

REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

appointed to inquire into and determine (a) whether culpable insider dealing took place between the 1st January and the 30th June 1984 in relation to the ordinary shares of International City Holdings Limited or any related companies and (b) the identity of any persons involved in such insider dealing and the extent of their culpability.

Presented pursuant to the Securities Ordinance (Cap. 333),
section 141I(4)(a)

VOLUME I

INTRODUCTION, LAW, BACKGROUND AND RELEVANT INFORMATION

Ordered to be printed and caused to be published by
the Insider Dealing Tribunal pursuant to the Securities
Ordinance, section 141I(4)(b)(i)

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INTRODUCTION, LAW, BACKGROUND AND
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Securities Ordinance, section 141I(4)(b)(i)

(i)

SECURITIES ORDINANCE

(Cap. 333)

NOTICE INSTITUTING INQUIRY BY INSIDER DEALING TRIBUNAL

CR 4/5321/84

2 November 1984

The Chairman of the Insider Dealing
Tribunal established under section 141G
of the Securities Ordinance, Cap 333 of
the Laws of Hong Kong

Notice under section 141H(2) of the
Securities Ordinance of Hong Kong

Whereas it appears to me that insider dealing (as that term is defined in the Securities Ordinance of Hong Kong) in relation to the securities of a corporation, namely International City Holdings Limited, has taken place or may have taken place, the Insider Dealing Tribunal is hereby required to inquire into and determine

- (a) whether culpable insider dealing in relation to ordinary shares in International City Holdings Limited or any related companies has taken place in the period between 1 January 1984 and 30 June 1984; and
- (b) the identity of any persons involved in such insider dealing and the extent of their culpability.

Dated the 2nd day of November 1984

(Sir John Bremridge)
Financial Secretary

(ii)

TABLE OF CONTENTS

NOTICE INSTITUTING INQUIRY

THE REPORT

Paragraph		Page
	CHAPTER I	
1.1	INTRODUCTION	2
	CHAPTER II	
	THE RELEVANT PROVISIONS OF PART XIIA OF THE ORDINANCE	
2.1	(i) Relevant provisions of substantive law	10
2.30	(ii) Procedure and powers of the Tribunal	28
2.44	(iii) Degree of cogency of evidence to establish culpable insider dealing	35
	CHAPTER III	
	THE BACKGROUND OF ICH PRIOR TO THE RELEVANT PERIOD	
3.1	(i) Incorporation	41

(iii)

Paragraph		Page
3.2	(ii) Shareholders	41
3.5	(iii) Directors	43
3.10	(iv) Principal activities of the ICH Group	45
3.11	(v) The Management Agreement between ICH and CKH	45
3.12	(vi) ICH share prices and cash position	45

CHAPTER IV

THE POLITICAL AND FINANCIAL SITUATION
IMMEDIATELY BEFORE THE RELEVANT PERIOD

4.1	(i) The political situation at the end of 1983	49
4.3	(ii) The property market at the end of 1983	49
4.4	(iii) The stock market at the end of 1983	50

CHAPTER V

THE CITY GARDEN TRANSACTION

5.1	(i) The parties to the transaction	52
5.6	(ii) Wang's go-betweens	53

(iv)

Paragraph		Page
5.12	(iii) The sequence of negotiations leading up to the transaction	56
5.30	(iv) The terms of the transaction	63
5.40	(v) The period between the execution of the memoranda and the cancellation of the transaction	67
5.52	(vi) The events leading up to the cancellation	73
5.59	(vii) Motivation of Wang in relation to the transaction	75
5.72	(viii) Motivation of K S Li in relation to the transaction	82

CHAPTER VI

THE PUBLICITY GIVEN TO
THE CITY GARDEN TRANSACTION

6.1	(i) The nature of the publicity	96
6.2	(ii) Publicity before the execution of the memoranda	96
6.44	(iii) Publicity between the execution of the memoranda and the cancellation of the transaction	117

Paragraph		Page
6.57	(iv) Publicity following the cancellation of the transaction	123
6.67	(v) Attitude of Wang and Ever Bright towards publicity for the transaction	129
6.86	(vi) Attitude of ICH and CKH towards publicity for the transaction	138

CHAPTER VII

THE IMPACT OF THE TRANSACTION AND ITS CANCELLATION ON THE PRICE OF ICH SHARES AND ON THE STOCK MARKET

7.1	(i) The impact of the transaction	152
7.26	(ii) The impact of the cancellation of the transaction	165

CHAPTER VIII

RELEVANT INFORMATION CONCERNING ICH SHARES DURING THE RELEVANT PERIOD

8.1	(i) Information relating to the negotiations preceding the transaction	176
8.9	(ii) Information relating to the break clause	180
8.15	(iii) Information relating to the cancellation of the transaction	183

THE SECURITIES ORDINANCE

(Cap. 333)

INSIDER DEALING TRIBUNAL

To the Honourable Sir John Bremridge, K.B.E., J.P.
Financial Secretary
Hong Kong

We, the undersigned being members of the Insider Dealing Tribunal appointed by His Excellency the Governor under section 141G(2) of the Securities Ordinance (Cap. 333), having been required by you by notice in writing addressed to the undersigned Chairman of the said Tribunal under section 141H(2) of the said Ordinance "to inquire into and determine

- (a) whether culpable insider dealing in relation to ordinary shares in International City Holdings Limited or any related companies has taken place in the period between 1 January 1984 and 30 June 1984; and
- (b) the identity of any persons involved in such insider dealing and the extent of their culpability."

and having conducted such inquiry accordingly pursuant to section 141I(1) of the said Ordinance, hereby furnish to you the following Report pursuant to section 141I(4)(a) of the said Ordinance.

CHAPTER I

INTRODUCTION

1.1 As appears from our terms of reference our inquiry was concerned with dealings in the shares of International City Holdings Limited ("ICH") between the 1st January and the 30th June 1984 ("the relevant period"). The Tribunal has been required by the Financial Secretary to embark on its inquiry pursuant to section 141H(1) of the Securities Ordinance (Cap 333) ("the Ordinance") following upon representations by the Securities Commission ("the Commission") to him on the 27th September 1984 that (1) there was a case for further and urgent investigation by the Tribunal into dealings in ICH shares during the relevant period and (2) the terms of reference for our inquiry should be as wide as possible.

1.2 After preliminary but limited investigations by the office of the Commissioner for Securities ("the Commissioner"), the Commission's suspicions had been aroused concerning certain dealings in ICH shares before and after the news had broken of a transaction ("the City Garden transaction") between Zangforce Limited ("Zangforce") a wholly owned subsidiary of ICH of one part and Cheery Bright Limited ("Cheery Bright") of the other part. Cheery Bright is a subsidiary of Violight Industry Company Limited ("Violight"), a company which at all material times carried on business under its own name and also under the name of Ever Bright Industrial Company.

1.3 ICH is a property company and the transaction related to the proposed sale by ICH, through its subsidiary Zangforce, of eight blocks of residential property incorporating commercial podia which ICH proposed to build as Phases II and III of a continuing development at a site known as City Garden in Hong Kong where Phase I had already been constructed by the beginning of the relevant period. The transaction (which will be considered in greater detail below) was effected by two memoranda of agreement ("the memoranda") each dated the 23rd January 1984 and each purporting to provide for the parties to enter into an agreement for the sale and purchase of 4 of the 8 blocks at a stipulated price within six months of the date of each memorandum but not earlier than the 30th April 1984.

1.4 Subject to adjustment the total stipulated price for the eight blocks exceeded \$900 million and Cheery Bright paid a deposit under each memorandum amounting to a total of slightly below \$47 million. The transaction had received wide publicity in the press, beginning with rumours on the 14th January 1984 when the parties were negotiating. It was always referred to in the press as if it were a sale and purchase transaction relating to the eight blocks in City Garden. The Commission was concerned that during the period of the negotiations and before the news of the transaction was generally available there had been purchases of ICH shares by parties connected with ICH followed by sales in the rising market which resulted when the news of the transaction was out.

1.5 Furthermore on the 28th June 1984 Cheery Bright had cancelled the transaction. The Commissioner learnt in July that the two memoranda (which were identical in terms *mutatis mutandis*) were not agreements for sale and purchase in the real sense but each contained a clause ("the break clause") entitling Cheery Bright to cancel each of the agreements and recover its deposits together with interest at the rate of 10 per cent per annum by giving Zangforce two days' notice in writing within six months from the date of the memoranda. It was of concern to the Commission that in the light of the circumstances of the events leading up to the City Garden transaction and in the light of its cancellation after being publicised as a sale and purchase, it must follow that directors of ICH and certain of its employees were parties to price sensitive information regarding ICH shares during the relevant period.

1.6 We began our inquiry into these events with the assistance of a paper which had been submitted to the Commission by the office of the Commissioner before it made its representations to the Financial Secretary for this inquiry. A copy of this paper has been supplied to all persons whose dealings have been investigated by us as suspected insider dealers. It was based on limited investigations carried out by the office of the Commissioner and we emphasise that whilst we found it a helpful introduction to the background of the matters which we were required to investigate, we have made no other use of it and our findings in this report have been arrived at on the evidence before us and for the reasons given below.

1.7 We have been occupied in this inquiry between the 2nd November 1984 and the date of this report. We make no apologies for the time taken. We had been given very wide terms of reference and it was necessary, if we were to make a thorough investigation, to obtain returns from no less than 1231 registered and exempt dealers and consider a total of 61,655 dealings in ICH shares recorded in these returns. We have had 44 meetings and our actual sittings occupied 36 days at which 141 witnesses gave evidence. Much sitting time was saved by obtaining statutory declarations from witnesses pursuant to section 141K(1)(e) of the Ordinance and section 4(1)(b) and (n) of the Commissions of Inquiry Ordinance (Cap 86) which are made applicable by section 141J(1) of the Ordinance. Altogether 326 statutory declarations were before us and our investigators interviewed about 300 persons. A further saving of sitting time was achieved by inviting affected parties or their legal representatives to furnish written submissions in advance of oral submissions.

1.8 Our report has been set out in Chapters in which we deal first, in Volume I, with the relevant provisions of Part XIIA of the Ordinance, the City Garden transaction and other important preliminary and background matters. Thereafter, in Volume II, we give our findings in the case of individual suspects whose dealings we have dealt with in chronological sequence. The effect of section 141I(5) of the Ordinance is to provide machinery whereby a person whom the Tribunal is minded to find not culpable in respect of a dealing which has been the subject of its inquiry may require the Tribunal not to name him in its report when it is published pursuant to section 141I(4)(b) of the Ordinance after it has been first submitted to the Financial Secretary

in its unexpurgated form. We apprehend that a substantial number of persons whose dealings we have inquired into will elect to exercise their right not to be named in our published report. In all probability the published report will not therefore contain reference to all persons whose dealings have been the subject of our inquiry.*

1.9 In the light of our experience in the inquiry we have seen fit to make comments and recommendations in Chapter XII in Volume II on the provisions of Part XIIA of the Ordinance and the implications of our findings in this report. In doing so we have emulated our only predecessor, the Tribunal ("the Barker Tribunal") appointed in 1980 under the Chairmanship of the Honourable Mr Justice Barker which took the same course in its report ("the Barker Report").

1.10 In the course of this report we have necessarily had to examine the motivation of the parties to the City Garden transaction both in relation to the transaction itself and to the publicity given to the transaction. We emphasise that the conduct of Mr Wang Guang-ying ("Wang") and the Ever Bright group of companies was not in question in our inquiry because there was no allegation that they were insider dealers during the relevant period or at all.

* In the event all the twenty-nine suspected persons who were held by the Tribunal to be not culpable in respect of insider dealings elected not to be named in this report.

1.11 It has proved to be unavoidable to examine their actions and motivation in relation to a number of matters out of fairness to a number of suspected insider dealers. It has also proved to be unavoidable to determine as a question of fact that Wang misrepresented to the public of Hong Kong the true character of the City Garden transaction as a sale and purchase at a time when he genuinely believed that he would not invoke the break clause. However, we emphasise that, by this and other findings in this report affecting Wang, we do not intend to make or imply any adverse finding against him. Such a finding would not be within our terms of reference and we do not make it.

1.12 The Tribunal has received assistance from many quarters. Pursuant to paragraph 18 of the Third Schedule of the Ordinance we appointed Mr Henry Litton Q.C. to be leading counsel for the Tribunal and the Attorney General nominated Mr G J McMahon and Mr N F Miller to be its junior counsel. We are indebted to Mr Litton for his balanced, careful and highly experienced assistance on a multitude of matters placing a very heavy burden upon him which he has discharged with his usual ability, courtesy and instinct for justice. Our two junior counsel have been unfailing in their efforts to assist us at all stages of the inquiry and we are indebted to them for their expertise and considerable industry.

1.13 We are aware that in some other jurisdictions it has been said that there is a dearth of trained investigators to investigate suspected insider dealing. For our part we could not have been better served by our investigating team led by Assistant Commissioner for Securities H N Whiteley and Senior Securities Officers

P R Bailey and S W Cheng. They and their colleagues have consistently worked very long hours and shown great skill and initiative together with a sense of fairness which we commend. They were undaunted by the magnitude and complexity of their task and, had it not been for their experience and industry, our inquiry would have taken much longer.

1.14 It was essential for an inquiry of the length and complexity which we have had to conduct that we should have an efficient Secretary. In Mr P K Auyeung the administration has provided us with an officer who has measured up fully to his task. He has been of invaluable assistance to the Chairman and has sustained the Tribunal and anticipated their needs and requirements at all times. Together with his two assistants, Miss Connie Lam and Miss Eleanor Lo, he has worked long hours and has mastered the intricate details of our inquiry to a degree that has greatly enhanced his usefulness to us. We also express our appreciation for the long hours worked by our stenographer Miss Anita Ngan who has performed admirably the daunting task of typing and correcting our drafts for this report.

1.15 Finally we record our appreciation of all the assistance we have obtained from all the members of the legal profession who have represented the persons whose dealings we have investigated. We have received unfailing courtesy and co-operation from both sides of the profession who have at the same time given of their utmost best for their clients. In particular Mr Leslie Wright has had to play a predominate role in our inquiry and we have derived great assistance from his exhaustively researched submissions on various legal aspects of our inquiry.

1.16 In the course of this report we have made use of abbreviated definitions of names and other expressions. For ease of reference we have set out an alphabetical list of all the abbreviations in Appendix I to this report.

CHAPTER II

THE RELEVANT PROVISIONS OF PART XIIA OF THE ORDINANCE

(i) Relevant provisions of substantive law

2.1 In the preliminary paragraphs of its report the Barker Tribunal set out the provisions of the Ordinance relevant to its inquiry and made observations on the interpretation of some of those provisions. The same provisions are relevant to the present inquiry. Subject to the comments in paragraphs 2.2 to 2.10 below, we respectfully adopt the relevant observations of the Barker Tribunal which are contained in the following paragraphs of the Barker Report:-

"4. The preamble to the Securities Ordinance reads as follows:

To establish a Securities Commission and a federation of stock exchanges, to make provision in relation to stock exchanges and dealers in securities, to control trading in securities and the business of making investments, and to provide for the protection of investors and associated matters.

Part XII A of the Ordinance which is headed "Insider Dealing" and which was brought into force on the 17th day of February 1978 was clearly enacted for the purposes of the protection of investors.

"5. The mischief with which Part XII A of the Ordinance is concerned is the practice of insider dealing which is detrimental to an orderly market in securities because

- (a) it gives to insiders such as the paid servants of listed companies and to the professional associates of those companies an unfair advantage over the investing public at large and over the shareholders who may be paying them; and
- (b) it undermines confidence in the integrity of the market place.

"6. (i) Section 141B of the Ordinance provides as follows:

(1) Insider dealing in relation to the securities of a corporation takes place and, pursuant to section 141C, may be culpable for the purposes of this Part -

- (a) when a dealing in the securities is made procured or occasioned by a person connected with that corporation who is in possession of relevant information concerning the securities;
- (b) when relevant information concerning the securities is disclosed by a person connected with that corporation directly or indirectly to another person and the first mentioned person knows or has reasonable grounds for believing that the other person will make use of the information for the purpose of dealing or procuring another to deal, in those securities.

(2) A dealing in the securities of a corporation is occasioned by a person connected with that corporation for the purposes of subsection (1)(a) when a person who has obtained relevant information in the circumstances described in subsection (1)(b) actually makes use of that information for the purpose of dealing or procuring another to deal in those securities.

(ii) Section 141D(1) provides:

For the purposes of this part -

"relevant information" in relation to securities means information which is not generally available, but, if it were, would be likely to bring about a material change in the price of those securities.

(iii) Section 141C(3) provides:

A person who enters into a transaction which is an insider dealing within section 141B(1)(a) may be held not culpable if his purpose is not, or is not primarily, the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information.

and (iv) Section 141E(1) provides:

A person is connected with a corporation for the purposes of section 141B if being an individual-

(a) he is 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 securities of 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 a substantial shareholder in either of such corporations.

"7. These sections are unhappily drafted. It is not, for example, clear whether section 141B(2) refers back only to section 141B(1)(a) and not to section 141B(1)(b), though we think that this must be the case, since section 141B(2) is seeking to define when a dealing in the relevant securities is "occasioned" and subsection 1(b) does not mention "occasioned".

Moreover, although section 141B purports to define when culpable insider dealing takes place there is no exhaustive definition of what is "culpable" insider dealing. Section 141C merely lists a number of eventualities in which insider dealing is not culpable.

"8. For our purposes it is sufficient to define "insider dealing" as the conscious use for the purpose of profit or of the avoidance of loss of confidential price-sensitive information to buy or sell shares to which that information relates or the disclosure of confidential price-sensitive information to a person likely to use the information for that purpose.

It is, however, important in this definition to stress the confidentiality of the price-sensitive information. Once the information becomes generally available it ceases to be "relevant information" within the meaning of section 141C(3) and thereafter there can be no "insider dealing" for the purposes of Part XIIA of the Ordinance."

2.2 Section 141B which defines insider dealing, provides that insider dealing may, pursuant to section 141C, be culpable for the purposes of Part XIIA of the Ordinance. As indicated in paragraph 7 of the Barker Report, section 141C does not contain any exhaustive definition of what constitutes culpable insider dealing. Subsections (1) to (4) of section 141C merely specify a number of eventualities where insider dealing is not culpable and subsection (5) requires the Tribunal to have regard, in arriving at its determination regarding the culpability of a person in relation to insider dealing, to whether or not such person has disclosed the dealing promptly or otherwise to the Commissioner of his own initiative and to the reasonableness of any explanation offered by such person if he has made no disclosure to the Commissioner of his own initiative.

2.3 Subject to the provisions mentioned in paragraph 2.2 it is left to the Tribunal to determine the culpability of any person in relation to insider dealing pursuant to section 141C(6) and 141H(3). Section 141C(6) provides:-

" (6) Subject to this section, the culpability of any person in relation to an insider dealing within section 141B is a matter for the Tribunal to determine under section 141H(3)."

2.4 The Tribunal consists of a Chairman who is a judge of the Supreme Court and 2 other members appointed by the Governor under section 141G(2) of the Ordinance and section 141G(3) stipulates that the 2 other members shall not be public officers. Whilst the Chairman determines all questions of law, paragraph 14 of the Third Schedule provides that all other questions are to be determined by the opinion of the majority of the members of the Tribunal. It is therefore manifest that the 2 non judicial members of the Tribunal, who are selected for their expertise and high standing in the commercial community, have a vital role to play in determining the issue of culpability. This issue is to be considered in the light of the spirit and intendment of Part XIIA of the Ordinance which is primarily intended to protect the investor by maintaining the integrity of and hence confidence in the market place by prohibiting any insider dealing which does not fall within any of the exonerating provisions of section 141C and which is determined by the Tribunal to be culpable under section 141C(6) and 141H(3) after consideration of all the circumstances of the dealing in question. In the event all the decisions of the Tribunal were unanimous.

2.5 Whilst we accept that the helpful working definition of "insider dealing" in paragraph 8 of the Barker Report was sufficient for the purposes of the Barker Tribunal (which did not find that there had even been any insider dealing because it concluded that none of the persons whose dealings it inquired into had dealt with relevant information) we have preferred to use the expression "relevant information" (as defined in section 141D(1) of the Ordinance) in this report rather than

"confidential price-sensitive information" which has undertones of the expression "unpublished price sensitive information" occurring in section 68* of the English Companies Act 1980 (1980c.22).

2.6 The definition of "relevant information" in section 141D(1) is concerned, not with information which is merely price sensitive but information in relation to securities which is not generally available but, if it were, would be likely to bring about a material change in the price of those securities. 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 sufficient degree in any given circumstances to amount to a material change.

2.7 One of the crucial provisions of Part XIIA set out above in paragraph 6(iii) of the Barker Report is section 141C(3). The effect of that provision is that a person who has entered into a transaction which is an insider dealing within section 141B(1)(a) may be held to be not culpable for the purposes of Part XIIA "..... if his purpose is not, or is not primarily the making of a profit or the avoiding of a loss (whether for himself or another) by the use of relevant information."

2.8 The Barker Report uses the expression "conscious use" in this context. We find this expression a helpful guide. It is clearly not sufficient for a finding of

* This section is now substantially reproduced as section 1 of the Company Securities (Insider Dealing) Act 1985 (1985 c.8).

culpability in relation to a person who is an insider dealer within section 141B(1)(a) that he is a person connected with a corporation for the purposes of section 141B who has dealt in the securities of that corporation when in possession of relevant information concerning those securities. Such a dealer merely brings himself within the definition of insider dealing under section 141B(1)(a) which may or may not be culpable.

2.9 Furthermore the Tribunal is required by section 141C(3) to inquire into such a dealer's motivation at the time of his insider dealing and if the Tribunal is not satisfied that at the time of the dealing he was consciously making use of relevant information for the purpose or primarily for the purpose of making a profit or avoiding a loss for himself or another, then the Tribunal should find that dealer not culpable. Another way of approaching the all important question of the use of relevant information is to enquire and determine whether the evidence satisfies the Tribunal that the relevant information was a factor in the insider's participation in the dealing transaction either by inducing him to enter into it or by assisting him or otherwise influencing him in the manner in which he performs the transaction. This was the approach of the trial judge and expressly approved by Arnup J.A. delivering the judgment of the Ontario Court of Appeal in Green v Charterhouse Group Canada Ltd. 68 DLR (3d) 592 at pp.618 and 619 where, in civil proceedings for compensation arising out of alleged insider dealing, the court was considering the effect of the words "make use of" which occurred in section 113 of the Securities Act, 1966 (Ont.) c.142 in relation to specific confidential information.

2.10 Mr Leslie Wright submitted to the Tribunal that the test of culpability to be adopted is whether confidential price sensitive information has in fact been improperly used, whether by an individual or a corporation for the purposes of the share dealing under inquiry. His emphasis on improper use or "actual misuse" of such information is, in our view, the correct approach because it emphasises the nature of the motivation required to establish culpability, as does Green's case cited above. Mr Wright further submitted that making use of relevant information in dealing in securities (as distinct from merely dealing in securities when in possession of relevant information) was the touchstone of culpability. We agree.

2.11 Apart from the above mentioned provisions of Part XIIA of the Ordinance which were relevant to the Barker Tribunal's inquiry, there are a number of additional provisions which are relevant to the matters we have had to consider in Chapter X(A)(2) in our inquiry. Section 141C(4) provides as follows in relation to an agent dealing on behalf of another:-

"(4) A person who, as agent for another, enters into a transaction which is an insider dealing within section 141B(1)(a) may be held not culpable for the purposes of this part if he did not select or advise on the selection of the securities to which the transaction relates."

Section 141D(2) makes it clear that an agent who deals in securities on behalf of his principal is a person dealing in securities for the purposes of Part XIIA. Section 141D(2) provides as follows:-

"(2) Without limiting the meaning of the phrase "dealing in relation to securities" in section 141B(1) and notwithstanding sections 2 and 3, a person deals in securities for the purposes of this Part if (whether as principal or agent) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or acquires or disposes of, or agrees to acquire to dispose of, the right to buy, sell, exchange or subscribe for, any securities."

2.12 A corporation can be a connected person for the purposes of section 141B. Section 141E(2) provides as follows:

"(2) A corporation is a person connected with a corporation for the purposes of section 141B so long as any of its directors or employees is a person connected with that other corporation within the meaning in subsection (1)."

Thus to take a simple example, if X is connected with ICH by virtue of section 141E(1)(a) because he is a director of ICH and if X is also a director of company 'A', then by virtue of section 141E(2) company 'A' is a person connected with ICH.

2.13 The following provisions of section 141C(2) provide for a corporation to erect an exculpatory "Chinese wall" or "bamboo curtain" which requires the corporation to be found to be not culpable in respect of any insider dealing by it:-

"(2) A corporation which enters into a transaction which is an insider dealing within section 141B(1)(a) is not culpable for the purposes of this Part if, although relevant information concerning the securities is in the possession of a director or employee of the corporation:-

- (a) the decision to enter into the transaction was taken on its behalf by a person other than that director or employee; and
- (b) arrangements were then in existence for securing that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not in fact so communicated and advice was not in fact so given."

2.14 The provisions of paragraphs (a), (b) and (c) are cumulative, not disjunctive. No corporation whose dealings came within the ambit of our inquiry invoked the "Chinese wall" provisions. However section 141C(2) is clearly not the only exculpatory provision of section 141C applicable to a corporation. The word "person" in that section includes a corporation in accordance with the wide definition of that expression in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) in the absence of a context requiring it to be construed otherwise. We do not consider there is anything in the context of section 141C to exclude the wide meaning of the

word "person" and it follows that a corporation as well as an individual person is entitled to invoke inter alia the exculpatory provisions of section 141C(3) considered above notwithstanding that such corporation may not be in a position to invoke section 141C(2).

2.15 In paragraphs 2.3 and 2.4 above we mentioned that, subject to the provisions of section 141C(1) to (5), the effect of section 141C(6) is to require the Tribunal to determine the culpability of any person in relation to insider dealing and to do so under section 141H(3) in accordance with the spirit and intendment of Part XIIA of the Ordinance. Section 141H(3) and the related provisions of section 141H(4) contain important provisions relating to the Tribunal's inquiry although they do not enlarge upon section 141C by dealing with or defining culpability itself in relation to insider dealing.

2.16 Section 141H(3) defines the object of the Tribunal's inquiry in the following terms which are reflected in our terms of reference:-

"(3) The object of an inquiry shall be to determine within the Tribunal's terms of reference-

- (a) whether culpable insider dealing in relation to the securities of a corporation has taken place; and
- (b) the identity of the persons involved therein and the extent of their culpability."

2.17 Section 141H(4) elaborates on section 141H(3)(b) by providing:-

"(4) In making a determination under subsection (3)(b), the Tribunal shall not be limited to the identity and culpability of an immediate party to an insider dealing but may, subject to section 141C-

(a) include any other person connected with the dealing;

(b) in the case of a body corporate, include the individuals who exercised control in the management thereof."

2.18 Having regard to the fact that insider dealing is defined in section 141B so as to include, under section 141B(1)(b), in the circumstances specified in that provision, the mere disclosure of relevant information by a connected person to another person (colloquially known in the jargon of insider dealing as "the tippee"), the effect of section 141H(3)(b) seems to us to be that a tippee may in appropriate circumstances be identified as one of the persons "involved" in culpable insider dealing. The tippee is therefore "an immediate party to an insider dealing" within the meaning of section 141H(4) and at the very least he comes within the ambit of section 141H(4)(a) as a "person connected with the dealing."

2.19 We consider that it is unfortunate that the tippee is dealt with in such an oblique manner under the Ordinance and we support the suggestion of Mr Kemal Bokhary Q.C. made

in his helpful article in the Hong Kong Law Journal (1984) at p.22 that the legislature should deal more clearly with the position of tippees.

2.20 A question of interpretation was raised by Mr Leslie Wright on behalf of his clients in relation to section 141H(4)(b) and its operation if the Tribunal, having found under section 141H(3)(a) that culpable insider dealing has taken place, proceeds to determine under section 141H(3)(b) the identity of the "persons involved" in that culpable insider dealing and the extent of their culpability. Section 141H(4) provides that in making its determination under section 141H(3)(b) the Tribunal is not limited to the identity and culpability of an immediate party to the insider dealing but may include, under section 141H(4)(a), any other person connected with the dealing and, under section 141H(4)(b) in the case of a body corporate, the individuals who exercised control in the management thereof.

2.21 Assuming a company to have been found culpable in respect of an insider dealing, Mr Wright submitted that it was not enough to establish the culpability of a person that he was found to be a director who exercised control in the management of the company, because the scope of his duties may not have embraced and may have been far removed from the company's share dealing operations. We agree that not every executive director of such a company should necessarily be found culpable to any extent. The finding must depend on the circumstances of the dealing.

