REPORT OF THE INSIDER DEALING TRIBUNAL OF HONG KONG

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

STIME WATCH INTERNATIONAL HOLDING LIMITED
(now known as Medtech Group Company Limited)

between

29th July to 7th August 1997 (inclusive)

and on other related questions

CONTENTS

ANNEXURES

ABBREVIATIONS

Atari	-	Atari Enterprise
Brighton	-	Brighton Securities (HK) Limited
CA Pacific	-	CA Pacific Securities Limited
Chark Fung	-	Chark Fung Securities Company Limited
Cheung's	-	Cheung's Securities Brokers Limited
China Point	-	China Point Stock Brokers Limited
DoJ	-	The Department of Justice
Eternal Summit	-	Eternal Summit Investments Limited
Farmcote	-	Farmcote International Limited
Get Nice	-	Get Nice Securities Limited
HZK	-	Beijing Hua Zheng Kang Communication and Technology Company Limited
HSBC	-	The Hongkong & Shanghai Banking Corporation Limited
Intercontinental	-	Intercontinental Securities Company
Kee Fung Sing	-	Kee Fung Sing International Finance Company Limited
Kingston	-	Kingston Securities Limited
Peckwater	-	Peckwater Holdings Limited
PRC	-	People's Republic of China
SEHK	-	The Stock Exchange of Hong Kong Limited
SFC	-	Securities & Futures Commission

ABBREVIATIONS (cont'd)

Stime	-	Stime Watch International Holding Limited
Stime Manufacturing Co., Ltd.	-	Stime Watch Manufacturing Company Limited
Target Wise	-	Target Wise Development Limited
The Ordinance	-	Securities (Insider Dealing) Ordinance, Cap. 395
TW	-	Tribunal Witness
Wah Sang	-	Wah Sang Securities Company
Yardley	-	Yardley Securities Limited

CHAPTER 1

INTRODUCTION

In this chapter, we set out in summary form the events which gave rise to this inquiry and the background of individuals and companies involved in those events.

The company relevant to the inquiry

The matters the Tribunal inquired into centred around trading transactions in the shares and warrants of a company which at the time of the transactions was called Stime Watch International Holding Limited ("Stime"), which subsequently altered its name to Medtech Group Company Limited. Those transactions we were to inquire into occurred during the period 29th July 1997 to 7th August 1997.

Stime at the time of the transactions was a Bermuda company listed on the Stock Exchange of Hong Kong Limited ("SEHK") since 23rd July 1996. During the period the subject of the inquiry the Chairman of Stime was a Mr. WONG Wing Shing, Wilson ("Mr. WONG"). The Deputy Chairman was Mr. TSANG King Hung ("Mr. TSANG").

The issued shareholding of Stime was divided between various investors who held some 35% of its shares and a company Farmcote International Limited ("Farmcote") which held 65% of its shares.

Mr. WONG held a controlling interest in Farmcote to the extent of 58.1% of its issued shares, Mr. TSANG held 22.2% of its issued shares and other persons controlled the balance of 18% of its shares[1].

In short, Mr. WONG controlled Stime and Mr. TSANG was the next largest individual interest.

The core business of Stime at all times relevant to this inquiry

[1] See Stime's 1997 Annual Report page 18 note (d).

and conducted through its 100% held subsidiary Stime Manufacturing Co., Ltd. was the manufacture and sale of watches and watch parts and the provision of electroplating services.

A summary of events which brought about the investigation by the Securities and Futures Commission ("SFC") and which led to this inquiry

(a) A brief history of Stime share and warrant prices during 1997

(i) Shares:

During the first half of 1997 Stime's share price had traded in a range of $1.20 to $1.60. A 1 for 2 issue due on 28th May 1997 had seen a price drop from $1.59 on the 19th May 1997 to $1.06 on 20th May.

Otherwise, previously, Stime share prices had broadly tracked the market but its price then eroded gradually to close at $0.98 on Friday 25th July 1997.

Between Monday 28th July 1997 and Friday 1st August 1997, the price rose significantly to close at $1.33.

Between Monday 4th August 1997 and Friday 8th August 1997, it rose further to close at $1.67.

By 21st August 1997, it had reached $2.175 and thereafter slowly declined.

Over the course of January to July of 1997 trading volume in Stime shares had for one sustained period in March seen considerable activity but otherwise had rarely exceeded 3 million shares a day and had generally been below 1 million shares a day.

In the week commencing 28th July 1997 (i.e. the beginning of the period we are concerned with) trading volume increased

significantly from 4.3 million shares on the 28th July to 13.8 million shares on Friday 1st August.

On the following Monday 4th August trading volume was 23.7 million shares. That daily figure steadily reduced to 5.8 million shares by Friday 8th August but thereafter trading volume remained high, reaching 18.8 million shares on 15th August until returning to historical levels by the end of August.

(ii) Warrants:

On the 2nd January 1997, Stime warrants closed at $0.68. Over the ensuing months their price, with relatively minor fluctuations, deteriorated gradually to close on Friday 25th July 1997 at $0.42.

On 29th July 1997, they closed at $0.475 and by Friday 1st August 1997, they rose to close at $0.61.

The rise continued throughout the next week and on Friday 8th August 1997, they closed at $0.88.

By 29th August 1997 they closed at $1.39 and thereafter gradually deteriorated in price.

Over the course of January 1997 to July 1997, trading volume in Stime warrants had been somewhat erratic with many days of no trading at all and on occasions the daily turnover exceeding 1 million. But generally with significant periods of exceptional activity turnover was less than 1 million warrants daily.

On the 29th July 1997, turnover was 600,000. On Friday 1st August 1997 it rose to 4.4 million warrants.

On the following Monday 4th August 1997 trading volume was 11.4 million warrants dropping to 1.5 million on Friday 8th August.

Trading volume remained on average over a million warrants a day until the end of August when turnover returned to historical levels.

It can be seen from the above brief summary of trading price and turnover in Stime's shares and warrants that, starting in the last week of July 1997, there was a quite dramatic increase in both share and warrant prices and in their turnover which reached sustained peaks in August 1997 and thereafter gradually returned to pre-existing levels.

Annexure A to this Report provides a history of the daily turnover and closing prices of Stime's shares and warrants.

(b) Events which were contemporaneous with the increase in turnover and price of Stime's shares and warrants in late July and August 1997

On or shortly before 28th July 1997, Mr. Wong, the chief executive of Stime, was contacted by either or both of Mr. Graham CHAN, the Stime group auditor or Mr. Simon NG, a solicitor in Hong Kong who was a non-executive director of Stime at that time concerning a possible joint venture project with a mainland partner.

Both Mr. CHAN and Mr. NG gave evidence before this Tribunal, and more will be said about them in due course.

Mr. WONG met with at least Mr. NG at the Conrad Hotel in the evening of 28th July. Mr. CHAN may also have been present at that meeting.

The meeting lasted for about an hour and some details of the proposed joint venture were discussed.

Precisely what details were discussed at that meeting was very much in issue before this Tribunal.

Following that meeting, Mr. WONG and Mr. NG flew to Beijing on

the 30th July to further discuss the project with the proposed mainland party Hua Zheng Kang Communication and Technology Company Ltd. ("HZK") together with Mr. Bee HO, the Sales and Marketing Director of Stime. At that meeting, Mr. WONG and the others were given a presentation concerning the technical aspects of the project and were provided with other details as to its financing and implementation. They returned to Hong Kong on 31st July 1997.

On the 1st August, Mr. Wong was present in Stime's offices when the company secretary, Mr. Kenneth SIN, approached him and told him the SEHK had made enquiries as to a recent price increase in Stime securities.

Mr. WONG told Mr. SIN something as to what had transpired at the 30th July meeting in Beijing and Mr. SIN relayed information concerning that to the SEHK. Subsequently an announcement concerning Stime's negotiations with the mainland party on the 30th July was made in the Hong Kong press on Monday 4th August.

Before that announcement was published however on Sunday 3rd August, Mr. WONG had returned to Beijing and signed the Joint Venture Agreement with the mainland party. Another company, Target Wise Development Limited ("Target Wise"), signed as a third party. Mr. NG had a 24.5% interest in that company. That interest had been disclosed.

Mr. WONG returned to Stime's Hong Kong office on Monday 4th August and on Tuesday 5th August, a further announcement appeared in the Hong Kong press as to Stime's (by way of its 100% owned subsidiary) having entered into the joint venture project with the mainland party and the third party.

Given Stime's core business prior to the announcements of 4th and 5th August 1997, the joint venture may have represented a considerable diversification of Stime's operations in the eyes of potential investors in Stime's securities. That indeed was an issue before the Tribunal.

As a result of the perceived heavy trading in Stime stock and the rise in its stock prices occurring prior to the announcements of 4th and 5th August and indeed prior to the signing of the agreement on 3rd August 1997, the Securities and Futures Commission instigated an investigation into transactions in Stime stock pre-dating those announcements of the 4th and 5th of August 1997. That investigation revealed that a substantial part of the trading in Stime stock had apparently been conducted by or on behalf of a person or persons possibly connected with Stime.

Those transactions, in due course, by way of the Notice of the Financial Secretary dated 21st November 2001 pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance Cap. 395 ("the Ordinance"), became the subject matter of this inquiry. The original notice is at page (i) of this Report. It was eventually amended in terms of a further notice pursuant to section 16(2) of the Ordinance dated 11th April 2002 at page (ii) of the Report.

In approaching the matters the subject of the section 16(2) notice as amended, this Tribunal has been particularly concerned with inquiring into whether information concerning the events summarized, which events occurred in broad juxtaposition with or prior to increases in Stime's share and warrant prices, may have been utilized by or through persons connected with Stime so as to bring about insider dealing in those securities within the Tribunal's Terms of Reference as set out in the amended notice.

CHAPTER 2

PROCEDURE

In this chapter, we summarize the procedures adopted by the Tribunal during the course of its own establishment and its preparation for and conduct of the inquiry into the matters the subject of its terms of reference.

Constitution of the Tribunal

By the original notice dated 21st November 2001, the Financial Secretary Mr. Antony Leung required the Insider Dealing Tribunal to inquire into certain transactions in Stime shares during the period 29th July 1997 to 1st August 1997.

Following receipt of the original notice, the Chairman sought the appointment of two lay members to the Tribunal pursuant to section 15(2) of the Ordinance. In due course, the present Tribunal was constituted as follows:-

Chairman:	His Honour Judge McMahon Deputy Judge of the Court of First Instance
Member:	Mr. HUI Sik Wing, Joseph Certified Public Accountant and sole proprietor of Hui Sik Wing & Co.
Member:	Mr. PANG Hon Chung Director of Finance and General Manager of Lotus International Limited

Upon the establishment of the Tribunal, the members read and perused various materials forwarded by or on behalf of the Financial Secretary.

The Tribunal directed itself that those materials were not evidence in the inquiry and were, at that stage, merely to serve as

introductory material for the assistance of members' understanding as to the subject matter of the inquiry.

The material presented to the Tribunal in that regard consisted of summaries of the SFC investigation and copies of interviews and statements of various persons made during the course of that investigation and various accompanying documents.

Appointment of Counsel for the Tribunal

The Tribunal on the 25th February 2002 appointed Mr. Peter Duncan of the Hong Kong Bar and Mr. Wesley W.C. WONG of the Civil Division of the Department of Justice as Counsel assisting the Tribunal.

Issuance of Salmon Letters

Following the appointment of Counsel to the Tribunal, the Tribunal then pursuant to paragraph 17 of the Schedule to the Ordinance considered on the basis of the preliminary materials before it whether any person's conduct should be the subject of the inquiry and whether any person was in any way implicated or concerned in the subject matter of the inquiry.

Following that consideration, the Tribunal decided that Salmon[2] letters of two sorts (Type "A" and Type "B") should be sent to various individuals. Sample copies of Type "A" and Type "B" letters are found at Annexures B and C to this Report respectively.

The individuals, to whom it was decided the Type "A" Salmon letter should be sent to, were the four individuals named in the original and amended section 16(2) notices.

