REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

HONG KONG WORSTED MILLS LIMITED
[now renamed as Beijing Development (H.K.) Limited]

between

May 6th and June 16th 1993 (inclusive)

and on other related questions

CONTENT

ANNEXURES

Abbreviation

HKWM	-	Hong Kong Worsted Mills Limited
IHL	-	Illumination Holdings Limited
BITIC	-	Beijing International Trust and Investment Corporation
Shek	-	SHEK Mei-ling
Cheng	-	CHENG Chun-ling
Tai	-	TAI Lai-wo
Tan	-	Sinyo Wahid Winata Tan
Leung	-	Dominic LEUNG Koon-hong
Fung	-	FUNG Pui
Ng	-	NG Kwong-fung
Brian Ng	-	Brian NG Kwong-fat
SIDO	-	Securities (Insider Dealing) Ordinance CAP 359
SFC	-	Securities and Futures Commission
CLAL	-	Credit Lyonnais Securities (Asia) Limited
Mansion House	-	Mansion House Securities (FE) Limited
South China	-	South China Securities Limited
Sun Hung Kai	-	Sun Hung Kai Investment Services Limited
Foreground	-	Foreground Securities Limited
Sunbird	-	Sunbird Limited, a BVI company
Tai Hing	-	Tai Hing Cotton Mill Limited, major shareholder of HKWM
Wallkey	-	Wallkey Engineering Limited. Ng's company in Hong Kong
Wing Fung	-	Wing Fung Jewellery and Goldsmith Company Limited. Ng's unincorporated jewellery business
PRC	-	People's Republic of China
BVI	-	British Virgin Islands
T	-	Transcript of Evidence
$	-	Hong Kong dollars

CHAPTER 1

INTRODUCTION

The Insider Dealing Tribunal has heard evidence and submissions over 30 days pursuant to a notice under s. 16(2) of the Securities (Insider Dealing) Ordinance (CAP. 395) Laws of Hong Kong served on the Tribunal on January 23rd 1997 requiring it to inquire into and determine whether certain dealings in Hong Kong Worsted Mills Limited shares between May 6th 1993 and June 16th 1993 were insider dealing as defined by CAP 395 and whether seven named persons should be identified as insider dealers.

By way of introduction we will set out in this chapter non-controversial matters, in an attempt to set the scene, under the following headings:-

1. Background information.

2. A list of witnesses the Tribunal heard evidence from together with an outline of the relevance of their testimony.

3. A chronology of the key events about which evidence has been given including the times and quantities of the suspect dealings.

4. An outline of the key issues we have endeavoured to resolve.

1. Background information

HKWM was principally a garment manufacturing business, although it developed property interests as well, which had been originally incorporated in 1963 and listed in 1970. As at the time of our inquiry Tai Hing Cotton Mill Limited owned 68.35% of HKWM shares. Tai Hing was a subsidiary of Tai Hing Holdings Limited, a company owned by the Chen family. (Clement Chen gave evidence to the Tribunal.)

On June 17th 1993 an announcement was made to the effect that Tai Hing had agreed to sell its HKWM shares to Illumination Holdings Limited (IHL). This followed two previous announcements on May 31st and June 7th that the parties were negotiating but that no agreement had been reached.

IHL was a BVI company incorporated in January 1993. It was the company used as the purchasing vehicle in the take-over of HKWM. It was jointly owned by the Ng brothers and Beijing International Trust and Investment Corporation (BITIC). BITIC owned 70% of IHL and the Ng brothers 30%.

BITIC was a PRC investment vehicle. Its officers had approached the Ng brothers with a view to their identifying a suitable Hong Kong listed company to be approached for the purpose of a possible take-over.

Both Ng and Brian Ng gave evidence before the Tribunal. The former was an implicated party, the latter was not. Their interest in IHL was through another BVI company called Sunbird Limited.

It is a known fact that in 1993 there was considerable interest shown by PRC entities in Hong Kong listed companies. Generally speaking this interest was reflected in share prices. The actual movement of the HKWM share price during 1993 is a matter of record and we have annexed the figures for the material period together with two graphs as Annexure B in this report.

In very broad terms it can be seen that the HKWM share was approximately $4 during the first four months of 1993. During May 1993 the price more than doubled and the average daily turnover increased thirteen-fold from 30,000 to 390,000. As already mentioned, the first announcement about a possible take-over was on May 31st and the actual successful take-over was published in the newspapers on June 18th. The closing price on the day before the final announcement was $9.50. When trading resumed after the announcement on June 22nd considerable interest in the share continued for the remainder of the month during which time its average value was $15.00.

2. Witnesses

We heard evidence from 20 witnesses, 7 of which had been identified as suspected insider dealers.

(a) The implicated parties:

As a result of the SFC investigation it was suspected that certain purchases of HKWM shares made by six individuals may have been insider dealing. They were:-

(i) Purchases by SHEK Mei-ling (Shek) of 100,000 shares between May 6th 1993 and May 11th 1993. Shek was an employee of Ng's jade and jewellery business, Wing Fung Jewellery. Her exact role at Wing Fung was never precisely described. Ng was her boss and she appeared to occupy the role of a personal assistant. (Her evidence is at T1687.)

(ii) Purchases by CHENG Chun-ling (Cheng) of 678,000 shares between May 18th and May 24th 1993. Cheng was a Taiwanese businessman. He knew Ng and Shek through the jade and jewellery business. (T1497 onwards)

(iii) Purchases by TAI Lai-wo (Tai) of 523,000 shares between May 11th and May 14th 1993. Tai was another business associate of Ng's, although not in the jewellery trade. (T1840 onwards)

(iv) Purchases by Sinyo Wahid Winata TAN (Tan) of 226,000 shares between May 26th and May 28th 1993. Tan was an Indonesian businessman or merchant. His connection with Ng and Shek was through the jade trade but he had other business interests. (T1594 onwards)

(v) Purchases by FUNG Pui (Fung) of 340,000 shares between June 7th and June 16th 1993. Fung was also involved in the jewellery business in Hong Kong. Unlike the previous three implicated parties there is no evidence of any contact between himself and Shek. (T. 1247 onwards)

(vi) Purchases by Dominic LEUNG Koon-hong (Leung) of 202,000 shares between May 25th and May 28th 1993. Leung is in a different category. His connection with the Ngs is not through trade but as a professional. He is a chartered surveyor and a director of Richard Ellis Limited. There is evidence that he was present at meetings at which the parties to the subsequent take-over were also present from May 22nd onwards. (T1111 and T1323)

In addition, NG Kwong-fung (Ng) was suspected to be an insider dealer following the SFC investigation. He was the seventh implicated party. No direct share purchases are alleged against Ng. His involvement in our inquiry has been on the basis of a suspicion that some of the above transactions may have been funded by him and were therefore with his knowledge and approval and that he was thereby a party to them. (T1885 onwards)

(b) The brokers:

(i) MOK Shu-fun - a dealer's representative with Paul Fan Securities Limited who gave evidence relating to Fung's dealings (T35 and 1076).

(ii) Joan TUNG Nei-chuen - an account executive with South China Securities Limited who gave evidence in relation to Tai's dealing (T82).

(iii) Ricky CHAN Wing-hong - of Mansion House Securities Limited gave evidence about Cheng's and Tan's dealings (T108).

(iv) CHIU Sing-kwong - a senior manager of Sun Hung Kai Securities who gave evidence of Leung's dealings (T253).

(c) The take-over:

Witnesses whose evidence was concerned almost entirely with negotiations about and implementation of the take-over were:

(i) Michael Anthony Dean (T661): Head of Corporate Finance Division of Credit Lyonnais, Ng's financial advisor.

(ii) Donald Nimmo (T1058) - who worked in a similar capacity as Michael Dean.

(iii) Brian NG Kwong-fat (T751 and 1984) - Ng's brother and a chartered accountant. Co-owner of Sunbird with his brother, the joint purchasers in the take-over.

(iv) Clement Chen (T980) - Executive Director of Tai Hing Cotton Mill Limited. The seller in the take-over.

In this category we mention also a witness who gave a witness statement to the SFC but was not called to give evidence before the Tribunal, namely GAO Qi-ming. Mr. Gao was the Deputy Chairman of BITIC. He and his colleague, a Mr. CAO Xiao-xiao (who died in 1995) came to Hong Kong and took part in the discussions and negotiations between May 20th and mid-June 1993. Even though Mr. Gao gave no oral evidence (unsuccessful attempts were made to secure his attendance from Beijing) his statement was before the Tribunal and was read and considered. It is open to the Tribunal to attach some weight to its contents. In deciding what weight the Tribunal should attach to it as evidence of the truth of its contents we bear in mind that it was not given an oath and we had no opportunity to see Mr. Gao give evidence or hear him being examined. Furthermore the record is dated October 1994, 17 months after the events being asked about. On the other hand all SFC records of interview commence with a standard preamble (which we set out below) which makes the witnesses' rights and obligations clear. Also, Mr. Gao had his solicitor present during the interview.

> "1. Chak: I, CHAK WOO Yin-han, am directed as investigator in accordance with section 33(1) of the Securities and Futures Commission Ordinance (hereinafter referred to as "the SFC Ordinance") (Cap 24). The Securities and Futures Commission ("the SFC") has

reason to believe that insider dealing for the purposes of Securities (Insider Dealing) Ordinance (Cap. 395), may have taken place in the shares of Hong Kong Worsted Mills Limited (hereinafter referred to as "Worsted Mills") during or around the period 13 May 1993 to 22 June 1993. Since I have reason to believe that you have in your possession information relevant to my investigation, you are obliged to answer my questions truthfully and to the best of your ability.

A document was attached to the notice I sent to you. Have you read it?

Gao: Yes.

2. Chak I now explain your right and obligation. Your obligation is to answer my questions truthfully and to the best of your ability. Of course you also have your right. Your right is that under Section 33(6) of the SFC Ordinance, if you consider that your answers may incriminate you, then you may so claim before answering my questions. After you have made a claim, then neither the questions nor the answers shall be admissible in evidence against you in criminal proceedings. But if you provide false statements intentionally, we can prosecute you. As a result of what I have said to you and reading this document, do you understand your right and obligation?

Gao: Yes."

(d) Other witnesses:

We heard evidence from two fellow traders of two of the implicated parties (Tan and Tai). They were:

(i) Chan Chi Kit (T134) - a metal ware dealer who was a friend of Tan's. Tan's dealing in HKWM shares involved CHAN Chi-kit.

(ii) SY Yau-tsang (T430) - a jewellery trader who was involved with the dealings of Tai.

We heard evidence from

(iii) Robin WONG Kwok-wai (T330 and 540). Before the take-over Robin Wong was the chief accountant of Wallkey. He also kept the financial records of Ng in relation to his Wing Fung Jewellery business. After the take-over he became the financial controller of the new company namely, Beijing Development (HK) Limited.

(iv) NG Kwong-fai (T501) - the elder brother of Ng and Brian Ng. He played no part in the take-over.

(v) Alex Pang (T1043) - Mr. Pang is now the Director of Enforcement at the SFC.

3. A brief chronology of key events as disclosed in the evidence

	In relation to the take-over	In relation to the share transactions and some movements of money at the material times
Late 1992	Ng is asked by BITIC to help them acquire a Hong Kong listed company.	
December 12th 1992	Ng receives fax from Beijing authorizing him to look for a suitable take-over target.	Shek recalls seeing such a fax.

<u>1993</u> January - April	A number of possible targets are identified and considered.	
April	HKWM identified as a possible target. Ng and Brian Ng travel to Beijing to meet BITIC and to discuss a proposed take-over of HKWM.	
April 30th		Ng lends Robin Wong $300,000.
May 1st		Ng and Shek both sign provisional sale and purchase agreements for a flat each in the Sunshine Cityplaza Development.
May 3rd		Ng lends Shek $250,000 which is part of a cheque from Wing Fung to her for $298,000.
May 6th	Shek overhears Ng having a telephone conversation concerning HKWM in Mandarin.	Shek opens a securities account with Foreground Securities and an account at the Yien Yieh Bank. She buys 26,000 HKWM shares. Ng issues a cheque to Shek for $250,000.
May 7th		Shek buys 34,000 HKWM.
May 10th		Shek buys 28,000 HKWM.

May 11th		Shek buys 12,000 HKWM. Shek takes Tai to South China Securities and Tai buys 40,000 HKWM.
May 12th		Shek places an order for 173,000 HKWM for Tai.
May 13th		Shek places another order for a further 173,000 for Tai.
May 14th		Shek places another order for a further 137,000 for Tai.
A date between May 8th & May 15th (approx.)	Brian Ng contacts Clement Chen to inquire about the possibility of a take-over of HKWM. (In his SFC statement Gao states that Ng first invited him to come to Hong Kong to discuss a possible take-over of HKWM in April.)	
May 18th		Shek takes Cheng to Mansion House Securities and buys 150,000 HKWM for Cheng.
May 19th		Cheng deposits 3 cheques (totalling $2,920,000) issued by Ng into his bank account. Shek buys another 150,000 HKWM for Cheng.
May 20th	Mr. Gao and Mr. Cao of BITIC arrive in Hong Kong.	Shek buys another 114,000 HKWM for Cheng.

	IHL (i.e. BITIC plus Ngs) approach financial advisers (CLAL) and solicitors (Baker and Mackenzie) for representation.	
May 21st	IHL meet CLAL to outline their preferred structure of the proposed take-over.	
Unknown date on or about May 20th	Brian Ng telephoned Dominic Leung and asks him to arrange a meeting with Clement Chen.	
May 22nd	The meeting at the Marriot Coffee Shop at which Ng, Brian Ng, Leung, Gao, Cao and Clement Chen were present.	
May 24th		Shek buys 78,000 HKWM for Cheng.
May 25th		Leung buys 80,000 HKWM through Sun Hung Kai Securities.
May 26th		Shek takes Tan (who had come to Hong Kong the previous afternoon) to Mansion House to open an account and then buys 127,000 HKWM.
May 27th		Shek places further order for 65,000 HKWM for Tan.