2.22 Mr Wright however took his argument further in his written submissions on the interpretation of section 141H(4)(b). Referring to the matters required to substantiate a finding of culpability against the director of a company found culpable in respect of insider dealing, he submitted:-

"He must be connected with the dealing. There must be a direct causative link between the director's conduct and the particular share dealings. A corporation can act only through its directors or officers and I submit that no determination of the culpability of the directors under paragraph (b) of subsection (4) can properly be made unless the evidence establishes beyond reasonable doubt that they had knowledge of the share transactions carried out on the corporation's behalf and while in possession of relevant information participated in the decision that led to the specific share transaction or series of share transactions being investigated. Culpability within the contemplation of the Ordinance can only affect those particular directors who represent "the directing mind and will" of the corporation with respect to the specific share dealings under investigation."

Mr Wright appeared to modify these submissions when he addressed us towards the conclusion of our sittings. However we consider that we should deal with the initial argument advanced by him in support of this interpretation of section 141H(4)(b).

2.23 In our view this is too narrow an interpretation of section 141H(4)(b). In particular the insistence that a director can only be found culpable in respect of

insider dealing by his company if he had knowledge of the dealing while in possession of relevant information and participated in the decision leading to the relevant dealing amounts to the proposition that the director must be the person or one of the persons who procured the company to deal. Such conduct is in any event clearly insider dealing which may be culpable under section 141B(1)(a) of the Ordinance. Furthermore if Mr Wright's narrow interpretation of section 141H(4)(b) were correct, section 141H(4)(b) would be superfluous because the director's conduct would fall squarely within section 141H(4)(a).

2.24 Considered in the light of section 19 of the Interpretation and General Clauses Ordinance in accordance with the spirit and intendment of the Securities Ordinance we conclude that the combined effect of section 141H(3)(b) and (4) is that where the Tribunal finds that a company is culpable in respect of any insider dealing it has a duty to determine the identity of the persons "involved" in that culpable insider dealing and the persons who may be so identified are any person connected with the company's relevant dealing or any individual who exercised control in the management of the company who is found to have been "involved" in the relevant culpable insider dealing. Section 141H(4)(a) and (b) are in our view disjunctive provisions and paragraph (b) is not controlled by paragraph (a).

2.25 The practical purpose of section 141H(4)(b) is, in our view, to permit the Tribunal to pierce the corporate veil and look beyond the corporate entity of a company found culpable in respect of insider dealing in order to

identify and assess the extent (if any) of the culpability of the individuals who exercised control in the management of the company at the material time and were involved in the relevant culpable dealing.

2.26 Whether or not an executive director can properly be found to have been "involved" in his company's culpable insider dealing where he was not the director or one of the directors who made the decision to deal on behalf of the company must be a question of fact to be decided in the light of the circumstances of each case. However in our view there can be involvement in culpable insider dealing by executive directors who did not themselves actually procure the relevant dealing if it can be shown that they were implicated or concerned in events which led up to or induced the relevant dealing, particularly where a situation had arisen where they were aware, or ought to have been aware, of a real risk that their company might embark on culpable insider dealing but they took no action to prevent such dealing.

2.27 Before leaving the relevant substantive provisions of Part XIIA of the Ordinance we emphasise that although section 141H(3)(a) is expressed to require us, within our terms of reference, to determine whether culpable insider dealing has taken place in relation to the shares of ICH or any related company, our first determination has had to be whether or not insider dealing within section 141B (which may or may not be culpable pursuant to section 141C) has taken place. This is demonstrably the position because our inquiry was instituted by the Financial Secretary's abovementioned notice addressed to the Chairman under section 141H(2) pursuant to the powers conferred upon

him under section 141H(1) to require the Tribunal to begin an inquiry if it appears to the Financial Secretary that insider dealing in relation to the securities of a corporation has taken place or may have taken place.

2.28 In the process of determining under section 141H(3)(a) whether culpable insider dealing has taken place in the ICH shares during the relevant period the Tribunal has necessarily had to determine initially whether insider dealing (which may be culpable under section 141C) has taken place at all. In a number of cases we were not satisfied that a connected person who had dealt in ICH shares had done so at a time when he was in possession of relevant information. We therefore did not pursue the question of culpability in those cases but determined that the relevant dealings were not culpable insider dealings for the purposes of section 141H(3)(a) because we were not satisfied that they were insider dealings within the meaning of section 141B.

2.29 Accordingly our inquiry in respect of each dealing which investigation indicated might be a culpable insider dealing involved our having to determine pursuant to section 141H(3) and (4):-

- (1) whether the dealing was an insider dealing within section 141B; and if so
- (2) whether the insider dealing in question was culpable insider dealing; and if so

- (3) the identity of the persons (including persons in any category of persons specified in section 141H(4), additional to an immediate party to the insider dealing) involved in the culpable insider dealing in question and the extent of their culpability.

(ii) Procedure and powers of the Tribunal

2.30 The Third Schedule of the Ordinance includes important procedural provisions concerning the sittings of the Tribunal and representation. Paragraph 14 provides that the Chairman is to determine questions of law, all other questions are to be determined by the opinion of the majority of the members. Paragraph 15 stipulates that every sitting of the Tribunal is to be in camera and that the Tribunal is to determine which persons may be present. However this provision is subject to paragraph 16 which provides that a person whose conduct is the subject of an inquiry or who is implicated or concerned in the subject matter of an inquiry shall be entitled to be present in person at any sitting of the Tribunal relating to that inquiry and to be represented by a barrister or solicitor. This right of attendance and representation is qualified by paragraph 19 which makes it clear that the expression "sitting" in paragraph 16 does not include any meeting of the Tribunal held for the purpose of deliberating on any question before it. Accordingly the Tribunal held its meetings without the attendance of implicated parties or their legal representatives.

2.31 To facilitate its functions wide powers are conferred on the Tribunal by sections 141J, K and L of Part XIIA of the Ordinance. Section 141J confers on the Tribunal most of the powers of a commission of inquiry

appointed under the Commissions of Inquiry Ordinance (Cap. 86) including the wide powers under section 4(1)(a) of the latter Ordinance to receive and consider any material notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings, under section 4(1)(d) to summon witnesses, under section 4(1)(g) to examine witnesses on oath or affirmation, under section 4(1)(l) to issue search warrants, under sections 4(1)(m) and (5) to regulate its own procedure, under section 4(1)(n) to exercise such other powers as may be necessary for the purposes of the inquiry and under section 9 to deal summarily with contempt in the face of the Tribunal.

2.32 Section 141K of Part XIIA of the Ordinance further empowers the Tribunal, if it would assist the conduct of the inquiry to do so, to authorise the Commissioner (who also has wide powers of investigation under section 124) to obtain discovery of and information in the form of a statutory declaration concerning books and documents from any person where the Tribunal has reasonable grounds to believe or suspect that those books or documents may contain information relevant to the inquiry. Further strength is given to the Tribunal's power of discovery by section 141L which excludes any claim of privilege, other than the privilege of a client in respect of disclosure of privileged information to his solicitor or counsel, as a justification for non-compliance by any person with a requirement for disclosure under section 141K or on appearance before the Tribunal.

2.33 Having been endowed with such very wide powers and with powers to enforce their exercise, the Tribunal has endeavoured to make a thorough inquiry into the matters coming within its wide terms of reference but

at the same time to avoid carrying thoroughness to the point of oppression. Inevitably some individuals have been required to attend and give evidence at several of our sittings but we have done our best to minimise the inconvenience caused to persons concerned in our inquiry.

2.34 Apart from the consideration of the City Garden transaction and its effect on the market price of ICH shares, the general pattern of our inquiry was to begin with individuals or companies connected with ICH and enquire whether they had dealt in ICH shares during the relevant period. If we were satisfied that they had so dealt we enquired whether they had done so when in possession of relevant information and, if we were satisfied that they had made insider dealings, we enquired into their possible culpability. However we also gave consideration to any dealings in substantial volumes of ICH shares by persons other than connected persons during critical times during the relevant period when it might reasonably be suspected that tippees were in the market. In the event we did not consider that there was sufficient evidence of insider dealing by any possible tippee to justify his being required to give evidence at our sittings.

2.35 Although the Tribunal is not a commission of inquiry under the Commissions of Inquiry Ordinance it has, as appears from paragraph 2.31 above, many of the powers and characteristics of such a commission or of a tribunal set up under the English Tribunals of Inquiry (Evidence) Act, 1921 (11 Geo 5 Cap. 7). Our proceedings are inquisitorial or investigative. Such proceedings are exceptional in Hong Kong, as they are in England, and are justified on the ground of public importance where the

normal civil or criminal procedures, with their long established safeguards against injustice to the individual, are considered inadequate to arrive at the truth. As the Royal Commission on Tribunals of Inquiry under the Chairmanship of the Rt. Hon. Lord Justice Salmon (as he then was) in 1966 observed in paragraph 30 of its Report ("the Salmon Report") on the working of the Tribunals of Inquiry (Evidence) Act, 1921 (Cmnd. 3121 (1966))-

"30. There are important distinctions between inquisitorial procedure and the procedure in an ordinary civil or criminal case. It is inherent in the inquisitorial procedure that there is no lis*. The Tribunal directs the inquiry and the witnesses are necessarily the Tribunal's witnesses. There is no plaintiff or defendant, no prosecutor or accused; there are no pleadings defining issues to be tried, no charges, indictments, or depositions. The inquiry may take a fresh turn at any moment. It is therefore difficult for persons involved to know in advance of the hearing what allegations may be made against them."

2.36 In formulating our own procedure in exercise of our wide powers we have been mindful of the Salmon Commission's concern expressed at paragraph 32 of their Report regarding the "difficulty and injustice with which persons involved in an inquiry may be faced" and we have endeavoured to observe as far as possible the six cardinal principles stated in the same paragraph of the Salmon Report, in order to remove or at least minimise such difficulty and injustice.

*The word underlined above appears in italics in the report.

2.37 To this end we adopted the following procedure in our inquiry. Initially our investigators interviewed and recorded statutory declarations from all persons whom we considered might have to be summoned as witnesses to give evidence at our sittings, either as witnesses who might be determined to have been implicated in culpable insider dealing or as witnesses whose conduct was not under suspicion but were merely concerned with the subject matter of the inquiry. Thereafter no person was summoned to attend the sittings of the Tribunal as a witness unless we considered that (1) in the case of a person initially suspected of insider dealing, there were circumstances justifying his being required to give evidence before us and be submitted to cross-examination by our leading counsel; and (2) in the case of a narrative witness, his evidence really was pertinent to our inquiry.

2.38 When a witness was summoned to attend our sittings we sent him a letter (a "Salmon letter") indicating the reason for his attendance and stating whether he was to be merely a narrative witness concerned with the subject matter of our inquiry or whether he was suspected of insider dealing. In the latter case the relevant dealing or dealings were indicated. In the case of suspected insider dealing by a company, both the company and its executive directors were summoned. In some cases the Salmon letters were necessarily general in their reference to dealings because they were sent at an early stage of the inquiry but we were satisfied that every suspect fully understood which of his dealings were the subject of our inquiry.

2.39 The Salmon letter informed witnesses of their right to legal representation and the Tribunal sent to suspects copies of the evidence which it regarded as material to them and their dealings. We were at first concerned about the need to preserve confidentiality in respect of individual dealings and therefore edited declarations to exclude matter which was not relevant to a particular suspect. However the solicitor for one of the parties took the point that a person who had been summoned to attend before the Tribunal was entitled, by virtue of paragraph 16 of the Third Schedule of the Ordinance, to be present at any sitting of the Tribunal relating to the inquiry. We accepted the submission and its implication that the person so summoned was entitled to see all the material before the Tribunal.

2.40 We accordingly sent copies of all declarations, transcripts of evidence and other documents that we considered could have any possible relevance to each suspected person and informed him of his right to inspect any other material available to the Tribunal at the chambers of our junior counsel. In two cases suspects were not sent material which was relevant to our inquiry affecting them. When this was discovered they were given the opportunity to have the relevant witnesses recalled for cross-examination but declined to do so.

2.41 Having regard to the nature of our inquiry we did not consider any useful purpose would be served by inviting our leading counsel to make any opening statement when our effective sittings began but we permitted leading counsel for one of the parties to make such a statement when he applied to do so. At our sittings our junior counsel

adduced the evidence in chief of witnesses who were not represented. Their evidence in chief consisted of their statutory declaration together with any supplementary evidence that was appropriate. If a witness was represented by counsel or a solicitor, he adduced his client's evidence in chief in the form of his statutory declaration followed by such supplementary evidence as was required. The role of our leading counsel was to cross-examine witnesses where appropriate on behalf of the Tribunal whose members also questioned witnesses when they considered it appropriate. However suspected persons or their lawyers and the lawyers of other parties were also given an opportunity to cross-examine any witness whose testimony was relevant to such persons or parties. Where it was required, a lawyer was permitted to re-examine his client.

(iii)

2.42 At the conclusion of our sittings we invited submissions from the Tribunal's leading counsel and from or on behalf of all the persons who were suspected of insider dealing and had attended our sittings. Leading counsel representing some important narrative witnesses also made submissions. Our leading counsel addressed us first and we allowed the suspects or their lawyers to have the last word. An opportunity was given to all parties or their lawyers to enlarge on their written submissions with oral submissions. In following the procedure outlined in paragraph 2.41 and in this paragraph we were guided by paragraphs 113 and 114 of the Salmon Report.

2.43 Six suspects did not exercise their right to legal representation. In their cases the Tribunal explained their rights to them during the sittings and ensured that

they understood the content of the Salmon letters sent to them and identified the dealings in respect of which they were suspected of insider dealing. All these suspects submitted written submissions and some of them elected to make supplementary oral submissions.

(iii) Degree of cogency of evidence to establish culpable insider dealing

2.44 The combined effect of section 141J(1) of the Ordinance and section 11(1) of the Commissions of Inquiry Ordinance is that our inquiry is deemed to be a judicial proceeding. However, as indicated above, our proceedings are inquisitorial or investigative. Our leading and junior counsel are not prosecutors, their role is to advise and assist the Tribunal in conducting the inquiry. All questions are determined by the Tribunal save that the Chairman determines questions of law. The witnesses are the Tribunal's witnesses and the function of the Tribunal is to determine, by arriving at the truth if it can on the evidence before it, whether or not culpable insider dealing has taken place and to determine the other matters for determination under section 141H(3) of the Ordinance. The inquiry is not ordinary civil or criminal litigation where there are established rules concerning onus and standard of proof and where, if the evidence adduced on behalf of the contending parties is inconclusive and uncertain, the rules as to onus must decide the question.

2.45 As Lord Diplock observed in Mahon v Air New Zealand [1984] A.C.808 (P.C.) at p. 814E:-

"An investigative inquiry into facts by a tribunal of inquiry is in marked contrast to ordinary civil litigation the conduct of which

constitutes the regular task of High Court judges in which their experience of the methodology of decision making on factual matters has been gained."

2.46 Leading counsel representing one of the interested parties cited to us the recent decision of the English Court of Appeal in R v Hampshire County Council [1985] 1 AllER 599 (C.A.) applying Hornal v Neuburger Products Ltd. [1957] 1QB 247 (C.A.) and Reg. v Home Secretary, ex p. Khawaja [1984] AC 74 (H.L.) and holding that the tribunal of a fire authority entertaining an appeal under relevant regulations by an officer of a fire brigade against a finding of guilt against him by his chief officer on disciplinary charges was by its nature a tribunal concerned with civil and not criminal matters and that the appropriate standard of proof was therefore the civil standard, although that burden varied according to the nature and seriousness of the allegation in issue.

2.47 The difficulty we feel about the learning in the cases cited above is that they are all cases in which the burden was undoubtedly on one party to prove certain matters. It being common ground that there was a burden of proof on one party or the other, the issue (or one of the relevant issues) was as to the requisite standard of proof, that is to say the degree to which the proof must be established. Such proceedings are not investigative proceedings as are our proceedings in this inquiry. For our part we have preferred to follow the observations of the Salmon Commission in paragraph 134 of their Report where they were considering the question whether there should be any appeal from the findings of Tribunals of Inquiry:-

"134. ...It is true that whether or not there is any evidence to support a finding is a question of law. Having regard, however, to the experience and high standing of the members appointed to these Tribunals and their natural reluctance to make any finding reflecting on any person unless it is established beyond doubt by the most cogent evidence*, it seems to us highly unlikely that any such finding would ever be made without any evidence to support it. Any adverse finding which a Tribunal may make against any persons will depend upon what evidence the Tribunal believes."

2.48 We considered the safest and fairest approach for us to adopt was that we should find no dealing to be a culpable insider dealing for the purposes of the Ordinance unless we were satisfied that it was so established beyond doubt by the most cogent evidence resulting from our inquiry in which no persuasive or evidential burden of proof was placed on any affected party. Any expression of satisfaction that follows in this report in relation to a finding of fact by the Tribunal is expressed on that underlying basis.

2.49 This evidential test is very close to the standard of proof in criminal proceedings save that the Tribunal is not affected by the technical rules of evidence. In adopting it with the support of our leading counsel we consider that we are rightly requiring the highest degree

*The underlining has been inserted by the Tribunal.

of proof to establish culpable insider dealing which the Financial Secretary is reported in the Hong Kong Hansard for the 12th October 1977 as describing (when introducing Part XIIIA of the Ordinance) as "essentially fraudulent behaviour".

2.50 When applying such an evidential test we have not confined ourselves to accepting or rejecting the submissions of our leading counsel on the one hand or of the relevant suspects or their legal representatives on the other hand. Applying the same approach as that reflected in the dictum of Diplock L.J. (as he then was) in Reg. v Deputy Industrial Injuries Commissioner Ex parte Moore [1965] 1QB 456 at p.486E-F in relation to the functions of insurance tribunals under English law, we have considered the evidence before us on the footing that we have been at liberty to form our own views even if they do not coincide with any of the contentions advanced before us by our leading counsel or by or on behalf of any person affected by the inquiry.

2.51 However we emphasise that although the Tribunal is not bound by the technical rules of evidence we have been mindful, when applying the above mentioned evidential test and deliberating over the evidence before us, of the rules of natural justice held by the Judicial Committee of the Privy Council in Mahon v Air New Zealand [1984] AC 808 (P.C.) to be applicable to the exercise of an investigative jurisdiction. Although the Judicial Committee was concerned with an inquiry of a different kind from that of this Tribunal, we consider that the following rules of natural justice referred to by Lord Diplock at p.820G to 821B are germane to this inquiry and we observed them:-

"The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below. The second rule is that he must listen carefully to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made.

"The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule is that the decision to make the finding must be based upon some* material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory.

"The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision-maker, might* have deterred him from making the finding even though it cannot be predicted that it would inevitably have had that result."

*The words underlined above appear in italics in the report.

2.52 The weight to be given to any material which is capable of having any probative value is a matter for the Tribunal but we have been mindful of the above rules when applying the above mentioned stringent evidential test to the evidence as a whole affecting any person or company whose dealing has come within the ambit of the inquiry. As regards the inference that it may be permissible to draw from circumstantial evidence where there is no direct evidence relating to a matter required to be proved, we have borne in mind the importance of avoiding purported inferences which are based on primary facts which justify more than one and inconsistent inferences, or are not arrived at on the basis of positive proved facts but amount to nothing more than speculation or conjecture. We were not prepared to draw any adverse inference from any material before us affecting any person unless we were satisfied beyond doubt that objective primary facts had been proved which logically and irresistibly required such an inference to be drawn.

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CHAPTER III

THE BACKGROUND OF ICH PRIOR TO THE RELEVANT PERIOD

(i) Incorporation

3.1 ICH is a property development company originally incorporated on the 18th November 1980 in Hong Kong under the Companies Ordinance (Cap. 32) as a private limited company under the name of Speed Arrow Investments Limited. On the 22nd April 1981 the company's name was changed to International City Holdings Limited.

(ii) Shareholders

3.2 Upon incorporation the authorised share capital of the company was \$10,000 divided into 10,000 shares of \$1.00 each. By the 15th June 1981 when ICH began trading as a listed company on the four Stock Exchanges, namely the Hong Kong Stock Exchange, Far East Stock Exchange, Kam Ngan Stock Exchange and Kowloon Stock Exchange ("the Exchanges") in Hong Kong, the company's authorised share capital had been increased to 4,000 million shares of \$1.00 each. On the 21st May 1981 when the board of ICH published the company's prospectus relating to the proposed issue of 450 million Ordinary Shares at a price of \$1.00 per share, 3,050 million Ordinary Shares had been issued to and paid up by the companies listed in the prospectus.

3.3 The position on the 15th June 1981 when ICH became a public listed company was that the 450 million shares which had been the subject of the flotation issue amounted to only 12.86 per cent of the 3,500 million shares which by

then represented the enlarged issued share capital of the company. The listing rules of the Exchanges which required this percentage to be 25 per cent were evidently waived for reasons that did not concern the Tribunal. The remaining 87.14 per cent of the issued shares were held by the following companies in the following numbers and percentages which appear at page 9 of the prospectus:-

	<u>Number of Ordinary Shares</u>	<u>Percentage of issued share capital following the issue</u>
Cheung Kong (Holdings) Limited ("CKH") . .	1,052,250,000	30.06
Hongkong Electric Holdings Limited ("HKE")	1,021,750,000	29.19
Wheelock Marden & Company Limited ("Wheelock Marden")	427,000,000	12.20
The Hongkong Land Company, Limited ("HKL")	122,000,000	3.49
Sun Hung Kai Properties Limited . .	122,000,000	3.49
World International (Holdings) Limited	122,000,000	3.49
Palwin Limited	76,250,000	2.18
Kum Hing Land Development & Agency Company Limited . .	61,000,000	1.74
Farring Company Limited . .	45,750,000	1.30
	<hr/>	<hr/>
	3,050,000,000	87.14
	=====	=====

3.4 The two principal shareholders of the company were accordingly CKH and HKE. The indirect interest of HKL in the company was significant as in addition to its direct holding of 3.49 per cent of the issued shares of ICH, HKL was the beneficial owner of 34 per cent of the issued shares in HKE. CKH and HKE maintained their positions as principal shareholders of ICH at all material times but they were in a position where they could not increase their percentage holdings, or that of themselves and those with whom they might be acting in concert, to or beyond the 35 per cent voting right threshold imposed by Rule 33 of the Hong Kong Code on Takeovers and Mergers without giving rise to the obligation for an offer under the provisions of that Rule.

(iii) Directors

3.5 The directors of ICH on the 15th June 1981 when ICH became a listed company were representatives inter alia of the main shareholders in the following groups. The CKH group was represented by Messrs Li Ka-shing ("K S Li"), Chow Chin-wo ("C W Chow"), Charles Lee Yeh-kwong ("Charles Lee"), George Colin Magnus ("Magnus") and George Zang Chon-sheng ("George Zang"). K S Li was and continued to be the Chairman and Managing Director of both ICH and CKH and all the other above named persons were directors of both companies at all material times.

3.6 The HKE group was represented on the board of ICH by Messrs John Peacock ("Peacock"), John Gerard Tonroe ("Tonroe") and the late Peter Gordon Williams ("Williams"), who were directors of HKE, and by Messrs Man Chai-po ("C P Man") and Tso Kai-sum ("K S Tso") who were senior executives of HKE. Williams was succeeded by Mr Trevor John Bedford ("Bedford") a former Managing Director of HKL on the 21st

July 1982. Bedford resigned his directorship of ICH on the 1st September 1983 and on the 30th November 1983 he was succeeded on the ICH board by Mr David John Davies ("Davies") who had been appointed Chief Executive Officer and Managing Director designate of HKL with effect from the 1st October 1983 and a director of HKE on the 25th October 1983.

(iv)

3.7 The Wheelock Marden group was represented on the ICH board by Mr John Louis Marden and Mr John Cheung.

3.8 With the exception of Williams who was ultimately succeeded by Davies the constitution of the ICH board remained unchanged as above during the period of our terms of reference. For the sake of completeness we add that from time to time alternate directors were appointed in respect of some of the directors but we did not consider that these appointments were material to our inquiry.

(v)

3.9 The prospectus declared that the Chairman and Managing Director, K S Li, assisted by K S Tso and C P Man would assume overall executive responsibility for the ICH Group and that it was intended that K S Tso and C P Man would devote the majority of their time to the management of the group's business. Although originally seconded to ICH from HKE the two executive directors were transferred permanently to ICH on the 1st August 1982, retaining their positions as executive directors. The offices of ICH were at Room 704, China Building, Central and K S Li had his office in the CKH office premises on the 21st floor of the same building.

(vi)

(iv) Principal activities of the ICH Group

3.10 At the time of the prospectus it was intended that ICH should act as a holding company and that the group's principal activities would be property development and investment. The group already had eight development projects in hand and the prospectus gave full particulars of these projects which were estimated to comprise approximately 927,000 sq. metres (approximately 10 million sq. ft.) on completion. These projects were in hand through the medium of wholly owned subsidiaries of ICH. One of these projects was in the initial stages of development at Electric Road, North Point, Hong Kong on a site purchased by Zangforce a wholly owned subsidiary company of ICH incorporated on the 25th November 1980. This project was later to become known as the City Garden development, part of which was comprised in the City Garden transaction which ultimately gave rise to this inquiry.

(v) The Management Agreement between ICH and CKH

3.11 The prospectus contained reference to a project management agreement ("the management agreement") dated the 15th May 1981 and made between ICH and CKH under which ICH had appointed CKH to be project manager for the ICH Group in respect of the eight properties then held by the subsidiaries of ICH. Under the management agreement CKH was to serve as development and sales manager of those properties.

(vi) ICH share prices and cash position

3.12 In June 1981 when the flotation of ICH took place the property market was at a high level and on the 17th June 1981 the share price of the company reached a peak of \$1.92. 1982 and 1983 were years of recession and the

properly qualified assumptions upon which the directors of ICH had based their profits forecast in the prospectus were unhappily proved wrong by the turn of events. In his Chairman's Statement in the 1981 Annual Report dated the 1st April 1982 (for the period from the 18th November 1980, when the company was incorporated, to the 31st December 1981) K S Li mentioned that subsequent to the end of 1981 "in the light of current market conditions" the ICH Group had offered special payment terms (in revised conditions involving a 20 per cent discount on the original price) to improve sales of units in Phase I, Blocks 1 to 6 of the City Garden project.

3.13 1982 saw a dramatic decline in property values and on the 2nd December of that year the price of ICH shares fell to 35 cents. In the Chairman's Statement in the 1982 Annual Report dated the 18th March 1983 (for the year ended the 31st December 1982) K S Li described the position thus:-

"During 1982, the property market was deeply affected by the world recession and the wait and see attitude of Hong Kong investors. Property and land prices fell dramatically with a decline of over 30% in property prices and a drop of more than 50% in land values as compared with the market peak in 1981. While there was a limited market for small units, sales of medium and large size units came to a standstill. These factors combined with purchaser defaults for some of the pre-sold flats have caused the net profit of the Group and the dividend for the year ended 31st December, 1982 to be substantially lower than the levels forecast in the prospectus."

3.14 K S Li had little comfort to offer to shareholders for 1983 but he rightly stressed in his Chairman's Statement that as a result of his board's cautious policy the ICH Group maintained a very strong liquid cash position with no net borrowings and that this sound financial base and its good quality land holdings made the group well placed to take advantage of any improvement in the market or to cope with continued adverse conditions. In 1983 the price of ICH shares had varied between a high of 68 cents recorded on the 26th July and a low of 36 cents recorded on the 4th October.

3.15 In November 1983 ICH shares fluctuated between 51 cents recorded on the 7th November and 42.5 cents recorded on the 24th November with a turnover for the month of about 45 million shares. In December the shares were traded at between 43 cents recorded on the 12th December and 48 cents recorded on the 29th December with a turnover for the month of only just over 15 million shares. By the end of December 1983, immediately before the beginning of the relevant period, Phase 1 of the City Garden project had been completed including Blocks 1 to 6 comprising 1,110 residential units and 2 commercial podia. Over 97 per cent of the residential units and all of the commercial podia had been sold. Phases II and III of the project comprising 8 residential blocks and commercial podia were to be completed in 1986 but the building plans had not yet been approved. The evidence of K S Li was that at the end of December 1983 the property market was very slow and early in January 1984 it was also slow. There was at that time practically no demand for the Phase II and III development.

3.16 However the cautious operating strategy of the ICH Group had placed it in a strong financial position with high

liquidity and no borrowings. In particular it appears from the 1983 Annual Report that at the end of December 1983 the Group held liquid assets in the form of quoted Eurodollar bonds valued at cost (below their market value) of \$567 million and bank balance and deposits amounting to \$131 million. The combined value of these assets was \$697 million amounting to 18.28 percent of the total value of the ICH Group's assets (less current liabilities of \$256 million) which was \$3,815 million. In addition the group had made secured loans amounting to \$196 million.

3.17 Accordingly the position in early January 1984 immediately before the relevant period was that ICH faced a depressed property market in which there was practically no demand for the Phase II and III development of the City Garden project, but the group was nevertheless in a strong financial position overall and had so far weathered the depressed state of the property market remarkably well.

CHAPTER IV

THE POLITICAL AND FINANCIAL SITUATION IMMEDIATELY
BEFORE THE RELEVANT PERIOD

(i) The political situation at the end of 1983

4.1 The end of 1983 was a politically sensitive and anxious time for the people of Hong Kong as indeed was the relevant period itself. The Sino-British talks concerning the future of Hong Kong had begun in September 1982 and they were to continue throughout the relevant period. On the 5th December 1983 H.E. the Governor of Hong Kong had left for Beijing to attend the seventh round of Phase Two of the talks which were conducted under a strict veil of secrecy. The long term future of the Hong Kong people was in the balance.

