

**REPORT OF THE
INSIDER DEALING TRIBUNAL
OF HONG KONG**

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

GILBERT HOLDINGS LIMITED

between

1 January & 19 May 1998 (inclusive)

and on other related questions

Introduction

By a notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap. 395 dated 26 August 2002, The Hon. Antony Leung, the then Financial Secretary of the Hong Kong Special Administrative Region, requested the Insider Dealing Tribunal to conduct an inquiry. The notice reads as follows:

“Notice under Section 16(2) of the

Securities (Insider Dealing) Ordinance, Cap. 395

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of the corporations, namely, the Gilbert Holdings Limited (“the company”) has taken place, or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and to determine:

(a) whether there has been insider dealing in relation to the corporations arising out of the dealings in the listed securities of the corporations by or on behalf of –

Rona Wong Yuen Wan, Lam Loy Lui, Fok Ying She, Hung Shiu Shan, Heidi Chin Muk Tse and Samantha Cheung Shu Yim during the period from 1 January 1998 to 19 May 1998, (both dates inclusive);

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

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

In compliance with the notice, the Insider Dealing Tribunal, comprising of Deputy High Court Judge as Chairman and Mr. Joseph Hui Sik Wing and Mr. James Wardell as members, heard evidence and submissions from counsel for a total of 27 days, between 29 November 2004 to 15 February 2005.

We now have pleasure in submitting the report on our findings in relation to questions (a) and (b) of that notice. Our report in relation to question (c) will be submitted at a later date.

CONTENTS

	<u>Page</u>
Introduction	i
Chapter 1 Background	1
Chapter 2 Procedure	5
Chapter 3 The Law	13
Chapter 4 Relevant Information	21
Chapter 5 The Financial State Of Gilbert, and the Directors' Knowledge Of That State	26
Chapter 6 The Harbin Joint Venture	45
Chapter 7 Additional General Matters	48
Chapter 8 The State Of The Market During The Period From 1 May 1998 To 19 May 1998	52
Chapter 9 The Samantha Cheung Shu Yim Dealings	54
Chapter 10 The Hung Shiu Shan Dealings	56
Chapter 11 The Waylex Fok Ying She Dealings	65
Chapter 12 The Rona Wong Yuen Wan Dealings	72
Chapter 13 The Lam Loy Lui Dealings	78
Chapter 14 The Heidi Chin Muk Tse Dealings	80
Chapter 15 Findings as to Insider Dealing	83
Chapter 16 Conclusion	86
Attestation	87
Introduction to Part 2 of the Report	88
Chapter 17 Calculation of losses avoided	90
Chapter 18 Determination of penalties and other orders	94
Chapter 19 Costs and expenses	102
Chapter 20 The Tribunal's orders	112
Attestation to Part 2 of the Report	116

Annexures

- Annexure A: Trading statistics of Gilbert shares on the Stock Exchange of Hong Kong for the period 1 August 1997 to 11 June 1998
- Annexure B: Schedule of dealings investigated
- Annexure C: Trading of Gilbert shares by Hung Shiu Shan
- Annexure D: Source of funds for the Hung Shiu Shan trading
- Annexure E: Source of funds for the Waylex Fok trading at Shenyin Wanguo
- Annexure F: Flow of funds from the Waylex Fok account at Shenyin Wanguo to Clarence Wong
- Annexure G: Flow of funds from Clarence Wong to Rona Wong's share trading accounts
- Annexure H: Flow of funds from Rona Wong's share trading accounts to Clarence Wong
- Annexure I: Schedule of Rona Wong's mobile telephone calls
- Annexure J: Calculation of losses avoided
- Annexure K: The costs of the Inquiry



The Chairman of a division of the
Insider Dealing Tribunal
Established under section 15 of the
Securities (Insider Dealing) Ordinance
Cap. 395 of the Laws of Hong Kong

**Section 16(2) of the
Securities (Insider Dealing) Ordinance Cap. 395**

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, Gilbert Holdings Limited, ("the company"), has taken place or may have taken place, the Tribunal is hereby required to inquire into and determine -

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of -

Rona Wong Yuen Wan, Lam Loy Lui, Fok Ying She, Hung Shiu Shan, Heidi Chin Muk Tse and Samantha Cheung Shu Yim during the period from 1 January 1998 to 19 May 1998, (both dates inclusive);

- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identify of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated this the 26th day of August 2002.

A handwritten signature in black ink, appearing to be "Antony Leung", written in a cursive style.

(Antony Leung)
Financial Secretary

Chapter 1

Background¹

1. Gilbert Holdings Limited, (Gilbert), was listed on the Stock Exchange of Hong Kong Limited, (SEHK), on Thursday, 12 October 1995. Gilbert was the principal holding company of seven other subsidiary companies comprised in what was known as the “Gilbert Group”, (the Group). The Group was principally engaged in the trading, development, and supply of flax, and an extensive range of linen products including yarns, fabrics and garments. The Group was also engaged in the trading of plastic materials and manufacture and sale of polyester staple fibres through recycling.

2. The business then carried on by the Group had been begun by Mr Wong Wing Wah, Clarence, (Clarence Wong), in 1984. In that year he had been joined by Mr Ming Chung Yee, Osric, (Osric Ming), who had experience in the textile industry. They were joined in 1991 by Mr Wong Man Fu, Sunny, (Sunny Wong), who was also experienced in the textile industry. The business of the Group developed to the stage that by 31 March 1995, the Group had a turnover of some HK\$416,867,000, from which it earned an operating profit of HK\$32,099,000².

3. Clarence Wong, Osric Ming and Sunny Wong became executive directors of Gilbert when it was listed. Five non-executive directors were also appointed, of those, two resided in Hong Kong, and two, and their substitute, resided in Bermuda. The non-executive directors were not involved in the scenario put before the Tribunal.

4. In early 1998, Gilbert experienced liquidity difficulties which eventually led to its being placed in receivership on 1 September 1999. In late April 1998, in view of Gilbert’s liquidity difficulties, an approach was made to the Hongkong & Shanghai Banking Corporation, (HSBC), in the hope of securing a short term loan of HK\$20 million to meet some of

¹ Throughout this Report, the expression “TB” will be used to refer to the bundles of statements and documents produced to the Tribunal by the Securities and Futures Commission, (SFC), and supplied to all parties. The expression “TR” will be used to refer to the transcript of the evidence.

² See Prospectus for the New Issue of Shares in Gilbert Holdings dated 27 September 1995, TB, Vol. 18 p. 152, 154.

Gilbert's then outstanding obligations. A meeting was held between the three executive directors and Gilbert's Financial Controller, and representatives of HSBC on 8 May 1998. At that meeting HSBC requested further information to enable them to consider the request.

5. Pursuant to that request, certain financial data was compiled by Gilbert which showed that, at that time, it had indebtedness of around HK\$600 million, and that creditors, both other banks through which Letter of Credit and Trust Receipt facilities had been arranged, and the suppliers of material to Gilbert, were either terminating or tightening existing credit facilities. At the same time Gilbert's accounts receivable were not being promptly paid, and were standing at some HK\$540 million as at 28 February 1998.

6. A second meeting was held on 15 May 1998, between Gilbert and HSBC. The three executive directors did not attend that meeting but sent Gilbert's Financial Controller instead. He was informed, and in turn shortly thereafter, informed the three executive directors, that HSBC had immediately terminated all existing banking facilities and transferred Gilbert's case to be dealt with by HSBC's own Corporate Recovery Unit. HSBC also required an independent auditor to be appointed to review Gilbert's financial position.

7. On divers days between 8 May and 19 May 1998, (inclusive), six persons completely disposed of their entire shareholdings in Gilbert. They were, Ms Rona Wong Yuen Wan, (Rona Wong), Madam Lam Loy Lui, (Madam Lam), Mr Hung Shiu Shan, (Mr Hung), Mr Waylex Fok Ying She, (Mr Fok), Madam Heidi Chin Muk Tse, (Heidi Chin), and Ms Samantha Cheung Shu Yim, (Samantha Cheung).

8. Rona Wong, is the eldest sister of Clarence Wong, and at the relevant time resided in the same house in Hong Lok Yuen as Clarence Wong. Madam Lam is the mother of Clarence Wong and Rona Wong. She too resided in that house. Mr Hung is the father-in-law of Sunny Wong. Mr Fok was engaged in the textile trade and was a business friend of Clarence Wong. His company, West Champion Linen Cotton Limited, (West Champion), was also a client of Gilbert. Heidi Chin is a sister-in-law of Osric Ming. Samantha Cheung was, at the relevant time, a secretary to the executive directors of Gilbert, and in particular, Sunny Wong's secretary.

9. The heavy selling by those six individuals appeared to cause the share price of Gilbert's shares to drop nearly 34% on 19 May 1998 alone, while on the same day the Hang Seng Index, (HSI), rose 0.4%. This prompted the SEHK to demand an explanation from Gilbert. On the 20 May 1998, Gilbert published an announcement, dated 19 May 1998, which included the following statement:

".... The Directors.... wish to state that they are not aware of any reason for such decrease. The Directors, however, wish to inform the shareholders that they are proposing to discuss Gilbert's position with its banker and will be seeking its support in respect of Gilbert's commitments to its banks. The shareholders will be kept advised of developments...."

10. Upon the publication of the 20 May 1998 announcement, by which time all six individuals had disposed of their entire shareholdings in the company by the previous day, Gilbert's share price rose 19%, while the HSI rose 1%.

11. On Friday 29 May 1998, Gilbert published a second announcement, dated 28 May 1998, again at the request of the SEHK. The notice stated:

".....The Directors wish to inform its shareholders and the public that Gilbert has had confidential discussions with its bankers, (the "Banks") recently regarding the financial position of Gilbert and its subsidiaries (the "Group"), and in particular, the Group's working capital requirements. Arthur Andersen & Co has been retained by Gilbert to conduct a review of the financial position and short term capital requirements of the Group."

" The Directors confirmed that the current short term banking borrowings of the Group amounted to approximately HK\$600 million. The Group is operating within its existing working capital facilities....."

12. On the first four trading days following the publication of this announcement, Gilbert's share price dropped by some 26%, 21%, 9% and 6% respectively on each day, when compared to the day immediately preceding. Turnover was some 20, 4 ½, 10 and 6 ½ times respectively that of the day immediately before the announcement. The cumulative drop in the share price at the end of the fourth trading day since the announcement,

(i.e. on 3 June 1998), was 63.4%.

13. The transactions in Gilbert shares by the six persons named above attracted the attention of the Securities and Futures Commission, (SFC). Following an investigation by the SFC and a report to the then Financial Secretary, a Notice was issued to a Chairman of the Insider Dealing Tribunal pursuant to s 16(2) Securities (Insider Dealing) Ordinance Cap. 395, (the Ordinance). That notice appears at (v) to this Report. The six persons who had undertaken trading in Gilbert's shares in May 1998, as set out in para. 7 above, were named in the notice.

Chapter 2

Procedure

14. In this Chapter we set out, in brief, the history of this Tribunal's establishment following its receipt of the Section 16(2) notice from the Financial Secretary, (the Notice), and the steps taken by the Tribunal for the purposes of its conduct of the inquiry undertaken by it into the matters required by its terms of reference.

The Tribunal's Terms of Reference:

15. The Tribunal's Terms of Reference are governed by the Notice, dated 26 August 2002, sent to the then Chairman, Mr Justice Lugar-Mawson, by the Financial Secretary pursuant to the provisions of s 16(2) of the Ordinance. The Notice instituted the present inquiry and required the Tribunal to inquire into suspected insider dealing by the persons named in the Notice.

The appointment of members and counsel assisting:

16. Mr Justice Lugar-Mawson subsequently received a synopsis of the background facts and evidence which were relevant to the subject matter of the inquiry, and a list of companies and persons who will also connected with the subject matter of the inquiry.

17. Following that, two lay members were appointed, by the Financial Secretary, to the Tribunal on 22 May 2003. Those members are Mr Joseph Hui Sik Wing, a Chartered Accountant, and a principal in Hui Sik Wing & Co, Chartered Accountants of Hong Kong, and Mr James Wardell, again a Chartered Accountant, and Executive Chairman of Horwath Corporate Advisory Services Limited.

18. On 27 April 2004, the Tribunal appointed Mr Anthony E Schapel, Barrister-at-Law, of the Hong Kong Bar, and Mr Herbert Li Kam Yiu, Senior Government Counsel of the Department of Justice, as counsel assisting in the Tribunal.

The service of Salmon letters:

19. Following the appointment of counsel the Tribunal was provided with the various witness statements, the documentary evidence, exhibits and records of interviews which were to form part of the evidence before the Tribunal. From that material, and following meetings with counsel assisting, the Tribunal determined that in addition to the six persons named in the Notice, the following persons should also be treated as implicated persons in the Inquiry mainly; Clarence Wong, Osric Ming, and Sunny Wong.

20. Each of the nine persons then implicated in the Inquiry, with the exception of Osric Ming, were served with Salmon letters³ informing them that they were to be regarded as implicated parties in the inquiry. Shortly thereafter all statements, documentary evidence, exhibits and records of interviews which had earlier been served on the Tribunal were served on the implicated parties, together with other documents such as the synopsis of the case which had earlier been provided to the Tribunal.

21. The Salmon letters specified a date for a preliminary hearing of matters are germane to the Inquiry. That preliminary hearing took place on Monday 13 September 2004.

22. The Tribunal was subsequently informed that Osric Ming had emigrated to Australia, and that he could not be located for service of the Salmon letter. He did not appear at the hearing nor was he represented by solicitors or counsel. Consequently, no examination has been made, nor have any findings have been made, in respect of Osric Ming's conduct.

The preliminary hearing and appointment of legal representatives for the implicated parties:

23. At the preliminary hearing Rona Wong, Madam Lam, and Heidi Chin each appeared in person, and did not seek leave to be represented by counsel for the purposes of the inquiry. Mr Jackson Cheung, solicitor of Messers Winston Chu & Co, was given leave to represent Mr Clarence Wong. Mr Giles Surman, instructed by Ms Jacqueline Ching of David Ravenscroft & Co, Solicitors, was given leave to represent Mr Fok.

³ Salmon letters are so named after Lord Salmon who first suggested this procedure as being appropriate for the notification of persons whose interests may be affected by the findings of a Tribunal of Inquiry.

Mr Dominic Yeung, instructed by Messers Kwok, Ng & Chan was given leave to represent Mr Sunny Wong and Mr Hung. Mr Sidney Lee, solicitor of Messers Lee, Mok & Wong was given leave to represent Samantha Cheung.

24. At the preliminary hearing on 13 September 2004, the procedures of the Tribunal were explained together with its powers and, in brief form, the more fundamental aspects of the law which would be applied, such as the standard of proof. In particular, the Chairman, confirmed the Terms of Reference of the Tribunal in open court, and detailed what steps had been undertaken in the constitution of the Tribunal up to that point in time. At the preliminary hearing the commencement of the substantive hearing was set for Monday 29 November 2004.

25. At the preliminary inquiry Heidi Chin inquired as to whether or not the implicated parties were required to attend the Tribunal hearings on every day that it sat. The Chairman informed her that the proceedings did not constitute a court, or a trial, but an inquiry, and that the only time that implicated parties were required to attend would be when they were required to come to give evidence. The implicated parties were informed that they were entitled to be present or to be represented on every day of the hearing, but that, other than the days when they were required to give evidence, they were not required to attend.

26. In October 2004, in view of his impending retirement, Mr Justice Lugar-Mawson, the then Chairman of the Tribunal, notified the Chief Executive that it was undesirable that he should continue to exercise his functions in relation to the Inquiry. On 30 October 2004, acting pursuant to s 8 of the Ordinance, the Chief Executive of the Hong Kong Special Administrative Region, duly appointed His Honour Judge John Saunders, a Deputy Judge of the Court of First Instance of the High Court, to be a temporary member of the Tribunal, and to be Chairman of the Tribunal in place of Mr Justice Lugar-Mawson.

The substantive hearing:

27. The substantive hearing duly began on Monday 29 November 2004. On that day Mr Fok appeared by his counsel Mr Surman, and Mr Sunny Wong and Mr Hung appeared by their counsel Mr Yeung. Heidi Chin and Samantha Cheung both appeared in person and informed the Tribunal that they did not wish to instruct counsel or solicitors in the

proceedings and that they would represent themselves.

28. Clarence Wong, Rona Wong, and Madam Lam did not appear before the Tribunal, nor were any solicitors or counsel present to represent them. There was no doubt at all that each of those three persons was aware that the substantive hearing was due to commence on that day. Rona Wong and Madam Lam were both present and heard the announcement of the day. Clarence Wong was represented by solicitors on that day and there was no suggestion that he did not know that the Tribunal was due to commence its inquiry on Monday 29 November 2004. As it is not necessary for implicated parties to be present on every day upon which and Insider Dealing Tribunal conduct its inquiry the Tribunal determined that it would, notwithstanding the absence of those three parties, proceed with the inquiry.

29. Over 27 days of sitting a total of 20 oral witnesses, including the eight implicated parties served with the Salmon letters, were called by Counsel to the Tribunal. In addition, Counsel for the Tribunal put in the written statements of 7 witnesses which were read to the Tribunal. The witnesses who gave evidence, or whose statements were read were:

Name		Present Occupation	General relevance to the inquiry
TW* 1	Ms KI Shuk Yee, Cherry ("Ms KI")	Chief Accountant of Gilbert Holdings Ltd.	Gave evidence as to the financial operation of Gilbert and its financial state at relevant times.
TW 2	Ms YAU Tim Lin, Connie ("Ms YAU")	Secretary of Terrence Howard at Shenyin Wanguo Securities (H.K.) Ltd, brokerage firm	Gave evidence as to the operation of share trading accounts at Shenyin Wanguo.
TW 3	Mr CHAN Shing Yan, Raymond ("Mr CHAN")	Customer Service Manager of HSBC	Gave evidence as to the financial circumstances of Gilbert and meetings with HSBC in May 1998.

* TW Denotes "Tribunal Witness".

	Name	Present Occupation	General relevance to the inquiry
TW 4	Ms ONG So Po, Polly ("Ms ONG")	Institutional Sales at Credit Lyonnais Securities (Asia) Ltd.	Gave evidence as to the operation of share trading accounts at Credit Lyonnais.
TW 5	Ms LO Po Yen, Katie ("Ms LO")	Private Client Sales at Credit Lyonnais Securities (Asia) Ltd.	Gave evidence as to the operation of share trading accounts at Credit Lyonnais.
TW 6	Ms CHU Wai Man, Jacqueline ("Ms CHU")	Private Client Sales at Credit Lyonnais Securities (Asia) Ltd.	Gave evidence as to the operation of share trading accounts at Credit Lyonnais.
TW 7	Mr CHAN Chun Wah, Frankie ("Mr CHAN")	Branch Manager of Chow Sang Sang Securities Ltd.	Gave evidence as to the operation of share trading accounts at Chow Sang Sang.
TW 8	Mr NG Yan Ngai ("Mr NG")	Senior Dealer of Ewarton Securities Ltd.	Gave evidence as to the operation of share trading accounts at Ewarton.
TW 9	Ms WONG Sau Kuen, Louisa ("Ms WONG")	Investigation Supervisor at Hutchison Telecommunications HK	Gave evidence as to records of mobile phone calls.
TW 10	Mr YU Kai Hung, Victor ("Mr YU")	Dealing Director of Celetio Investments Ltd.	Gave evidence as to the operation of share trading accounts at Celetio.
TW 11	Mr Anthony Charles Wensley Wright ("Mr Wright")	Corporate Recovery Manager of HSBC	Gave evidence as to meetings with the directors of Gilbert and HSBC officers.
TW 12	Ms FUNG Sau Hong, Stella ("Ms FUNG")	Manager in the Surveillance Department of the Enforcement Division of the SFC	Gave expert evidence as to the fact of the financial circumstances of Gilbert and market trading in the company's shares.

	Name	Present Occupation	General relevance to the inquiry
TW 13	Ms CHEUNG Shu Yim, Samantha ("Ms CHEUNG")	Implicated party	Gave evidence as to internal operations at Gilbert and her own share dealings.
TW 14	Mr WONG Man Fu, Sunny ("Mr WONG")	Implicated party	Gave evidence as to operations at Gilbert and his own share dealings.
TW 15	Mr HUNG Shiu Shan ("Mr HUNG")	Implicated party	Gave evidence as to his own share dealings.
TW 16	Mr FOK Ying She, Waylex ("Mr FOK")	Implicated party	Gave evidence as to an account in his name at Shenyin Wanguo.
TW 17	Mr WONG Wing Wah, Clarence ("Mr WONG")	Implicated party	Gave evidence as to operations at Gilbert and his own share dealings.
TW 18	Ms WONG Yuen Wan ("Ms WONG")	Implicated party	Gave evidence as to share dealings in her name.
TW 19	Ms LAM Loy Lui ("Ms LAM")	Implicated party	Gave evidence as to share dealings in her name.
TW 20	Ms CHIN Muk Tse, Heidi ("Ms CHIN")	Implicated party	Gave evidence as to share dealings in her name.
TW 21	Ms MAN Ngar Yin, Agnes ("Ms MAN")	Senior Manager of the Securities and Futures Commission	Evidence of formal investigated matters read.
TW 22	Ms TSOI So Fan, Maria ("Ms TSOI")	Senior Translator of the Securities and Futures Commission	Evidence as to translations read.
TW 23	Ms YIP Siu Bing ("Ms YIP")	Assistant Manager of RBC Dominion Securities (HK) Ltd.	Evidence as to the operation of share trading accounts at RBC Dominion read.

	Name	Present Occupation	General relevance to the inquiry
TW 24	Ms CHAN Lai Wah ("Ms CHAN")	Customer Service Staff of the Cable & Wireless HKT	Evidence as to telephone numbers read.
TW 25	Mr Terence Henry Howard ("Mr Howard")	Managing Director, Shenyin Wanguo Securities (HK) Ltd	Evidence as to the operation of share trading accounts at Shenyin Wanguo, read.
TW 26	Mr LO Kai Chung Thomas ("Thomas Lo")	Financial Controller of Gilbert Holdings Ltd.	Evidence as to financial affairs of Gilbert, read.
TW 27	Mr CHUNG Shui Ho, Johnny ("Mr Chung")	Manager of SFC	Evidence as to SFC matters, read.

30. None of the implicated parties sought to call witnesses on their behalf.

31. Each of the oral witnesses, including each implicated party, was open to questioning by counsel assisting, and by each of the other implicated parties, either represented by counsel, or if not represented, personally, if present. The evidence of Man Ngar Yin, Agnes, Tsoi So Fan, Maria, Yip Siu Bing, Chan Lai Wah, Lo Kai Chung, Thomas, and Chung Shui Ho, Johnny, all as to formal matters, were given wholly by statement read to the Tribunal.

32. In addition the Tribunal received as part of the evidence four statements made to the SFC in the course of its inquiries by Terence Henry Howard, Managing Director, (at the relevant time), of Shenyin Wanguo Securities (HK) Limited (Shenyin Wanguo). The relevance and significance of those statements and the circumstances in which they were received are dealt with in Chapter 11 of this report.

33. Once the substantive hearing commenced there were no more private meetings between counsel assisting and the Tribunal. All matters of a "housekeeping" nature were dealt with in open court, or by way of correspondence if that was more convenient. The only matter of that nature

which required attention, with steps taken during the course of the Inquiry, was to make arrangements to take evidence from Terence Henry Howard by way of video link from Singapore. As it transpired, the arrangements to take the evidence having been made, Mr Howard did not make himself available in Singapore to give that evidence. The matter was thus to no avail.

34. In the course of preparing this Report the Chairman requested Counsel to the Tribunal to supply soft copies of certain schedules used during the hearing for inclusion as annexures in the Report. The implicated parties were informed of those requests, and the schedules supplied to the Chairman were supplied to them as well.

35. The substantive hearing was conducted on an inquisitorial basis. That meant the Tribunal was itself responsible for the evidence that was called before it, though in this regard it sought the advice of counsel assisting, and would have considered any application for the calling of a witness by counsel for any of the implicated parties, or by the implicated parties themselves. No such application was made.

36. At the conclusion of the evidence submissions were made by counsel assisting the Tribunal and by counsel representing implicated parties. Heidi Chin elected to make submissions in writing which we duly received. Although they were offered the opportunity to make a final speech to us at the conclusion of the hearing of all the evidence, none of the other unrepresented implicated parties sought to such a speech. Mr Yeung was given leave to make written submissions on a point of law and those were duly received and considered. Mr Schapel replied to those submissions.

37. Following submissions the Tribunal retired to consider its findings in respect of paragraphs (a) and (b) of the Terms of Reference as contained in the s16(2) Notice, with a view to preparing this interim report.

Chapter 3

The law

38. The law applied by the Tribunal is set out hereunder so far as the general statutory provisions and fundamental principles of law which related to the Inquiry are concerned. More particular and specific aspects of law applied by the Tribunal will be dealt with, where appropriate, in the context in which they arise in later chapters.

39. Under the provisions s 9, of the Ordinance there are a number of different circumstances in which insider dealing can take place. In the context of this Inquiry the Tribunal has had regard following provisions of s 9, (words irrelevant to the present Inquiry had been omitted):

“(1) Insider dealing in relation to a listed corporation takes place-

- (a) when a person connected with that 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 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;
- (c) when relevant information in relation to that 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....;
- (e) when a person who has information which he knows is relevant information in relation to that 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 counsels or procures another person to deal in those listed securities”

40. When considering the liability of an implicated person under s 9 of the Ordinance, we were required to determine whether the information was information which was in the possession of a person “connected” with Gilbert. Section 4 provides as follows:

“4. “Connected with a corporation”

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

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

(within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives or to the fact that such transaction is no longer contemplated; or

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

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

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

41. There is no doubt whatsoever that Clarence Wong, Osric Ming, Sunny Wong, and Samantha Cheung were all connected persons in relation to Gilbert. There was equally no doubt that Mr Hung, Rona Wong, Madam Lam, Mr Fok and Heidi Chin all knew that Clarence Wong, Osric Ming, Sunny Wong were each connected persons with Gilbert.

42. What is “dealing in listed securities” is defined by s 6 of the Ordinance as follows:

“ For the purposes of this Ordinance, a person deals in securities if (whether as principal or agent) he buys, sells,..... any securities...”

It was not suggested by any counsel, or by any unrepresented party, that the transactions scrutinised by the Tribunal did not constitute “dealing in listed securities” as defined by the Ordinance.

43. What is “relevant information” is defined by s 8 of the

Ordinance. The question as to whether or not “relevant information” existed in this case was central to the defence mounted by Mr Yeung on behalf of Mr Sunny Wong and Mr Hung. As the position of Clarence Wong and Rona Wong appeared to be similar to that of Sunny Wong we bore in mind Mr Yeung’s submissions on the issue of relevant information when considering the case of Clarence Wong and Rona Wong. What constitutes “relevant information”, and whether or not it existed in this case, will be considered in Chapters 4 and 5 of this Report.

General Principles of Law:

Standard of Proof:

44. The Tribunal adopted the standard of proof in its view properly applicable to findings of insider dealing under the Ordinance. That standard of proof was proof to a high degree of probability. It is a genuinely high standard of proof and reflects the serious nature of a finding of insider dealing made against an implicated person. It is the standard appropriate to the matters at issue in this Inquiry. It is the same standard which has been adopted in previous inquiries. It is appropriate that we should record the comments of the Tribunal in the *Hong Kong Parkview Group Limited*⁴ Inquiry, to remind ourselves of that standard. There the Tribunal said:

“ The standard of proof should be simply stated and remains 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 is at all times 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”

It was not suggested that any other standard of proof should be adopted.

Inferences:

⁴ Report of the Insider Dealing Tribunal of Hong Kong concerning dealings in the listed securities of Hong Kong Parkview Group Limited, dated 5 March 1997, p 19.

45. Following the completion of the evidence, in the course of considering that evidence, it was necessary from time to time, for the Tribunal, when determining an issue, to consider whether it was appropriate to draw an inference against an implicated party. In opening remarks at the commencement of the substantive hearing the Chairman reminded those unrepresented parties present at that time of the power of the Tribunal to draw inferences in the following terms:

“The Tribunal is entitled to objectively analyse and draw appropriate inferences from proven or undisputed facts. The requirement that facts must be proved to a high degree of probability does not prevent the Tribunal from inferring from the facts that have been the subject of direct evidence before it, the existence of some further facts, such as the knowledge or intent of the person, which constitutes an essential element of insider dealing or other relevant conduct. But the inference itself must be one that could only be drawn to a high degree of probability from the direct facts proved.”

46. In the course of the hearing, at appropriate points in the course of their evidence, the Chairman reminded Clarence Wong, Rona Wong, and Sunny Wong, of the power of the Tribunal to draw inferences. Each said that they clearly understood that power.

Considerations of Fact & Law:

47. So far as all questions of law which arose during the course of the Inquiry were concerned, the members were directed by and complied with the directions given by the Chairman. Statements within this Report that the Tribunal took a particular view of the law should be read in that light.

48. So far as the Tribunal’s findings of fact were concerned, the Tribunal proceeded on the basis that it should strive to be unanimous in such findings, but that otherwise a finding of fact could be on the basis of a decision of a majority of the members. In this Inquiry all three members of the Tribunal were unanimous in their findings.

49. All findings of fact were based upon the evidence presented before the Tribunal. The Tribunal warned itself not to base any part of its findings on speculation or guesswork.

50. The two lay members of the Tribunal had considerable experience in the operation of listed companies and of the Hong Kong financial markets. The Chairman directed the lay members in terms of the comments of Lord Widgery CJ in *Wetherall v Harrison* [1976] QB 773 at :

“So I start with the proposition that it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to draw on that special knowledge in interpretation of the evidence which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt.”

51. Accordingly, the lay members were aware that they should not provide themselves or the Tribunal with “evidence” from their own knowledge of the technical circumstances, procedures, or other matters germane to these proceedings, but were to restrict the use of their professional experience and knowledge only to assessing the evidence actually presented to the Tribunal.

The cases of each implicated party considered separately:

52. The Tribunal directed itself that the role of each implicated party should be considered separately, and that a finding of culpability or an exoneration of one did not necessarily mean that the same finding would be arrived at in respect of the other. It should be said however, evidence relating to one implicated person’s case was common to that of the other, and so was taken into consideration by us in considering the cases of each of the implicated parties. That is especially so in the case of Clarence Wong and Rona Wong.

Character:

53. The Tribunal reminded itself that all implicated parties were persons of good character. That enhanced their credibility as witnesses and rendered them of a lesser propensity to commit unlawful acts.