		Leung buys a further 22,000 through Sun Hung Kai.
May 28th		Shek places an order for Tan for a further 34,000 HKWM.
		Leung buys another 110,000 HKWM.
	CLAL meet IHL's bankers and funds for a possible take-over are confirmed.	
	Leung arranges another meeting at which only Brian Ng, Clement Chen and Leung are present. A draft sale and purchase agreement is handed to Clement Chen.	
May 31st	The first public announcement by HKWM that an approach has been received.	
June 2nd		Leung sells 130,000 HKWM.
June 3rd		Shek sells 66,000 HKWM.
June 4th		Shek sells 34,000 HKWM.
		Leung sells 32,000 HKWM.
June 7th	The second public announcement stating that negotiations were still in progress.	

		FUNG Pui buys 50,000 HKWM through Paul Fan Securities.
June 10th		FUNG Pui buys a further 50,000 HKWM.
June 11th		FUNG Pui buys another 50,000.
June 12th	All parties meet at offices of Johnson Stokes & Masters. Leung attends this meeting. After a very long meeting negotiations break down completely.	
June 13th(?)	Leung is told he will receive $5 million if he can get the parties back together.	
June 15th	Leung brings parties back together and an agreement is reached. FUNG Pui makes out 5 cashier orders for $1 million each to IHL at request of Ng.	FUNG Pui buys another 90,000 HKWM.
June 16th	Sale and purchase agreement signed.	FUNG Pui buys another 100,000 HKWM.
June 17th	Press announcement of agreement made.	
June 18th	$5 million repaid to FUNG Pui in repayment of June 15th cashier order.	

August 7th	Leung receives $3,330,000 as part of his $5 million fee.
September 4th	Leung receives balance of $1,670,000.

4. The primary issues:

In Chapter 3 we set out the six sub-sections of s. 9 CAP 395 which define the circumstances in which insider dealing takes place. We also refer to the other sections which are relevant to our task in this inquiry.

Later in this report we deal with the evidence relating to each individual separately. At that stage we will deal in more detail with the evidence relating to each ingredient of each relevant sub-section against each implicated party. In this introductory chapter we merely outline the primary issues in broad terms.

(a) What information did Shek have at the time of her dealings in her own name which commenced on May 6th 1993? We must decide what she knew, where she had got the information from and whether it qualifies as relevant information as defined by the ordinance.

(b) What information did Shek convey to Tan, Cheng and Tai? We must then decide what Tan, Cheng and Tai knew at the times their purchases were made.

(c) We must decide if Shek's activities in relation to Tan, Cheng and Tai amount to her counselling or procuring each of them to insider deal.

(d) FUNG Pui is in a separate category. He started buying later than all the others, on June 7th, a week after the first announcement about take-over negotiations. He continued to buy after the June 17th announcement up until the end of July.

We must decide if his purchases between June 7th and June 16th were made because he received inside information about the take-over.

(e) Dominic Leung - He also is in a separate category. In his case the issue is simple - namely is it highly probable on the evidence we have heard that when he bought between May 25th and May 28th he knew that HKWM was the target company for the proposed take-over and if so how did he find out? If he did we must also, as with all others, be satisfied that the information he had qualifies as relevant information as defined by s. 8.

(f) NG Kwong-fung - The suspicion raised against Ng was that, knowing HKWM was the company against which a take-over was being contemplated, he informed others either directly or indirectly of that fact. He therefore counselled or procured others to deal in the shares. The suspicion was also raised that he directly or indirectly provided funds for such purchases to be made. A significant proportion of the evidence in the inquiry was on this issue. We deal with it in more detail in Chapter 4. As will be seen there our conclusion is that although there are a number of instances in which large sums of money flow from one party to another at the same time as share purchases are being made and paid for the totality of the evidence does not satisfy us that there is a connection between the transfer of funds involving Ng on the one hand and HKWM share dealings on the other hand. It is plain how and why the suspicion was raised but it is not made out by the evidence.

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. James Wardell. Mr. Wardell is a Chartered Accountant and a partner in the firm of Deloitte Touche Tohmatsu

Member: Mr. Peter WONG Shiu-hoi. Mr. Wong is the Managing Director of the Tai Fook Group Limited

By a notice dated the 23rd January, 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, Hong Kong Worsted Mills Limited (now renamed as Beijing Development (H.K.) Limited) ("the company"), 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 Ms Shek Mei Ling, Messrs Tai Lai Wo, Cheng Chun Ling, Sinyo Wahid Winata Tan, Dominic

Leung Koon Hong and Fung Pui during the period from 6 May 1993 to 16 June 1993 (inclusive);

(b) whether there has been insider dealing in relation to the company arising out of either Mr. Ng Kwong Fung or Ms Shek Mei Ling or both of them, while in possession of relevant information (as defined in the Ordinance), counselling or procuring any of the persons named in paragraph (a) to deal in the listed securities of the company;

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

(d) 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 Amy So. Both Mr. Davies and Miss So are from the Attorney General's Chambers as it then was, the Department of Justice as it now is.

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:-

SHEK Mei-ling, Sinyo Wahid Winata Tan, CHENG Chun-ling and TAI Lai-wo by Mr. Alfred H.H. Chan of counsel instructed

by Messrs Boase Cohen & Collins.

FUNG Pui by Mr. WONG Po-hoi of counsel instructed by Messrs Hau, Lau, Li & Yeung.

Dominic LEUNG Koon-hong by Mr. Paul W.T. Shieh of counsel instructed by Messrs Robin Bridge & John Liu.

NG Kwong-fung by Mr. Adrian Huggins, SC instructed by Messrs Baker & McKenzie.

After all the evidence had been heard, during submissions, Mr. Huggins made an application to represent Mr. Brian NG Kwong-fat. This application was opposed by Mr. Peter Davies. We granted the application and as a result Mr. Huggins made certain submissions on behalf of Brian Ng in answer to allegations which had been raised against him in Mr. Davies' final submissions.

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 seven persons. The purpose of the Salmon letter is to give the person 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 Hong Kong Worsted Mills 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. 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 evidence in support of those allegations has been disclosed.

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

The Salmon letters were sent out on March 6th 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 hearing

This was held on March 20th 1997. The main purposes of the preliminary hearing were to hear and grant applications for legal representation, to make an opening statement and to discuss a future timetable.

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, 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.

(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 who 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. If their SFC statements were unchallenged by all the implicated parties they were read into the evidence. The witness could then be further examined if necessary. If the witness's statement was agreed and no one wished to ask any questions in further examination the witness need not attend and his statement could become his evidence.

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 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.

CHAPTER 3

LAW

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. The section which has been of prime concern in this inquiry is s. 9(1)(f). However we set them out in full because other sections have also been considered in relation to certain individuals. 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,

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

(f) 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

The proper standard of proof in inquisitorial proceedings

where allegations of insider dealing are made has been the subject of detailed submissions in previous inquiries before this Tribunal. 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. This is the standard we have applied. We believe it to be the correct standard. We believe it to be the highest standard there is, short of the criminal standard. 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, no 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. Where necessary we will state our findings that, for example, we do not rely on a particular witness' evidence. This does not necessarily involve specific findings that a witness has lied before the Tribunal. Mr. Huggins, S.C. on behalf of Brian Ng expressed concern that the Tribunal, in response to Mr. P. Davies' final submission might make a finding that his client (Brian Ng) had told a lie to this Tribunal. It is of course open to us to say that we reject a piece of evidence or do not believe it but that does not necessarily result in a specific finding in our report that a particular party has told a particular lie.

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, takes 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

With the consent of all the parties, the statement or statements of each witness called by counsel to the Tribunal was read into the evidence. With a few minor exceptions each witness agreed the contents of the statements to be true and accurate. Each witness was given the opportunity to clarify or amend his/her statement once it had been read. Likewise the statements of each implicated party was, on Mr. Davies' application and without objection by counsel representing the implicated party, put into evidence. By this procedure they became documents which accurately recorded what they had said to the SFC subject to any live evidence given by way of clarification or amendment. The Tribunal has attached such weight to the contents of the SFC statements as it considers 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.

CHAPTER 4

THE SUBSEQUENT STRUCTURE OF THIS REPORT

In Chapters 5 - 10 we will deal separately with each of six of the implicated parties. The purpose of this chapter is to enlarge on what we have already referred to in Chapter 1 at page 14. We have heard a considerable amount of evidence which concerns the possible involvement of NG Kwong-fung in the funding of HKWM share purchases. In structuring this report we consider it appropriate to state at the outset that we make no findings from the inquiries we have made and the evidence we have heard that he knowingly disclosed any inside information about the possible take-over of HKWM or that he was a party to providing funds for others to buy HKWM with inside information or that he made any gains, directly or indirectly from any such purchases.

In his opening address counsel to the Tribunal, very properly, set out the "case" involving Ng in the following way:-

> "22. The case against Mr. Ng is rather different. Mr. Ng is a person connected with Hong Kong Worsted Mills Limited within the meaning of section 4(1)(d) of the Ordinance and it was from him, as a connected party, that the other implicated persons, directly or indirectly may have received the information which prompted them to buy shares. There is no evidence that he himself bought Hong Kong Worsted Mills Limited shares prior to the take-over announcement nor that he actively counselled anyone else to buy. His admissions amount only to his having perhaps made known that there was to be a take-over and he has consistently denied that he told anyone that Hong Kong Worsted Mills Limited was to be the target of the take-over.
>
> 23. There is evidence that his brother Brian cautioned Mr. Ng against buying shares during the take-over negotiations and Ms. Shek herself has stated that she was anxious that he, her boss, did not find that she and others were buying Hong Kong Worsted Mills

Limited shares.

24. Nevertheless, the Tribunal will no doubt wish to examine what appears to have been a complete lack of care and concern about the fact that faxes containing information about the take-over were apparently available to anyone who was near the fax machine and paused to read them. ....

26. .... It will also be the Tribunal's duty to examine whether it be possible for someone in the situation of Mr. Ng to commit insider dealing as a 'tipper' by mere recklessness in permitting relevant information to fall into the hands of persons who act upon it.

27. The Tribunal will also enquire into evidence that $300,000 of the cost of Ms. Shek's shares was funded by Mr. Ng or at least by his firm, Wing Fung. Both he and Ms. Shek have attested that the purpose for which that money was lent was for the purchase of a flat and this explanation is supported to some extent by the evidence of Mr. Wong Kwok-wai who was earlier also lent money by Mr. Ng for a similar purpose. Mr. Wong was the chief accountant of Wallkey, an associate company of Wing Fung sharing the same premises and after the take-over of Hong Kong Worsted Mills Limited, he became its financial controller."

As the evidence unfolded Mr. Davies submitted to us that, in fact, it would not be appropriate in this inquiry to consider the notion of being an "insider dealer by mere recklessness" and we agreed. We say no more. Mr. Huggins invited the Tribunal to make a legal ruling that it is impossible for proof of insider dealing to be based solely on reckless conduct by the implicated party. We decline to make such a ruling. In the context of this case it was simply abandoned by Mr. Davies and we think, rightly so.

In his final address to us he submitted that :-

"Mr. Ng was the main or one of the main players in the story and one has only to look at the Fund Flow Charts in Bundle 3 to see why this is so.

> Whatever he and others he traded with wished to achieve by their unorthodox method of 'off-set' accounting between themselves was never fully explained. However, it was not per se illegal nor, in our submission, has there been any evidence to connect that with insider dealing."

Again we agreed.

The consequence is that we can deal with the evidence relating to Shek, Tan, Cheng, Tai and Fung with more brevity than might have been originally thought.

We see no purpose in analysing at length evidence which was directly concerned with the suspicion that Ng was the conductor orchestrating a sizeable and complex scheme of HKWM share buying when that evidence does not prove the suspicion. By the same token, although we have carefully considered the evidence involving Shek, Tan, Cheng, Tai and Fung possibly being Ng's pawns in a bigger scheme, we have again concluded that the evidence falls short of proof and no purpose is served by including it in this report.

In the next six chapters therefore we report on our findings in relation to each person's own purchases and decide whether they amount to insider dealing by that individual and where appropriate whether they were counselled or procured by Shek.

CHAPTER 5

SHEK MEI-LING, WINNIE

In so far as the evidence which is relevant to allegations of insider dealing by Shek is concerned we concentrate first of all on whether that evidence proves insider dealing as defined by section 9(1)(f) (supra page 24).

She purchased 100,000 HKWM shares between May 6th and May 11th 1993. She paid $408,873-87 cents for them. She sold them all about a month later on June 3rd and 4th 1993 for $640,619-69 cents, thus making a profit of $231,745-82 cents.

Under s. 9(1)(f) we must decide if the evidence proves that at the material time she had:-

(i) received information indirectly from Ng

(ii) that he was contemplating a take-over offer for HKWM and that

(iii) she knew it was relevant information (as defined by s. 8) and she -

  (a) dealt in the listed securities of HKWM herself and/or(as a separate course of conduct)

  (b) counselled or procured Tan, Cheng and Tai to do so.

The indirect receipt of information:

S. 9(1)(f) provides for both direct and indirect receipt of information. We have already stated that there is no evidence that she received information directly from Ng in the sense that Ng actually told her albeit in confidence. As part of the picture that she received information indirectly we must consider the working relationship between her and her boss.

She had known Ng since 1988 and had joined his company, Wing Fung Jewellery in March 1991. None of the witnesses who were asked seemed willing or able to give her a job description within the company. She said she was not his personal assistant nor was she his secretary. She simply described herself as an "employee".

She occupied an office of her own at the company's premises in the Hang Lung Bank Building (the office floor plan can be seen at Annexure C). Most of her work was involved with trading in jade and also diamonds. She had responsibilities for buying diamonds but not jade which was Ng's responsibility. She did however sell jade, often at the retail outlets in Canton Road where she came into contact with many jade traders. She also carried out tasks for Ng such as booking flights and accommodation for business associates and clients, sending flowers to hotels etc., namely the sort of tasks normally carried out by a secretary or personal assistant.

In 1993 her salary was $12,000 a month. Her annual bonus came to about $36,000 so her average monthly income was $15,000. She told us also that she did some trading in jade on her own behalf and this might add $10,000 a month to her income.