4.2 On this matter we had the benefit of the evidence of Sir Philip Haddon-Cave who was the Chief Secretary of Hong Kong at the time. He said that it was the continued concern of the Hong Kong Government, particularly from the late summer of 1983 to roughly late spring 1984 to allay the fears of the people of Hong Kong. He referred to that period as the difficult months when Government was concerned with the stability of the economy and indeed the political stability of Hong Kong society.

(ii) The property market at the end of 1983

4.3 In Chapter III we referred to the problems that beset ICH as a property company by the end of 1983. K S Li, an expert in the field, described the market as very slow

and the shares of property companies as consequentially very depressed. In a letter dated the 20th July 1984 to Davies of HKL, written in the aftermath of the cancellation of the City Garden transaction, K S Li had described the property market as being stagnant during the period in early and middle January 1984 when the City Garden transaction was under negotiation.

(iii) The stock market at the end of 1983

4.4 On the 17th October 1983 Government had implemented its decision to link the Hong Kong dollar at an exchange rate of \$7.8 to one US dollar. At that time the Hang Seng Index had fallen as low as 771.55 points.

4.5 Mrs Ada Yeung Tam Nuen-hung ("Ada Yeung") a Securities Officer responsible for monitoring trends and activities in the stock market gave evidence including a considerable volume of statistics relating to market conditions in November and December 1983 and to the relevant period. Her evidence relating to the end of 1983 indicated a lack of significant improvement in the market in November and December. The Hang Seng Index stood at 852.90 points at the end of November. This was 12 points down from the end of October when the Index had closed at 865.33. In November the average daily turnover had dropped slightly to \$127 million from \$134 million in October.

4.6 Movement in the Index in December was again insignificant. The Hang Seng Index closed at 875 and the average daily turnover was referred to by Ada Yeung as a derisory \$84.99 million against \$127 million in November. Ada Yeung summed up the inactive state of the stock market in December 1983 in the following passage of one of her declarations :-

" There were conflicting interpretations put on the latest round of talks in Beijing. This together with the stubborn trend of US interest rates kept local investors out of the market although there remained no doubt that US and other foreign investors were still keen on selected stocks of the local market - US institutions purchased some quite large lines of Hongkong Land shares on the reasoning that, at the equivalent of 40 US cents, they represented almost option money betting on a recovery.

The index was still heavily weighted in property stocks labouring under interest rate mountains and the few professional local investment managers still active were concentrating on the handful of good manufacturing and non-property stocks listed. Some level of interest in the Admiralty II tenders only provided a short-lived fillip to the real estate sector."

4.7 Thus at the end of 1983, despite the linking of the Hong Kong dollar at a fixed rate to the US dollar, political uncertainty and high interest rates combined to produce a very subdued stock market at a time when the collapse in land values which had occurred in 1982 showed no signs of reversal in what amounted to a stagnant real estate market. This was the setting in which negotiations began for the City Garden transaction.

CHAPTER V

THE CITY GARDEN TRANSACTION

(i) The parties to the transaction

5.1 As already indicated in paragraphs 1.2 and 1.3 of the Introduction to this report, the proposed vendor in the City Garden transaction was Zangforce which was a wholly owned subsidiary of ICH and was the vehicle by which ICH intended to enter into the transaction.

5.2 Cheery Bright, the proposed purchaser, was the subsidiary of Violight which owned 9,997 of the 9,998 issued shares of Cheery Bright. The latter company was the vehicle by which Violight intended to enter into the transaction.

5.3 Violight (which changed its name to China Everbright Holdings Company Limited subsequent to the relevant period) was the holding company for the Ever Bright group of companies in Hong Kong whose Chairman and moving spirit was Mr Wang Guang-ying ("Wang"). Wang came to Hong Kong on the 26th April 1983 from the People's Republic of China where he was Vice Chairman of the Chinese People's Political Consultative Conference and Vice Chairman of the All-China Federation of Industry and Commerce. He was Chairman of the Beijing Everbright Industrial Company.

5.4 In Hong Kong, Wang was one of three partners in a partnership registered on or about the 6th May 1983 under the Business Registration Regulations as a firm carrying on business under the name of Ever Bright Industrial Company.

This firm was dormant and the active business of the Ever Bright group in Hong Kong had at all material times been conducted by Violight and its numerous subsidiary and associated companies. Violight was incorporated on the 10th May 1983 and pursuant to an application dated the 11th May 1983 it was registered under the Business Registration Regulations as a body corporate carrying on business under the name of Violight Industry Company Limited and Ever Bright Industrial Company. In practice the officers of Violight referred to themselves as officers of Ever Bright Industrial Company or "Ever Bright" and Violight was commonly referred to as "Ever Bright". In this report we have therefore used the expression "Ever Bright" from time to time in the same sense.

5.5 Although the transaction was entered into between Zangforce and Cheery Bright they were for all practical purposes the instruments of ICH and Violight respectively and the dominant personalities behind the two principal companies were K S Li and Wang respectively.

(ii) Wang's go-betweens

5.6 The negotiations leading up to the City Garden transactions were conducted on Wang's behalf by Mr Chan Park-chi ("P C Chan") and his son Mr Raymond Chan Chi-Wai ("Raymond Chan"). After his arrival in Hong Kong Wang had first met Raymond Chan who had been a student acquaintance of Wang's son-in-law in the United States. Raymond Chan subsequently introduced his father to Wang who understood that the business activities of the Chans included dealing in building materials and interior design. Wang's evidence was that he was interested in this line of business and had been considering setting up a company dealing in construction and building materials.

5.7 The eventual sequel to Wang's meeting with the Chans was that, a few months after he had become acquainted with P C Chan, Wang procured Violight to join with the Chans in forming a joint venture limited company called Guangda (Development) Limited ("Guangda") which was registered on the 22nd December 1983. According to Wang Guangda was intended to deal in building and decoration materials under the management of Raymond Chan. The authorised capital of the company was 2 million shares of \$1.00 each, of which all but 2 shares were paid up. Violight held 800,000 of the paid up shares and of the remainder P C Chan held 199,999 and Raymond Chan held 999,999.

5.8 Wang and the Chans attended various social gatherings and there was discussion by them with others of the 1997 issue, the price of land in the New Territories and of the practice in Hong Kong of dealing in flats before the issue of their occupation permits (known as "chow lau fa"). According to Wang, P C Chan told him that he was a supplier of building materials to CKH and they discussed the property market generally.

5.9 According to P C Chan the City Garden project of ICH was recommended to Wang at a dinner given by P C Chan at the end of December 1983. P C Chan's evidence was that the conversation had turned to property investment; it had been agreed that property appeared to be a good investment, and Wang said he wanted to invest \$200 million in the Hong Kong property market and that 20 per cent of the expected profit would be credited to Guangda. P C Chan said that it was at this stage that he recommended that the investment be made in the City Garden project because he considered it to be a well planned development in an advantageous location and he

regarded ICH as a reputable company which offered favourable payment terms. The method by which P C Chan claimed that Guangda was to receive 20 per cent of the profit from Wang's investment remained shrouded in uncertainty which deepened progressively as the cross-examination of P C Chan by Mr Martin Lee for the Ever Bright interest progressed.

5.10 Wang's evidence was that he had gained the impression that P C Chan was a broker for the City Garden development. He deposed that initially he accepted P C Chan's suggestion that he should enter into negotiations through P C Chan with a view to buying 1, 2 or 3 blocks in the City Garden development. Later the number increased to eight blocks. Wang attributed this increase to the persuasion of P C Chan. The latter's evidence under cross-examination by Mr Martin Lee was to the effect that before the negotiations with K S Li began Wang had told P C Chan that if there was to be a purchase he would like to buy all eight blocks in City Garden if the price was right.

5.11 Both the Chans, father and son, were cross-examined at length about their conduct and motives. To the extent that such matters are relevant to our inquiry we were satisfied that they were genuine go-betweens for Wang who was a new comer to property investment in Hong Kong and that they undertook to conduct negotiations for the City Garden transaction on his behalf on no agreed basis regarding their reward but in the hope and expectation that Wang would give them their due remuneration in due course, whether such remuneration consisted of the profits of the sales agency in respect of the re-sale of the property or some other form of commission.

- (iii) The sequence of negotiations leading up to the transaction
5.12 Negotiations began on Tuesday the 3rd or Wednesday the 4th January 1984 when P C Chan telephoned K S Li and informed him that Wang might be interested in purchasing a few blocks in City Garden. K S Li thereupon arranged an internal meeting in the CKH conference room at 4 pm on the same day to discuss the approach to be adopted by ICH in the negotiations and the price. Apart from K S Li himself, this meeting was attended by Miss Katherine Hung Siu-lin ("Katherine Hung"), Messrs George Zang, K S Tso and C P Man. Katherine Hung was a Group Manager and Sales Manager of CKH. George Zang was an executive director and Deputy General Manager of CKH and a director of ICH. K S Tso and C P Man were, as stated in paragraph 3.9 above, executive directors of ICH.

5.13 It is significant that this first internal meeting before the negotiations began and other subsequent meetings relating to the transaction were held in the conference room of CKH and not in the offices of ICH on the 7th floor of the same building. The reason for the location of the meeting and the attendance of some individuals who were not directors or officers of ICH but were only CKH officers or directors lies in the management agreement referred to at para. 3.11 above, under which CKH had become the project manager of the City Garden project and responsible for its design, construction and sales. Thus George Zang and Mr Albert Chow Nin-mow ("Albert Chow") (who attended all meetings after the first meeting referred to in para.5.14) had been responsible as directors of CKH for the supervision of the City Garden project and were answerable directly to K S Li. George Zang was primarily responsible for and involved in the planning of the project and Albert Chow was

more concerned with the sales side and legal documentation. Katherine Hung headed the sales department and was responsible to Albert Chow.

5.14 The first meeting between the negotiating parties took place on Wednesday the 4th or Thursday the 5th January 1984 at the conference room of CKH. This meeting was attended by P C Chan, Raymond Chan and all the persons who had attended the previous internal meeting described in paragraph 5.13. There was a conflict of evidence, which we did not consider it necessary to resolve or elaborate upon, as to (1) the precise terms in which P C Chan introduced himself, with particular reference to his interest in Guangda and the proposed participation or otherwise of that company in the transaction and (2) the reason why it was common ground between the negotiating parties during the negotiations that neither P C Chan nor his son Raymond Chan would be paid any commission by ICH for their part in negotiating the transaction. Suffice it to say that we were satisfied that P C Chan made it clear that he and his son were negotiating on behalf of Wang and that, because no commission was contemplated they wanted the price reduced as much as possible.

5.15 The Chans began by saying they were interested in the purchase of some of the proposed blocks in City Garden. But, after seeing the plans, they indicated that they were interested in the purchase of all eight blocks if the price was sufficiently attractive. K S Li offered a price of \$690 per square foot for the residential units and \$595 per square foot for the commercial podia. The Chans asked for a reduction to give them face. K S Li stood firm but offered a break clause operative from the signing of the proposed agreement under which the purchaser would be allowed a

three months period during which to elect to resile from the purchase and recover its deposit with interest at the rate of 10 per cent per annum. The Chans said they would discuss these proposals with Wang.

5.16 On Saturday the 7th January 1984 K S Li told Albert Chow about the possibility of the transaction and its proposed terms and asked him to prepare the necessary documentation in advance and to look into any possible legal problems. On Sunday the 8th January 1984 the Chans took Wang to inspect City Garden and other developments. Wang seemed to favour City Garden.

5.17 On Monday the 9th January 1984 a second meeting of the negotiating parties took place at the conference room of CKH. This meeting was attended by the same persons as had attended the first meeting on the 4th or 5th January save that Albert Chow was now also present. P C Chan told the meeting that Wang had visited City Garden and was impressed. He tried to negotiate a price reduction of 10 to 15 per cent but this was resisted by K S Li who said it would mean a sale at below cost. However K S Li offered to extend the period of the break clause from three to six months in lieu of a reduction in price. No decision was reached at this meeting and it was agreed that neither side would publicise the matter.

5.18 After the second meeting a discussion was held between Albert Chow, George Zang, C P Man, K S Tso and P C and Raymond Chan regarding the necessary documentation required for the transaction. It was agreed that memoranda should be drawn up to effect the transaction as insufficient

information was available to enable sale and purchase agreements to be prepared. Albert Chow undertook the preparation of the necessary memoranda.

5.19 On Thursday the 12th January or Friday the 13th January 1984 George Zang and Albert Chow visited the Chans at their showroom at 158 Lockhart Road to hand Albert Chow's draft memoranda to P C Chan and explain their contents to him. On this occasion P C Chan said that serious consideration was being given to the transaction, especially the price. This information was communicated to either C P Man or K S Tso by Albert Chow.

5.20 According to the Chans, Wang indicated to them shortly after the second meeting held on Monday the 9th January 1984 that he had decided to buy the eight blocks in City Garden but it was agreed between the Chans and Wang that they should try to reduce the price. Wang however insisted in his evidence that he did not finally decide to enter into the transaction until a few days before the 23rd January (the date the memoranda were executed). Be that as it may, on Monday the 16th January P C Chan, in the presence of Wang, telephoned K S Li from Wang's office and told K S Li that Wang was offering to visit K S Li to discuss the transaction.

5.21 K S Li, realising that the purpose of Wang's proposed visit would be to negotiate a reduction in price and knowing that he had no intention of agreeing to such a reduction, decided to minimise the consequential embarrassment to him by insisting as a matter of courtesy that he should visit Wang. There followed a third meeting

which was held at Wang's office and was the only meeting of the negotiating parties at which both Wang and K S Li were present.

5.22 At this meeting Wang asked K S Li to give him face by reducing the price of the eight blocks in City Garden. K S Li explained that he had already given P C Chan face by offering the property at the price being asked and that he could not make any further reduction. Wang persisted in asking for a reduction of 10 to 15 per cent as a little favour but K S Li refused. He informed Wang that he was not too enthusiastic about the transaction as the price he had offered was already not profitable. He added that whilst Wang could sleep at night if the market turned out to be poor and Wang lost money, K S Li could not sleep at night because he knew Wang's capital was from China and K S Li would not feel easy if China suffered a big loss in their transaction.

5.23 When Wang again insisted on a price reduction K S Li said that if Wang considered that K S Li was not giving him face he would rather call off the transaction and, in order to give face to Wang, he would personally make a gift to Wang of ten small units for his employees to live in. But there could be no price reduction. Wang refused this offer, saying he wished to go ahead with the transaction.

5.24 According to the evidence of the Chans they took the initiative at this stage, when Wang and K S Li shook hands, by saying that the transaction was on and agreed to when the two principals had shaken hands but if there was an outstanding issue regarding the ten flats it could be

resolved later. The evidence of P C Chan was that after this meeting Wang told his executives in the conference room of Ever Bright in the presence of the Chans that the deal had been agreed on. P C Chan also deposed that soon after this meeting Wang asked him to finalise details of the transaction, prepare for formal contract and obtain the ten flats promised by K S Li. There is a clear conflict of evidence here between the Chans and Wang. Wang insisted that he did not finally commit himself to the transaction at this stage. There is also a conflict of evidence between the Chans and K S Li who said he did not remember the hand shaking in question and that, as he would not compromise, this meeting had ended without a decision being reached. Suffice it to say that events confirmed that this meeting was not the end of the negotiations.

5.25 On the 17th January 1984 P C Chan and his son Raymond Chan attended a fourth meeting at the CKH conference room. P C Chan's evidence was that he had come to doubt whether Wang would be able to pass 20 per cent of the profit on the transaction to Guangda. He and his son had been negotiating the transaction successfully but he was not apparently going to get anything out of it. He therefore went back to negotiate with K S Li and sought to improve the terms of the proposed transaction with his own interest in mind.

5.26 The meeting on the 17th January was attended by the Chans, K S Li, George Zang, Albert Chow, Katherine Hung, C P Man and K S Tso. For the purposes of this inquiry it suffices to mention the outcome of the negotiations at that meeting which was that K S Li agreed to offer a minimal 1.5 per cent discount on the purchase price of the eight blocks

in City Garden in the form of fifteen flats from those remaining in Phase I of the City Garden development. This time the flats were not to be provided by K S Li personally but by ICH.

5.27 There was a conflict of evidence regarding the manner in which ICH was to implement this discount and, in particular, as to whether the Chans were to be entitled to five of the flats. In due course the question of the fifteen flats loomed large in the breaking up of the relationship between the Chans and Wang. K S Li was adamant that the flats were to be transferred to the Ever Bright subsidiary company that was to become the purchaser of the eight blocks in City Garden. The subsequent draft instruments relating to the flats prepared by Zangforce's solicitors support K S Li's evidence. For our purposes it is not however necessary to pursue this aspect of the negotiations further. It suffices to mention that the discount was offered and the Chans said they would report the proposal to Wang.

5.28 Between the 17th and 20th January there were discussions between the representatives of the parties to the proposed transaction and their respective solicitors regarding conveyancing documentation and estate management. ICH employed the firm of Woo, Kwan, Lee and Lo as Zangforce's solicitors. The partners concerned were Mr William Kwan Cheuk-yin ("William Kwan") and Mr Peter Lo Chi-Lik ("Peter Lo") but the solicitor actively concerned with the transaction was Miss Ivy Chan Sau-ching ("Ivy Chan") who was then a salaried solicitor. Vielight employed the firm of Ho and Wong as Cheery Bright's solicitors on the introduction of P C Chan. The

senior partner of Ho and Wong concerned with the matter was Mr Ho Sun-kuen ("S K Ho") but the solicitor actively involved was another partner Miss Joyce Li Pik-shan ("Joyce Li").

5.29 On Saturday the 21st January 1984 P C Chan called either Albert Chow or George Zang to confirm that the Ever Bright interest had agreed to the proposed price and terms for the City Garden transaction. It was then arranged that there should be a formal ceremony for the execution of the relevant memoranda of agreement at the Ever Bright offices on Monday the 23rd January 1984. The ceremony was duly held on that date and K S Li and Wang executed two memoranda of agreement on behalf of Zangforce and Cheery Bright respectively.

(iv) The terms of the transaction

5.30 At the time the memoranda were executed the eight blocks in City Garden were not yet under construction. The building plans were yet to be approved and it was not envisaged by ICH that approval would be obtained earlier than the 30th April 1984. There was therefore insufficient information available for sale and purchase agreements and it had been agreed that the documentation to effect the transaction should take the form of memoranda whereby the parties agreed to enter into future sale and purchase agreements in the form of annexed draft agreements. The blocks were divided into two groups of four blocks each for the purposes of the transaction with one group situated away from the water front to be completed ahead of the other group by the water front. Wang explained that the reason for this division was that if the four blocks near the water front were completed first then the sales of the other blocks would be adversely affected.

5.31 Each memorandum of agreement was the mirror image of the other. They were in common terms mutatis mutandis. The combined effect of clauses 1, 2 and 5 of each memorandum of agreement was as follows. Zangforce agreed to sell and Cheery Bright agreed to purchase four of the eight blocks at a stipulated price (subject to adjustment by reference to subsequent certification of total gross floor area) on the terms contained in a sale and purchase agreement annexed to the memorandum of agreement. The stipulated purchase price was payable by six instalments in the manner provided in a Schedule to the memorandum of agreement. The basis for the calculation of the final adjustment of the price by reference to certified total gross floor area was \$595 per square foot for commercial units and \$690 per square foot for domestic units. The first instalment was payable on execution of the memorandum of agreement and the Schedule provided that all but the last instalment were deposits and part payments. The parties were obliged by clause 2 to enter into the sale and purchase agreement "within 6 months from the date hereof but not earlier than 30th April, 1984", the latter date being the earliest date by which it was envisaged that the building plans would be approved.

5.32 The purchase price for blocks 11, 12, 12A and 14 (which were intended to be completed before blocks 7, 8, 9 and 10) was \$453,851,210 subject to adjustment in accordance with the formula mentioned in paragraph 5.31 above. The first instalment payable on execution of the relevant memorandum of agreement in respect of these blocks was \$22,692,560. Thereafter four instalments of \$22,692,560 each were payable at specified stages of construction, the fourth of such instalments being payable when the roof was completed or on the 30th September 1985 whichever was the later. Finally the sum of \$340,388,410 being the balance of

the purchase price was payable within one month after the issue of the Occupation Permit in respect of the relevant blocks.

5.33 In the case of blocks 7, 8, 9 and 10 the purchase price was \$485,234,380 subject to adjustment. The first instalment was \$24,261,000 followed by four instalments of \$24,262,000 each, the fourth of such instalments being payable when the roof of the blocks was completed or on the 31st January 1986 whichever was the later. The balance of the purchase price payable within one month after the issue of the Occupation Permit in respect of the relevant blocks was \$363,925,380.

5.34 Clause 3 of each memorandum of agreement provided that within six months of the 23rd January 1984 Cheery Bright might cancel the agreement by giving Zangforce two days' notice in writing whereupon Zangforce would be obliged to refund forthwith to Cheery Bright the initial instalment (being the part payment and deposit of \$22,692,560 in respect of one group of blocks and \$24,261,000 in respect of the other group) paid by that company as prospective purchaser. In addition Zangforce would be obliged on such cancellation to pay to Cheery Bright interest on each initial instalment so refunded at the rate of 10 per cent per annum calculated from the date of payment to the date of repayment.

5.35 Clause 4 contained provisions which were intended to ensure that the agreement comprised in one memorandum of agreement should be conditional upon the due performance of the agreement comprised in the other memorandum of

agreement. There is room for the contention that clause 4 of each memorandum of agreement should be construed as permitting Cheery Bright to effect a cancellation and recover its deposits with interest by merely defaulting on its obligation to execute the sale and purchase agreement annexed to either of the memoranda of agreement. However we were satisfied that even if such a construction were arguably sustainable it was not intended by the parties. Their intention was to provide that if Cheery Bright did not exercise its right to cancel the transaction under clause 3, then it would be obliged to enter into two sale and purchase agreements in respect of all eight blocks. It would not be entitled to elect to purchase one group of blocks and not the other.

5.36 On final analysis of the memoranda Cheery Bright had entered into the City Garden transaction on very favourable terms. It had paid two deposits amounting to a total sum of \$46,953,560. This amount was only about 5 per cent of the total prospective purchase price of \$939,085,590 and it was repayable forthwith with interest at the rate of 10 per cent per annum if Cheery Bright elected to cancel the transaction during the six month period following the 23rd January 1984 when the memoranda were executed.

5.37 Cancellation during the six month period might have resulted in some degree of loss for Cheery Bright or Violight because the deposit money could have earned more than 10 per cent interest during that period. However the risk of such a loss was a very modest price to pay for what amounted to a six month view of the property market coupled with the right to make a very big purchase at a fixed price per square foot of the eight blocks (comprising 1,283 flats

and also commercial podia) in the City Garden development. Wang had six months in which to decide finally whether or not to commit Cheery Bright to the transaction.

5.38 The break clause in the memoranda has sometimes been referred to as creating an option. Strictly speaking it was not at law an option because Cheery Bright had made an agreement binding itself to enter into the sale and purchase agreements but for all practical purposes the break clause was as valuable as an option because it put Cheery Bright in a position where it could resile from the transaction with virtual impunity at any time during the six month period.

5.39 The memoranda contained no reference to the fifteen flats which K S Li had agreed should be the element of discount in the transaction. From time to time separate draft instruments were prepared and considered in respect of the 15 flats after the 23rd January 1984 but no final draft instrument ever emerged before the eventual cancellation of the City Garden transaction.

(v) The period between the execution of the memoranda and the cancellation of the transaction

5.40 For understandable reasons witnesses were not always able to give precise dates for events. This was particularly the case regarding the period between the execution of the memoranda on the 23rd January 1984 and the end of March 1984. However we were satisfied that during this period Wang was looking for a buyer for the City Garden blocks and his subordinates were looking for advice on sales techniques.

5.41 Some time in February 1984 Mr Thomas Chui Kwong-sang ("Thomas Chui") a Deputy General Manager of Violight who was an old school friend of Mr Larry Tam Hee-chung ("Larry Tam"), an estate agent and partner in the firm of Debenham Tewson and Tam, approached Larry Tam together with a colleague Mr Yeung Ling-tung ("L T Yeung") about the possibility of Larry Tam finding buyers for the eight City Garden blocks. Larry Tam told them that they were asking far too high a price for the prevailing market but he said he would ask his firm's associate company in the Middle East, Debenham Tewson and Chinnocks if they had any interested clients.

5.42 Larry Tam had asked L T Yeung to confirm the Ever Bright offer in writing. This request resulted in a letter dated the 21st February 1984 from Wang to Larry Tam's firm offering it the overseas agency for the sale of the eight blocks in City Garden until the 31st March 1984 at asking prices of \$860 per square foot for residential units and \$740 per square foot for commercial units. By a letter dated the 27th February 1984 addressed to Wang, Larry Tam accepted the agency on his firm's behalf after having telexed his firm's associate company in the Middle East to enquire if they had any interested clients. On the same day Larry Tam received a reply to his telex in which the associate firm expressed interest in commercial property but he did not pursue the matter as the asking price was too high. In March Mr Chris Tse Chuen-chow ("Chris Tse") enquired by telephone on behalf of Violight if there had been any developments and Larry Tam told him that the asking price was too high.

5.43 It was clear from the evidence of Wang himself, of Wang's daughter Miss Wang Mi ("Wang Mi") and of Chris Tse that Violight was wholly lacking in expertise in the marketing of real estate. Wang Mi was at all material times her father's secretary after she came to Hong Kong on the 17th January 1984. She was also the business manager of what she called the business division of Ever Bright. In June 1984 Violight established a real estate division under Chris Tse.

5.44 Wang Mi deposed that although she was never specifically assigned to the City Garden transaction she had taken responsibility for it as nobody else had done so. Between about the 19th March and the beginning of June when he became employed by Violight as Deputy General Manager of its Real Estate Division Chris Tse acted from time to time as an informal adviser to Violight. This came about because he was at the time employed by Sino Realty and Enterprises Limited ("Sino Realty") which was engaged in two property development joint enterprises with Ever Bright. These projects required his making visits to Ever Bright from time to time and he would normally contact Wang Mi. Under cross examination by Mr Martin Lee Chris Tse acknowledged that the Ever Bright personnel did not have adequate knowledge of the Hong Kong property market.

5.45 Wang Mi admitted frankly under cross-examination by Mr Litton that at the time she had absolutely no experience in real estate development, nor had her colleagues Gu Shirong and L T Yeung who accompanied her when she discussed the City Garden development with ICH and CKH personnel after the execution of the memoranda of agreement. As Wang Mi put it in her evidence under cross-examination by Mr Litton - ".....

for this project our company wanted to find a professional person in the property and development sector but at that time the person had not come to light to our company". The eventual choice to fill this gap was Chris Tse.

5.46 When the transaction was entered into there were not even approved building plans of Phases II and III of the City Garden development. In the course of his evidence Mr John Ho Kai-wah ("John Ho") the Chief Accountant of CKH produced the relevant forms showing that the revised scheme building plans for Phase II (blocks 7 to 10) were approved on the 17th April 1984 and the building plans for Phase III (blocks 11, 12, 12A and 14) were approved on the 30th March 1984. It is hardly surprising that one of the first moves made by Wang Mi (an intelligent woman with a university degree in chemical engineering and some years of experience in industry, trade and market research) was to hold discussions with ICH and CKH personnel concerning the next step to be taken by Zangforce, with particular reference to the precise specifications of the future development and marketing strategy in relation to that development.

5.47 Such discussions took place in February and March and on one occasion on the 19th March 1984 Wang Mi and her colleagues were accompanied by Chris Tse. According to K S Tso, C P Man, Katherine Hung and Chris Tse the Ever Bright representatives suggested that CKH might be the selling agents for Cheery Bright but this proposal was greeted with a non-committal reaction. The Chans offered their services as selling agents at an early stage but were given no definite reply by Wang and they played no active part subsequently as they fell out with Wang over the allocation of the 15 flats that were to represent the discount in the transaction. Wang

himself gave some very vague evidence about other possible purchasers of the City Garden blocks but we did not consider it necessary to consider that evidence further in this report.

5.48 On the 28th March 1984 Jardine Matheson and Company Limited ("Jardines") announced its decision to move its domicile to Bermuda. On the 31st March 1984 the agency of Debenham, Tewson and Tam lapsed. After Larry Tam had told Chris Tse in March that Wang's asking price for the City Garden blocks was too high Chris Tse informed L T Yeung of this conversation. On the 10th April Davies had lunch with Wang. In a subsequent letter dated the 17th April Davies reported to K S Li on his lunch meeting with Wang and stated that it seemed to him that there were a number of reservations about the negotiations to sell the City Garden flats. From April onwards all the indications are that Wang and his subordinates were seeking to obtain a reduction in the price to be paid under the City Garden transaction, a variation of that transaction or an alternative to it.