Lies:

54. We concluded that a number of implicated persons had told lies in the course of their evidence to the Tribunal, and also in statements made in the course of their interviews by SFC officers. In previous inquiries the Insider Dealing Tribunal has applied the law in relation to lies as stated in the *Public International Investments Limited*⁵ Inquiry. A more recent statement as to the law in relation to lies is contained in *Yuen Kwai Choi v HKSAR* [2003] 2 HKLRD 176 CFA, from which the following principles are drawn, and which we applied in our consideration of the lies presented to us.

55. Those principles, adapted appropriately, are as follows:

- (a) Lies usually affect credibility only. As a matter of law, a lie in itself could never prove guilt. It is the risk of such improper use by the [Tribunal] of an [implicated person's] lies that the law wished to guard against;
- (b) [Counsel for the Tribunal] might wish to use a lie told by [an implicated person] to establish or assist his case or strengthen an inference of guilt against him, for example to provide corroboration for an accomplice's evidence or to support identification evidence. If so the following criteria must be met – (i) it must be a deliberate lie, (ii) relating to a material issue in the case, (iii) there was no innocent explanation for the lie, and (iv) it was a lie which was either admitted or proved by independent evidence.

56. As will be seen, in the present case, we concluded at the end of the day that Clarence Wong, Rona Wong, Sunny Wong, and Mr Hung had all lied to us in their evidence. We restricted the use of those lies to our assessment of their individual credibility, in the same way that good character went to the individual credibility of various parties. Particularly, we did not apply the fact that we had been told lies to support the evidence against any of the implicated parties. There was no need to, as, where we have found an individual implicated person guilty of insider dealing, the evidence against that individual was overwhelming in any event.

⁵ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Public International Investments Limited, dated 5 August 1995, p 30.

The statements and records of interview of the implicated parties and other witnesses:

57. The previous statements of witnesses and implicated parties made to SFC investigators in the form of records of interview, as well as their written statements produced to the Tribunal, were accepted as evidence by us in addition to any oral evidence given by the witnesses and implicated parties. What weight we attached to the contents of the previous statement or record of interview varied in the circumstances of the particular statement. How soon after the event it was made, and whether it was an admission against interest or exculpatory, were matters we took into account.

58. In admitting such evidence before us we were doing so in accordance with the provisions of s17(a) of the Ordinance which, where relevant, is as follows:

“The Tribunal may, for the purpose of an inquiry under this Ordinance –

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;”

It was upon this provision that we received in evidence and had regard to the statements made to the SFC by Mr Howard. We record that at the commencement of the Inquiry Mr Surman indicated an intention to oppose the admission of those statements, a position which was subsequently withdrawn, he accepting that the statements were admissible, and that the important factor was the weight to be attributed to those statements, particularly having regard to the fact that Mr Howard was not cross-examined on those statements.

59. In dealing with the evidence of the expert witness called by counsel for the Tribunal, Stella Fung Sau Hong, we bore in mind her expertise, but reminded ourselves that, as with any other witness, we could accept or reject all or part of her evidence. Her evidence was considered by us in the context of the other evidence in the case.

Chapter 4

Relevant information

60. Insider dealing can only take place on the basis of relevant information as defined by s 8 of the Ordinance. If the subject information falls short of being relevant information, then there has been no insider dealing. The case advanced by counsel assisting was that information that, the fact that Gilbert's financial state was such that it had a present inability to satisfy its overall indebtedness and that that state of affairs constituted a threat to its continued viability, was "relevant information", as defined by the Ordinance. Before we consider the factual circumstances as to Gilbert's financial state we consider the law as to "relevant information".

61. Section 8 of the Ordinance defines "relevant information" as follows:

"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."

62. There are therefore three elements comprised in the concept of "relevant information" as that expression is used in the Ordinance. They are:

First, the information about the particular corporation must be specific.

Second, the information must not be generally known to that segment of the market which does, or which would be likely to, deal in Gilbert shares; and

Third, the information would, if so known, be likely to have a material effect on the price of Gilbert shares.

Specific Information:

63. What may or may not amount to specific information will depend always on the particular factual circumstances of a case. We will consider the particular factual circumstances of this case in Chapter 5. There have been a number of approaches to, and attempts at, determining what is required of information before it is “specific” for the purposes of s 8 of the Ordinance. For the purpose of this Inquiry we adopt the test used by the Tribunal in *Firststone International Holdings Limited Inquiry*⁶, and adopted by the Tribunal in both the *Chinese Estates Holdings Limited Inquiry*⁷, and the *Chinney Alliance Group Limited Inquiry*⁸. That test is in the following terms:

“We have directed ourselves that information concerning a company’s affairs is sufficiently specific if it carries with it such particulars as to a transaction, the event or matter or proposed transaction, event or matter so as to allow that transaction, event or matter to be identified and its nature to be coherently described and understood.”

64. We accept that specific information is to be contrasted with mere rumour, vague hopes and worries, and with unsubstantiated conjecture⁹.

65. For information to be characterised as “specific information”, there is no requirement that the information should be precise¹⁰. As was said by an earlier Tribunal¹¹:

“Information is not rendered general, as opposed to specific, merely because the information is broad and allows room, even substantial room, for particulars.”

⁶ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to listed securities in *Firststone International Holdings Limited Inquiry* dated 8 July 2004, p. 58.

⁷ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinese Estates Holdings Limited* dated 25 June 1999, p. 38.

⁸ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Chinney Alliance Group Ltd* dated 24 December 2004, p.35.

⁹ See *Chinese Estates*, (supra fn 6), at p. 39.

¹⁰ Supra at pp. 39-40. See also the Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of *Stime Watch International Holdings Limited*, dated 14 February 2003, at p. 83.

¹¹ See *Public International Investments*, (supra fn 4) at p. 236.

66. The distinction between specific information on the one hand, and precise information on the other, is well illustrated by the following statement made in the course of the House of Commons debates¹² on the equivalent English legislation:

“In general, specific information might typically be that a bid was going to be made. Precise information would be the price at which that it was going to be made. On that basis, precise information would be narrow, exact and definitive.”

It will always be the case that specific information need not be precise, but precise information will necessarily be specific. In determining whether information is specific it will be necessary for the Tribunal to look objectively at the information, and ask where it should be placed on a scale rising from rumour, innuendo, hint, then general information, up to specific or precise information.¹³ Whether information may be characterised as specific may be resolved, in part, by the Tribunal assessing whether that information would be likely to affect materially the price of shares. The more likely it is that the information would affect a share price, then the more likely it is that that information will be found to be specific. Thus, where the evidence in a particular case demonstrates that upon the information becoming public the share price was affected, then it is more likely that that information will be found to be sufficiently specific to fall within the terms of s 8.

67. In “*Insider Dealing*”¹⁴, Ms Hannigan gives a number of examples of specific or precise information. The view is expressed, which we accept, that knowledge of substantial losses made by a company, even though the precise magnitude of the losses is not yet clear, would constitute specific information¹⁵.

68. Weighing all of these matters we are satisfied that specific information may constitute knowledge of a company’s financial state of affairs, where that knowledge goes beyond general knowledge in the market that a company may be particularly financially well off, or experiencing some financial difficulties.

¹² HC Debs, Session 1992-93, Standing Committee B, 10 June 1993 Col 174, cited in “*Insider Dealing*”, 2nd Ed, Longman, Brenda Hannigan, p.63.

¹³ See “*Insider Dealing*” (supra fn 11), at p. 64-5.

¹⁴ Supra fn 11, at p. 63

¹⁵ By way of authority for the proposition *R v Goodman*, unreported but see Financial Times, 1 May 1991 and 16 June 1992, is cited.

Information not generally known:

69. By its very nature, inside information is information which is known only to a few and is not generally known to the market, the market being defined in s 8 as “those persons who are accustomed or would be likely to deal in the listed securities of that corporation”.

70. In the context of the present case there was no issue as to this definition. The Tribunal is satisfied that at the material time those persons accustomed to dealing in securities of Gilbert or likely to deal in those securities are constituted by the wider investing public.

Price sensitive information:

71. The third requirement of “relevant information” is that it must be information:

“which would if it were generally known to [the wider investing public] be likely materially to affect the price of those securities”.¹⁶

In simple terms, the information must be price sensitive. It is not sufficient that the information should simply affect the price of the securities. The effect must be material. We are satisfied that the definition of “material”, adopted by the Tribunal in *Chinese Estates*¹⁷, in the following terms, is correct:

“Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of significant degree in any given the circumstances that amount to a material change.”

72. In principle, all information that is sufficiently price sensitive will be important information concerning a company’s affairs. But the converse is not necessarily true. Not all important information concerning a company’s affairs will be price sensitive. Important information or information of great interest concerning a company may excite comment, but may nevertheless be information of the kind that would not be likely to

¹⁶ The Ordinance, s 8.

¹⁷ *Supra* fn 6 at p 45-6.

have a material impact on the price of that company's securities.

73. It was not disputed that in this case, that the actual impact of the information becoming generally available, was likely to be determinative of the impact on price, and thus whether the information was material. Annexed hereto as Annexure A is a chart setting out the trading statistics for Gilbert shares on the HSI for the period from 1 August 1997 to 11 June 1998.

Chapter 5

The Financial State of Gilbert, and

the Directors' Knowledge of that state

74. In this Chapter we discuss the evidence relating to the central issue as to the financial state of Gilbert in April and May 1998, in order to determine whether information as to the financial state of Gilbert in April and May 1998, was “relevant information”. We will determine, if we conclude that the information was “relevant information”, who was in possession of that information at appropriate dates.

75. We will deal in detail with the evidence as to the dealing in the securities of Gilbert in later chapters of this Report, when considering separately the activities of each of the Implicated Persons.

The evidence as to Gilbert's financial position:

76. A central issue in the Inquiry was the financial state of Gilbert in April and May 1998. The position adopted by counsel for the Tribunal was that Gilbert was in a serious financial predicament and that by the beginning of May 1998, at the earliest, and at least by 15 May 1998, the situation was such that Gilbert's acute inability to satisfy current indebtedness put the continued viability of the company at risk. The position adopted by the directors who gave evidence, Clarence Wong and Sunny Wong, was that while Gilbert had a temporary cash flow issue, it was nothing more than a usual annual event, and an exigency of the nature of the company's business. They said that with the anticipated payment of accounts receivable, and the continued assistance of their primary bankers, HSBC, which they confidently expected, there was no issue as to the viability of the company.

77. It is accordingly necessary to look in detail at the financial position of Gilbert between January and May 1998.

How finance was provided to Gilbert:

78. The Gilbert Group of companies engaged mainly in buying and selling linen materials. The Group bought materials and cloth, and would then commission factories to have those materials processed into finished products. Finished products were sold on. In addition the Group traded in materials, buying materials, and selling those materials on. The suppliers of materials were located in Hong Kong, the People's Republic of China, (PRC), and Southeast Asian countries. Suppliers were generally paid by Letter of Credit, (LC), although if the material acquired was a small amount, payment may be made by cheque. On the same basis Gilbert's customers, who purchased either material or finished garments, would generally pay by LC, although, again on occasions, payment might be by way of cheque.

79. In the usual way of business, Gilbert arranged Trust Receipt, (T/R), loan facilities against the goods supplied to it, upon receipt of the LC's it had issued to suppliers, thereby enabling Gilbert to take possession of the goods, subject to the T/R, before the LC fell due for payment. This enabled Gilbert to manufacture garments from the goods, then on-sell those goods, thereby obtaining cash from the sale of goods, to meet the T/R obligation. There was no evidence to suggest that the usual practice of 90 days credit on a T/R was not given to Gilbert.

80. While this is a perfectly acceptable and normal method of business, it is dependent upon a steady cash flow into a company from the sale of its manufactured or on-sold goods, to meet its obligations under its credit arrangements. Where there is not a steady cash flow, especially if compounded by a requirement from banks that credit facilities be reduced, or cease, thereby reducing the available credit, there is a very high risk that a company will face a severe cash crisis.

The relevant documents:

81. Cherry Ki Shuk Yi, (Cherry Ki), whom we found to be a truthful witness, was the chief accountant, under the supervision of the Financial Controller, Thomas Lo Kai Chung, (Thomas Lo), at Gilbert. Her evidence was that the directors were kept informed of the financial position of the company, primarily by way of two documents. The first of these was a document described as a "T/R Loan Retirement Schedule"¹⁸, in which, for

¹⁸ See e.g. TB Vol. 8 p 286-7.

each month, set out a list of the T/R advances which were required to be repaid, (described in the Gilbert schedules as “retired”), during the following month. The second was an untitled document, generally referred to as a “Cash Flow Statement”¹⁹, although rather than being a true cash flow statement, it was in reality information provided to the directors of the amount of cash that was expected, on a particular day, to be available during the coming month. Collectively, these documents were described by Ms Ki as the management accounts.

82. Ms Ki’s evidence was that these reports were submitted to Clarence Wong and Osric Ming. She said that the documents were not traditionally sent to Sunny Wong although in her statement to the SFC she said she began sending them to him for review from around May 1998.

83. The Cash Flow Statement as at 4 May 1998²⁰, recorded that Gilbert had a negative cash position of just over \$2 million. The date is significant, for as will be later discussed, an important meeting was held at HSBC on 8 May 1998. It is right, and must be recorded, that the Cash Flow Statement for 13 May 1998, recorded a positive cash position of \$40 million²¹. The difference is not significant however, for it merely illustrates the day to day fluctuation of the situation, and does not represent an overall picture of the state of Gilbert’s finances.

The reduction in available credit:

84. The directors of Gilbert realised during March 1998 that they were facing cash flow problems. A number of banks had begun restricting or cancelling the company’s credit lines. Rumours began to circulate in the marketplace as to the company’s financial status. By letter dated 2 April 1998²², they took the step of writing to a number of banks, referring to those rumours and asserting that the rumours were not true. The letters were written by Thomas Lo, and copied to each of three directors.

85. Neither Clarence Wong nor Sunny Wong recalled the letters or the steps taken. To write such a letter is an extraordinary step, for it merely has the effect of bringing the rumour to the notice of all who received the letter, whether they had heard the rumours or not. We do not accept that

¹⁹ See e.g. TB Vol. 8 p. 279.

²⁰ TB Vol. 8 p. 279.

²¹ TB Vol. 8 p. 280.

²² TB Vol. 18 p. 87.

neither Clarence Wong or Sunny Wong would not have been fully aware of such a letter at the time it was written. It is significant that HSBC, Gilbert's primary banker, was not a recipient of the letter.

86. At some time in the first 4 months of 1998²³, Ms Ki, prepared a schedule²⁴ setting out Gilbert's banking facilities, (both LC and TR), and recording whether or not the banks then providing facilities had required that Gilbert should repay the debt, or to use the expression in the schedule, "Request Early Retire Loan". According to the schedule, of 33 banks then providing credit facilities, which totalled \$805.3 million, 13 banks, representing credit of \$271.3 million, or 33% of Gilbert's credit lines, required early retirement of the loans. If the requirement to repay ABN-Amro \$54 million by 26 May 1998, imposed on Gilbert on 28 February 1998 is included the extent of the reduction in available facilities increases to 40%.

87. Subsequently, shortly after 8 May 1998, Raymond Chan of HSBC prepared a schedule that was based upon information provided to him by Ms Ki. That schedule²⁵ recorded that 8 banks, totalling \$162 million in credit, had either cancelled or withdrawn the facilities. A further seven banks totalling \$215.3 million in credit had either reduced, or frozen for review, their facilities. Thus, a total of 15 banks had either reduced or cut banking facilities by \$261.5 million, and \$86.37 million of facilities with those banks had to be repaid or settled on settlement date. The reduction in credit facilities then stood at 43% of that previously available to Gilbert.

88. A clear picture emerges of a company under serious pressure from its banks, with its credit facilities being significantly withdrawn or reduced.

89. On 24 April 1998, Ms Ki, at the request of Mr Raymond Chan, of HSBC, sent by facsimile, a schedule²⁶ purporting to represent the banking facilities then available to Gilbert. The list set out 24 banks, 9

²³ In evidence Ms Ki said that the schedule was prepared in May 1998, (TR Day 3, p. 52. l. 12), but we are satisfied that it is more likely that this schedule was prepared prior to 28 February 1998 because on that day ABN-Amro Bank, although recorded in the schedule with limit of \$20 million, had notified Gilbert that a rolling facility totalling in excess of \$54 million must be repaid on 26 May 1998. It is unlikely that on this, "in-house" document, that fact would not have been recorded.

²⁴ TB Vol. 8 p. 323.

²⁵ TB Vol. 8 p. 339.

²⁶ TB Vol. 8 p. 346.

banks fewer than had been on the earlier in-house list. Significantly, 7 banks, Den Danske Bank, Rabobank, Dao Heng, Banco Santander, Belgian Bank, Bank of Tokyo-Mitsubishi, and ABN-Amro Bank, representing \$376 million of credit, were included in that list. Each of those 7 banks had terminated their facilities and required outstanding loans to be repaid. Three, Banco Santander, HSBC of Tokyo-Mitsubishi, and Dao Heng, had imposed that requirement on Gilbert prior to February 1998, two months prior to the message to HSBC on 24 April 1998. Further, two banks, Deutsche Bank, and Kreditbank, representing collectively a further \$131 million of credit to had, according to the in-house list, notified that their loans would be repaid by the end of April 1998.

90. The schedule was clearly misleading. When the matter was put to Ms Ki, she first asserted that she could not recall whether there were ongoing discussions with the banks, or whether she had simply made a mistake.²⁷ However she subsequently said²⁸ that she was told by Osric Ming:

“.... maybe HSBC is not aware that of some credit lines we had with some other banks so in that case I don't tell HSBC that.”

We have not heard from Osric Ming and accordingly make no findings against him. However on the face of evidence before us the schedule appears to be deliberately misleading. We make no finding as to how that came about.

The position as to accounts receivable:

91. At the same time as Gilbert's banking facilities were being withdrawn or reduced to a significant extent, the Group's accounts receivable were rising. At 31 October 1997, accounts receivable stood at \$319 million²⁹. By 31 December 1997, they had risen to \$432.5 million³⁰. At 28 February 1998 accounts receivable had risen further to \$540.4 million³¹.

92. Thus, at the same time as credit was reducing, the inflow of

²⁷ TR Day 3 p. 52, l. 23.

²⁸ TR Day 3 p. 53 l. 7-10.

²⁹ TB Vol. 8 p. 298.

³⁰ TB Vol. 8 p. 300.

³¹ TB Vol. 8. p. 302.

available cash to meet the Group's obligations was reducing significantly. The accounts receivable were reduced, as at 31 March 1998, to \$29.3 million by a write-off, approved by the Group's auditor. The accounts receivable were written off as "bad or doubtful debts". The debts written off primarily comprise debts that had arisen in respect of sales to South America. The recalcitrance of Gilbert's debtors is demonstrated by the fact that within only one month, by 30 April 1998, accounts receivable had more than doubled to \$86.7 million rising slightly to \$89.8 million, as at 31 May 1998. Plainly, Gilbert could not rely upon the payment of accounts receivable to relieve a cash flow problem.

93. A clear picture emerges of a company with a very serious problem with its debtors, certainly a company which could not, in safety, rely upon its overdue accounts receivable in any significant way to relieve its debt situation. By reading together the Cash Flow Statement, and the Loan Retirement Schedule, and bearing in mind the extent of the accounts receivable, a picture of the financial position of Gilbert emerges.

94. As at 13 May 1998, the Cash Flow Statement³² recorded that Gilbert had cash available of \$40 million. However during that month the Loan Retirement Schedule³³ recorded that \$163.9 million worth of loans must be repaid. It is right that the Cash Flow Statement simply records a position as at that particular day, (13 May 1998), and the Loan Retirement Schedule records a total sum to be paid during a month, and accordingly a direct comparison of the two documents may not be entirely fair. But there was no suggestion by any of the directors who gave evidence, that cash in excess of \$160 million would have been available during the month to meet those obligations.

95. Indeed, as subsequent requests to HSBC show, the directors recognised that there would be a shortfall of at least \$70 million.

The meetings with HSBC:

96. There were two crucial meetings between Gilbert personnel and HSBC. The first of these was on 8 May 1998, and was attended, for Gilbert, by Clarence Wong, Osric Ming, Sunny Wong, the three directors, and Thomas Lo, the Group Financial Controller. For HSBC, the meeting

³² TB Vol. 8 p. 280.

³³ TB Vol. 8 p. 295.

was attended by Simon Harris, Senior Manager, Special Assets, and Anthony Wright, Corporate Recovery Manager. Although not formally recorded in the minute³⁴ subsequently made by HSBC, the meeting was also attended by Raymond Chan Shing Yan. He was the Customer Service Manager in the Industrial and Commercial Business Unit, Western Kowloon District, the commercial banker who dealt with Gilbert on a day-to-day basis. The second meeting, on 15 May 1998, was attended, for Gilbert, only by Thomas Lo, and for HSBC, by Simon Harris and Anthony Wright together with Stuart Tait, Senior Corporate Recovery Manager attended. Records of both meetings were made by Anthony Wright³⁵.

97. Prior to 8 May 1998, the officer at HSBC who was responsible for the Gilbert account was Raymond Chan. He handled approximately 50 industrial and commercial clients. In serving those clients he gave advice in respect of loans and other banking products. His primary contact at Gilbert was Cherry Ki. He also had contact with Thomas Lo, but noted in his evidence that Mr Lo had only recently joined the company. On important matters Mr Chan dealt with Osric Ming. His evidence was that prior to May 1998, his contact with Gilbert was almost on a daily basis.

98. At the beginning of May 1998, the account was transferred from Mr Chan's Industrial and Commercial Business Unit, to the Corporate Recovery Unit. The purpose of the Corporate Recovery Unit was to manage accounts that were in difficulties, particularly by reason of cash flow and liquidity problems.

99. It had been at Mr Chan's request that the deceptive schedule³⁶ of available banking facilities had been prepared and sent to HSBC by facsimile on 24 April 1998. HSBC was aware of the market rumours that Gilbert was being squeezed by other banks full repayment and sought the information in order to give them an overview of the extent of the banking facilities and the bankers support at that time. Following receipt of that schedule, Mr Chan contacted Cherry Ki on a day-to-day basis until the account was transferred to the Corporate Recovery Unit. The purpose of his contact with Cherry Ki was to ascertain whether any further banks had cancelled or reduced or increased the credit facilities that had been set out on the schedule.

³⁴ TB Vol. 11 p. 97

³⁵ 15 May 1998, TB Vol. 11 p. 123.

³⁶ TB Vol. 8 p. 339, and para 90 above.

100. Mr Chan's evidence was that the schedule had only been reluctantly released by Gilbert and only after repeated requests to both Cherry Ki and Osric Ming. In evidence he noted that at that time of that document, it was the only information HSBC had, and that it was without any supporting documents. At the hearing, with the hindsight of full information as to the number of banks that had requested early repayment or retirement of loans, Mr Chan was of the view that HSBC had been misled by the schedule³⁷.

101. A few days before 8 May 1998, Clarence Wong had contacted a member of the senior management of HSBC, a Mr David Li. Clarence Wong had informed David Li that Gilbert had a liquidity issue, but at the same time assuring Mr Li and Raymond Chan that there was no problem.

102. Notwithstanding Clarence Wong's assurance to the Tribunal that there was no problem, it is apparent that he and the other directors fully appreciated that there was a serious problem. Had there been no problem, quite simply, there would have been no need to approach HSBC in such a manner. Clarence Wong reported to David Li a cash flow shortage because of other banks' pressure on Gilbert for repayment, and requested a short-term loan of \$20 million to help bridge the cash flow shortfall. As a result of this contact a meeting was arranged for 8 May 1998. Clarence Wong was requested by Raymond Chan to bring his whole team to the head office for a meeting in order that HSBC may fully understand what was happening at that moment in time. His evidence was that the bankers sensed that the matter would be serious and wished to bring it to the highest level of attention possible.

103. Of primary concern to HSBC was the question of cash flow. A day or so before the meeting Raymond Chan requested Thomas Lo to supply financial information. When Thomas Lo asked what kind of information was required, he was told that HSBC required current financial information, mainly management and financial information, the balance sheet, profit and loss account, and hopefully a cash flow. Information in response to the request was faxed by Thomas Lo to Raymond Chan on 8 May 1998, and was entitled "Financial Forecast and Information". It was received by Raymond Chan just as he was to leave his office to attend the meeting. The information comprised an abbreviated profit and loss account which covered the three past years of the company as a public company,

³⁷ TR Day 6 p.33-4.

(which figures had been audited), and forecasts for the next four financial years. For the same periods an abbreviated balance sheet was provided. While acknowledging that it basically covered the information that had been sought Raymond Chan noted that no information as to cash flow was included.

104. At the meeting the directors of Gilbert sought assistance from HSBC to meet a shortfall pending receipt of receivables in the third quarter of 1998. The meeting was inconclusive and ended with HSBC requiring that Gilbert supply facility information to allow HSBC to better gauge Gilbert's immediate facility needs and vulnerability.

105. On 12 May 1998 Raymond Chan prepared a "follow-up memo"³⁸ intended to give the Corporate Recovery Unit, apparently by then known as the "Special Assets Unit", more detail, and to summarise the key issues in order that they may make quick and informed judgments on the matter, or to give advice, in case it was resolved that the account would remain in the Business Unit.

106. The memorandum records that the Gilbert Group had \$753 million in general banking facilities with 31 banks, other than their facility with HSBC. In addition, a syndicated loan of \$200 million had been made in December 1997, and the first quarterly repayment on that loan was due in September 1998. The memorandum records the following views of Mr Chan at the time:

"The high gearing of the group makes them vulnerable to recent tightening of bank credit."

"Present financial position of the group is fragile as a writ from suppliers may aggravate banks' credit squeeze and ruin the convertible bond issue. Moreover, the chance of getting new bank credit is small in view of the present market environment. These temporary loans from existing main bankers are critical for their survival."

"We are pressing Gilbert to prepare cash flow forecast, management accounts up to 31 March 1998, current trade debtors and trade creditors ageing lists for our thorough assessment of their cash flow position. The finance department of the group

³⁸ TB Vol. 11 p. 32.

(which is small) is now pre-occupied by banks' inquiries, the coming field audit by Arthur Andersen, legal due diligence, and market review of the convertible bond issue as well as the upcoming Price Waterhouse's review on the group's six-year trend. We are capping our exposure to the group 'as is' and our course of actions (sic) will only be determined upon receipt of the group's cash flow forecast and related information which are expected to be received by us at the end of the week."

It is right that in a document entitled "History Sheet"³⁹, which was later prepared by Raymond Chan for the Special Assets Unit, he recorded that the quarterly repayments on the syndicated loan did not pose an immediate problem to Gilbert's cash flow. That statement however must be seen in context of the fact that the payments were not due to commence until the end of September 1998, and accordingly were not an immediate, but a future issue.

107. The primary concern of HSBC at the meeting on 8 May 1998, was to obtain further information, particularly cash flow information, in order to allow HSBC to better gauge Gilbert's immediate facility needs and vulnerability. That was information that had been sought by HSBC prior to the beginning of May 1998. In his memorandum of 12 May 1998 Raymond Chan endorsed a handwritten note reporting that in the meeting of 8 May 1998, Gilbert had advised that the cash flow information was "in place".

108. The position after the meeting on 8 May 1998, was therefore, that the three directors of Gilbert, and the financial controller, had gone to Gilbert's primary bank to seek short-term funds of \$20 million. In terms of the company's borrowing, \$20 million was a relatively small amount. Gilbert banking facilities with some 30 odd banks had previously totalled in excess of \$800 million. The situation was sufficiently serious that it was considered necessary that all three directors should personally attend upon HSBC. They came away empty-handed, and with a requirement for further information. They had assured HSBC that the required information was in hand and would be supplied.

109. Again, it is correct that Raymond Chan, when interviewed by the SFC, said⁴⁰

³⁹ TB Vol. 11 p. 42.

⁴⁰ TB Vol. 11 p.9.

“After the meeting of 8 May 1998, the picture presented to us by Gilbert did not make us feel too worried.”

But that statement was made from HSBC’s point of view, and does not reflect any relief of the cash crisis being faced by Gilbert. It was a statement made without the knowledge that misleading information had been given by the directors of Gilbert to HSBC. In its terms, the statement shows that any lack of concern, at that time, on the part of HSBC, was based upon reliance on information supplied to HSBC by Gilbert. The statement must be seen in the context of the amount of information then available to Raymond Chan. He was, according to his evidence to the Tribunal, which we accept, being misled by the information supplied to him by Gilbert. In the course of the hearing, when supplied with further information, for example that the amount due for repayment by Gilbert was much higher than asserted by them in the meeting, Raymond Chan’s view was that given that information, he would be very concerned about Gilbert’s ability to repay HSBC’s facilities. The matter was then passed by Raymond Chan to the Special Assets Unit, and he had no further involvement.

110. The second meeting with HSBC took place on Friday 15 May 1998, at 11 a.m. Anthony Wright, made a record of the meeting⁴¹. The record notes, and there is no dispute, that on behalf of Gilbert only the Group Financial Controller, Thomas Lo, attended. Thomas Lo informed the HSBC representatives that the directors chose not to attend the meeting, as they believed that their attendance would indicate that the company had a problem.

111. At the previous meeting on 8 May 1998, Thomas Lo and the directors had promised cash flow reports. Anthony Wright recorded that the cash flow reports had not been delivered, and that Thomas Lo now refused to deliver them, and further that he did not wish to hand over a more recent Price Waterhouse due diligence report, allegedly prepared for the proposed convertible note. It is not without significance that that document was not presented to the Tribunal by any of the directors of Gilbert.

112. At the meeting on 8 May 1998, the directors of Gilbert had sought \$20 million. Thomas Lo now disclosed to HSBC that Gilbert required immediate facilities in the order of \$120 million, \$30 million to

⁴¹ TB Vol. 11 p. 123.

meet urgent bank demands, \$70 million for the most pressing creditors, and \$20 million for raw materials. He was not able to say to HSBC how that sum would be funded. Thomas Lo was advised that, as there was no information, either independent or internal, to support Gilbert's view that there was no problem and that there had been no evident cooperation of Gilbert's part in supplying information, HSBC had no alternative but to immediately withdraw facilities.

113. Thomas Lo left the meeting and returned to Gilbert's own offices where he immediately informed the directors of the position. The position was now clear. Gilbert was facing an immediate shortfall in available cash in the sum of \$120 million, and had not been able to bridge that shortfall with its primary bankers. About one third of the secondary bankers from whom Gilbert obtained trade finance had either cancelled or reduced their facilities. In any terms the Gilbert faced a serious cash flow situation.