We concluded that Wing Fung Jewellery was a relatively small concern in terms of its premises and staff and that within its structure Winnie Shek had a close working relationship with her boss. He relied on her loyalty.

Against this background we now address the question - at the time she made her purchases had she found out that the company Ng was contemplating a take-over offer for was HKWM? On the totality of the evidence we have concluded that the answer to this question is in the affirmative. We have made this decision without difficulty, having considered the cumulative effect of the following factors.

(i) <u>Sight of faxes:</u>

As can be seen from the office plan the office fax machine is close to the doors of both Ng's office and Shek's office. She

could readily read any fax that was received on that machine before it was passed on to the person to whom it was addressed. It was part of her job to distribute them (although she was not the only person who did this).

Her first knowledge that her boss had been appointed as the Hong Kong agent for the Beijing Municipal People's Government with responsibility to identify a suitable target company for a possible take-over came from a fax or faxes in late 1992. An example of such a fax - which Shek conceded in evidence that she had probably seen - is at Annexure D. It is dated December 23rd 1992. She also confirmed that she had seen other faxes in about April 1993. Her recollection of the subject matter of these faxes was that they concerned details of meetings in Beijing which Ng was requested to attend in his capacity as their Hong Kong agent. In her own words in her statement to the SFC on November 5th 1993 "I knew that the Beijing Municipal Government would take over a listed company in Hong Kong together with my boss." This was no small piece of news as can be seen by the "Canton Road reaction" [see point (iii) infra].

(ii) Overhearing a phone call:

Shek admits that on the day she started buying HKWM shares she heard Ng having a phone conversation in his office. The door was open. She said it was this phone call together with her knowledge at (i) above that prompted her to embark on her subsequent course of conduct in relation to HKWM shares.

Her evidence before the Tribunal was that she heard her boss say, during a conversation in Mandarin, that "the Worsted Mills share is quite good". Her SFC statement says "I heard him mentioning the name of Worsted Mills in a long distance telephone conversation conducted in Mandarin". Shek speaks Cantonese, Mandarin and English. Her statement continued - "I have seen some faxes of about 1 to 2 pages sent from Beijing mentioning about the acquisition. I knew about this acquisition as a result. I looked up the newspapers and found

out there really was a listed company called Hong Kong Worsted Mills. I then bought 100,000 ...". She told the Tribunal that she looked up HKWM in a Hong Kong Stocks Guide Book and on Ng's share monitor in his office.

Shek's evidence was that these bare facts represent the totality of the information in her possession and that her purchase of 100,000 HKWM was gamble because she was never sure that it was in fact the take-over target and she did not know if it would be a successful target.

We are satisfied that her state of mind (or her state of knowledge) was more confident and more certain than she was prepared to admit. It was not a gamble because at the time she acted she knew there was only one runner in the race. The following matters have contributed to this finding.

(iii) Canton Road:

Hong Kong's jade market is in Canton Road. Both Ng and Shek frequently visited there for business. Tan, Cheng, Tai and Fung were familiar faces there. It was common knowledge in the early part of 1993 that Ng was looking for a suitable target company. Ng stated in evidence that he made no secret of the fact that he was looking for a suitable target and that he told "many people" in Canton Road. The jade traders in Canton Road could be of no use to him in his search for a target. The only consequence of telling so many people would therefore be to heighten curiosity - they wanted to know the name of the company. Both Shek and Ng were asked on numerous occasions. Their usual answers were to the effect that they "didn't know" or "didn't know yet". Those traders who gave evidence on this matter were unashamed in revealing that their reason for wanting to know was so as to buy shares in that company and therefore make money. It is significant that Shek was frequently asked for this information. She was clearly regarded as a person who might have the answer because of her close relationship to Ng himself. Once the news came from her those who became privy to the

information bought immediately.

In our view the only sensible and logical conclusion is that Shek bought as soon as she was in possession of the information herself and moreover the mere fact that the information was then provided by Shek was good enough for the others to buy as well.

(iv) Shek's share trading experience:
What she did on this occasion was out of all proportion to any involvement she had previously had in share trading. On one previous occasion her brother-in-law had bought about 10,000 shares for her. Apart from that she had no previous experience or dealings in shares.

(v) An element of secrecy
She wanted to keep it secret from her boss and so she did not use the broker where she already had an account because that broker knew Ng very well. Instead she opened a new account with Foreground Securities Limited (Foreground). She then made purchases through this new account and through the Yien Yieh Commercial Bank. The fact that she was anxious that her boss did not find out that she was buying HKWM is further evidence that she was buying on inside information. If it was not inside information why should she worry about the fact that her boss might find out that she was buying on it?

(vi) Could she afford it?
Only by using a large sum of borrowed money. Her financial outlay between May 6th and May 11th was over $400,000. Her annual salary including bonuses was about $180,000. We cannot accept that any person would spend 225% of her annual income on something she was not sure of. Counsel on her behalf submitted that the real question was not whether it was a large sum in relation to her income but whether she had the money at time. The fact that she did have funds available is largely due to the fact that she borrowed. She borrowed $250,000 from Ng and other smaller sums from relatives.

The fact that she chose to spend money borrowed from her boss and her family again fuels the contention that she knew what she was doing.

It was part of her case, and we make no finding to the contrary, that the borrowed money from Ng was available and in her account on May 6th, the day she received the information which sparked off her buying, because Ng had recently lent her money to invest in a property in a new development at Sunshine City, Ma On Shan. She had asked for the loan in mid-April because she learnt that Ng had been similarly generous to Robin Wong, his accountant at Wallkey. The loan was not reduced to writing and no interest was payable. A flat was purchased. (Ng himself bought one as well.) A payment for stamp duty, initial installments, solicitors fees etc. were paid on time by her in May and June. Her liquidity improved by $231,000 when she sold her HKWM shares on June 3rd and 4th.

In short, the fact that she spent over double her annual salary over a five day period using borrowed money, part of which she happened to have because of a loan from her boss which was intended for a property purchase, on the very day she overheard the phone call, and taking steps to keep it secret from her boss are all pieces of circumstantial evidence which contribute to the standard of proof being reached.

(vii) Passing on the information:

Shek's confidence in the correctness of her information about HKWM is further demonstrated by her conduct subsequent to her own purchases in relation to Tan, Cheng and Tai. Each of them had asked her before May 6th for the name of the company. She had said she did not know at that time. None of them had bought any other shares on other market rumours or speculations. However the first time they asked after May 6th their independent reaction was the same in all three cases - they made immediate arrangements to buy as soon as possible. If she had truly said to each of them that it was only a gamble

and she was not sure the information was correct the logical response from at least one but more probably all would have been - "if you've not sure, then I'm not sure either and I won't buy". We find it highly probable, on the evidence, that those to whom she gave the name of HKWM were themselves satisfied with the correctness of the information because (a) it had come from Shek herself, (b) they knew the closeness of the business relationship between Shek and Ng and (c) they knew Shek had bought shares herself.

(Purchases by Tan, Cheng, Tai and Fung are dealt with individually in later chapters.)

(viii) Direct assistance to Tan, Cheng and Tai:

Later in this chapter we make a finding against Shek that she not only insider dealt on her own account but also counselled and procured Tan, Cheng and Tai. Here, we merely note the extent of assistance to Tan, Cheng and Tai as part of the cumulative picture that the information she possessed was more than a mere gamble but was, in truth, knowledge that Ng and the Chinese party were contemplating the take-over which ultimately did in fact occur.

(a) In relation to Tai: On May 11th she took Tai to South China Securities Limited and introduced him to a broker (Joan Tung). She had previously told him that he would need to bring a cheque with him to open the account. He brought a cheque for $100,000 to do so. Over the next four days Shek received further orders from him by mobile phone which she executed through South China. A total of 523,000 shares were purchased in this way for Tai.

(b) In relation to Cheng: Shek gave Cheng the name of HKWM as the take-over company when he phoned her from Taiwan on May 17th. Cheng had never purchased shares in Hong Kong before. Cheng arranged for a friend of his, CHAN Chi-kit to go with Shek to a

securities house the next morning, before he himself had arrived from Taiwan. Shek chose Mansion House Securities. Cheng arrived in the afternoon. He immediately arranged a cashier order to open the account and started buying. All his orders were placed by Shek on his behalf. 678,000 were bought over 5 days.

(c) In relation to Tan: Tan is an Indonesian Chinese. Like the others he had been asking Shek and Ng for the name of the company during the early part of 1993. He was a friend and business associate of Cheng. He found out that Cheng had bought on Shek's information. Tan, himself arrived in Hong Kong on May 25th. He then asked her again and she told him. Then, the same pattern of events unfolded. On the morning of May 26th Shek took him to a different securities firm. This time it was Sun Hung Kai Securities. In fact, because of Sun Hung Kai's commission rate they decided not to use them and went to Mansion House instead. Tan made arrangement for large sums of money to be available for purchases to be made through the account and thereafter left the actual buying to Shek. She bought 226,000 on his behalf.

Relevant information

Armed with our finding that the information Shek had and passed on to three others was that the company her boss, Ng, was contemplating making a take-over offer for was HKWM we now address the question - is that relevant information as defined by s. 8 of CAP. 395 (see page 26).

(i) It must be "specific information about HKWM":
The argument has been advanced that information which amounts to no more than a possibility or "a wild shot" or an ordinary gamble in the betting market place cannot pass the test of specificity. In other words, if one accepts Shek's version of events that she "thought it might be HKWM but she wasn't sure" when she herself bought and also when she told

the others, it is too vague to be specific.

However, based on the finding we have made about the quality of her information we do not have to address this argument. It is simply not necessary for us to determine every exact detail of the information she had and precisely when she received it. Our determination, on this issue, is complete if and when we are satisfied to a high degree of probability on the whole of the evidence that by May 6th she had discovered that the company that the Ngs and BITIC were going ahead with was HKWM. As we have already reported we are so satisfied.

Is this information specific about HKWM? It cannot be otherwise. The features about the information which make it specific are:

(a) that it relates to a take-over of that company and

(b) that the Ng's partners in the proposal came from a mainland Chinese investment corporation.

In "Insider Crime" by Rider and Ashe the commentary is made "information as to the *possibility* (our emphasis) of a take over may be regarded as specific information and will certainly rank as precise, given that it is more than mere rumour".

(ii) It must be "not generally known to persons accustomed to or would be likely to deal in HKWM shares".

In relation to Shek we are concerned with the question of whether the information was not generally known (a) when she bought (May 6th-11th) and (b) when she counselled or procured (May 11th-28th).

The part of the definition which refers to "to those persons who are accustomed or would be likely to deal ..." means that we ask ourselves was the information generally known by people who tend to buy 2nd and 3rd liner stocks as opposed to blue

chip buyers. This aspect of the definition need not trouble us as it has not been suggested that there was information available that was likely to be known by big investors or share analysts on the one hand but not likely to be known by mere 3rd liner speculators on the other hand.

Prior to May 18th there was not any information which could be regarded as generally known by anyone. Such information that there was or may have been could never have been more than *mere* rumour.

It was submitted that an article in the Oriental Daily on May 18th 1993 (see Annexure E) may have changed this situation so that all dealings after this date could have been on information which was generally known and therefore not relevant. We must remember that if information becomes generally known it ceases to be relevant information. The information that was published must include its element of specificity. If as a result of the publication information which was mere rumours beforehand has merely become mere published rumour afterwards then it cannot be said that *relevant* information has become generally known. The article of May 18th plainly falls into this category. The rumour has simply gone into print.

In short, the evidence satisfies us that throughout the relevant period that Shek was trading for herself or others the information she had remained confidential and was not generally known.

(iii) It must be material. By "material" is meant information which "if it were generally known would be likely materially to affect the share price". Put more broadly, if speculators in 3rd liner stocks had known that PRC based investment company was going to take over HKWM would the price have gone up materially? Evidence from Mr. Alex Pang, the SFC Director of Enforcement on this issue was in the following terms:-

"22. I was asked by Naomi Chak to compile statistics on the price performance of listed companies which were targets of takeovers. I observed that during the 13 months from June 1992 to June 1993, there were 27 preliminary announcements which disclosed that the controlling shareholders of these listed companies were respectively approached by third parties with a view to takeover their respective companies. .... I note that in average the closing prices of these companies moved up 13.5% immediately following the announcement and the accumulated upward movements at the end of next trading day increased to 19.7%

23. I was also asked by Naomi Chak to provide statistics on the performance of the shares of shell companies which were taken over by enterprises connected or related to the People's Republic of China ("PRC")("China enterprises"). I have made the following observations:

24. From October 1992 to June 1993, there were 15 shell companies listed on the SEHK, which were taken over by China enterprises. ....

.... 28. On the day of publication of the identity of the purchasers being China enterprises or if it was not a trading day, the next trading day, the stocks exhibited an average increase of 36.77% increase in share price. All the companies managed to get a positive return.

29. In the absence of any unexpected corporate news in the market or any significant corporate activities relating to HKWM during the period, I am of the view that the announcement of the take-over HKWM by BITIC, a state-owned enterprise of the PRC, was the major factor that caused the share price of HKWM to increase by nearly 100% from its pre-suspension price.

> 30. This tremendous gain in the share price of HKWM was attributed to investor's expectation that the acquisition of HKWM by BITIC would bring good prospects to the future of HKWM, and therefore its share price."

This evidence provides the basis of the argument that in this case (as with many others) the test of materiality is answered by the expression that the "proof of the pudding is in the eating". What in fact happened to the HKWM share after the announcement on June 17th was an increase from $9.50 on June 16th to $15.10 on the next trading day, June 22nd with a later high of $20 on June 28th - a material gain by any standards not mirrored by movements in the Hang Seng Index.

Knowledge that the information was relevant:

Not only must we be satisfied that Shek was in possession of relevant information at the material times that she both bought for herself and others but also that she knew it was relevant.

This ingredient is satisfied by common sense. Shek was regularly asked in Canton Road to reveal the name, she reacted as soon as she got the information, she knew her boss regarded it as confidential, she kept it to herself and three valued business associates and she used a large amount of borrowed money to buy. There can be no doubt that she knew the information was confidential and price sensitive and therefore "relevant".