5.49 Between April and June, Mr Yam Wong ("Yam Wong"), the proprietor of a real estate company, met George Zang on at least four occasions and, in his capacity as a go-between for Violight and Cheery Bright, he endeavoured without success to negotiate a reduction in the price payable by Cheery Bright under the transaction or the acceptance of other proposals, namely the reduction of the number of blocks to be purchased by Cheery Bright or that CKH should act as sales agents for Violight. Yam Wong was a friend of George Zang and he was brought on the scene by the

introduction of Mr Wang Ji-hao ("J H Wang") a project manager of Glittering Investment Company Limited, a company in the Ever Bright group. J H Wang accompanied Yam Wong whenever he went to negotiate with George Zang.

5.50 When Yam Wong's efforts failed Wang Mi herself went to negotiate with Albert Chow and Katherine Hung and possibly George Zang. She deposed that they already knew that Ever Bright was trying to reduce the price through Yam Wong. She therefore put two proposals to them, namely a reduction in the number of blocks to be purchased or formation of a joint venture company with the Ever Bright interest only taking 5 per cent of the shares. Wang Mi received no definite answer to these proposals but Katherine Hung put up a counter proposal that Ever Bright might buy some completed factory buildings from ICH. Chris Tse was strongly opposed to such a counter proposal. According to Wang Mi she informed Wang of the basic details of her attempts to reduce the price of the transaction. He objected initially but later agreed to the discussions with ICH representatives.

5.51 The next move was a lunch hosted by Yam Wong on the 22nd June 1984 at a restaurant in the Landmark building in Central. The lunch was attended by Wang Mi, Chris Tse, J H Wang, George Zang, Albert Chow and Katherine Hung. The Violight representatives pressed for a price reduction or the adoption of various alternative proposals. When the ICH representatives refused to agree Wang Mi said that the Ever Bright interest would cancel the transaction. George Zang urged Wang Mi to consider the impact of cancellation on public opinion and added that the question of cancellation was one for Wang and K S Li.

(vi) The events leading up to the cancellation

5.52 On the 25th June 1984 K S Li gave a lunch at the CKH penthouse in the China Building attended by Wang, Wang Mi, Chris Tse, Albert Chow, George Zang and Katherine Hung. During drinks before the lunch started K S Li told Wang that if the transaction was to be cancelled it should be done quickly because it would be awkward if Wang were to ask for the repayment of Cheery Bright's deposit after the expiration of the six month deadline stipulated in the memoranda.

5.53 According to K S Li, Wang talked about having lost a deal because Jardines had moved their registered office to Bermuda and originally he had had a possible buyer from the Middle East. Wang asked K S Li how much Wang would lose if he sold the eight blocks. K S Li's evidence was that he told Wang it would be difficult to get a bulk purchaser but even if he could do so he would lose "big money". Wang deposed that K S Li told him he would probably lose as much as \$200 million if he went ahead. K S Li eventually said, when cross-examined by Mr Martin Lee, that he could not remember mentioning this figure but the loss would be something like \$200 million and maybe he had mentioned that figure.

5.54 Before lunch Wang decided to cancel the transaction and expressed his wish to do so. In his declaration Wang deposed -

"I decided there and then to call off the deal because I now realized the property market was not good at that time, and I would find it difficult to secure buyers for the flats, which were all relatively large in size."

Thereupon K S Li urged Wang to send the necessary two day notice and it was agreed that K S Li would prepare a press release, a copy of which would be sent to Wang for approval as a joint release.

5.55 Having fallen out with the Chans, Wang decided not to instruct S K Ho who had been close to P C Chan and recommended by him to act as Cheery Bright's solicitor for the City Garden transaction. For the cancellation business Wang instructed another solicitor, namely Mr Robert W H Wang ("Robert Wang") the senior partner of Robert W H Wang & Co. After the lunch on the 25th June Chris Tse accordingly telephoned Robert W H Wang & Co and spoke to Johnny Mak Kwok-wing ("Johnny Mak") a senior clerk of Robert Wang and asked him to come to a meeting on the next day at Ever Bright's office. At that meeting held in the morning of the 26th June Chris Tse gave Johnny Mak copies of the memoranda and instructed his firm to settle the necessary documentation to cancel the City Garden transaction. Written instructions to that effect dated the 26th June 1984 and signed by Wang on behalf of Cheery Bright were given to Johnny Mak's firm.

5.56 Two cancellation letters dated the 26th June 1984 giving the necessary two day notice and demanding repayment of the deposits with interest were thereafter prepared and signed by Robert Wang. The letters were delivered by messenger to the office of Zangforce and ICH at 704 China Building on the 26th June and eventually reached Albert Chow in CKH's office that evening. He informed K S Li of their arrival and notified C P Man to prepare the necessary cheques to refund the deposit money and interest to Cheery Bright.

5.57 On the 25th June K S Li had instructed C P Man to prepare a board circular notifying the directors of ICH when the cancellation was effected. C P Man subsequently prepared and circulated ICH Board Circular No. 10/84 dated the 27th June 1984 announcing the cancellation.

5.58 On the afternoon of Thursday the 28th June 1984 the cancellation procedure was completed when Chris Tse and Johnny Mak went to the CKH conference room and met George Zang, Ivy Chan and William Kwan. Chris Tse took with him the agreed joint press release purportedly signed by Wang. Johnny Mak was given two cheques drawn in favour of Cheery Bright for the sums of \$25,304,555.34 and \$23,668,650.94 representing the amount of the deposit and interest payable in respect of each of the two groups of blocks in City Garden upon the cancellation of the transaction. The cheques were accompanied by two letters dated the 28th June 1984 addressed to Robert W H Wang & Co by Messrs Woo, Kwan, Lee & Lo confirming the cancellation on behalf of Zangforce their client. After the conclusion of the cancellation business there was a press conference.

(vii) Motivation of Wang in relation to the transaction

5.59 We were satisfied that the transaction was a genuine business transaction and that there is no evidence that it was part of a conspiracy to enter into a sham transaction to give a false stimulus to the property market and the price of property company shares in Hong Kong. Having regard to the suspicions which were aroused regarding the transaction at the time of the cancellation we considered that it was right that we should make this finding of fact in our report when considering the motivation of Wang and K S Li in relation to the transaction which was entered into by two companies which were primarily activated by those two personalities.

5.60 Wang had entered on the property market scene early in January 1984 at a time when it was stagnant. He was the Chairman of Violight through which company and its subsidiaries the Ever Bright group did business in Hong Kong financed by capital from sources in the People's Republic of China. He was, to use his own expression (as translated from Mandarin) "eyecatching" at a time when confidence in the future of Hong Kong was wavering. He came to the property market with a complete lack of expertise but he was an optimist. In his declaration he deposed -

"I made up my mind to purchase the blocks because I had full confidence in the future of Hong Kong and I considered the property market was on the road to recovery."

5.61 This view of the property market formed by a novice in the field was in marked contrast to that of K S Li and the management of ICH and CKH who were highly experienced in the field of property development and marketing and whose opinion in early January 1984 (referred to by K S Li in his letter dated the 20th July 1984 to Davies) was that property prices were most likely to go down. However we were satisfied that Wang's optimism was genuine albeit ill founded. We were satisfied that on the 19th January 1984, when Wang was interviewed by Miss Shing Mei-lan ("M L Shing") a reporter with the China News Service in Hong Kong, he told her that he had come to Hong Kong to do business and to do something for the prosperity and stability of Hong Kong.

5.62 The evidence of M L Shing, who exhibited her notes of her interview of Wang on the 19th January 1984, further satisfied us that Wang believed that the effect of any big

transaction in Hong Kong would be to give impetus to the stock and property markets and that, whilst his primary reason for entering into the City Garden transaction was that of a genuine business man seeking to make a profit from his dealing, he also believed and intended that the magnitude of the City Garden transaction would be such as to give a boost to the property and stock markets and to confidence in Hong Kong.

5.63 In arriving at our findings above based on the evidence of M L Shing who had recorded Wang's expressed views at the material time in January 1984 we do not imply that we have rejected Wang's own evidence on these important matters. When he gave oral evidence to the Tribunal on the 25th September 1985, speaking from recollection, he was understandably cautious about the precise words he had uttered to M L Shing some twenty-one months earlier but the tenor of his evidence was consistent with that of M L Shing when he was asked by Mr Litton about the accuracy of M L Shing's purported quotation of his words in her article based on the interview on the 19th January. The relevant words in the purported quotation were - "We come to do business in Hong Kong and in the meantime to do something for the prosperity and stability of Hong Kong." When he was asked about the accuracy of this purported quotation the following passage of questions and answers occurred between Mr Litton and Wang:-

"Q. That is accurate, is it not, Mr Wang?

A. I did have this intention and these may not be the exact words. I've said that I was there to do business.

Q. But did you say words to that effect as appearing in the quotation?

A. Not necessarily the exact wording but the meaning is there because I was here in Hong Kong to do business and if I did good business then it would be beneficial to the Hong Kong situation."

5.64 As regards the break clause, we were satisfied that Wang realised from start to finish that its effect was to entitle Cheery Bright to resile from the City Garden transaction by giving the necessary two day notice at any time during the six month period subsequent to the 23rd January 1984. The unchallenged evidence of S K Ho, Cheery Bright's solicitor, was that on the morning of the 23rd January 1984, prior to the execution of the memoranda in the late afternoon of the same day, Wang commented on the break clause in the course of conversation about the transaction, saying "I have a right either to buy or not to buy within six months". S K Ho was therefore left with the impression that Wang had no doubt as to the advantage of the break clause.

5.65 The evidence of Mr Li Xinshi ("Li Xinshi"), who evidently spent most of his time in Beijing but was a senior colleague of Wang, was that when Wang told him about the City Garden transaction in Beijing during Chinese New Year in 1984 (2nd to 4th February 1984) Wang had mentioned the break clause. In his declaration Li Xinshi deposed as follows :-

"I was also told by Mr WANG that the option clause was inserted at the initiative of Mr LI Ka-shing who had stated that if the property market was not good then Mr WANG could cancel the deal. I felt that Mr LI

included the option because a huge amount of money was involved and the option would allow Mr WANG time to observe. If the deal became unfavourable Mr WANG had the right to cancel the memoranda and the seller shall(sic) return the deposit together with interest."

Further evidence of the awareness on the Ever Bright side of the value of the break clause came from Wang Mi who deposed in her declaration that she was not surprised at the inclusion of the clause in each of the memoranda and that she regarded the clause as a good "buffer".

5.66 Although Wang knew full well at all material times that the break clause gave him a view of the property market for six months, we were satisfied that his degree of optimism about the property market and the effect of the transaction on that market and on confidence generally in Hong Kong was such that he genuinely had no intention of invoking the clause when the transaction was entered into. In his declaration Wang went so far as to depose that even if the break clause had not been offered by K S Li, Wang would still have gone ahead with the transaction as at the time he considered it to be a good deal. We were not satisfied that his optimism would have carried him so far, since this was a transaction negotiated by Chinese business men and K S Li's evidence was that, in such a big transaction, if there was no reduction in price, considerations of face required the offer of the break clause before a deal could be made.

5.67 It was never in issue that the break clause was proposed by K S Li initially. We were satisfied that both the Chans and Wang informed K S Li at different times during the negotiations that the break clause was useless to them

because it would never be invoked. To some extent these representations were made in an attempt to reduce the price of the transaction but we were satisfied that Wang's optimism was such in January 1984 that he did not then seriously contemplate that he might invoke the break clause. Wang Mi also said under cross-examination by Mr Wright that initially she was not too interested in the break clause because at the time her side intended to complete the transaction.

5.68 As late as the 19th May 1984 (by which time Wang Mi was seeking ways of reducing the price of or negotiating alternatives to the transaction) Wang told press reporters in Beijing that the transaction would not be cancelled. We believed his evidence that whilst he came round to agreeing to Wang Mi continuing to negotiate with ICH and CKH for more acceptable terms, he still did not want to cancel the transaction in May and most of June. As he put it in his declaration:-

"I did not want to call off the deal, taking into consideration the possible impact it could have on the Hong Kong markets, and as I saw it, if these alternatives were feasible, it would be nice."

5.69 It is significant that Chris Tse's evidence under cross-examination by Mr Martin Lee was to the effect that, as late as the 25th June 1984 when he accompanied the Ever Bright party to K S Li's lunch at the CKH penthouse, he had the impression that Wang was going there to wait for a reply from K S Li regarding the alternative proposals of Wang Mi and that Wang did not want to withdraw completely from the transaction. The evidence of Li Xinshi also points to the decision to cancel the transaction being made as late as the

lunch meeting held on the 25th June 1984. His evidence was that as late as early June Wang had spoken to him about the transaction, saying that Wang Mi considered the price a little bit too high and hoped to beat it down but his impression was that the decision to cancel was not made until one or two days before the cancellation was announced.

5.70 Accordingly we were satisfied that Wang did not decide to invoke the break clause until the lunch meeting on the 25th June 1984 when K S Li showed no disapproval of such a move and encouraged him to do so with expedition. Wang had clearly done his best through Wang Mi to cobble together some form of alternative transaction but failed. By the 25th June he was aware from Wang Mi that if he went ahead with the transaction he would be committing himself to an over priced purchase in a very large property transaction. K S Li confirmed his fears that he was heading for a substantial loss if he went on, and if Cheery Bright made a bulk sale of the City Garden blocks after having acquired them under the transaction. He was in a very difficult position and liable to lose face whatever course he took. As Li Xinshi put it in retrospect in his declaration:-

"Of course, he was afraid that if the deal was cancelled it would be a loss of face. But if he did not cancel the deal, whilst being fully aware of losing money, this would seriously affect the business of Ever Bright in that people might not be willing to do business with the company."

5.71 In the event Wang made the decision to lose face by cancelling the transaction and avoiding what he considered would be a substantial loss. In the ordinary way Wang's

action in cancelling the transaction by exercising the break clause would not have involved any loss of face. However the publicity given to the transaction during the relevant period had been such that the cancellation was bound to loom large in the public eye and equally bound to cause loss of face to the Ever Bright interest and to Wang in particular.

(viii) Motivation of K S Li in relation to the transaction

5.72 K S Li is a man of considerable stature in the commercial world of Hong Kong. Sir Philip Haddon-Cave described him graphically as a "high-fly developer...a very high flying, brilliant man" with "a rather high PR profile whatever he does." K S Li told the Tribunal that from his point of view there was nothing unusual about the magnitude of the City Garden transaction. The unusual factor was the involvement of Wang.

5.73 On the 12th and 24th January, before and after the execution of the memoranda on the 23rd January K S Li had spoken to Sir Philip about it in the course of their discussion of other matters of mutual concern. Sir Philip's evidence was that when K S Li mentioned the transaction to Sir Philip he did not give him the impression that he was concerned that if the real estate market should deteriorate he would be seen to have been able to take advantage of the transaction at the expense of a China backed company. Sir Philip said that K S Li did not appear to be particularly happy at consummating the transaction and he wished to be under no obligation to Ever Bright or Wang in what he regarded as a normal commercial deal. Sir Philip was given what he termed the clear impression that the origin of the break clause lay in K S Li's anxiety not to be under any sort of obligation to those with communist affiliations.

5.74 Under cross-examination by Mr Martin Lee, Sir Philip said that he himself was not concerned about the break clause. He was preoccupied with other matters and did not give it any second thoughts. He said in answer to Mr Lee:-

"It seemed to me, to the extent I thought about it at all, simply struck me as being typical of the man. In other words, he did not wish to be under any obligation. I didn't think further than that."

5.75 When asked by Mr Lee to elaborate on his earlier evidence about K S Li not appearing to be particularly happy about consummating the transaction, Sir Philip replied that he thought K S Li was of the view that Wang's offer to buy was in the nature of a favour being done to him by people with Chinese connections. Sir Philip added that K S Li did not want to be under any sort of obligation to Ever Bright. ICH was cash rich. Being a high flying developer with a rather high PR profile and the property market being sluggish - "he didn't particularly like the deal because he thought it might place him in their eyes under an obligation". Sir Philip concluded his evidence on K S Li's attitude to the transaction generally with the following observation:-

"There was no need for him to go looking for favours and he therefore didn't want to be offered one. So, he said to Mr Wang Guangying, I regard this as a straightforward commercial transaction, nothing more, nothing less."

5.76 Wang himself deposed in his declaration that the break clause was proposed and insisted upon by K S Li because he said Wang was new to Hong Kong and not familiar with the property market here. According to Wang, K S Li said he

would lose friends both in Hong Kong and China if he was thought to have deceived Wang and this was his main reason for the inclusion of the break clause. Wang repeated the substance of this evidence when he was cross-examined by Mr Litton.

5.77 P C Chan said that at the first meeting of the negotiating parties (which he said took place on the 4th January 1984) K S Li told Chan that he proposed to guarantee profitability to Wang by offering a three month break clause during which Wang could cancel the transaction and recover his deposit with interest. According to P C Chan it was on this occasion that K S Li said that in case the investment were to lose money Wang could sleep well at night, P C Chan might sleep with some difficulty but K S Li could not sleep.

5.78 P C Chan also volunteered, when cross-examined by Mr Wright about the break clause, that on one occasion during the negotiations K S Li had said to Wang:-

"You don't have to tell me how you came by your capital. I know it. I want you to make a profit in this investment and that is why I give you this clause because, as you have invested so big an amount, you should have a reasonable profit."

5.79 P C Chan said he always believed Wang would not invoke the break clause and from beginning to end P C Chan did not want the clause. He said that when K S Li proposed the clause, K S Li had said that if he were the purchaser he would be prepared to pay \$50 million for such a clause whereupon P C Chan suggested he should withdraw the clause and reduce the price by \$50 million but K S Li refused.

5.80 When, on the 18th January 1984, K S Li spoke to Mr Simon Keswick ("Keswick") who was then the Chairman of HKE and of HKL and was enquiring about the transaction as Chairman of HKE, K S Li did not display the attitude of detached indifference to the transaction that he had shown towards Sir Philip nor the benevolence he had shown towards Wang as a newcomer to the property market. Keswick's recollection of the conversation was not precise. He was preoccupied with many other very important matters at the time. He said he was left with the impression from the conversation that the transaction had actually been entered into by the 18th January. He could not recall precisely, but he believed that K S Li mentioned the break clause, saying that this was for cosmetic purposes only and that the Chinese Government would be most unlikely to exercise such an option.

5.81 The conversation between K S Li and Keswick was heard over a loudspeaker telephone by Peacock who was then Deputy Chairman and Group Managing Director of HKE and a non-executive director of ICH. Peacock had not only read about the transaction in the newspapers but had been told about it and about the break clause by his finance director Tonroe who had in turn discussed the transaction with C P Man and K S Tso on the 16th January 1984 at a business lunch. According to Peacock when K S Li told Keswick about the break clause during their conversation on the telephone, he mentioned that such a large deal would require approval from Beijing and such a term was normal in contracts with the Chinese Government.

5.82 In ICH Board Circular No.3/84 dated the 7th February 1984, which was drafted by K S Tso, K S Li as Chairman of ICH informed his directors inter alia that the transaction included the break clause and commented as follows:-

"The insertion of the above Special Condition was considered important to give Everbright and its controlling organisation in China enough confidence to enter into a transaction of such magnitude. However, the Company has been repeatedly assured by Everbright that it would be a most unlikely occurrence for them to invoke this special clause and subsequent events appear to confirm their statement."

For convenience the full text of ICH Board Circular No. 3/84 is set out in Appendix II.

5.83 When, on the 17th April 1984, Davies wrote to K S Li to express his anxiety about Wang's attitude towards the transaction in the light of Wang's conversation with Davies at their lunch on the 10th April 1984, K S Li replied with complete equanimity (which he said in evidence was intended merely to indicate adherence to the transaction and to snub Davies for his interference) in a letter dated the 18th April 1984 in terms which included the following:-

"Please rest assured that our Company is well prepared to cope with any situation that may arise. No matter what turns out after the six months option period, we will just stick to the agreement we have entered into with Ever Bright."

5.84 On the afternoon of the 28th June 1984 K S Li spoke to reporters after the announcement of the cancellation. The evidence of Miss Lo Yuk-chun ("Y C Lo"), an assistant programme officer of Radio HK, was that she made a tape recording of what K S Li said on that occasion. A translation of the transcript of that recording indicated

that amongst other things K S Li said that he was not surprised by the decision of Ever Bright to cancel the transaction and that when he signed the memoranda he had thought there could be such a possibility.

5.85 In a reply dated the 20th July 1984 to a letter from Davies dated the 18th July 1984 which was critical of a number of matters concerning the transaction including the break clause K S Li replied as follows concerning the ICH management thinking underlying the transaction:-

"2. At the time the deal was being negotiated with the purchaser, the situation was as follows:

- a. The property market was stagnant. Similar properties were being sold at around \$700.00/s.f. and it was the opinion of the management that prices were most likely to go down. It would have been impossible to obtain a selling price of \$690.00/s.f. for the bulk sale of 1,283 flats without the option clause.
- b. Phases II & III development of City Garden would not be ready for open sale until early 1985 under law society rules. Therefore, had the deal been cancelled, the Company would have suffered no financial loss.
- c. The purchaser requested that I.C.H.L. should not disclose the option clause and reiterated that they would never contemplate cancelling the deal.
At the time, there was certainly no cause to doubt the intention and sincerity of the purchaser.

I consider that the deal was made in good faith, a calculated risk with no financial downside for the Company; and if it succeeded, it would have been most beneficial for the Company."

5.86 At the board meeting of ICH on the 8th August 1984 K S Li again defended the City Garden transaction against criticism from Davies and the press and is recorded in the minutes of the meeting as having said that the transaction was definitely to the Company's advantage in the depressed state of the market and that the Company was not in a position to sell any units of Phases II and III before the award of the superstructure contract in early 1985.

5.87 When he gave evidence before the Tribunal, K S Li said in answer to Mr Wright that his attitude to the transaction as Managing Director of ICH was that he needed the business offered by Wang but he would not personally have chosen to touch it. The reason for this attitude was that if Wang were to lose money or problems were to arise in connection with the transaction, K S Li would get into trouble and he would only have himself to blame.

5.88 Under cross-examination by Mr Litton K S Li elaborated on his attitude to the offer of Wang to do business. He believed that Wang must be approved by the Central Government of the People's Republic of China and that his capital was from that source. Personally he did not like the business but he had to be loyal to his company. If Wang accepted his asking price, K S Li needed the business. His only concern was in case Wang should lose money. However K S Li said there was no reason why he should refuse to do

business with a fellow Chinese from his parent country. Although ICH was a cash rich company, the completion of the City Garden development had been delayed by the Hong Kong Government. In May 1981 the ICH prospectus had indicated a completion target of July 1985. In the case of most developments the land cost was higher than the building cost and if land was lying idle, it meant that the developer was losing the interest payments. In 99 per cent of cases the developer's aim was therefore to complete his project as soon as possible.

5.89 As regards the break clause, K S Li deposed in his declaration that he had offered it to Wang because:-

- "(a) at that time there was practically no market demand for these properties. It would have been impossible to obtain a selling price of \$690.00 per sq. ft. for the bulk sale of the 1,283 available flats without such an option clause;
- (b) I strongly believed at that time that the purchaser would not cancel the sale under the prevailing political climate even if there was an option clause;
- (c) under the non-consent scheme of the Law Society, ICH could not offer the units for sale to the public until early 1985;
- (d) if on the one hand ICH refused to give a substantial discount and on the other hand there was no option clause, I was almost certain we would lose such a potential buyer."

These reasons are generally consistent with what K S Li said in that part of his letter dated the 20th July 1984 (set out in paragraph 5.85 above) when defending the transaction and the break clause against the criticism of Davies after the cancellation.

5.90 Under examination by Mr Wright and under cross-examination by Mr Litton and Mr Martin Lee, K S Li said that the final price he offered Wang for the transaction was almost his cost. He would not agree to less because he did not want ICH to lose money, but if they could make a deal and break even, they would be quite happy. As regards the break clause K S Li insisted that it was useless to Wang because his intention was to give confidence to Hong Kong people and to the property market. The break clause was, he said, an indication of K S Li's sincerity. It was necessary to give face to Wang in this way if there was to be no price reduction but he knew the buyer could not invoke the clause.

5.91 He admitted when questioned by Mr Wright that he had told Sir Philip Haddon-Cave that he did not want the public to think that Wang was doing him a favour by entering into the transaction. He also acknowledged to Mr Martin Lee that he was troubled by the transaction because if anything went wrong and "China" would or might lose a lot of money, he could not sleep at night. When asked by Mr Lee if that was really the reason for his wanting the break clause, the following sequence of answers and questions ensued:-

"A. I know what I want to show, that means I got the option here to show Mr Wang the price really is my cost and reasonable but another thing I know, in his position he can not exercise the option, that mean he cannot cancel the agreement."

Q. Politically?

A. Politically, and I believe his reason to buy this project is not straight for business. He is really trying hard to give more confidence to the people in Hong Kong.

Q. That was why you thought he might be doing you a favour by spending the money on your company and not on some other company, is that right?

A. That, I don't like. That is why I try, try to convince him that I am not that big a dog, no excitement at all. When you say give me this business you can ask Mr Chan Park-chi from the early beginning I say I don't think really I am not excited and happy for this business. I say please, because Wang Guang-ying I cannot reduce the price because that is my cost, but the conclusion I give the option, that only shows the loyalty from me. This is really my cost, my cost, with this option that means I don't mind you don't buy now. But another thing, I know 100 per cent agree with him, he repeat, repeat, say option is useless to him."

5.92 Mr Litton reminded K S Li of P C Chan's evidence to the effect that when K S Li had told P C Chan that, had K S Li been the purchaser, he would have been prepared to pay \$50 million for the break clause, P C Chan had invited him to reduce the price by that amount and withdraw the break clause. K S Li claimed he could not remember saying the option was worth such a sum. He added that he would not have offered the break clause if the buyer had not been Wang who, for political reasons, had given assurances that he would never invoke it.

5.93 The evidence above relating to K S Li's motivation in relation to the City Garden transaction reveals the workings of a very astute mind. We were satisfied that the evidence as a whole provides a sure basis for our conclusion that the transaction was a genuine business transaction and not a mere sham. We were also satisfied that K S Li was in a genuine dilemma when approached by P C Chan with an offer to do business with Wang who represented the Ever Bright interest in Hong Kong which derived its capital from sources in the People's Republic of China.

5.94 He knew the property market was stagnant and that he and his management did not think that there was any imminent prospect of any improvement. He considered it would be in the interest of ICH to sell the eight blocks in City Garden even if the price were at cost so that ICH would barely break even. He regarded Wang as politically motivated and anxious to deal in a big way in property in order to stimulate the property market and promote confidence in Hong Kong. On the other hand, K S Li must have realised that if he dealt on a large scale with this optimistic newcomer to the property market in Hong Kong and the result was a substantial loss of capital derived from China, he would be very embarrassed. He admitted it would give him sleepless nights.

5.95 The shrewd solution to this dilemma was to stick to his economic rock bottom price and offer the break clause, thereby making it clear to Wang that K S Li was not being done a favour by the transaction with Wang and that the ultimate decision whether to purchase the eight blocks lay with Wang for six months. There was no sale in the commercial sense. Wang had six months to decide whether or

not to bind Cheery Bright to purchase the property. From the point of view of ICH, K S Li considered that the company would benefit whatever the outcome. If Wang did not cancel the transaction, ICH would just about break even and reap the advantage of a capital return on a substantial sale at a time when the property market was stagnant. If Wang were to cancel the transaction, ICH would not be in any worse position than it was in January 1984 when it could not envisage the sale of individual units in the eight blocks under the Law Society Non-Consent Scheme (controlling sales of unbuilt flats where a common solicitor acts for both vendor and purchaser) until early 1985.

5.96 K S Li had thus put himself in the position where he could not be accused of taking advantage of an inexperienced purchaser employing capital from China. He had not lost face by receiving any favour from Wang in the form of a politically motivated transaction. If it had not been for the publicity referred to in Chapter VI below whereby the transaction was represented as an actual sale and purchase, Wang could have cancelled the transaction later without any loss of face.

5.97 We believed P C Chan when he said that K S Li had put a value of \$50 million on the break clause and we were satisfied that, as K S Li represented to the ICH directors in ICH Board Circular No. 3/84 dated the 7th February 1984, the break clause was inserted in the memoranda to give Cheery Bright and those behind it enough confidence to enter into a transaction of the magnitude of the City Garden transaction. We were also satisfied that, although K S Li received repeated assurances from both Wang and P C Chan during the negotiations (when they were seeking to reduce the price)

that the break clause would never be invoked, he must have been aware that until the six month period elapsed there was a real risk that Wang might invoke the clause and cancel the transaction.

5.98 Mr Litton had asked K S Li to elaborate on the statement in ICH Board Circular No. 3/84 to the effect that "subsequent events" appeared to have confirmed the repeated assurances of Ever Bright that it would be a most unlikely occurrence for them to invoke the break clause. When asked to specify the "subsequent events", which were the basis for his reassurance to his directors, he was quite unable to do so. He repeated his alleged belief that the option would never be exercised and referred to Wang's failure to register the transactions. When it was pointed out to him that time for registration did not expire until the 22nd February 1984 he rambled on about what a busy man he was and having to sign hundreds of documents a day.