Those four individuals were:-

(a) Mr. WONG Wing Shing, Wilson ("Mr. WONG"),

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

(b) Mr. TSANG King Hung ("Mr. TSANG"),
(c) Mr. Mohammed ADIL ("Mr. ADIL"), and
(d) Mr. LAU Wan ("Mr. LAU Wan").

The Tribunal decided on the materials before it that those four individuals were persons potentially implicated in the matters to be the subject of the Tribunal's inquiry.

The individuals, to whom Type "B" Salmon letters were to be sent, were persons the Tribunal considered at risk of having their conduct and involvement in the transactions to be the subject of the inquiry adversely criticized, although at that stage, they were not considered to be persons potentially implicated in any insider dealing the subject of the inquiry. Those four concerned persons were:-

(a) Mr. LO Kwok Wah ("Mr. LO K.W."),
(b) Mr. NG Kam Cheuk, Raymond ("Mr. NG K.C."),
(c) Mr. LAM Wai Keung ("Mr. LAM W.K."), and
(d) Ms NG Yu Shui ("Ms NG Y.S.").

The Salmon letters served on the above eight persons specified that a preliminary hearing of the Tribunal would take place and specified the date and location of that sitting.

Service of Materials on the Four Implicated Persons

So far as Mr. WONG, Mr. TSANG and Mr. ADIL were concerned, all three were served with Type "A" Salmon letters on 8th or 9th April 2002.

Each of those persons was, at the same time or within a few days, also served with bundles of documents comprising the preliminary summaries of facts, statements, and records of interviews the Tribunal had already perused.

So far as Mr. LAU Wan was concerned, service in Hong Kong could not be effected upon him. He had become resident in Canada. His whereabouts there were originally unknown, but eventually his place

of residence was located and a Salmon "A" letter was served on his wife who accepted it on his behalf. That service was effected on the 2nd May 2002. Documents served on Mr. LAU Wan's wife at that time included the transcript of proceedings of the 1st preliminary hearing. Other documents served at that time made known that the preliminary materials were available to him for collection in Hong Kong should he wish to see them.

Nothing further has been heard of Mr. LAU Wan. He has not, in any way, responded to the Salmon letter served upon him. He has not requested any documents be provided to him.

Accordingly the inquiry proceeded in his absence.

Amendment of Terms of Reference contained in the original section 16(2) notice

Prior to the commencement of the inquiry, the Tribunal decided to request the Financial Secretary to reconsider the period the subject of the existing terms of reference.

As can be seen from the original section 16(2) notice, by paragraph (a) the Tribunal was to inquire into certain transactions conducted during the period 29th July 1997 to 1st August 1997.

From the preliminary material before it, the Tribunal was concerned that it may have eventuated that evidence called during the inquiry would demonstrate insider dealing in the subject securities may have extended beyond that period[3].

In due course, the further and amended notice under section 16(2) dated 11th April 2002 was issued requiring the Tribunal to inquire into the subject transactions over the period 29th July 1997 to 7th August 1997.

[3] The Tribunal asked, by letter, that the Financial Secretary be requested to consider whether the terms of reference should be extended to the 4th August 1997. After due consideration and advice from the Department of Justice, the Financial Secretary decided to extend the terms of reference to include the period 29th July 1997 to 7th August 1997.

A copy of that amended section 16(2) notice is set out at page (ii) of this Report.

Preliminary Hearing

A preliminary hearing was, in accordance with the notice to that effect contained within the Salmon letters to the implicated and concerned parties, held on the 22nd April 2002.

That preliminary hearing was adjourned, after certain brief "housekeeping" matters were dealt with, to allow all involved parties to be served with copies of the amended section 16(2) notice and an amended summary of facts or case synopsis, and for further inquiries to be made concerning Mr. LAU Wan.

On the 3rd May 2002, the preliminary hearing was continued. No communication has been received from Mr. LAU Wan.

Opening Statement

At the continuation of the preliminary hearing, the Tribunal, through the Chairman, delivered an opening statement which dealt with a number of matters.

Those matters in summary were:-

(a) To confirm the terms of reference (as amended) governing the inquiry.

(b) To announce the preliminary steps undertaken up to that date by the Tribunal in the course of preparing for the inquiry.

(c) To give a general understanding as to the procedures to be adopted by the Tribunal in the course of it conducting the inquiry itself. In that regard, it was emphasized that the procedures of the inquiry itself would be inquisitorial in nature, and that it was the Tribunal's function to direct the

inquiry. Evidence called for the purposes of the inquiry was called at the behest of the Tribunal.

(d) To set a date for the commencement of the inquiry itself.

Other matters of importance were also dealt with by the Tribunal during the course of the preliminary hearings. They were:-

Legal Representation for Implicated and Concerned Parties

At the preliminary hearings, applications were heard for legal representation by implicated parties.

At the first day of the preliminary hearing, i.e. on the 22nd April 2002, Mr. Bernard MAK of the Hong Kong Bar instructed by Messrs. Johnny K.K. LEUNG & Co. was appointed counsel for two of the implicated persons, namely Mr. WONG and Mr. TSANG.

On the continuation of the preliminary hearing on the 3rd May 2002, Mr. Andrew LAM of C.L. Chow & Lam was appointed to represent another implicated person, Mr. ADIL.

There was, as we have said earlier, no appearance by or on behalf of or application to represent Mr. LAU Wan before the Tribunal.

No applications for representation were made by or on behalf of any other concerned party.

The Role of Counsel for the Tribunal

During the preliminary hearings, it was emphasized that within the inquisitorial nature of the proceedings to be held the role of the counsel for the Tribunal was not that of prosecutors as in the adversarial process, but that their role was to present evidence objectively and fairly regardless of which way that evidence fell.

Further, the role of counsel to the Tribunal was also to assist the Tribunal when required with research and argument on matters of law.

Also, they were to deal with the logistical concerns of the Tribunal so far as the organising and obtaining of witnesses and documents and other evidence was concerned and organising the presenting of that evidence before the Tribunal.

It was explained that in performing that role, it had been on occasion necessary for the members of the Tribunal to meet with counsel for the Tribunal prior to the preliminary hearings.

As events transpired, however, no further meetings between the members of the Tribunal and counsel for the Tribunal took place during the inquiry itself.

The preliminary hearings concluded with the setting of a date for the commencement of the substantive inquiry on the 3rd July 2002.

The Substantive Inquiry

The inquiry was conducted in public over various days from 3rd July 2002 to 18th November 2002.

The Inquisitorial Process

As stated earlier, the proceedings of the Tribunal were inquisitorial in nature rather than adversarial.

That meant that rather than opposing parties deciding on the conduct of their own cases as to what witnesses and evidence to call, the Tribunal itself determined what course the inquiry was to take and therefore what witnesses would be called and what evidence would be presented.

It also meant that the questioning of witnesses was more flexible than in the case of adversarial proceedings in that on occasion the order of counsel's examination or cross-examination departed from the usual order adopted in adversarial proceedings.

Further the purpose of the Tribunal was not to build a case against a particular individual or individuals, but to hear evidence which would assist it in getting to the truth of the matters it was required to inquire into pursuant to the notice under section 16(2) of the Ordinance which stated the Tribunal's terms of reference.

Bearing that ultimate aim of the Tribunal in mind, however, we emphasise for the purpose of this Report that whilst the procedures adopted by the Tribunal were flexible, the Tribunal was always aware that a primary consideration was fairness to the persons, whether implicated persons or concerned persons, who were involved in the inquiry. At no time was any procedure adopted by the Tribunal which in the view of its members may have resulted in unfairness to any person in those categories.

At the commencement of the inquiry, counsel for the Tribunal made an opening statement. That statement had earlier been served in written form on the implicated parties.

Following the delivery of that statement, counsel for the implicated parties delivered opening statements on behalf of Mr. TSANG, Mr. WONG and Mr. ADIL.

Evidence was then called before the Tribunal. That evidence took the form of the oral evidence of witnesses, witness statements or affirmations, various documentary exhibits and schedules. As to the latter, the Tribunal was careful to remind itself that schedules and charts which had been prepared for this hearing could not be relied upon unless they were properly proven from their source materials. In other words, before relying upon them the Tribunal satisfied itself that they were accurate and based upon reliable evidence before the Tribunal. The evidence called before the Tribunal is summarized at Chapter 4 of this Report so far as its aspects we thought important are concerned.

At the end of the evidence we had submissions from the parties and following that herewith provide our initial findings as to paragraph (a) and (b) of our Terms of Reference.

We intend after further submissions and representations from the parties to then determine and deliver the appropriate orders and penalties pursuant to paragraph (c) of the Terms of Reference.

CHAPTER 3

THE LAW

In this chapter we do not deal with all matters of law which were raised during the calling of evidence or at other times during the Tribunal's sittings. Rather we set out the more general and fundamental principles and provisions of law which underpinned this inquiry.

Standard of Proof

The standard of proof adopted by the Tribunal so far as its findings of fact were concerned was that of proof to a high degree of probability.

That standard was applied because in the opinion of the Tribunal, it was commensurate with and proportionate to the gravity of the allegations of insider dealing which the Tribunal was to consider and decide.

That is a genuinely high standard of proof and is one which in previous inquiries has been commonly adopted.

While this Tribunal has arrived at its own determination of the appropriate standard of proof given the circumstances of the allegations central to this inquiry we adopt with approval the comments of the Tribunal contained within the Parkview Report:

> "The standard of proof should be simply stated and remain the same throughout. It is a high standard of proof – not the highest reserved for criminal allegations – but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the higher the standard should be. The standard at all times is high. "A high degree of probability" refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing

> which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy."

There have been no submissions before us to the effect that any other standard of proof be adopted and that standard has been applied uniformly by the Tribunal in arriving at its conclusions of fact pursuant to its terms of reference.

Inferences

In arriving at a determination as to whether or not an individual has conducted or been involved in insider dealing for the purposes of the Ordinance, and in dealing with the issues which arose during the inquiry, on many occasions it was necessary for the Tribunal to consider whether certain facts, established to the Tribunal's satisfaction on the evidence, should lead the Tribunal to draw inferences as to other facts.

That of course is not unusual in an inquiry of this sort. It is true to say that commercial transactions of an unlawful or prohibited nature are rarely evidenced directly in writing and that the truth of those transactions can often only be discerned indirectly, by looking at the surrounding circumstances and the actions of those involved in the light of those circumstances. That is particularly so where, as in the case of allegations of insider dealing, the state of mind of a person, so far as his knowledge and intentions are concerned, may be crucial to the resolution of issues.

During the course of this inquiry much of the evidence as to the implicated parties' knowledge of and participation in the share transactions the subject of our terms of reference and as to their state of knowledge of information and events relevant to our inquiry was in fact indirect or circumstantial in nature.

For that reason the Tribunal thinks it appropriate to set out the members' approach to the question of proof of a fact by indirect or circumstantial evidence.

The Tribunal directed itself that any inference to be drawn from a set of facts proven to the Tribunal's satisfaction must be the only reasonable inference which can be drawn from those established facts.

Considerations of Fact and Law

So far as every question of law which arose throughout the history of this Tribunal was concerned, the members were directed by and complied with directions given by the Chairman.

Insofar as reference is made in this report to the Tribunal directing itself on a matter of law that reference must be understood to be to directions given in the above terms.

So far as findings of fact were concerned, the Tribunal proceeded on the basis that the members should try to be unanimous in such findings, but that otherwise a finding of fact could be on the basis of the decision of a majority of the members. As matters transpired all findings of fact of the Tribunal were unanimous.

Findings of fact by the Tribunal were based on the evidence presented to it. Members were warned that their decisions in that regard must be based only on the evidence called before the Tribunal.

The Tribunal directed itself that it could not base any part of its findings, or take into account in any way, matters in the nature of guesswork, conjecture or speculation.

Further inasmuch as the two lay members of the Tribunal were both qualified and practicing members of the accountancy profession and had professional experience of the operation of the Hong Kong financial market, the Tribunal was alert to the danger of becoming its own witness.