Could the cash flow situation have been relieved:

114. It has been argued that any cash flow situation that Gilbert may have had was not a crisis, but merely a usual day to day event in the life of a trading company, particularly a company in the trade in which Gilbert engaged. It was put that the situation was likely to be ameliorated by the future receipt of accounts receivables, and by the issue of a convertible bond worth \$100 million by the Prudential Group who were said to be making that investment in July 1998.

115. We have already dealt with the question of accounts receivable. Gilbert's debtors were seriously in default, the accounts in many cases had been outstanding for many months, and the reality simply was, as was recognised by the write-off in March 1998, that payment could not be anticipated on any early basis.

116. As to the Prudential convertible bond, although raised by Clarence Wong and Sunny Wong as a possible solution, again in reality it could not help Gilbert in May 1998. In the first place, the receipt of the funds was still two months away. Even the short term sum of \$70 million sought from, but refused, by HSBC, would not be enough to carry the Gilbert through until the convertible bond funds became available. Secondly, and more significantly, the convertible bond was dependent upon the completion of due diligence. With the hindsight now available it is

abundantly plain that any due diligence conducted by Prudential would have revealed the gaping cash hole in Gilbert's situation and it is highly unlikely that the convertible bond would have proceeded to fulfillment.

117. The evidence before us raised a strong suspicion that well before the beginning of May 1998, probably as early as the middle of March 1998, the three directors of Gilbert were aware that the company was facing a cash crisis. The evidence is not however, sufficient to establish, to a high degree of probability, the extent of the directors' real awareness of the seriousness of that cash flow crisis. By the beginning of May 1998 however, that position had changed and all had become completely clear to the directors. Their knowledge of the seriousness of the company's financial crisis was such as to stimulate their approach to HSBC. Their refusal to show to HSBC the documents requested shows their knowledge of the true situation that would have been revealed by those documents.

118. We conclude, to the appropriate standard of proof, that as at the beginning of May 1998, Gilbert was in a serious cash flow crisis of such a nature that it had an acute inability to satisfy its indebtedness, to such an extent that the continued viability of the Gilbert Group was at risk.

119. We record that neither the evidence of Raymond Chan nor that of Anthony Wright was challenged in any way in cross-examination by counsel for Sunny Wong and Mr Hung. Further, in evidence, neither Clarence Wong nor Sunny Wong offered any challenge to the evidence of either Raymond Chan or Anthony Wright.

Was information as to Gilbert's financial position "relevant information":

120. Having determined that, at the beginning of May 1998, Gilbert had a cash flow crisis such that the continued viability of the Gilbert Group was at risk, we turn now to consider whether knowledge of the nature of the cash crisis, (or "information"), constituted "relevant information" as that expression is used in the Ordinance.

Specific information:

121. For information to constitute "relevant information", it must be specific. A cash flow crisis, (or problem), is a concept that is well known

and understood. The very title identifies and describes the nature of the crisis. A company may face a cash flow problem on a regular basis which may be relieved by appropriate banking facilities. Such a cash flow problem is specific, but if relieved by appropriate banking facilities does not threaten the viability of the company. When a cash flow problem is such that, because it cannot be relieved by banking facilities, the viability of the company is threatened it becomes a crisis. We are satisfied that such a situation is sufficiently specific, and capable of being identified and its nature inherently described and understood, that it may in appropriate circumstances constitute “relevant information”.

122. The information in the possession of the directors prior to their first approach to HSBC was no mere worry. It was not unsubstantiated conjecture on the part of the directors that a cash flow crisis was imminent. The existence of the crisis was substantiated by the pressing need for cash in Gilbert, caused by the withdrawal of banking facilities and the extent of overdue accounts receivable, both of which stimulate an extraordinary approach to HSBC. We are satisfied that knowledge as to the cash crisis was specific information.

123. The fact that, when the cash crisis became public, the share price dropped substantially, is itself evidence of the specific nature of the information as to the cash crisis.

To whom was the information known:

124. For information to constitute “relevant information”, it must be information which is known only to a few, and not generally known to the market. We have concluded that in the context of this case, “the market” constitutes those members of the public who were likely to deal in Gilbert shares. It is right that there had been rumours in the marketplace as to Gilbert’s financial state. Raymond Chan’s view was that those rumours were strong⁴². But there was no evidence at all, or any suggestion in the marketplace, that any cash flow problem was such as to put the very viability of the company at risk.

125. We are satisfied, to the appropriate standard of proof, that any rumours in the marketplace, prior to May 1998, fell well short of revealing the true situation at Gilbert, a situation that was known only to the directors

⁴² TR Day 5, p. 41, l. 6.

and Financial Controller of Gilbert, and the officers of HSBC, who had attended the meetings on 8 and 15 May 1998.

Price sensitive information:

126. The third requirement of “relevant information” is that it must be price sensitive. We accept the evidence of Stella Fung, an SFC expert, that the information as to the extent and nature of the cash crisis was price sensitive information. Stella Fung was asked about the situation at 8 May 1998, described by counsel for the Tribunal in the following terms⁴³:

“Q.... On 8 May, which was a Friday, the situation with the company was as follows, that as of that date there was an approximate overall long-term indebtedness of about \$600 million, plus \$200 million in relation to a syndicated loan, so there is indebtedness of about \$800 million. As far as short-term indebtedness is concerned, it was seen as on that date that \$60 million to \$70 million was owed to suppliers and/or contractors, some of whom were threatening legal action. Added to that, for the month of May 1998, and on various dates, a total of about \$164 million had to be found to satisfy banking creditors and that in the month of June 1998, just short of \$150 million was due for the same purpose. By that date, certain credit facilities from a number of banks had been cut and, on 8 May, the directors go to the bank, the HSBC, to whom they are also indebted, and asked for financial assistance. As of that date, the Hong Kong bank had no firm undertaking that they will give such assistance and call for information in relation to the company’s financial position and cash flow....

She responded:

A... I would say that is very price-sensitive because they do not have enough money to satisfy the indebtedness that they need to repay in a very short period of time and they do not have the banking facilities or the OD or the overdraft line to repay the loan. That is a very serious problem, short-term financing problem for them. If they cannot get support from HSBC then their creditors may take action, legal action. Once this information was disclosed to the public, then the share price would react very negatively because people will think that this company was having very big problems in satisfying all its short-term loans.”

⁴³ TR Day 8, p.54-55.

127. Stella Fung's evidence, which we accept, was that knowledge that HSBC had informed the company that it would not support the company anymore, was equally price sensitive, and that it would have a very negative effect on the share price, and would lead investors to sell down their holding of Gilbert shares⁴⁴.

128. On 29 May 1998, following speculation in the Chinese press on 20 May 1998⁴⁵, 24 May 1998⁴⁶, and 28 May 1998⁴⁷, Gilbert published an announcement, dated 28 May 1998⁴⁸ disclosing that it had had, what were described as 'confidential discussions' with its bankers recently, regarding the Group's financial position and in particular its working capital requirements. The announcement recorded:

"The directors of the Company (the "Directors") refer to an article in the Hong Kong Economic Journal today concerning the Company's working capital position and a possible debt restructuring proposal and the Company's announcement dated 19 May 1998. The Directors wish to inform its shareholders that the Company has had confidential discussions with its bankers (the "Banks") recently regarding the financial position of the Company and its subsidiaries (the "Group") and in particular, the Group's working capital requirements. Arthur Andersen & Co has been retained by the Company to conduct a review of the financial position and short-term capital requirements of the Group. Upon completion of the review, which is expected to occur in or about late June 1998, further discussions with the Bankers will take place.

The directors confirm that the current short-term banking borrowings of the Group amounted to approximately HK\$600 million. The Group is operating within its existing working capital facilities."

129. The announcement shocked the market and the share price plunged 26.3%. The rumour that had been published by Apple Daily on 24 May 1998, had resulted in the share price falling by 30%. Market reaction to the publication on 28 May 1998, by Hong Kong Economic Journal had been mild. The share price dropped only 2.4%. The significant plunge in the share price, both as a result of the Apple Daily publication, and the

⁴⁴ TR Day 8 p. 59, l. 10.

⁴⁵ TB Vol. 16 p. 87, (Hong Kong Economic Journal)

⁴⁶ TB Vol. 16 p. 88, (Apple Daily)

⁴⁷ TB Vol. 16 p. 89, (Hong Kong Economic Journal)

⁴⁸ TB Vol. 16, p. 35.

Gilbert announcement on 29 May 1998, is ample evidence of the price sensitive nature of the state of Gilbert's financial affairs. The market was reacting to the knowledge by significantly reducing the share price. The information was plainly price sensitive.

130. It is appropriate to note here that all of the relevant trading with which we are concerned had been concluded by 19 May 1998, prior to any of the press reports, and whether rumours, or formal notices, referred to in the previous paragraphs.

131. We are accordingly satisfied, to the required standard of proof, that information as to the cash crisis was, at the beginning of May 1998, price sensitive information.

132. We accordingly conclude that information as to the extent of the cash crisis faced by Gilbert was, at the beginning of May 1998 specific information, that was not known to the public generally, and was price sensitive information. It was accordingly "relevant information".

The Directors' knowledge of the relevant information:

133. Being thus satisfied that the information that the financial crisis faced by Gilbert was relevant information we turn now to consider the extent of, and the directors' knowledge of that information.

134. Clarence Wong did not suggest that he was not fully aware of the financial affairs of Gilbert. He was chairman of directors and acknowledged that the directors were a close-knit group who did not keep secrets from each other. Cherry Ki circulated financial information to him and he did not suggest that he did not receive it or, that once he received it he ignored that information. It is beyond doubt that Clarence Wong was fully aware of the fundamental underlying facts, and the consequences of those facts, upon which the conclusion can be reached that, at the beginning of May 1998, Gilbert faced a cash crisis of such a nature that the viability of the company was threatened.

135. It was not suggested by him that he was not fully aware of the situation of the company prior to 19 May 1998. Rather, his position was, that although he was aware of the facts, he did not perceive them to constitute a crisis, believing that the situation would be resolved by the

collection of accounts receivable and by continued support from HSBC. We reject that proposition. In so rejecting that proposition we have regard to two primary matters. First, as will be set out in Chapters 11 and 12 hereof, we did not find Clarence Wong to be a believable witness. Second, we are satisfied that his conduct in causing the sale of the shares held in the name of Mr Fok, and in causing Rona Wong to sell shares in her name, at a time before the true state of affairs at Gilbert became public knowledge, demonstrates that he was fully alive to the seriousness of the situation.

136. The position of Clarence Wong was that he had no role or involvement at all in the shares held by Mr Fok. For reasons subsequently set out we reject that position. The absence of any evidence to the contrary there can be no other reason for the sale of those shares of than the state of affairs at Gilbert. For exactly the same reasons, there can be no other reason for the sales by Rona Wong, particularly those on 18 and 19 May 1998.

137. The position of Sunny Wong, in the hearing, was that he believed that accounts receivable would rescue Gilbert. Yet at the same time he sought to contend that he did not receive financial information about Gilbert and concentrated solely on sales matters. It was asserted on his behalf that the accounts receivable under his control remained healthy. He asserted, but in the complete absence of any information to substantiate the assertion, that he was responsible for below 15% of the accounts receivable. He did not identify any of the accounts for which he was responsible, and there was no evidence to indicate that even that 15% was “healthy”. Further, his position as sales manager does not support the proposition that he was responsible for such a small percentage of the accounts receivable.

138. Again, for reasons we will subsequently set out, we did not find Sunny Wong to be a believable witness.

139. Next, when interviewed by SFC Sunny Wong did not suggest at any time that he believed that Gilbert’s accounts receivable would be sufficient to rescue Gilbert.

140. He did not dispute the evidence that he had a significant financial interest in Gilbert, which represented his livelihood. He did not dispute the evidence that the three directors were a close-knit group, who lunched together regularly, and, who did not keep secrets from each other.

The suggestion that he was unaware of the financial position of the company at the beginning of May 1998, was quite without foundation.

141. In respect of both Clarence Wong and Sunny Wong, if there were any doubt as to the extent of their knowledge at the beginning of May 1998, it was simply beyond argument that the information given to HSBC on 8 May 1998, would have made the matter abundantly clear. It is irrelevant that Sunny Wong may have had little to say at the meeting on 8 May 1998. He was present and was fully aware of everything that was said.

142. We reject the proposition, advanced by counsel for Sunny Wong that it was not until 18 May 1998, that Sunny Wong became fully aware of the serious financial crisis faced by Gilbert.

143. Finally, Ms Ki saw the position as at the beginning of May 1998, in simple terms. She said that Gilbert was unable to pay its debts with the available cash⁴⁹. She expressed her concerns to Osric Ming, and we have no doubt at all that he would have discussed those concerns with both Clarence Wong and Sunny Wong.

Conclusion:

144. While we find the extent of the directors real knowledge as to the financial position of Gilbert, prior to 8 May 1998, to be highly suspicious, we find that the evidence does not go so far as to establish, to the requisite standard of proof, the full extent of their knowledge at that time. But we are satisfied, to the appropriate standard of proof, that each of the two directors, Clarence Wong, and Sunny Wong were, by 8 May 1998, when they met with HSBC, fully aware that Gilbert faced a financial crisis of such a nature that the continued viability of the Group was threatened. We are accordingly satisfied that each of the two directors were, by 8 May 1998, in possession of “relevant information” in relation to Gilbert.

⁴⁹ TR Day 2, p. 7 l. 21 – p.8 l.2.

Chapter 6

The Harbin joint venture

145. On 15 October 1997, Gilbert announced that an agreement had been reached with Harbin Linen Mill, a state-owned enterprise in the PRC, to jointly establish a new company to exclusively distribute all the linen products produced by Harbin Linen Mill in different parts of the world, excluding the PRC.

146. On Tuesday 5 May 1998, Gilbert issued an announcement⁵⁰ to the SEHK that the joint-venture company would be closed in mid-May 1998. The announcement was published in Hong Kong newspapers on Wednesday 6 May 1998. The announcement recorded:

“Harbin-Gilbert holds the worldwide exclusive distributorship for all linen products produced by Harbin Linen Mill. The decision of terminating the joint-venture agreement was made after friendly discussions and as a result of differences in agreeing on marketing and production strategies of Harbin-Linen’s operations.

.....

Since this joint-venture has been formed for a few months, such termination will only result in a minimal financial effect on Gilbert.”

This view was repeated in the Chinese financial press⁵¹.

147. On Friday 1 May 1998, Gilbert’s share price remained at the previous closing level of \$0.70, on thin turnover of 150,000 shares. On Monday 4 May 1998, the share price dropped 1.43% to close at \$0.69, on increased turnover of 730,000 shares. On Tuesday 5 May 1998, Gilbert’s share price further retreat at 8.7% to close at \$0.63 on increased turnover of 950,000 shares. Between 1 May 1998, and 5 May 1998, (three days trading), the Hang Seng Index, (HSI), dropped 2.2%.

⁵⁰ TB Vol. 16 p. 32 & 33.

⁵¹ TB Vol. 16 p. 86 & 86A.

148. The announcement of Tuesday 5 May 1998 was made after the close of trading on the day. The next day, Wednesday 6 May 1998 Gilbert's share price dropped 9.52% to \$0.57 with 742,000 shares traded, and the HSI fell marginally by 0.4%. On Thursday 7 May 1998, Gilbert's share price dropped another 1.75% to \$0.56 on reduced turnover of 330,000 shares, while the HSI also dropped 1.4%.

149. The opinion of Stella Fung, which we accept, was that the cumulative decline in the Gilbert share price over five consecutive trading days, of some 20% from \$0.70 on 30 April 1998, to \$0.56 on 7 May 1998, may be attributed to weak market sentiment, during a period when the HSI dropped 3.97%, and the Harbin announcement.

150. Each of the implicated parties pointed to the Harbin announcement as a justification for this sale of shares. We have concluded that the Harbin announcement may have justified the sale of shares in Gilbert, by a particularly nervous investor, prior to 8 May 1998. However, whilst a shareholder may have decided to sell shares on the basis of the announcement, any effect of the announcement on the market would have dissipated by, at most, the close of trading on Thursday 7 May 1998. We are satisfied that if a shareholder in Gilbert was genuinely motivated to sell his shares by reason of the Harbin announcement, he would have done so by 7 May 1998.

151. The position however is different in relation to the implicated parties, for they were not nervous investors. They were either directors of Gilbert or persons closely related to those directors, who, as we will set out, were given inside information as to Gilbert's financial position. Neither Clarence Wong nor Sunny Wong, both directors of Gilbert, suggested that the announcement published on Wednesday 6 May 1998, was in any way misleading. There is no evidence at all to suggest that the announcement, assuring investors that there would be only a minimal financial effect on Gilbert of the termination of the joint-venture, was not genuine. We are satisfied that the Harbin announcement could not, in the light of the director's assurance to the public, have been a genuine justification for sales of shares beneficially owned by Clarence Wong and Sunny Wong.

152. As will be seen, we have found that both Clarence Wong and Sunny Wong communicated relevant information to family members, on or after 8 May 1998. While sales of shares by those persons, in the days prior to that date are suspicious, we are not satisfied to the requisite standard of

proof that they were as a result of insider dealing. However we are satisfied that sales of shares, whether held on their own behalf or for others, after 8 May 1998, by implicated parties, cannot be attributed to the Harbin announcement. We are satisfied of that first, because by that time the effect of the announcement on the market would have dissipated, and second, because after that date the primary reason for the sale of shares was relevant information as to Gilbert's financial situation.

Chapter 7

Additional general matters

153. In order to evaluate the evidence in the process of identifying any of the implicated persons as insider dealers, it is necessary to bear in mind the following additional factual matters in the overall context surrounding Gilbert.

154. Gilbert was listed on the SEHK in October 1995. After listing the Chinese press had reported⁵² that:

“the transaction volume of (Gilbert’s) stock is quite low, showing that investors have limited understanding of and interest in the company’s business. In future the company should make an effort to increase the circulation of its shares.”

The precise date of publication is not known, but it must have been in the latter half of 1996, because the article contains the actual results from Gilbert for the financial year ending in March 1996, and forecast results for the year ending in March 1997.

155. The implicated parties held the following share accounts in which Gilbert shares were traded. The table sets out the month and year in which the accounts were opened.

Hung Shiu Shan	Tai Tak	12/95
Hung Shiu Shan	Ewarton	4/97
Fok Ying She	Shenyin Wanguo	11/96
Rona Wong	Celetio Investments	8/82
Rona Wong	Chow Sang Sang	9/96

⁵² See article produced in SFC interview by Hung Shiu Shan, Vol. 7, pp. 171, 188C.

Rona Wong	Shanghai Commercial	2/96
Rona Wong	Honfirst	2/96
Rona Wong	RBC Dominion A/c 1	5/97
Rona Wong	Credit Lyonnais	6/97
Lam Loy Lui	Chow Sang Sang	9/96
Heidi Chin	Tanrich	1/96
Heidi Chin	Jospa	2/97

156. In addition, the three directors, Clarence Wong, Osric Ming and Sunny Wong opened share trading accounts in their respective names at Shenyin Wanguo in October 1995. A share trading account was also opened in the name of Rona Wong at Shenyin Wanguo in December 1996, but that account was never utilised. Rona Wong also opened a second account at RBC Dominion in June 1997, but that account was not used for Gilbert share trading.

157. In September 1996 an account was opened in the name of Choi Tak Chuen at Shenyin Wanguo. Funds originating from Clarence Wong were used to settle the purchase of Gilbert shares in that account, which was active from 4 September 1996, until 6 December 1996. The account dealt exclusively in Gilbert shares. A document⁵³, purportedly signed by Mr Choi, authorised payments for all sums due from the account to be paid Clarence Wong. The evidence established that the proceeds of sale of Gilbert shares in the account, \$3,153,999.08, were paid to Clarence Wong. We record that Choi Tak Chuen was not called to give evidence before us.

158. The great majority of shares in Gilbert were held by a company called Fine Tuned Resources Limited, (Fine Tuned). That company was beneficially owned by the three directors, Clarence Wong, Osric Ming, and Sunny Wong. Fine Tuned also kept a share trading account at Shenyin

⁵³ TB Vol. 9 p. 419.

Wanguo⁵⁴. For reasons which we will later demonstrate, we have concluded that the whole of the shares in Mr Fok's Shenyin Wanguo account were beneficially owned by Clarence Wong. On 9 September 1997, the records of the operation of Mr Fok's Shenyin Wanguo account show a sale of 500,000 Gilbert shares⁵⁵. Shenyin Wanguo's records for Fine Tuned's account show that on the same day Fine Tuned acquired 500,000 Gilbert shares. Clarence Wong accepted that that was a cross transfer of shares, but denied that he had any involvement in Mr Fok's account at Shenyin Wanguo.

159. Counsel for the Tribunal sought to argue, from the article referred to in para. 154 above, that transactions of the nature described in para. 158, demonstrated the activities of the directors of Gilbert in the creation of a false market. Whilst that transaction and others in which implicated parties bought shares, only to sell them and buy equivalent amounts of shares soon thereafter, are suspicious, we are not satisfied to a high degree of probability that the directors were engaged in creating a false market. Consequently, in our deliberations, we have disregarded this submission.

160. Of the accounts set out in para. 155, the following were utilised exclusively for the trading of securities in Gilbert:

Fok Ying She	Shenyin Wanguo
Choi Tak Chuen	Shenyin Wanguo
Rona Wong	RBC Dominion A/c 1
Rona Wong	Credit Lyonnais
Rona Wong	Shanghai Commercial

161. Rona Wong was unable to offer any credible explanation as to why it was necessary for her to hold, simultaneously, 7 share trading accounts, at six different brokerages, or even 2 share trading accounts at one brokerage. With one exception only, (Rona Wong's account at

⁵⁴ TB Vol. 2 p. 47 et seq.

⁵⁵ TB Vol. 1 p. 61.

Celetio), all of the share trading accounts were opened at all around the time of, or subsequent to, Gilbert's listing on the SEHK in October 1995. In some cases other shares were traded through the accounts, the primary security traded in all of the accounts was that of Gilbert.

CHAPTER 8

The state of the market during the period from

1 May 1998 to 19 May 1998

162. We have concluded that relevant information existed in the minds of the two directors, Clarence Wong, and Sunny Wong at the latest by 8 May 1998, and that they knew that that information was relevant information.

163. The Notice required us to investigate share trading by the implicated parties during the period 1 January 1998 to 19 May 1998 (inclusive). While we find the state of knowledge of the directors, as to the financial status of Gilbert prior to 8 May 1998 to be suspicious, we are not satisfied to the appropriate standard of proof, as to the directors understanding of the state of Gilbert's financial affairs in March and April 1998. Consequently we are unable to find that relevant information existed prior to 8 May 1998. It follows that any trading undertaken by implicated parties prior to 8 May 1998, did not constitute insider dealing.

164. Having determined that relevant information existed in the minds of the directors on 8 May 1998, it is necessary to examine the trading undertaken by each of the implicated parties on or after that date. However, first we propose to review the general trading pattern from 1 May 1998, to 19 May 1998.

165. As we have recorded in paragraph 149 above, over five consecutive trading days, the Gilbert share price had dropped by 20% to \$0.56 on 7 May 1998.

166. Between 8 May 1998, and 19 May 1998, Gilbert's share price plummeted 55.7% to close at \$0.248 on 19 May 1998, compared with a modest 5.2% decline in the HSI. During the period 8 May 1998, to 19 May 1998, daily turnover averaged 3.4 million shares, some eight times higher than the average daily turnover of 380,000 shares in April 1998. The implicated parties accounted for 54.97% of the total trading volume of shares from 8 May 1998, to 19 May 1998. In particular, turnover reached a

high of 12.27 million shares on 19 May 1998, of which aggregate selling by the five implicated parties account for 71.66% of the total trading volume of the shares. On that day alone the share price plunged 33.87%. On Tuesday 19 May 1998, the five implicated parties finally disposed of all their remaining shares.

167. On 20 May 1998, the implicated parties, having sold all their shares, ceased to sell shares in the marketplace. On that day Gilbert made a public announcement. The announcement was, in the usual way, to the SEHK on the previous day, 19 May 1998, and was published in newspapers on 20 May 1998. The share price immediately rebounded 18.95%.

168. The announcement⁵⁶ recorded:

“The directors of the Company (the Directors) have noted the decrease in the price of shares of the Company today and wish to state that they are not aware of any reason for such decrease. The Directors, however, wish to inform the shareholders that they are proposing to discuss the Company’s position with its banker and will be seeking its support in respect of the Company’s commitments to its banks. The shareholders will be kept advised developments.

The Directors also confirm that there are no negotiations or agreements relating to intended acquisitions or realisations which are disclosable under paragraph 3 of the Listing Agreement and that they are not aware of any matter disclosable under the general obligation imposed by paragraph 2 of the Listing Agreement which is or may be of a price-sensitive nature.”

169. The precise dealings undertaken, with which we are concerned, are set out in Annexure B hereto. In our consideration of the trading by individuals we propose to confine ourselves to that trading which took place during May 1998. We do so in the light of the facts as to the trading pattern set out above in this chapter.

⁵⁶ TB Vol. 16 p. 34.

Chapter 9

The Samantha Cheung Shu Yim dealings

170. Samantha Cheung was a secretary at Gilbert. Initially she was part of a pool of secretaries, who worked generally for all of the three directors of Gilbert. Some months after listing however, she became the personal secretary to Sunny Wong. Her duties were the usual secretarial duties which included occasional private matters for the director for whom she worked.

171. Although she had been assigned to work specifically for Sunny Wong, from time to time she took instructions from Clarence Wong. She did so specifically in relation to share dealings undertaken by Mr Fok at Shenyin Wanguo, which share dealings, as will be later seen in Chapter 11, were all undertaken on the instructions of Clarence Wong.

172. Since March 1997, Samantha Cheung had been trading personally in Gilbert shares. By March 1998, she had accumulated 500,000 shares, and in March 1998, she sold 200,000 shares, leaving a balance of 300,000. There is no evidence that she did not fund her own acquisition of the shares, or that the proceeds of any sale of the shares did not go to herself.

173. On 13 May 1998 she sold her remaining 300,000 shares. She told the SFC in interview subsequently, and the Tribunal, that she sold the shares because she had seen the price of Gilbert shares start to fall. Her evidence was that she did not want to waste her energy on a stock that she found to be troublesome, by having to monitor the share price all the time.

174. We accept that in the normal course of events it will not be surprising for an employee of a public company to buy shares in that company. Counsel for the Tribunal took the view that the evidence was insufficient to establish, to the necessary degree of proof, that her sales were sales conducted with the knowledge of such relevant information as to render the sales “insider dealing” sales. We accept that position as appropriate. While there might well have been rumours amongst the staff at Gilbert of financial difficulties being faced by the company, the evidence fell well short of establishing on the part of Samantha Cheung actual

knowledge of relevant information.

175. We accordingly conclude that the dealings in the listed securities of Gilbert by Samantha Cheung Shu Yim on 13 May 1998 did not constitute insider dealing.

Chapter 10

The Hung Shiu Shan Dealings

176. Sunny Wong was Mr Hung's son-in-law. There was no evidence at all that he undertook share dealing in Gilbert shares himself. The only evidence of a share dealing account in his name was that at Shenyin Wanguo, opened at the time Gilbert was listed, and used only for the acquisition of new shares in a company called Jackin International Limited. The relevance of this particular dealing is dealt with at paras 207-9 below.

177. As we have set out, we are satisfied that Sunny Wong was a person connected with Gilbert, and that, at the time of the sales in May 1998, he was in possession of information which he knew to be relevant information. Mr Hung himself acknowledged that he knew that Sunny Wong was a director of Gilbert. We are satisfied that Mr Hung knew that Sunny Wong was a person connected with Gilbert, as that expression is used in the Ordinance.

178. Two primary issues arise in relation to Mr Hung's dealings. They are first, whether the shares held by him, were held to his benefit alone, or jointly for the benefit of himself and Sunny Wong, or for the benefit of Sunny Wong alone. The second issue is whether or not Sunny Wong gave Mr Hung relevant information, and whether, if he did, Mr Hung knew or had reasonable cause to believe that Sunny Wong had that information by virtue of his connection with Gilbert.

The beneficial ownership of Mr Hung's shares:

179. The trading of Gilbert shares by Mr Hung is set out in Annexure C. The underlying facts substantiating the transactions reflected in that Annexure were not disputed by either Mr Hung or Sunny Wong. Equally the underlying facts substantiating the flow of funds between Sunny Wong and Mr Hung, set out in Annexure D were not in dispute.

180. In December 1995, just after Gilbert was listed, Mr Hung opened a share trading account at Tai Tak Securities. He began purchasing,

and selling Gilbert shares through the account, but it may be said only sporadically. It is right to note, and we have regard to the fact in our assessment of the evidence, that Mr Hung bought and sold shares in other companies using this, and a second share trading account, with Ewarton Securities, which replaced the Tai Tak account. In the following paragraphs we review the significant trades in Gilbert shares, made by Mr Hung.

The Tai Tak Account trades:

181. On 21 August 1996, a purchase of 164,000 in Gilbert shares was made through the Tai Tak account. The purchase price was \$187,750.90. Two days later Sunny Wong withdrew precisely that amount from his Chase Manhattan bank account. The sum was paid into Mr Hung's Hang Seng Bank account, from where he withdrew it and applied it to the purchase of the shares. He sold those shares on 27 November 1996, that transaction reducing his holding of Gilbert shares to zero. However a few days later on 3 December 1996, he purchased 4,000 Gilbert shares, and on 4 December 1996, a further 446,000 Gilbert shares.

182. On 10 January 1997, he purchased 170,000 shares at a purchase price of \$180,963.45. Three days later, on 13 January 1997, Sunny Wong withdrew precisely that sum from his Chase Manhattan bank account and in the same way as before, Mr Hung applied it to meet the price of the purchase of the Gilbert shares. On 6 March 1997, he purchased a further 500,000 shares at a cost of \$532,241.90. The next day, 7 March 1997, Sunny Wong withdrew precisely that amount from his Chase Manhattan bank account. This time the broker at Tai Tak, Mr Ng Yan Ngai, passed the funds through his own account at the Hang Seng Bank, before crediting them to Mr Hung's account at Tai Tak to settle the purchase.

183. This brought Mr Hung's total shareholding to 1,210,000 Gilbert shares as at 6 March 1997. On 19 March 1997, he sold the entire shareholding. The net proceeds of sale, \$1,524,721.82 were paid entirely to Sunny Wong. Mr Hung then closed the account at Tai Tak.