5.99 K S Tso had drafted the circular. The best he could do when asked by Mr Wright to specify the relevant "subsequent events" was to say that he relied on the fact that ICH had been told so many times that the break clause would not be exercised and that, when a meeting had been held on the 20th January 1984 with the Chans to discuss conveyancing aspects of the transaction, the Chans had insisted that they should do the estate management of the eight blocks.

5.100 K S Li's evidence before us that he only offered the break clause because he was sure that Wang could not, for political reasons, invoke it, strikes a discordant note in

contrast to Wang's and P C Chan's understanding, induced by K S Li, that the clause was for Wang's benefit. Moreover K S Li was content to inform the media after the cancellation that he was not surprised by the cancellation and that when he signed the memoranda, he had thought there could be a possibility of Wang invoking the break clause and cancelling the transaction. He explained to the Tribunal that this was not true and was said by him to avoid embarrassing Wang.

5.101 Although we accepted that K S Li would always seek to avoid embarrassing Wang, we were satisfied that he told the truth to the media about the possibility of cancellation. Wang and K S Li were not strangers before the transaction. They had known each other for some years and they trusted and respected each other. We were satisfied that K S Li meant to give Wang a real route of escape from the substantial City Garden transaction as part of a genuine commercial transaction in which no favours were being done to K S Li and that, despite Wang's original assurances that he would not contemplate cancellation, K S Li envisaged at all material times that Wang might cancel the transaction if the market did not improve. He worked out that cancellation would not cause loss to ICH. As he indicated in his letter dated the 20th July 1984 to Davies, there could be no "financial downside" for ICH whatever happen. Accordingly when Wang decided to cancel on the 25th June 1984, K S Li readily accepted the decision and urged him to get on with the cancellation procedure without delay. He was clearly not put out or surprised.

CHAPTER VI

THE PUBLICITY GIVEN TO THE CITY GARDEN TRANSACTION

(i) The nature of the publicity

6.1 Although the transaction received publicity from the Hong Kong television media, investigation revealed that records of the relevant programmes were negligible. It was not possible to obtain any video tapes of television news items relating to the transaction other than a tape covering the press conference held in the afternoon of the 28th June 1984 at which Wang, accompanied by Mr Fang Zhengping ("Fang"), announced the cancellation of the transaction. Radio Television Hong Kong submitted all their available records concerning the transaction and the evidence of Y C Lo referred to in Chapter V was obtained from this source. Most of the available evidence of media publicity given to the transaction emanated from the press. Inevitably our investigation of press coverage was not exhaustive but we were satisfied that it was sufficiently thorough for our purposes. Whenever we considered it material to ascertain the author and the source of a press article, we endeavoured to do so, but this was not necessary in every situation.

(ii) Publicity before the execution of the memoranda

6.2 The earliest press reports on the City Garden transaction appeared on Saturday the 14th January 1984. The Tribunal's investigators were able to trace twelve newspapers which published reports of the transaction on that date. Two of these reports appeared in English language newspapers, namely the South China Morning Post ("the Post") and the Hong Kong Standard ("the Standard"). The remainder appeared in the vernacular press, namely the

Sing Tao Jih Pao, Hong Kong Economic Journal ("the Economic Journal"), Ming Pao Daily News, Hong Kong Daily News, Hong Kong Commercial Daily ("the Commercial Daily"), Financial Daily, Star, Sing Tao Wan Pao, Sing Pao Daily News and Tin Tin Daily News.

6.3 The price of ICH shares had risen sharply on Friday the 13th January and all but one of the articles appearing on the 14th January were expressed to be based on market rumours or unconfirmed reports that Ever Bright or a China funded consortium were purchasing City Garden flats from ICH. Three of the abovementioned twelve newspapers also reported other rumours connected with the sharp rise of the price of ICH shares on the 13th January. Thus the Standard included a report of a rumour that CKH was disposing of its entire interest in ICH to a China-controlled company, the Commercial Daily included a report of a rumour of a takeover of ICH shares by China funds and the Financial Daily included a report of a rumour that Ever Bright was buying shares in ICH.

6.4 The only press report on the 14th January 1984 with any pretensions of authenticity as distinct from rumour was that of Mr Chang Yang-yian who wrote under the name of "Cheung Lap" in the Sing Tao Wan Pao, an evening newspaper of which he was at the material time an assistant news editor responsible for financial news connected with Chinese organisations in Hong Kong. In the morning of the 14th January he read the article published in the Economic Journal reporting a rumour, allegedly widely spread on the 13th January, that Wang intended to buy from ICH six blocks in City Garden for \$680 per square foot, the whole deal involving several hundred million dollars. Cheung Lap's

newspaper went out at 1 pm. He thought the report about City Garden was big news and so, in the morning of the 14th January, he had a telephone conversation with Wang whom he had spoken to on previous occasions.

6.5 Cheung Lap's article published in the afternoon of the same day purported to be based on the telephone conversation he had with Wang in the morning. The article referred to the recent purchase by Ever Bright Industrial Company from ICH of eight residential blocks in City Garden with a floor area at 1.2 million square feet and valued at \$900 million. Wang was purportedly quoted as having confirmed the purchase by saying "It is a fact. Actually, the deal has been clinched" and adding that it was not at present convenient to disclose the specific details of the transaction.

6.6 However, when Cheung Lap appeared before the Tribunal, he admitted that the purported quotation of Wang's confirmation of the purchase and the purported details of the purchase were the product of his own journalistic licence and independent researches concerning City Garden and property values. In fact he had spoken to Wang about the rumoured transaction reported in the Economic Journal and when Wang had not actually denied the rumour but said "hey, how do you know", Cheung Lap knew there was something in it and wrote his article in the way he did. For him Wang's non-denial of the transaction was evidently the equivalent of its confirmation.

6.7 On Sunday the 15th January 1984 five vernacular newspapers contained reports on the pending transaction.

They were the Sing Pao Daily News, Economic Journal, Tin Tin Daily News, Wen Wei Pao and Wah Kiu Yat Po. The article in the Sing Pao Daily News was written by a columnist Mr Wai Yiu-ki ("Y K Wai"). Around the 13th January 1984 he had heard rumours of the pending transaction in the Far East Stock Exchange which was his regular source of financial news. He had also read Cheung Lap's article published in the Sing Tao Wan Pao on the afternoon of the 14th January. His article in the Sing Pao Daily News was based on the rumours he had heard and on Cheung Lap's article. The article purported to confirm the purchase by Ever Bright from ICH of six blocks in City Garden, adding that only the details had not been completed.

6.8 The Tribunal did not identify the writers of the articles published on the 15th January in the Tin Tin Daily News, Wen Wei Pao and Wah Kiu Yat Po. The article in the Tin Tin Daily News referred to Ever Bright's "recent purchase" of eight residential blocks in City Garden for \$900 million and included the comment that analysts were of the opinion that Wang's purchase had undoubtedly given the property market a shot in the arm, and on the other hand the purchase was also meant to promote stability and prosperity.

6.9 The article in the Wen Wei Pao reported that Ever Bright and ICH had recently reached a sale and purchase agreement under which Ever Bright would put up nearly \$1 billion to purchase more than 1,000 units in eight residential blocks to be built as Phases II and III in City Garden. The article asserted that the report of the transaction had been confirmed by the parties concerned who had declined to disclose the intended use of the flats after they had been completed or the details of the deal. Comment was made to the effect that the transaction which was Ever

Bright's biggest investment in Hong Kong and the biggest transaction in the property sector of late, would give a boost to the local property sector which had been in the doldrums for some time.

6.10 The article in the Wah Kiu Yat Po reported that "To promote economic interests" Ever Bright had purchased eight residential blocks in City Garden for a price which exceeded \$900 million. It was asserted that Wang had confirmed this information but the specific details of the deal would not be disclosed for the time being. Comment was made about the magnitude of the deal for Ever Bright and generally, and the article concluded by observing that according to economic analysts Wang's decision to make the first "biggest investment" in the property sector showed that he intended to promote stability and prosperity in Hong Kong as well as economic interests.

6.11 Of the articles published on the 15th January 1984 the one whose sources and authenticity the Tribunal has been able to verify is the article which appeared in the Economic Journal. It was written by three journalists. In its English translation it comprises five paragraphs. The opening two paragraphs were written by Mr Lai Ting-yiu ("T Y Lai"), a reporter. He reported that Wang had confirmed that Ever Bright had struck a property deal with ICH to buy "several City Garden residential blocks" but had said the sum involved was a commercial secret and declined to disclose how the flats would be used. T Y Lai's unchallenged evidence was that he had obtained this information from Wang's secretary Miss Winnie Ng Sau-kam ("Winnie Ng") who had checked with Wang before confirming to him on the telephone that Ever Bright had entered into a deal with ICH to buy several blocks in City Garden.

6.12 The third paragraph of the article was written by Miss Cecilia Ko Yuk-kwai ("Cecilia Ko"), a reporter. Her evidence, which was unchallenged, was that she had gone to CKH's premises on Saturday the 14th January to try to interview K S Li. On the previous day her colleagues had been unable to contact any responsible officer of CKH by telephone and so Mr Eric Chan Cho-biu ("Eric Chan"), the chief reporter of the Economic Journal had sent her to CKH's offices on the Saturday. She failed to see K S Li but was able to speak to George Zang. Her report in the third paragraph of the article was to the effect that George Zang, an executive director and the deputy general manager of CKH, had confirmed that the deal with "a big company" for the sale of part of the City Garden project had almost been concluded but that George Zang had not disclosed the selling price or the number of flats to be sold.

6.13 The two final paragraphs of the article contained speculation regarding the number of blocks in City Garden to be sold, the sale price and the proposed use of the flats by Ever Bright. These paragraphs were written by the chief reporter Eric Chan who based them on Cheung Lap's article in the Sing Tao Wan Pao on the 14th January and on an article in the Economic Journal published on the same day.

6.14 Thus, whilst all the newspaper articles (apart from the article of Cheung Lap in the Sing Tao Wan Pao) on the 14th January 1984 had admitted that they were reporting market rumours, all five of the newspaper articles published on the 15th January purported to be publishing confirmed fact. In the case of the report on the latter date in the Economic Journal the Tribunal was satisfied that T Y Lai based his part of the report on

information obtained from Wang through Winnie Ng and that Cecilia Ko based her part of the report on information obtained from George Zang.

6.15 The positive assertion in the vernacular press on the 15th January 1984 that the deal for the sale of 8 blocks in City Garden had already taken place between Ever Bright and ICH was firmly rebutted in an article in the Post on Monday the 16th January written by Mr Jerry Norton ("Norton"), the business news editor of that newspaper. He had heard the rumours about City Garden on Friday the 13th January from market sources and had written the article in the Post on the 14th January which is mentioned in paragraph 6.2 above. In that article, based on the rumours he had heard from more than one source, he had referred to an unconfirmed report that Ever Bright had made a major purchase in ICH's City Garden project.

6.16 Over the weekend Norton followed up the story. His article which appeared in the Post on the 16th January was based on (1) the rumours he had heard on the 13th January, (2) information gleaned from the translation of a vernacular press report which he said could well have been the article appearing on the 15th January in the Economic Journal and (3) information obtained in a conversation with K S Tso of ICH on the 15th January. When he spoke to K S Tso on the 15th January about the transaction, K S Tso only confirmed that negotiations were in progress whereby Ever Bright might possibly purchase a substantial part of City Garden. He denied that a deal had been concluded. Accordingly Norton's article on the 16th January emphasised that, contrary to reports which had been circulating in the stock markets on Friday the 13th January

and contrary to some reports which had appeared in some Chinese newspapers over the weekend, negotiations were still going on and no firm agreement had been reached on the deal or its details.

6.17 Norton's article appeared under the headline "Ever Bright casts eyes on City Garden". At its centre was a picture of Wang. The article gave details of one of the reports (which K S Tso had discounted) that "relevant authorities" had confirmed the deal whereby "Ever Bright, chaired by Mr Wang Guangying and closely linked to China", would buy 8 blocks in City Garden comprising more than 1,000 flats in Phases II and III of the project at a cost of \$1 billion. Norton commented in his article that if the price were at or even close to that quoted by the reports, it would probably also give a major boost to the depressed property markets. When K S Tso gave evidence, he confirmed the authenticity of Norton's report of their conversation on the 15th January 1984.

6.18 The Tribunal's investigators were able to trace four other articles published on the 16th January 1984 in Chinese newspapers, namely the Ming Pao Evening News, Commercial Daily (two articles) and Oriental Daily News. The article in the Ming Pao Evening News appeared in a regular financial column usually written by Mr Chu Siu-pui under the pseudonym "Fong Nam" but, on this occasion, he had requested Mr Hung Kai-fai ("K F Hung"), a part-time columnist, to write the column for him after they had discussed it together. K F Hung mainly concerned himself in his articles with analysis and comments. He regarded the news of the transaction, if true, as of great significance in view of its magnitude and the relatively dormant state

of the property market. The article was an intelligent analysis of the transaction on the footing only that there were market rumours that the parties had made a deal for the sale and purchase of eight blocks in City Garden. He made his own estimates of the average selling price which he stated in the article to be between \$680 to \$690 per square foot. The article concluded with some comments about Ever Bright and about Wang whom he described as a person with access to the highest authority, who would be unlikely to make such a huge investment without reliable information. The article described the news as "a shot in the arm for boosting the confidence of investors and carries great import."

6.19 One of the articles appearing in the Commercial Daily on the 16th January 1984 reported that Wang had confirmed that Ever Bright had bought eight blocks in City Garden from ICH and that it had been learned that the deal would involve a sum close to \$1 billion. The article concluded by commenting that "According to financial sources, the big deal will have a good stimulating effect on Hong Kong's politics and property market." There was no evidence of the writer or the source of this article.

6.20 The other article appearing in the Commercial Daily on the 16th January 1984 was written by Mr Lau Wai-leung ("W L Lau"), an assistant editor of the economic news section of that newspaper. Written under W L Lau's pseudonym of "Ho Gor" in his daily column entitled "Short Notes on Stockmarket", the opening passage of the column was as follows:-

"Last Friday, International City Holdings (ICH) had a sudden rise and the widely circulated news had been confirmed. The news was that Ever Bright would put up nearly \$1 billion to purchase eight blocks of City Garden (Phase II and III to be completed by 1985). No wonder ICH shares rose from 54¢ to 64¢ at the close on Friday, with also a huge increase in turnover, a proof that the news had reached the market. I have written that Ever Bright was rumoured to be purchasing City Garden. Now that the news has been confirmed, it will have a stimulating effect on the stockmarket. Mr Wang Guangying has a special status and his words and activities are carefully watched by many."

6.21 W L Lau's evidence was that he had picked up rumours of the transaction on the 13th January in the Kam Ngan Stock Exchange and had written about them as unconfirmed reports in his column appearing in the Commercial Daily on the 14th January after making unsuccessful efforts to contact Wang and ICH spokesman on the same day. He had also written about the rumours on the 14th January in a column he wrote under the pseudonym of "Ming Kan" in the Tin Tin Daily News. He deposed that he believed that he may have based his column on the 16th January 1984 in the Commercial Daily, referring to the news of the purchase as confirmed, on an article appearing in the local press on the 14th or 15th January which confirmed the transaction. He could not recall which local newspaper he had in mind.

6.22 The Tribunal did not identify the writer or the source of the article appearing in the Oriental Daily News on the 16th January 1984. The article referred to the sale

of eight blocks of City Garden as having been made by CKH to "the China-backed company Ever Bright". It asserted that the deal exceeded \$1 billion, the price was around \$690 per square foot and that the transaction had given the property market a shot in the arm.

6.23 On the 17th January 1984 publicity of the transaction continued. The Tribunal received evidence of six articles, one in the Post written by Norton and the remainder in Chinese newspapers. Norton deposed that after writing his article which appeared in the Post on the 16th January he had followed up other press reports that the deal had been concluded and, wishing to assess the reaction of the property market, he contacted various sources in Ever Bright and ICH and also Mr Ian McFadzean ("McFadzean") who was then Group General Manager, Property Development of HKL. The sequel to his enquiries was an article by Norton in the Post under the headline "City Garden Sale 'super news for market'".

6.24 Norton's evidence when appearing before the Tribunal and questioned by Mr Litton about this article was that he thought that ".....this was in effect after the news was out, so what we were looking for was reaction to it from other people in the property business". The article recorded the comments of McFadzean and of Mr David Runciman ("Runciman"), a senior partner in the firm of Richard Ellis, on the deal. Both were favourable if the deal had gone through as reported and McFadzean is reported to have said that the purchase had "got to be good" for the local property market and would be "super" if the reported price were correct and China via Ever Bright was injecting \$1 billion into Hong Kong.

6.25 Norton reports that on the previous day a spokeswoman for Ever Bright (whom we were satisfied was Wang's secretary Winnie Ng speaking after consulting Wang) had confirmed that the China-connected company "has already concluded" a deal to buy eight blocks in the ICH project in City Garden. The article went on to report that the spokeswoman had said that further details, including the price, would be disclosed in a statement by Wang to be issued later that week.

6.26 Norton had also contacted George Zang of ICH and CKH about the deal. In his article Norton quoted George Zang as having said on the 16th January to Norton that the Ever Bright purchase was "almost" finished, but that the deal was being treated as part of the "normal course of business" and that he would not comment further. It is not surprising that, in between the passages in his article where he gave these two accounts of the state of the dealings between Ever Bright and ICH, Norton sought to reconcile the two accounts by observing:-

"Apparently though all major parts of the deal have been worked out, it has yet to be actually signed".

6.27 The Chinese newspapers which published articles about the pending transaction on the 17th January 1984 were the Sing Pao Daily News, Sing Tao Jih Pao, Ta Kung Pao, Commercial Daily and Tin Tin Daily News.

6.28 The article in the Sing Pao Daily News was written by its financial editor Mr Leung Shiu-jun ("S J Leung") and illustrated the tendency of some financial journalists

in Hong Kong to copy the articles of others. The last paragraph of S J Leung's article mentioned briefly that it had been confirmed that ICH was selling 6 blocks of City Garden. He explained in his declaration that his newspaper was late in reporting the news of the City Garden transaction because he had not instructed his colleagues to follow it up. He therefore thought he should make a reference to the transaction in his column. His comment was based on the article of Y K Wai, a columnist of his newspaper, published on the 15th January 1984. This article is referred to in paragraph 6.7 above and was itself copied by Y K Wai from Cheung Lap's article on the 14th January in the Sing Tao Wan Pao.

6.29 The article in the Sing Tao Jih Pao was written by Mr Woo Yuk-chun ("Y C Woo"), the columnist who had written the article, based on market rumour which appeared in the same paper on the 14th January 1984. His evidence indicates that he relied on other press reports of confirmation of the transaction and trading of ICH shares by several big stock brokers, including Vickers da Costa, for his report in his article on the 17th January that because of confirmation of Ever Bright's purchase of eight blocks in City Garden, the market had opened in a bullish atmosphere.

6.30 The Tribunal did not identify the writer of the article in the Ta Kung Pao. The article purported to report that Wang had on the previous day confirmed to reporters that Ever Bright was buying from ICH eight blocks in City Garden for close to \$1 billion and that the eight blocks had a total floor area of over 1.2 million square feet. Wang was purportedly reported as having said that it was not convenient to disclose details of the deal and that no

decision had been made regarding the use of the property. The article commented to the effect that the transaction was the largest deal since the Bank of China acquired a site in Murray Road for \$1 billion in 1982. It concluded by expressing the belief that the City Garden transaction would have some stimulating effect on the market and that it showed that Ever Bright's investment in the property market had some bearing on the promotion of Hong Kong's prosperity and stability. M L Shing of China News Service deposed that she learned of the transaction from this article. She thought the deal had already been concluded and therefore arranged to interview Wang on the 19th January 1984.

6.31 Copies of the articles appearing in the Commercial Daily and in the Tin Tin Daily News on the 17th January were among the press cuttings produced by K S Li. The Tribunal did not identify the writers of either of these articles. The Commercial Daily purported to report that George Zang had told its reporter on the previous day that the deal concerning Ever Bright's purchase of City Garden from ICH would soon be signed and that the deal was a substantial transaction. The Tin Tin Daily News purported to report that the deal had now been confirmed by Wang but that K S Tso of ICH had said that agreement on the deal had not yet been reached and that details had not yet been worked out.

6.32 A sceptical note was struck in an article by Mr Raymond Sacklyn ("Sacklyn"), the editor of Target Financial Service ("Target"), which appeared on the 18th January. After referring to his information concerning the deal including his understanding that Ever Bright was paying a deposit of about \$50 million, Sacklyn suggested that Ever Bright was going into the project as a pure speculation and

that it would almost appear as if Ever Bright was taking an option on the eight blocks in City Garden. The present editor of Target, Mr David Pyott's hearsay evidence, after consulting Sacklyn overseas by telephone, was that Sacklyn knew nothing of the break clause at the time but thought it obvious, in view of the minimal size of the deposit paid by Ever Bright compared with the actual purchase price, that Ever Bright was entering into the deal on a speculative basis in the hope that the property market would improve. On the 19th January the Economic Journal published an article about the transaction which its author, the editor of the newspaper Eric Chan, admitted was copied from the article in Target on the previous day.

6.33 On the 19th January M L Shing, a reporter of the Hong Kong office of the China News Service, had interviewed Wang after reading about the transaction in the Ta Kung Pao on the 17th January, being thereby induced to think that the transaction had already been concluded. On the 20th January M L Shing telexed an article based on her notes of the interview to her Beijing main office for distribution to subscribers. It was released on the same day. The China News Service release was headed "To do something for the prosperity and stability of Hong Kong - says Wang Guangying". The release referred to the purchase as having been effected, purporting to quote Wang's comments on "Ever Bright's recent purchase of eight residential blocks in City Garden". The cost of the eight blocks was reported to be nearly \$1 billion and the transaction was stated to be the biggest on the local property market of late.

6.34 The release purported to quote Wang as having stated his own motives and theories in relation to the transaction. He was alleged to have commented - "We come

to do business in Hong Kong and in the same time to do something for the prosperity and stability of Hong Kong". He was also alleged to have said:-

"Any big transaction in Hong Kong will produce interacting effects on the stock and property markets. The performance of the property and stock markets in Hong Kong may reflect the confidence of the people in Hong Kong. That the property market has improved and the stock market picked up recently manifests the restoration of confidence."

6.35 Wang and Ever Bright were generally regarded in Hong Kong as being backed by capital from China. The China News Service release on the 20th January emanating from Beijing was accordingly fallen upon by the Hong Kong press as a whole. The Tribunal received evidence of articles published in no less than fourteen newspapers on the 21st January 1984 of which all but two were clearly based on and substantially reproduced with comment on the subject matter of the release by the China News Service the day before.

6.36 It was possible to identify the writers of the article in three of these newspapers and their evidence was that their source was the China News Service release. This was the case in respect of the articles in the Economic Journal written by Eric Chan, in the Post written by Norton and in the Financial Daily written by Alain Chiu Kwok-on ("Alain Chiu"). Norton was careful to observe in his article in the Post that, whilst the deal was reported to have been "concluded", Wang had not shed any light on whether the agreement had been signed. In the case of nine newspapers the Tribunal was not able to identify the writers of the articles but their subject matter was clearly

substantially based on the release. These newspapers were the Standard, Ming Pao Daily News, New Evening Post, Tin Tin Daily News, Sing Pao Daily News, Ching Pao, Wen Wei Pao, Commercial Daily and Oriental Daily News. The Ming Pao Daily News also contained a financial article written by Mrs Ho So Shiu-fung, the editor of the woman's page in which there was a reference to the confirmation of the transaction which she told the Tribunal was based on the release.

6.37 Two other newspapers referred to the transaction on the 21st January. In an article whose author the Tribunal was unable to trace, the Ta Kung Pao referred briefly to the confirmation of the rumour of the sale of the City Garden blocks. The Sing Tao Wan Pao contained a similar confirmation and also a lengthy article under a picture of Wang written by Cheung Lap purporting to include, in the form of questions and answers, a record of an interview with Wang held "recently".

6.38 The article purported to examine Wang's motivation in relation to the City Garden purchase which was described as the most sensational news item in the property market recently. The record of the interview indicated Wang as being optimistic about the property market and as saying that property and share prices had dropped to a reasonable level where it was a good time to buy. Wang was also purportedly reported as saying that the object of Ever Bright's business activities in Hong Kong was to contribute to the prosperity and stability of Hong Kong.

6.39 The following passage was attributed to Wang in the course of the interview:-

"From the recent reaction, it seems that our purchase of the residential accommodation in City Garden has a positive effect on the revival of the property market. Of course Hong Kong's real estate sector is a complicated one, and we are adopting a prudent attitude in joining this field. 70% of listed shares in Hong Kong is related to real estate. When the property price goes up again the stock market becomes bullish and markets of all other Hong Kong business become booming. This is common knowledge. So the real estate is like the nose of the bull. When this part moves, the whole body follows."

The record of the interview ended with Wang purportedly being asked if he was optimistic about Hong Kong's economy in view of what he had said and replying "Of course. If I am not bullish, I would not have come to Hong Kong to set up a branch company."

6.40 In his declaration Cheung Lap deposed that his article was based on a conversation with Wang at a cocktail party. Questioned by Mr Litton when he appeared before the Tribunal he admitted that Cantonese words translated into English as "worth buying" and "bargain hunting" ascribed to Wang (a Mandarin speaker) in the interview were in fact Cheung Lap's expressions intended to express the meaning of Wang. He also admitted that he did not take a note of the interview when it took place at the cocktail party but said that he had made notes immediately afterwards.

6.41 Cheung Lap's article clearly has to be considered with great caution in the light of these factors. He was an enterprising journalist who seemed to have had a gift for

scouting out news and filling in gaps imaginatively where necessary. He admitted to Mr Martin Lee that he always spoke to Wang in Mandarin sometimes ascribing to him Cantonese words Wang did not know and that when he prepared his articles he would sometimes use exaggeration to produce dramatic effect. However, we believed Cheung Lap when he said under cross-examination by Mr Litton that "... at the time Mr. Wang's idea was that the Hong Kong economy was turning over, turning upwards and through his investment it would help in turning Hong Kong property upwards".

6.42 After the flurry of press articles on the 21st January 1984 announcing the confirmation of the transaction subject, in the case of Norton's article in the Post, to the question whether an agreement had actually been signed, there is no evidence to indicate that the press was any longer actively concerned to publish news about the actual making of a deal which had already been confirmed.

6.43 In the light of the above evidence of the publicity given in the press to the pending transaction we were satisfied that:-

- (1) Rumours of the proposed purchase by Ever Bright of part of City Garden reached the stock market on Friday the 13th January and were reported as such in the vernacular press on Saturday the 14th January.
- (2) The article written by Cheung Lap in the Sing Tao Wan Pao on the 14th January 1984 reporting that a deal had actually been made was based on an interview with Wang in which the latter's

non-denial was construed as an admission that a deal had been entered into by Ever Bright to purchase eight blocks in City Garden from ICH for \$900 million.

- (3) By Sunday the 15th January the vernacular press was beginning to report the transaction as more than a matter of mere rumour. Thus the Economic Journal published a report, based on the enquiries of T Y Lai and Cecilia Ko, that Wang had confirmed the deal but withheld the details, and that George Zang had said that a deal with a big company had almost been concluded.
- (4) On Monday the 16th January there were several more articles about the transaction in the vernacular press and the principal English language newspaper, the Post, published Norton's article reporting K S Tso's denial of a completed deal and admission that Ever Bright were negotiating. By now the news that the parties were negotiating was out and the picture emerges of press reports from the Ever Bright side confirming a deal and those from the ICH side denying that a deal had been struck but admitting that negotiations were close to a deal. Thus Norton's article published in the Post on the 17th January reported that his source in Ever Bright had confirmed that a deal had been concluded whereas George Zang had said that the Ever Bright purchase was "almost" finished.
- (5) The release on the 20th January 1984 by the China News Service of M L Shing's article reporting that Wang had confirmed the transaction and explaining his motives was accepted by the

press in Hong Kong as confirmation from Beijing that a China backed company had agreed to purchase the eight blocks in City Garden from ICH. This acceptance was manifested in the numerous articles mentioned above in which both the English and Chinese language newspapers reproduced the subject matter of the China News Service release as being reliable news.

- (6) Wang was being widely represented to the public by the press as having come to Hong Kong to do business and at the same time to do something for the prosperity and stability of Hong Kong. He was also being represented as believing that a big transaction such as the City Garden transaction would produce positive interacting effects on the stock and property markets, thereby restoring confidence in Hong Kong.
- (7) When the English and Chinese press published the news of the alleged confirmation by Wang of the deal as an accomplished fact on the 21st January 1984 in reliance on the release of the China News Service on the previous day, there was no denial of this news by either party to the transaction notwithstanding the fact that Wang did not accept K S Li's price until the 21st January and the memoranda were not executed until the 23rd January 1984.
- (8) Neither the media nor the public was given any inkling that the transaction was not going to be a sale in the commercial sense but was going to include the break clause giving Cheery Bright a view of the property market for six months on generous terms.