In that regard as Lord Widgery C.J. said in Wetherall v. Harrison (1976) QB 773:-

> "it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to

> draw on that special knowledge in interpretation of the evidence which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt."

Accordingly the lay members of the Tribunal were directed that they could not provide "evidence" from their own knowledge, in the sense that they could not rely upon their own knowledge of a fact or matter in arriving at their findings, but were to use their fundamental professional experience and knowledge, as the occasion arose, only in assessing the evidence actually presented to the Tribunal and in deciding what weight to place upon it.

<u>The cases relevant to the implicated parties considered separately</u>

During the course of our deliberations it appeared to us that many of the issues before us, and indeed much of the evidence, was relevant to the case of more than one implicated party.

Accordingly the Tribunal directed itself as to the necessity of considering the case of each implicated party separately, and reminded itself that a finding of culpability so far as one party was concerned did not necessarily mean that another was also culpable.

<u>Lies</u>

One other matter of law the Tribunal directed itself upon in its assessment of the evidence was the effect of a witness's (including implicated persons) lies in evidence. The fact that a witness, in the Tribunal's view, lied may obviously have reduced that witness's credibility to a greater or lesser extent.

But so far as any implicated persons lies could be regarded as having, additionally, a probative effect as evidence is concerned, the

Tribunal directed itself in terms of the observations made in this regard in the Public International Investments Limited Report which we set out hereunder:-

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

Character

In considering the evidence before us we reminded ourselves that the implicated parties are persons of previous good character. That had two effects. It enhanced their credibility as witnesses and rendered them of lesser propensity to commit unlawful acts.

The Ordinance

We set out now those provisions contained within the Ordinance which are of particular relevance to this inquiry.

(a) Insider Dealing

The allegations which were considered by the Tribunal so far as the implicated parties were concerned arose under the following provisions of section 9(1) of the Ordinance:-

> "(1) Insider dealing in relation to a listed corporation takes place –
>
> (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;
>
> (b) …..
>
> (c) when relevant information in relation to that corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and the first-mentioned person knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or counselling or procuring another to deal, in the listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives);
>
> (d) …..
>
> (e) when a person who has information which he knows is relevant information in relation to that corporation which he received (directly or indirectly) from a person –
>
> (i) whom he knows is connected with that corporation; and
>
> (ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,
>
> deals in the listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives;
>
> (f) …."

It can be seen from the above provisions that central to each of them is the requirement that relevant information be known to or transferred by a person "connected" with the company.

(b) Connected Persons

"Connected person" is defined in section 4(1)(a) and (b) of the Ordinance as follows:

> "(1) A person is connected with a corporation for the purposes of section 9 if, being an individual –
>
> (a) he is a director or employee of that corporation or a related corporation; or
>
> (b) he is a substantial shareholder in the corporation or a related corporation; or
>
> (c) ….
>
> (d) ….
>
> (e) …."

In the present inquiry, it has been accepted that at all relevant times both Mr. WONG and Mr. TSANG were Directors of Stime and were substantial shareholders in a related company, Farmcote, and accordingly were connected persons for the purposes of the Ordinance. Mr. ADIL was not a "connected person". Nor was Mr. LAU Wan.

(c) Relevant Information

It can also be seen from the provisions of section 9(1) above that before there can be any insider dealing in the stocks of a company there must be in existence relevant information.

A fundamental issue, so far as this inquiry was concerned, was whether at various times the information possessed by an implicated person or passed on to or by him to another implicated person satisfied the statutory requirements so as to be relevant information. We say at various times because one of the distinctive features of this inquiry has been that the detail and particularization of the information available to

the implicated parties developed during the relevant period of our terms of reference.

Section 8 of the Ordinance defines “relevant information” as follows:-

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

That definition requires that three fundamental matters be established before information can be “relevant” for the purposes of section 8.

Those three matters are:-

(1) The information must be specific so far as the corporation’s affairs are concerned.

(2) The information must not be generally known to the market existing in respect of the corporation’s securities.

(3) The information must be of a sort which would likely materially affect the corporation’s stock price if it was known to the market.

It can be seen that the information, to be relevant information, must be specific.

The question as to whether information possessed by or transferred by persons involved in this inquiry at particular times was specific information was a fundamental issue before the Tribunal and will be more fully dealt with in Chapter 7.

CHAPTER 4

A SUMMARY OF THE EVIDENCE

General evidence

The general evidence given before the Tribunal was primarily by way of the oral evidence of witnesses (including concerned and implicated parties) together with their statements (comprising both statements or affirmations made for the purpose of these proceedings as well as recorded interviews made to SFC investigators) together with the documents referred to by those witnesses directly or through their statements. Admitted facts were also provided to the Tribunal.

The witnesses

The witnesses who gave evidence either orally or by statement or both were:-

TW 1 Mr. PANG Cheung Hing, Alex ("Mr. Alex PANG")
TW 2 Mr. NG Chi Yeung, Simon ("Mr. Simon NG")
TW 3 Mr. CHAN Ho Yin, Graham ("Mr. Graham CHAN")
TW 4 Mr. HO Chung Pui ("Mr. Bee HO")
TW 5 Ms LAU Wai Chun, Belinda
TW 6 Mr. LO Kwok Wah
TW 7 Mr. LAM Wai Keung
TW 8 Mr. NG Kam Cheuk, Raymond
TW 9 Ms NG Yu Shui
TW 10 Mr. CHAN Wai Ming
TW 11 Ms KWAN Sau Mui, Rachel
TW 12 Mr. CHAN Kin Sun
TW 13 Mr. OR Kui Hung
TW 14 Mr. CHUNG Ngai
TW 15 Ms LI Siu Han
TW 16 Ms CHU Yuet Wah
TW 17 Mr. CHOW Wai Keung
TW 18 Mr. HUNG Hon Man, George

TW 19 Mr. WONG Sheung Kwong
TW 20 Mr. YAU Tak Hing, Patrick ("Mr. Patrick YAU")
TW 21 Mr. CHAN Tak Ching
TW 22 Mr. TSUI Ho, Horace ("Mr. Horace TSUI")
TW 23 Mr. SIN Ka Man, Kenneth ("Mr. Kenneth SIN")
TW 24 Mr. LEE Wai Ming, Laurence
TW 25 Mr. TSANG King Hung
TW 26 Mr. WONG Wing Shing, Wilson
TW 27 Mr. LI Siu Chau, Dominic ("Mr. Dominic LI")
TW 28 Mr. LEUNG Wing Kin, Victor ("Mr. Victor LEUNG")
TW 29 Mr. Mohammed ADIL
TW 30 Mr. Eric CHENG Kai Sum ("Mr. Eric CHENG")
TW 31 Mr. LAU Wan
TW 32 Mr. LAU Kwok Fai, Danny

A summary of the evidence

(A) The Admitted Facts

All the Admitted Facts in this Inquiry were reduced to writing and may be found at Annexure D. There were only three sets signed by all implicated parties present before the Tribunal.

In summary, by Admitted Facts dated 3rd July 2002 various matters were agreed so far as the implicated persons, Mr. TSANG, Mr. WONG and Mr. ADIL were concerned. Those matters included various records of relevant stockbrokers which were agreed to be accurate and the Prospectus and Annual Reports of Stime were produced for the years 1996 and 1997.

By Admitted Facts dated 17th July 2002 various witnesses bank account records including some transaction details of Messrs. TSANG, WONG and ADIL and Mr. ADIL's company Atari Enterprise ("Atari") were agreed to be accurate. An extract from the bank statement of Stime Watch Manufacturing Company Limited was agreed as well as ADIL's China Point stockbrokers trading summary.

By Admitted Facts dated 12th November 2002, it was agreed that certain cheques drawn on Mr. ADIL's joint personal account at the Hongkong & Shanghai Banking Corporation Limited ("HSBC") were written by Mr. Dominic LI.

Finally, it should be mentioned while Mr. TSANG signed and produced a document headed "Statement of Admitted Facts" that document was signed by only Mr. TSANG himself and as will be seen we treated it as equivalent to a witness statement provided by him and admitted into evidence.

(B) A summary of the undisputed evidence

It was accepted by all parties involved in these proceedings that Messrs. WONG and TSANG, at the material time, were persons connected with Stime. They were respectively Chairman and Deputy Chairman. At all times, through their shareholding in Farmcote, they were the two most substantial interests in Stime. Mr. WONG effectively controlled Stime.

It was also accepted that Mr. ADIL, through his company, Atari, of which he was the sole proprietor was the largest or one of the largest clients of Stime and that he was a personal and close friend of Mr. WONG and had been from a time before Stime's public listing in 1996. He was, if not a friend of Mr. TSANG, a relatively close acquaintance.

Mr. LAU Wan was a broker known to all three of Messrs. WONG, TSANG, and ADIL.

Since the public listing of Stime in July 1996, Mr. ADIL had traded intermittently and substantially in Stime securities. There had been a significant break in his trading from about November 1996 to 14th July 1997 but his trading had resumed from that time with continuous purchases until he sold or otherwise disposed of most of his Stime shares from 5th August to 24th December 1997.

Mr. TSANG had traded in Stime securities through a nominee or nominees since July 1996.

Almost all the stock still held by nominees on his behalf by December 1997 and January 1998 were transferred on his instructions to Kingston Securities Limited ("Kingston") where in large part they apparently presently remain. Some smaller part of that stock remaining in the hands of TSANG's nominees was transferred also to Get Nice Investment Limited.

Mr. WONG over the course of Messrs. TSANG and ADIL's share trading had never purchased Stime securities in his own name or another's name. But, on occasion during the relevant period and afterwards, funds from Mr. WONG's personal bank accounts had been used to pay money directly or indirectly to trading accounts of Mr. TSANG (held in the name of nominees) and Mr. ADIL which were used to trade in Stime stock. Further, on occasion, during the operation of those accounts after the relevant period, money originating from those trading accounts was paid into bank accounts of Mr. WONG.

Mr. LAU Wan had helped and advised Mr. TSANG in the setting up of some if not all of the nominee accounts Mr. TSANG used to trade in Stime shares, and had also advised Mr. ADIL in the setting up of his trading in Stime shares.

Mr. LAU Wan was also instrumental in the transfer of the remaining shares held by Mr. TSANG's nominees to Kingston (and Get Nice) in January 1998.

During the 8 trading days of the relevant period, trading in Stime stock in accounts controlled by Mr. TSANG and Mr. ADIL's account increased significantly. Those accounts were those of LAM Wai Keung, NG Kam Cheuk, LO Kwok Wah, NG Yu Shui and Mr. ADIL's own account.

That increase can be seen in the following excerpt from a history of those accounts:

TRADING BY LAM, NG K.C, LO, NG Y.S. & ADIL					TOTAL MARKET TRADING	
Date	**Total Shares Bought**	**Total Shares Sold**	**Total Warrants Bought**	**Total Warrants Sold**	**Share Turnover**	**Warrant Turnover**
29.7.97	2,938,000	298,000	-	-	5,799,000	600,000
30.7.97	1,512,000	60,000	-	-	5,814,000	770,000
31.7.97	3,900,000	20,000	-	-	6,233,000	160,000
1.8.97	4,622,000	180,000	470,000	-	13,882,000	4,420,000
4.8.97	2,490,000	140,000	3,290,000	-	23,739,000	11,428,000
5.8.97	232,000	1,418,000	740,000	-	16,806,000	5,906,800
6.8.97	254,000	924,000	-	-	10,464,000	1,810,000
7.8.97	200,000	160,000	-	-	12,316,000	1,570,000
TOTAL	16,148,000	3,200,000	4,500,000	-	95,053,000	26,664,800

In conjunction with the enhanced trading in Stime stock the following events occurred.

On 28th July 1997 after approaches to him by either or both of Mr. Simon NG and Mr. Graham CHAN, Mr. WONG met Mr. NG at the Conrad Hotel at about 5 p.m. Mr. CHAN may have been present.

The purpose of the meeting was to allow Mr. NG to present to Mr. WONG a proposal that Stime would join a joint venture with a PRC company in establishing a pager network in Beijing.