The Ewarton Account trades:

184. By 25 April 1997, Mr Hung had opened an account at Ewarton Securities. He immediately purchased 500,000 shares at a cost of

\$733,087.90. On 28 April 1997, Sunny Wong drew a cheque on his Chase Manhattan account for \$733,087.90, which was paid to Mr Hung. He deposited into his own bank account and then drew funds in the same amount which he paid to Ewarton to settle the purchase. On 27 May 1997, a further 200,000 shares were purchased at a cost of \$247,040.58, a purchase again funded by Sunny Wong in the same manner. As may be seen in Annexure D, further purchases made on 24 June 1997, 12 December 1997, 16 December 1997, and 17 December 1997 were all paid with funds provided, in the precise sum, by Sunny Wong. The total amount provided by Sunny Wong to Mr Hung, and used by him to purchase Gilbert shares through the Ewarton account was \$1,291,377.43.

185. Mr Hung had made sales of Gilbert shares in May 1997, June 1997, July 1997 and August 1997. By 1 April 1998, he held 2,150,000 Gilbert shares. He had made no sales since August 1997. 1,058,000 of those shares had been funded by Sunny Wong. Although sales had been made, there had been no subsequent payment of money to Sunny Wong. On 7 April 1998 Mr Hung began selling his Gilbert shares. On two days, 8 April 1998 and 9 April 1998 his sales, of 300,000 and 288,000 shares respectively, amounted to 65.2% and 56.5% of the market turnover on those days. His sales continued through April concluding on 14 of May 1998, by which time the whole of his shareholding was sold. There is no evidence that any moneys at all from the sale of the shares was paid to Sunny Wong.

The explanations as to the movement of funds:

186. Sunny Wong's evidence was that Mr Hung had told him from time to time that he was purchasing Gilbert shares. But he said that he did not know that the purchases were being made with money borrowed by Mr Hung from him. He said that on each occasion when Mr Hung received money from him, Mr Hung had come to him and asked to borrow money, which he lent to Mr Hung, without question. He said he did so because of their family relationship. He said that he did not question the request for such precise sums, but merely wrote out the cheque as requested.

187. Sunny Wong was cross-examined specifically about the payment to him, by Mr Hung, of the sum of \$1,524,722, shortly after the sale of all of the shares in the Tai Tak account. He accepted that the sum was nearly as much as he had received by way of salary from Gilbert during one year. He said that he did not ask his father-in-law why the

money was given to him but said that it was normal that his father-in-law would give him money, as he had been giving his father-in-law money. He went on to say that maybe his father-in-law was of the view that he needed money for other expenses at that time⁵⁷. He did not make any suggestion as to what those expenses might be.

188. Sunny Wong asserted that he did not discuss matters about the Gilbert with his father-in-law. He knew that his father-in-law was a buyer and seller of Gilbert shares, and that his father-in-law knew that he was a director of Gilbert. They met regularly on social occasions and very substantial sums passed between them which were used for the purchase of Gilbert shares or for the return of the proceeds of sale of Gilbert shares. Having regard to the very precise, large sums paid by, or received by, Sunny Wong we find it unbelievable that in the process of making the payments, either way, Sunny Wong and his father-in-law Mr Hung did not discuss the affairs of Gilbert. We find it equally unbelievable that Sunny Wong did not know that the sums paid by him to Mr Hung were used for the purchase of Gilbert shares, or that the sum returned to him was the proceeds of sale of Gilbert shares.

189. Mr Hung for his part, asserted that he merely asked his son-in-law for money, but did not tell him what the money was to be used for. As to the return of funds to Sunny Wong he said that, at that time, he had a feeling that Sunny Wong was in need of money because his second baby was coming⁵⁸. When pressed about the matter in cross examination he was unable to say why he had not made this suggestion to the SFC when questioned by them about the payment. Evidence was induced to establish that the baby was born on 31 May 1997⁵⁹.

190. Mr Hung was quite unable to explain why, when the baby was not due until the end of May he should make a substantial payment to his son-in-law in late March. He was quite unable to explain why, if in late March he considered that his son-in-law was in need of a sum in excess of \$1.5 million to cover expenses arising from the birth of the baby, he should borrow from his son-in-law, in April 1997. That was just over a month before the birth, and he borrowed \$733,088 for the purchase of Gilbert shares. He was also unable to explain why on 27 May 1997, four days before the birth of the child, he should borrow a further \$247,040.58 for the

⁵⁷ TR Day 11 p. 27.

⁵⁸ TR Day 15 p. 19.

⁵⁹ Ex 26: Birth Certificate.

purchase of Gilbert shares.

191. We find it unbelievable, for the reasons set out in para 188, that Mr Hung did not tell Sunny Wong that the money he acquired from Sunny Wong was to be used for the purchase of Gilbert shares. We find it equally unbelievable that he did not tell Sunny Wong that the money returned to him was from the sale of Gilbert shares. We reject the suggestion, made only by Mr Hung, and not by Sunny Wong, and for the first time during the hearing, that the return of the money was in any way related to the birth of Sunny Wong's child. It was unrelated in time to the birth of the child and two thirds of the sum was returned to Mr Hung for the purchase of Gilbert shares before the birth of the child.

192. The explanation offered by Mr Hung for the sale of all shares and subsequent closure of the Tai Tak account, and the opening of the Ewarton account, with, by 27 May 1997, the acquisition of 1,300,000 Gilbert shares, 90,000 more than were held at the closure of the Tai Tak account only nine weeks earlier, was that Mr Hung's nephew, Ng Yan Ngai, the broker who had been undertaking the trades had advised him that Ewarton, for whom Mr Ng worked, now had its own share broking licence and was able to undertake trades in itself. When questioned by the Tribunal as to why the shares were not simply withdrawn from Tai Tak, and then deposited with Ewarton, Mr Hung said that that was "inconvenient". Mr Hung was unable to explain why it was more convenient to incur the costs involved in the sale and purchase of shares and also to undertake the risk that the price of the shares may have increased in the interim. In assessing this issue we had regard to the fact that Heidi Chin appeared to endure no inconvenience in closing one share trading account, withdrawing the shares and depositing them with another broker on opening a new account.⁶⁰ It was not necessary for her to sell and then re-acquire the shares. We accept the submission of counsel for the Tribunal that it defies credulity to sell all shares from the Tai Tak account simply because a new share trading account was to be opened with another broker.

193. When first interviewed by the SFC, on 19 August 1998, although acknowledging that he had had a share account at Tai Tak, Mr Hung said that he first traded in Gilbert shares on 25 April 1997⁶¹. He

⁶⁰ See para 262 below.

⁶¹ TB Vol. 7 p. 90.

produced a schedule setting out his dealings in Gilbert shares⁶². The schedule did not disclose any of the transactions made through Tai Tak. He was interviewed again on 29 November 1999. This time, the SFC produced to him the monthly statements of the Tai Tak account revealing share trading in Gilbert shares beginning in December 1995. When asked why he had not disclosed the prior trading through the Tai Tak account he asserted that his first answer had meant to refer only to the Ewarton account⁶³. The question as to when he began trading in Gilbert shares was not limited in any way. His prior preparation of the schedule, completely omitting the Tai Tak trading, was a deliberate act with failed to disclose that trading. In all the circumstances his answer to the SFC was, we find, deliberately misleading.

194. Mr Hung's actions must be viewed in the light of certain facts. We have found that Mr Hung's failure to reveal to the SFC his trading in Gilbert shares in the Tai Tak account was deliberately misleading. He closed the Tai Tak account, with the sale of all the shares, and the subsequent disposal of the funds, only to open the Ewarton account, and acquire of new shares, in excess of the number previously owned. He did this using nearly two thirds of the amount previously invested, obtained from the same source, Sunny Wong. In all the circumstances we find that Mr Hung's actions in closing the account and opening a new account with a different broker, was probably a device designed to conceal his trading in Gilbert shares.

195. For the reasons we have set out above, in rejecting their assertions, we did not find either Sunny Wong or Mr Hung to be believable witnesses. The only credible explanation for the payment of money by Sunny Wong, to Mr Hung, upon the acquisition by Mr Hung of Gilbert shares, the subsequent repayment of money to Sunny Wong upon the sale of Gilbert shares, and the acquisition of further Gilbert shares with money acquired from Sunny Wong, is that the purchase of Gilbert shares made by Mr Hung using money acquired from Sunny Wong was the purchase of shares for the benefit of Sunny Wong. For the same reasons we find that Sunny Wong knew that the shares that were acquired using his funds were so acquired for him.

196. In the course of his cross-examination, for the first time, Mr Hung suggested that his purchase of shares using Sunny Wong's funds was

⁶² TB Vol. 7 p. 129.

⁶³ TB vol. 7 p. 142.

an investment device he was undertaking, on behalf of Sunny Wong, but unknown to Sunny Wong. His purpose, he said, was to form some sort of secret trust for the benefit of Sunny Wong and his family. He became hopelessly confused when pressed about this matter, particularly as to how, if the matter were, as he said, kept secret, the proceeds of the trust could find its way to Sunny Wong and his family on Mr Hung's death. Counsel for Mr Hung and Sunny Wong subsequently made submissions in writing on the issue of secret trusts. In the light of our finding that Sunny Wong knew that the shares acquired with his funds were for his benefit we do not need to give this matter further consideration.

197. We accordingly conclude that, of the Gilbert shares acquired by Mr Hung, those acquired using funds provided by Sunny Wong were acquired for Sunny Wong, with his knowledge. We conclude that any other shares acquired by Mr Hung in the Ewarton account were acquired for Mr Hung's personal benefit.

Did Sunny Wong give Mr Hung Relevant Information:

198. On 1 April 1998, Mr Hung owned 2,150,000 Gilbert shares. Although he had sold shares he had made no repayments to Sunny Wong. Of those shares, 1,058,000 had been acquired with funds provided by Sunny Wong. We accordingly conclude that those 1,058,000 shares were acquired for the benefit of Sunny Wong. Those shares were beneficially owned by Sunny Wong. By 1 May 1998 Mr Hung had reduced that shareholding to 1,260,000 shares. Of the disposals that had been made there is no evidence at all of the payment of any of the proceeds to Sunny Wong. We accordingly conclude, to the appropriate standard of proof, that of those 1,260,000 shares then held, 1,058,000 were still beneficially owned by Sunny Wong. In reaching this conclusion we have had regard to the fact that there is no evidence as to the repayment of funds by Mr Hung to Sunny Wong. Having regard to the nature of their personal relationship of father-in-law and son-in-law, we do not regard the fact of the non-repayment of funds as sufficient to displace the inference that we have drawn as to the beneficial ownership of the shares.

199. There is no doubt whatsoever that Sunny Wong was a person "connected" with Gilbert. Equally, there is no doubt that Mr Hung knew that Sunny Wong was so connected. There is further, equally, no doubt that, if any information concerning Gilbert was given to Mr Hung by Sunny Wong, Mr Hung would have known or would have reasonable cause to

believe that Sunny Wong held that information by virtue of his connection with Gilbert.

200. We are satisfied that Sunny Wong and Mr Hung would have inevitably discussed the state of affairs at Gilbert from time to time when making arrangements for the sale and purchase of shares in Gilbert or the transfer of funds between them consequent upon those sales or purchases. While the sales that took place by Mr Hung during April 1998, raise great suspicion as to the extent of any knowledge Mr Hung may have had, as to circumstances at Gilbert, in the light of our finding that relevant information did not exist until the beginning of May 1998, we are unable to conclude that the April 1998 sales constitute insider dealing.

201. Mr Hung's explanation⁶⁴ for the sales in April and May 1998, was that at some time in March and April the Chinese press had reported that 100 odd second and third line companies were in financial trouble and if their banks demanded that these companies repay loans, they would definitely go broke. He was unable to produce the article upon which he relied, but the evidence from the SFC clipping service was not such that we are able to say that there was no such article. However whilst he made sales on three days at the beginning of April he seemed content to wait until nearly the end of April before making further sales. Had the justification for the sales been as he said, we find that he would have sold the whole of the shares during April, and not taken the risk of holding them through until the middle of May.

202. We have concluded that Sunny Wong was in possession of relevant information at the beginning of May 1998. We have found that Mr Hung held shares in Gilbert both for himself personally, and for the benefit of Sunny Wong. We are satisfied that from time to time the two men discussed the affairs of Gilbert. Having regard to the whole of the evidence we are satisfied, to the appropriate standard, that at the beginning of May 1998, Sunny Wong informed Mr Hung of the perilous state finances at Gilbert, and that together they agreed that the remaining shares held by Mr Hung, both for the benefit of himself and Sunny Wong, would be sold.

203. Mr Hung gave as an explanation for the sales in May the Harbin announcement. For the reasons set out in Chapter 6, we are satisfied that the Harbin announcement was not the basis of the sales. We

⁶⁴ TB Vol. 7 p. 93.

are satisfied that his selling on and after 8 May 1998, was because of the information he had received from Sunny Wong, and was not predicated on the Harbin announcement.

Conclusion:

204. We accordingly conclude that in relation to the sale of 1,010,000 Gilbert shares between 8 May 1998, and 14 May 1998, held, with his knowledge, to his benefit by Mr Hung, Sunny Wong undertook insider dealing contrary to s 9(1)(a) of the Ordinance. In relation to the same shares we conclude that Mr Hung undertook insider dealing contrary to s 9(1)(e) of the Ordinance.

205. We further conclude that in relation to the sale between 8 May 1998 and 14 May 1998, of the remaining 48,000 Gilbert shares held by Mr Hung for his own benefit, Mr Hung undertook insider dealing contrary to s 9(1)(e) of the Ordinance. In relation to those same shares, Sunny Wong undertook insider dealing, contrary to s 9(1)(c) of the Ordinance.

Chapter 11

The Waylex Fok Ying She dealings

206. The evidence established that in November 1996, an account was opened at Shenyin Wanguo in the name of Mr Fok. The evidence also established that that account was devoted entirely to dealings in Gilbert shares. The account executive at Shenyin Wanguo who had responsibility for the account, was, at all material times, Terence Howard. By September 1997, the account contained a portfolio of 4,278,000 Gilbert shares. On 19 May 1998, the whole of the portfolio was sold in batches on the one day. The disposal of the shares accounted for 34.8% of the market turnover on 19 May 1998.

207. When interviewed by the SFC Mr Fok asserted that these shares were his, and that the acquisition of the shares had been funded by his own money, and by borrowings from his company. He said that he had decided to sell the entirety of its stock on that day because of the failure of the joint-venture with Harbin, which by then was public knowledge.

The provision of funds by Clarence Wong to the Fok account:

208. The evidence also established that the acquisition of all shares in the account were funded, almost exclusively, from monetary transfers originating from Clarence Wong by way of an account held in the name of Rona Wong. The flow of funds from Clarence Wong's account to Rona Wong's account, and from there to the account of Mr Fok at Shenyin Wanguo is illustrated at Annexure E. The fact of the monetary transfers set out in that Annexure were not challenged by either Clarence Wong or Rona Wong.

209. The flow of funds to Mr Fok's account at Shenyin Wanguo, with one exception only, originated from Clarence Wong. It is necessary to examine that exception.

The Jackin International shares:

210. In October 1995, at the time of the listing of Gilbert, each of

the three directors, Clarence Wong, Osric Ming, and Sunny Wong also opened share trading accounts at Shenyin Wanguo. During the currency of those accounts, in November 1996, a new listing took place on the SEHK in relation to a company called Jackin International Limited. Shares in the initial public offering by that company, were allocated to each of the three directors in their accounts at Shenyin Wanguo. Those shares were immediately sold, and the proceeds of sale transferred to Mr Fok's account at Shenyin Wanguo, and the proceeds used to purchase Gilbert shares.

211. There was no evidence from Osric Ming in relation to the Jackin International shares. On 28 November 1996, Osric Ming and Sunny Wong both signed an authority authorising Clarence Wong to collect the proceeds of sale of the Jackin shares and transfer those proceeds to Mr Fok's account at Shenyin Wanguo. Sunny Wong, when questioned about the matter simply had no recollection of the circumstances of the transaction, and was unable to explain it. Clarence Wong too said that he had no recollection of the circumstances of the transaction, and he too was unable to offer any explanation as to it.

212. What is clear, is that on the authority of Clarence Wong, all the proceeds of sale of the Jackin shares, newly allocated on the listing of Jackin to the three directors were transferred to Mr Fok's account at Shenyin Wanguo and applied in the purchase of Gilbert shares. What is also clear, is that Mr Fok did not provide any of the funds used to acquire shares in his name through the Shenyin Wanguo account.

The return of funds from the Fok account to the Clarence Wong:

213. Just as virtually all of the funds to acquire the shares in Mr Fok's account had come from Clarence Wong, funds derived from the disposal of the shares, and payments of dividends on the shares, all made their way back to Clarence Wong, again either by way of Rona Wong's account, or directly from Shenyin Wanguo. The flow of funds back to Clarence Wong is illustrated at Annexure F.

214. Special steps were taken in relation to the proceeds of the sale of shares on 19 May 1998. On 21 May 1998, Shenyin Wanguo banked the entire proceeds, \$1,070,474.78, in Mr Fok's account at Hang Seng Bank. On 26 May 1998, Mr Fok drew a cheque for \$1,070,000, payable to Merry Mark Limited, (Merry Mark), a company of which he was a director. On 27 May 1998, from the Merry Mark account, Mr Fok drew two cheques,

totalling \$1,070,000, both of which were paid into an account held by Rona Wong at the Shanghai Commercial Bank on 28 May 1998. On 29 May 1998, Rona Wong in turn draw a cheque payable to her father, which cheque was paid into her father's account at the same bank. On 29 May 1998, a cheque was drawn on the father's account for \$1,070,000 and paid into Clarence Wong's Citibank account.

215. Clarence Wong and Rona Wong sought to explain all transactions between them by saying that cheques paid by Clarence Wong to Rona Wong were advances by way of loan to her, and subsequent repayments of those loans. Rona Wong sought to explain the transactions between herself and Mr Fok as loans from her to him, and refunds of the loans back to her.

216. Prior to the commencement of the hearing Mr Fok, through his solicitors, supplied to the Tribunal and the implicated parties a new statement. Contrary to his statements to the SFC he now denied that he had ever operated the account opened in his name at Shenyin Wanguo. He said that in about October 1996, in response to a request from Osric Ming, he agreed to the opening of a share trading account in his name, knowing that the account would be operated by Osric Ming. He said that although there was no discussion about the matter at the time, he believed that Osric Ming wanted to trade shares in some name other than his own, because of his position in Gilbert. Mr Fok said that he was sent account opening documents by Shenyin Wanguo which he forwarded to Osric Ming. He said that from then on he forwarded all documents he received from Shenyin Wanguo, to Osric Ming, without opening them. He said that from time to time, when he was informed by Samantha Cheung that money had been paid into his account, he dealt with that money in accordance with her instructions.

217. His evidence was that prior to the trading on 19 May 1998, he had never met Terence Howard. His evidence was that on 19 May 1998, late in the afternoon, he received a telephone call from either Osric Ming or Samantha Cheung instructing him to transfer a credit from his account as a result of the share sale to the account of Rona Wong, but not to do so directly, instead to make the transfer via another account. He did so, using the Merry Mark account has described above.

218. His evidence further was that in about June or July 1998, before he received a letter from the SFC requesting an interview, and

following a telephone conversation with Osric Ming, he had lunch with Osric Ming and Clarence Wong. His evidence was that he was requested by them to tell the SFC that the transactions were his own, that he should say that he could not recall the detail of the transactions, and that the money involved in the account came from loans from various people, including Clarence Wong. He said he was told to rely upon the Harbin announcement as a reason for the sales of the shares. He said that arrangements were made for him to see Terence Howard who repeated the same instructions.

219. His evidence further was that when with Terence Howard he was shown what purported to be the account opening documents and the transaction records of the account, and learnt for the first time that the signature on the documents was not his. He denied being provided with any inside information in relation to shares in Gilbert.

220. We accept Mr Fok's evidence to the Tribunal and reject that of Clarence Wong and Rona Wong. We are satisfied that following legal advice, and recognising the reality of the situation he was in, Mr Fok had decided to tell the truth to the Tribunal. In reaching this conclusion we have had regard to the statement, received in evidence, of Terence Howard. While that statement in part directly contradicts Mr Fok, we bear in mind that although the opportunity was made available to Mr Howard to be cross-examined on that statement, he did not avail himself of the opportunity. The contradictions remain untested, and inconsistent with other evidence.

221. While we note a significant increase in the account receivable owing by Mr Fok's company, West Champion Linen Cotton Limited, in the months leading up to the collapse of Gilbert, from which an inference may be drawn that some benefit was being given to Mr Fok, there is no evidence of any other discernible benefit to Mr Fok from the trading in the Shenyin Wanguo account. It was properly submitted by counsel for the Tribunal that, from Mr Fok's standpoint, there was little point in the Shenyin Wanguo share trading account ever having existed, except perhaps to foster a spirit of cooperation between himself and the directors of Gilbert with whom he did business.

222. We also have regard to the operation of the account at Shenyin Wanguo in the name of Choi Tak Chuen. Like Mr Fok's account, the account dealt exclusively in Gilbert shares. Like Mr Fok's account, the

evidence established that the funds used to settle purchases on the account originated from Clarence Wong and the ultimate proceeds of sale of the whole of the shares through the account found their way back to Clarence Wong. Mr Choi's account operated until 6 December 1996. Mr Fok's account began on 21 November 1996, with the "dove-tailing" giving rise to a strong inference that both accounts were for the same purpose.

223. The evidence of Samantha Cheung was that Clarence Wong provided her with all instructions and details to enable her to communicate with Shenyin Wanguo concerning the application of funds deposited in the account. There is no evidence at all that Mr Fok gave her any such instructions. Terence Howard, in his interview with SFC⁶⁵ stated that Clarence Wong gave instructions in relation to the account. In this respect at least, there is little reason to doubt Terence Howard's statement. Terence Howard does not suggest at all that Osric Ming gave instructions relating to the account.

224. We reject the evidence of both Clarence and Rona Wong which we find to be patently unbelievable. We are satisfied, to the appropriate standard of proof, that the Shenyin Wanguo account in the name of Mr Fok was an account opened for the benefit of Clarence Wong, that he was the beneficial owner of all shares traded through the account, and that he was personally entitled to the proceeds of sales of the shares in the account. For the reasons that follow we are satisfied that he, Clarence Wong personally operated the account, by way of instructions conveyed by him personally or through Samantha Cheung.

225. Neither Clarence Wong nor Rona Wong was adequately able to explain why loans should be made from Clarence Wong to Rona Wong of sums so precise that they were to exact cents, and then precisely the same sum advanced by Rona Wong to Mr Fok. Equally neither was able to adequately explain why the amounts advanced were not repaid, but instead the precise proceeds of the sale of Gilbert shares, sums which were less than the amounts advanced. Neither was able to adequately explain why, if there were advances made between brother and sister, dividends on shares apparently owed by Mr Fok, and paid to him, should be paid precisely back, through Rona Wong, to Clarence Wong. We reject the proposition that such sums amounted to payment of interest.

⁶⁵ TB Vol. 9 pp145-6.

226. Rona Wong asserted that the payment of funds by her to her father was the repayment of a loan. There was no evidence from her father, and no other evidence to support the assertion, one made by a person who asserted, whenever faced with a transaction that she could not explain, that it was a loan to her or a repayment of a loan by her. We conclude, to the appropriate standard of proof, that both Clarence Wong and Rona Wong knew precisely the sensitive nature of the refund of the proceeds of the sale of the shares in the Shenyin Wanguo account, and that the indirect routing of the proceeds was directly as a result of a desire by both to keep Clarence Wong's involvement in the shares a secret.

227. We are satisfied that the manoeuvring of funds through Merry Mark and then Clarence and Rona Wong's father was a deliberate attempt by Clarence Wong and Rona Wong to "launder" the funds by concealing their true origin in the Mr Fok account at Shenyin Wanguo.

228. The sale of the shares from the account on 19 May 1998, was conducted in batches. There is no documentary evidence to support the contention that Mr Fok used his mobile phone to contact with Shenyin Wanguo on 18 May or on 19 May 1998. The only call of relevance was received by him was about 4.30 p.m. on 19 May 1998, and that call was received by him from Gilbert.

229. We accordingly conclude that the whole of the shares in the account maintained in the name of Mr Fok at Shenyin Wanguo were beneficially owned by Clarence Wong.

230. Being the beneficial owner of those shares, Clarence Wong clearly had appropriate motivation to ensure that the shares were sold in a timely manner and before the state of affairs that existed at Gilbert became public knowledge. We accept the evidence of Samantha Cheung, that throughout instructions to her in relation to Mr Fok's account at Shenyin Wanguo came to her from Clarence Wong. Even if, as Mr Fok asserted, Osric Ming was involved in the setting up the account, all the funds came from Clarence Wong or by way of his instruction. We have found that all of the instructions in relation to the account came from him. The whole of the proceeds of the realisation of shares in the account, and the dividends paid on those shares, went to Clarence Wong.

231. Weighing all of these matters we conclude, to the appropriate standard of proof, that on 19 May 1998, when in possession of information

about Gilbert, which he knew to be relevant information, Clarence Wong instructed Terence Howard to sell all of the shares in the Shenyin Wanguo account in the name of Mr Fok. It is beyond argument that Clarence Wong was a person connected with Gilbert.

232. We accordingly conclude that in relation to the sale of 4,278,000 Gilbert shares from the account of Mr Fok at Shenyin Wanguo on 19 May 1998, Clarence Wong undertook insider dealing, contrary to s 9(1)(a) of the Ordinance.

Chapter 12

The Rona Wong Yuen Wan Dealings

233. Rona Wong held share trading accounts at seven different brokerages. Her accounts at Shenyin Wanguo and RBC Dominion A/c 2, may be disregarded as neither was used to trade Gilbert shares. The accounts at RBC Dominion A/c 1, Credit Lyonnais, and Shanghai Commercial were used exclusively to trade in Gilbert shares. The accounts at Honfirst, Celetio and Chow Sang Sang were used to trade Gilbert shares and other shares.

The Credit Lyonnais account:

234. The evidence established, and it was not disputed by either Clarence Wong or Rona Wong, that the trading in Gilbert shares in the Credit Lyonnais account was funded entirely by Clarence Wong. The evidence further established that all monetary withdrawals from that account found their way to Clarence Wong, including a payment of \$173,915, by way of dividend paid on 17 October 1997. The entire proceeds of the sale of shares in the account in May 1998, the sum of \$1,334,926 formed part of a cheque drawn by Rona Wong on 27 May 1998 in the sum of \$1,831,926 and paid by her into Clarence Wong's Citibank account on that day. The funds flow from Clarence Wong to Rona Wong may be seen in Annexure G, and the fund flow from Rona Wong to Clarence Wong may be seen in Annexure H.

235. Consequently, Rona Wong neither funded personally the purchase of any Gilbert shares through the Credit Lyonnais account, nor did she receive any of the proceeds of sale for her own personal benefit. She derived no discernible benefit whatsoever from any of the trades conducted through the account. Again, both Clarence Wong and Rona Wong asserted that the flow of funds between them merely amounted to loans and the repayment of loans, and that it was purely coincidental that Rona Wong happened to use the precise sums borrowed to buy Gilbert shares, and the precise sums yielded on sales, and dividends on the shares, to repay the loans. We reject that evidence as an outright lie.

236. We are satisfied that the Credit Lyonnais account in Rona

Wong's name was operated by her exclusively for the benefit of Clarence Wong and that he was the beneficial owner of all shares in the account. We are satisfied that Rona Wong operated the account with full knowledge of that situation.

The RBC Dominion account:

237. We accept the evidence of Samantha Cheung that Clarence Wong came to her and asked her if she knew of a securities firm where an account could be open. She herself had an account at RBC Dominion, and obtained an account opening form from an account executive, Jennifer Yip, and gave it to Clarence Wong⁶⁶. Her evidence in this respect was corroborated by Jennifer Yip⁶⁷.

238. Subsequently an account was opened, in the name of Rona Wong, using the form, with Samantha Cheung's account number endorsed as to the source of the client. Rona Wong proceeded to use the account to trade Gilbert and other shares. Again the flow of funds demonstrates numerous purchases of shares in Gilbert with funds that originated from Clarence Wong. Again precise sums from the sale of Gilbert shares were returned by Rona Wong to Clarence Wong.

239. From the sale of Gilbert shares from the RBC Dominion account on 18 May 1998, Rona Wong received \$564,585.25. On 25 May 1998, she drew a cheque on her HSBC account, into which the proceeds of sale had been paid, in the sum of \$436,674 and paid that into her Chekiang First Bank account, into which the proceeds of sale of shares through Chow Sang Sang, Celetio and Credit Lyonnais had also been paid. From there she drew a cheque for \$1,831,926, which was paid into Clarence Wong's Citibank account. Rona Wong thereby retained for herself, in her HSBC account, \$127,911.25. She had sold 300,000 Gilbert shares at \$0.445, and 350,000 Gilbert shares at \$0.45, an average price of \$0.447. She was not able to offer any explanation as to her retention of those funds. The only reasonable explanation can be that she considered part of the shares sold to be hers. At the average price that sum represents 286,155 shares. We are satisfied to a high degree of probability that those shares were sold on her behalf, and the remaining 363,845 shares, to her knowledge, on behalf of Clarence Wong.

⁶⁶ TR Day 9, pp 56-7.

⁶⁷ TB Vol. 10 p. 79.

240. Again, both Clarence Wong and Rona Wong sought to explain the flow of funds as loans and repayment of loans, with the purchase and sale of Gilbert shares being purely coincidental. For the reasons we have already given we reject that evidence. We are satisfied, to a high degree of probability, that, with the exception noted above in para. 239, Clarence Wong was the beneficial owner of the Gilbert shares traded through the account on 18 May 1998, and that they were so traded with the full knowledge of Rona Wong.

The Chow Sang Sang and Celetio accounts:

241. In respect of the accounts at Chow Sang Sang and Celetio, Clarence Wong as a supplier of funds in the same manner for the purchase of shares through the accounts. Proceeds of sales of shares in Gilbert through both accounts in May 1998, were received by Rona Wong into her Chekiang First account, and formed part of the cheque drawn by her on that account on 27 May 1998 and paid to Clarence Wong. We are satisfied to a high degree of probability that the shares traded by Rona Wong in both the Chow Sang Sang and Celetio accounts were for the benefit of Clarence Wong.

The Shanghai Commercial account:

242. The evidence does not establish the supply of funds by Clarence Wong to enable the acquisition of Gilbert shares through the Shanghai Commercial account. We are satisfied that the shares in that account in May 1998 were beneficially owned by Rona Wong. Following the sale of the shares she retained the proceeds for herself.