(iii) Publicity between the execution of the memoranda and the cancellation of the transaction

6.44 There was no evidence that the keen interest of the press in the progress of the transaction to the stage of agreement was anything but assuaged after the release of the China News Service on the 20th January had been accepted as confirmation, albeit in fact anticipatory confirmation, of the transaction. No press release was issued when the memoranda were executed. Fang of Ever Bright gave evidence that on the 23rd January 1984 he contacted M L Shing of the China News Service and reporters of the Wen Wei Pao informing them of the deal and the signing ceremony. They did not attend.

6.45 T Y Lai, a reporter of the Economic Journal, exhibited to one of his declarations a transcript of a speech delivered by Wang to a Rotary Club lunch on the 21st February 1984. The topic chosen by the club for his speech was the functions of Ever Bright in promoting business relationship between Hong Kong and China. Wang was recorded as referring to Ever Bright as having bought eight blocks of City Garden earlier in the year. He gave this as one example of Ever Bright's investments and economic co-operation in Hong Kong. There is again no suggestion in the record of this speech that the transaction was anything but a sale and purchase.

6.46 In sharp contrast to the relatively euphoric reactions of other members of the Hong Kong press to the news of the transaction, Mr Philip Bowring ("Bowring"), writing Shroff's column in the Far Eastern Economic Review published on the 23rd February 1984, displayed a shrewd and prophetic cynicism worthy of Cassandra. For various reasons

he took the gloomiest view of the transaction and was highly suspicious of its true purpose, commenting:-

"More to the point. it appears a deliberate attempt to stimulate the stockmarket. Although the deal has been to the short-term benefit of the market as a whole and ICH in particular, many doubts exist. At best, Everbright is wholesaling 1,000 middle-class flats in the hope of a property upturn which will yield a good profit. At worst, this is a paper deal put together for effect. Shroff frankly sees more significance in the fact that Cheung Kong chairman Li Ka-shing is selling than that Everbright is buying."

He was particularly concerned about the absence of publicity of the details of the transaction and commented on this aspect of the matter as follows:-

"Although the deal has been widely publicised, absolutely no details have been revealed. Thus it is impossible to say how profitable it may be for ICH, or whether Everbright is backing its judgment with hard cash and real risk. Everbright is paying HK\$1 billion. But when? Who is funding the purchase? On what terms? When will the blocks be finished? The Hongkong market should have had enough during the last boom of fancy-sounding property deals involving delayed delivery, vendor finance and other devices which subsequently fell apart, to ask for an explanation."

There was no evidence to suggest that the Hong Kong market heeded Bowring's forebodings.

6.47 The first announcement concerning the transaction made on behalf of ICH after the execution of the memoranda was made in the Chairman's Statement dated the 14th March contained in the ICH Annual Report for 1983. The announcement was as follows:-

"Preliminary agreements have been reached for the sale of Phases II and III of the development comprising eight residential blocks and commercial podia. The whole development will be completed in 1986."

There was no evidence to indicate that this cryptic announcement and the reference to "preliminary agreements" caused any suspicions to be roused in the minds of the investing public or the media. Indeed the only press report that the Tribunal's investigators were able to trace which referred to the announcement was contained in Norton's article in the Post on the 15th March commenting on the ICH Chairman's Statement. At the end of his article Norton referred to the announcement and observed that it was an apparent reference to Ever Bright's announcement in January that it was buying the Phases II and III property for \$1 billion. The article concluded with the comment that in the previous month Wang had said that only \$47 million of the purchase price had been paid at that point.

6.48 The announcement on the 28th March 1984 of Jardines' decision to move its domicile to Bermuda was described in the declaration of Ada Yeung, the market analyst in the office of the Commissioner for Securities, as stunning news causing a drop in stocks across the board and a drop of more than 100 points in two trading days in the Hang Seng Index. On the 5th April 1984 when the news of Jardines' move to Bermuda was still a matter of general

concern, Wang was the speaker at a dinner reception at the Aberdeen Marina Club as the guest of the alumni associations of a number of universities in the USA. The function was attended by the press including Mrs Olivia Cheung Sin Siu-han ("Olivia Sin") whose article on Wang's speech and answers to questions from his audience appeared on the 6th April 1984 in the Post under the headline "Mr Ever Bright reassures HK: Don't fuss over Jardines".

6.49 The evidence of Olivia Sin was that Wang had produced copies of his prepared speech for the press but she had lost her copy. The topic of the speech was the economic relationship between China and Hong Kong, investment by China in Hong Kong and the development of Ever Bright. Olivia Sin had tape recorded Wang's answers to questions and had written her article for the Post at home after returning from the reception. The gist of her article was that Wang had played down the effect of Jardines' move whilst admitting that it had affected the local stock market, especially small dealers and property investors. He was reported to have suggested that people invest in property and shares which were undervalued. The article also reported him as saying at some stage that Ever Bright's negotiations for the re-sale of the eight blocks of flats in City Garden had been temporarily interrupted because of the Jardines' move and that he had been negotiating for some time with buyers (whom he declined to name) for the resale of the eight blocks and thought he would make a profit. Again there is no hint to be found here of the existence of the break clause.

6.50 The annual general meeting of ICH was held on the 10th May 1984. After the meeting K S Li was interviewed

by a group of press reporters including Mr Peter Witton ("Witton") of the Post. According to Witton's evidence the interview lasted about ten minutes and questions and answers were put in both Cantonese and English. Witton did not understand Cantonese and so questioned K S Li and received replies in English. A report of the interview written by Witton appeared in the Post on the 11th May 1984 under the headline "Property still fetching low prices, says Li".

6.51 After reporting K S Li's observations on the state of the property market generally and ICH in particular, the article concluded with three paragraphs which Witton said in his declaration were based on replies to questions put to K S Li by him regarding the City Garden transaction. K S Li was reported to have said that "the matter is proceeding normally". Witton's evidence was that those were not K S Li's actual words but he was certain that K S Li's actual words carried the same meaning. K S Li was also reported in the article to have said, when asked by Witton about reports that Ever Bright had only paid about \$45 million of the \$1 billion price, that the company had followed normal commercial procedure. Finally he was reported to have declined to say when more money would be forthcoming.

6.52 That rumours were afoot by May 1984 that Wang had backed out of the City Garden transaction was evidenced by an article published in the Financial Daily on the 19th May 1984 attributing a drop of 2 1/2 cents in the price of ICH shares on the previous day to such a rumour. The writer of the article was Mr Siu Chok-lee ("C L Siu"), an editor of the Financial Daily but he was unable to recall the source of the information of the rumour.

6.53 Alain Chiu, a news editor of the Financial Daily, had heard the rumour that Ever Bright would back out of the City Garden transaction. At the time the publisher of the Financial Daily, Mr Wong Yeung-lit ("Y L Wong") was in Beijing on an officially sponsored tour organised by the New China News Agency for Hong Kong reporters covering the meetings of the National People's Congress and the Chinese People's Political Consultative Conference. Wang was Vice-Chairman of the latter body. On the evening of the 18th May 1984 Alain Chiu telephoned Y L Wong in Beijing, told him of the rumour and asked him to check with Wang the possibility of Ever Bright backing out of the transaction.

6.54 On the 19th May Wang gave a lunch for the Hong Kong reporters at a restaurant in Beijing which Y L Wong attended. Before the lunch he held an informal press conference at which he explained why he was then in Beijing and mentioned the City Garden transaction. This gave Y L Wong his opportunity to ask Wang if he would be backing out of the transaction. Y L Wong's evidence was that Wang gave a categorical answer in the negative. After the lunch Y L Wong wrote an article and passed it by telephone to Alain Chiu, his news editor. The article appeared in the Financial Daily on the 20th May 1984.

6.55 Y L Wong's article reported Wang as having told the reporters on the previous day in Beijing that the deposit he had paid for the purchase of units in City Garden would absolutely not be refunded and that after completion of foundation works another instalment would be paid. He was quoted as having said to the reporters - "Li Ka-shing said I could withdraw, but how can I withdraw? I cannot

withdraw, and besides, there is no reason for withdrawal." The article reported Wang as having said that the City garden units would be re-sold to foreigners as this would attract capital from outside which would be good for Hong Kong in many ways. He was also reported as having blamed the Jardines' affair for his having suspended earlier negotiations with foreign business men for the sale of the units and as having stressed that his doing business in Hong Kong was to contribute to its stability and prosperity.

6.56 T Y Lai of the Economic Journal had attended Wang's lunch party in Beijing on the 19th May. He confirmed that he had heard Wang state categorically, in answer to Y L Wong's question, that he would not back out of the transaction. In a subsequent article in the Financial Daily on the 22nd May 1984 written by C L Siu, Wang's denial that Ever Bright would back out of the transaction was referred to again. There was no evidence available to the Tribunal of any press article concerning the transaction or the cancellation of the transaction published between the 22nd May and the 29th June 1984.

(iv) Publicity following the cancellation of the transaction

6.57 The joint press release of ICH (Zangforce) and Ever Bright (Cheery Bright) announcing the cancellation of the City Garden transaction was issued in the afternoon of the 28th June 1984. In the release the cancellation was dressed up as a matter of mutual agreement between the parties. The release stated that ".... in accordance with a provision in the preliminary agreements both parties decide to unconditionally cancel the sale and purchase". In the afternoon of the 28th June Wang and K S Li held press conferences.

6.58 The news was too late for press publication on that day but on the 29th June the press published its reactions to the cancellation and various accounts of the press conference. The Tribunal's investigators were able to trace articles in eight newspapers, namely the Financial Daily, Economic Journal, Standard, Wen Wei Pao, Ming Pao Evening News, Post, New Evening Post, Ta Kung Pao and Asian Wall Street Journal. Some newspapers published more than one article and many of the articles were lengthy, reflecting the extent of the ground covered in the press conferences given by Wang and K S Li on the previous day.

6.59 Several of the writers of the articles gave evidence before the Tribunal. Their evidence was not challenged. We did not consider it necessary to trace and call all of the writers of the articles as we were satisfied that most of them were reporting, albeit with different inflections and comments, versions of the press conferences held on the previous day. An exception was the article in the Economic Journal most of which was written by T Y Lai and Cecilia Ko using material they obtained from radio and television programmes they had heard and seen on the 28th June. Y C Lo produced a transcript of the news item broadcast at 7.30 a.m. on the 29th June by Radio Hong Kong and deposed that the programme was based on an edited version of her tape recording of the press conferences given by Wang and K S Li. The importance of the articles and of the evidence of radio and television programmes is that they demonstrate that the media were taken up with the cancellation as having substantial news value in relation to a transaction which had been given heavy media coverage in January 1984 as a significant sale and purchase relating to a substantial amount of property.

6.60 The approach of most of the media accounts of the cancellation was to examine the explanations given by Wang and K S Li for the cancellation and to consider the effect of the cancellation on the property and stock markets. Several articles contain reports of comments by property experts and brokers on the likely effect, if any, of the cancellation on the stock market. Both Wang and K S Li are understandably shown to be seeking to explain the cancellation as a business decision and to be emphasising that the transaction was only a preliminary agreement. However it is clear that the public was being told for the first time through the media of the existence of the break clause which had been invoked by Wang.

6.61 There are references in some of the articles to the Commissioner for Securities having commented that he was looking into the legality of the non-disclosure of the break clause to ICH shareholders. Miss Silenus Cho Siu-chun ("Silenus Cho") of the Financial Daily wrote the long article appearing in that newspaper after she had attended both the press conferences of Wang and K S Li and tape recorded the proceedings. At the end of her article she reported that she had raised with K S Li the possibility of some people having manipulated the market. This possibility was strenuously denied by K S Li. Similar denials by K S Li were reported in two other articles whose writers the Tribunal did not identify. In the Economic Journal he was reported as denying that ICH had made profits by dumping shares when the transaction pushed the price up. In the Wen Wei Pao he was reported as denying that either party to the transaction had been trying to make speculative profits out of the affair.

6.62 A pungent article in the Far Eastern Economic Review's edition dated the 12th July 1984, which actually appeared on the 5th July 1984, by Teresa Ma and Bowring under the headline "The hollow men" sharply criticised Wang and ICH for the earlier lack of accurate information about the City Garden transaction, contending that "Once again, Hong Kong investors have been caught out by lack of accurate information". The article was printed under a picture of Wang at a Lion's Club meeting "talking up the market" and accuses him in no uncertain terms of having tried to do that very thing as a "highly visible figure" and guest speaker at a series of club luncheons and dinners following the announcement that the deal had been "concluded".

6.63 The reference in the joint press release to the cancellation being within the terms of the preliminary agreement was described in the article as begging the question of why the nature of the transaction was not accurately described in the first instance. ICH was criticised for failing to make it clear that the so-called sale was not a sale at all. After referring to the description of the transaction in ICH's 1983 Annual Report published on the 14th March 1984 as a preliminary agreement the writers of the article commented:-

"But if there were doubts in the market as to the fine print of the deal, they were not sufficient to stop ICH's share price soaring from around 45 HK cents in early January to more than 80 cents after the announcement. The market as a whole also momentarily took heart from Peking's apparent determination to invest. The Hang Seng Index gained 250 points in the first five weeks of the year."

After more adverse comment the transaction was finally written off in the article as a fiasco.

6.64 Articles in the Sing Tao Jih Pao and the Post appearing on the 17th July 1984 purported to contain denials by K S Li of market rumours of insider dealing in ICH shares by CKH or any of its directors. In particular there was a reported denial that CKH had bought any ICH shares in the four month period before the execution of the memoranda or that CKH had sold any ICH shares during the six week period before the cancellation of the transaction on the 28th June 1984. Mr James Tse Tang-pao ("James Tse"), the reporter of the Sing Tao Jih Pao who wrote the article in that newspaper explained in his declaration that he had in fact spoken to George Zang, not K S Li, but that he had reported the denials as emanating from K S Li because he understood George Zang had agreed to this course since George Zang was speaking on behalf of K S Li. The article in the Post was written by Mr Victor Su Yu-lin ("Victor Su") and edited by Norton. George Zang's unchallenged evidence in his declaration was that Victor Su had interviewed him, not K S Li, and that George Zang had indicated that he was the spokesman for K S Li.

6.65 On the 12th July 1984 Bowring obtained, from a source which the Tribunal did not consider it sufficiently vital to its inquiry for him to be compelled to disclose, a copy of ICH Board Circular No. 3/84 dated the 7th February 1984. Having ascertained that the memoranda had not been registered in the Land Office, Bowring felt that the suspicions expressed in his article in the Far Eastern Economic Review on the 23rd February 1984 regarding the intentions of the parties to the transaction, particularly the intentions of ICH, were confirmed by the circular.

He deposed in his declaration that the lack of adequate disclosure had been confirmed by the cancellation and the circular simply pointed to motivation. He accordingly wrote a further article in the edition of the Far Eastern Economic Review dated the 26th July 1984 in which he concentrated on K S Li's part in ensuring that details of the City Garden transaction were not made public.

6.66 There were no holds barred in the article which incorporated a photograph of K S Li beneath which appeared the caption "Li: silent partner". The headline above the article was "Quiet on the Li side" followed by the caption "The Cheung Kong chairman kept quiet about the fine print of the Ever Bright deal to help confidence". The gist of the article was an attack on K S Li and his ICH directors for assisting Wang in withholding from the public information of the break clause. With the last paragraph of ICH Board Circular No. 3/84 in mind Bowring commented as follows in his article:-

"Withholding adverse news to help maintain the "stability and prosperity" of the property market may at times seem a patriotic act. But to do so after the markets had been stimulated by Ever Bright's announcements is another matter. It was not as though there had not been some doubts at the time as to the fine print of the deal."

The article concluded with criticism of the Securities Commission for not making a more thorough investigation into the matter. This article was the last press article before us in evidence relating to the time before it became known that the Financial Secretary was proposing to set up the present Tribunal.

(v) Attitude of Wang and Ever Bright towards publicity for the transaction

6.67 Two indisputable facts stand out prominently in the light of the evidence above about the publicity given to the transaction. On the one hand the transaction received very wide publicity from the 14th to the 21st January 1984 and from time to time thereafter as a sale and purchase transaction and, on the other hand no disclosure was ever made of the break clause or of its very favourable terms to Cheery Bright. At no time did Wang ever hint that the break clause existed. Moreover at the Rotary Club lunch on the 21st February he told his audience that Ever Bright had bought the blocks earlier in the year and at the USA universities' alumni dinner reception at the Aberdeen Marina Club on the 5th April 1984 he told his audience that he had been negotiating the re-sale of the blocks in City Garden for some time.

6.68 We were satisfied that Wang welcomed publicity for the transaction as a sale and purchase (which he originally intended it to be) from the very beginning of the negotiations. The evidence of Sir Philip Haddon-Cave shows that when K S Li mentioned the negotiations to Sir Philip on the 12th January K S Li told him he did not want publicity but that Wang had said it would be a good idea to put out a statement to the effect that the deal had been effected. This was, according to K S Li, because Wang thought it would be good "P.R." from both CKH and Ever Bright's point of view and above all because Beijing would be very pleased.

6.69 When the publicity came in the press from the 14th January 1984 onwards and built up to a peak on the 21st January 1984 there was no complaint from Wang despite the

fact that there were numerous reports that he or an Ever Bright source had confirmed a sale and purchase transaction which had not in fact taken place and indeed never did take place. Wang did not claim that he was ignorant of these reports. On the contrary he admitted under cross-examination by Mr Litton that his company subscribed to the Wen Wei Pao, that it had extracts from newspapers including the Ta Kung Pao and that every day he would thumb through them.

6.70 During January and February and subsequently Wang was, to use his own expression "eye catching" as an important and influential business man believed in the financial circles of Hong Kong to be backed by capital from China and by the Central Government of the People's Republic of China. As Wang himself put it when questioned by Mr Litton:-

"I am a relative of Liu Shao Qi and I was a Vice-Mayor of Tientsin and many leaders present to me flowery bouquets. Of course people would be concerned about me."

He also said in answer to Mr Litton that it was a fact that he had relatives in China and a good and familiar relationship with leaders of the Chinese Government but he did not know how Hong Kong people assessed that.

6.71 At a time when the property market was stagnant, the stock market depressed, the political scene uncertain and the people of Hong Kong were awaiting anxiously the outcome of the Sino-British talks in Beijing, he came on the scene as the prospective purchaser in what was heralded as a

\$1 billion property transaction. It is not surprising that the Hong Kong press fell upon him. He was the man of the moment. Under cross-examination by Mr Martin Lee, Cheung Lap of the Sing Tao Wan Pao agreed that at that time, as Wang himself later said in his evidence, he was surrounded by reporters who would flock to him whenever he appeared and he could not avoid them.

6.72 Wang was inexperienced in dealing with the Hong Kong press. He said that in China the practice was for press reports to be vetted before publication. He very prudently adopted the attitude that in Hong Kong nobody would annoy a reporter but he said that he did not invite any reporters to give him coverage. He claimed that he remained passive in this regard and that when Fang, who was Ever Bright's public relations officer, had telephoned members of the press to inform them of the deal on the 23rd January 1984 it was because "...we have to say what we have done. It does not necessarily mean that is publicity."

6.73 The substance of his evidence both in his declaration and under cross-examination was that he had not actively sought publicity but only gave answers to what was asked by the press, he had no control over what the press was writing about him and the transaction, he was preoccupied during the negotiation period with the process of decision making and there were so many articles that he could not have corrected them all. As he deposed in his declaration in relation to his failure to rectify press reports before the 23rd January 1984 which indicated that the deal had been concluded:-

"From my past experience, I noticed that there were many reports on Everbright and its activities in the newspaper, some being accurate and others inaccurate, but I ignored them and did not mind and it was not necessary to take actions to rectify the inaccuracies so long as no grave harm was done to the Company. I still considered the option clause unimportant as I was concentrating on making the deal a success either in its original form or with modifications."

6.74 Thus Wang allowed the early heavy volume of publicity of the transaction and of Wang himself to flow on. He did not regard the publicity as misleading because at the time he regarded the break clause as unimportant. In his eyes the press publicity could only be beneficial to Ever Bright and to the transaction during the negotiations or thereafter because, as he told M L Shing of the China News Service on the 19th January, he believed that any big transaction in Hong Kong would produce interacting effects on the stock and property markets and reflect the confidence of the Hong Kong people. He put the same proposition to Cheung Lap of the Sing Tao Wan Pao who expressed it in his article appearing in his newspaper on the 21st January 1984 in the colourful metaphor of the "nose of the bull" quoted at paragraph 6.39 above. We were satisfied that with this underlying economic philosophy, that unhappily proved to be fallacious, Wang was content to allow the publicity, misleading though it was, to continue because he saw himself as being about to give a much needed stimulus to the property and stock markets by the City Garden transaction and thereby creating the improved market which would yield Cheery Bright a profit on the transaction

when it resold the property while at the same time promoting confidence in the future of Hong Kong. The publicity could only be beneficial in promoting these objectives.

6.75 We emphasise that, in making the above findings of fact regarding Wang's motivation, we intend to make no adverse finding in relation to his integrity which is not the subject of our inquiry. On the facts found above we were satisfied that Wang's judgment as a newcomer to the property market in Hong Kong was proved by events to be wrong and that his attitude towards the publicity in question was influenced by a genuine intention at the material time to negotiate, and later to enter into, a transaction which he intended at the time would be completed (notwithstanding the existence of the break clause) and which would result in the promotion of confidence in Hong Kong. We considered that it was important to make these findings of fact to clear the air because the City Garden transaction stands at the centre of our inquiry and suspicions have been aired in the press as to whether the transaction was a genuine transaction at all and whether it was merely a device to "talk up" the market by publicity for some improper ulterior motive. We were satisfied that it was not such a device.

6.76 There is the further matter of the non-disclosure of the break clause. The existence of the clause was never disclosed to the press or any other organ of the media before the cancellation of the City Garden transaction. Under section 5 of the Land Registration Ordinance (Cap.128) the memoranda would have been entitled to the priority provided for by that section and by section 3 of the Ordinance if they had been registered in the Land Office

within one month after their execution on the 23rd January 1984. The memoranda were never registered and so another possible avenue for publicising the terms of the City Garden transaction and the existence of the break clause was closed.

6.77 Wang made the final decision not to register the memoranda after Wang Mi had obtained impeccable legal advice from Joyce Li on the subject. We heard much evidence about the motivation of various individuals connected with Ever Bright and CKH in relation to the question of registration. However the actual decision whether or not to register the memoranda clearly lay with Cheery Bright as the prospective purchaser and not ICH or CKH. The decision was in fact made by Wang on behalf of Cheery Bright.

6.78 Neither Cheery Bright nor any person connected with Ever Bright and concerned in the deliberations leading up to the decisions on behalf of Cheery Bright not to register the memoranda and not to disclose the break clause, dealt in ICH shares at any material time. Accordingly, subject to what follows in the next seven paragraphs, we do not find it necessary to pursue further the motivation of Wang or any other person responsible for those decisions.

6.79 There remains one further matter concerning Wang's motivation in relation to the non-disclosure of the break clause. It affects K S Li and the ICH and CKH interest. The evidence of K S Li supported by that of Albert Chow, George Zang, C P Man and K S Tso was that P C Chan had repeatedly told them that Ever Bright did not want the break clause publicised because he said it would never be

exercised and if it were made public it would be damaging to public confidence. P C Chan himself admitted that from beginning to end he did not want the clause nor did he want it publicised because he knew that if there were a cancellation in the six month period the effect would be "tremendous". However he claimed, when cross-examined by Mr Wright, that he could not remember if he had actually requested during the negotiations that the clause be kept confidential. His son Raymond Chan said, when asked by Mr Wright if P C Chan had at any meeting during the negotiations said the break clause should be kept confidential, that he could not remember clearly but he added - "To a very great extent I remember that whenever the question of confidentiality was raised he (P C Chan) would agree to it."

6.80 As regards Wang himself there was a conflict of evidence between him and K S Li which was complicated by the manifest reluctance of each of them to embarrass the other with whom he had previously dealt on a basis of mutual respect and trust. K S Li maintained, when giving evidence, that there had been a telephone conversation between him and Wang at some time during the negotiations in the course of which Wang had said that he did not want the public to know about the break clause. He had not mentioned this in his declaration in which he had said that P C Chan had made such a requirement on several occasions and Wang had "probably" done so. K S Li explained in evidence that he was embarrassed by having to say this about Wang and by the fact that there had been only one conversation between him and Wang whereas P C Chan's utterance had been made before many other witnesses. He said the conversation had been in Mandarin. He could not remember the exact words used because they were not serious about them as they knew the "option" would never be exercised.

6.81 As a result of a telephone call (made in the course of our sittings after K S Li had given the above evidence) between Wang (who was in New York) and his solicitor it was put to K S Li by Mr Martin Lee that Wang "seems to remember" although "he is not 100 per cent sure" saying in Mandarin to K S Li "do not write" or "do not write in". K S Li replied that he could remember the meaning but not the actual "conversation" and that to be fair to Wang he could not say whether Wang had used such expressions or not, adding:-

".... I think Mr Wang will have a same feeling. I respect him. This hour we both are talking like this. It is very very painful the case. And straight if I want to answer to Mr Chairman, for this case the meaning I don't think I have any misunderstanding of the option should not to tell the public."

6.82 In view of this line of cross-examination by Mr Martin Lee, Mr Wright appearing for K S Li and Mr Litton assumed that what had been put to K S Li by Mr Martin Lee, acting on instructions as being Wang's recollection of the relevant telephone conversation between the two men, represented what Wang was asserting to have happened. For that reason, although Wang said nothing about the conversation when he gave his evidence in chief, neither Mr Litton nor Mr Wright cross-examined Wang about the conversation. However at the end of his re-examination of Wang, Mr Martin Lee received the answer "No" when he asked Wang if he could remember speaking to K S Li on the telephone and asking him to keep the break clause confidential.

6.83 At this stage Mr Wright felt constrained to cross-examine Wang, with the leave of the Tribunal, on this matter. He did so with patience, tact and pertinacity but Wang strenuously denied the conversation. Finally Mr Wright asked Wang to agree that K S Li would do his best to tell the truth about this topic to the best of his recollection and Wang replied:-

"That is the most I can say. I respect him but I could not be sure that every word he said is true. I am very friendly to him and, at the same time, I have also affirmed to tell the truth."

6.84 We did not find it necessary nor did we consider it prudent to determine whether, in the light of the above evidence, P C Chan or Wang had actually taken the initiative and requested K S Li or any representatives of ICH to conceal the existence of the break clause. We were having to consider dealings between Chinese business men including a Hong Kong property magnate and an important business man from China. We bore in mind the following colourful submission of Mr Martin Lee regarding the subtlety of such dealings:-

".... if I may quote the Bible out of context no doubt, their ways are not our ways and their thoughts are not our thoughts, that is the difficulty. Sometimes things are very subtly done among the Chinese, you are never specific, you think that the other man wants this and you like to please him and therefore you do something, but unbeknown to you that was not what he had in mind at all, but since you took the first step he thought it would be ungracious not to play accordingly and therefore will agree..."

6.85 Accordingly we made no findings as to who took the initiative regarding the non-disclosure to the public of the break clause. However we were satisfied by the evidence of K S Li, Albert Chow, George Zang, C P Man and K S Tso that they genuinely believed as a result of what had passed between the two sides in the course of the negotiations leading up to the transaction and thereafter that P C Chan and Wang wanted the break clause kept confidential because, if it were publicised, it would cause adverse market reaction detrimental to Cheery Bright and detrimental to Wang's purpose of promoting confidence in Hong Kong.

(vi) Attitude of ICH and CKH towards publicity for the transaction

6.86 We were satisfied that if K S Li and the relevant executive directors of ICH and CKH had had their way throughout there would have been no publicity given to the transaction other than a brief statement to the shareholders in the ICH chairman's annual statement. K S Li's evidence was that it had not been the policy of ICH and CKH to make press announcements of any property sales or purchases and that ICH's policy regarding the chairman's annual statement was that a brief report should be given to the shareholders on the current status of each of the Group's projects. When asked by the Chairman if the policy of his company was that he did not want the deal to be published, K S Li replied:-

"Yes, because the main thing for property company, you are (inaudible) so many developers. You really, you can keep as much as business way secret, good for the business. That is the policy I have."

C P Man and K S Tso gave evidence to similar effect in their declarations, deposing that it was not ICH's policy to make statements regarding its business and that the City Garden transaction did not require board approval, being considered by K S Li to be part of ICH's normal course of business.

6.87 The attitude of K S Li towards publicity of the transaction was made known to Sir Philip Haddon-Cave as early as the 12th January 1984. Sir Philip's evidence was that on that date K S Li told him about the negotiations and informed him about Wang wanting to put out a statement that a deal had been effected. Sir Philip said in evidence that K S Li told him he took exception to this and that he had told Wang he was a developer selling off property under construction in the usual way and that Ever Bright was simply another buyer. Sir Philip also said in evidence that K S Li had gone on to say he did not want publicity for the deal as it could lead to a bad reaction. Sir Philip explained that there had been earlier occasions when K S Li had been the subject of unfair rumours that he was pulling out of Hong Kong and he did not want this to happen again.