What details of the joint venture were provided by Mr. NG to Mr. WONG at that time, as we have already stated, was a fundamental issue in this inquiry, and will be dealt with later in this Report. After the meeting or at its conclusion, Mr. WONG agreed to go to Beijing to further discuss the joint venture with the PRC party.

He left for Beijing with Mr. Simon NG and another director of Stime, Mr. Bee HO, on the 30th July. They remained there for two days during which time Mr. WONG was provided with substantial information concerning the project and returned to Hong Kong in the afternoon or evening of the 31st July.

It was accepted, or at least not in issue during the course of this inquiry, that the information provided to Mr. WONG during the Beijing discussions of the 30th and 31st July was detailed and generally complete information relating to the structure, financing and technical details of the joint venture.

Following Mr. WONG's return to Hong Kong, he went to Stime's offices on 1st August and informed various other directors as to the project.

Sometime on or before the 1st or 2nd August, Mr. WONG agreed with Mr. NG to return to Beijing on the 3rd August.

They did so and on that day, Mr. WONG, on behalf of a wholly-owned subsidiary of Stime, Eternal Summit, which had been purchased for this possible purpose some days before, signed the joint venture agreement.

Mr. WONG returned to Hong Kong in the evening of the 3rd August and attended Stime's offices on the 4th August.

On that day, the 4th August, an interim public announcement was made which had been previously agreed on 2nd August as the result of a SEHK inquiry as to increases in Stime's stock prices. That announcement of the 4th August therefore expressed the position as at no later than the 2nd August and disclosed only that negotiations were underway between Stime and a PRC company in respect of a joint venture project. It did not disclose that in fact the joint venture agreement had been signed on the preceding day, the 3rd August.

Further, on the 4th August the agreement Mr. WONG had entered into was ratified by the Stime board and a further announcement was agreed, which was published in the press on the following day, the 5th August, then disclosing the terms of the joint venture and Stime's participation through Eternal Summit. From the 28th July to the 5th August, Stime's shares had increased in value by some 45.3% and turnover had risen dramatically as summarized in the previous excerpt of Stime stock trading. From the 28th July to the 5th August Stime's warrants had increased in value by some 102% and turnover had also risen dramatically as shown in the excerpt.

Following on from the public disclosure of 5th August, Mr. ADIL, as we have said, commenced the gradual and eventually

effectively complete disposal of the Stime shares held by him, but Mr. TSANG, through his nominees, continued to trade apparently incurring substantial losses over time until in January 1998 the remaining Stime shares held by his nominees for him were transferred to Kingston and Get Nice and his trading ceased for all practical purposes so far as those securities were concerned.

(C) A summary of the witnesses' evidence

The following is a summary of the evidence given by particular witnesses before the Tribunal. It is not, nor could it be, a complete recital of the whole of the given evidence. Its purpose is to summarize the fundamental aspects of the evidence so as to show the framework within which the issues before the Tribunal fell to be determined.

When those issues are dealt with in due course in subsequent chapters of this Report, other more detailed and perhaps more important aspects of the evidence not referred to in this summary will be addressed.

For the purposes of this summary, no distinction will be drawn between what a particular witness said in any prior interview or statement which became part of the evidence, and what that witness said in his evidence on oath or affirmation before the Tribunal. The purpose of this summary is to simply lay out in broad terms the evidence presented to the Tribunal. Distinctions between the contents of a witness's prior statements and interviews and what was said by that witness in evidence, while not necessarily referred to for the purposes of this summary were obviously relevant so far as the Tribunal was concerned on the occasions when it came to address the question of what weight to place upon different aspects of a witness's evidence and in assessing the credibility of a witness.

I. The evidence concerning the joint venture

An appropriate starting point for a summary of the evidence called before the Tribunal is that of Mr. Simon NG (TW2).

He was, at the relevant time, a non-executive director of Stime and by profession a solicitor.

Prior to the 28th July 1997, he had been instrumental in negotiations directed at setting up a telecommunications joint venture between a Thai company and the Beijing company HZK. That Thai company had shortly beforehand withdrawn from the project and Mr. NG commenced to look for a replacement company.

He approached Mr. Graham CHAN (TW3), an accountant who was the Stime auditor at that time and who was an associate of Mr. NG, about this matter and Mr. CHAN suggested that Stime be approached.

Accordingly, subsequently Mr. WONG was contacted by Mr. NG by telephone and a meeting was arranged to discuss the joint venture proposal.

According to Mr. NG, he, Mr. CHAN and Mr. WONG met at the Conrad Hotel on Monday the 28th July for the purpose of him introducing Mr. WONG to the nature of the joint venture project. Mr. NG described that meeting as being a preliminary discussion only.

At various times in his evidence, he described the contents of the discussion between himself and Mr. WONG and the nature of the information he provided to Mr. WONG about the joint venture. He said in general terms (and this matter will be specifically dealt with at a later stage of this Report) that he gave Mr. WONG a brief explanation of the nature of the proposed business of the joint venture and the technology involved and of the structure of the joint venture itself. This meeting lasted about one hour and according to Mr. NG, Mr. WONG was interested in the joint venture proposal and wished to know more.

Accordingly an arrangement was made for himself and Mr. WONG to fly to Beijing on the 30th July for the purpose of a more detailed briefing by the Chinese party to the joint venture, i.e. HZK.

According to Mr. NG following that briefing on the 30th July, on either that day or the 31st July while still in Beijing, Mr. WONG had

indicated to him that he was happy in principle to participate in the joint venture subject to the completion of satisfactory documentation.

Mr. NG's recollection was that while in Beijing on the 30th July or the 31st July, the date of signing the formal joint venture documentation was fixed for the 3rd August. He and Mr. WONG then returned to Hong Kong.

Over the next few days, i.e. from the 31st July to 2nd August, the various documentary aspects of the project were completed. Those documents were prepared by HZK in the main. Mr. NG thought he may have advised Mr. WONG on the contents of some of them, but not in the formal sense of a solicitor/client relationship.

On Sunday the 3rd August, he and Mr. WONG returned to Beijing and the joint venture agreement was signed. Stime's involvement was by way of a subsidiary company called Eternal Summit. Mr. NG's own company Target Wise in which he held an interest with another person Mr. CHUNG Ngai also entered into the joint venture as a minority partner (19%), Eternal Summit was the majority partner (51%) and HZK had a 30% interest.

Mr. NG said that at some stage, he thought perhaps while flying to Beijing on 30th July, he had advised Mr. WONG that any Stime public announcement at that stage should specify that Stime's interest in the joint venture was merely at a "preliminary negotiations" stage.

He said he subsequently saw the 4th August public announcement made by Stime after the joint venture agreement had been signed on the 3rd August and was surprised by its factual inaccuracy, in that it did not refer to the signing of the agreement and thought this was brought about by a lack of communication between Mr. WONG and Stime's company secretary Mr. Kenneth SIN (TW 23).

Mr. Graham CHAN (TW 3), the Stime auditor, agreed with Mr. NG as to how Mr. WONG had come to be approached in respect of the joint venture. He further said he had telephoned Mr. WONG the same

day he had spoken to Mr. NG and had told him broadly that Mr. NG would approach him concerning a business proposal.

Mr. CHAN's evidence differed significantly from Mr. NG's however in one important respect. Mr. CHAN had no recollection of being present at the 28th July meeting with Mr. WONG and Mr. NG at the Conrad Hotel. Accordingly, for that reason, he was unable to give any evidence concerning what information was provided to Mr. WONG about the joint venture at that meeting.

Mr. HO Chung Pui ("Mr. Bee HO")(TW 4) was the sales and marketing director of Stime at the relevant time.

He said at some time at the end of July 1997, Mr. WONG had told him he was to accompany Mr. WONG to Beijing to negotiate with a mainland company about a two-way information system. At that time Mr. WONG had not given him any further details other than that.

He and Mr. WONG, together with Mr. NG, flew to Beijing and were given a briefing about the proposed project. That briefing consisted of a slide presentation and the perusal of documents such as a technical report on the feasibility of the project.

He was primarily concerned with the technical side of the project and was in Beijing for that purpose as he had tertiary qualifications in Computer Science and Maths. No one told him of any of the financial aspects of the proposed project.

Following the meeting and briefing, he said Mr. WONG had remained non-committal about the project and they had left Beijing that day or the next without, to his understanding, there being any form of agreement by Mr. WONG to the project, though he could not say what had passed between Mr. WONG and Mr. NG.

He had no further involvement in the matter.

That was the evidence from witnesses, other than the implicated parties Messrs. WONG and TSANG, which related to the negotiations

and events leading up to the signing of the joint venture agreement on the 3rd August.

II. The evidence relating to TSANG's nominees trading in Stime stock over the material times (A history of their trading is at Annexure H)

During the course of those events and partly before, four individuals at Mr. TSANG's request had opened stock trading accounts with brokers in Hong Kong so as to enable Mr. TSANG to trade in Stime's stock.

These persons acting as nominees of Mr. TSANG traded only in Stime's shares and warrants on his behalf and did so before, during and after the relevant period in large amounts.

In brief, their evidence was as follows:-

Mr. LO Kwok Wah (TW 6), an accountant, said he had been an acquaintance of Mr. TSANG for a number of years.

On the 29th July, or perhaps a day or so earlier, Mr. TSANG had contacted him and asked him to open a stock trading account in his own name with Brighton so as to allow Mr. TSANG to trade.

He had done so and on a regular basis Mr. TSANG would contact him and give him buying and selling instructions in relation to Stime's shares.

He carried out those instructions. Additionally he had provided Mr. TSANG with a number of personal cheques signed in blank. He said occasionally those cheques would be drawn against his account at Po Sang Bank and on those occasions the amount of the cheque would be met by funds deposited in that account by Mr. TSANG. Those cheques were used to pay calls on his trading account.

Mr. LO was emphatic that he did not receive any reward from Mr. TSANG for performing those services for him. He said he did so in the hope of Mr. TSANG giving him some business in due course.

Mr. LO said he only operated the Brighton account on behalf of Mr. TSANG. No one else gave him any instructions in its operation.

Subsequently, the operation of the account came to an end on the 22nd January 1998 when Mr. TSANG instructed him to transfer all the remaining shares to Kingston and he did so.

LAM Wai Keung (TW 7) met Mr. TSANG in 1983. They had remained friends and in July 1996, Mr. TSANG asked him to open a stock trading account in his own name and to act as Mr. TSANG's nominee in trading in Stime shares. He was told by Mr. TSANG to contact Mr. LAU Wan at Yardley for the purpose of opening the account and he did so. The account was opened with Mr. LAU Wan's assistance and subsequently Mr. TSANG would give him instructions as to the buying and selling of Stime stock.

Additionally he bought and sold Stime stock in his own pre-existing trading account at Intercontinental Securities. Mr. TSANG also gave him instructions as to trading in Stime stock in that account.

Margin calls required by the accounts relating to the Stime stock trades were paid by him and Mr. TSANG would deposit funds in his bank account to let him do so.

This state of affairs continued until about January 1998 when he was instructed by Mr. TSANG to transfer the remaining Stime stock he held on behalf of Mr. TSANG to Kingston.

Mr. LAM also denied receiving any benefit from Mr. TSANG for serving as a nominee of Mr. TSANG in Stime stock trading.

Mr. NG Kam Cheuk, Raymond (TW 8) was a friend of Mr. TSANG.

Mr. TSANG, a day or so prior to 30th July 1997, contacted him and asked him to open stock trading accounts at Yardley and CA Pacific so as to enable Mr. TSANG to trade on those accounts.

He was told by Mr. TSANG to contact Mr. LAU Wan at Yardley to open an account there. The Yardley account was opened on the 30th July. After the accounts were opened, Mr. TSANG would give him instructions as to trading in Stime shares. He would place his orders through Mr. LAU Wan so far as the Yardley account was concerned.

Settlement on the two accounts was made by way of him providing Mr. TSANG with his own personal blank signed cheques.

Mr. TSANG would then make settlement with those cheques. Deposits would then be made into his cheque account.