Finally there is no issue that she actually dealt by purchasing shares of HKWM in her own name. All the ingredients of s. 9(1)(f) are therefore proved to a high degree of probability against her.

We are also satisfied that her conduct in relation to Tan, Cheng and Tai amounts to counselling or procuring. She passed on the name of the company and took positive steps in each case which ensured that they also dealt on the same inside information.

s. 9(1)(e):

In relation to Shek we will deal with this sub-section more briefly. Shek would be an insider dealer under this section also if the evidence proved she knowingly had relevant information which she had indirectly received from Ng who she knew was connected with HKWM and had the information by virtue of being so connected and she then dealt.

The questions to be addressed therefore which have not already been addressed under s. 9(1)(f) are:-

(i) was Ng a person connected with HKWM at the material time?

(ii) did he have relevant information as result of that connection? and

(iii) did Shek know that?

We have already set out the definition of "connected person" at page 25 of this report. We have considered the application of ss. 4(1)(c) and 4(1)(d) on this issue.

Ng would be a connected person under s. 4(1)(c) as and when he occupied a position which might reasonably give him access to relevant information about HKWM by virtue of a business relationship between him or a corporation of which he is a director and HKWM.

Ng would become a connected person under s. 4(1)(d) when he is in a position to have access to relevant information in relation to HKWM by virtue of his being connected with another corporation, being information relating to a contemplated transaction between both the corporations or a transaction involving one of the corporations and the listed securities of the other.

The facts are that Shek knew Ng was connected with BITIC and they were jointly contemplating a take-over of HKWM. The knowledge stems from May 6th at the latest. She knew it was relevant information.

BITIC and the Ngs later joined forces in the name of IHL to carry out the take-over.

Ng was a connected person under s. 4(1)(d) on May 6th or before because of the contemplated transaction involving BITIC (and ultimately IHL) and the listed securities of HKWM.

It is also arguable, but in view of our finding that s. 4(1)(d) applies, academic, that he was a connected person from an early stage under s. 4(1)(c) as well.

In relation to s. 4(1)(c) it is not so much a question of *if* he was so connected but *when* he became so connected. It is arguable that being connected under s. 4(1)(c) only applies after HKWM had actually been approached and negotiations had begun i.e. from May 22nd onwards.

The answers to the questions posed on the previous page are all yes.

s. 9(1)(a) and (c):

In his final submission Mr. Davies invited the Tribunal to consider the possibility that Shek had also breached ss. 9(1)(a) and (c) by virtue of *her* being a person connected with HKWM. We do not find that Shek has been shown by the evidence to be a person connected to HKWM. An ingredient which would have had to be proved for us to so find is that she occupied a position which may reasonably be expected to give her access to relevant information about HKWM by virtue of her business relationship between her and HKWM. At the time of her dealing in HKWM her connection with HKWM was plainly more remote than this definition requires.

CHAPTER 6

TAI LAI-WO

We concentrate, once again, on the provision of s. 9(1)(f) in relation to the evidence concerning TAI Lai-wo.

Ng and Tai had done business together. By 1993 he had known Shek for about two years. He had met her through his business dealings with Ng and when he went to Ng's offices in the Hang Lung Building.

He was aware that Ng was looking for a Hong Kong company to take-over together with a Chinese party. During the early part of 1993 he asked both Ng and Shek for the name of the company but he was unable to find it out. He knew, therefore, in the early part of 1993 all the same important factors that Ng and Shek knew, namely that Ng was a Hong Kong agent for a PRC party looking for a take-over target in Hong Kong. Only one piece of information was missing - the identity of the company. His actions after May 11th reveal one simple truth - without that final piece of the jig-saw he would not speculate but as soon as he was given the name by Shek he entered the market and bought.

We have already found that the information Shek possessed on May 6th was relevant information. As that information related simply to the name of a company then it retained its quality of relevance whenever she passed it on to those others who knew Ng was looking for a target and who had the same motive to buy.

Further facts in relation to Tai to which we attach weight when considering the ingredients of s. 9(1)(f) are:-

(i) that these were the first Hong Kong shares he had ever bought,

(ii) that he bought 523,000 of them at a cost of $2,525,237,

(iii) that he bought them the same afternoon that he first received the

news from Shek,

(iv) that he was guided by Shek in the arrangements for opening a share account at South China and immediately put the account in funds,

(v) that he trusted his source, Shek, to carry out his further purchasing orders over the three subsequent days,

(vi) that he has never concealed the fact that he would not have bought HKWM if he had not known that Ng was involved with a PRC party to find a Hong Kong company and had not been told by Shek that that company was HKWM.

Bearing in mind that we are only analysing Tai's purchases on his own account for his own benefit and examining the totality of the evidence we find in relation to s. 9(1)(f) that :-

(a) Tai received information indirectly from Ng. The conduit for the transfer of the information was Shek.

(b) Ng was a person who he had reasonable cause to believe was contemplating a take-over of HKWM because Shek told him. The information she passed on was the information we have found she was in possession of.

(c) Tai knew that information was relevant information and consequently -

(d) Tai dealt in HKWM shares by instructing Shek to buy on his behalf through his Hong Kong securities account.

We therefore find Tai's purchases between May 11th and May 14th as insider dealing. We are satisfied that s. 10(3) has no application in this case (a matter to which we give more consideration in Chapter 10). We therefore identify TAI Lai-wo as an insider dealer.

In so far as s. 9(1)(e) is concerned we consider no purpose is served by making a similar analysis. Those ingredients which are common to both s. 9(1)(e) and s. 9(1)(f) need not be repeated. As to those ingredients which appears in s. 9(1)(e) but not s. 9(1)(f), namely the issue of Ng and/or Shek being "persons connected" to HKWM we also have made our findings in Chapter 5.

All that remains in relation to Tai's position under s. 9(1)(e) is the issue of his knowledge that Ng was a person connected to HKWM. The evidence cannot fail to satisfy the Tribunal of this ingredient. His discovery of Ng's connection to HKWM was fundamental to his decision to buy.

Tai's funding:

For the sake of completeness we make brief reference to this issue. Its relevance is in relation to the suspicion raised that Tai's purchases involved Ng. As we have already reported our decision on this issue we merely set out an outline of the evidence we heard in relation to it. It has not played a part in our decision making process concerning Tai's insider dealing.

In short, Tai explained that $2.45 million of the money which went into his South China account came from 2 cheques (for $2 million and $450,000 each) which he received from a man called SY Yau-tsang. This money was a payment for jade and jewellery which Tai had recently purchased in Shanghai for RMB500,000. Tai thus made a handsome profit in a jade and jewellery transaction which was a field in which he rarely did business.

Sy was another business associate of Ng's in the jade trade. We discovered in the course of the inquiry that it was common practice amongst jade traders in Hong Kong to pay each other with cheques on which the payee's name was left blank. The cheques could then be used as cash by the person who received it. If a person who received it wished to put his name on it and bank it he could do so. Alternatively he could pass it on to another person in relation to another transaction and then the new recipient had the choice of whether to put his name on

it or not.

The cheques for $2 million and $450,000 which Sy gave Tai were such cheques. At about the same time Sy was transacting other jade business with Ng and Wing Fung again using the same method of payment. The details of these cheques do not matter because although we considered it necessary to make investigations into these matters no evidence emerged from which any findings adverse to Ng could be made.

CHAPTER 7

CHENG Chun-ling

As with Tai, the bulk of this chapter will be an evaluation of the evidence in so far as it relates to Cheng's buying of HKWM shares for himself and whether those purchases have been shown to be insider dealing as defined by s. 9(1)(f).

Between May 18th and May 24th 1993 he purchased 678,000 HKWM shares at approximately $5 each.

Cheng also came to know that his business associate Ng, was busy looking for a company to take-over in early 1993. It was well known amongst the Canton Road traders and a subject of discussion. Cheng himself had been a jade and jewellery trader for many years and had had many business dealings with Ng. He had asked Ng on a number of occasions for the name of the company but Ng had not provided him with the name. The mere fact that he, like others, was making continuing inquires for the name supports the contention that the one key piece of information he required before he would commit himself to buying was the name of the company from the "horse's mouth". He said in evidence that the reason he wanted to know the name was so he could buy the shares and make a profit.

It eventually came on May 17th from Shek. Cheng is a Taiwanese jade dealer and on May 17th he telephoned Shek from Taiwan primarily in relation to a jade transaction he was doing with Wing Fung. In the course of this conversation he again asked Shek if she yet knew the name of the company her boss was contemplating taking over and if she did to name it. On this occasion Shek revealed the name of HKWM.

In their evidence to the Tribunal both Shek and Cheng suggested that this disclosure was couched in very cautious terms such as "it might be Worsted Mills", "she could not be sure" or "she could not guarantee it". They have plainly and for obvious reasons put a gloss of

uncertainty on this conversation when in fact there was none. Had there been any such uncertainty in the minds of either Shek or Cheng then the subsequent events would not have occurred. Had the claimed caution been truly said over the phone then the situation in Cheng's mind after May 17th would have been virtually no different from the situation beforehand. In fact the situation changed dramatically as revealed by the subsequent conduct of the parties.

This finding is based on the following facts:

(i) Cheng had never bought Hong Kong shares before. On five trading days between May 18th and May 24th he bought an average of 135,000 per day at an average cost of $700,000 per day.

(ii) He knew nothing about the procedures of buying Hong Kong stocks and in the space of less than one day, without doing any research into the quality of the HKWM share he arranged for a friend of his in Hong Kong, CHAN Chi-kit to meet Shek and go together with her to Mansion House to make preliminary arrangements for opening a share account for Cheng to buy HKWM shares later that day.

(iii) Cheng arrived from Taiwan on the morning of May 18th. He immediately met Shek (who had already met Chan and been to Mansion House) who took him to Mansion House.

(iv) Prior to going to Mansion House Shek had told him he would need funds to open the account. He therefore made immediate arrangements and had a $2 million cashier order ready to be given to the account executive at Mansion House, Ricky Chan.

(v) He put in a further $3 million on May 21st. The price had gone up slightly from $4.775 on May 20th to $5.25 on May 21st. On May 21st and 24th Shek bought a further 264,000 shares for him.

Adding these facts to our finding in relation to the status of the information which Shek in fact had and passed on, we are satisfied to the required standard of proof that:-

(a) Cheng received information indirectly from Ng, because he got it directly from Shek that

(b) Ng was contemplating a take-over of HKWM.

(c) Cheng knew the information was relevant information and he immediately

(d) dealt in HKWM shares with the assistance of Shek who placed the order for him. It is worthy of note that Shek had apparent authority to keep buying without further instructions as to volume or price until she was asked to stop or until the funds ran out. Between May 18th and May 24th there were no intervening conversations. On May 24th Shek told him she had bought 678,000 and he then said he thought that would be enough and the buying stopped and did not resume.

We find therefore all the ingredients of insider dealing as defined by s. 9(1)(f) proved and we identify CHENG Chun-ling as an insider dealer. S. 10(3) does not apply.

As for insider dealing as defined by s. 9(1)(e) we repeat our observations made in Chapter 6 in relation to Tai. The circumstances pertaining to Cheng are precisely the same in this regard.

Funding

For the sake of completeness we also report briefly on the evidence in relation to Cheng's financing of his share purchases. Evidence was given concerning four cheques which were credited to Cheng from Wing Fung on May 17th (three cheques totalling $2,920,000) and on May 21st (one cheque for $2,250,000). The amount and timings of these payments gave rise to the possibility that Ng was funding Cheng's purchases. We investigated the business relationship between

Ng and Cheng. We found it to be a relationship of many years standing during which time there had been numerous transactions between them in jade and jewellery for amounts in the millions and tens of millions of Hong Kong dollars. Given also the unusual method of offset accounting (i.e. the circulation between traders of cheques with the payee's name left blank) that was prevalent between the traders it was both difficult and dangerous to try and identify a source of funds as being from a particular person for a particular purpose. We can therefore make no finding adverse to Ng arising out of the cheques from Wing Fung which were deposited into Cheng's account on May 17th and May 21st.

CHAPTER 8

SINYO WAHID WINATA TAN

Tan, who was also known as CHAN Chun-yee was the third trader who knew and traded with Ng and Wing Fung. He also knew Shek through the same business. He is an Indonesian Chinese whose business operations were located in Indonesia. Amongst his many business interests he ran a jewellery business.

His purchases of HKWM which we have inquired into were over a three day period from May 26th - May 28th 1993. He purchased a total of 226,000 for $1,354,493 which is an average price of $6.00. The price was steadily rising during those three days.

The circumstances in which his purchases were made has, by now, a familiar ring to it.

Tan knew from early 1993 that Ng was "dealing in something big" which involved Ng looking for a Hong Kong listed company to take over. At different times he asked Ng and Shek and also Cheng for the name of the target company. As with the others the reason he wanted to know was so that he could make money by buying their shares. Knowledge of the name of the company was what he wanted.

No name was revealed to him until May 25th. He was in Indonesia during May prior to the 25th.

On about May 22nd or 23rd he had cause to telephone his fellow trader Cheng. During the conversation, such was the level of his interest, he asked Cheng if he had heard yet which company Ng was going to take over. Cheng told him that he had recently purchased some shares (and indeed was still buying large quantities) however he did not tell Tan the name himself but told him he should ask Shek for the name. We find that Cheng said "Ask Shek" for two reasons. One reason is obvious, the other is highly probable. The obvious reason is that because it was Shek who told him in the first place and the highly

probable additional reason is that Shek told him in confidence and any decision as to whether confidential information should be further leaked was Shek's decision and not his.

Such was Tan's confidence that the name would be revealed to him and such was his confidence that it would be relevant information that he made the necessary arrangements to have funds available in Hong Kong before he flew to Hong Kong on May 25th.

He spoke to Shek the same day soon after his arrival in the afternoon. Shek gave him the same information that she had given Tai and Cheng. We are satisfied that as a result of this conversation Shek told Tan what she then knew namely that the company her boss was contemplating taking over was HKWM.

