge exercising the discretion must obviously look to his conduct generally, so long as such conduct is relevant to the charges he faced. This cannot be confined to any particular period of time. Since, however, the discretion is being exercised in the

context of an acquittal - the averments constituting to the crimes alleged – it follows that, generally speaking, the conduct most relevant to the matters under consideration must be the defendant's conduct during the investigation and at the trial : How he first respond to the investigators, the answers he gave when confronted with the accusations, the consistency of those answers with his subsequent defence, etc. Wrapped up with this is the strength of the case against the defendant and the circumstances under which he came to be acquitted : These too are relevant to the exercise of the discretion to deprive him of his costs, so long as the judge is not, indirectly, thereby punishing him by taking a view of the facts palpably different from that taken by the jury and reflected in the not-guilty verdict."

The Tribunal considers this to be a most helpful statement of principle which it is entirely appropriate to adopt in these proceedings.

We further remind ourselves of s.26A(4) of SIDO which states : -

"……Order 62 of the Rules of the High Court shall apply ……" Order 62 r. 3(2) states : -

"If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

Concerning the application of O.62 Mr. Marash S.C. has referred us to Atken L. J's remarks in Rutter v. Godfrey [1920] 2 K.B at page 60 :-

"(a) "In the case of a wholly successful defendant, in my opinion the judge must give the defendant his costs unless there is evidence that the defendant : (1.) brought about the litigation, or (2.) has done something connected with the institution or the conduct of the suit calculated to occasion unnecessary litigation and expense, or (3.) has done some

wrongful act in the course of the transaction of which the plaintiff complains. These principles require further expansion.

By (1.) is meant – has so conducted himself as to lead the plaintiff reasonably to believe that he had a good cause of action against the defendant and so induce him to bring the action."

We have already determined that (1) above, does not apply. He did not cause the inquiry to be commenced. However (2) and (3) taken together with the statement of principle in the Tong Cun Ling case cause us to determine that our discretion as to Leung Chee Hon's costs should be exercised so an to allow him only part of his costs. We start from the fact that he was not found to be an insider dealer. We then balance against that his conduct in giving a dishonest statement to the SFC, the effect on the investigation and the inquiry of his two conflicting statements, the strength of the case against him and his conduct in the transactions which led to an inquiry being instituted.

We attach some weight to the following matters :

(i) The mere fact of giving a dishonest statement to the SFC, however quickly remedied, is completely unacceptable.

(ii) The existence of conflicting statements from one party added to the difficulties facing the SFC investigators and the length of the investigation.

(iii) The existence of conflicting statements from one party was the subject of considerable examination and cross-examination in the inquiry itself.

(iv) His involvement in insider dealing, as determined at page 86 of this report, was borderline.

(v) On any view, he was a piece in the jigsaw, albeit not a piece which brought him within s.26A(5)(d).

These factors, subject to one further matter which follows, have caused us to allow him one half of his costs.

The Tribunal notes that a major item in the draft bill of costs provided to us for our consideration was in relation to the court reporting fees of Smith Bernal's "Live note" service.

This service was arranged by the implicated party. The official court reporting services were provided by "Verbatim Reporters". "Live note" was an additional service which should be excluded from any costs order. This is no reflection on Smith Bernal. They, as always, provided an excellent service but it was always to be at the implicated party's own expense.

We allow 50% of Leung Chee Hon's costs, net of Smith Bernal's fees, to be taxed if not agreed.

(b) Wong Mui

In Madam Wong Mui's case we see no reason why the normal principle that costs follow the event should not apply. She may have her costs to be taxed if not agreed.

(c) Henry Lai

Culpable conduct in relation to share dealing by Henry Lai was found to be not proved. As with Leung Chee Hon we do not find that his conduct, to the extent that any particular matters were proved by the evidence, places him within s.26A(s)(c) or (d) so as to disentitle him completely from being awarded any costs.

Once again therefore, we revert to s.26A(1) and consider in what way we should exercise our discretion as to costs. Our findings in relation to Henry Lai are contained in paragraph 8 of the report. It is not necessary to repeat them. However the adverse remarks therein cause us to reduce his award of costs. Henry Lai may have 50% of his costs under s.26A(1) to be taxed if not agreed.

Summary of Orders

1.	Under s.23(1)(b) against Francis Cheung and Cammie Pang jointly in relation to the "Robert Law" shares	$ 4,005,818
2.	Under s.23(1)(b) against Cammie Pang for her 750,000 shares	$ 1,088,721
3.	Under s.23(1)(b) against Mdm Zhang for her 800,000 shares -	$ 1,175,474
4.	Under s.23(1)(c) against Francis Cheung and Cammie Pang jointly	$ 5,000,000
5.	Under s.23(1)(c) against Cammie Pang	$ 1,000,000
6.	Under s.23(1)(c) against Mdm Zhang	$ 750,000
7.	The costs of the Tribunal will be paid by Francis Cheung as to 85%, Cammie Pang 10% and Mdm Zhang 5% under s.27 of CAP 395	
8.	Under s.26A(1) CAP 395 Leung Chee Hon is awarded 50% of his costs net of Smith Bernal's fees, Henry Lai is also awarded 50% of his costs and Wong Mui all her costs, all to be taxed if not agreed.	

The Honourable Mr. Justice Burrell
Chairman

Mr. Charles CHAN Wai-dune
Member

Mr. Michael Sze Chai-ping
Member

June 27th 2001