He received no reward for those services to Mr. TSANG.

In early 1998, the remaining Stime shares on the two accounts were transferred to Kingston on Mr. TSANG's instructions.

Ms NG Yu Shui (TW 9) was the sister-in-law of Mr. TSANG. In late 1996, Mr. TSANG asked her to open stock trading accounts in her name, but for his use, at Wah Sang and Cheung's. The Wah Sang account was opened on 2nd December 1996 and the Cheung's account was opened on 3rd December 1996.

Mr. TSANG told her the reason for this was that as he was a director of a listed company it was inconvenient for him to trade in the company's shares in his own name.

Subsequently she traded in Stime stock on those accounts in accordance with Mr. TSANG's instructions.

Mr. TSANG provided funds to her bank account for the purpose of her making settlements in respect of her trading by way of cheques drawn on that account upon the instructions of Mr. TSANG.

Eventually in about December 1997 and January 1998, she, on Mr. TSANG's instructions, opened stock trading accounts at Kingston and Get Nice and the remaining Stime shares she had traded for Mr.

TSANG were transferred to those accounts.

She admitted in evidence that she had lied to the SFC investigators when she had first been interviewed by them. That was because before the first interview she had spoken to Mr. TSANG and had provided him with her trading statements, including an SFC letter to her informing her the SFC inquiry was confidential and subject to secrecy provisions, and Mr. TSANG had then directed her as to what she was to say to the SFC investigators.

However, following that first interview, Mr. TSANG had spoken to her again and told her the SFC had found out about the matter. Accordingly in her second interview, she told the truth.

She said that she had only acted on Mr. TSANG's instructions in the conduct of the share trading and that she had not received any benefit for doing so.

III. <u>Evidence of the dealers and securities company executives who set up and helped operate TSANG's nominees trading accounts being TW 10-TW 13, TW 15-16 and TW 18-20</u>

Namely: Mr. CHAN Wai Ming (TW10)
an executive dealer with Brighton

Ms KWAN Sau Mui, Rachel (TW11)
a dealer's representative with Brighton

Mr. CHAN Kin Sun (TW 12)
an executive dealer with Yardley

Mr. OR Kui Hung (TW 13)
an executive dealer with Wah Sang

Ms LI Siu Han (TW 15)
a dealer with Cheung's

Ms CHU Yuet Wah (TW 16)

a dealer with Kingston

Mr. HUNG Hon Man, George (TW 18)
the Chairman of Get Nice

Mr. WONG Sheung Kwong (TW 19)
the general manager of Get Nice

Mr. YAU Tak Hing, Patrick (TW 20)
an executive of Kingston.

All were dealers or executives working for the brokerage firms which were involved with the trading of Stime shares by Mr. TSANG's nominees (i.e. TW 6-9) and Kingston and Get Nice, the two brokerages to which the remaining shares of Stime in the hands of the nominees were transferred in about December 1997 and January 1998.

Generally speaking, they gave evidence of the mechanical operation of the accounts and procedures adopted in the opening of the accounts of the nominees of TSANG.

Their evidence can be dealt with as a whole at this stage.

It should be noted this portion of the summary of evidence does not refer to the evidence of the implicated person Mr. LAU Wan. He was a broker and executive at China Point during the relevant period which was the brokerage firm where Mr. ADIL operated his trading account. His evidence, comprising his sole record of interview, will be dealt with in the summary of the implicated persons' evidence at the end of this chapter.

The evidence of the above witnesses can be summarized as follows:

The accounts of NG Yu Shui at Wah Sang and Cheung's were cash accounts.

The accounts of LO Kwok Wah at Brighton and NG Kam

Cheuk and LAM Wai Keung at Yardley were margin accounts. That meant that the trading client was lent a proportion of the purchase price of shares which he bought on each transaction by a sister company of the securities firm which was a finance company.

The proportion or percentage of the purchase price lent was subject to continuing negotiation between the securities firm and the client.

Whatever that percentage was, however, if the price of the shares dropped so that the percentage limit or margin was exceeded, then the client would be called upon to pay off part of the outstanding amount to restore the margin to its approved limit.

At Yardley securities, according to Mr. CHAN Kin Sun (TW 12), Mr. TSANG's nominees, Mr. NG Kam Cheuk, Raymond and Mr. LAM Wai Keung, enjoyed a margin of 50% (the usual margin percentage was 30-40%) on a total loan basis of $30-$40 million. That, according to Mr. CHAN, was a surprisingly large facility for two persons of average income, and was in that amount and on those terms because Messrs. NG and LAM were introduced to Yardley by Mr. LAU Wan.

Ms CHU Yuet Wah (TW 16) and Mr. YAU Tak Hing, Patrick (TW 20) were dealers and executives with Kingston. Mr. HUNG Hon Man, George (TW 18) and Mr. WONG Sheung Kwong (TW 19) were dealers and executives of Get Nice. The primary role of their companies in these events was to accept the accounts of the four TSANG nominees when those accounts were transferred to Kingston and Get Nice at the end of December 1997 and early January 1998. By that time, the accounts had traded at a considerable loss. Subsequently an arrangement was arrived at whereby Kingston executives obtained an interest in those stocks lodged with Kingston, and in a new issue of Stime shares, and the accounts of the nominees were effectively closed. Executives associated with Kingston including CHU Yuet Wah effectively gained a significant interest in Stime. What this meant was that there were, unlike Mr. ADIL's account at China Point, effectively no profits or even proceeds from Mr. TSANG's nominees accounts to consider in terms of to whom those proceeds may have been distributed to or through.

IV. The public announcements published by Stime as to the joint venture

We will now deal with the evidence relating to the issuing of the two public announcements of Stime on the 4th August and 5th August 1997 as to its negotiating and eventually joining the joint venture with HZK.

Mr. Horace TSUI (TW 22) was at the relevant time an executive at the SEHK, Listing Division.

As a result of Stime share's price increasing substantially by Friday 1st August 1997, he contacted Mr. Kenneth SIN, the Stime company secretary and made enquiries of him. What Mr. SIN told him was to the effect that Stime was in preliminary negotiations concerning the buying of an investment property. That information, as given by Mr. SIN, was entered on an enquiry sheet by Mr. TSUI. Mr. TSUI told Mr. SIN that a public announcement was required. Subsequently drafts of the public announcement in somewhat different terms proposed to be issued by Stime were sent to Mr. TSUI who, after suggesting some amendments, eventually approved on the 1st August the form of announcement which was published on the 4th August.

On Monday 4th August after speaking again to Mr. SIN in the morning following further price rises in the Stime stock price Mr. TSUI was informed of the signing of the joint venture agreement on the previous day, the 3rd August, and advised Mr. SIN that a further announcement was required to be made. That announcement was approved subsequently by Mr. TSUI on behalf of the SEHK and published on the following day, the 5th August.

Mr. Kenneth SIN (TW 23), the Stime company secretary and financial controller at the material times gave evidence in the same substantial terms as Mr. TSUI. He said also that the information he gave to Mr. TSUI had been obtained by him from Mr. Wilson WONG.

When he first spoke to Mr. TSUI on the 1st August he did not know that Mr. WONG had been to Beijing on the 30th and 31st July and was to return to Beijing on the 3rd August.

He generally agreed he provided Mr. TSUI with the information Mr. TSUI had entered on the SEHK enquiry sheet except he disagreed that he had told Mr. TSUI on 1st August that, for the purpose of the 4th August announcement, Stime was negotiating to "acquire investment property".

V. The evidence of Dominic LI

We now summarize the evidence of Mr. Dominic LI (TW 27). His evidence was important to our deliberations and will be dealt with again in due course.

Mr. LI was a Director of Stime at the material times. He performed accounting duties at Stime although he had no qualifications in that regard. He had a staff under him of 7-8 people. He said before the 3rd August he had become aware of the proposed joint venture on the mainland and had discussed finance for it with Mr. WONG, though he did not know that Mr. WONG intended to return to Beijing on the 3rd August and would sign the joint venture agreement.

He gave evidence also about a series of cheques which were drawn on Messrs. WONG & TSANG's and ADIL's accounts (i.e. ADIL's personal joint account held with his father and Atari's business account) and agreed that rather than those cheques being filled in by the drawer they had in fact been completed by him, Dominic LI. He said generally that somewhat surprising situation had arisen on occasion because Messrs. WONG, TSANG and ADIL would provide him with signed blank cheques and give him instructions as to their completion so far as payee and amount were concerned.

The cheques that he filled in, according to his evidence, were those marked with an asterisk in the schedule at Annexure E.

He particularly explained the completion of Atari's cheques by him, and of Mr. ADIL's personal cheques on the instructions of Mr. ADIL as arising from the fact that for a substantial period of time he had worked in Atari's premises at Tsim Sha Tsui (Stime's offices were at Tsuen Wan)

with Mr. ADIL as a favour to Mr. ADIL who was a good customer of Stime in an attempt to help Mr. ADIL with his books of account.

During this period of time he had on occasion completed Mr. ADIL's personal cheques for him as well as Atari's cheques, also as a favour, in accordance with Mr. ADIL's instructions.

On one occasion, the 19th August, whilst working in Atari's office, Mr. ADIL had given him $600,000 cash and asked him to bank it for him.

He took it with him when he returned to Stime's offices in Tsuen Wan intending to bank it later.

When he arrived at those offices, Mr. Wilson WONG had given him instructions as to the completion of a personal cheque of Mr. WONG's for $351,000 and told him to cash it and pay $350,000 the money into Atari's account.

That meant after obtaining the $350,000 cash from the Wilson WONG cheque he then combined that sum with the $600,000 Mr. ADIL had earlier given him and deposited $950,000 into Atari's bank account.

He said, so far as he knew, it was simple coincidence that both Messrs. WONG and ADIL had given him these monies on the same day for banking into Atari's account. He did not know that the combined sum would then be used to pay into a trading account at CA Pacific the sum of $1 million by way of a cheque he completed. It should be noted that the trading records of the account at CA Pacific were not available before the Tribunal as a result of the circumstances of that company having ceased business before the commencement of the present investigation and its records not being obtainable. That evidence was given by TW 24, LEE Wai Ming, Laurence of the SFC.

We turn now to the evidence of the implicated persons.

VI. The evidence of the implicated persons

Three of the four implicated persons gave oral evidence. Obviously Mr. LAU Wan did not, although his recorded interview with the investigating SFC officers was placed in evidence. Mr. LAU Wan remained absent and without representation for the whole of the proceedings.

(1) The evidence of Mr. TSANG King Hung

Mr. TSANG King Hung became TW 25. His evidence came before the Tribunal by way of his recorded interviews with SFC officers, a witness statement produced before the Tribunal and his oral evidence. Additionally, and prior to his giving evidence, Mr. TSANG made what were described as factual admissions. Those admissions were reduced to writing and appear at Annexure K. We have noted previously in this Report that those admissions were not adopted by any other party and we regard that document as equivalent to a witness statement of Mr. TSANG.

By way of those admissions, Mr. TSANG purports to have admitted insider dealing in Stime shares from 29th July 1997 onwards over the period of the terms of reference.

We say "purports" because Mr. TSANG can only admit matters of fact. It is for this Tribunal to determine whether those facts admitted amount, in law, to insider dealing on the basis of relevant information pursuant to section 8 and section 9 of the Ordinance.

We go on now to summarize his evidence.

His evidence, taken as a whole, was to the effect that he had worked with Mr. WONG for many years. When Mr. WONG had started Stime as a business Mr. TSANG had become a 30% shareholder, with Mr. WONG holding the balance of the company's shares. Mr. TSANG was a director of the company.

He and Mr. WONG worked hard, Stime was successful and in July 1996 it had been listed on the SEHK.

He said at about that time he had met a broker Mr. LAU Wan

and had told him of his interest in purchasing more Stime shares. Mr. LAU Wan had suggested that he should use nominees to do so.

Accordingly he approached Mr. LAM Wai Keung (TW 7) in July 1996 and then his sister-in-law, Ms NG Yu Shui (TW 9) and arranged to use accounts in their names for his trading in Stime shares.