In relation to Tan there was a piece of further noteworthy evidence, namely that Shek asked Tan not to reveal the name to anybody else. We do not know if she also said it to Tai. Given our finding in Chapter 7 that it was highly probable that she did say something similar to Cheng it can be seen that Shek's pattern of disclosing the information is in the context of secrecy. This is not surprising given the fact that she knew she was passing on relevant information and the others realized they were receiving relevant information. The fact that this piece of information actually formed part of the first hand evidence in relation to Tan is an indication that Shek felt she had by then, told enough people and she did not want the leak to go any further.

Shek's subsequent conduct in relation to Tan follows the same pattern and enforces the same group of findings:-

(i) Shek, on May 26th in the morning, took Tan to yet another different securities house, Sun Hung Kai Securities. Commission rates there were not favourable so they chose Mansion House instead.

(ii) Tan made arrangements to fund his newly opened account with $2.5 million. The details of this funding were complex but the complexities do not add any strength to our findings. We

therefore find it unnecessary to outline them here.

(iii) He authorized Shek to buy HKWM on his behalf. He gave no instructions concerning price or volume. She had a free hand to buy for him even though the only thing Tan knew about HKWM was its name and that it was the company Ng was contemplating a take-over of. That is all he wanted or needed to know.

We find each ingredient of s. 9(1)(f) to be proved to a high degree of probability by the direct and circumstantial evidence we have heard and the inferences we have drawn from it. We have set out those ingredients piecemeal in Chapters 6 and 7. To do so again in relation to Tan would be unnecessarily repetitive. Tan's purchases are not materially different in any respect.

Our comments in relation to s. 9(1)(e) have equal application in Tan's case.

Funding

As already mentioned the evidence relating to Tan's funding of his purchase is somewhat more complicated than with Tai and Cheng. It involves a role played by a fellow trader of Tan's, a Mr. CHAN Chi-kit and his company, Kong Ming Hong. Mr. Chan gave evidence before the Tribunal at some length. In summary form the evidence was to the following effect:-

(1) CHAN Chi-kit opened an account in his own name in Hong Kong with $3 million sent to him from Tan in Indonesia on May 26th.

(2) Chan then purchased a bank draft for $2.5 million from that account which was used to deposit into the Mansion House account.

(3) After Tan's purchases stopped on May 28th there was a delivery of a cashier order [from the account at (1) above] for $450,000

from CHAN Chi-kit to Wing Fung on May 31st. The only cogent evidence was to the effect that this was on Tan's instructions and was for the payment of jewellery.

(4) On June 19th 1993 there was a cheque for $3.15 million from Wing Fung to Kong Ming Hong. There was no evidence to refute the explanation that this was part of a currency swap between Ng in Hong Kong and Tan in Indonesia which was beneficial to them. Further details in this report would be superfluous.

(5) On June 28th 1993 Wing Fung received a cheque for $144,340 from Kong Ming Hong. This payment was also at Tan's request. It was an outstanding debt for jewellery. CHAN Chi-kit informed the Tribunal that both this money and the money involved in the currency swap at (4) above was Tan's money.

Thus we conclude our findings that the evidence proves Tan to be an insider dealer and it does not prove any involvement with Ng. We find his inside deals to be for himself and with his own money.

CHAPTER 9

FUNG PUI

The fourth Hong Kong trader whose purchases of HKWM were investigated and inquired into was FUNG Pui. There is no doubt, that from the outset he was in a category of his own.

In his opening statement to the Tribunal our counsel Mr. Davies said this:-

> ".... 26. Finally, we have Mr. Fung. Other than the mildly suspicious fact that he spent some $5 million on Hong Kong Worsted Mills Limited shares, which after all was a third line stock, when his previous dealings only ever amounted to $2 million and in blue chips, there is little or no evidence against him. It is the nature of this inquisitorial system that he be put on notice that he may in some way be implicated and entitled to representation even though at the present time there is not even a prima facie case that he has been an insider dealer."

After 30 days of evidence and submissions, Mr. Davies, in relation to Fung said:-

> "A roguish character who in our submission gave evidence in a frank and open manner.
>
> He purchased HKWM shares but very late in the day, 10 and 11 June 1993 a week after the 31 May, 1993 announcement. He says it was on the basis of rumours and what he read in the newspapers and no evidence has been unturned to disprove or even challenge that explanation."

We are grateful to Mr. Davies for his sensible and realistic approach. The only matter which Mr. P.H. Wong on Fung's behalf took issue with was the use of the word "roguish". We consider the word was used in the sense of being mischievous or playful rather than in the

sense of being dishonest or unprincipled.

Nonetheless, we considered it necessary and important to consider three matters in relation to Fung's trading in HKWM. They were:-

(a) The volume:

Between June 7th and June 16th 1993 (the day before the announcement) Fung purchased 340,000 HKWM which cost him just under $3 million. During July 1993 he increased his share holding in HKWM to 500,000 by spending a further $2 million. It is true that he was no stranger to buying and selling shares on the Hong Kong Stock Exchange. However the vast majority of his previous trading had been in bigger companies, usually blue chips and for amounts considerably less than the $3 - $5 million he had outlayed on HKWM. The fact that he embarked on an unusual share in an unusually large amount was out of the ordinary and gave rise to understandable suspicion.

(b) The connection with Ng:

At approximately the same time that Fung was buying HKWM shares he became involved with Ng in relation to the funds required to carry out the take-over of HKWM. The evidence revealed that on about June 15th Ng approached Fung because he thought he needed to raise funds quickly and place them in the account of IHL so that IHL would be able to pay over the agreed sum to HKWM as part of the agreed terms of the take-over. Fung owed Wing Fung $5 million in connection with jade dealings. Fung therefore, at Ng's request, paid over five cashier orders for $1 million each on June 15th.

In the event this raising of cash to fund the IHL account was not necessary. Funds from China arrived in time. Therefore Ng repaid Fung his $5 million on June 18th with two IHL cheques for $2.5 million each. The method of repaying Fung is an example of bad business practice for the following reasons. When they were

given to Fung the payee on both of them was left blank and no receipts were given for either of them. Fung then filled in his own name on one of them and the name of his broker, Stephen Mok, on the other. He then paid the latter one into Mok's personal account. Bearing in mind that IHL was about to become the holding company of a public listed company which had no involvement in the jade business their cheques should not have been so utilized.

In spite of all this we found no evidence that Ng told Fung of the name of HKWM as the take-over company nor that Ng was funding his share purchases.

(c) Fung's business relationship with his broker:

Fung's broker was Stephen MOK Shu-fun, a dealer with Paul Fan Securities Limited. The feature of the dealings between Fung and his broker which concerned the Tribunal and merited further investigation was the fact that Fung placed $1 million into Mr. Mok's personal bank account and instructed him to use this money to buy and sell shares on his instructions. Mr. Mok agreed this was unusual in the sense that he had not provided this service for any of his other clients and had not done it at all for Fung or anyone else since this occurrence in 1993. Fung's explanation was that he trusted Mr. Mok and was often out of Hong Kong so was happy to let Mr. Mok trade for him using Fung's money in Mok's account.

We decided that however unusual or improper the arrangement was and however unsatisfactory the explanations may have been it did not and could not have led us to any conclusion that it was evidence of insider dealing.

Three further factors contributed to our decision that no finding of insider dealing should be made against Fung.

Firstly, his purchases came much later in time than Tai, Cheng or Tan. Fung started buying on June 7th, a week after the first announcement on May 31st (Annexure F) and he continued to

buy beyond the second announcement which was made on the very day he started to buy, June 7th. (Annexure G)

Secondly, he continued to spend a further $2 million after the final announcement on June 17th (Annexure H).

Thirdly, there is no evidence which connects him to Shek who is the only person against whom the evidence supports a finding of disclosing relevant information. It does not follow from this that no information came from any other source. It merely means that the only person we specifically identify as a person disclosing information to others, to a high degree of probability is Shek.

CHAPTER 10

DOMINIC LEUNG KOON-HONG

Background

Of all the implicated parties in the HKWM inquiry Dominic LEUNG Koon-hong (hereafter referred to as "Leung") is the only person who was a professional. The others were jade traders, an employee of a jewellery company, a metal merchant and so on. In making this distinction we intend no disrespect to the latter group. We make it to emphasize what we consider to be an important starting point when examining the evidence namely that he was a professional man.

He was also a very successful and well educated professional man. When giving evidence in-chief he somewhat understated his position. This may or may not have been due to modesty. He told us he was now 37 years old, he had obtained a Higher Diploma from the Hong Kong Polytechnic. He joined Richard Ellis in 1984 as a professional assistant having briefly worked for Chesterton Petty. He became a director of Richard Ellis in 1993 at the age of 33. He is now an Executive Director. He described his role in Richard Ellis as "business development". Later in his evidence it emerged he was a qualified chartered surveyor whose particular speciality was property and business development in China. At the very end of his evidence (which lasted four days) he also confirmed the accuracy of the information on the Richard Ellis notepaper which included the fact he had an MBA. When asked about his MBA he said "I think it should be an MBA from University of East Asia, Macau and it was a part time course". The fact was that he had a Master's Degree in Business Administration. He had become a director of Richard Ellis - a very well known and very large property company in Hong Kong - at the relatively young age of 33 and his day to day business involved looking for and developing business and property opportunities in China.

His purchases

Between May 25th and May 28th he purchased 202,000 HKWM shares through his account at Sun Hung Kai Investment Services Limited. We focus our consideration of the evidence concerning Leung on his state of mind at the time of his purchases. As with any inquiry into what a man knew or realized or must have known at a given time we can and should look at his actions and conduct before, at the time of and after the critical time. Contrary to part of the submission made on his behalf, events involving him after May 28th when his buying ended are not irrelevant. Events before and after when taken together are capable of shedding light on his true state of mind at the time.

An additional factor to which we have attached some weight in Leung's case was his demeanour when giving evidence. We refer to this in a little more detail later in the chapter.

Key events

The chronology of the key events which directly involved Leung about which he and others gave evidence (including Ng, Brian Ng, Clement Chen, Donald Nimmo, Michael Dean, all of whom gave oral evidence and Mr. Gao who had made a statement to the SFC) is as follows:-

Before May:	Leung introduced Brian Ng to Clement Chen at a cocktail party.
May 20th: (Approx.)	Brian Ng telephoned Leung to ask him to arrange a meeting which Clement Chen would attend and meet certain friends of Brian Ng. Leung was asked to do this because he knew Clement Chen quite well, certainly better than Brian Ng knew him. Leung arranged the meeting.
May 22nd:	The meeting. It took place at the Marriott Hotel Coffee Shop in the afternoon. It was a

	Saturday. In attendance were Mr. Gao and Mr. Cao (from BITIC), Brian Ng and Ng, Leung and Clement Chen (the Director of Tai Hing Cotton Mills Limited and the major shareholder of HKWM).
May 25th-28th:	Leung buys his HKWM shares.
May 27th:	Brian Ng contacted Leung to request the services of Richard Ellis in locating suitable office premises for rent.
May 28th:	Brian Ng again telephoned Leung and asked him to arrange another meeting with Clement Chen. Leung did this and the three of them met later the same day. At this meeting a packet containing a provisional sale and purchase agreement concerning the proposed take-over was handed to Clement Chen by Brian Ng.
June 1st:	Leung and Brian Ng had a meal together.
June 2nd:	Leung started to sell his HKWM shares.
June 4th:	Leung finished selling his HKWM shares.
Between June 7th & 9th:	Brian Ng requested Leung to recommend a surveyor to value HKWM properties. Leung was told that the reason Richard Ellis were not being used was because he knew Clement Chen too well.
June 11th:	Brian Ng telephoned Leung and asked him to attend a meeting at the offices of Johnson Stokes & Masters the next day. Brian Ng said he wanted him to be there because he knew Clement Chen well.

June 12th:	The meeting at Johnson Stokes & Masters (JSM). Many people attended including the parties to the proposed take-over and their legal and financial advisers. The meeting lasted most of the day but eventually broke down without any agreement being reached.
June 12th:	After the meeting Leung was informed, probably by Mr. Gao that if he could get the parties back together he would receive $5 million.
June 14th: (Approx.)	Leung contacted Clement Chen.
June 15th:	A breakfast meeting was held at which Brian Ng, Clement Chen and Leung met and talked.
June 15th:	Brian Ng telephoned Leung and told him that an agreement had been reached.
June 16th:	Leung attended the signing ceremony.
July 13th:	Leung received a letter from the SFC requesting information about his involvement.
July 16th:	Leung replied to the SFC letter. (Annexure I)
August & September:	Leung received $5 million.
December 8th:	Leung was interviewed by SFC.
January 12th 1994:	Leung was interviewed by SFC.

January 13th 1994: Leung was interviewed by SFC.

It can be seen from this outline chronology that between May 20th (the first approach by Brian Ng) and June 15th(the agreement) there were eleven contacts or meetings between Brian Ng and Leung. Leung bought his shares after the first two such contacts or meetings (i.e. May 20th and May 22nd).

Leung's testimony as to why he bought the shares

Before we report our findings concerning the above events we give a summary of Leung's own explanation as to why he spent $1.3 million on 202,000 HKWM shares on May 25th, 27th and 28th. By way of preliminary comment we wish to dispel any notion that by reporting our findings on his evidence first we have in some way, reversed the burden of proof. There is no burden of proof on an implicated party (save under s. 10). Before making any finding against any person the Tribunal must be satisfied on the whole of the evidence to a high degree of probability. Leung's own evidence is part of the whole picture and we merely deal with it first as a matter of logical convenience.

Fundamental to his evidence was that he had no information about the contemplated take-over. In evidence he said that the first time he realized that the parties were contemplating and discussing a take-over was after he had been at the meeting at JSM on June 12th for a couple of hours. His purchases on May 25th-28th were wholly unrelated to any knowledge or information concerning the possibility of a take-over.

He confirmed that it was coincidental that the corporation he decided to buy shares in was the same one that he had arranged a meeting with between the director of its major shareholder and officials from BITIC who had recently arrived in Hong Kong from Beijing at his friend's, Brian Ng's invitation.