The sale of the shares in May 1998:

243. Rona Wong gave the Harbin announcement as her primary reason for the sale of all Gilbert shares in her name in May 1998. We reject that suggestion. We do so for two reasons.

244. First, as we have already stated, we consider that the Harbin announcement is not a justification for sales that occurred on or after 8 May 1998.

245. Second, as well as selling shares, after the announcement Rona Wong was a purchaser of shares. On 4 May 1998, Rona Wong sold 60,000 Gilbert shares, only to purchase 70,000 shares immediately thereafter. On 5 May 1998, the day of the announcement, she purchased 20,000 shares. On 6 May 1998 she purchased a further 10,000 shares and on 7 May 1998 a further 8,000 shares. On 11 May 1998 she purchased 4,000 more shares. On 12 May 1998, at the same time as she sold 510,000 shares she bought a further 10,000 shares. Such purchases are entirely inconsistent with a decision to sell her shareholding in the light of the Harbin announcement.

246. Clarence Wong and Rona Wong lived in the same house, with their mother, in Hong Lok Yuen. It is plain that they communicated closely and in detail as to the sale and purchase of Gilbert shares. Such communication is an inevitable and overwhelming inference from the conclusion that she has held, in numerous share accounts, shares which were beneficially owned by Clarence Wong. It was inevitably necessary for them to discuss in detail matters such as the supply of funds to meet purchases made, and the fact of purchases themselves, for the evidence established that instructions to the dealers on the accounts were given by Rona Wong, and not Clarence Wong, notwithstanding the fact that he was the true owner of the shares.

247. In such circumstances we are satisfied that in May 1998, when Clarence Wong was in possession of information which he knew to be relevant information, namely the perilous state of Gilbert's finances, he informed Rona Wong of that situation. We find it inevitable that a brother and sister, who had worked closely together in the acquisition of, and sale of shares, would have shared with each other such information.

248. That that was so is borne out by the mobile phone record of Rona Wong as described in Annexure I. The record demonstrates that on each of the days when she was selling Gilbert shares she was making calls to, or receiving calls from Gilbert's office. Having regard to the whole of the evidence we are satisfied to a high degree of probability that those calls were with her brother Clarence Wong. It is right that from time to time she had had contact with Gilbert staff, but there was no suggestion that calls at that time were purely on routine matters with Gilbert staff.

249. The timing of her telephone calls on 18 and 19 May 1998, are particularly revealing. Rona Wong had left Hong Kong on the afternoon of Friday 15 May 1998, to go to Malaysia. She had returned Hong Kong

shortly after 3 p.m. on Monday 18 May 1998. She accepted that within minutes of landing she telephoned first the Gilbert office and then her brother Clarence on his mobile phone. In interview with the SFC she had asserted that her phone calls on that afternoon from the airport were to Clarence Wong in an effort to arrange transportation from the airport home. However in the hearing, neither Clarence Wong nor Rona Wong had any memory of the telephone calls.

250. Immediately following her second call to Clarence Wong, Rona Wong telephoned her broker at Chow Sang Sang and issued instructions to sell Gilbert shares. Numerous calls followed to her broker and to Gilbert. We are satisfied that the whole series of telephone calls set out in Annexure I demonstrates a pattern of a person with particular information in relation to Gilbert, panic selling in order to dispose of shares. The level of panic in Rona Wong was such that literally within minutes of landing back in Hong Kong after a weekend away she checked the position with Clarence Wong and resumed selling.

251. We are satisfied to a high degree of probability that Clarence Wong counselled and procured Rona Wong to sell Gilbert shares, knowing that she would sell them. We are accordingly satisfied that in relation to the sale of the following shares by Rona Wong:

13 May 1998	Chow Sang Sang	50,000 shares ⁶⁸
14 May 1998	Chow Sang Sang	780,000 shares ⁶⁹
	RBC Dominion	510,000 shares ⁷⁰
15 May 1998	Shanghai Commercial	100,000 shares ⁷¹
	RBC Dominion	50,000 shares ⁷²
18 May 1998	Chow Sang Sang	106,000 shares ⁷³

⁶⁸ TB Vol. 3 p. 37

⁶⁹ TB Vol. 3 p. 37

⁷⁰ TB Vol. 3 p. 54, and see para 239.

⁷¹ TB Vol. 2 p. 347

⁷² TB Vol. 3 p. 54, and see para 239.

⁷³ TB Vol. 3 p. 37

	Celetio	48,000 shares ⁷⁴
	Credit Lyonnais	320,000 shares ⁷⁵
	RBC Dominion	650,000 shares ⁷⁶
19 May 1998	Credit Lyonnais	3,740,000 shares ⁷⁷

Clarence Wong is guilty of insider dealing contrary to s 9(1)(a) of the Ordinance by procuring Rona Wong to sell those shares. Of those shares, 100,000 in the Shanghai Commercial account, and 286,155 in the RBC Dominion account were beneficially owned by Rona Wong. The remaining 5,967,845 shares were beneficially owned by Clarence Wong.

252. We are satisfied to a high degree of probability that Clarence Wong informed Rona Wong of the perilous state of Gilbert's finances and that when he did so he knew that was relevant information. We are satisfied to a high degree of probability that when Rona Wong received that information she knew it to be relevant information and that she knew that Clarence Wong was connected with Gilbert, and that he had that information by virtue of his connection with Gilbert. We are accordingly satisfied that, in relation to the sale of the following shares held for her own benefit:

14 May 1998	RBC Dominion	286,155 shares ⁷⁸
15 May 1998	Shanghai Commercial	100,000 shares ⁷⁹

Rona Wong is guilty of insider dealing contrary to s 9(1)(e) of the Ordinance. As to the remaining shares and accounts, set out in para. 251 above, being the person who dealt in the shares held by her beneficially for Clarence Wong, Rona Wong is guilty of insider dealing, contrary to s 9(1)(e) of the Ordinance.

⁷⁴ TB Vol. 3 p. 214

⁷⁵ TB Vol. 3 p. 40

⁷⁶ TB Vol. 3 p. 54, and see para 239.

⁷⁷ TB Vol. 3 p. 40

⁷⁸ TB Vol. 3 p. 54, and see para 200.

⁷⁹ TB Vol. 2 p. 347

Chapter 13

The Lam Loy Lui dealings

253. Madam Lam is the mother of Clarence Wong and Rona Wong. At all relevant times she was living in the same house in Hong Lok Yuen as her son and daughter. On 1 May 1998, she was the owner of 250,000 Gilbert shares, held in a share trading account at Chow Sang Sang Share Brokerage. There is no evidence to suggest that any person other than Madam Lam herself funded the acquisition of the shares. There is no evidence to establish that Clarence Wong knew of the existence of the shares. Shares other than Gilbert shares were traded through the account.

254. Madam Lam sold 30,000 Gilbert shares on 15 May 1998. The evidence establishes that Rona Wong was in telephone contact with brokers at Chow Sang Sang on 14 May 1998 giving instructions in relation to the sale of other Gilbert shares. But there is no evidence to suggest that Rona Wong was involved in giving the instructions for the sale of 30,000 shares in Madam Lam's name on 15 May 1998. While the inference arises, from the mere fact of the family relationship and their living circumstances, that Clarence Wong would have discussed Gilbert's desperate situation with his mother at home, having heard and seen Madam Lam give evidence, we are not satisfied that that inference is established to a high degree of probability. We accordingly conclude that the evidence is insufficient to establish insider trading on the part of Madam Lam or any other person in relation to the sale of 30,000 Gilbert shares by Madam Lam on 15 May 1998.

255. Rona Wong accepts that she ordered the sale of Madam Lam's remaining 220,000 shares on 18 May 1998. She said she did so on her mother's instruction. Madam Lam was vague in her evidence, which is not surprising having regard to her age and the quality of her hearing. She asserted that she had given permission to Rona Wong to sell the shares, saying that she simply wanted to sell.

256. In our view the evidence is insufficient to establish that Madam Lam was in possession of relevant information at the time she instructed her daughter to sell the shares, and accordingly the act of Madam Lam in selling the shares has not been demonstrated to constitute insider dealing.

257. The evidence does not establish to a high degree of probability that Rona Wong told her mother of the relevant information which we have found she held at the relevant time. While the inference arises that she would have told her mother that Gilbert was in serious financial trouble and that it was best to sell the shares, it does not arise to a high degree of probability. However, we are satisfied, to a high degree of probability, that Rona Wong would have, at least, told her mother to sell the shares. For the reasons that we have demonstrated in considering Rona Wong's own dealings we concluded that she was acting desperately to sell all of the shares available. We are satisfied that that level of desperation on the part of Rona Wong would have inevitably led her to advise her mother to sell her shares, but not necessarily to give her precise reason why the shares should be sold. We are satisfied that when Rona Wong advised her mother to sell the shares, she knew or had reasonable cause to believe that her mother would in fact sell the shares. She was right. The mother gave her daughter instructions to sell.

258. Where a person who has relevant information counsels or procures another person to deal in securities, it is not necessary for that first person to pass on to that other person the relevant information. It is sufficient that a person in possession of relevant information counsels or procures another to deal in securities, knowing or having reasonable cause to believe that such a person would deal in the securities.

259. We conclude that on 18 May 1998, Rona Wong, being in possession of information which she knew to be relevant information, counselled or procured Madam Lam to sell her remaining 220,000 shares in Gilbert. We accordingly conclude in relation to that transaction, that insider dealing took place by Rona Wong contrary to s 9(1)(e) of the Ordinance.

Chapter 14

The Heidi Chin Muk Tse Dealings

260. Heidi Chin is the sister-in-law of Osric Ming. She is married to Osric Ming's eldest brother. On 29 January 1996, Heidi Chin opened a share trading account at Tanrich Securities Company Limited⁸⁰.

261. On 4 October 1996, 460,000 Gilbert shares were purchased at a cost of \$161,582.42. The amount due was apparently settled in cash, but the source of funds was not disclosed in evidence. A further 212,000 Gilbert shares were purchased on 23 October 1996, at a cost of \$208,072.94. Again the amount due was apparently settled in cash.

262. Purchases continued until 27 November 1996, at which time Heidi Chin held one million Gilbert shares. On that day all shares were sold for \$1,246,552.35. That sum was paid out from the account, but there is no evidence as to where it went.

263. However she began buying Gilbert shares again on 4 December 1996, and by 31 December 1996, she held 1,720,000 Gilbert shares and 280,000 Gilbert warrants. By 27 January 1997, her holding in Gilbert shares had increased to 1,936,000.

264. On 18 February 1997, Heidi Chin opened a share trading account with Jospa Investment Company Limited⁸¹. On 19 February 1997, the Tanrich account appears to have been closed and the shares transferred to another account. The Jospa account shows a deposit of precisely the same number of shares that were in the Tanrich account. There is no evidence as to the relationship between Tanrich and Jospa, but it seems beyond question that the shares were the same, and that they were merely transferred from the one brokerage to the other. Numerous sales and purchases of Gilbert shares thereafter took place through 1997. The account was used to trade other shares as well.

265. By 1 May 1998, Heidi Chin held 3,194,000 Gilbert shares in

⁸⁰ Ex 58.

⁸¹ TB Vol. 8 p.47 et. seq.

the Jospa account. She commenced selling those shares on 13 May 1998, selling 440,000 shares. A further 830,000 shares were sold on 14 May 1998, and 624,000 shares were sold on 15 May 1998. Following the weekend, on 18 May 1998, 520,000 shares were sold, and finally on 19 May 1998, the remaining 780,000 shares were sold.

266. Heidi Chin explained the selling of the shares by saying that she was concerned about the future of the company following the publication of the Harbin notification. She was unable to say why she waited nearly 10 days before commencing sales, nor could she explain just what aspect of the announcement led her to have such a concern that she undertook what were in effect panic sales.

267. Counsel for the Tribunal sought to argue that an inference arose on the whole of the evidence that Clarence Wong and Osric Ming had been using Mr Fok's and Mr Choi's accounts at Shenyin Wanguo to create a false market in Gilbert shares. Although accepting that funding for the acquisition of Gilbert shares in Heidi Chin's Jospa account appeared to have emanated primarily from an overdraft facility at HSBC of China in the joint names of Heidi Chin and her husband, secured by real estate they owned, counsel sought to contend that the Heidi Chin account was being used on the same basis.

268. While a degree of suspicion arises, we are not able to say, to a high degree of probability, that the Heidi Chin account was used in that way. There is no evidence that either Clarence Wong or Osric Ming knew that Heidi Chin owned shares in Gilbert. There is no evidence to suggest that funding for the account came from either Clarence Wong or Osric Ming. Equally there is no evidence to suggest that either Clarence Wong or Osric Ming benefited directly from any of the sales of the shares.

269. There is no evidence of any communication, or any opportunity of communication, (other than by landline telephone of which there would be no record), between Osric Ming and Heidi Chin or her husband at the relevant time.

270. There is a high degree of suspicion arising from the timing of the sales and the manner in which the sales were conducted. We are not convinced that the Harbin announcement was the primary justification for the sales. But that said, we are unable to say to a high degree of probability, that at the time the sales were made, Heidi Chin had information which she

knew was relevant information.

271. We are accordingly unable to find that insider dealing took place in relation to the sale of Gilbert shares by Heidi Chin on the five occasions on which she sold Gilbert shares between 13 May 1998 and 19 May 1998.

Chapter 15

Findings as to Insider Dealing

272. We now summarise our findings.

273. We have found that there was not insider dealing in respect of Gilbert shares during the reference period by or on behalf of the following individuals:

- (i) Ms Samantha Cheung Shu Yim; and
- (ii) Mr Waylex Fok Ying She, and
- (iii) Madam Lam Loy Lui, and
- (iv) Heidi Chin Muk Tse

274. We have found that there was insider dealing in respect of Gilbert shares during the reference period by all on behalf of the following individuals:

- (i) Mr Hung Shiu Shan:
 - i In relation to the sale, between 8 May 1998 and 14 May 1998, of 48,000 Gilbert shares, as set out in para. 205 hereof, held to his personal benefit in his Ewarton account, contrary to s 9(1)(e) of the Ordinance; and
 - ii In relation to the sale, between 8 May 1998 and 14 May 1998, of 1,010,000 Gilbert shares, as set out in para. 204 hereof, held by him for the benefit of Sunny Wong, contrary to s 9(1)(e) of the Ordinance;

(ii) Mr Sunny Wong Man Fu;

- i In relation to the sale, between 8 May 1998 and 14 May 1998, of 1,010,000 Gilbert shares, as set out in para. 204 hereof, held by Mr Hung Shiu Shan, for the benefit of Sunny Wong, contrary to s 9(1)(a) of the Ordinance; and
- ii In relation to the sale, between 8 May 1998 and 14 May 1998, of 48,000 Gilbert shares, as set out in para. 205 hereof, held by Hung Shiu Shan, contrary to s 9(1)(c) of the Ordinance;

(iii) Mr Clarence Wong Wing Wah,

- i In relation to the sale of 5,967,845 Gilbert shares, held to his personal benefit, in accounts held by Rona Wong, as set out in para. 251 hereof, contrary to s 9(1)(a) of the Ordinance, and
- ii In relation to the sale of 386,155 Gilbert shares in accounts held by Rona Wong, held to her personal benefit, as set out in para. 251 hereof, contrary to s 9 (1)(a) of the Ordinance, and
- iii In relation to the sale of 4,278,000 Gilbert shares, as set out in para. 232 hereof, held to his personal benefit in the account of Mr Fok Ying She at Shenyin Wanguo on 19 May 1998, contrary to s 9(1)(a) of the Ordinance;

(iv) Ms Rona Wong Yuen Wan:

- i In relation to the sale, of 386,155 Gilbert shares in accounts held by her for herself personally, as set out in para. 252 hereof, contrary to s 9(1)(e) of the Ordinance, and

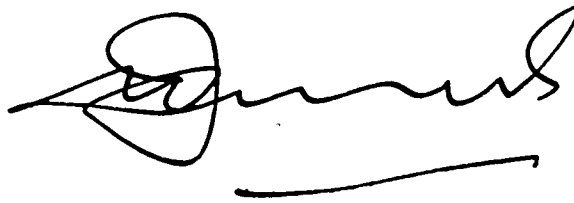
- ii In relation to the sale by Madam Lam Loy Lui of 220,000 Gilbert shares on 18 May 1998, as set out in para. 259 hereof, contrary to s 9(1)(e) of the Ordinance, and
- iii In relation to the sale of 5,967,845 Gilbert shares, held to the personal benefit of Clarence Wong, in accounts held by her, as set out in para. 252 hereof, contrary to s 9(1)(e) of the Ordinance.

Chapter 16

Conclusion

275. Chapters 1- 15 are now forwarded to the Financial Secretary in response to the questions raised by his notice of 26 August 2002, in sub-paragraphs (a) and (b) thereof.

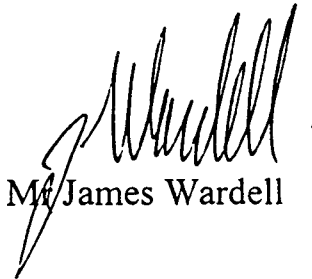
276. In due course, after hearing from Counsel assisting the Tribunal, and Counsel representing those found to be insider dealers, and in person from those insider dealers who were unrepresented, or if they wish from counsel to be instructed on their behalf, we will provide our response to sub-paragraph (c) of the Notice, and set out the terms of any penalties imposed and orders made by us.



His Honour Judge John Saunders

(Deputy High Court Judge)

Chairman



Mr James Wardell

Member



Mr Hui Sik Wing

Member

11 May 2005

Introduction

We now submit the second part of the Report of our findings in relation to the Financial Secretary's notice pursuant to section 16 of the Securities (Insider Dealing) Ordinance Cap 395, (the Ordinance), dated 26 August 2002, requesting the Insider Dealing Tribunal to conduct an inquiry into certain dealings in the listed securities of Gilbert Holdings Limited, (the company), between 1 January 1998 to 19 May 1998, (the Notice).

The second part of the Report constitutes our findings in relation to the third question raised by the Notice. By paragraph (c) of the Notice we are required to inquire into and determine the amount of any profit gained or loss avoided by those persons we identified as insider dealers.

With this second part of the Report are the orders we have made under ss 23, 26, 26A and 27 of the Ordinance.

As subsection 23(2) of the Ordinance provides that the Tribunal shall not make an order in respect of any person under subsection 23(1) without first giving that person an opportunity to be heard, we sat on 8 November 2005, to hear submissions from the implicated persons and Counsel to the Tribunal relating to:

1. the calculation of any profit gained or loss avoided as a result of the insider dealing we found proved;
2. the appropriate financial penalties and orders under s 23 of the Ordinance consequent upon our findings of insider dealing;
3. what witness expenses should be granted under s 26 of the Ordinance;
4. what costs should be awarded to the implicated persons under s 26A of the Ordinance;
5. what orders, if any, should be made under s 27 of the Ordinance.

Of the nine implicated persons, (eight of whom had been served with Salmon letters), only Samantha Cheung Shu Yim and Waylex Fok Ying She chose to make submissions to us. Osric Ming Chung Yee had not been served with the Salmon letter, and took no part in the inquiry. Clarence Wong Wing Wah made written submissions, but did not attend the hearings. Hung Shiu Shan and Sunny Wong Man Fu chose not to make submissions, but requested a transcript of the proceedings, which was duly supplied to them. Rona Wong Yuen Wan and Heidi Chin Muk Tse chose not to appear, nor to make written submissions to us. Madam Lam Loy Lui passed away prior to the hearing. Mr Waylex Fok instructed counsel who made submissions to us. Samantha Cheung made a written submission, and appeared in person, but did not wish to say anything further in addition to that written submission.

Save where the context otherwise requires it, the same terms and abbreviations in the first part of the Report are used in this second part. Where sums of money are referred to, cents are ignored and the figures are rounded up or down to the nearest dollar.

CHAPTER 17

Calculation of losses avoided

277. By paragraph (c) of the Notice we are required to inquire into and determine the amount of any profit gained or loss avoided by those persons we identified as insider dealers. None of the four implicated persons we identified as insider dealers made, or were involved in the making of, any profit from their trading. However, the trading that was undertaken that has been identified as insider dealing trading involved the avoidance of loss. Each of the four implicated persons avoided, or were involved in the avoidance of losses.

A correction in relation to Mr Hung and Sunny Wong:

278. In our First Report, (para 205), we held that Mr Hung sold 48,000 Gilbert shares between 8 May 1998, and 14 May 1998, which shares were held to his personal benefit. In relation to those shares, we held that that transaction constituted insider dealing contrary to s 9(1)(e) of the Ordinance. In relation to the same shares we held that Mr Sunny Wong was an insider dealer contrary to s 9(1)(c) of the Ordinance.

279. We are grateful to Counsel to the Tribunal for pointing out to us that in fact those 48,000 shares were sold prior to 8 May 1998, and accordingly the transaction cannot be constituted as an insider dealing transaction. In this respect our findings as recorded at para 274(i) i, and (ii) ii of our First Report stand corrected.

The principles behind the calculation:

280. There is no provision in the Ordinance setting out how the Tribunal should calculate losses avoided. The principles to be applied in the calculation of losses avoided are set out in the judgement of the Court of Final Appeal in *Insider Dealing Tribunal v Shek Mei Ling* [1999] 1 HKLRD 879.

281. A notional exercise must be performed. The calculation of the amount of loss avoided involves a comparison between the amount realised

by the insider dealer from the shares sold, before the market learned the bad news, and the market value of the shares at a date which had to be identified as the appropriate date. Failing cogent evidence that, in any event, the shares would have been sold before the market announcement, the appropriate date would usually be a date by which the market learned and absorbed the relevant information. Transaction costs, if any, are deducted from the gross loss avoided. Favourable or unfavourable extraneous factors are to be ignored.

282. In carrying out this exercise the Tribunal has regard to the trading record of the shares in question. The date on which the information became known to the market is usually capable of precise determination and the trading statistics on, and after, that date will normally show the effect the information had on the market. If a significant increase in volume or increase or decline in value, or both, is seen on a day, or a number of days, within a reasonable period of time after the release of the information, it is not unreasonable for the Tribunal to accept that day as being the appropriate date. In appropriate circumstances, it may well be the actual date on which the information was made public.

The date the relevant information became public:

283. We are satisfied that the relevant information as to the financial crisis faced by Gilbert was not publicly known until Gilbert published an announcement on the morning of 29 May 1998. It is right that in the days prior to that there had been speculation in the Chinese press as to the state of affairs at Gilbert, and that a publication of a rumour in Apple Daily on 24 May 1998, had resulted in the share price falling by 30%. But that was merely a rumour and was not itself relevant information. As a result of the announcement of 29 May 1998, the share price fell 26.3%.

284. The evidence as to the extent of losses avoided was given to us by Stella Fung Sau Hong, whose expertise we have accepted. None of the persons determined to be insider dealers challenged the evidence of Ms Fung. It was her evidence, which we accept, that the relevant information had been fully digested and absorbed by the investing public by the close of business on 3 June 1998.

285. We accordingly conclude that the appropriate date at which the losses avoided should be determined is 3 June 1998, and that the average traded price of \$0.1484 is the appropriate price at which losses should be

determined.

Determination of the losses avoided:

286. In the present case the shares sold as a result of insider dealing were shares which were variously held, either for the personal benefit of the legal holder of the shares, or for the benefit of some other person, for whom the legal holder held the shares in trust. The evidence of Ms Fung attributed losses both to the legal holder of shares, and to the beneficial holder of the shares. Such a method of calculation has the effect of imposing a double accounting of the loss avoided to a sale of shares. We are satisfied that when calculating the loss avoided only one sum may be calculated in respect of any one parcel of shares. As to where the burden of repaying that loss pursuant to any orders made by the Tribunal should fall, that matter must be dealt with separately.

287. Thus, when determining the amount of the loss avoided, we do so having regard to the legal owner of the shares at the time of the sale. For convenience, we have interpolated the beneficial owner of each parcel of shares in the following schedule.

288. On that basis, the losses avoided are as follows:

Mr Hung:	Loss avoided
1,010,000 shares (held for the benefit of Sunny Wong)	\$353,293
Fok Ying She	
4,278,000 shares (held for the benefit of Clarence Wong)	\$438,070
Rona Wong	
386,155 shares held to her personal benefit	\$110,673
5,967,845 shares (held for the benefit of Clarence Wong)	\$1,316,471

Lam Loy Lui

220,000 shares (held for her personal benefit)	\$52,815
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Total losses avoided:	\$2,271,322
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Schedules setting out the foregoing losses avoided are at Annexure J.

CHAPTER 18

Determination of penalties and other orders

289. Section 23(1) of the Ordinance sets out the penalties we may impose. It reads as follows:

“(1) At the conclusion of an inquiry or 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.”

290. We have determined the losses avoided by the persons who were the legal owners of the shares sold in the relevant period in Chapter 17. Orders under s 23(1)(b) have traditionally been described as “disgorgement orders”, and orders under s 23(1)(c) have traditionally been described as “penalty orders”. We adopt those descriptions.

291. We are satisfied that the effect of the use of the expression, “by that person”, in s 23(1)(b), is that a disgorgement order cannot be made against an insider dealer who counsels or procures others to deal, but does

not do so himself, and therefore, personally, neither makes a gain nor avoids a loss. A person who holds shares on trust for another, that is one who holds the legal title to shares for the benefit of another, as is the situation in this inquiry, does not himself make a gain nor avoids a loss on the sale. The person who makes a gain or avoids a loss is the person for whose benefit the shares are held. We are satisfied that disgorgement orders ought therefore to be made against those for whose benefit the shares were held.

292. There is no similar restriction in relation to a penalty order. A penalty order may be imposed upon any person who has been identified as an insider dealer. The penalty may not exceed three times the amount of any profit gained or loss avoided, “by any person” as a result of the insider dealing: see s 23(1)(c).

293. Thus, in determining penalty where shares are legally held by a person for the benefit of another person, the Tribunal may look at the gain made or the loss avoided by that other person in determining any penalty to be imposed on the legal holder of the shares, even when that person has made no personal gain, nor suffered a loss.

294. Although not so described in the Ordinance a penalty order is comparable to a fine. Its purpose is to deter insider dealing by leaving a person who engages in insider dealing substantially out of pocket, whether that person has for their own benefit engaged in insider dealing, or for the benefit of others.

Principles of assessment:

295. In the decision of the Court of Appeal in *Shek Mei Ling v Insider Dealing Tribunal* [1998] 4 HKC 37, at 51D-52B Nazareth VP outlined the principles to be applied in assessing financial penalties under s 23(1) of the Ordinance. These warrant setting out in full:

“(1) The fact that the insider dealer presented to SFC investigators a false story does not go in aggravation of the penalties which would otherwise be imposed. It is merely that he who admits fraud at the very outset will be credited for that fact.

(2) The effect of admission before the Insider Dealing

Tribunal especially at an early stage is a fact which goes in mitigation of the penalty, though in a strong case that will carry less weight than in a case where the evidence is not strong.

(3) Where an admission is put forward on a basis which is believed, the credit for the admission will be less than it would otherwise be.

(4) Financial penalties are to accord with the gravity of the wrongdoing, and are to be increased by reason of the substantial wealth of the insider dealer.

(5) The Tribunal should not impose a financial penalty on an assumption that someone else will pay.

(6) In determining whether to disqualify an insider dealer from holding offices as a director of a listed company, or of listed companies, there come into play at 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 the 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 offices 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 private company; and the impact upon the individual of such a disqualification.

(8) Where an incident in, or connection with, the inquiry, gives rise to a justified sense of grievance, the Tribunal should recognise and take that fact into account in determining the appropriate penalties.

(9) In making its orders under section 23(1)(b) and (c) and section 27, the Tribunal should have regard to the totality of the financial burden imposed by these orders.”

296. These principles were not questioned when the matter went before the Court of Final Appeal, and we have taken those principles into account in assessing the financial penalties.

Disgorgement orders:

297. The plain purpose of a disgorgement order is to ensure that an insider dealer does not benefit from the insider dealing, whether by gaining a profit not available to others, or by avoiding a loss suffered by others. Consequently, it should only be in very exceptional circumstances, such as proved lack of means, that it will be appropriate that a disgorgement order should be any sum less than the profit gained, or the loss avoided.

298. In a letter addressed to the Tribunal, Clarence Wong asserted that he has been unemployed since Gilbert was placed in receivership in September 1999. He said that the adverse publicity of the case had affected his reputation and has made it difficult for him to get back into the industry ought to getting employment. There was no evidence to support these assertions. He produced no evidence whatsoever to us of any assets he may have. He chose not to explain to us how, notwithstanding the difficulties he may have had in getting employment, he has provided for his means of living since September 1999. In the absence of any such evidence we draw the inference that he has sufficient means, and has assets which he prefers not to disclose to the Tribunal. In his letter he described health conditions from which he suffers. He placed no medical evidence before us to substantiate those assertions.

299. Rona Wong, Mr Hung, and Sunny Wong all chose not to place any evidence before us at all. In the absence of any evidence we draw the inference that each has income upon which they can live, and that they have assets, from which they can meet penalty and disgorgement orders, which they prefer not to disclose to the Tribunal.

300. Weighing these matters, and applying the principles in *Shek Mei Ling*, outlined above, we are satisfied that there is no reason to depart from the usual principle that disgorgement orders ought to be made in the sums equivalent to the loss avoided by each person for whose benefit insider dealing took place.

301. We accordingly order that the following persons, found to be insider dealers, and having benefited by avoiding losses, must, pursuant to s 23(1)(b) of the Ordinance pay to the Government the following sums:

(i) Clarence Wong	\$1,754,541
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(ii)	Sunny Wong	\$ 353,293
(iii)	Rona Wong	\$ 110,673

302. Madam Lam Loy Lui was not found to be an insider dealer, in relation to 220,000 Gilbert shares sold on 18 May 1998, (see para 259, First Report above). We accept the evidence of Ms Fung that the loss avoided in relation to that sale amounts to \$52,815. As Madam Lam was not found to be an insider dealer, the Tribunal has no jurisdiction to make a disgorgement order in relation to the loss avoided by her.

Penalty orders:

303. While disgorgement orders may only be made against those who benefit, either by way of profit or through the avoidance of loss from insider dealing, penalty orders may be made, not only against those who benefit from insider dealing, but also against those who facilitate insider dealing. In the present case we are of the view that no distinction should be drawn, in relation to penalty, between those who benefited from the insider dealing, and of those who facilitate it. As the level of penalty that may be imposed is related to the amount of any profit gained or loss avoided by any person as a result of the insider dealing, those sums will be appropriate in determining the penalty to be imposed on those who have not benefited directly, but who have facilitated insider dealing.