In mid-1997, Stime shares had dropped in price and he intended to buy more of them. Mr. LAU Wan suggested he use more nominees.

He approached Mr. LO Kwok Wah (TW 6) and Mr. NG Kam Cheuk, Raymond (TW 8) and had them agree to open trading accounts for his use.

This occurred at the same time as Mr. Wilson WONG first informing him of the 28th July meeting between Mr. WONG and Mr. Simon NG (TW 2) concerning the proposed joint venture.

According to Mr. TSANG, Mr. WONG told him of the Conrad Hotel meeting the day after it took place, i.e. on the 29th July. Mr. TSANG said when Mr. WONG spoke to him on the 29th July, Mr. WONG told him that he, Mr. WONG would go to Beijing about a potential pager project involving a powerful mainland party which involved several ten million dollars and which appeared to be a solid proposal though nothing was confirmed. He had told Mr. LAU Wan, after hearing this information from Mr. WONG on the 29th July, that he had an opportunity to make money, and Mr. LAU Wan had suggested using the nominees accounts to trade in Stime's shares. He could not remember whether he had passed on any information about the joint venture to Mr. LAU Wan.

Mr. TSANG, at least substantially because of the information from Mr. WONG, then went ahead and used his nominees to purchase and trade in Stime shares from the 29th July onwards. He thought it likely Mr. WONG would go ahead with the joint venture and Stime's share price would go up. Mr. WONG went to Beijing on 30th July and Mr. TSANG had no contact with him until the 1st August. On that day in Stime's office, Mr. WONG told him that he liked the project. He gave Mr. TSANG the details of the proposed joint venture and Mr. TSANG

advised him to go ahead with the project.

Mr. TSANG's impression was that Mr. WONG was keen to proceed with the joint venture and he expected the joint venture to be signed in due course. He was not sure if he knew Mr. WONG had returned to Beijing on the 3rd August and signed the joint venture agreement but remembered seeing Mr. WONG again in the office on the 4th August when Mr. WONG told him and other Stime officers in a meeting of the signing of the agreement. In a further meeting the details of the announcement to be made on the 5th August of the involvement of Stime, through a recently purchased subsidiary Eternal Summit, were decided.

In any event over the course of those events, he had continued trading in Stime shares using the accounts of nominees. He said settlement transactions on the nominees accounts were made by cash cheque to disguise the source of the funds.

He had continued trading through August 1997 but in September and into November of 1997 he had started to make losses and had become responsible for settling margin calls on his nominees accounts.

To do so he had commenced borrowing large sums of money from Mr. WONG. It was only at that time he had told Mr. WONG about his trading in Stime shares. This he initially said was the end of September or early October 1997. He later said it was in November 1997.

He said he had known Mr. ADIL since 1985 but that even though Mr. ADIL was a good customer of Stime he had not communicated with him very much over the period of the share dealings.

He did not know Mr. ADIL was trading in Stime shares also.

He said monies from Mr. ADIL or Atari paid into his account represented borrowings he had made from Mr. WONG which Mr. WONG had asked Mr. ADIL to pay into his account. On occasion the monies

were paid directly into a nominee's account at the request of Mr. TSANG. Sometimes these could also have represented repayments to him of monies he had lent Mr. WONG.

Conversely monies paid by him to Atari's account were loans repaid by him to Mr. WONG which Mr. WONG had asked be paid to Atari's account. Sometimes also these payments could have represented loans made by him to Mr. WONG.

It should be added here that in his first interview with the SFC, Mr. TSANG had said he had not traded in Stime shares, but subsequently in later interviews agreed what he had said on that first occasion was a lie.

(2) <u>The evidence of Mr. Wilson WONG</u>

Mr. WONG gave evidence as TW 26.

He said he was approached by Mr. Simon NG and Mr. Graham CHAN about a proposal concerning a joint venture with a mainland company involving a 2-way pager system.

They all three met at the Conrad Hotel in the evening of the 28th July. Mr. NG briefed him about the joint venture. He was told it involved a 2-way paging system, that several tens of million of dollars would be required and that the mainland partner was "politically powerful".

The next day the 29th July, he told Mr. TSANG about the proposed joint venture, as well as Mr. Dominic LI. About this time, he spoke also to Mr. ADIL. He thought he may have told him something to the effect he was going to Beijing to discuss a cooperative endeavour with a Chinese party but it was equally possible he had just said he was going to Beijing on business. On the 30th July, he flew to Beijing with Mr. NG and Mr. Bee HO where he received, together with the others, a detailed briefing from the Chinese party HZK. It seemed a "solid and feasible" project to him and when he returned to the office on the 1st August he told Mr. TSANG about the briefing he had received. At

that time, he was uncommitted but inclined to proceed. A public announcement (Annexure F) was drafted to reflect the position. Around that same time, Mr. NG organized a return trip to Beijing for the 3rd August. He agreed to go. He knew the purpose of the trip was to sign the joint venture agreement but he was still not quite sure whether he would. He wanted to delay the signing of the agreement.

In the event, he signed the agreement in his capacity as a director of Eternal Summit, a shell company purchased a few days earlier for this eventuality, which was a subsidiary of Stime. (The Agreement is at Annexure I.)

He returned to Stime's office on the 4th August and briefed his fellow directors as to the position. A further announcement was prepared for publication and was published the following day 5th August (Annexure G).

He agreed that from time to time over the relevant period and immediately before and for some time afterwards there had been transfers of funds from his personal account or from Mr. TSANG's at his request to the accounts of or to accounts at the direction of Mr. ADIL and Mr. TSANG.

Particularly within the period 28th July to 7th August, he agreed that the transfers from Mr. TSANG's account to Mr. ADIL's or Atari's accounts were done by Mr. TSANG at his request as the result of Mr. ADIL asking for loans.

So far as these loans were concerned, he had no idea that the monies were being used by Mr. ADIL to finance his trading in Stime stock.

So far as Mr. TSANG's trading was concerned, he only found out that Mr. TSANG was trading in Stime shares sometime around late October 1997 when Mr. TSANG commenced borrowing quite heavily from him and told him that he was doing so to fund his trading activities.

In other words, his evidence was to the effect that the transfers

of funds between his and Mr. ADIL's accounts and Mr. TSANG and Mr. ADIL's accounts were simply representative of personal loans between the parties and the repayments of those loans. The monies, when they were paid as loans, or were repayments of loans, were often paid at the direction of the intended recipient into others' personal accounts.

He accepted that many cheques of his own, and of Mr. TSANG, Mr. ADIL and Atari had been apparently signed by the account holder, but that the particulars on the cheque had been completed by Mr. Dominic LI.

He suggested that the reason for this was mere convenience and that so far as ADIL's personal cheques which were completed by Mr. LI were concerned, it may have been Mr. ADIL had given him or Mr. LI some cheques signed in blank for the purpose of them being completed to repay Mr. TSANG monies advanced to Mr. ADIL by Mr. TSANG at his own, Mr. WONG's, request.

Further there was another category of cheque which had been provided to him by Mr. ADIL, also signed in blank.

These cheques related to an instance where Mr. LAU Wan had commenced to borrow money from Mr. WONG. Mr. LAU Wan had suggested to him that in lending the money it might be preferable to use someone else's cheques. So, he, Mr. WONG, had asked Mr. ADIL for a number of signed blank cheques and Mr. ADIL had complied with that request.

That explained, according to Mr. WONG, the various cheque payments to Kingston made on Mr. ADIL's personal account which were completed by Mr. LI on Mr. WONG's instructions and which represented loans to Mr. LAU Wan.

At no time had he ever provided information about Stime's potential or actual entry into the joint venture project to any person for the purpose of them or with the knowledge that they would use that information to trade in Stime shares, nor at any time had he traded directly or indirectly in Stime shares.

(3) The evidence of Mr. Mohammed ADIL

TW 29 was Mr. Mohammed ADIL. His evidence was to the effect that he had met Mr. Wilson WONG in 1985 shortly after he had started his own watch exporting company, Atari. He traded with Stime. Business grew and he became a trusted friend of Mr. WONG. He knew Mr. TSANG also because of their business relationship.

When Stime was listed in 1996, he met Mr. LAU Wan. He thought Stime would be a successful company and so through Mr. LAU Wan opened a margin stock trading account at China Point. He then traded in Stime shares. Mr. LAU Wan was his broker. He traded only in Stime shares.

He stopped trading in October 1996 but resumed again on Mr. LAU Wan's advice in mid-July 1997. He did so also because he thought the Stime price was good and he had spare cash available.

He denied that he resumed trading because of any information given to him by Mr. WONG or any other person. He said that he traded on his own behalf. He specifically denied Mr. WONG had any interest in his account.

He agreed however that money on many occasions had been advanced to him by Mr. WONG, either directly or sometimes by Mr. TSANG at Mr. WONG's direction. He said these advances were loans. He agreed that many of the advances may have been used by him for the purposes of his share trading in Stime stocks, but he said he had never told Mr. WONG of his trading in Stime stock or of the profits he made. He believed Mr. WONG advanced him the money in the belief he had a cash flow problem.

For a while, until 1998 he kept a record of these loans and his repayments of them but in that year he stopped borrowing from Mr. WONG and so he destroyed that record.

He agreed that Mr. Dominic LI had written many of the Atari

cheques used to pay China Point. He said Mr. LI had written many Atari cheques for him and had also written his own personal cheques for him because he himself was lazy, and made frequent mistakes when writing cheques. So he asked Mr. LI to write them out for him on occasions when Mr. LI was present in his office. That occurred frequently, because over a period after the middle of 1997, Mr. LI had come to Atari's office in the Tsim Sha Tsui area as a favour to help him write up Atari's books properly. On those occasions he had asked Mr. LI to write cheques for him and, on one occasion at least, to deposit a large sum of cash in Atari's bank account for him. Mr. LI had also on that occasion written out the cash deposit slip.

In respect of his personal cheques drawn in favour of Kingston, he said he knew nothing of those cheques other than that Mr. Wilson WONG had asked him if he could use his, Adil's, personal account for his own purposes.

He, ADIL, had agreed and had given Mr. WONG some 20 odd personal cheques signed in blank. He identified those cheques as having eventually been made out by Mr. Dominic LI in favour of Kingston, and some other brokerages. He said he had never asked Mr. WONG the purpose of those cheques. Money was deposited to his personal account to cover the cheques and if that were not done he assumed Mr. WONG had taken the cheque into account as a repayment of monies owing by him, ADIL, to Mr. WONG.

When he had on occasion repaid a loan to Mr. WONG, he had sometimes been directed to pay it into another person's bank account and he had done so. He thought that was why funds from his personal account had been deposited into the accounts of Mr. TSANG's nominees such as NG Kam Cheuk on the 13th August 1997 and NG Yu Shui on the 31st October.

(4) <u>The evidence of Mr. LAU Wan</u>

TW 31, Mr. LAU Wan, was the final witness of significance although he was hardly a witness of substance.

His evidence consisted solely of what amounted to an interview conducted with him by an SFC investigator.

He did not, as pointed out before, attend the Tribunal or have any representation before the Tribunal. He was effectively served by way of a Salmon letter, as set out in Chapter 2 of this Report, being delivered to his home address in Toronto.

This Tribunal has never received any response from Mr. LAU Wan. Nor has counsel assisting. Accordingly this inquiry proceeded without him. The Tribunal's findings, so far as consideration of his evidence are concerned, were accordingly restricted to the contents of his recorded interview with the SFC investigator.

In that interview, Mr. LAU Wan stated that he had met Mr. ADIL at a dinner before July 1996 where Mr. ADIL had made enquiries about the opening of a stock trading account. As Mr. LAU Wan was a dealer at China Point at that time, he had helped Mr. ADIL with the procedures of opening an account there. The account was operated by Mr. ADIL by the placing of orders through Mr. LAU Wan.