6.88 George Zang was normally the press spokesman for CKH. His evidence was that when the first articles appeared in the press about the transaction on the 14th January 1984, apparently emanating from Wang, he was really surprised. He said that when journalists called him on the telephone saying Wang had already confirmed the deal and asking him to confirm if this was true or not, he could not under the circumstances deny the possibility of a deal and so he said only "Yes, its under discussion". If he had simply issued a denial it would have been very embarrassing if Wang were to

say more. George Zang made it clear in his evidence that if the press had put a bare rumour to him about the transaction without reference to any alleged confirmation by Wang, he would have said nothing or "no comment" but he pointed out that "at that time when I receive call from them I already saw the newspaper and many people talking round in the market".

6.89 The evidence before us shows that George Zang found himself in the awkward predicament of being asked to comment on reports of a deal purporting to emanate from Wang or someone in Ever Bright on two occasions, and on each occasion he very understandably found it prudent to maintain his credibility with the press by denying that a deal had been struck but admitting that negotiations were far advanced. Thus on the 14th January 1984 he was interviewed by Cecilia Ko of the Economic Journal and confirmed that a deal with "a big company" for the sale of part of the City Garden project had almost been concluded but would give no further details. Again, on the 16th January when George Zang was contacted by Norton of the Post about the transaction, he told Norton that "the deal was almost finished, but it was being treated as part of the normal course of business". On the previous day, K S Tso found himself in a similar predicament when spoken to by Norton. He denied that a deal had been concluded but admitted that negotiations were still going on.

6.90 Thus, so far, all the evidence points to the ICH and CKH directors concerned with the negotiations showing no initiative regarding publicity but finding themselves confronted by the press with reports allegedly emanating from Ever Bright sources about a deal, and finding

themselves in the embarrassing position of having to depart from their normal policy of saying nothing about their company's transactions to the press. They said nothing about the details of the negotiations but confined themselves to acknowledging that negotiations were going on and, in the case of George Zang, that the negotiations had reached an advanced stage.

6.91 After the statement of George Zang to Norton on the 16th January that the deal was "almost finished" there was no evidence of any release of information about the transaction by ICH or CKH personnel until the reference to the "preliminary agreements" in the Chairman's Statement dated the 14th March 1984. As we have already found in paragraph 6.85 above, K S Li and his colleagues concerned in the negotiations believed that P C Chan and Wang did not want the break clause publicised. They did their best to see to it that what they understood to be Wang's wishes were met. Thus Albert Chow's evidence was that when on the 24th or 25th January 1984 Ivy Chan, the solicitor acting for ICH, informed him that Joyce Li, Cheery Bright's solicitor, had asked if ICH had any objection to the registration of the memoranda, he spoke to Joyce Li himself saying that ICH did not object to registration, but suggesting that she consult P C Chan who had repeatedly said during the negotiations that the break clause should not be made public. Under cross-examination by Mr Wright, Joyce Li confirmed that both Ivy Chan and Albert Chow had called her after the signing of the memoranda about registration. Mr Wright asked Joyce Li if she remembered the conversation with Albert Chow and his saying to her that ICH had no objection to registration but that the Chans representing Ever Bright during the negotiations had requested that the break clause should not be made public. She replied that she could not

recall the exact conversation but the impression she got from Ivy Chan and Albert Chow was that CKH would not like the memoranda to be registered.

6.92 The clearest evidence of the intention of ICH to conceal the break clause from the public is contained in the last paragraph of ICH Board Circular No. 3/84 dated the 7th February 1984 issued by K S Li. The last paragraph of the circular was in the following terms:-

"Directors are requested to note this transaction by signing at the appropriate spaces provided hereunder and keep the Special Condition confidential as any leak would adversely affect the property market and the confidence in the economic revival of Hong Kong."

All the directors of ICH signed the circular.

6.93 The requirement in the abovementioned paragraph of the circular that the break clause be kept confidential is not expressed to be made in compliance with any requirement of Wang or Ever Bright but the evidence of K S Li in his declaration and when examined orally by Mr Wright was that he had requested his fellow directors to keep the break clause confidential because that was requested by the buyer and he wanted to remind the directors of this. According to K S Li's evidence it was logical that Ever Bright should not want the break clause publicised. He added:-

"...if you see a man like Mr Wang Guang-ying; on the one hand he likes to give more confidence to Hong Kong and I repeat, in his mind I believe he

also doesn't want to exercise that option so why does he need to let the public know about this option clause?"

6.94 When cross-examined by Mr Litton about the absence in the last paragraph of the circular of any reference to a request by Wang for the break clause to be kept confidential, K S Li asserted that he had merely passed on in the circular the words of P C Chan - "his exact words, this is what he told me and I put it in the circular to my directors, the same as what they said". He explained that P C Chan had said he wanted to keep the break clause a secret "and to tell the public would affect the confidence of the people in Hong Kong, and that is against Mr Wang's policy". This sensitivity about reference to Wang is emphasised by the following passage of his evidence when under cross-examination by Mr Litton:

"Yes, that is because of Mr Wang Guang-ying and Mr Chan, he doesn't want to let the option be made public, and that was just what I said to the directors, but I tried not to mention Mr Wang Guang-ying's name in any circular, because at that time he was so sensitive in Hong Kong. I tried not to use his name and did everything I could to stop it, but in the conversation on the telephone I had been told our directors had said Mr Wang Guang-ying had mentioned two things; one never to exercise the option and two, to keep the option top-secret, and that is why I sent the circular to the directors, but I don't want to repeat Mr Wang's name in any document if I can avoid it."

6.95 The special significance to K S Li of the fact that ICH's buyer was Wang, a business magnate from China backed by capital from China and intent on promoting confidence in Hong Kong, was brought out again when K S Li was cross-examined by two other leading counsel. One of the leading counsel asked him why there was no reference in the circular to the 1.5 per cent discount proposed to be given in the form of 15 flats. He replied to the question and then volunteered :-

"... also actually I just gave the information to the Board because only Mr Wang Guang-ying - if it was another buyer to purchase this project we would not inform the directors, we would not keep them informed."

6.96 When he was cross-examined by Mr Martin Lee he again showed his sensitivity about possible embarrassment to Wang (who had not disclosed the break clause) if the clause were to be made known to the public by his directors, saying:-

"And I agree with the way what they say because the option is useless and if that time if the director to tell the public say, oh, we got this option, but Mr Wang never tell, also never tell the press he got this option. It will make unbalance to him and repeat again, I respect Mr Wang, even in this hour."

6.97 K S Li told Mr Martin Lee that Wang had the right, if he so wished, not to disclose the break clause to the public and he repeated that it was logical that Wang did not

want to let the public know he had "this option". K S Li said further that he had no doubt that Wang wanted to do something for the stability and prosperity of Hong Kong. The following passage then ensued in his cross-examination by Mr Martin Lee:-

"Q. Indeed, and that is why you agreed to the request, you agreed to keep the option clause confidential?

A. Two things, one, I am agreed because he is the buyer and number two, because of his position. Because for example, even today to change anyone in Hong Kong to purchase the City Garden and with the option who asked me to keep it confidential, I think immediately I would refuse - no way I should do that, anything like that for me is zero. Like today if Mr Wang Guang-ying, if I keep it completely confidential it is completely wrong but because of his position, I know his position."

The above passage of K S Li's evidence demonstrates the very special position occupied by Wang in the mind of K S Li. He was prepared to see to it that ICH kept the break clause confidential for Wang but he would have done it for no other buyer.

6.98 Clearly Wang was in the position where, as a result of all the publicity of the transaction as a sale and purchase in the media giving rise to a boost in the price of ICH shares, any announcement that, contrary to Wang's representations, the so-called sale was not a sale at all but a transaction giving Wang a view of the property market for six months, would have had a most adverse effect on Wang's reputation as a business man from China who had

come to promote confidence in Hong Kong. As K S Li so aptly put it, it was only logical that Wang should not want the break clause to be disclosed to the public. As K S Li's circular expressly stated, such disclosure would adversely affect the property market and the confidence in the economic revival of Hong Kong.

6.99 It was not within our terms of reference to pronounce on the business ethics or legality of K S Li's efforts to ensure that the directors of ICH did not disclose the existence of the break clause to the public. We therefore refrained from doing so. However we were satisfied that he felt obliged to protect the property market for Wang, who was a very special buyer, by concealing the existence of the break clause, the public disclosure of which would have adversely affected the property market and also the confidence that Wang was seeking to promote in Hong Kong.

6.100 K S Li endeavoured in his evidence to play down the expected effect of the disclosure of the break clause to the public by saying he was only repeating in the circular what the Chans had said and that he considered that if Wang had disclosed the existence of the clause and announced at the same time that he had no intention of invoking it, neither the property market nor the share market would have been adversely affected because the public would have believed Wang's assurance that he would not invoke the clause. This is an interesting hypothesis but the true factual position at the date of ICH Board Circular No. 3/84 (the 7th February 1984) was that Wang had stood by and allowed the transaction to be misrepresented by the press as a sale and purchase since the publication of Cheung

Lap's article in the Sing Tao Wan Pao on the 14th January 1984 and the price of ICH shares had soared as a result. The real risk which K S Li was seeking to guard against was a leak directly or indirectly from one of his directors. If such a leak had occurred, we have no doubt that public confidence in Wang would have been shattered and the property market and the price of ICH shares would have been adversely affected.

6.101 Moreover, K S Tso, who drafted the circular for K S Li's approval, acknowledged to Mr Litton under cross-examination that the last paragraph of the circular expressed his belief and there was no reason for him to think that K S Li would have thought otherwise. When Mr Litton pressed him on the question whether the stock market would have been adversely affected had the real nature of the transaction become public knowledge, he at first denied it but eventually agreed in the following passage in the transcript:-

"Q. Had the public known the true facts, wouldn't the share market have plunged in consequence?

A. You think the market would plunge?

Q. No, that was a question directed to you, Mr Tso!

A. Yes."

6.102 George Zang also agreed with the view expressed in the last paragraph of the circular regarding the effect of a leak to the public of the existence of the break clause. Asked if that paragraph was an accurate statement of his own view at the time, he replied:-

"Yes. This is since Mr Wang already announce or, say, leak the deal, that everybody knows in Hong Kong. At that time the political atmosphere is very sensitive. When they knew Mr Wang company like (inaudible), Mr Wang bought this or, say, leadership of this big deal, suddenly if you leak the option, I think the people will misunderstand the word, say, harm the confidence of Hong Kong or affected the property market. So I agree with what Mr Li said here."

6.103 The process of protection of Wang from the disclosure of the break clause was continued, not without some anxiety on K S Li's part, when, on the 14th March 1984 his ICH Chairman's Statement was published in the ICH Annual Report for 1983, referring to the memoranda as "preliminary agreements". As indicated in paragraph 6.47 above the cryptic reference in the Chairman's Statement was mentioned in Norton's article in the Post on the 15th March 1984 but no suspicions regarding the true nature of the transaction seem to the Tribunal to have been roused in the minds of the media or the public.

6.104 The relevant part of the Chairman's Statement was drafted by K S Tso on K S Li's instruction. In his evidence in chief K S Li explained that the meaning of "preliminary agreements" was that the transaction was not a final agreement and the expression was a conservative expression like all words in the Chairman's Statement but at the time he was "101 per cent" sure the deal was done despite the "option". He said he would have been quite happy, in fact he would have liked it very much, if Ever Bright had changed their minds and registered the break clause. If they had done so in time, he said:-

"....immediately I could tell the shareholders they registered because it would be no secret. The secret was the request by Mr Chan Park-chi and Mr Wang."

He explained that after he had used the expression "preliminary agreements" in the Chairman's Statement:-

"I am worried that Mr Wang maybe would complain and ask me why I said this, and I asked my people, "Did anybody complain that I put it here?"

6.105 When questioned by the Chairman of the Tribunal, he acknowledged that he was in a dilemma because this was a special case involving Wang who had already made announcements about the transaction and, whilst he felt obliged to inform the shareholders that the transaction was not a final contract, he had promised not to publicise the break clause. He said he was worried that by describing the transaction as something other than a final contract he would have upset the Ever Bright interest, but he pointed out to the Chairman that "here didn't say got the option". Finally he observed to the Chairman that this was a very unusual case:-

"Because suppose he is not Mr Wang Guang-ying, then of course everything I would disclose, every detail, but because Mr Wang, and for political reason, I don't think he can exercise the option. This is what I think."

We were satisfied by the evidence referred to in this and the previous paragraph that K S Li was palpably seeking to serve the double purposes of satisfying Wang that he had not

disclosed the break clause in the Chairman's Statement whilst at the same time describing the transaction to his shareholders in a suitably generic manner consistent with its true character. It was a move which served his purpose well because Wang did not complain nor did his shareholders and neither the press nor the public came to realise that the transaction was not a sale at all until after the cancellation.

6.106 As indicated in paragraphs 6.50 and 6.51 above the press interview of K S Li after the ICH Annual General Meeting on the 10th May which was reported in the Post by Witton on the 11th May 1984 gave nothing away about the true nature of the transaction.

6.107 Thus, after the 16th January 1984 when George Zang told Norton of the Post that "the deal was almost finished" the responsible directors of ICH and CKH had remained silent about the transaction which was being heavily publicised in the press as a sale and purchase, save that the ICH Chairman's Statement dated the 14th March 1984 described the memoranda as "preliminary agreements" at a time when K S Li was wanting to inform his shareholders that the agreements were not final whilst at the same time not embarrassing Wang by disclosing the existence of the break clause to the public. Although K S Li sought to justify this conduct on the footing that he allegedly did not believe that Wang would ever exercise the option, we were satisfied that the inescapable truth of the matter was that, once Wang allowed the press to report the transaction as a sale and purchase and the price of ICH shares was thereby substantially boosted, K S Li felt obliged to protect Wang and the property market from the inevitable collapse of confidence

that would have followed if the existence of the break clause had become known to the public. The ICH Board Circular No. 3/84 dated the 7th February 1984, issued when ICH shares were at about their peak following the City Garden transaction, was the clearest evidence of K S Li's motivation and we were satisfied, as was its draftman K S Tso, that the final paragraph of that circular accurately represented K S Li's motivation at the time. That motivation was to protect the market for Wang, the important business figure from China who was ICH's prospective buyer.

CHAPTER VII

THE IMPACT OF THE TRANSACTION AND ITS CANCELLATION ON THE PRICE OF ICH SHARES AND ON THE STOCK MARKET

(i) The impact of the transaction

7.1 Ada Yeung, the Securities Officer referred to above in paragraph 4.5 of Chapter IV, produced a chart showing the daily turnover and daily closing prices of ICH shares during the relevant period. In the interest of clarity we have appended the chart to this report as Appendix III.

7.2 In the subdued market conditions prevailing in November and December 1983 the price movements of ICH and other comparable property company shares were roughly in line with each other and with the movement of the Hang Seng Index. This was demonstrated by the evidence of Ada Yeung who produced another chart as a means of comparison of the performance of the shares of ICH against the performance of a selection of twelve other prominent property based publicly quoted companies ("the comparable property companies") and against the movement of the Hang Seng Index in November and December 1983. The data set out in the chart as the basis for the comparison comprised the closing prices and percentage movement of the prices of the shares of ICH and the comparable property companies weekly from the 4th November to the 30th December 1983, using the Hang Seng Index and the closing price of the relevant shares as at the 30th December 1983 as a base.

7.3 January and February 1984 saw a pronounced change in the trend of the price and turnover of ICH shares. As appears from Appendix III there was a remarkable upsurge in both price and turnover in those months. Between the 3rd January (the first trading day of 1984) and the 12th January the price rose steadily by not more than 4 cents per day from 46.5-47 cents to 55/56 cents and by the 12th January the daily turnover had risen to 8.94 million shares. On Friday the 13th January, the day when rumours of the City Garden transaction were rife in the stock market but had not yet been published in the press, both the price and the turnover were given a substantial impetus by the rumours despite a 3.11-point drop in the Hang Seng Index. The price of ICH shares rose 8/9 cents to 64 cents and the turnover for the day rose by nearly 6 million shares to 14.89 million.

7.4 The weekend followed and on Saturday the 14th and Sunday the 15th January the Chinese press published articles about the transaction, some of them purporting to publish confirmed fact. On the next trading day, Monday the 16th January, the press articles continued and the turnover of ICH shares leapt to just over 23 million shares, the highest it ever achieved during the relevant period. In this heavy trading the closing price fell back slightly to 63 cents in the Hong Kong Stock Exchange, Far East Stock Exchange and Kam Ngan Stock Exchange ("the three principal exchanges") but thereafter, as the publicity continued, the price continued to rise steadily until the closing price reached a peak of 83 cents in all the Exchanges on Monday the 6th February. This price of 83 cents was an increase of 36-36.5 cents from the price of 46.5-47 cents on the 3rd January and the increase amounted to over 76 per cent of that price. The daily turnover

between the 17th January and the 6th February was below 10 million shares on only three days (24th January: 7.23 million, 25th January: 6.91 million and 1st February: 8.27 million) and it was over 14 million on the 17th (14.64 million), 26th (14.49 million), 27th (14.60 million) and 30th January (16.55 million) and on the 6th February (14.88 million).

7.5 On the 9th February the turnover was 19.79 million shares and ICH shares achieved a high for that day of 85 cents in the Kam Ngan Stock Exchange (closing at 81 cents in the three principal exchanges) representing an increase of 80 per cent on the day's high of 47 cents reached in the same exchange on the 3rd January. On the 10th February the shares closed at 78 cents in all the four Exchanges and the turnover for the day was 22 million shares. Between Monday the 13th and Friday the 17th February the closing price varied between 82 cents reached on the 14th February in the three principal exchanges and 77/76 cents reached on the 17th February. During this period the daily turnover fluctuated between 13.82 million on the 14th and 8.26 million on the 17th February.

7.6 During the remainder of the trading days of February the closing price receded further from 73 cents on Monday the 20th February to 69 cents on the 29th February. During the same period the turnover also fell and it fluctuated between 8.92 million shares on the 20th and 5.30 million on the 22nd February. During January and February the aggregate monthly turnover was 211 million and 200 million shares traded respectively, a striking increase on the aggregate turnover figures for November and December 1983 which were just under 45 million and just over 15 million shares traded respectively.

7.7 During January and February 1984 ICH shares were by no means alone in their impressive upsurge. The stock market generally had also risen impressively out of the relative trough of November and December 1983. Thus the Hang Seng Index which began at 871.06 on the 3rd January rose 231.32 points to 1102.38 on the 31st January 1984. This was an increase of over 26 per cent for the month. The Hong Kong Monthly Digest of Statistics February 1984 indicated an aggregate turnover of \$7.5 billion for January which Ada Yeung deposed to be the highest volume since September 1981 and almost five times that of the previous month. By the 6th February the Index reached 1134.12 which Ada Yeung deposed to be a shade higher than the 1983 peak of 1102.64 achieved on the 21st July 1983. The level of 1134.12 on the 6th February represented a rise of 263.06 from the 871.06 points registered on the 3rd January. This was a rise of over 30 per cent. During the remainder of February the Index fluctuated between 1094.87 registered on the 17th and 1022.85 registered on the 27th February. It closed the month on the 29th February at 1059.29. Ada Yeung described the latter half of February as a time when the market underwent a period of consolidation when most investors were awaiting major corporate results and the Financial Secretary's budget.

7.8 Ada Yeung gave evidence regarding the factors which had contributed to the rallying of the stock market in January and February 1984. She referred to the three successive cuts in the prime lending rate during late January to mid February reducing the rate by 3.5 percentage points to 10 per cent. She further deposed that:-

"The feature during the first two months of 1984 was the active participation of Chinese interests into the local economy which had stimulated market sentiment to the highest level since the 1997 talks began in September 1982."

As instances of this participation of Chinese interests in the local economy in January and February Ada Yeung referred to:-

- (1) the reports of the involvement of Ever Bright in the property market in January by its entering into the City Garden transaction;
- (2) the involvement of the China Resources Group in the industrial sector by its acquisition in January of a 35 per cent stake in Conic Investment Company Limited ("Conic"); and
- (3) the participation of Chinese interests in the auction of the Admiralty II site in February.

She also deposed that Chinese interest buying was suggested by market sources to be responsible for the strong performance accorded to the share prices of the Bank of East Asia notwithstanding the fact that the bank's results announced in January were disappointing and could even have disguised a loss over the year.

7.9 Referring to the stock of ICH, Conic and the Bank of East Asia as "special situation stocks" which "fared distinctively well" during January and February 1984, Ada Yeung deposed that whereas during that period (ending at the end of February) the share prices of ICH, Conic and the Bank

of East Asia had gained 47 per cent, 30 per cent and 46 per cent respectively, the Hang Seng Index had only risen by 21 per cent during the same period.

7.10 Ada Yeung produced a chart ("Ada Yeung's comparison chart") providing a means of comparison of the performance of ICH shares against that of the comparable property companies and the Hang Seng Index between the 3rd January and the 31st July 1984. The closing share prices of the companies and the percentage movement of the prices were shown at 2 weekly intervals from the 3rd January, using the Hang Seng Index and the closing price of the relevant shares as at the 30th December 1983 as a base. This chart demonstrated that by the end of January and until mid February, with the exception of Hang Lung Development Company Limited ("Hang Lung"), ICH shares prices increased at an appreciably greater rate than those of the comparable property companies and at a substantially greater rate than the upward movement of the Hang Seng Index.

7.11 Ada Yeung deposed that:-

"China's active participation had been taken as explicitly signalling some form of commitment in maintaining the existing political and economic structure. Boosted by this optimism, foreign investment money persistently flowed into the local stock market."

As examples of investment money flowing into Hong Kong as a result of the confidence inspired by China's manifestation of such commitment, she referred to HKL's successful placement of 72 million shares of Jardines to foreign

institutions in January which she deposed had drawn a cash inflow of \$885 million within one day. She also referred to the offer by Cable and Wireless on the 6th February for the whole of the issued capital of Hong Kong Telephone involving a total cash inflow of \$3.48 billion.

7.12 In the light of the above evidence in this Chapter we were satisfied that, whilst the impressive buoyancy of ICH share prices in January and February 1984 was not solely attributable to the reports of the City Garden transaction, that buoyancy was primarily caused by the confidence in the future of Hong Kong induced for the time being in the property market, the industrial sector and the stock market generally by the active participation of the Chinese interests mentioned in paragraph 7.8 above. In the case of the property market the relevant Chinese interest was Ever Bright which was reported to have entered into the City Garden transaction, being a transaction represented by Wang and by the press to have been a purchase and sale of very substantial items of property from a subsidiary of ICH. The natural consequence was that, whilst the Hang Seng Index rose in January and February to the extent of over 30 per cent by the 6th February and 21 per cent by the end of February, the price of ICH shares rose during the corresponding periods by over 76 per cent and 47 per cent respectively. Furthermore we were satisfied by the data in Ada Yeung's comparison chart that, with the exception mentioned in paragraph 7.10, the rise in the price of ICH shares was appreciably greater than the rise in the price of the shares of the comparable property companies.

7.13 During March 1984 the price of ICH shares did not achieve the heights of the previous month but on most

days until the 27th March the shares maintained a price of over 70 cents, trading in the three principal exchanges in a band between closing prices of 75 cents achieved on the 19th and 20th March (when the Hang Seng Index was at its peak for the month) and 68 cents on the 1st, 8th, and 27th March. On the 28th March Jardines announced their decision to change their domicile and a sharp drop in ICH share prices was the immediate result. The shares were trading at closing prices of 67/68 cents on the 28th March. They fell 5/6 cents to 62 cents on the 29th March and on Friday the 30th March they were down a further 4/5 cents to 57/58 cents in the three principal exchanges. The aggregate turnover in March was down to 120.45 million shares compared to the figures of 211 million and 200 million for January and February. The highest daily turnover in March was 10.62 million on the 19th March and the lowest figure was 2.35 million on the 7th March. Ada Yeung's comparison chart indicates that until the 15th March the performance of ICH shares was continuing to be more impressive, by reference to the datum point of the 30th December 1983, than that of the Hang Seng Index but the performance of four of the comparable property companies (Sun Hung Kai Properties Limited ("Sun Hung Kai"), Henderson Land Development Company Limited ("Henderson Land"), Hang Lung and Tai Cheung Properties Limited ("Tai Cheung")) was in line with or slightly ahead of that of ICH.

7.14 Ada Yeung described the stock market as having "sailed steadily" in the first part of March and all the indicators were evidently promising until the announcement of Jardines' move. She deposed that excessive liquidity in the local banking system was conducive to market activity and she also mentioned the boost in sentiment caused by the cut of 1.5 percentage points in the prime lending rate

on the 12th March. On the 19th March the Hang Seng Index registered 1170.35 which was its highest point since August 1982.

7.15 Although the market was now apparently soundly based and little affected by the increase of 1.5 percentage points in prime lending rate on the 26th March, the announcement, on the 28th March, of Jardines' move produced an immediate adverse reaction. Ada Yeung described the announcement as "the most stunning news to the market" and added:-

"Stocks took a sharp mark down across the board and the Hang Seng Index plunged more than 100 points in the two trading days following the announcement on 28 March 1984, closing the month at its lowest at 1,014.38. Average daily turnover was in the region of \$300 million, slightly higher than the \$280 million record in February. The effect on sentiment and the market in London was even sharper as the name Jardine was regarded as synonymous with Hong Kong."

7.16 Ada Yeung further deposed that the news of Jardines' move:-

"... could hardly have been more unfortunate as it came at a time when several financial entities were in the process of increasing portfolio investment in Hong Kong and also when confidence in Hong Kong's future was seeping back."

7.17 The sharp downward trend caused by the "Bermuda bombshell" was not of lasting effect in the resilient Hong Kong market where, as Ada Yeung put it, citing an unnamed securities analyst - "confidence is so fragile and yet hope never dies, and buying into panic is usually rewarded." In April 1984 the closing price of ICH shares on the 2nd and 3rd of that month at 57/58 cents began where the Jardines announcement had taken it at the end of March but the shares recovered some of the loss and closed in the three principal exchanges through the month at between 60 and 65 cents until the last trading day of the month on Monday the 30th April when the shares closed at 58/59 cents. The aggregate turnover for the month (18 trading days) was 67.39 million shares compared to 120.45 million in March (22 trading days). Ada Yeung's comparison chart shows that by the 2nd April and at all material times thereafter the relevant performance of ICH shares lost its pre-eminence compared with the performance of the shares of several of the comparable property companies.

7.18 In April the Hang Seng Index was quick to recover some of its lost ground. Having opened at 1023.96 on the 2nd April it reached 1083.67 by the third trading day which was the 5th April and by the 19th April it registered 1115.85 which was not far from its figure of 1118.85 before it had fallen sharply as a result of the Jardines announcement. Ada Yeung attributed this recovery to bargain hunting, mainly by foreign institutions interested in buying stocks made cheap by the Bermuda incident. Other material factors mentioned by her were the confidence inspired by the indifference shown by the Chinese Government and the left wing press to the Jardines announcement, the soothing statements of Chinese officials

ahead of the imminent visit of Sir Geoffrey Howe, the Secretary of State for Foreign Affairs, to Beijing and encouraging comments by K S Li and Wang "the rising pro-communist capitalist" on their companies' massive expansion plans in Hong Kong.

7.19 Sir Geoffrey Howe's press announcement on the 20th April was, according to Ada Yeung, a disappointment to investors because it destroyed the last hope of Hong Kong being "monitored under the British administration while the sovereignty returns to China after 1997". The announcement was followed on the 24th April, the next trading day after Easter, by a drop in the Hang Seng Index to 1070.02 from 1115.85 on the 19th April, the last trading day before Easter. This factor together with the return of fears of an imminent rise in local interest rates resulted in the Index falling further and closing at 1037.06 at the end of the month during which the aggregate turnover had fallen to \$3.4 billion in 18 trading days compared to the corresponding figure of \$6.7 billion for the 22 tradings of March.

7.20 The downward drift of stock market that began towards the end of April continued into May. The closing price of ICH shares began the month at 59 cents on the 1st May and, after descending as low as 46.5/47 cents on Monday the 21st May (the day after Wang's denial that he would withdraw from the City Garden transaction was published in the Financial Daily), it ended the month on the 31st May at 52 cents. This was a fall of nearly 12 per cent. The aggregate turnover for the month (23 trading days) was 81.31 million shares.

7.21 During May the Hang Seng Index fell from 1034.73 on the 1st May to close at 915.30 on the 31st May. This was a fall of 11.5 per cent. On the 21st May the Index had registered 893.01, which was its lowest figure since the beginning of January. The aggregate turnover during the month was about \$3.2 billion during 23 trading days compared with \$3.4 billion during the 18 trading days of April. Ada Yeung deposed that during May the average daily turnover was only \$139 million which was a drop of 28 per cent from the daily turnover in April. This drop in turnover was attributed by Ada Yeung not only to lack of buyers but also to the reluctance of investors to unload their shares at the prevailing levels.