During his second interview with the SFC he stated that he had traded in securities for about 10 years and had a share portfolio of $2-3 million. As far as his decision to buy HKWM was concerned he stated:-

> "I remember before I bought the shares of Worsted Mills, I had read from the newspaper saying that Worsted Mills was one of the prospective companies to be taken over by companies with mainland capital. Several days before I bought (the shares of Worsted Mills), its turnover was especially large and its share price was rising rapidly such that it had been among the top ten rise for several consecutive days. Therefore, I thought that Worsted Mills might be taken over. Besides, the PE of Worsted Mills was also very low and its business was not too bad. I thought that the risk wouldn't be very high although I bought some. Therefore, I asked CHIU Sing-kwong to buy 100,000 to 200,000 shares of Worsted Mills for me. CHIU Sing-kwong decided the quantity and the price of the shares to be bought for me."

The interview continued the next day and the following exchange took place:-

> "Q: In your first record of meeting, you once mentioned that after attending the appointment (with Brian NG, Clement CHEN and representatives from BITIC) on 22.5.1993, you estimated that Brian and BITIC might want to test Worsted Mills as to whether it was willing to sell its listing status, didn't you?
>
> A: At that time I did not have the issue of the possible acquisition of Worsted Mills in mind, until I read the news about the possibility of Worsted Mills being acquired. It was not until then that I reckoned Worsted Mills might be acquired. This reckoning of mine was entirely based on the information in the newspapers and had absolutely nothing to do with my attending the meeting on 22.5.1993. As to revealing this reckoning of mine during the last meeting with you, it might be due to some misunderstanding during our conversation. In our last meeting, the reply I gave you was that because I inferred after the

incident that that meeting might be to test Worsted Mills as to whether they would sell their listing status. Actually, at that time, I did not have the issue of the possible acquisition of Worsted Mills in mind.

Q: Did your attending the meeting on 22.5.1993 have any impact on your decision to purchase Worsted Mills (shares) in end May 1993?

A: Absolutely not .... My trading in Worsted Mills shares in this case was purely because I followed the general trends."

In evidence in-chief before the Tribunal he took the matter much further. It was his case that at the time HKWM was one of about four shares that he was considering buying. He kept abreast of financial news generally and had also done some research of shares that might be worth buying. It was as a result of this general research that he made his decision to buy on May 25th. In support of this contention he produced three folders of documents to show how his decision probably came about. We accept that he did not produce these folders as documents that he definitely read at the time or written research that he actually made at the time. He produced them to provide support and illustration of what his thinking would have been at the time. They comprise material that a prudent purchaser looking for a 2nd or 3rd liner stock could have seen and relied on prior to buying HKWM when he did.

Mr. Paul Shieh on his behalf expressed concern that the Tribunal thought that, by producing these documents we thought he was attempting to bolster a false "defence" with the benefit of hindsight. The three folders, which total 128 pages are titled "Share movement and trends" - 51 extracts of statistics and tables from economic journals between May 11th and June 3rd, "Press clippings" - 49 extracts from various publications between May 9th and June 1st and "Record of share trading" - 28 pages of his own trading between July 1991 and August 1993.

He explained to the Tribunal that at the time he was considering HKWM, HK Macau, Asean Resources and Paramount Printing shares.

The documents contain an analysis of the performance of these shares at the material time to illustrate how and why he must have come to the decision to buy HKWM.

As already stated the issue we must decide is whether or not his choice of HKWM shares at the time he bought was a coincidence. If, in truth, the purchases were prompted by inside information which he had previously acquired then the files are plainly an attempt to bolster untrue evidence. If on the other hand his purchases were "purely because I followed market trends" as he said to the SFC then the files provide some corroboration for those trends. The assistance we get from the mere existence of the files themselves in making this decision is minimal.

The only observation we make is this - it was plainly acknowledged that the files were produced for the purpose of this inquiry and prepared in mid 1997. Nonetheless he said he recalled analyzing four particular shares at the time in his mind. He never reduced his thought or analysis to writing at the time. It must be the case that his recollection of which four particular shares he was considering at the time came from re-reading the articles in the press at the time. He then collected 128 pages of statistics and press reports to illustrate the "sort of" material he would have read. On any view as an attempt to illustrate what went through his mind at the time it is plainly overdone and does little to answer the question - was it a coincidence or not? The fact that HKWM was a reasonable buy at the time without the inside information does not help us decide whether Leung bought with or without the information. If it had not been a good prospect in any event, the Ngs would probably not have identified as a target in the first place.

It is also worthy of note that this aspect of his evidence in which he stated that his purchase was as a result of careful analysis and weighing up the prospects of four particular shares was not referred to at all when he was first interviewed by the SFC on December 8th 1993. His first response to them as his reason was that it seemed HKWM was a possible take-over target. From his next interview onwards (January 12th 1994) and in his evidence to the Tribunal he has sought to distance himself from the first reason given.

As will be seen at the conclusion of this chapter the Tribunal finds that Leung's purchases were prompted by knowledge of relevant information. That being the case his attempts to retract his original statement and his elaborate presentation of share analysis at the time are consistent with a desire to establish that the reason he bought HKWM when he did so was an innocent coincidence when in fact it was not so.

What information did he possess when he bought HKWM?

We can only consider actual events before May 25th when answering this question. The significance of events after May 25th are in relation to matters of credibility and consistency.

A. Before May 25th:

By a date unknown at the end of April or before May 6th the Ngs (Brian and NG Kwong-fung) had identified HKWM as the target company. Arrangements were then made to bring the personnel from BITIC so as to make an approach to HKWM through the director of its major shareholder, Clement Chen of Tai Hing.

There is no dispute that Leung was asked to set up the meeting. He was asked on or about May 20th the same day that Mr. Gao and Mr. Cao of BITIC arrived in Hong Kong. The meeting took place on May 22nd (a Saturday) in the Marriot Hotel Coffee Shop. Gao, Cao, Leung, Clement Chen, Ng and Brian Ng were there. It was the first meeting of the parties. We heard extensive evidence from the last four named persons about the meeting. Evidence about its length, who arrived first, its purpose, its nature, what was said by whom to whom and when, the atmosphere, the result etc. were all matters dealt with by each witness.

Dealing with general matters first we find that the meeting lasted about 45 minutes. It was relatively informal and was an opportunity for Clement Chen to meet officials from a PRC investment company. The meeting no doubt started with the usual introductory courtesies and business niceties. Leung was present

because he had arranged the meeting and knew both Brian Ng and Clement Chen quite well. His presence would contribute to an easier and more relaxed atmosphere.

Leung's evidence was that he did not know the underlying purpose of the meeting nor did Clement Chen ask him anything about it when he first invited him to attend. Other than it being an invitation to meet friends and discuss business opportunities Leung told us that both he and Clement Chen were ignorant of its real purpose.

We heard evidence that Leung remained ignorant throughout the meeting as there were no round-the-table discussions specifically about the possibility of a take-over. The evidence suggests that Clement Chen first became aware of this possibility at the very end of the meeting. Leung, Chen, Ng and Brian Ng all gave evidence of an incident which occurred moments after the meeting began to break up. At the end of the meeting Brian Ng took Clement Chen to one side and briefly spoke to him in private. It was in this private conversation that the question of a possible take-over or acquisition of Tai Hing was first specifically proposed to Clement Chen. Leung was not a party to it. We are satisfied that the reason for specifically broaching the subject in this way was not to keep it confidential from Leung but to ensure that the first official approach came not from the PRC party but from the Hong Kong agent. As Brian Ng explained ".... I can't ask that to Mr. Chen in front of Mr. Gao because as I explained that if he rejected then Mr. Gao would have lost face. So I pulled him aside before we left and then I said to him that we were very interested in the company .... Mr. Chen was saying ... anything would be (in) black and white if you are going to make an offer. So I said that if alright, I will instruct our lawyer to draft a sale and purchase agreement and I have explained to Mr. Chen very simply what sort of terms and conditions will be included in that sale and purchase agreement ... including properly revaluation, the deferred payment, terms of stock and the premium ...."

This answer from Brian Ng shows not only had he and BITIC done a lot of work on the proposal they were going to make before the meeting but also that the "pulling aside" incident was clearly more than an exchange of one or two sentences.

Thus, in a nutshell the evidence from the key witnesses painted an overall picture of the meeting being polite but informal with Leung and Chen wholly unaware of its purpose until it came to an end when Chen was confidentially let into the true picture.

Against this picture we now examine the evidence of what was said and written about this meeting before the witnesses gave oral evidence:-

(a) Leung's statement to the SFC on December 8th 1993 contains the following:-

> "Although they did not mention the issue of acquisition, I estimated that Brian and Beijing (International) Trust (possibly) wanted to probe as to whether Worsted Mills was willing to dispose of its listing status."

Before the Tribunal his evidence was that this was a mistake brought about by the SFC's questioning which he failed to amend because he was in a hurry to leave the interview.

(b) Clement Chen's statement to the SFC on March 3rd 1994 states:-

> "I remember in this meeting, it was mainly Brian or NG Kong-fung who talked to me. They told me that they had paid attention to Worsted Mills all along. They wanted to buy the shell of Worsted Mills. But at that time, they didn't mention whether it was they (NG Kong-fung and NG Kwong-fat) or it was they and other people or companies who wanted to buy the shell of Worsted Mills. At that time, I replied them that we could have a discussion on selling the whole company but I would not

just sell the shell of the company. I remember at that time, all 6 persons (LEUNG Koon-hong, Mr. GAO, Mr. CAO, NG Kong-fung, NG Kwong-fat and myself) present at the meeting heard these conversations. I remember in the latter part of the meeting, before we left, NG Kwong-fat pulled me aside saying that they could pay a premium of $70,000,000 to $80,000,000 to buy the shell of Worsted Mills. I said I couldn't make the decision on behalf of the directors of Worsted Mills. If he was interested in it, he could prepare a written proposal to me and I would then pass it to the board of directors. Because Brian said all these things only after he had pulled me aside, I think other people couldn't hear it."

Before the Tribunal, three and a half years later he was less precise. We quote the following examples of answers to questions from different people during his evidence.

Q: Who was it that raised the question of buying the shell of Worsted Mills, who was it that raised that, was it Brian Ng or Ng Kwong Fung?

A: I can't remember exactly.

Q: In your evidence you mentioned that in response to a question or a suggestion raised by one of the Ng's that they wanted to buy the shell of Worsted Mills you said 'we won't sell the shell and we would only consider selling the whole company'. Do you remember that?

A: According to the evidence I gave to the SFC I did say that. .... But whether during the meeting that buying the company or the shell of the company, I can't be certain whether it was mentioned or not.

Q: There was no talk during the meeting itself but that there was when Brian Ng pulled you aside?

A: As I have just said, because it is more than four years now, that if you ask me to look at my statement, then just to tell you what happened, I really can't.

Q: While the six of you were sat down together someone mentioned to you would you be interested in selling the listed - or shell of the company.

A: Yes it should be someone suggested it. .... According to the statement I gave at that time, yes. But then now if you ask me whether I did say it, I can't remember now.

Q: In fact would it be fair to say that they did mention during the meeting, when you're sitting together, whether you're interested in selling the share or listed status of the company?

A: I still maintain if you ask me now that I can't remember, but in the evidence I gave to the SFC - in the statement I gave to the SFC - that someone did suggest about this matter whether what time - exactly at what stage and what time that is suggested, then I really can't remember."

It is plain that his evidence to the Tribunal was more vague and uncertain than his statement to the SFC. We accept that the passage of time clouds the memory. In this case we consider it safe to attach weight to the contents of his more contemporaneous statement. He did not specifically reject its accuracy. In such circumstances his statement may assist in dissipating the mist of uncertainty which had thickened in Mr. Chen's mind over the intervening years.

(c) NG Kwong-fung's evidence on the other hand did the opposite. He was unsure at the time but became sure in front of the Tribunal. To the SFC he had said "I don't remember what had been discussed". He also said he did not even remember if Leung was at the meeting. This lack of recollection was recorded in about December 1993. In evidence however he

stated that he was sure both that the take-over possibility was not mentioned at the meeting and that Leung was present.

(d) As early on July 7th 1993 in answer to a standard letter from the SFC to IHL dated June 30th 1993 Brian Ng (who signed the letter on behalf of IHL) described the May 22nd meeting as follows:-

> "22 May 93 - IHL introduce Messrs. Gao and Cao to the vendor and the structure of a possible Sale and Purchase Agreement ("S&P") is first discussed with the vendor. This included mention of a basis of adjusted net asset value, taking into account a property revaluation, deferred payment terms for stock and a premium of $94-100 million." (Annexure J)

Brian Ng told the Tribunal that such discussions which are described in this passage took place not when everybody was sitting around the table but when he pulled Clement Chen to one side at the end of the meeting. The same letter, written three weeks after the announcement of the take-over described Leung's role as "he acted as an intermediary between the vendor and purchases during negotiations". This description of being an "intermediary" or go-between was typical of the type of expression used to describe his role at the time whereas in evidence more diluted or general terms such as a "buffer" or that he was asked to attend "because he knew Clement Chen better" were used.

We have concluded on the totality of the evidence that as a result of the meeting of May 22nd Leung was not the ignorant party he claimed he was. In coming to the conclusion we have attached weight to, inter alia, the following matters:-

(i) The tendency amongst some witnesses, including Leung himself, to distance themselves from or explain comments made nearer the time which point to the contemplation of a take-over being discussed during the meeting.

(ii) Leung was, according to his own evidence researching HKWM at the time as a possible purchase. He would be keen to know as much as possible and would be using all his professional skill and experience to acquire information, directly or indirectly. Leung was an intelligent astute professional who could not possibly have remained unaware, uninterested and/or uninformed throughout.

(iii) Leung started buying his shares on Tuesday, May 25th - the next trading day but one after the meeting, spending $1.5 million over 3 days.

(iv) Leung's demeanour as a witness to the Tribunal did not enhance our assessment of his credibility. Making full allowances for nervousness we found his answers and the way he gave them to be, on many occasions, evasive and unnecessarily long winded. At the conclusion of his evidence the Tribunal was satisfied that his poor demeanour when giving evidence was solely attributable to the fact that he had purchased HKWM shares not for the reasons he gave but because the allegations of insider dealing made against him were true and correct.