On occasion Mr. ADIL traded well above the margin limit. Mr. LAU Wan thought this was unusual. He did not know why Mr. ADIL did so. Mr. LAU Wan asked him on occasion to reduce the margin. He noticed Mr. ADIL only dealt in Stime shares. He asked Mr. ADIL about this and Mr. ADIL had told him the reason was that he was familiar with Stime as a company.

That was the scope of Mr. LAU Wan's interview and accordingly that is the scope of Mr. LAU Wan's evidence before the Tribunal.

VII. The expert evidence

We will now deal with the expert evidence of Mr. Alex PANG (TW 1).

We will summarize his evidence at this end point because he produced the records of trading in Stime stock over the relevant period and later. That price and turnover history is contained at Annexure A. The materials he produced included also summary schedules and charts of trading in Stime stock. Those materials we accept as accurate. They were never challenged.

Mr. PANG gave evidence also as an expert witness, qualified to express an opinion as to the effect of information upon the price of shares and stock in the Hong Kong market in 1997. It should be noted that on occasion he referred to such information as "relevant" information in nature. We understood him to mean that to be "price sensitive" information. He was not accepted by us and he did not purport to be able to give an opinion on whether information was relevant for the purposes of section 8 of the Ordinance.

He is presently responsible for monitoring share trading with the China Securities Regulatory Commission.

In 1997 he was responsible for equivalent duties in the SFC in Hong Kong.

He gave opinion evidence as to the effect of information concerning the joint venture project and Stime's involvement in it on Stime stock prices.

He said generally that any information which suggested Stime was to diversify its existing core watch business by entering into a joint venture with a mainland company involving a telecommunications project was price sensitive. It potentially strengthened Stime's earning capacity by moving the company away from the low profit margin watch sector it operated in into a new area of business with greater potential earnings.

He said this opinion was confirmed by the price rises either immediately or over time which had occurred in respect of Stime stock when the information was placed, in part, into the market place by way of the published announcement of the 4th August 1997 and, in whole, on the

market place by the published announcement of the 5th August 1997.

He specifically was of the view that even relatively bare information to the effect that Mr. WONG, the chief executive of Stime, was to go to Beijing to discuss a paging and telecommunication joint venture with a mainland company was price sensitive.

In other words, he was of the view that the information provided to Mr. WONG on the evening of the 28th July 1997 at the Conrad Hotel by Mr. Simon NG, as given in evidence by Mr. WONG, was price sensitive because of

(a) the possibility of the diversification of Stime's business into the (then) high technology telecommunications field;

(b) the "reddening" of Stime, which was a potent market factor in 1997; and

(c) the increase in Stime share prices after the market announcement on the 4th August 1997 that Stime had entered into such negotiations.

Further, Mr. PANG and for essentially the same reasons was quite certain that the information as to Stime's interest in the project on the completion of the negotiations on the 30th and 31st July 1997 and after the signing of the joint venture agreement on the 3rd August 1997 was price sensitive.

VIII. Documentary evidence

By way of the evidence of the individuals referred to above, a large volume of documents were produced before the Tribunal.

Some of the more important documents were the account opening documents and share trading records of the various persons who traded as nominees of Mr. TSANG, and Mr. ADIL's own trading records with China Point.

The bank accounts of those individuals as well as of the implicated parties (with the exception of Mr. LAU Wan) were also produced, together with those of Atari.

Documents relating to Stime, particularly its Annual Reports and Prospectus for the periods 1996 and 1997 were produced. At one stage the Tribunal issued section 17 notices for the production of Stime's 1997 ledger. That however could not be produced it having said to have been lost.

Cheques and bank slips relating to the transfer of funds between the bank accounts of TSANG, WONG, ADIL, TSANG's nominees and various brokers firms were also produced and formed the basis of the schedule of transactions at Annexure E. Those transactions, as will be seen, were of some importance to our considerations.

The admissibility of that evidence was in large part challenged before us and we will deal with that evidential issue in the section below:-

IX. The relevance and scope of the evidence of the financial transactions involving the implicated parties

From the summary of the evidence called before us as set out in this chapter, two matters arose as to the relevance and extent of the evidence of the financial transactions which occurred before, during and after the relevant period of 29th July to 7th August 1997 amongst the implicated parties and certain securities firms.

That evidence was primarily evidence from bank and security brokerage records showing the transfer of, on occasion, very large sums of money, by cash cheque between the accounts of Mr. WONG, Mr. TSANG and Mr. ADIL. These transfers involved also monies on occasion being paid into the bank accounts of Mr. TSANG's nominees by way of cheques signed by Mr. WONG and Mr. ADIL. It involved also on occasion money being paid to the brokers' firms already mentioned in this summary of evidence, for accounts where the trading of TSANG's nominees and ADIL took place, namely Yardley, Brighton, Cheung's, CA Pacific, Intercontinental and China Point. The transactions and transfers

in question are summarized in the schedule at Annexure E of this Report.

Further some of these transactions involved monies, which at least in large part represented the proceeds realized by Mr. ADIL as a result of his trading in Stime shares, being paid to accounts at other brokers being primarily Kingston, but also Get Nice, Chark Fung and Kee Fung Sing.

The cheques drawn by Mr. TSANG, Mr. WONG and Mr. ADIL to effect the various transfers of money between each others, Mr. TSANG's nominees and various brokerage firms accounts were written out in large measure by Dominic LI (TW 27). His evidence has been referred to already in this regard. Substantial deposits representing the drawdown of proceeds in ADIL's China Point trading account, i.e. the account he used to trade in Stime securities, were made on four primary occasions into ADIL's bank accounts namely:

19th August 1997	$4.0 million
20th August 1997	$1.9 million
22nd August 1997	$3.1 million
19th September 1997	$4.4 million

These deposits can be seen on the schedule at Annexure E.

Those deposits funded in large part cheques signed by Mr. ADIL, but written by Dominic LI and deposited into various accounts at Kingston, Get Nice, Chark Fung and Kee Fung Sing.

Cheques written by Mr. LI are marked with an asterisk (*) on the Schedule at Annexure E.

Both the relevance and weight of this evidence was challenged before us by the representatives of the implicated parties.

That is because various aspects of the evidence of those monetary transfers amongst the accounts controlled by the three implicated parties we have mentioned and payments to the various stockbroking firms occurred not only during but also before and after the

period limited by our terms of reference.

According to the argument advanced by the implicated parties' representatives, this evidence was therefore irrelevant insofar as it related to transactions, monetary transfers and financial relationships outside the relevant period of 29th July to 7th August even if those transactions, transfers and relationships did involve the implicated parties.

That argument found no favour with us.

In our view the evidence was plainly relevant and admissible.

Firstly the evidence of the financial relationships between the implicated parties taken as a whole over the period set out in the Schedule at Annexure E showed a system or scheme of actions and relationships involving the implicated parties which was consistent in broad terms over that period, including the relevant period, and which in its structure and operation threw considerable light, as will be seen, on the knowledge and involvement of the implicated parties so far as their participation and activities in dealing with Stime securities were concerned during the relevant period.

An analysis of these financial relationships showed that the source of funding for the purpose of the Stime share trading transaction of one implicated person was often funds systematically provided by another implicated person.

Further in the same vein, and specifically so far as Mr. ADIL's trading account was concerned, it demonstrated together with other evidence that drawdowns on his trading account which represented in large part his profit taking were in the main distributed through the hands of another implicated person Mr. WONG, whether directly or through Mr. Dominic Li, into other brokers' accounts or were, in respect of two cheques, paid to Stime Manufacturing Co., Ltd. These latter brokers were, as we have said, mainly Kingston, but also CA Pacific, Get Nice, Chark Fung and Kee Fung Sing.

Details of the cheques drawn on Mr. ADIL's account and

written by Mr. Dominic LI and representing at least in part payments of monies from proceeds made by him from his trading in Stime shares are:

Date	Proceeds from China Point share trading deposited into Mr. ADIL's account (HK$)	Cheque written by Mr. Dominic LI on Mr. ADIL's account (HK$)	Payee
19.8.1997	4,000,000.00		
20.8.1997	1,900,000.00		
20.8.1997		500,000.00	Kingston
20.8.1997		2,000,000.00	CA Pacific
20.8.1997		500,000.00	Stime Mfg Co. Ltd.
21.8.1997		605,000.00	Stime Mfg. Co. Ltd.
22.8.2007	3,100,000.00		
23.8.1997		3,000,000.00	Kingston
23.8.1997		1,000,000.00	Chark Fung
28.8.1997		2,000,000.00	Kingston
2.9.1997		1,000,000.00	Kingston
3.9.1997		3,500,000.00	Kingston
12.9.1997		800,000.00	Kingston
15.9.1997		1,000,000.00	Kingston
18.9.1997		300,000.00	Kingston
18.9.1997		900,000.00	Kingston
19.9.1997	4,400,000.00		
19.9.1997		2,000,000.00	Kee Fung Sing
22.10.1997		200,000.00	Kingston
22.10.1997		300,000.00	Kingston
22.10.1997		300,000.00	Kingston
23.10.1997		200,000.00	Kingston
23.10.1997		200,000.00	Kingston
23.10.1997		200,000.00	Kingston
24.10.1997		500,000.00	Get Nice
28.10.1997		150,000.00	Kingston
28.10.1997		150,000.00	Kingston
28.10.1997		150,000.00	Kingston
28.10.1997		150,000.00	Kingston
28.10.1997		150,000.00	Kingston
28.10.1997		150,000.00	Kingston
7.11.1997		1,000,000.00	Kingston
18.11.1997		2,000,000.00	Kingston

When, towards the end of the evidence called before the Tribunal, we considered this matter we issued notices under section 18 of the Ordinance to those securities companies or, in respect of Chark Fung and Kee Fung Sing, their liquidators, to provide evidence of the accounts into which these cheques representing in considerable part the profits of Mr. ADIL's trading at China Point had been paid.

We might add that we also issued section 18 Notices to Medtech, the holding company of Stime Manufacturing Co., Ltd., as to the production of its Ledgers and other accounting documents relating to the entries for the cheques paid to Stime Manufacturing Co., Ltd.

Those records, according to Medtech's current company secretary, Mr. LAU Kwok Fai, Danny, and Mr. Dominic LI, Stime's Director at the time responsible for storage of the records, could not be found. They had been stored in a factory in China and were now missing so far as the years 1996 and 1997 were concerned.

In any event, the documents furnished pursuant to the section 18 Notices directed to the above-mentioned securities firms were admitted by us into evidence.

They showed that the cheques drawn in favour of Kingston were paid or may have been paid into accounts in Kingston held in the following names: MOK Yuen Cheng, KOU Yuk Nam, HO Yu Hing, MAK Yiu Lam, YAU Tak Chi and LEE Sau Ying.

The cheque drawn in favour of Chark Fung was paid into an account in the name of CHOW Wai Keung.

The cheque drawn in favour of Kee Fung Sing may also have been paid into an account in the name of CHOW Wai Keung.

All of the above accounts had also been used to trade primarily in Stime stock over the latter part of 1997.

Accordingly, at the end of all of the evidence we recalled Mr. TSANG, Mr. WONG and Mr. ADIL to give further evidence about these matters.

Mr. TSANG said, effectively, he had no knowledge of these transactions. Mr. WONG said Mr. LAU Wan had asked him for a series of loans and suggested that someone else's cheques be used, so he borrowed some 29 cheques from Mr. ADIL. Mr. ADIL confirmed this in his evidence. Mr. WONG's evidence was to the effect these loans he

had advanced to Mr. LAU Wan in the form of Mr. ADIL's cheques must have been used by Mr. LAU Wan to pay margin calls, or make settlement, on accounts operated by persons known to and connected with Mr. LAU Wan. He, WONG, had no knowledge of those accounts or those people.

X. The possible scope of further transactional evidence

We then considered whether we should call for further evidence from the persons who had been identified as the holders of the accounts into which these cheques were or may have been paid.

We heard submissions from counsel in this regard. Counsel assisting was able to tell us that so far as was known, no trading in Stime securities had occurred in these accounts during the relevant period.

We accepted that the persons identifiable as the account holders would be unlikely to give evidence advancing the purposes of the inquiry.