304. The matters set out above in relation to Clarence Wong, (see para 298 above), are the matters that he relied upon by way of mitigation in relation to penalty orders. As we have set out, Mr Hung, Sunny Wong, and Rona Wong elected to put nothing before us by way of mitigation.

305. There was no evidence to indicate that any of the persons found to be insider dealers were other than persons of good character, in the sense that there was no evidence that any of them had previous criminal convictions, nor that they had previously been found to be insider dealers. However, like the Tribunal in the *Siu Fung*⁸² Inquiry, we take the view that previous good character counts for little in matters of insider dealing. Those who have committed criminal offences, or engaged in previous acts of insider dealing, are very rarely placed in positions of authority within

⁸² Second Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Siu Fung Ceramics Holdings Limited dated 25 October 2004, p. 14.

listed companies or put in a position to commit insider dealing.

306. Having regard to all of the information available to us as set out in our First Report, and in this Report, we have come to the conclusion that an appropriate penalty to be imposed in relation to each of the four persons whom we have found to be insider dealers is a sum equal to 1.5 times the amount of the loss avoided by the insider dealing. In reaching this conclusion we have had due regard to the totality of the financial burden imposed by the orders we have made.

307. We accordingly order that the following persons, found to be insider dealers, must pursuant to s 23(1)(c) of the Ordinance pay to the Government the following sums by way of penalty:

Mr Hung Shiu Shan, the penalty based upon the loss avoided by Sunny Wong in the sum of \$353,293. Penalty: \$ 529,940

Mr Sunny Wong Man Fu, in relation to the loss avoided by him in the sum of \$353,293: Penalty: \$ 529,940

Mr Clarence Wong Wing Wah, in relation to the loss avoided by him in the sum of \$1,754,541:

	Penalty:	\$2,631,812
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Ms Rona Wong Yuen Wan

(i) The penalty based upon the loss avoided by Madam Lam in the sum of \$52,815: Penalty: \$ 79,223

(ii) The penalty based upon the loss avoided by Clarence Wong in the sum of \$1,316,471: Penalty: \$1,974,707

(iii) In relation to the loss avoided by her in the sum of \$110,673:
Penalty: \$ 166,010

Total penalty imposed on Rona Wong: \$2,219,940

Disqualification orders:

308. We now deal with the question of disqualification orders pursuant to s 23(1)(a) of the Ordinance. A disqualification order may be made both in relation to a publicly listed company or a private company or both. The order may extend beyond disqualification from holding the office of director of a company to the positions of a liquidator, or a receiver or manager of the property of a listed company and may prohibit indirect management of companies.

309. Insider dealing is of its nature serious and is an attack on the credibility of the open market system. Those who indulge in insider dealing, by that indulgence, demonstrate to the world at large that they are unfit to hold the office of a director, particularly of a publicly listed company. Having regard to these factors it is our view that it would only be in exceptional circumstances that the Tribunal, having found a person to be an insider dealer, would not make a disqualification order.

310. In arriving at our decision to make disqualification orders we have taken into account the need to ensure the integrity of the securities market; to protect the public from further abuse by the insider of the privileged position of trust which the office of a director carries; to deter others from breaching that trust; and to mark the disapproval of the investment community of insider dealing generally.

311. There was nothing in the information put before us by Clarence Wong to lead us to find any exceptional circumstances. Mr Hung, Sunny Wong and Rona Wong all chose to say nothing in relation to this aspect of the matter.

312. In reaching our conclusion we have had regard to the whole of the evidence in the Inquiry in relation to each of the four insider dealers. There is no evidence at all that a disqualification order would have any adverse impact upon any of the four insider dealers, none of whom are presently directors of publicly listed companies. We note that Mr Hung is a director of one private trading company, and Clarence Wong is a director of one company limited by guarantee, (a school association company). We are of the view that there are no exceptional circumstances arising either from the nature of the insider dealing committed or from the personal circumstances of each of the four insider dealers that would justify us in not making disqualification orders.

313. There will be an order that Clarence Wong Wing Wah, Hung Shiu Shan, Sunny Wong Man Fu and Rona Wong Yuen Wan shall not, without the leave of the Court of First Instance, 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 three years. Pursuant to s 23(5) of the Ordinance this order shall take effect from the date on which it is notified to the person named in the order.

CHAPTER 19

Costs and expenses

Witness expenses:

314. Section 26 of the Ordinance gives a discretion to the Tribunal to award a witness expenses to any witness who may attend to give evidence at an inquiry. In the course of the hearing, we awarded TW9, Ms Wong Sau-kuen the sum of \$52 by way of expenses pursuant to this section.

Costs:

315. Section 26A of the Ordinance gives the Tribunal a discretion to award, to a person whose conduct has been the subject of an inquiry, the costs reasonably incurred by that person. The costs so awarded constitute a charge on the general revenue and may be taxed under the provisions of Order 62 of the Rules of the High Court.

316. The discretion of the Tribunal to award costs to a person who has been the subject of an inquiry is limited by the provisions of s 26A(5). Consequently, a person who has been identified as an insider dealer has no right to apply for costs: see s 26A(5)(a). A person who is not identified as an insider dealer may make an application for costs, but must also establish that he is not barred from making an application by the provisions of s 26A(5), the relevant portion of which is as follows:

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

.....

- (d) 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 institution of the inquiry under section 16.”

Application for costs by Mr Fok:

317. Waylex Fok Ying She was one of the six persons named in the Notice as persons who had undertaken the dealings in the listed securities of Gilbert and into which inquiry was to be made. In the event, for the reasons set out in Chapter 11 of the First Report, we did not find Mr Fok to be an insider dealer. Mr Fok, having not been found to be an insider dealer, was not barred by s 26A(5)(a), but still had to surmount the obstacle against such an application in s 26A(5)(d).

318. The factual background relevant to the issue of Mr Fok's application for costs may be shortly stated.

319. At the request of either Clarence Wong or Osric Ming, Mr Fok established a share trading account at Shenyin Wanguo. At the time the account was established Mr Fok had no intention of using it himself and believed that it would be used for the trading of shares by Osric Ming. He followed the instructions of Samantha Cheung, whom he knew to be a secretary to the directors of Gilbert, in dealing with funds required for, or yielded from, share transactions in through the account.

320. Following the disposal of Gilbert shares by Clarence Wong at the time of the Gilbert financial crisis, Mr Fok, at the instigation of Samantha Cheung, engaged in a money laundering exercise designed to conceal the passage of the proceeds of the sale of shares from his account at Shenyin Wanguo, which went ultimately to Clarence Wong.

321. When the matter came under the scrutiny of the SFC, Mr Fok met with Clarence Wong and Osric Ming and agreed to present to the SFC a false story in relation to the trading through the account, claiming that it was his own. At that time he also attended the offices of Shenyin Wanguo and was shown false documentation in relation to the account. He recognised that it was false, but took no steps, other than to supply Shenyin Wanguo with a copy of his identity card.

322. On five different occasions between August 1998, and May 2000, a period of nearly 2 years, Mr Fok made false statements to the SFC in accordance with the agreement he had reached with Clarence Wong and Osric Ming. It was not until 11 September 2004, six years after he was first interviewed by the SFC, and some seven weeks prior to the commencement

of the substantive Inquiry that, through his solicitors, he supplied a witness statement in which he set out the circumstances ultimately accepted by the Tribunal as the truth.

323. Mr Fok duly attended the Inquiry when required and gave evidence in accordance with that statement.

324. The essential question that must be considered in relation to Mr Fok's application for costs is whether the Tribunal is of the view that by his own acts or omissions he has caused or brought about, whether wholly or in part, the institution of the inquiry.

325. The argument made by Mr Marash SC, for Mr Fok, was that Mr Fok had never been more than a peripheral actor in a limited number of the numerous suspicious transactions that formed the basis of the Inquiry. Together with that, Mr Marash submitted that it must have been abundantly plain to the investigators at SFC, from the money trail showing funds beginning and ending with Clarence Wong, that Mr Fok was not telling the truth.

The relevant law:

326. There appears to be some difference of opinion in past Tribunals as to the interpretation of the crucial expression in s 26A(5)(d):

“caused or brought about (whether wholly or in part).”

In *Financial Secretary v Wong* (2003) 6 HKCFAR 476, Ribeiro PJ, at 505J, noted that s 26A:

“plainly seeks to provide a complete code concerning (the) entitlement (to costs of persons implicated in an insider dealing inquiry).”

But in that case, the conclusion of the inquiry not having been reached, no particular consideration was given to the scope of the provision.

327. In the *Chinese Estates*⁸³, *Hanny*⁸⁴, and *Siu Fung*⁸⁵ inquiries the Tribunal appears to have adopted a broad approach to the interpretation of the expression, holding that it would be sufficient if the acts or omissions of the person concerned materially contributed to the institution of the inquiry. In the *Stime Watch*⁸⁶ inquiry the Tribunal took the view that the provision required it to be satisfied that the acts or omissions of the cost applicant was at least partly responsible for the institution of the inquiry.

328. A narrower approach was taken in the *Chee Shing*⁸⁷ inquiry, and the *Lippo*⁸⁸ inquiry where the Tribunals' took the view that despite adverse findings against costs applicants, since the inquiry would have been instituted anyway, their acts were not considered to have caused or brought about the institution of the inquiries. This narrow view appears to pay little regard to the expression "whether wholly or in part".

329. We are satisfied that in the application of s 26A(5)(d) a broader view ought to be taken of the expression "caused or brought about (whether wholly or in part)". It may well be that the acts or omissions of one particular person may not be the sole, or even the prime contributing factor, to the institution of an inquiry. We are satisfied that by the use of the expression "whether wholly or in part" the Legislature intended simply that the acts or omissions of the person in question must have been a material contribution to the institution of the inquiry or that those acts or omissions were at least partly responsible for the institution of the inquiry.

Mr Fok's acts and omissions:

330. Mr Fok's acts in opening the account at Shenyin Wanguo and allowing it to be used for share trading by another person without having

⁸³ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Chinese Estates Holdings Ltd dated 25 June 1999, p. 108, (Hartmann J)

⁸⁴ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Hanny Holdings Ltd formerly known as Hanny Magnetics Ltd dated 15 June 2000, p. 252, (Hartmann J)

⁸⁵ Second Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Siu Fung Ceramics Ltd dated 25 October 2004, p. 22, (Lugar-Mawson J)

⁸⁶ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Stime Watch International Holdings Ltd dated 14 February 2003, p. 173, (McMahon J)

⁸⁷ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of Chee Shing Holdings Ltd dated 27 June 2001, p. 98, (Burrell J)

⁸⁸ Report of the Insider Dealing Tribunal of Hong Kong on whether insider dealing took place in relation to the listed securities of HKCB Bank Holding Company Ltd and Hong Kong China Ltd, now renamed Lippo China Resources Ltd dated 9 August 2005, p. 15-17, (Lugar-Mawson J)

regard to the trading was taking place directly enabled Clarence Wong to undertake insider dealing. In that respect Mr Fok's acts were a material contribution to the institution of the inquiry, for had there been no insider dealing by Clarence Wong through the account, then there would have been no inquiry into Mr Fok's acts.

331. Right up until seven weeks prior to the substantive hearing Mr Fok persisted in the false story that the trading was his own. It is right that he did so in the face of the money trail, and the almost inevitable conclusion that his lies would be found out. But so long as he persisted in that position, the need to involve him in the Inquiry to the extent that he was, including being named in the Notice, and being a recipient of a Salmon letter, meant that he was materially contributing to the need for the Inquiry.

332. We accordingly conclude that Mr Fok's own acts or omissions, in part, caused or brought about the inquiry, and that we are accordingly precluded by s 26A(5)(d) from exercising any discretion we may have in relation to costs in his favour.

If we do have discretion:

333. In case we are wrong in that conclusion we have given consideration to the issue as to whether or not we ought to exercise that discretion to award costs to Mr Fok having regard to the whole of the circumstances. There is nothing in the legislation to indicate how the broad discretion ought to be exercised. The situation is the same in relation to the costs of a successful defendant in criminal proceedings: see s 73A Criminal Procedure Ordinance Cap. 221.

334. That provision was considered in *Tong Kun Ling v HKSAR* [1999] 2 HKCFAR 531 at 535 where the Court of Final Appeal said:

“When a defendant has been brought to trial upon particular charges and is then found not guilty it is clearly right that he should normally be compensated out of public revenue for the costs incurred in defending those charges. In considering whether, despite this general rule, he should be deprived of all or part of his costs, the judge exercising the discretion must obviously look to his conduct generally, so long as such conduct is relevant to the charges he faced. This cannot be confined to any particular

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

335. We have had regard to the decision in *Ng Yui-kin & Ors v R* [1983] HKLR 356. In so far as it states the law, it must be read in the light of the subsequent decision in *Tong Kun Ling*. Further, it is distinguishable on its facts. In that case the defendant had revealed everything well before a prosecution decision was made. In the present case, it was not until seven weeks before the commencement of the substantive inquiry and six years after he was first interviewed, that Mr Fok made a different, contrary and exculpatory, statement. In the whole of the circumstances Counsel for the Tribunal was perfectly entitled to regard the subsequent statement as itself potentially false, even allowing for the money trail, and, as he did, to properly test that statement in the hearing.

336. In reaching our decision on the exercise of discretion as to Mr Fok's costs we apply the principles laid down in *Tong Kun Ling*.

337. The following further facts are relevant.

338. First, Mr Fok was willing to open a share trading account in his name and allow others to use it without any regard to the trading was taking place. Mr Marash submitted that Mr Fok did not have any real reason to think that insider dealing would be taking place because he did not actually know which shares were being traded through the account.

339. It is right that in his evidence⁸⁹, Mr Fok said that he did not know that the account was used to acquire or trade in Gilbert shares. We

⁸⁹ TR Day 16 p. 55 l. 4

find that answer to be disingenuous in the extreme. Only by completely closing his eyes to the obvious could Mr Fok have held that view at the time the account was opened. There is no other sensible reason for Osric Ming to wish to trade shares in Mr Fok's name. When asked if it occurred to him that Osric Ming wanted to hide his share trading from some person, Mr Fok responded that he could not be sure. Again that is an utterly disingenuous answer. There can be no other reason for asking Mr Fok to open the account in his name and to allow others to use it for trading.

340. When pressed as to what legitimate reason a person might have to allow another person to use his share trading account, Mr Marash first suggested that a director of a company such as Gilbert may wish to trade in Gilbert shares, not insider dealing, but that: *"he did not want people to know he was trading in them because it might affect the price movement of the shares"*. As a second reason, Mr Marash said it might be for tax reasons.

341. Neither are legitimate reasons. At the time of the trading under examination, a director of a listed company was required by law to disclose to the public any trading at all undertaken by him in the shares of the company in which he is a director, within five days of that trading. That time limit has now been reduced to three days. The reduction in the time limit serves only to emphasise the importance placed upon the notion that the public, as investors in publicly listed companies, are entitled to know virtually immediately about any dealings undertaken by a director of such a company in the shares he holds in that company. It is plainly not legitimate to conceal, from the Inland Revenue Department, potentially taxable profits made in share trading by undertaking that share trading in another person's name.

342. At the time the final sales of the shares were effected by Clarence Wong, Mr Fok chose to accede to instructions plainly designed to disguise the flow of funds from the proceeds of sale, by the use of the bank account of the company he owned, (Merry Mark), withdrawing the proceeds from that account and making them payable to Clarence and Rona Wong's father's account. We accept the submission of Counsel for the Tribunal, that in so doing, Mr Fok must have known that there was something to hide, and yet he obliged without demur.

343. We have already recorded that Mr Fok lied to the SFC on no fewer than five occasions so as to cover up the role of Clarence Wong, and

with a view to misleading the SFC in their investigation. We have recorded that when he became aware of false documentation in relation to the opening of the trading account at Shenyin Wanguo he acquiesced in that false documentation. These were lies, concealment and acquiescence in deceit which was made not out of impulse, but was well-planned, over a long period of time, and persisted with until a very late stage.

344. It is right that in the *Chee Shing*⁹⁰ Inquiry a person named in the Notice, who made conflicting statements to SFC, was awarded 50% of his costs. But in that case both of the statements were made during the course of the investigation stage and well before the institution of the inquiry. There is nothing in the case to indicate behaviour subsequent to the insider dealing, designed to conceal the matter from the SFC, and persisted in virtually to the date of trial, as is present here.

345. Having regard to all the circumstances we can put it no better than the Tribunal did in relation to the costs of an applicant in the *Lippo*⁹¹ inquiry. Were we to grant Mr Fok his costs, or even a part thereof, we would only be rewarding deceit and mendacity. We accordingly conclude that even if we did have the jurisdiction to consider a costs application by Mr Fok, we would exercise that discretion against the grant of costs.

Application for costs by Samantha Cheung:

346. Samantha Cheung sought payment of costs in the sum of \$10,000, comprising legal fees for professional advice received by her in relation to the Inquiry. The Tribunal concluded that the evidence was insufficient to establish, to the necessary degree of proof, that her sales were conducted with the knowledge of relevant information, so as to render the sales culpable as insider dealing.

347. While we accept that in the normal course of events it is not surprising for an employee of a public company to buy shares in that company, such an employee must take great care when buying or selling such shares. Samantha Cheung was a secretary to the directors of Gilbert and must have realised that she was in a privileged position in relation to the directors. She should have been aware that by virtue of that position any share dealings she undertook might well incur suspicion and cause an

⁹⁰ Supra FN 88.

⁹¹ Supra FN 90 p.14

inquiry to be instituted against her.

348. While we are not satisfied that any act or omission on her part contributed to the institution of the inquiry, by acting upon any rumours there might have been amongst the staff in Gilbert, and upon her own knowledge of the fact that Gilbert was experiencing financial difficulties, she brought suspicion on herself. For these reasons we exercise our discretion against an award of costs to Samantha Cheung.

Expenses:

349. Pursuant to s 27 of the Ordinance, the Tribunal has the discretion to order any person who has been identified as an insider dealer to pay to the Government such sums as it thinks fit in respect of the expenses of and incidental to the inquiry, and any investigation of his conduct or affairs, made for the purposes of the inquiry.

350. The cost of this Inquiry has been assessed at \$3,648,439. These costs include the following:

- (a) the SFC's expenses, on a time basis, in assisting the Tribunal in the preliminary and substantive hearings;
- (b) the cost of the Department of Justice including Counsel's fees;
- (c) the Tribunal's costs, that is the fees and salaries of the Tribunal members and staff, and expenses such as interpretation services, court reporting services, and photo copying, directly attributable to the Inquiry itself. In keeping with previous practice, establishment expenses are not included.

Annexure K gives details of these costs.

351. No reason has been suggested to us by any of the four insider dealers as to why the usual order, that those found to be insider dealers should meet the costs of the Inquiry, should not be made. There will accordingly be an order that Clarence Wong Wing Wah, Hung Shiu Shan,

Sunny Wong Man Fu and Rona Wong Yuen Wan, shall, jointly and severally, pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 27 of the Ordinance the sum of \$3,648,439, being the costs and expenses of the Inquiry.

CHAPTER 20

The Tribunal's Orders

352. We now set out the orders that we have made under ss 23 & 27 of the Ordinance.

Clarence Wong Wing Wah:

353. We order that:

1. Clarence Wong Wing Wah shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or a manager 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 three years from the date on which he is notified of this order;
2. Clarence Wong Wing Wah shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(b) of the Ordinance the sum of \$1,754,541, being the loss avoided in relation to his insider dealing in the listed securities of Gilbert Holdings Limited;
3. Clarence Wong Wing Wah shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(c) of the Ordinance, a penalty of \$2,631,812, in respect of his insider dealing in the listed securities of Gilbert Holdings Limited.

Hung Shiu Shan:

354. We order that:

1. Hung Shiu Shan shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or a

manager 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 three years from the date on which he is notified of this order;

2. Hung Shiu Shan shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(c) of the Ordinance a penalty of \$529,940, in respect of his insider dealing in the listed securities of Gilbert Holdings Limited.

Sunny Wong Man Fu:

355. We order that:

1. Sunny Wong Man Fu shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or a manager 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 three years from the date on which he is notified of this order;
2. Sunny Wong Man Fu shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(b) of the Ordinance the sum of \$353,293, being the loss avoided in relation to his insider dealing in the listed securities of Gilbert Holdings Limited;
3. Sunny Wong Man Fu shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(c) of the Ordinance, a penalty of \$529,940, in respect of his insider dealing in the listed securities of Gilbert Holdings Limited.

Rona Wong Yuen Wan:

356. We order that

1. Rona Wong Yuen Wan shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or a manager 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 three years from the date on which she is notified of this order;

2. Rona Wong Yuen Wan shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(b) of the Ordinance the sum of \$110,673, being the loss avoided in relation to her insider dealing in the listed securities of Gilbert Holdings Limited;
3. Rona Wong Yuen Wan shall pay to the Government of the Hong Kong Special Administrative Region, pursuant to s 23(1)(c) of the Ordinance, a penalty of \$2,219,940, in respect of her insider dealing in the listed securities of Gilbert Holdings Limited.

Expenses:

357. We order that Clarence Wong Wing Wah, Hung Shiu Shan, Sunny Wong Man Fu and Rona Wong Yuen Wan, shall, jointly and severally, pay to the Government of the Hong Kong Special Administrative Region, under s 27 of the Ordinance the sum of \$3,648,439 in respect of the costs of the Inquiry.

Costs applications:

358. The applications of Waylex Fok Ying She and Samantha Cheung Shu Yim for costs are refused.

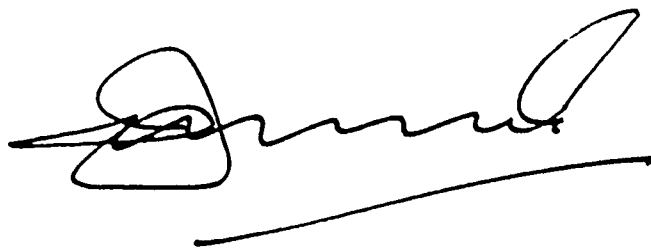
Payment:

359. All the orders for financial penalties, disgorgement orders, and costs, shall be paid on or before 31 March 2006. If not paid on or before that date, the sums will bear interest at the judgement rate until payment.

Registration of Orders:

360. Pursuant to s 29 of the Ordinance, these orders will be

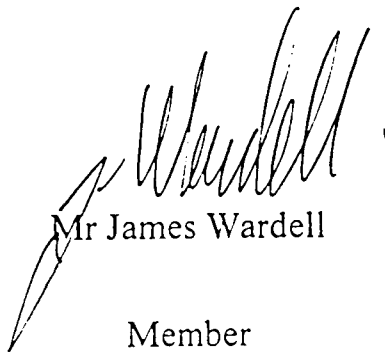
registered with the Court of First Instance of the High Court of the Hong Kong Special Administrative Region, and become for all purposes orders of the Court of First Instance made within the jurisdiction of that court.

A stylized, handwritten signature in black ink, featuring a large, looped initial 'S' followed by a series of connected, wavy strokes.

His Honour Judge John Saunders

(Deputy High Court Judge)

Chairman

A handwritten signature in black ink, appearing to read 'James Wardell', with a long, sweeping horizontal stroke at the end.

Mr James Wardell

Member

A handwritten signature in black ink, appearing to read 'Hui Sik Wing', with a distinctive looped initial 'H'.

Mr Hui Sik Wing

Member

15 December 2005

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure A

Trading statistics of Gilbert shares on the Stock Exchange of Hong Kong for the period 1 August 1997 to 11 June 1998

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
01/08/1997	2,272,000	1.330	1.310	1.320	2.33	16,379.220
04/08/1997	1,428,000	1.330	1.300	1.310	-0.76	16,259.590
05/08/1997	1,624,000	1.320	1.280	1.290	-1.53	16,371.520
06/08/1997	4,110,000	1.360	1.310	1.310	1.55	16,541.600
07/08/1997	5,220,000	1.350	1.260	1.280	-3.82	16,673.270
08/08/1997	4,118,000	1.330	1.270	1.290	2.38	16,647.540
11/08/1997	2,244,000	1.280	1.240	1.240	-3.88	16,460.470
12/08/1997	4,316,000	1.340	1.260	1.270	2.42	16,363.410
13/08/1997	3,142,000	1.300	1.250	1.260	-0.79	16,482.930
14/08/1997	1,746,000	1.300	1.250	1.290	2.38	16,497.710
15/08/1997	3,332,000	1.300	1.260	1.270	-1.55	16,096.880
19/08/1997	1,564,000	1.220	1.200	1.210	-4.72	15,477.260
20/08/1997	3,400,000	1.290	1.230	1.260	4.13	15,855.670
21/08/1997	8,290,000	1.300	1.260	1.300	3.17	15,654.030
22/08/1997	3,182,000	1.320	1.260	1.290	-0.77	15,429.750
25/08/1997	5,460,000	1.320	1.250	1.310	1.55	15,598.880
26/08/1997	3,090,000	1.320	1.270	1.290	-1.53	15,547.220
27/08/1997	2,610,000	1.300	1.280	1.280	-0.78	15,533.950
28/08/1997	2,770,000	1.290	1.260	1.260	-1.56	14,876.100
29/08/1997	2,974,000	1.280	1.230	1.270	0.79	14,135.250
01/09/1997	1,620,000	1.270	1.180	1.220	-3.94	13,425.650
02/09/1997	4,854,000	1.240	1.060	1.170	-4.10	13,735.330
03/09/1997	2,070,000	1.250	1.190	1.230	5.13	14,713.990
04/09/1997	2,420,000	1.220	1.160	1.170	-4.89	14,199.170
05/09/1997	3,140,000	1.200	1.160	1.190	1.71	14,563.550
08/09/1997	1,314,000	1.280	1.230	1.240	4.20	14,806.490
09/09/1997	2,230,000	1.290	1.220	1.260	1.61	14,996.660
10/09/1997	2,808,000	1.280	1.230	1.230	-2.38	14,805.440
11/09/1997	2,146,000	1.230	1.190	1.220	-0.81	14,308.300
12/09/1997	1,084,000	1.250	1.220	1.240	1.64	14,470.460
15/09/1997	1,994,000	1.260	1.240	1.250	0.81	14,630.650
16/09/1997	2,244,000	1.280	1.240	1.260	0.80	14,411.190
18/09/1997	1,032,000	1.280	1.230	1.230	-2.38	14,419.450
19/09/1997	1,410,000	1.250	1.240	1.240	0.81	14,384.130
22/09/1997	780,000	1.250	1.180	1.180	-4.84	14,108.080
23/09/1997	1,678,000	1.230	1.170	1.200	1.69	14,094.380
24/09/1997	464,000	1.180	1.150	1.150	-4.17	14,205.440

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
25/09/1997	350,000	1.180	1.180	1.190	3.48	14,636.590
26/09/1997	180,000	1.220	1.180	1.220	2.52	14,710.870
29/09/1997	2,558,000	1.260	1.180	1.260	3.28	14,864.370
30/09/1997	1,578,000	1.260	1.220	1.240	-1.59	15,049.300
03/10/1997	540,000	1.210	1.200	1.200	-3.23	15,128.020
06/10/1997	724,000	1.210	1.170	1.180	-1.67	14,776.780
07/10/1997	642,000	1.180	1.150	1.170	-0.85	14,810.760
08/10/1997	348,000	1.180	1.160	1.160	-0.85	14,838.520
09/10/1997	820,000	1.130	1.090	1.110	-4.31	14,273.120
13/10/1997	574,000	1.120	1.070	1.090	-1.80	14,072.900
14/10/1997	470,000	1.080	1.040	1.040	-4.59	13,836.560
15/10/1997	270,000	1.010	0.940	0.940	-9.62	13,384.240
16/10/1997	220,000	1.000	0.950	0.980	4.26	13,567.260
17/10/1997	140,000	1.000	0.990	1.000	2.04	13,601.010
20/10/1997	250,000	0.960	0.930	0.930	-7.00	12,970.880
21/10/1997	302,000	0.950	0.890	0.890	-4.30	12,403.100
22/10/1997	854,000	0.860	0.820	0.820	-7.87	11,637.770
23/10/1997	400,000	0.780	0.730	0.730	-10.98	10,426.300
24/10/1997	440,000	0.720	0.680	0.720	-1.37	11,144.340
27/10/1997	492,000	0.700	0.610	0.640	-11.11	10,498.200
28/10/1997	400,000	0.640	0.570	0.600	-8.25	9,059.890
29/10/1997	456,000	0.670	0.630	0.630	5.00	10,765.300
30/10/1997	230,000	0.650	0.650	0.650	3.17	10,362.860
31/10/1997	580,000	0.670	0.640	0.670	3.08	10,623.780
03/11/1997	1,560,000	0.720	0.670	0.680	1.49	11,255.110
04/11/1997	1,440,000	0.730	0.690	0.700	2.94	10,780.780
05/11/1997	380,000	0.700	0.690	0.700	0.00	10,681.750
06/11/1997	288,000	0.690	0.670	0.690	-1.43	10,412.560
07/11/1997	132,000	0.680	0.580	0.650	-5.80	10,104.500
10/11/1997	286,000	0.650	0.590	0.620	-4.62	9,992.840
11/11/1997	120,000	0.620	0.610	0.610	-1.61	10,004.130
12/11/1997	113,000	0.580	0.580	0.600	-1.64	9,607.910
13/11/1997	226,000	0.610	0.560	0.590	-1.67	9,720.780
14/11/1997	800,000	0.630	0.580	0.590	0.00	9,957.330
17/11/1997	540,000	0.620	0.580	0.610	3.39	10,419.750
18/11/1997	350,000	0.630	0.610	0.610	0.00	10,245.180
19/11/1997	108,000	0.800	0.580	0.580	-4.92	10,154.360