B. <u>After May 25th</u>:

An analysis of Leung's conduct after his purchases is, we find, consistent with the conduct of a man who had had relevant information at the material time.

His own evidence concerning events which occurred after May 25th continues in the same vein, namely that his state of ignorance and unawareness persisted until very late in the day. In fact he told the Tribunal that it was not until he had been at the meeting at the JSM offices on June 12th for a couple of hours that he realized they were all discussing a possible take-over. Counsel to the Tribunal submitted that Leung's evidence had an "air of unreality" about it. We were in general agreement with the description and particularly so in this instance.

Prior to this meeting on June 12th Leung had been asked by Brian Ng to locate office premises for rental (May 27th), to attend a meeting with Clement Chen when a draft sale and purchase agreement was handed over (May 28th), to have a meal with him (June 1st), to recommend a surveyor to value HKWM property (June 8th?) and then on June 11th to attend the JSM meeting because he was a friend of Clement Chen's.

Leung's evidence was that his state of ignorance remained unaltered until the meeting was well under way. There were about a dozen people at this meeting. Our reluctance to accept his evidence on this issue is enforced by the observation that on July 16th 1993 in answer to a letter from SFC he stated, in relation to the May 28th meeting -

> "At the request of Ng, I contacted Mr. Chen on 28th May to have a meeting with Mr. Ng. During the meeting Mr. Ng forwarded a proposal to Mr. Chen concerning a possible acquisition of Hong Kong Worsted Mills." (Annexure I)

This conflicts sharply with his evidence to the Tribunal that he knew nothing of it till late morning on June 12th.

It is highly improbable also that a man who until, say 11.00 a.m. on June 12th knew nothing was the same man who a few hours later, when the negotiations broke down badly, was taken into the confidence of BITIC and the Ngs to such an extent that he was offered $5 million to bring the parties back to the table as the first move in an attempt to salvage the deal. He got them back. The deal was salvaged and he got his $5 million.

Much evidence was given about his $5 million fee. Even though it is a large sum of money it is only a small piece of evidence. We do nonetheless attach some significance to it as part of the circumstantial evidence from which we have concluded that Leung's awareness did not start on June 12th but had been in existence since May 22nd. There are two particular features of the

"$5 million" which contribute to this conclusion. Firstly, it is a payment out of proportion to what he said it was for i.e. merely ringing up Clement Chen to ask him back to the negotiating table. Secondly, Leung disclosed the existence of the fee to no-one until it emerged in evidence when Brian Ng was being questioned on the matter which had been raised by a member of the Tribunal. It is true that he had not been specifically asked about it beforehand. We feel however that he would never have volunteered the information himself because his involvement in the negotiations generally was clearly unknown to Richard Ellis. He was acting in his individual capacity. Thus, his reply to the SFC by letter of July 16th concludes "N.B. It would be appreciated if all future correspondence are marked PRIVATE."

C. The extent of his knowledge

Having established in A and B above that he was not ignorant of the matter on May 25th we must consider now what he did in fact know and whether it was relevant information.

The evidence proves to a high degree of probability that Leung could not have failed to realize as a result of the May 22nd meeting that the Ngs and BITIC were contemplating a take-over of HKWM. For the purposes of this report it is not necessary for the Tribunal to make specific findings as to exactly when his state of mind reached this level or from whom and in what way he had acquired the necessary information.

What is plain is that, given his intelligence, professionalism and knowledge of the parties he left that meeting in a state of awareness of what was being contemplated i.e. a take-over of HKWM, the detailed discussion of which had yet to begin and that knowledge had been received, directly or indirectly from another person or persons.

D. Application of findings to s. 9(1)

We have dealt in earlier chapters with the issue of whether

this information is relevant information. The same test applies here and there is no purpose in repeating it. That Leung knew it was relevant information is unarguable.

We find therefore that each ingredient of s. 9(1)(f) has been proved by the evidence to the required standard.

E. Section 10(3)

Mr. Shieh on Leung's behalf has submitted that even if we find insider dealing proved against Leung we should not identify him as an insider dealer because he can rely on s. 10(3).

S. 10(3) states:-

> "(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."

Mr. Shieh submits that even if Leung had inside information he did not use it when he bought his shares because the information he in fact used was his own independent research. This argument is without merit. It is fanciful to argue that he did have inside information but used some other information when he bought.

To conclude, we identify Dominic LEUNG Koon-hong as an insider dealer, his purchases between May 25th and May 28th having been in breach of s. 9(1)(f) of CAP. 395.

CHAPTER 11

NG KWONG-FUNG

In the course of the report so far we have

(a) stated that the totality of the evidence we have heard does not prove any act of insider dealing by Ng and

(b) made reference to Ng's involvement with each of the other implicated parties.

We have not referred to or reported on each and every piece of evidence which involved Ng or Wing Fung and its finances and accounting. Such references as we have made have been confined to and only in relation to our deliberations concerning the other implicated parties.

We have decided that to make further specific references to these and other pieces of evidence as a part of our report specifically in relation to Ng is neither necessary nor appropriate. No adverse findings of insider dealing arise from them.

Their cumulative effect caused suspicion to fall on him. The suspicion was reasonably held albeit not proved. We are satisfied that the inquiries we made into Ng's involvement were necessary and merited. They may still be relevant in the matter of costs should an application be made.

CHAPTER 12

CONCLUSION

In answer to paragraph (a) of the Financial Secretary's Notice served on the Tribunal under s. 16(2) of the Securities (Insider Dealing) Ordinance, CAP 395 the Tribunal has determined that there was insider dealing in relation to Hong Kong Worsted Mills Limited arising out of the dealings in the listed securities of the company by Ms SHEK Mei-ling and Messrs. TAI Lai-wo, CHENG Chun-ling, Sinyo Wahid Winata TAN and Dominic LEUNG Koon-hong during the period from May 6th 1993 to June 16th 1993 inclusive.

In answer to paragraph (b) the Tribunal has determined that there was insider dealing by Ms SHEK Mei-ling by her counselling or procuring Messrs. TAI Lai-wo, CHENG Chun-ling and Sinyo Wahid Winata TAN, while she was in possession of relevant information (as defined in s. 8 of CAP 395), to deal in the listed securities of the company.

In answer to paragraph (c) we identify Ms SHEK Mei-ling and Messrs. TAI Lai-wo, CHENG Chun-ling, Sinyo Wahid Winata TAN and Dominic LEUNG Koon-hong as insider dealers.

This concludes the first part of our report. Before making any further decisions in relation to penalties and other consequential orders we will give all parties an opportunity to be heard on matters relating to mitigation and/or costs.

The Tribunal Secretary will contact all the parties to arrange a convenient date for the Tribunal to reconvene for this purpose, hopefully within the next 4 weeks. The Tribunal will thereafter consider and report on all matters relevant to the determination to be made under paragraph (d) of the s. 16(2) Notice and further make such order as are appropriate and necessary under ss. 23-27 inclusive of CAP 395. The completed report will then be furnished to the Financial Secretary and others in accordance with the provisions of s. 22(3) of CAP. 395.

The Honourable Mr. Justice Burrell
Chairman

Mr. James Wardell
Member

Mr. Peter Wong Shiu-hoi
Member

November 18th 1997

CHAPTER 13

PENALTIES AND CONSEQUENTIAL ORDERS

On 19th November 1997 the Tribunal sent Chapters 1-12 inclusive of this report to the Financial Secretary. The same chapters were sent to the Department of Justice and the solicitors representing the implicated parties soon thereafter.

Thus far we have made our findings in relation to paragraphs (a), (b) and (c) of our terms of reference.

s. 23(2) of CAP 395 states:-

> "(2) The Tribunal shall not make an order in respect of any person under subsection (1) without first giving the person, and, in the case of a person that is a corporation, an officer concerned in the management of the corporation, an opportunity of being heard."

Accordingly, on 17th December 1997 the Tribunal sat to hear submissions from all parties relating to :-

(A) the method of calculating the amount of any profit gained as a result of the insider dealings which we had found proved;

(B) the appropriate financial penalties and orders pursuant to s. 23 which should follow our findings; and

(C) what orders if any should be made pursuant to ss 26A and 27 of CAP 395.

The relevant provisions of CAP 395 are as follows:-

23. Orders etc. of Tribunal

(1) At the conclusion of an inquiry as soon as is reasonably practicable thereafter, where a person has been identified in a determination under

section 16(3) or in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders -

(a) an order that that person shall not, without the leave of the High Court, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order;

(b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;

(c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.

s.26A. Costs

(1) Subject to subsection (5), at the conclusion of an inquiry or as soon as reasonably practicable thereafter, the Tribunal may award to-

(a) any witness;

(b) any person whose conduct is, in whole or in part, the subject of the inquiry,

such sum as it thinks fit in respect of the costs reasonably incurred by him in relation to the inquiry.

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

(c) a person who and in respect of whom it appears to the Tribunal

has by his own acts or omissions caused or brought about (whether wholly or in part) the Tribunal to inquire into his conduct subsequent to the institution of the inquiry under section 16 or during the course of that inquiry; or

(d) any other person who and in respect of whom it appears to the Tribunal has by his own acts or omissions caused or brought about (whether wholly or in part) the institution of the inquiry under section 16.

s. 27:-

At the conclusion of an inquiry or as soon as is reasonably practicable thereafter, the Tribunal may order any person who has been identified as an insider dealer in a determination under section 16(3) or as an officer of a corporation in a determination under section 16(4), as the case may be, to pay to the Government such sums as it thinks fit in respect of the expenses of and incidental to the inquiry and any investigation of his conduct or affairs made for the purposes of the inquiry.

(A) <u>The method of calculating the amount of any profit gained</u>

In this Inquiry some of those persons who have been identified as insider dealers never sold the shares which were the subject of the insider dealing and therefore still hold them and thus have not realized any actual financial profit. Of the others who did sell, some sold before the relevant information became public, some sold after, some sold all their shares, others sold only some of them.

In other words each insider dealer's situation is different and we have heard and considered a variety of different submissions and proposals as to how each insider dealer's "profit" if any, should be calculated.

We are in no doubt that the same method should be adopted in each case regardless of whether or not the shares had actually been disposed of, regardless of when they were disposed and regardless of the price actually recovered at the time of sale.

In order to calculate the profit gained we subtract the price paid for a share from its value a short time after the relevant information became public and multiply that figure by the number of shares purchased. The "short time after" is the time it takes for the public information to become disseminated and the share value re-rated. This is usually a matter of a few days. The simplest and fairest way of doing this is to take an average of the closing prices of the share over a number of days after the announcement. This method is fair provided there is no new information in the market place during the relevant period which might further affect its value.

The average price of an HKWM share between the first trading day after the announcement on June 17th 1993 and June 30th 1993 was $16.80. This is the figure we shall use. There was no new information which might have affected this figure.

It does not follow however that the full amount of the profit gained as calculated by this method should be the amount to be ordered under s. 23(1)(b).

Before deciding on the appropriate amount under s. 23(1)(b) we will take into account all those matters which have been urged upon us by counsel on their lay clients' behalves in seeking to reduce or even eliminate an order under s. 23(1)(b). If we find there is merit in the submissions - and we consider each case separately - it is open to us to discount the notional profit to reflect the mitigation that has been advanced.

First of all however we will set out the results of the calculations of "profits gained" in accordance with the method herein set out.

SHEK Mei-ling

Shek bought a total of 100,000 shares which cost her $408,873. Had she sold them at $16.80 per share she would have realized $1,680,000 less expenses on sale of $8,484, namely $1,671,516. Thus

the notional profit would be $1,671,516 - $408,873 which equals $1,262,643.

TAI Lai-wo

Tai bought a total of 523,000 shares which cost him $2,524,237. Had he sold them at $16.80 he would have realized $8,786,400 less expenses of $44,370 namely $8,742,030. Thus Tai's notional profit is $6,217,793.

Sinyo Wahid Winata TAN

Tan bought 226,000 shares at a cost of $1,354,493. After expenses of $19,174 the proceed of sale at $16.80 per share would have been $3,777,626 producing a notional profit of $2,423,133.

CHENG Chun-ling

Cheng was the biggest buyer. He spent $3,429,939 on a total of 678,000 shares. After the cost of selling at $57,521 the proceeds at $16.80 per share would have been $11,332,879. The profit would have been $7,902,940.

Dominic Leung

Leung bought 202,000 at a cost of $1,299,079. Had he sold at $16.80 he would have got $3,393,600 for them, less expenses of $17,137 equals $3,376,463. The resulting profit would have been $2,077,384.

To summarize the "profits gained" for the purpose of s. 23(1)(b) are:-

Shek	-	$1,262,643
Tai	-	$6,217,793
Tan	-	$2,423,133
Cheng	-	$7,902,940
D. Leung	-	$2,077,384

S. 23(1)(b) states that an order shall be "an amount not exceeding" the profit gained. In each case we will discount both the profit gained and also the s. 23(1)(c) penalty for a combination of the following reasons:-

(a) Mitigation advanced.

(b) In some instances the shares were never in fact sold and no profit was actually made.

(c) In some cases the shares were sold before the announcement and the profit actually made were significantly less than the notional profit.

(d) The insider dealers' means. It is a person's "ability" to pay within a reasonable time and not the immediate availability of funds which determines a person's means.

(e) The principle of totality.

Mitigation

We do not propose to set out in this report all matters advanced by way of mitigation. Counsel made helpful submissions which can be found in the transcript of proceedings. What does and does not constitute a mitigating factor in insider dealing cases has been reported on in previous inquiries. We have followed the principles set out in previous inquiries and also taken into account such of the mitigation as it is appropriate to do so within those principles.