7.22 Ada Yeung attributed the decline of the Index in May partially to increases in the interest rate of 1 per cent on the 10th May and 0.75 per cent on the 28th May, raising the prime minimum lending rate from 11 per cent to 12.75 per cent. Another factor which contributed to drastic and erratic moments of the Index in both upward and downward directions was political uncertainty generated by a series of comments by the Chinese leaders on the subject of the stationing of troops in Hong Kong after 1997 and the preservation of the capitalist system in Hong Kong after that year.

7.23 Between the 1st and the 27th June 1984 (the day before the announcement of the cancellation of the City Garden transaction) ICH shares traded in a band between a closing price of 57 cents and 52 cents and the daily turnover fluctuated between a maximum of 5.43 million shares on the 15th June and 1.28 million shares on the 27th June.

On the latter date the closing price of the shares was 53/54 cents in the three principal exchanges, there being no trading in ICH shares in the Kowloon Stock Exchange on that date. The price of the shares was now comparable to those prevailing during the period between the 6th and 12th January (before the big upsurge caused by the rumours of the City Garden transaction on the 13th January), but during that same period the shares had been rising steadily and the turnover had fluctuated between 4.08 million and 8.94 million shares.

7.24 The Hang Seng Index registered 917.50 on the 1st June. By the 11th June it had risen to 966.12 but the volume of trading during this period was never in excess of a daily turnover of \$171.4 million. By the 19th June the Index had fallen to 927.39 and the turnover for that day was only \$77.58 million. On the 27th June the Index registered 924.97 and the turnover for that day was \$65.62 million. Ada Yeung described the local stock market as having been in the doldrums for most of June "in the absence of a clear direction of either the economic front or the political front". She referred in her evidence to the Index reaching 966 on the 11th June and commented:-

"However, in the lack of substantive bullish factor, the stock market soon slipped back to the 930 level in featureless trading ahead of the UMELCO members' visit to Peking in late June."

Ada Yeung deposed that the visit of the UMELCO members to Beijing did not have any immediate impact on the stock market as investors were divided in their opinions regarding its likely effect and both the optimists and pessimists remained on the sidelines.

7.25 The position by the 27th June 1984 was thus that both the price of ICH shares and the Hang Seng Index had lost the lustre which they displayed in January and February and to a lesser extent into March. Both the Index and the price of ICH shares had fallen back to figures comparable with early January 1984 and the market generally was clouded with both political and economic uncertainty which had put it in into the doldrums.

(ii) The impact of the cancellation of the transaction

7.26 There was convincing evidence that rumours of the pending cancellation of the City Garden deal had reached some circles in the stock market some days before the 25th June 1984 when Wang actually decided to cancel. Mr Philip Tose, managing director of the broking firm Vickers da Costa & Company Hong Kong Limited ("Vickers da Costa") deposed that two to three weeks before the cancellation of the transaction there were market rumours, from sources he could not remember, that Wang might renege on the transaction, but that there was no mention of an option at this time.

7.27 Another broker, Mr John Watson ("Watson") the sole proprietor of what was then Watson & Company also deposed that he picked up the rumour from his firm's financial adviser, Mr David Harman ("Harman") two to three days before the 25th June. Harman disclosed the source of his information to the Tribunal but we were unable to obtain any reliable or specific evidence of the original source of this rumour which preceded Wang's actual decision to cancel the transaction. Suffice it to say that Watson passed on the information to Mr Jonathan Compton ("Compton") who was inter alia a director of Henderson Baring Fund Managers Limited which was the investment manager of the Henderson Baring Hong Kong Fund ("the HBHK Fund").

7.28 Compton had acquired 8.4 million ICH shares for the HBHK Fund through Vickers da Costa in January 1984. He deposed that in late March or early April a policy decision had been made, based on political factors, to reduce the HBHK Fund's holding of shares in Hong Kong in what was a falling market, and 3.4 million ICH shares were sold between the 16th and 19th April at 62-65 cents. Having heard the rumour that the City Garden transaction would be cancelled, Compton sold a further 1 million of the HBHK Fund's ICH shares through Watson & Company on the 25th and 26th June 1984 for 54-56 cents.

7.29 On the 28th June 1984, the date of the announcement of the cancellation, the closing price of ICH fell by 4-5 cents to 49-50 cents and the Hang Seng Index fell by about 20 points. However the news of the cancellation was not actually released until the afternoon of Thursday the 28th June. The precise time of the release to the press could not have been more than a matter of 30 minutes before the afternoon session of the stock exchanges closed at 3.30 pm. The most detailed evidence regarding the time when the first of the joint press releases was issued by Ever Bright came from Wang Mi and from media witnesses who attended Wang's press conference which preceded that of K S Li. Fang, Ever Bright's press spokesman, gave general evidence to the effect that Wang had told him on the 28th June that the transaction was to be cancelled and that later Fang had contacted the China News Service and various "China related" newspapers including the Wen Wei Pao and the Sing Tao Wan Pao.

7.30 Wang Mi deposed that the press were invited to be at Ever Bright's office at 3 pm on the 28th June. The

evidence of Miss Fidelia Chau Wai-man ("Fidelia Chau") of the Economic Journal was that at about noon on the 28th June a fellow reporter Mr Yuen Kwok-pui ("K P Yuen") told her he had received information that Ever Bright would back out of the transaction and instructed her to confirm the news with Ever Bright. She said she called Ever Bright by telephone at around 2 pm on the same day to speak to Wang who was not available. She spoke to Fang who confirmed the cancellation and told her that Ever Bright would be holding a press conference that afternoon when Wang would be present to answer questions. Fidelia Chau did not attend the press conference but she told K P Yuen about it.

7.31 Miss Joyce Yip Wai-ching ("Joyce Yip") of the Standard deposed that she was instructed by her news editor at about 2 pm on the 28th June to attend a press conference at Ever Bright's office in relation to the City Garden transaction. She said that she had gone to the press conference and that at about 3 pm Wang appeared and read out a press statement followed by an explanation of his decision to back out from the transaction. A similar account was given by Y C Lo of Radio Hong Kong. She deposed that her Assignment Head Mr Dick Ho had instructed her at about 2.30 pm on the 28th June to attend the Ever Bright press conference at which Wang had something to announce, no other information being available. Y C Lo said in her declaration that on her arrival at Ever Bright's office she was given a copy of the press release announcing the cancellation and that at about 3 pm Wang appeared and read out the release, followed by an explanation of the decision to withdraw. Patrick Tang of the Standard followed Joyce Yip to the Ever Bright press conference on the 28th June but he did not arrive until the conference was about to end.

7.32 In the light of the above evidence we were satisfied that the rumour in the stock market of the pending cancellation of the City Garden transaction referred to in paragraphs 7.26 and 7.27 above must have been spreading, because by the morning of the 28th June Fidelia Chau of the Economic Journal was being asked by her fellow reporter K P Yuen to confirm his information about Ever Bright backing out of the transaction. Also Fang called several newspapers to send reporters to the press conference, which Wang Mi said was fixed for 3 pm and which Joyce Yip and Y C Lo said had begun at about that time. There must therefore have been a number of members of the press who had been told at or before 2 pm about the press conference to be given by Ever Bright and who guessed that a cancellation was to be announced.

7.33 However we were satisfied that there was no evidence that the news of the cancellation was generally available before it was formally announced by the issue of the joint release and Wang's explanation of the cancellation at about 3 pm on the 28th June.

7.34 With a view to ascertaining the motivation for disposals of ICH shares on the 28th June 1984 we have examined the volume of dealing in the morning and afternoon sessions in all four exchanges and the Tribunal's investigators took declarations from several vendors of substantial holdings on that date. Ada Yeung also provided us with a useful analysis of the dealings in ICH shares in the three principal exchanges on that date, there having been only a dealing in 30,000 ICH shares at 50 cents in the Kowloon Stock Exchange on the day in question.

7.35 Ada Yeung's analysis showed that there was a total turnover of 11,760,000 ICH shares in the three principal exchanges on the 28th June. Details of the trading in the three principal exchanges were as follows:-

TRADING IN ICH SHARES 28 JUNE 1984

	<u>TOTAL SHARES</u>	<u>MORNING SESSION</u> (10am to 12.30pm)	<u>PRICES</u> <u>Opening/</u> <u>Closing</u>	<u>AFTERNOON SESSION</u> (2.30pm to 3.30pm)	<u>PRICES</u> <u>Opening/</u> <u>Closing</u>
HK Stock Exchange	1,314,000	1,040,000	53¢/50¢	274,000	50¢/49.5¢
Far East Stock Exchange	7,418,000	4,044,000	53¢/49.5¢	3,374,000	48.5¢/50¢
Kam Ngan Stock Exchange	3,028,000	1,852,000	54¢/50¢	1,176,000	50.¢/49¢
Three principal exchanges	11,760,000	6,936,000	-	4,824,000	-

It is apparent from the above table that the announcement of the cancellation having come at around 3 pm did not cause a last minute rush to sell ICH shares at the end of the afternoon's trading. The heaviest trading (amounting to nearly 7 million shares) took place in the morning session before 12.30 pm in all three principal exchanges.

7.36 The Tribunal was able to identify and obtain declarations from the vendors of 6.2 million of the 11.79 million ICH shares sold on the 28th June. We mention their names below because we do not consider they should

be concealed in a report which is required to be made public but we emphasise that, after full investigation of the relevant dealings, none of the vendors appeared before us as a suspected insider dealer. Their evidence was admitted solely because of its relevance in relation to the motivation of dealers in ICH shares on the 28th June 1984. Copies of the declarations of these vendors were supplied to all persons who might have been affected by their evidence and, as none of such persons expressed a wish to cross-examine any of the vendors, we did not summon them to give evidence at our sittings but treated their declarations as their unchallenged evidence.

7.37 The following sales were effected on the 28th June by the following vendors:-

<u>Vendor</u>	<u>No. of Shares Sold</u>	<u>Price</u>
Mr Peter Nash ("Nash")	1,600,000	48.5 cents
Cotillion International Incorporated ("Cotillion")	908,000	52 cents
The HBHK Fund	20,000	53 cents
	224,000	52 cents
	3,252,000	50 cents
	<u>3,496,000</u>	
Watson & Company	200,000	50 cents
	<u>6,204,000</u>	

7.38 Nash sold 400,000 ICH shares on the 27th June 1984 and on the next day he sold a further 1,600,000 shares at 48.5 cents. At the time he sold those ICH shares and

numerous other shares in other companies in order to raise over \$10 million to enable him to discharge an outstanding account. The sale of 1,600,000 ICH shares at 48.5 cents on the 28th June is identifiable in Ada Yeung's analysis of the dealings in the three principal exchanges as the only sale of the day at 48.5 cents. It was effected as a sale of a special lot by direct business in the Far East Exchange in the afternoon session.

7.39 The sale of 908,000 ICH shares on the 28th June by Cotillion was effected on that company's behalf by Miss Irene So Wai-yin ("Irene So"), a registered dealer and executive director of Mansion House Securities Limited. Cotillion is owned by her parents and she deposed that she sold the shares on instructions to avoid further loss on marginal dealings. The price of 52 cents obtained for the shares was not obtainable in any of the Exchanges during the afternoon session. The sale must therefore have taken place during the morning session.

7.40 Compton sold a further 3,496,000 of the HBHK Fund's ICH shares on the 28th June on the strength of the rumour which he had heard before the 25th June that Wang would renege on the City Garden transaction. This sale was effected through Vickers da Costa at 50-53 cents. Compton sold out the balance of the HBHK Fund's holding amounting to 504,000 shares through the same brokers on the 29th June at 47/47.5 cents on seeing press confirmation of the cancellation of the transaction. The bulk of the HBHK Fund's 3,496,000 shares sold by Compton on the 28th June must have been effected in the morning session of trading because Ada Yeung's analysis of the dealings in ICH shares on that day shows that the price of 52 and 53 cents was only obtainable in the morning and that the total number of ICH

shares sold at 50 cents in the afternoon session in all the exchanges was only 646,000 whereas the HBHK Fund sold 3,252,000 shares at that price.

7.41 Watson & Company, through whom Compton heard of the rumour that Wang would renege on the transaction, also sold 200,000 ICH shares on the 28th June on its own behalf.

7.42 Thus whilst 2,508,000 of the 11,790,000 ICH shares sold on the 28th June 1984 have been shown to have been sold for reasons not related to the cancellation of the City Garden transaction, there is clear evidence that 3,696,000 shares were disposed of (by Compton and Watson & Company) on the strength of the market rumour of the pending cancellation of the transaction. The Tribunal did not attempt the task of ascertaining the motivation of the vendors of the balance of 5,586,000 shares sold in lesser quantities on the 28th June except where there were grounds for suspecting a vendor of culpable insider dealing. The available evidence satisfied us that on the 28th June 1984 not less than 31 per cent of the sales of ICH shares were induced by the vendors' knowledge of a rumour of cancellation of the transaction and that another 21 per cent of those sales were not induced by factors connected with the cancellation of the transaction. Bearing in mind these factors and the timing of the announcement of the cancellation, we were satisfied that the news of the cancellation was not generally available on the 28th June until the press release at about 3 pm but that there was a rumour of the pending cancellation in at least some circles in the stock market which was sufficiently strong to have a significant effect on the volume of sales of ICH shares on that date when the total turnover was 11,790,000 compared with 1,281,000 on the previous day.

7.43 On the 29th June 1984 when the press published the news of the cancellation the price of ICH shares fell by only about 1-2 cents to 48/48.5 cents but the turnover was maintained from the previous day at 11,870,000 shares. Ada Yeung produced a chart showing the daily closing prices of ICH shares and of the shares of the comparable property companies from the 15th June to the 13th July 1984 using as a base line the Hang Seng Index and the closing price for all the shares on the 30th December 1983. The chart shows ICH shares descending steadily by a total of 11.5 cents amounting to 23 per cent from a closing price of 50 cents on the 28th June to 38.5 cents on the 13th July, after recovering slightly from a trough of 36.5 cents on the 9th July, the first trading day following the 3.25 per cent rise to 17 per cent in the local prime lending rate on the 7th July 1984.

7.44 The same chart shows that during the same period, between the 28th June and the 13th July 1984, the Hang Seng Index fell, albeit less steeply than ICH, by 157.81 points, amounting to 17.5 per cent, from 903.83 to 746.02. CKH sustained a fall of 22 per cent during the same period from \$7.95 to \$6.20. Compared with ICH, five of the other comparable property companies' shares sustained a greater or equal actual percentage loss during the same period, namely Sun Hung Kai (31.2 per cent), HKL (26.5 per cent), Henderson Land (27.3 per cent), Hang Lung (23.4 per cent) and Tai Cheung (27.5 per cent). Four of the remaining six comparable property companies' shares all sustained less severe but appreciable percentage losses ranging from 11.4 per cent (HKE) to 22.3 per cent (New World Development Company Limited). The data for two of the comparable companies, Swire Properties Limited and Hopewell Holdings Limited, was not complete.

7.45 The evidence of Ada Yeung indicated three factors as contributing to the depressed state of the stock market during the last three trading days of June, namely the 27th, 28th and 29th of that month. These dampening factors were:-

- (1) The 1 per cent rise in the local interest rate. This had been decided upon on Tuesday the 26th June and the decision had been communicated to the Government Information Services at 6.36 pm on the same day for transmission to the media. The effective date for the change in rate was Wednesday the 27th June.
- (2) The dispatch by the New China News Agency of a lengthy report on the UMELCO members' discussion with Mr Deng Xiaoping and the critical commentaries issued by the pro-China press accusing the UMELCO members of misinterpreting Deng's view on the issue of the confidence crisis in Hong Kong.
- (3) The announcement of the cancellation of the City Garden transaction.

7.46 According to Ada Yeung the gloomy atmosphere thus created gave rise to rumours of problems encountered by property companies and the industrial sector and on the first trading day in July (Monday the 2nd July) the Hang Seng Index had fallen below the psychologically important level of 900 to 868.63 on the strength of a rumour that Ever Bright was going to withdraw from another property development project. She described the market as drifting downward and registering new lows every day and referred

to the "stunning news" of the 3.5 per cent rise, to 17 per cent, of local interest rates on the 7th July, as giving "another dampening blow to the already bleak sentiment". This news, together with further political anxieties brought the Hang Seng Index down, as indicated in paragraph 7.44 above, to its level of 746.02 on the 13th July which Ada Yeung described as "....the new low for the year and also the lowest point since 17 October 1983 (771.55), the day at which the local unit was "pegged" (sic) to the US dollar."

7.47 We were satisfied by the evidence reviewed above relating to the market conditions subsequent to the announcement of the cancellation of the City Garden transaction that the impact of the cancellation of the transaction on the price of the shares of ICH and the comparable property companies and upon the Hang Seng Index during the period between the 29th June and the 13th July was significant. It is not possible to quantify this impact because it was only one of several depressive factors at work on the stock market at the time. However it clearly contributed significantly to the gloom at the end of June which started the sharp slide in the price of ICH and the comparable companies' shares and in the Hang Seng Index, culminating in the relative trough to which prices had fallen by the 13th July 1984.

CHAPTER VIII

RELEVANT INFORMATION CONCERNING ICH SHARES
DURING THE RELEVANT PERIOD

(i) Information relating to the negotiations preceding the transaction

8.1 One of the special features of the circumstances under which the City Garden transaction was entered into was that the publicity in the media anticipated the actual event of the execution of the memoranda by which the transaction was effected on the 23rd January 1984. By that time, as we have already mentioned in paragraph 6.44 of Chapter VI above, the keen interest of the press in the progress of the transaction had been assuaged by the release of the China News Service on the 20th January 1984 announcing that Wang had confirmed the transaction. Although there was no similar announcement on behalf of ICH, there was no denial from that source and the transaction was paraded in no less than 14 newspapers on the 21st January as having been confirmed from Beijing sources in relation to a China backed company which was the purchasing party in the transaction.

8.2 In fact Wang did not finally decide to enter into the transaction until Saturday the 21st January. By that time the price of ICH shares had risen about 16 per cent from 55/56 cents on the 12th January (the day before the rumours of the transaction reached the stock market) to 65 cents on Friday the 20th January in the three principal exchanges. The turnover of the shares had been 8.9 million shares on the 12th January. After a sharp rise to 14.89

million on the 13th, the daily turnover reached 23.16 million on the 16th and was over 11 million on the 20th January. The price of ICH shares had thus risen substantially at a time when rumours followed by increasingly firm reports of the transaction in the press were prevalent. We were satisfied that these early rumours and the press reports, many of them purporting to report the transaction as entered into or about to be entered into, had given the price of ICH shares the initial impetus that was to continue to the peak closing price of 83 cents on the 6th February.

8.3 Accordingly we did not consider that the general availability of information on or about the 21st January that Wang had finally agreed to enter into the transaction on K S Li's terms would have been likely to bring about a material change in the price of ICH shares. Such a change had already occurred and the price was already in the process of rising by reason of the stimulus previously afforded by the initial market rumours and the press reports relating to the transaction. We were therefore satisfied that in these circumstances there could never have been a situation in which accurate information that the parties had actually come to terms on the 21st January could constitute relevant information concerning ICH shares for the purposes of section 141D(1) of the Ordinance.

8.4 However, having regard to (1) the stagnant state of the property market in early January 1984, (2) the political significance of Wang's Ever Bright organisation as a purchaser and (3) the magnitude of the proposed transaction, we were satisfied that the general availability

of information, even in the early stages, of the existence of negotiations by or on behalf of Wang and Ever Bright to purchase the eight blocks comprising Phases II and III of the City Garden project would have been likely to bring about a material upward change in the price of ICH shares. We were fortified in this view by the immediate 8/9 cents rise in the price of ICH shares and the increase of nearly 6 million shares in daily turnover which occurred when rumours of the transaction reached the stock market on Friday the 13th January 1984. Even at this stage when rumours were abroad we considered that the general availability of information that the rumours were true or substantially true would also have been likely to bring about a material upward change in the price of ICH shares within a reasonable period of time. This was in fact what happened.

8.5 It follows that any recipient between the 3rd/4th January 1984 (when the negotiations began) and the 12th January (the day before the rumours of the transaction reached the stock market) of information that the parties were negotiating concerning the sale and purchase of the eight City Garden blocks, was the recipient of relevant information concerning ICH shares. It also follows that on and after the 13th January (when the rumours of the transaction reached the stock market) and until the news of the confirmation of the advanced stage of the negotiations by ICH and the news of Wang's confirmation of the transaction became generally available, any recipient of information that the rumours about the transaction were true or substantially true, was the recipient of relevant information concerning ICH shares.

8.6 As we have indicated at paragraph 6.43(4) of Chapter VI above, we were satisfied that the news that the transaction was imminent and indeed that it was confirmed by Wang and Ever Bright sources, was generally available by Monday the 16th January which was the first trading day after the rumours of the transaction were stimulating the price of ICH shares on Friday the 13th January. By the 16th January articles mentioned in Chapter VI above in both the Chinese and English language newspapers contained reports purporting to be based on the comments of representatives of the parties to the effect that the transaction was already agreed upon in the case of the Ever Bright interest, or in an advanced state of negotiation in the case of the ICH interest.

8.7 K S Li, whose policy was to keep dealings of his companies secret, had no compunction about talking to his project managers at his weekly project managers meeting on Wednesday the 18th January 1984 about the quality of the work to be done in Phases II and III of the City Garden project on the footing that the quality was to be maintained to the standard of Phase I notwithstanding the fact that Phases II and III had been sold. This attitude clearly indicates that on the 18th January, K S Li did not consider he was mentioning anything confidential when he referred to Phases II and III as having been sold. Furthermore Norton, whose evidence on this point is mentioned at paragraph 6.24 of Chapter VI above, told the Tribunal that by the 16th January he was interviewing property experts such as McFadzean and Runciman in order to assess the reaction of the property market to the transaction. Norton was, he said, doing this at a time when in effect the news was out. We were satisfied that Norton was right and that any person

learning of the transaction on or after the 16th January was acquiring information that was generally available. We considered it to be arguable that, by reason of the evidence referred to in Chapter VI above of the press publicity of the transaction purporting to confirm the rumours of the transaction, the news was out by Saturday the 14th or Sunday the 15th January but we did not consider that possibility further because those two days were not trading days.

8.8 Accordingly, Saturday the 14th and Sunday the 15th January 1984 not being trading days, we were looking for possible culpable insider dealers in ICH shares who were persons connected with ICH and dealing in ICH shares between the 4th and the 13th January when in possession of relevant information concerning those shares, namely information that the negotiations for the City Garden transaction were going on or information that the rumours of that transaction were true to the extent that negotiations were going on.

(ii) Information relating to the break clause

8.9 By the 16th January 1984 the pending transaction had received wide publicity as a purchase and sale of a substantial amount of property at a price of nearly \$1 billion. The pending purchase had been paraded in the press as having been made by the Ever Bright interest at whose head was Wang, a capitalist from China who was widely believed to have the backing of the Central Government of the People's Republic of China. This was all happening at a time of anxious political uncertainty during the Sino-British talks concerning the future of Hong Kong after 1997 and at a time when the property market was stagnant following its collapse in 1982. The transaction was being

fallen upon by the press because of its importance as a harbinger of the confidence of China backed interests in the future of Hong Kong. The impact of a transaction of such magnitude with a purchaser like Ever Bright was indicated by the substantial rise of 8/9 cents in the price of ICH shares on the 13th January 1984 as a result of the mere rumours of the transaction.

8.10 Prior to the 16th January and thereafter all the announcements of the transaction as a purchase and sale were made by Ever Bright representatives. The ICH representatives initially admitted only that negotiations were under way or nearly completed and then, after a long silence, K S Li described the transaction as "preliminary agreements" in his ICH Chairman's Statement on the 14th March 1984. There was the clearest evidence that Wang had allowed himself to be publicised at all material times as a prominent personality from China, a capitalist who had come to do business in Hong Kong in a big way and thereby to bring confidence at a time when it was much needed.

8.11 Against this background, if the news had got out at any time when the price of ICH shares was still stimulated by the news of the City Garden transaction, that the pending transaction and the eventual transaction was not a purchase and sale of property for nearly \$1 billion in the commercial sense but merely two agreements the practical effect of which were to enable Wang to have an almost free view of the property market for six months, we were satisfied that (as we have already indicated at paragraph 6.98 in Chapter VI above) there would have been an immediate adverse reaction in the media, and in public opinion and

that such reaction would have been likely to bring about a material downward change in the property market and in the price of ICH shares. Wang would have lost much of his credibility. These were after all the consequences which the secrecy called for in the last paragraph of ICH Board Circular No. 3/84 dated the 7th February 1984 were expressed to be intended to avoid.

8.12 As time went on after the 16th January and the transaction received more and more publicity as a purchase and sale with important confidence boosting consequences manifested in the continuing rise in ICH shares in January and February and contributing materially to the rise in the Hang Seng Index during the same period, the degree of disenchantment with Wang and Ever Bright and K S Li and ICH that would have followed the revelation of the break clause and the true nature of the transaction (which had been concealed from the public) would have progressively increased.

8.13 As regards the likely effect on the price of ICH shares of the disclosure of the break clause on or after the 16th January 1984, the actual drop in price to be expected would certainly have been substantial during the period between the 16th January (when the price of ICH shares closed at 63 cents) and the 28th March (when ICH shares closed at 67/68 cents). This was the period when the price of ICH shares clearly reflected the impact of the City Garden transaction. At the beginning of the period it was in the process of rising as a result of that impact. The closing price reached a peak of 83 cents on the 6th February and it never fell below 67 cents during March until the

initial drop to 62 cents on the 29th March caused by the Jardines announcement on the 28th March. After that there remained a risk that news of the break clause would get out, but the likely actual resultant fall in the price of ICH shares would have decreased as the effect of the news of the City Garden transaction became spent, and the price of the shares declined due to other supervening factors.

8.14 Accordingly we were looking for possibly culpable insider dealers in ICH shares who were persons connected with ICH and dealing in ICH shares while their price was still stimulated by the news of the City Garden transaction between the 16th January and about the 28th March 1984 when in possession of relevant information concerning those shares, namely information that the City Garden transaction was not in fact a sale and purchase but was a transaction embodying a break clause which enabled Cheery Bright to resile from the transaction during the six month period at minimal, if any, cost to itself.

(iii) Information relating to the cancellation of the transaction

8.15 The main volume of publicity given to the transaction was in January but, as appears from the evidence referred to under rubric (ii) of Chapter VI above, Wang remained in the public eye throughout the relevant period and in May 1984 the press followed up the rumours that he was backing out of the City Garden transaction. Thus Wang was confronted with the rumour by Y L Wong at Wang's press conference in Beijing on the 19th May 1984 and his denial that he would cancel the transaction was published in the Financial Daily on the next day. The continuing public interest in the City Garden transaction which had been given

so much prominence by the media in January was indeed manifested by the wide publicity (referred to under rubric (iv) in Chapter VI above) which was in fact given to the cancellation when it was announced.

8.16 There was convincing evidence that adverse public reaction to the news of the cancellation was expected in informed circles. Thus George Zang confirmed the evidence of Wang Mi and Chris Tse that when, at Yam Wong's lunch meeting on the 22nd June 1984, Wang Mi had said the Ever Bright interest would cancel the City Garden transaction, George Zang had urged her to consider the impact of the cancellation. A broker, Mrs Leslye Jill Gallie, a partner in Francis R Zimmern, replied in the affirmative when asked by Mr Litton if news of the cancellation of the transaction by Ever Bright would have reacted strongly upon the market.

8.17 Evidence of actual market reaction to the prospect of cancellation of the transaction is referred to in paragraphs 7.28, 7.40 and 7.41 in Chapter VII above. Thus on the strength of market rumour of the pending cancellation of the City Garden transaction, Compton sold 1 million of the HBHK Fund's ICH shares through Watson & Company on the 25th and 26th June 1984; and on the 28th June he sold a further 3,496,000 of the HBHK Fund's ICH shares through Vickers da Costa, the bulk of them in the morning session of trading. Watson & Company also sold 200,000 ICH shares on their own behalf on the 28th June on the strength of the same market rumour.

8.18 As we have indicated in our conclusion in paragraph 7.47 in Chapter VII above, it is not possible to quantify the impact of the news of the actual cancellation on the price of ICH shares. However we were satisfied that the news of the cancellation was a significant factor contributing to the gloom at the end of June which induced the sharp slide in the price of ICH shares and of the shares of the comparable companies and in the Hang Seng Index between the 29th June and the 13th July 1984.

8.19 We were accordingly satisfied that any recipient of information, between the 25th June and the 28th June before 3 pm, that the cancellation of the transaction was pending or that the market rumour to that effect was true, was in receipt of relevant information concerning ICH shares. The receipt of information prior to the 25th June regarding Wang Mi's negotiations to vary the terms of the transaction and her threat to cancel it made at Yam Wong's lunch meeting on the 22nd June was also relevant information but there was no evidence before us that any person dealt in ICH shares when in possession of this latter category of relevant information.

8.20 We therefore had to consider only the cases of possibly culpable insider dealers in ICH shares who were connected with ICH and dealing in ICH shares between the 25th and 3 pm on the 28th June 1984 when in possession of relevant information concerning those shares, namely information that the cancellation of the City Garden transaction was pending.