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
20/11/1997	304,000	0.610	0.590	0.610	5.17	10,050.680
21/11/1997	180,000	0.620	0.610	0.610	0.00	10,548.200
24/11/1997	180,000	0.620	0.580	0.600	-1.64	10,566.360
25/11/1997	0	0.600	0.600	0.600	0.00	10,325.560
26/11/1997	100,000	0.600	0.600	0.600	0.00	10,590.110
27/11/1997	34,000	0.570	0.570	0.570	-5.00	10,583.100
28/11/1997	150,000	0.560	0.560	0.570	0.00	10,526.920
01/12/1997	120,000	0.560	0.560	0.570	0.00	10,750.880
02/12/1997	260,000	0.590	0.580	0.590	3.51	11,216.350
03/12/1997	551,000	0.570	0.550	0.570	-3.39	11,207.580
04/12/1997	290,000	0.590	0.580	0.580	1.75	11,474.940
05/12/1997	80,000	0.590	0.580	0.580	0.00	11,527.600
08/12/1997	518,000	0.610	0.590	0.600	3.45	11,722.940
09/12/1997	100,000	0.590	0.590	0.590	-1.67	11,490.660
10/12/1997	450,000	0.590	0.580	0.580	-1.69	11,022.410
11/12/1997	130,000	0.550	0.540	0.550	-5.17	10,420.220
12/12/1997	100,000	0.580	0.580	0.580	5.45	10,614.660
15/12/1997	90,000	0.600	0.580	0.600	3.45	10,435.150
16/12/1997	170,000	0.590	0.570	0.590	-1.67	10,346.380
17/12/1997	66,000	0.590	0.580	0.590	0.00	10,692.700
18/12/1997	40,000	0.560	0.550	0.560	-5.08	10,754.110
19/12/1997	160,000	0.580	0.540	0.570	1.79	10,405.810
22/12/1997	172,000	0.570	0.550	0.570	0.00	10,172.470
23/12/1997	218,000	0.570	0.550	0.550	-3.51	10,368.100
24/12/1997	100,000	0.580	0.570	0.550	0.00	10,342.440
29/12/1997	550,000	0.570	0.550	0.560	1.82	10,502.990
30/12/1997	114,000	0.580	0.550	0.580	3.57	10,755.210
31/12/1997	0	0.580	0.580	0.580	0.00	10,722.760
02/01/1998	0	0.580	0.580	0.580	0.00	10,680.570
05/01/1998	104,000	0.580	0.540	0.570	-1.72	10,303.540
06/01/1998	104,000	0.560	0.530	0.560	-1.75	10,135.510
07/01/1998	10,000	0.570	0.570	0.570	1.79	9,538.610
08/01/1998	20,000	0.570	0.570	0.560	-1.75	9,254.530
09/01/1998	0	0.550	0.550	0.550	-1.79	8,894.640
12/01/1998	2,054,000	0.540	0.445	0.495	-10.00	8,121.080
13/01/1998	1,076,000	0.495	0.420	0.430	-13.13	8,720.000
14/01/1998	332,000	0.435	0.420	0.430	0.00	9,226.550

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
15/01/1998	38,000	0.430	0.430	0.430	0.00	8,578.980
16/01/1998	0	0.420	0.420	0.420	-2.33	8,900.040
19/01/1998	646,000	0.420	0.395	0.400	-4.76	9,400.420
20/01/1998	706,000	0.400	0.390	0.395	-1.25	9,433.700
21/01/1998	368,000	0.400	0.380	0.395	0.00	9,246.800
22/01/1998	482,000	0.400	0.370	0.380	-3.80	8,883.730
23/01/1998	722,000	0.395	0.375	0.380	0.00	8,920.200
26/01/1998	796,000	0.390	0.350	0.380	0.00	8,973.860
27/01/1998	70,000	0.400	0.390	0.400	5.26	9,252.360
02/02/1998	172,000	0.415	0.390	0.415	3.75	10,578.600
03/02/1998	118,000	0.430	0.400	0.415	0.00	10,525.510
04/02/1998	496,000	0.430	0.405	0.415	0.00	10,302.610
05/02/1998	982,000	0.440	0.415	0.430	3.61	10,442.130
06/02/1998	710,000	0.470	0.440	0.465	8.14	10,485.860
09/02/1998	780,000	0.490	0.460	0.460	-1.03	10,873.150
10/02/1998	422,000	0.480	0.450	0.480	4.35	10,859.670
11/02/1998	428,000	0.500	0.435	0.470	-2.08	10,793.410
12/02/1998	200,000	0.465	0.430	0.435	-7.45	10,620.030
13/02/1998	886,000	0.450	0.420	0.450	3.45	10,274.600
16/02/1998	640,000	0.465	0.430	0.460	2.22	10,124.030
17/02/1998	220,000	0.480	0.450	0.460	0.00	10,232.030
18/02/1998	1,128,000	0.530	0.460	0.500	8.70	10,670.950
19/02/1998	568,000	0.530	0.500	0.530	6.00	10,581.270
20/02/1998	2,996,000	0.610	0.530	0.610	15.09	10,599.790
23/02/1998	1,270,000	0.640	0.590	0.590	-3.28	10,685.210
24/02/1998	370,000	0.610	0.580	0.590	0.00	10,683.340
25/02/1998	1,800,000	0.610	0.580	0.610	3.39	10,886.740
26/02/1998	844,000	0.640	0.590	0.630	3.28	11,224.780
27/02/1998	370,000	0.630	0.630	0.630	0.00	11,480.690
02/03/1998	244,000	0.640	0.600	0.600	-4.76	11,318.840
03/03/1998	712,000	0.600	0.580	0.600	0.00	11,425.460
04/03/1998	558,000	0.600	0.590	0.600	0.00	11,350.810
05/03/1998	1,000,000	0.600	0.570	0.570	-5.00	10,803.880
06/03/1998	410,000	0.600	0.580	0.600	5.26	10,919.530
09/03/1998	644,001	0.600	0.590	0.600	0.00	10,994.090
10/03/1998	10,000	0.610	0.610	0.600	0.00	10,898.570
11/03/1998	436,000	0.630	0.590	0.630	5.00	11,118.850

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
12/03/1998	464,000	0.670	0.600	0.620	-1.59	10,902.470
13/03/1998	0	0.620	0.620	0.620	0.00	11,057.030
16/03/1998	42,000	0.660	0.630	0.610	-1.61	11,181.540
17/03/1998	942,000	0.630	0.570	0.610	0.00	11,255.540
18/03/1998	4,634,000	0.710	0.620	0.710	16.39	11,121.650
19/03/1998	4,275,500	0.750	0.680	0.720	1.41	11,445.040
20/03/1998	1,886,000	0.730	0.690	0.730	1.39	11,564.230
23/03/1998	380,000	0.730	0.710	0.710	-2.74	11,594.330
24/03/1998	790,000	0.730	0.700	0.740	4.23	11,845.430
25/03/1998	1,486,000	0.780	0.730	0.730	-1.35	11,810.630
26/03/1998	724,000	0.790	0.790	0.750	2.74	11,757.880
27/03/1998	300,000	0.790	0.710	0.730	-2.67	11,735.500
30/03/1998	568,000	0.750	0.690	0.710	-2.74	11,503.760
31/03/1998	470,000	0.710	0.700	0.710	0.00	11,518.680
01/04/1998	560,000	0.740	0.700	0.730	2.82	11,331.420
02/04/1998	790,000	0.730	0.700	0.700	-4.11	11,189.710
03/04/1998	544,000	0.740	0.690	0.740	5.71	11,052.680
07/04/1998	410,000	0.730	0.700	0.700	-5.41	11,049.430
08/04/1998	460,000	0.730	0.700	0.720	2.86	11,314.460
09/04/1998	510,000	0.740	0.710	0.720	0.00	11,342.020
14/04/1998	554,000	0.760	0.720	0.720	0.00	11,420.340
15/04/1998	100,000	0.720	0.720	0.720	0.00	11,371.060
16/04/1998	390,000	0.720	0.700	0.700	-2.78	11,187.780
17/04/1998	110,000	0.670	0.670	0.670	-4.29	11,001.320
20/04/1998	10,000	0.700	0.700	0.680	1.49	11,151.630
21/04/1998	136,000	0.700	0.660	0.660	-2.94	10,968.260
22/04/1998	486,000	0.740	0.680	0.700	6.06	10,977.470
23/04/1998	840,000	0.700	0.690	0.700	0.00	10,918.940
24/04/1998	570,000	0.700	0.690	0.700	0.00	10,879.930
27/04/1998	810,000	0.700	0.680	0.680	-2.86	10,593.710
28/04/1998	60,000	0.720	0.650	0.700	2.94	10,678.610
29/04/1998	0	0.700	0.700	0.700	0.00	10,471.150
30/04/1998	0	0.700	0.700	0.700	0.00	10,383.680
01/05/1998	150,000	0.700	0.600	0.700	0.00	10,583.680
04/05/1998	730,000	0.690	0.630	0.690	-1.43	10,439.420
05/05/1998	950,000	0.660	0.590	0.630	-8.70	10,153.660
06/05/1998	742,000	0.600	0.550	0.570	-9.52	10,109.140

Stock Code : 00505 - GILBERT HOLD

Date Range : 1 Aug 1997 - 11 Jun 1998 Total : 224,191,501 shares

Min Price : 0.116 Daily Average : 1,062,518

Max Price : 1.360 Average Price : 0.712

DATE	NO. OF SHARES	HIGH	LOW	CLOSE	% CHANGE	HSI
07/05/1998	330,000	0.600	0.550	0.560	-1.75	9,971.930
08/05/1998	2,296,000	0.560	0.490	0.520	-7.14	10,060.380
11/05/1998	2,034,000	0.570	0.540	0.570	9.62	10,096.370
12/05/1998	2,400,000	0.550	0.485	0.490	-14.04	9,841.510
13/05/1998	1,690,000	0.490	0.450	0.490	0.00	9,469.290
14/05/1998	2,660,000	0.490	0.430	0.430	-12.24	9,591.950
15/05/1998	2,176,000	0.435	0.400	0.420	-2.33	9,538.390
18/05/1998	1,856,000	0.410	0.375	0.375	-10.71	9,411.970
19/05/1998	12,278,000	0.375	0.243	0.248	-33.87	9,449.110
20/05/1998	4,570,000	0.295	0.250	0.295	18.95	9,549.180
21/05/1998	2,976,000	0.320	0.290	0.300	1.69	9,670.450
22/05/1998	1,254,000	0.320	0.270	0.270	-10.00	9,555.980
25/05/1998	640,000	0.290	0.270	0.270	0.00	9,544.530
26/05/1998	80,000	0.280	0.260	0.260	-3.70	9,482.210
27/05/1998	720,000	0.250	0.246	0.250	-3.85	8,993.430
28/05/1998	120,000	0.250	0.245	0.244	-2.40	8,877.940
29/05/1998	2,402,000	0.190	0.140	0.180	-26.23	8,934.560
01/06/1998	540,000	0.170	0.140	0.141	-21.67	8,612.010
02/06/1998	1,230,000	0.141	0.128	0.128	-9.22	8,598.170
03/06/1998	750,000	0.125	0.118	0.120	-6.25	8,819.220
04/06/1998	410,000	0.125	0.116	0.125	4.17	8,558.430
05/06/1998	332,000	0.122	0.121	0.121	-3.20	8,569.470
08/06/1998	380,000	0.125	0.121	0.121	0.00	8,586.630
09/06/1998	70,000	0.118	0.118	0.118	-2.48	8,391.460
10/06/1998	496,000	0.117	0.116	0.116	-1.69	7,979.370
11/06/1998	124,000	0.116	0.116	0.116	0.00	7,886.070

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure B

Schedule of dealings investigated

<u>Date</u>	<u>Rona Wong</u>	<u>Fok Ying She</u>	<u>Hung Shiu Shan</u>	<u>Heidi Chin</u>	<u>Lam Loy Lui</u>	<u>Samantha Cheung</u>	<u>Closing Price</u>	<u>% of Market Turnover</u>
7/4/98	-	-	(12,000)	-	-		\$0.70	2.9%
8/4/98	-	-	(300,000)	-	-		\$0.72	65.2%
9/4/98	-	-	(288,000)	-	-		\$0.72	56.5%
22/4/98	-	-	(76,000)	-	-		\$0.70	15.6%
23/4/98	-	-	(100,000)	-	-		\$0.70	11.9%
24/4/98	-	-	(114,000)	-	-		\$0.70	20%
4/5/98	(60,000)	-		-	-		\$0.69	17.8%
	70,000							
5/5/98	20,000	-	(50,000)	-	-		\$0.63	7.4%
6/5/98	10,000	-	-	-	-	-	\$0.57	1.3%
7/5/98	8,000	-	(200,000)	-	-	-	\$0.56	63%
8/5/98	-	-	(750,000)	-	-	-	\$0.52	32.7%
11/5/98	4,000	-	-	-	-	-	\$0.57	>1%
12/5/98	(510,000)	-	-	-	-	-	\$0.49	21.7%
	10,000							
13/5/98	(100,000)	-	-	(440,000)	-	(300,000)	\$0.49	49.7%
14/5/98	(1,430,000)	-	(260,000)	(830,000)	-	-	\$0.43	94.7%
15/5/98	(100,000)	-	-	(624,000)	(30,000)		\$0.42	34.6%
18/5/98	(474,000)	-	-	(520,000)	(220,000)	-	\$0.375	65.4%
19/5/98	(3,740,000)	(4,278,000)	-	(780,000)	-	-	\$0.248	71.7%

- Notes:
1. Brackets denotes sales
 2. The 9th, 10th, 16th and 17th May 1998 were Saturdays or Sundays

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure C

Trading of Gilbert shares by Hung Shiu Shan

Trading of HUNG Shiu Shan from 1995 to 1998

<u>Date</u>	<u>Buy</u>	<u>Sell</u>	<u>Price per share</u> <u>\$</u>	<u>Balance</u>	<u>\$ Amount</u>	<u>Funded by</u> <u>Sunny Wong</u>	<u>Proceeds</u> <u>returned to</u> <u>Sunny Wong</u>
<u>Tai Tak</u>							
1/12/95	130,000		1.07	130,000	\$139,689.79		
7/12/95	70,000		1.06	200,000	\$74,515.07		
22/12/95	50,000		0.95	250,000	\$47,701.98		
2/1/96	50,000		0.95	300,000	\$47,701.98		
18/1/96		50,000	1.08	250,000	\$53,771.58		
19/1/96		50,000	1.09	200,000	\$54,268.66		
30/1/96	200,000		1.34 1.35	400,000	\$270,137.87		
24/6/96	50,000		1.09	450,000	\$54,731.34		
25/7/96		50,000	1.31	400,000	\$65,222.13		
25/7/96		400,000	1.30 1.29	0	\$515,629.30		
21/8/96	164,000		1.14	164,000	\$187,750.90	\$187,750.90	
7/10/96	200,000		0.97	364,000	\$194,820.62		
26/11/96		200,000	1.10	164,000	\$219,069.40		
27/11/96		164,000	1.29	0	\$210,664.44		
3/12/96	4,000		1.19	4,000	\$4,848.12		
4/12/96	446,000		1.19 1.15	450,000	\$524,951.63		
9/12/96		80,000	1.24	370,000	\$98,779.18		
11/12/96	20,000		1.06	390,000	\$21,315.76		
3/1/97	150,000		1.02	540,000	\$153,647.19		
10/1/97	170,000		1.06	710,000	\$180,963.45	\$180,963.45	
6/3/97	500,000		1.06	1,210,000	\$532,241.90	\$532,241.90	
19/3/97		1,210,000	1.26 1.27	0	\$1,524,721.82		1,524,722.00

Ewarton

25/4/97	500,000		1.46	500,000	\$733,087.90	\$733,088.00	
30/4/97	200,000		1.41	700,000	\$283,192.86		
16/5/97	200,000		1.34	900,000	269,133.64		
27/5/97	200,000		1.23	1,100,000	\$247,040.58	\$247,040.58	
27/5/97	200,000		1.24	1,300,000	\$249,049.04		
28/5/97		600,000	(200,000) 1.35	700,000	\$824,497.56		
			(200,000) 1.41				
			(200,000) 1.38				
6/6/97	550,000		(300,000) 1.25	1,250,000	\$691,413.11		
			(200,000) 1.26				
			(50,000) 1.23				
10/6/97	150,000		(50,000) 1.23	1,400,000	\$183,272.73		
			(100,000) 1.21				
12/6/97	100,000		1.14	1,500,000	\$114,482.22		
13/6/97	180,000		(30,000) 1.18	1,680,000	\$211,805.26		
			(150,000) 1.17				

<u>Date</u>	<u>Buy</u>	<u>Sell</u>	<u>Price per share</u> <u>\$</u>	<u>Balance</u>	<u>\$ Amount</u>	<u>Funded by</u> <u>Sunny Wong</u>	<u>Proceeds</u> <u>returned to</u> <u>Sunny Wong</u>
17/6/97	100,000		1.18	1,780,000	\$118,499.14		
20/6/97	70,000		1.21	1,850,000	\$85,058.73		
24/6/97	158,000		1.22	2,008,000	\$193,575.74	\$193,575.74	
26/6/97		160,000	1.35	1,848,000	\$215,086.32		
9/7/97	200,000		1.21	2,048,000	\$215,086.32		
25/7/97		100,000	1.28	1,948,000	\$127,458.56		
6/8/97		400,000	1.33	1,548,000	\$529,749.64		
7/8/97		154,000	1.33	1,394,000	\$203,953.34		
25/8/97		200,000	1.31	1,194,000	\$260,891.74		
2/9/97	500,000		(400,000) 1.19 (100,000) 1.10	1,694,000	\$588,478.78		
14/10/97	100,000		1.07	1,794,000	\$107,452.61		
22/10/97	100,000		0.83	1,894,000	\$83,351.09		
29/10/97	56,000		0.63	1,950,000	\$35,442.12		
12/12/97	100,000		0.58	2,050,000	\$58,245.34	\$58,245.34	
16/12/97	50,000		(30,000) 0.58 (20,000) 0.59	2,100,000	\$29,351.72	\$29,351.72	
17/12/97	50,000		0.59	2,150,000	\$29,651.79	\$29,651.79	
7/4/98		12,000	0.73	2,138,000	\$8,645.79		
8/4/98		300,000	0.70	1,838,000	\$209,168.40		
9/4/98		288,000	(60,000) 0.72 (228,000) 0.71	1,550,000	\$204,266.73		
22/4/98		76,000	(70,000) 0.68 (6,000) 0.70	1,474,000	\$51,593.37		
23/4/98		100,000	0.70	1,374,000	\$69,722.80		
24/4/98		114,000	0.70	1,260,000	\$79,483.74		
5/5/98		50,000	0.66	1,210,000	\$32,851.82		
7/5/98		200,000	0.56	1,010,000	\$111,556.48		
8/5/98		750,000	(180,000) 0.495 (40,000) 0.50 (50,000) 0.51 (250,000) 0.52 (180,000) 0.53 (50,000) 0.54	260,000	\$385,464.98		
14/5/98		260,000	(120,000) 0.455 (140,000) 0.45	0	\$117,133.80		

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure D

Source of funds for the Hung Shiu Shan trading

FUND FLOW between SUNNY WONG and HUNG SHIU SHAN**(1) Funding by SUNNY WONG to HUNG SHIU SHAN**

<i>Withdrawal by Sunny Wong</i>			⇒	<i>Via Hung Shiu Shan</i>			⇒	<i>Deposit into Hung Shiu Shan's brokerage accounts for trading in Gilbert shares.</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>		<u>Date</u>	<u>Bank</u>	<u>Amount</u>		<u>Amount</u>	<u>Broker</u>	<u>Remarks</u>
23/8/96	Chase	\$187,750.90	⇒ (cheque no.226867)	23/8/96	Hang Seng	\$187,750.90	⇒	\$187,750.90	Tai Tak	-For purchase of 164,000 shares of Gilbert on 21/8/96.
13/1/97	Chase	\$180,963.45	⇒ (cheque no.704429)	13/1/97	Hang Seng	\$180,963.45	⇒	\$180,963.45	Tai Tak	-for purchase of 170,000 shares of Gilbert on 10/1/97.
28/4/97	Chase	\$733,088.00	⇒ (cheque no.704395)	28/4/97	Hang Seng	\$733,087.90	⇒	\$733,087.90	Ewarton	-for purchase of 500,000 shares of Gilbert on 25/4/97.
24/6/97	Chase	\$194,000.00	⇒ (cheque no. 704423)	25/6/97	Hang Seng	\$193,575.74	⇒	\$193,575.74	Ewarton	-for purchase of 158,000 shares of Gilbert on 24/6/97.

(2) Funding by SUNNY WONG to HUNG SHIU SHAN via NG YAN NGAI

<i>Withdrawal</i>		⇒	<i>Deposit</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Bank</u>	<u>Remarks</u>
7/3/97	Chase account of Sunny Wong	\$532,241.90	⇒ (cheque no.704445)	7/3/97 Hang Seng savings acc't of Hung Shiu Shan	- the proceeds cannot directly be traced further
10/3/97	Hang Seng account of Ng Yan Ngai	\$532,241.90	⇒ (cheque no. 760621)	10/3/97 Wing Hang Account of Tai Tak	-for purchase of 500,000 shares of Gilbert on 6/3/97.

(3) Direct Deposit by SUNNY WONG into brokerage account of HUNG SHIU SHAN

<i>Withdrawal by Sunny Wong</i>		⇒	<i>Deposit into Hung Shiu Shan's brokerage account</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Bank</u>	<u>Amount</u> <u>Broker</u> <u>Remarks</u>
28/5/97	Chase	\$247,040.58	⇒ (cheque no. 704410)	28/5/97 Hang Seng	\$247,040.58 Ewarton For purchase of 200,000 Gilbert shares on 27/5/97.
15/12/97	Chase	\$58,245.34	⇒ (cheque no. 319252)	15/12/97 Hang Seng	\$58,245.34 Ewarton For purchase of 100,000 Gilbert shares on 12/12/97
18/12/97	Chase	\$29,351.72	⇒ (cheque no. 319258)	18/12/97 Hang Seng	\$29,351.72 Ewarton For purchase of 50,000 Gilbert shares on 16/12/97

19/12/97	Chase	\$29,651.79	⇒ (cheque no. 319259)	19/12/97	Hang Seng	\$29,651.79	Ewarton	For purchase of 50,000 Gilbert shares on 17/12/97
Withdrawal (Proceeds of sale) by HUNG SHIU SHAN and return to SUNNY WONG								
Withdrawal from Hung Shiu Shan's account at Stockbroker								
			⇒	<i>Via bank account(s)</i>			⇒	<i>To Sunny Wong</i>
Date	Broker	Withdrawal Amount	⇒	Bank	Amount	⇒	Date	Depositing Bank
21/3/97	Tai Tak	\$1,524,721.82	⇒	Hang Seng (Savings) ↓	\$1,524,721.82	⇒		
				Hang Seng (chequing)	\$1,530,000.00 ↓	⇒ (cheque)	26/3/97	Chase
								\$1,524,722.00

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure E

Source of funds for the Waylex Fok trading at Shenyin Wanguo

FUND FLOW FROM CLARENCE WONG TO FOK YING SHE

<i>Withdrawal by Clarence Wong</i>		⇒	<i>Via Nominee</i>	⇒	<i>Deposit into Fok Ying She's account at Shenyin Wanguo</i>	
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Nominee (Bank)</u>	<u>Amount</u>	<u>Remarks</u>
25/11/96	American Express	\$506,951.96 (\$507,031.97 – bank charges)	⇒ (T.T.)	25/11/96 6 Rona Wong (HSBC)	\$506,951.96 ⇒ (cheque no. 204862)	-the deposit slip was faxed by Samantha Cheng to Shenyin Wanguo and marked for settlement of purchase of 496,000 Gilbert shares through Fok's account on 21/11/96 (Purchase order B29055).
2/12/96	American Express	\$2,107,747.52 (\$2,107,827.52 – bank charges)	⇒ (T.T.)	2/12/96 Rona Wong (HSBC)	\$2,107,747.52 ⇒ (cheque no. 204872)	-the deposit slip was faxed by Samantha Cheng to Shenyin Wanguo and specified that \$1,360,203.60 should be deposited into Fok's account and the rest into another account.
2/12/96	Shenyin Wanguo	\$71,966.79	⇒ (Internal transfer)		\$71,966.79	-direct transfer from Clarence Wong's account to Fok's account at Shenyin Wanguo to fund purchase of Gilbert shares.
2/12/96				Osric Ming (Shenyin Wanguo)	\$84,891.03 ⇒ (Internal Transfer)	Osric Ming and Sunny Wong gave written authorization for Clarence Wong to arrange for internal transfer from their accounts into Fok's account at Shenyin Wanguo to fund purchase of Gilbert shares.
2/12/96				Sunny Wong (Shenyin Wanguo)	\$79,961.79 ⇒ (Internal transfer)	

<i>Withdrawal by Clarence Wong</i>			<i>Via Nominee</i>			<i>Deposit into</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Nominee (Bank)</u>	<u>Amount</u>	<u>Amount</u>	<u>Remarks</u>	<i>Fok Ying She's account at Shenyin Wanguo</i>
6/12/96	American Express	\$1,850,083.59	⇒ (T.T.)	Rona Wong (HSBC)	\$1,850,083.59	⇒ (cheque no. 204883)	\$988,650.77	-the deposit slip was faxed by Samantha Cheng to Shenyin Wanguo and marked that \$988,650.77 was to be deposited into Fok's account.
10/12/96	American Express	\$3,138,890.19 (\$3,138,970.19 - bank charges)	⇒ (T.T.)	Rona Wong (HSBC)	\$3,138,890.19	⇒ (cheque no. 204887)	\$1,998,331.95	-this cheque was deposited directly into Fok's account.
11/12/96	American Express	\$1,148,839.90	⇒ (T.T.)	Rona Wong (HSBC)	\$1,148,839.90	⇒ (cheque no. 204890)	\$602,532.56	-deposit slip was faxed by Samantha Cheng to Shenyin Wanguo and marked for settlement of purchase of 516,000 shares of Gilbert through Fok's account on 9/12/96 (Purchase order B30911).
12/12/96	American Express	\$1,463,714.92	⇒ (T.T.)	Rona Wong (HSBC)	\$1,463,714.92	⇒ (cheque no. 204891)	\$639,483.68	-Marked for settlement of purchase of 558,000 shares of Gilbert through Fok's account on 10/12/96 (P.O.B31116).
18/12/96	American Express	\$1,560,947.09 (\$1,561,027.09 - bank charges)	⇒ (T.T.)	Rona Wong (HSBC)	\$1,560,947.09	⇒ (cheque no. 204902)	\$1,574,052.90	-the deposit slip was faxed from Gilbert to Shenyin Wanguo, and was marked for settlement of purchase of 1.5m Gilbert shares (purchase order B31627) through Fok's account on 13/12/96.

<i>Withdrawal by Clarence Wong</i>			⇒	<i>Via Nominee</i>			⇒	<i>Deposit into Fok Ying She's account at Shenyin Wanguo</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>		<u>Date</u>	<u>Nominee (Bank)</u>	<u>Amount</u>		<u>Amount</u>	<u>Remarks</u>	
23/5/97	Citibank	\$265,103.52	⇒ (T.T.)	23/5/97	Rona Wong (HSBC)	\$265,103.52	⇒ (cheque no. 228667)	\$265,103.52	-deposit slip was marked for the account of Fok.	
4/6/97	Citibank	\$393,638.56 \$509,119.26 (Total: \$902,757.82)	⇒ (cheques nos. 58675 58656)	4/6/97	Clarence Wong (Shenyin Wanguo)	\$902,757.83	⇒	\$902,757.82	-Clarence Wong signed a 3 rd party cheque authorization for deposit of the entire amount into Fok's account at Shenyin Wanguo.	
14/6/97	Citibank	\$691,841.41 (\$691,941.41 - bank charges) \$373,554.96	(T.T.) ⇒ (cheque no. 58661)	14/6/97	Fok (Hang Seng)	\$1,065,396.37	⇒ (cheques nos. 74380, 74379)	\$1,065,396.37	-notice of deposit was faxed by Clarence Wong to Shenyin Wanguo through Gilbert, marked for the settlement of P.O.B57995 (300,000 Gilbert shares) purchased on 6/6/97 and P.O. B58801 (582,000 Gilbert shares) purchased on 11/6/97.	
16/6/97	Citibank	\$702,967.61 (\$703,067.61 - bank charges)	⇒ (T.T.)	19/6/97	Fok (Hang Seng)	\$702,967.61	⇒ (cheque no. 74381)	\$702,967.61	-deposit slip was faxed by Samantha Cheng and marked for settlement of purchase of 598,000 shares of Gilbert through Fok's account on 12/6/97 (Purchase order B59178).	

<i>Withdrawal by Clarence Wong</i>			<i>Via Nominee</i>			<i>Deposit into</i> <i>Fok Ying She's account at</i> <i>Shenyin Wanguo</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Nominee (Bank)</u>	<u>Amount</u>	<u>Amount</u>	<u>Remarks</u>	
26/6/97	Citibank	\$865,203.59 (\$865,303.59 – bank charges)	⇒ (T.T.)	26/2/97	Rona Wong (HSBC) ↓ (cheque no. 220139) ↓ Fok's Hang Seng Bank account	\$865,203.59	⇒	-the deposit slip was faxed by Fok to Terrence Howard marked for settlement of purchases of 200,000 Gilbert shares on 10/6/97 (P.O.B58628) and 500,000 Gilbert shares on 23/6/97 (P.O.B61574) through Fok's account.

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure F

Flow of funds from the Waylex Fok account at Shenyin Wanguo to Clarence Wong

FUND FLOW (Proceeds of sale of Gilbert shares) FROM FOK YING SHE TO CLARENCE WONG

Fok Ying She's Withdrawal from Stockbroker			⇒	Via bank account(s)			⇒	Rona Wong issued cheque to Clarence Wong		
<u>Date</u>	<u>Broker</u>	<u>Withdrawal Amount</u>	⇒	<u>Date</u>	<u>Bank</u>	⇒	<u>Date</u>	<u>Cheque No.</u>	<u>Depositing Bank</u>	<u>Amount</u>
9/4/97	Shenyin Wanguo	\$1,599,784.07	⇒	10/4/97	Fok's Hang Seng account ↓ cheque no. 74377 ↓	⇒				
				11/4/97	Rona Wong's HSBC account	⇒	14/4/97	205102 (in total \$5,925,127.48 which includes the sum of \$1,599,784.07)	Citibank	\$5,925,127.48 (which includes the sum of \$1,599,784.07)
26/4/97	Shenyin Wanguo	\$138,418.98	⇒	29/4/97	Fok's Hang Seng account ↓ cheque no. 74378 ↓	⇒				
				2/5/97	Rona Wong's HSBC account	⇒	5/5/97	228651 (together with cheque no. 228650 in the sum of \$964,745.99)	Citibank	\$1,103,164.97 (which includes the sum of \$138,418.98)
27/8/97	Shenyin Wanguo	\$ 85,796.86 \$269,271.53 (total: \$355,068.39)	⇒	27/8/97	Fok's Hang Seng account ↓ cheque no. 74383 ↓	⇒				
				1/9/97	Rona Wong's HSBC account	⇒	3/9/97	228637	Citibank	\$355,068.39

<i>Fok Ying She's Withdrawal from Stockbroker</i>		⇒	<i>Via bank account(s)</i>	⇒	<i>Rona Wong issued cheque to Clarence Wong</i>		
11/9/97	Shenyin Wanguo	\$617,414.60	⇒	11/9/97	Fok's Hang Seng account	⇒	
					↓ cheque no. 674384 ↓		
				25/9/97	Rona Wong's HSBC account	⇒	26/9/97 235559 Citibank \$617,414.60
28/10/97	Shenyin Wanguo	\$238,563.32	⇒	28/10/97	Fok's Hang Seng account	⇒	
					↓ cheque no. 74384 ↓		
				30/10/97	Rona Wong's HSBC account	⇒	31/10/97 235574 Citibank \$238,563.32
16/2/98	Shenyin Wanguo	\$42,678.66	⇒	16/2/98	Fok's Hang Seng account	⇒	
					↓ cheque no. 74392 ↓		
				24/2/98	Rona Wong's HSBC account	⇒	24/2/98 246731 ¹

¹ Rona Wong issued cheque 246731 on 24/2/98 to withdraw the entire amount of \$42,678.66 and is not further traced.