(B) Financial penalties and orders pursuant to s. 23(1)

(1) s. 23(1)(b)

In respect of each insider dealer the Tribunal's orders under s. 23(1)(b) are as follows:-

SHEK Mei-ling

Shek sold her own shares on the 3rd and 4th June 1993. The first public announcement by HKWM that they had received an approach had been made on May 31st. Whatever her reasons for selling were she made an actual profit of $231,745 - considerably smaller sum than her notional profit. However the decision to sell is entirely within the hands of the insider dealer. The wrongdoing is complete at the time of purchase. We do make some reduction from the notional profit but the reasons for so doing are connected more with her means and the principle of totality than with the fact of an early sale resulting in a relatively small profit. The sum we order is $600,000.

TAI Lai-wo

Tai has never sold his shares. Again, it is not part of our function to make findings as to why a person sells or does not sell the shares they acquired by insider dealing. It is his misfortune that their present value is markedly less than that which he paid for them. However, the Tribunal considers it would be too harsh, in all the circumstances of the case, to order him to repay the whole of the notional profit which was in excess of $6 million. The sum we order is $3 million.

Sinyo Wahid Winata TAN

Tan sold some but not all of his shares. The profit he actually made, we are told by his counsel, was $1,167,087. Bearing in mind the notional profit was approaching $2.5 million we consider an appropriate amount under s. 23(1)(b) to be $1.5 million.

CHENG Chun-ling

Cheng, like Tai, still owns his shares. He bought more than anyone else. He therefore finds himself facing the

largest penalty. We cannot give him a greater discount simply because his potential liability is so large. We will adopt a similar approach in respect of Cheng's dealings and order the sum of $3.9 million.

Dominic Leung

Like Shek, Dominic Leung sold early. In fact he sold at almost precisely the same time as Shek. His actual profit was smaller however because he had bought later. In the natural course of events the inside information came to him later than it had come to Shek. His actual profit was $151,136. However, by applying a similar discount to the amount of his notional profit we order a sum of $1,000,000.

(2) s. 23(1)(c)

The maximum amount which can be ordered under this section is three times the amount of the "profit gained". It is not three times the amount of the actual profit. So, for example, the maximum order against Dominic Leung would be $6,232,000.

The primary reasons for discounting the notional profit under s. 23(1)(b) were the principles of means and totality. Because s. 23(1)(c) is more in the nature of a fine, it is open to us to look at the overall picture and attach such weight as we consider appropriate to the wider mitigating and/or aggravating features in each case.

SHEK Mei-ling

It is under this section that we must take account of the very important role she played in counselling or procuring the insider dealing by Tai, Tan and Cheng. Their combined notional profits were over $16 million. The maximum order we could make would be approximately $3.7 million (i.e. three times her notional profit). The order we do make is $1.2 million.

Before moving on to Tai, Tan and Cheng we note and record that in respect of all 4 of these insider dealers it was submitted on their behalves that they were ignorant of the law relating to insider dealing at the time. It is said that it was a breach of the law based on ignorance rather than cynical disregard. We entirely accept this but do not regard it as a mitigating factor of any significance. It is merely illustrative of the widespread lack of understanding concerning the stringency of regulations governing share trading.

TAI Lai-wo

We take into account, in respect of Tai, Tan and Cheng, that they were the three outsiders who became insiders on information from Shek. There was nothing sophisticated about their insider dealing. It was prompted by a mixture of greed and naivety. In evidence they made no secret of the fact that they were trying to get the information for some time before they bought and wasted no time once they got it. In Tai's case we will make an order under s. 23(1)(c) which represents a lesser sum than the amount ordered under s. 23(1)(b). It must however bear some relation to the s. 23(1)(b) figure because the size of the potential profit must be regarded as one of the factors in assessing the gravity of the wrongdoing. The sum we order under s. 23(1)(c) is $2 million.

Sinyo Wahid Winata TAN

As indicated hitherto Tan's position is in many ways similar to that of Tai and Cheng. The fact that he has in fact sold the shares at a profit only distinguishes him in the sense that he has realized some assets which, in theory are available to meet any penalties ordered, whereas the other have not.

As with the other two we have been informed that his present financial circumstances are not as healthy as they were in 1993 when he was able to finance these substantial share

purchases. Being Indonesian Chinese he has the present currency crisis in that country to contend with. In deciding what is a fair and proper order in his case we adopt the same arithmetic approach as we used in Tai's case i.e. two-thirds of the s. 23(1)(b) amount ordered, namely $1 million.

CHENG Chun-ling

Cheng also has financial problems now which he did not have in 1993. Through his counsel he offered his apologies and explained that his actions were primarily due to ignorance on his part. It is a sad but familiar pattern in this case that at the time of the "offence" the insider dealer is wealthy and avaricious but at the day of reckoning he is apologetic and facing financial ruin. We nonetheless fully accept his contrition, we accept a hard lesson has been learnt. We cannot ignore the fact that the number of shares he bought was very great and potential profits, at the expense of the ordinary investor, were huge.

Adopting the same approach as with Tai and Tan the amount we penalize him is $2.6 million.

Dominic Leung

On behalf of Mr. Leung it was submitted that the order under s. 23(1)(b) should be the actual profit (i.e. $151,000) and a multiplier of one be used when determining the s. 23(1)(c) penalty.

We have rejected the first submission.

In Mr. Leung's case we consider that an appropriate additional penalty should reflect both that he is a professional man and that his insider dealing was a calculated attempt to make a quick profit for himself which he revealed to no one. We believe that he kept it as secret as possible because he realized it was in breach of the insider dealing law.

His investment was relatively small and his actual profit relatively modest. Through his counsel he recognizes that some orders under subsections (a), (b) and (c) have to be made against him. The amount we consider to be appropriate in his case is $1.5 million.

(3) s. 23(1)(a) - Disqualification

This section is so drafted that an order under it can take many forms. For example, it can relate to a listed company or a private company or both; it can prohibit a person from being a director, a liquidator, a receiver and a manager or any combination of these. It can also prohibit indirect management of companies.

Given the seriousness of insider dealing, to make no order under this section would be exceptional. There are no such exceptional circumstances in this case arising from either the nature of the insider dealing committed or the personal circumstances of the insider dealers identified.

We adopt and quote the principles set out in the Success Holding Inquiry at page 97:-

"(6) In determining whether to disqualify an insider dealer from holding office as a director of a listed company, or of listed companies, there come into play a number of considerations. The determination will take into account the need to ensure the integrity of the securities market; to protect the public from further abuse by that person of the privileged position of trust which that office carries; to deter others from breaching that trust; and to mark the disapproval of the investment community with the conduct of the insider dealer.

(7) In determining whether to disqualify an insider dealer from holding office as a director of a private company, one should have regard to the connection, if any, of the company with the insider dealing, and any relationship

between the insider dealer and the private company; and the impact upon the individual of such a disqualification."

We have given individual consideration to the circumstances of each insider dealer. We will make an order in every case confined to listed companies. The full terms in each case are set out at the conclusion of this chapter.

The maximum period of disqualification is 5 years. This case is not one of the most serious but neither is it a minor breach of the Ordinance. We further consider the wrongdoing of SHEK Mei-ling and Dominic Leung to be more serious than the remaining three. The periods of disqualification which we consider proper in this case are:

Shek	- 3 years
Tai	- 2 years
Tan	- 2 years
Cheng	- 2 years
Dominic Leung	- 3 years

(C) Costs

(i) s. 27

S. 27 empowers the Tribunal to make an award of costs against persons identified as insider dealers.

We agree with the submission made by counsel to the Tribunal that our costs should include:-

(a) the Tribunal's costs (limited to the fees and salaries of the Tribunal members and staff and also expenses such as interpreters, court reporters and photocopying which are directly attributable to the inquiry itself. Thus expenses such as office rent and electricity are not included. This approach is in keeping with previous inquiries).

(b) the costs of the Department of Justice

(c) the costs of the SFC which have been incurred since the inquiry started hearing evidence on June 16th 1997, but not before.

It has been submitted that because NG Kwong-fung and FUNG Pui were not identified as insider dealers those who were so identified should not have to pay 100% of the Tribunal's costs. We think there is some merit in this suggestion. Even though we have stated that NG Kwong-fung and FUNG Pui were properly identified as implicated parties at the outset of the inquiry the fact that time was spent on their cases which did not result in findings against them persuades us to make a reduction in the bill of costs which the five insider dealers should be ordered to pay.

We consider a realistic proportion of the total costs which a s. 27 order should meet is 80%.

We now must apportion that 80% among the identified insider dealers. We consider the following apportionment reasonably reflects each party's involvement. Such involvement is not only a measure of time spent but also of the seriousness of the conduct.

Shek	-	25% of the total costs
Tai	-	10% of the total costs
Tan	-	10% of the total costs
Cheng	-	10% of the total costs
Dominic Leung	-	25% of the total costs

Thus totalling 80% of all the costs.

(ii) s. 26A

Only one witness made an application for costs and that was NG Kwong-fung.

S.26A(1) gives the Tribunal a discretion, subject to s. 26A(5), to award an implicated party costs. S. 26A(5) takes that discretion away in certain circumstances. The most obvious circumstance, contained in sub-section (a) is where the implicated party has been identified as an insider dealer. NG Kwong-fung was not so identified.

We are therefore only concerned with subsections (c) and (d) which we have set out on page 89. If we decided that subsection (c) or (d) applied to Mr. Ng so as to deprive him of his costs entirely we would state our reasons for so deciding. We are satisfied that s. 26A(5) should not be applied in his case and therefore s. 26A(1) shall apply to him. It is not necessary to give reasons why s. 26A(5) does not apply, only if it does apply.

Our sole task therefore is to decide whether to exercise our discretion in Mr. Ng's favour and award him costs. If so, whether to award him all his costs or a portion of them. By section 26A(4) Order 62 of the Rules of the Supreme Court (CAP. 4) shall apply to the award and taxation of any costs awarded by the Tribunal. Under Order 62 the wholly successful party is entitled to his costs from the other party unless he brought about the litigation himself or he so conducted the litigation so as to occasion unnecessary costs or he has done wrongful act in the course of the transaction being litigated.

There is an immediate difficulty in applying these principles to a Tribunal of Inquiry. In a Tribunal of Inquiry there are no plaintiffs and defendants, there is no litigation, there is no lis, there are no winners and losers in the cause. Order 62 provides for payment of costs by a losing party to a winning party. Thus, when deciding how to exercise its discretion judicially, the Tribunal cannot ignore the fact that it is not dealing with the costs of civil litigation in a Court of Law.

Nonetheless, CAP. 395 states that Order 62 shall apply. With this difficulty in mind, we shall apply it.

It would not be appropriate to re-open the evidence for and against NG Kwong-fung for the purpose of evaluating it on the issue of costs. We have already stated that the combined effect of all the evidence caused suspicion to fall on him and that although the evidence did not convert that suspicion into proof the inquiries made were nonetheless necessary and merited.

Taking an overview of Mr. Ng's part in the whole inquiry the Tribunal, in the exercise of its discretion has, with some difficulty, come to the conclusion that this is not a case in which it would be reasonable and just to award him the whole of his costs. We award him two-thirds.

The Tribunal's orders are that:-

(1) SHEK Mei-ling shall not without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of 3 years.

(2) SHEK Mei-ling shall pay to the Government the sum of $600,000 under s. 23(1)(b) of CAP. 395.

(3) SHEK Mei-ling shall pay a penalty of $1.2 million under s. 23(1)(c) of CAP. 395.

(4) SHEK Mei-ling shall pay 25% of the costs of the Inquiry.

(5) TAI Lai-wo shall not without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of 2 years.

(6) TAI Lai-wo shall pay to the Government the sum of $3 million under s. 23(1)(b) of CAP. 395.

(7) TAI Lai-wo shall pay a penalty of $2 million under s. 23(1)(c) of CAP. 395.

(8) TAI Lai-wo shall pay 10% of the costs of the Inquiry.

(9) Sinyo Wahid Winata TAN shall not without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of 2 years.

(10) Sinyo Wahid Winata TAN shall pay to the Government the sum of $1.5 million under s. 23(1)(b) of CAP. 395.

(11) Sinyo Wahid Winata TAN shall pay a penalty of $1 million under s. 23(1)(c) of CAP. 395.

(12) Sinyo Wahid Winata TAN shall pay 10% of the costs of the Inquiry.

(13) CHENG Chun-ling shall not without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of 2 years.

(14) CHENG Chun-ling shall pay to the Government the sum of $3.9 million under s. 23(1)(b) of CAP. 395.

(15) CHENG Chun-ling shall pay a penalty of $2.6 million under s. 23(1)(c) of CAP. 395.

(16) CHENG Chun-ling shall pay 10% of the costs of the Inquiry.

(17) Dominic LEUNG Koon-hong shall not without leave of the Court of First Instance of the High Court be a director or a liquidator or a receiver or a manager of the property of a listed company or in any way whether directly or indirectly be concerned or take part in the management of a listed company for a period of 3 years.

(18) Dominic LEUNG Koon-hong shall pay to the Government the sum of $1 million under s. 23(1)(b) of CAP. 395.

(19) Dominic LEUNG Koon-hong shall pay a penalty of $1.5 million under s. 23(1)(c) of CAP. 395.

(20) Dominic LEUNG Koon-hong shall pay 25% of the costs of the Inquiry.

(21) NG Kwong-fung be awarded two thirds of his costs to be taxed if not agreed.

(22) All the orders for financial penalties shall be paid on or before April 1st 1998.

ACKNOWLEDGEMENTS

The Chairman would like to record his appreciation of the assistance given to him by the two members in the Hong Kong Worsted Mills inquiry, Mr. James Wardell and Mr. Peter WONG Shiu-hoi. Their contribution before, during and after the Court hearing and both in Court and in Chambers was immense. People with such professional skills and experience who give up their valuable time serve not only the Tribunal but also the business community of Hong Kong.

The Tribunal was, as ever, ably administered by its staff namely Mr. Patrick CHUNG Chan-yau, Secretary to the Tribunal, Miss Mary AU Lai-chun, Secretary to the Chairman, Ms LEUNG Yim-foon and Mr. Michael WONG Kam-chiu. We are indebted also to Verbatim Reporters for their unfailing reliability and efficiency.

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The Honourable Mr. Justice Burrell
Chairman

Mr. James Wardell
Member

Mr. Peter Wong Shiu-hoi
Member

January 21st 1998