<u>Date</u>	<u>Broker</u>	<u>Withdrawal Amount</u>	<u>⇒</u>	<u>Date</u>	<u>Bank</u>	<u>⇒</u>	<u>Date</u>	<u>Cheque No.</u>	<u>Depositing Bank</u>	<u>Amount</u>
21/5/98	Shenyin Wanguo	\$1,070,474.78	⇒	21/5/98	Fok's Hang Seng account ↓		(* Last transaction: Fok has sold all of his Gilbert shares.)			
				26/5/98	cheque no. 74394 ↓					
				26/5/98	Merry Mark Ltd.'s BOC account ↓					
				27/5/98	cheque no. 795276 ↓					
				27/5/98	cheque no. 795277 ↓					
				28/5/98	Rona Wong's Shanghai Commercial Bank account ↓					
				29/5/98	cheque no. 20232 ↓					
					Rona Wong's father's Shanghai Commercial Bank account ⇒		29/5/98	35041	Citibank	\$1,070,000.00

Direct return of money from Fok Yin She to Clarence Wong

Fok Ying She's Withdrawal from Stockbroker			⇒	To Clarence Wong			
<u>Date</u>	<u>Broker</u>	<u>Withdrawal Amount</u>	⇒	<u>Date</u>	<u>Depositing Bank</u>	<u>Amount</u>	<u>Remarks</u>
28/11/96	Shenyin Wanguo	\$534,896.91	⇒ (cheque no. 910288)	28/11/96	Citibank	\$534,896.91	Fok authorized Shenyin Wanguo to issue cheque directly to Clarence Wong.
6/12/96	Shenyin Wanguo	\$2,106,916.56	⇒ (cheque no. 583842)	6/12/96	Citibank	\$2,106,916.56	Fok authorized Shenyin Wanguo to issue cheque directly to Clarence Wong.
14/1/97	Shenyin Wanguo	\$253,998.64 ↓ transferred to Fok's Hang Seng account	⇒ (cheque no. 74372)	15/1/97	Citibank	\$253,998.64	
17/2/97	Shenyin Wanguo	\$73,557.04 ↓ transferred to Fok's Hang Seng account	⇒ (cheque no. 74373)	21/2/97	Citibank	\$73,557.04	
17/3/97	Shenyin Wanguo	\$564,220.92 ↓ transferred to Fok's Hang Seng account	⇒ (cheque no. 74374)	20/3/97	Citibank	\$564,220.92	

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure G

Flow of funds from Clarence Wong to Rona Wong's share trading accounts

FUND FLOW FROM CLARENCE WONG TO RONA WONG

<i>Withdrawal by Clarence Wong</i>				⇒	<i>Via Rona Wong</i>		⇒	<i>Rona Wong's Brokerage account</i>	
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>		<u>Bank</u>	<u>Amount</u>		<u>Stockbroker Name</u>	
23/5/97	Citibank	\$265,103.52 (\$265,203.52-bank charges)	⇒ (transfer)	23/5/97	HSBC	\$265,000 ↓ (cheque no. 228667)	⇒ (cheque no. 743683)	RBC Dominion	
					Chekiang First Commercial	\$265,000			
24/6/97	Citibank	\$120,000 (\$120,100-bank charges)	⇒ (transfer)	24/6/97	HSBC	\$119,492	⇒ (cheque no. 220138)	RBC Dominion	
25/6/97	Citibank	\$363,100 (\$363,200 - bank charges)	⇒ (transfer)	25/6/97	HSBC (Savings) ↓ HSBC (Checking)	\$363,100 ↓ \$362,593	⇒ (cheque no. 220143)	RBC Dominion	
26/6/97	Citibank	\$256,500	⇒ (transfer)	26/6/97	HSBC (Savings) ↓ HSBC (Checking)	\$256,500 ↓ \$256,356	⇒ (cheque no. 220140)	RBC Dominion	
27/6/97	Citibank	\$1,970,405.35	⇒ (transfer)	27/6/97	HSBC	\$1,970,405.35	⇒ (cheque no. 220144)	Credit Lyonnais	

<i>Withdrawal by Clarence Wong</i>			<i>Via Rona Wong</i>			<i>Rona Wong's Brokerage account</i>	
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Bank</u>	<u>Amount</u>	<u>Broker Name</u>	
3/7/97	Citibank	\$2,681,630.18	⇒ (transfer)	3/7/97	HSBC	\$2,681,630.18	⇒ (cheque no. 220119)
21/8/97	Citibank	\$363,495 (\$363,595-bank charges)	⇒ (transfer)	21/8/97	HSBC	\$363,495	⇒ (cheque no. 228629)
3/9/97	Citibank	\$482,082.40	⇒ (transfer)	4/9/97	HSBC	\$481,982	⇒ (cheque no. 235545)
24/9/97	Citibank	\$261,275.83	⇒ (transfer)	24/9/97	HSBC	\$261,275.83	⇒ (cheque no. 235558)
27/9/97	Citibank	\$306,259.65	⇒ (transfer)	27/9/97	HSBC	\$306,259.65	⇒ (cheque no. 235560)
14/10/97	Citibank	\$110,454.30	⇒ (transfer)	14/10/97	HSBC	\$110,454.30	⇒ (cheque no. 235564)
23/12/97	Citibank	\$63,450	⇒ (transfer)	23/12/97	HSBC	\$63,333.82	⇒ (cheque no. 246703)
24/12/97	Citibank	\$7,000 (\$7,100-bank charges)	⇒ (transfer)	24/12/97	Shanghai Commercial Bank	\$6,897	⇒ (cheque no. 2744)
30/12/97	Citibank	\$95,600 (\$95,700-bank charges)	⇒ (transfer)	30/12/97	Shanghai Commercial Bank	\$95,571	⇒ (cheque no. 2745)
31/12/97	Citibank	\$11,500	⇒ (transfer)	31/12/97	Shanghai Commercial Bank	\$11,446.50	⇒ (cheque no. 2746)

<i>Withdrawal by Clarence Wong</i>			<i>Via Rona Wong</i>			<i>Rona Wong's Brokerage Account</i>		
<u>Date</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Date</u>	<u>Bank</u>	<u>Amount</u>	<u>Broker Name</u>		
5/1/98	Citibank	\$8,170 (\$8,370 – bank charges)	⇒ (transfer)	5/1/98	Shanghai Commercial Bank	\$8,261.60	⇒ (cheque no. 2747)	Chow Sang Sang
14/1/98	Citibank	\$33,170 (\$33,270 – bank charges)	⇒ (transfer)	14/1/98	Shanghai Commercial Bank	\$33,167.80	⇒ (cheque no. 2748)	Chow Sang Sang
23/1/98	Citibank	\$18,930 (\$19,038 – bank charges)	⇒ (transfer)	23/1/98	Shanghai Commercial Bank	\$20,618.20	⇒ (cheque no. 2746)	Chow Sang Sang
15/4/98	Citibank	\$7,700 (\$7,800 – bank charges)	⇒ (transfer)	16/4/98	HSBC	\$7,692.84	⇒ (cheque no. 256034)	Celetio
22/4/98	Citibank	\$12,000 (\$12,100 – bank charges)	⇒ (transfer)	23/4/98	HSBC	\$11,198.22	⇒ (cheque no. 256038)	Celetio
22/4/98	Citibank	\$7,200 (\$7,300 – bank charges)	⇒ (transfer)	22/4/98	HSBC	\$7,136	⇒ (cheque no. 256036)	Chow Sang Sang

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure H

Flow of funds from Rona Wong's share trading accounts to Clarence Wong

FUND FLOW (Withdrawal of proceeds of sale of Gilbert shares) FROM RONA WONG TO CLARENCE WONG

Rona Wong's Withdrawal from Stockbroker			⇒	Via Rona Wong's bank account(s)			⇒	To Clarence Wong		
Date	Broker	Withdrawal Amount	⇒	Date	Bank	Amount	⇒	Date	Depositing Bank	Amount
25/8/97	RBC Dominion	\$116,516.79	⇒ (cheque no. 103)	25/8/97	HSBC	\$116,516.79	⇒ (cheque no. 228630)	26/8/97	Citibank	\$116,516.79
17/10/97	Credit Lyonnais	\$173,915	⇒ (transfer)	17/10/97	HSBC	\$173,915	⇒ (cheque no. 235568)	17/10/97	Citibank	\$173,915
5/1/98	RBC Dominion	\$13,445.71	⇒ (cheque no. 1853)	5/1/98	HSBC	\$13,445.71	⇒ (cheque no. 246705)	5/1/98	Citibank	\$13,445
8/5/98	RBC Dominion	\$564,585.25	⇒ (cheque no. 3268)	8/5/98	HSBC	\$564,585.25	↓ }			
				25/5/98	Chekiang First	\$436,674.00 ¹				
18/5/98	Chow Sang Sang	\$40,528.50		18/5/98	Chekiang First	\$40,528.50	⇒ (cheque no. 149696)	27/5/98	Citibank	\$1,831,926
20/5/98	Celetio	\$18,372.22		20/5/98	Chekiang First	\$18,372.22				
25/5/98	Credit Lyonnais	\$1,334,926.09		25/5/98	Chekiang First	1,334,926.09				

¹ Rona Wong deposited \$436,674.00 into her account with Chekiang First Bank via cheque (no. 256050)

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure I

Schedule of Rona Wong's mobile telephone calls

**Rona Wong's Mobile Phone
And
Order Placing Record**

Date: 12/5/98

Telephone Call Record

Broker Order Record

<u>Time</u>	<u>Phone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
14:51:54	2848 1321	To	RBC				
14:52				RBC	Sell	150,000	50
15:24:18	2848 1321	To	RBC				
15:24				RBC	Sell	200,000	50
15:28:52	2848 1321	To	RBC				
15:43:33	2848 1321	To	RBC				
15:44				RBC	Sell	160,000	49
15:44:28	2369 8218	To	Gilbert				
15:45:06	2525 7108	To	Celetio				
15:45				RBC	Sell	10,000	51
15:45:21				Celetio	Buy	10,000	51
15:46:04	2369 5259*	From	Gilbert				

Date: 13/5/98

Telephone Call Record

Broker Order Record

<u>Time</u>	<u>Phone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
15:32:19	2369 5265*	From	Gilbert				
15:33:56	2848 1321	To	RBC				
15:34				RBC	Sell	50,000	45 – 455
15:36:57	2369 1108*	From	Gilbert				
15:37:32	2730 7005	To	Chow Sang Sang				
15:38:16				Chow Sang Sang	Sell	50,000	46
16:17:50	2722 0338	From	Her office				

Date: 14/5/98

Telephone Call RecordBroker Order Record

<u>Time</u>	<u>Telephone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
12:19:43	2848 1321	To	RBC				
12:20:03				RBC	Sell	100,000	45
12:20:22	2730 7005	To	Chow Sang Sang				
12:20				Chow Sang Sang	Sell	100,000	45
12:21:03	2848 1321	To	RBC				
14:57:43	2369 8218	To	Gilbert				
15:03:08	2848 1321	To	RBC				
15:03:33				RBC	Sell	100,000	45
15:10				Chow Sang Sang	Sell	100,000	45
15:11:22	27307005	To	Chow Sang Sang				
15:12:07	2369 8218	To	Gilbert				
15:13:49	27307005	To	Chow Sang Sang				
15:18:18	2848 1321	To	RBC				
15:18:34				RBC	Sell	100,000	44.5
15:32				Chow Sang Sang	Sell	100,000	45
15:33:39	27307005	To	Chow Sang Sang				
15:35:03	2369 8218	To	Gilbert				
15:36:21	2848 1321	To	RBC				
15:36:35				RBC	Sell	150,000	45
15:36:53	2369 8218	To	Gilbert				
15:37				Chow Sang Sang	Sell	100,000	44.5
15:38:32	27307005	To	Chow Sang Sang				
15:40:43	2314 3721	From	Gilbert				
15:41:14	2848 1321	To	RBC				
15:41:32				RBC	Sell	100,000	44.5
15:41:54	27307005	To	Chow Sang Sang				
15:41				Chow Sang Sang	Sell	100,000	44.5
15:43:59	2369 5267*	From	Gilbert				
15:44:54	2848 1321	To	RBC				
15:45:12				RBC	Sell	50,000	44.5
15:50				Chow Sang Sang	Sell	100,000	45
15:51:09	2730 7005	To	Chow Sang Sang				
15:51:50	2848 1321	To	RBC				
15:52:09				RBC	Sell	50,000	44.5
15:52:40	2369 8218	To	Gilbert				
15:53:39	2369 5214*	To	Gilbert				
15:54				Chow Sang Sang	Sell	50,000	44.5
15:55:12	2730 7005	To	Chow Sang Sang				

Date: 14/5/98 (continued)

Telephone Call RecordBroker Order Record

<u>Time</u>	<u>Telephone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
15:57:53	2730 7005	To	Chow Sang Sang				
15:57				Chow Sang Sang	Sell	130,000	43
15:59:59	2848 1321	To	RBC				
16:01:23	2848 1321	To	RBC				
16:09:15	2735 5723	To					
16:09:52	2848 1321	To	RBC				
16:15:18	2848 1321	To	RBC				
16:21:27	2848 1321	To	RBC				
16:22:23	9486 0345	To	Clarence Wong				
16:23:24	2730 7005	To	Chow Sang Sang				
18:07:51	9486 0345	To	Clarence Wong				

Date: 15/5/98

Telephone Call RecordBroker Order Record

<u>Time</u>	<u>Telephone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
11:07:27	2369 8218	To	Gilbert				
12:30:01	2369 8218	To	Gilbert				
14:35:49	2369 8218	To	Gilbert				
14:36:41	9486 0345	To	Clarence Wong				
15:01:40	2525 1090	To	Shanghai Commercial	Shanghai Commercial	Sell	100,000	

Date: 18/5/98

Telephone Call RecordBroker Order Record

<u>Time</u>	<u>Telephone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
15:13:23	2369 8218	To	Gilbert				
15:14:56	9486 0345	To	Clarence Wong (mobile)				
15:15:24	2369 8415*	From	Gilbert				
15:16:11	2730 7005	To	Chow Sang Sang				
15:18:03	2730 7005	To	Chow Sang Sang				
15:19:59	2730 7005	To	Chow Sang Sang				
15:23:01	2369 5265*	From	Gilbert				
15:23:27	2369 8218	From	Gilbert				
15:24:04	2730 7005	To	Chow Sang Sang				
15:24:39	2369 8218	To	Gilbert				
15:25:31	2730 7005	To	Chow Sang Sang				
15:26:11	2525 7108	To	Celetio				
15:27				Celetio	Sell	48,000	38.5
15:28:09	2730 7005	To	Chow Sang Sang				
15:28				Chow Sang Sang	Sell	106,000	38-39
15:29:31	2730 7005	To	Chow Sang Sang				
15:30:21	2369 8218	To	Gilbert				
15:31:48	2868 1033	To	Credit Lyonnais				
15:32				Credit Lyonnais	Sell	100,000	Market
15:37:34	2868 1033	To	Credit Lyonnais				
15:41:17	2369 8218	To	Gilbert				
15:43:47	2868 1033	To	Credit Lyonnais				
15:44				Credit Lyonnais	Sell	40,000	38
15:44:37	2868 1033	To	Credit Lyonnais				
15:48:09	2722 0337	To	Her own office				
15:49:33	2369 5214*	From	Gilbert				
15:50:04	2838 1033	To	Credit Lyonnais				
15:50:36	2838 1033	To	Credit Lyonnais				
15:50				Credit Lyonnais	Sell	180,000	37.5
15:51:45	2314 3721	From	Gilbert				
15:54:16	2658 8123	To	Home				
16:31:09	2369 8219*	From	Gilbert				
16:31:30	2369 8415*	From	Gilbert				
16:31:50	2369 5187	From	Gilbert				

Date: 19/5/98

Telephone Call RecordBroker Order Record

<u>Time</u>	<u>Telephone No.</u>	<u>Type of Call</u>	<u>Subscriber</u>	<u>Broker</u>	<u>Order</u>	<u>Quantity</u>	<u>Price (cents)</u>
9:24:52 10:33	9486 0345	From	Clarence Wong	Credit Lyonnais	Sell	100,000	37.5
11:10:39	2524 7885	From					
14:19:29	2369 8219*	From	Gilbert				
14:20:02	2868 1033	To	Credit Lyonnais				
14:23:40	2868 1033	To	Credit Lyonnais				
14:28				Credit Lyonnais	Sell	620,000	36.5 – 37
14:34				Credit Lyonnais	Sell	500,000	35 – 36
14:39				Credit Lyonnais	Sell	150,000	35 – 35.5
14:42:27	2868 1033	To	Credit Lyonnais				
14:42				Credit Lyonnais	Sell	110,000	35
14:44				Credit Lyonnais	Sell	220,000	34 – 35
14:45:51	2868 1033	To	Credit Lyonnais				
14:46				Credit Lyonnais	Sell	230,000	33 – 34
14:47:01	2868 1033	To	Credit Lyonnais				
14:47				Credit Lyonnais	Sell	310,000	32 – 33
14:51				Credit Lyonnais	Sell	300,000	31 – 32
14:53:53	2369 8219*	From	Gilbert				
14:54				Credit Lyonnais	Sell	500,000	28 – 31
14:57:30	2314 3721	From	Gilbert				
14:58:33	2868 1033	To	Credit Lyonnais				
14:58				Credit Lyonnais	Sell	250,000	28
15:01:25	2314 3721	From	Gilbert				
15:01:55	2868 1033	To	Credit Lyonnais				
15:03:58	2369 5265*	From	Gilbert				
15:06				Credit Lyonnais	Sell	450,000	25 – 27.5 cents
15:07:02	2868 1033	To	Credit Lyonnais				
15:07:45	2369 8218	To	Gilbert				

*Note: References in records of interviews on whether the following were Gilbert's telephone numbers

<u>Telephone No.</u>	<u>Evidence in bundles [vol/pp – Q&A no.]</u>
2369 1108	[3/254 – Q&A 51] but also see [4/10 – Q&A 29]
2369 5214	[3/251 – Q&A 37]
2369 5259	[3/252 – Q&A 40]
2369 5265	[3/254 – Q&A 51]
2369 5267	[4/05 – Q&A 10]
2369 8219	[4/10 – Q&A 29]
2369 8415	[3/251 – Q&A 37]

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure J

Calculation of losses avoided

Gilbert Holdings Limited
Computation of Notional Loss Avoided
Hung Shiu Shan

Account Name	Transaction Date	Quantity of shares sold (a)	Net sales proceeds (HK\$) (b)	Notional sale proceeds at re-rated price of \$0.1484 # (HK\$) (c)	Notional transaction costs (at 0.386%) ## (HK\$) (d)	Notional net sale proceeds (HK\$) (e) = (c) - (d)	Notional net loss avoided (HK\$) (f) = (b) - (e)
Shares held to the personal interest of Sunny Wong Man Fu in account held by Hung Shiu Shan							
<u>Ewarton Securities Ltd</u>							
Hung Shiu Shan	8-May-98	520,000	263,550.43	77,168.00	297.87	76,870.13	186,680.30
Hung Shiu Shan	8-May-98	230,000	121,914.55	34,132.00	131.75	34,000.25	87,914.30
Hung Shiu Shan	14-May-98	260,000	117,133.80	38,584.00	148.93	38,435.07	78,698.73
Total		1,010,000	502,598.78	149,884.00	578.55	149,305.45	353,293.33

Note: # The re-rated price is the average transaction price of Gilbert shares during the four trading days from 29 May 1998 to 3 June 1998

Transaction cost consisted of (a) minimum brokerage commission of 0.25% of transaction value; (b) transaction levy of 0.011% of transaction value; and (c) stamp duty of 0.125% of the transaction value. These added up to 0.386% of transaction value. Trading tariff of \$0.50 on each transaction is not included in the calculation for simplicity.

Gilbert Holdings Limited
Computation of Notional Loss Avoided
Sunny Wong Man Fu

Account Name	Transaction Date	Quantity of shares sold (a)	Net sales proceeds (HK\$) (b)	Notional sale proceeds at re-rated price of \$0.1484 # (HK\$) (c)	Notional transaction costs (at 0.386%) ## (HK\$) (d)	Notional net sale proceeds (HK\$) (e) = (c) - (d)	Notional net loss avoided (HK\$) (f) = (b) - (e)
Shares held to the personal interest of Sunny Wong Man Fu in account held by Hung Shiu Shan							
<u>Ewarton Securities Ltd</u>							
Hung Shiu Shan	8-May-98	520,000	263,550.43	77,168.00	297.87	76,870.13	186,680.30
Hung Shiu Shan	8-May-98	230,000	121,914.55	34,132.00	131.75	34,000.25	87,914.30
Hung Shiu Shan	14-May-98	260,000	117,133.80	38,584.00	148.93	38,435.07	78,698.73
Total		1,010,000	502,598.78	149,884.00	578.55	149,305.45	353,293.33

Note: # The re-rated price is the average transaction price of Gilbert shares during the four trading days from 29 May 1998 to 3 June 1998
 ## Transaction cost consisted of (a) minimum brokerage commission of 0.25% of transaction value; (b) transaction levy of 0.011% of transaction value; and (c) stamp duty of 0.125% of the transaction value. These added up to 0.386% of transaction value. Trading tariff of \$0.50 on each transaction is not included in the calculation for simplicity.

Gilbert Holdings Limited
Computation of Notional Loss Avoided
Clarence Wong Wing Wah

Account Name	Transaction Date	Quantity of shares sold (a)	Net sales proceeds (HK\$) (b)	Notional sale proceeds at re-rated price of \$0.1484 # (HK\$) (c)	Notional transaction costs (at 0.386%) ## (HK\$) (d)	Notional net sale proceeds (HK\$) (e) = (c) - (d)	Notional net loss avoided (HK\$) (f) = (b) - (e)
Shares held to the personal interest of Clarence Wong Wing Wah							
In accounts held by Rona Wong							
<u>RBC Dominion Securities (HK) Ltd</u>							
Rona Wong	14-May-98	510,000	252,421.13	75,684.00	292.14	75,391.86	177,029.27
Rona Wong	15-May-98	50,000	22,493.76	7,420.00	28.64	7,391.36	15,102.40
Rona Wong	18-May-98	650,000	289,876.74	96,460.00	372.34	96,087.66	193,789.08
Less:							
Shares held by Rona Wong to her personal benefit		(286,155)	(127,911.25)	(42,465.40)	(163.92)	(42,301.49)	(85,609.76)
<u>Chow Sang Sang Securities Ltd</u>							
Rona Wong	13-May-98	50,000	22,841.40	7,420.00	28.64	7,391.36	15,450.04
Rona Wong	14-May-98	780,000	345,131.10	115,752.00	446.80	115,305.20	229,825.90
Rona Wong	18-May-98	106,000	40,528.50	15,730.40	60.72	15,669.68	24,858.82
<u>Credit Lyonnais Securities (Asia) Ltd</u>							
Rona Wong	18-May-98	320,000	120,233.75	47,488.00	183.30	47,304.70	72,929.05
Rona Wong	19-May-98	3,740,000	1,214,693.37	555,016.00	2,142.36	552,873.64	661,819.73
<u>Celestio Investments Ltd</u>							
Rona Wong	18-May-98	48,000	18,372.22	7,123.20	27.50	7,095.70	11,276.52
Sub-total		5,967,845	2,198,680.72	885,628.20	3,418.52	882,209.67	1,316,471.05
Shares held to the personal interest of Rona Wong							
In accounts held by Rona Wong							
<u>RBC Dominion Securities (HK) Ltd</u>	n.a.	286,155	127,911.25	42,465.40	163.92	42,301.49	85,609.76
<u>Shanghai Commercial Bank</u>							
Rona Wong	15-May-98	100,000	39,845.60 @	14,840.00	57.28	14,782.72	25,062.88
Sub-total		386,155	167,756.85	57,305.40	221.20	57,084.20	110,672.65
Shares held to the personal interest of Clarence Wong Wing Wah							
In accounts held by Fok Ying She							
<u>Shenvin Wanguo Securities</u>							
Fok Ying She	19-May-98	4,278,000	1,070,474.78	634,855.20	2,450.54	632,404.66	438,070.12
Sub-total		4,278,000	1,070,474.78	634,855.20	2,450.54	632,404.66	438,070.12
Grand Total		10,632,000	3,436,912.35	1,577,788.80	6,090.26	1,571,698.54	1,865,213.81

Note: # The re-rated price is the average transaction price of Gilbert shares during the four trading days from 29 May 1998 to 3 June 1998

Transaction cost consisted of (a) minimum brokerage commission of 0.25% of transaction value; (b) transaction levy of 0.011% of transaction value; and

(c) stamp duty of 0.125% of the transaction value. These added up to 0.386% of transaction value. Trading tariff of \$0.50 on each transaction is not included in the calculation for simplicity.

@ Assuming the selling price was \$0.40 which was the lowest execution price on that day. If based on the average transaction price of \$0.4213 on that day, the proceed from the disposal of 100,000 shares would be \$41,967.38, and the loss avoided would be \$27,184.66. The difference between these two calculation methods would be \$2,121.78.

Gilbert Holdings Limited
Computation of Notional Loss Avoided
Rona Wong Yuen Wan

Account Name	Transaction Date	Quantity of shares sold (a)	Net sales proceeds (HK\$) (b)	Notional sale proceeds at re-rated price of \$0.1484 # (HK\$) (c)	Notional transaction costs (at 0.386%) ## (HK\$) (d)	Notional net sale proceeds (HK\$) (e) = (c) - (d)	Notional net loss avoided (HK\$) (f) = (b) - (e)
Shares held to the personal interest of Rona Wong							
<i>In accounts held by Rona Wong</i>							
<u>RBC Dominion Securities (HK) Ltd</u>	n.a.	286,155	127,911.25	42,465.40	163.92	42,301.49	85,609.76
Shanghai Commercial Bank							
Rona Wong	15-May-98	100,000	39,845.60 @	14,840.00	57.28	14,782.72	25,062.88
	Sub-total	386,155	167,756.85	57,305.40	221.20	57,084.20	110,672.65
Shares sold by Lam Loy Lui							
<u>Chow Sang Sang Securities Ltd</u>							
Lam Loy Lui	18-May-98	220,000	85,337.10	32,648.00	126.02	32,521.98	52,815.12
	Sub-total	220,000	85,337.10	32,648.00	126.02	32,521.98	52,815.12
Shares held to the personal interest of Clarence Wong Wing Wah							
<i>In accounts held by Rona Wong</i>							
<u>RBC Dominion Securities (HK) Ltd</u>							
Rona Wong	14-May-98	510,000	252,421.13	75,684.00	292.14	75,391.86	177,029.27
Rona Wong	15-May-98	50,000	22,493.76	7,420.00	28.64	7,391.36	15,102.40
Rona Wong	18-May-98	650,000	289,876.74	96,460.00	372.34	96,087.66	193,789.08
Less:							
Shares held by Rona Wong to her personal benefit		(286,155)	(127,911.25)	(42,465.40)	(163.92)	(42,301.49)	(85,609.76)
<u>Chow Sang Sang Securities Ltd</u>							
Rona Wong	13-May-98	50,000	22,841.40	7,420.00	28.64	7,391.36	15,450.04
Rona Wong	14-May-98	780,000	345,131.10	115,752.00	446.80	115,305.20	229,825.90
Rona Wong	18-May-98	106,000	40,528.50	15,730.40	60.72	15,669.68	24,858.82
<u>Credit Lyonnais Securities (Asia) Ltd</u>							
Rona Wong	18-May-98	320,000	120,233.75	47,488.00	183.30	47,304.70	72,929.05
Rona Wong	19-May-98	3,740,000	1,214,693.37	555,016.00	2,142.36	552,873.64	661,819.73
<u>Celestio Investments Ltd</u>							
Rona Wong	18-May-98	48,000	18,372.22	7,123.20	27.50	7,095.70	11,276.52
	Sub-total	5,967,845	2,198,680.72	885,628.20	3,418.52	882,209.67	1,316,471.05
	Grand Total	6,574,000	2,451,774.67	975,581.60	3,765.74	971,815.86	1,479,958.81

Note: # The re-rated price is the average transaction price of Gilbert shares during the four trading days from 29 May 1998 to 3 June 1998

Transaction cost consisted of (a) minimum brokerage commission of 0.25% of transaction value; (b) transaction levy of 0.011% of transaction value; and (c) stamp duty of 0.125% of the transaction value. These added up to 0.386% of transaction value. Trading tariff of \$0.50 on each transaction is not included in the calculation for simplicity.

@ Assuming the selling price was \$0.40 which was the lowest execution price on that day. If based on the average transaction price of \$0.4213 on that day, the proceed from the disposal of 100,000 shares would be \$41,967.38, and the loss avoided would be \$27,184.66. The difference between these two calculation methods would be \$2,121.78.

Insider Dealing Tribunal Inquiry into Gilbert Holdings Limited

Annexure K

The costs of the Inquiry

The Costs of the Inquiry

Description	Amount (\$)	Amount (\$)
Witness expenses		52
Department of Justice costs		2,271,790
SFC costs		147,401
Tribunal costs		
Interpretation Services	47,250	
Court reporting services	152,400	
Fees of the Tribunal Members	247,500	
Cost of the Chairman and Tribunal staff	752,802	
Expenses related to video conferencing	24,360	
Photocopying of transcripts	4,884	1,229,196
Total		3,648,439