All were introduced to their respective brokerage in the opening of their accounts by Patrick YAU (TW 20). Patrick YAU was unable to be located so as to give oral evidence before the Tribunal. He was thought to be in China. He had made only a partial statement to the investigating SFC officers, terminating his interview before it was complete. He did not return to the SFC so as to continue with that interview. Prior to the sitting of this Tribunal he had apparently left the jurisdiction.

That meant the Tribunal was unable to be assisted with the evidence of either Mr. LAU Wan who had according to Mr. WONG borrowed those monies or Patrick YAU, who had, according to the documents retrieved introduced the account holders to the brokerages into which at least a large part of those sums were paid, so far as those transactions were concerned.

We therefore considered what use to make of the evidence that these cheques representing Mr. ADIL's profits, or a large part of them, were paid into accounts at the stated securities firms; the purpose, control and beneficial interest in which could not be determined.

At the end of the day, we decided that beyond Mr. WONG's admission in his own evidence that he had had some control of these funds prior to them going to the payee of the cheques, i.e. the securities firms, we would not draw any adverse inference against any implicated parties as to the cheques being paid into those accounts, so far as any inference concerning insider dealing is concerned.

(D) <u>The Tribunal's approach to the evidential weight of witnesses' statements produced during the inquiry</u>

Section 17(a) of the Ordinance reads as follows:

> "17. Powers of Tribunal
>
> The Tribunal may, for the purpose of an inquiry under this Ordinance –
>
> (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;"

Accordingly this Tribunal was not bound by the laws of evidence as otherwise applied in the courts of Hong Kong. We were therefore able to consider material as substantive evidence of fact which would not have been admissible as such evidence in a court of law.

In practical terms that meant we were able to take into account, as a matter of principle, evidence which would have been ruled inadmissible as hearsay in a court proceeding or trial.

But because such evidence was admissible on principle did not mean that considerations of common sense and fairness could be dispensed with.

We were at all times in our considerations of the evidence, and particularly when considering witnesses' prior statements and also documentary evidence from unproven sources, aware of the inherent

qualities of such evidence so far as any propensity to unreliability or inaccuracy were concerned.

We considered also Lord Salmon's comments in his Report of 1966 where, in the context of considering the risks to an implicated witness should he subsequently be prosecuted, he made this comment concerning hearsay evidence:

> "The Rule against hearsay evidence, rightly in our view, is not applied by the Tribunal, although the practice is for the Tribunal to ignore hearsay evidence for the purpose of arriving at any adverse finding against anyone appearing before it."

We accept those comments. It seems to us that in approaching all the material provided to us the overriding principle in deciding how to regard that material, so far as the position of any implicated person is concerned, is that of fairness.

In most cases it would seem likely to be unfair to any such person that an adverse finding be made in respect of him being involved in insider dealing where that finding was founded on hearsay evidence.

But that is not to say that hearsay evidence cannot be taken into account against the interests of an implicated person. Whether or not that is done may well depend on the circumstances of the case and the sort of hearsay evidence involved.

For example commercial records may well be produced without being proven by their makers but may be unchallenged in evidence and be of a sort, such as bank records, so as to be considered sufficiently reliable as to be used to support a finding adverse to an implicated party.

The question of the acceptance of hearsay evidence was at all times governed by a consideration, in the circumstances, as to whether the use of that evidence as a matter of common sense would be fair.

CHAPTER 5

THE CREDIBILITY OF THE EVIDENCE OF THE IMPLICATED PARTIES

One of the fundamental issues before the Tribunal, and one which was of considerable concern to us as we approached the factual issues was that of the credibility of the witnesses called during the inquiry. So far as most of the witnesses are concerned, questions concerning their credibility can be more conveniently dealt with in this Report in the context of matters upon which their evidence touched.

But the question of the credibility of the three implicated parties who taken as a whole gave substantial evidence before the Tribunal as to virtually all of the matters of fact which fell for resolution by us, was of such a fundamental nature that the question of Mr. TSANG's, Mr. WONG's and Mr. ADIL's credibility as witnesses is dealt with generally before we proceed on in the subsequent chapters to conveniently consider other more specific issues of fact and the credibility of their evidence relating to those more specific matters.

Accordingly what follows in this chapter is a resume of our general findings at the end of the day as to the credibility of the evidence of Mr. TSANG, Mr. WONG and Mr. ADIL. But we emphasize what is set out in this chapter is not a full appraisal of all aspects of the evidence before us which had a bearing on our findings as to the credibility of these implicated persons.

Other aspects of their evidence will be further dealt with when we come to deal with the specific issues raised in the following chapters.

Mr. TSANG

So far as Mr. TSANG is concerned, he, in his evidence before us, admitted that he had lied to the SFC investigators in his first interview of 15th February 1999. In that interview he quite simply denied trading in Stime shares. That was plainly false. He, as we have said, now in

his evidence admits quite straightforwardly that he used four nominees to trade very extensively and more or less continuously in Stime shares at different times since 1996. The nominees in their evidence before us said he did so and we accept their evidence in that regard.

Further, Mr. TSANG admits having caused one of his nominees NG Yu Shui to lie to the SFC investigators when she was first interviewed by them and deny that she had traded on his behalf.

Further, when asked by Kenneth SIN (TW 23) in effect whether he knew anything of the increased turnover and price of Stime shares on 1st August 1997, he replied falsely that it was nothing to do with him.

Even in his last interview with the SFC when asked if he had had personal monetary transactions with Mr. ADIL, his answer was probably not. We appreciate there was some ambiguity in both the question and the answer but the answer by Mr. TSANG, given the number of times there had been transfers of large sums of money between his bank accounts and those of Mr. ADIL meant his answer was less than frank.

Mr. TSANG at no stage in his evidence struck us as having changed his spots. He seemed cautious, sometimes evasive and anxious to machine his evidence to his best advantage. That approach in his oral evidence did on occasion manifest itself in small inconsistencies within his evidence. For example he initially said he had told Mr. WONG in September or October 1997 that he had been dealing in Stime shares. That timeframe lengthened to November 1997 under cross-examination.

His evidence had what could be described as unusual absences of explanation. For example he could not give any, in our view, clear explanation as to why he required four nominees to act for him in his surreptitious purchases of Stime shares. His only explanation of this was that it was suggested to him by Mr. LAU Wan.

In this regard also he gave what we regard as a completely unconvincing explanation as to why he dealt through nominees in the first place. He said it was for “convenience” and that he did not want to go

through the, to him, unknown and confusing disclosure procedures as to his share dealing. We found it impossible to place any credit in that explanation. There was no reason he could not have sought assistance from Kenneth SIN, Stime's company secretary, or indeed someone such as Simon NG, a solicitor and non-executive director of Stime, in this regard.

More cogently given the volume and frequency of the sales and purchases of Stime shares by his nominees on his behalf, that in itself, given the number of instructions and confirmations of trades he had to undertake on a daily basis, must have been extremely inconvenient.

In short, we regarded Mr. TSANG's evidence before us, at the end of the day, with considerable reservations as to its reliability.

Having said that we accepted, in large part those aspects of his evidence where he admitted his own wrongdoing so far as trading in Stime securities on the basis of the information he received from Mr. WONG concerning the HZK joint venture.

We however were of the view generally in regard to Mr. TSANG's evidence that he was concerned to isolate his own activities from those of Mr. WONG and Mr. ADIL, and to accept blame onto his own shoulders in that regard.

Mr. WONG

Mr. WONG also seemed to us to be someone more than prepared to bend his evidence to suit his own purposes so far as this inquiry was concerned.

As a starting point we regarded the answers he gave to fundamental questions asked of him in his interviews with SFC investigators as plain nonsense.

When interviewed on the 27th January 1999, for example, he was asked questions and gave answers which went to the heart of the issues involved in this inquiry.

There were in particular two questions and answers he gave which we thought significant.

They were:

> "Q7: You've just said that you need more time to retrieve the relevant information. Can you tell us what kind of information it is?
>
> A7: I have to retrieve information relating to the relevant period (i.e. July to August 1997) to see if I had bought shares and warrants of Stime Watch or held shares and warrants of Stime Watch under the name of other people during that time.
>
> Q8: Did you, during the period from July 1997 to mid-1998, hold shares and warrants of Stime Watch under the name of others (including individual and company)?
>
> A8: I don't remember now. I have to go back and check."

Given his evidence before us that he had never traded in any shares ever, either directly or through others, those answers are surprising. One would have thought that a chairman of a company which at that time had been listed for only 2½ years would have known, without having to check, whether or not he had used other people or companies to hold shares in that listed company on his behalf. That is particularly so when it is remembered that this series of questions and answers occurred during his second interview which took place some five months or more after his first interview during which he had been told that the SFC were investigating suspected insider dealing in the shares of Stime during the relevant period.

In cross-examination he explained his answers in this regard in his second interview as stemming from his need to think carefully, as he thought it possible other people may have bought shares and involved him in it.

In our view, his answers and the explanation he offered in evidence for them make no sense.

Further in his third interview of 26th February 1999 he was asked:

> "Q13: Have you lent monies to anybody for their securities trades?"

He answered:

> "A13: I've never lent money to anybody for their securities trades, though I have lent money to people."

This should be compared to his evidence before us where he said that he had been asked for loans by Mr. LAU Wan in the latter part of 1997 and those cheques he issued to Mr. LAU Wan had been made out to securities firms.

Further the answer to question 13 was inconsistent with his subsequent assertions that he had lent monies to Mr. TSANG when Mr. TSANG requested them, also in the latter part of 1997 and Mr. TSANG told him those loans were to fund his securities trading. He corrected that answer to question 13 in our view somewhat belatedly in his final interview by telling the SFC investigators that he had lent monies to Mr. TSANG.

At no stage did he mention the $23 million he advanced to Mr. LAU Wan in the latter part of 1997 by way of cheques made out to securities firms.

In our view, it is somewhat surprising that at no stage did he bring this extensive series of what he in evidence described as loans to Mr. LAU Wan to the attention of the SFC investigation.

In our view, Mr. WONG was less than frank in his SFC interviews.

There were on occasion contradictions between what Mr. WONG told us in his evidence and what he had said in his statements and interviews on previous occasions.

For example, before us in evidence, he said that he thought he had spoken to Mr. ADIL on the 29th July and may or may not have told him he was going to Beijing the next day, but that he gave him no details of the proposed joint venture on that occasion. He thought he may simply have told Mr. ADIL he was leaving Hong Kong on business the next day.

However in his interview of 26th February 1999 (his third interview, some 6 months after he was first interviewed by the SFC), he said:

> "Q6: Let me show you the record of your statement on 27 January 1999. Do you have anything to add?
>
> A6: I want to make addition to my statement on 27 January 1999. I remember that after Simon NG told me about the joint project with Hua Zheng Kang and before I went to Beijing for the first time to negotiate with Hua Zheng Kang, I had spoken to Mohammed Adil ("Mohammed") that I was going on a business trip to Beijing in a couple of days. I remember I said to him that Stime Watch might do business with mainland China but I did not say the Chinese party would acquire equity interests in Stime Watch, since I was still not sure then about the details of the cooperation, nor was I sure that Stime Watch would go ahead with the project with the Chinese party. However, I had mentioned to Mohammed that if any opportunity arose, Stime Watch was in principle happy to engage in business cooperation with mainland enterprise because this was beneficial to the company.
>
> At that time, I already knew that Mohammed had been trading in the shares of Stime Watch, but I had no idea when he bought and sold the shares.
>
> Q7: Please describe how you told Mohammed about Stime Watch's joint venture project with Hua Zheng Kang.

A7: I did not tell Mohammed the amount of money involved as far as Stime Watch was concerned. Neither did I tell him what kind of business it was. Because even I myself was not sure at that time what kind of business it was until I went to Beijing and heard the introduction by Hua Zheng Kang. I did not tell Mohammed who the Chinese partner was. Furthermore, I did not tell him in what way the project would be conducted and the proportion of shareholding since I myself did not have such information until I went to Beijing."

In other words, his evidence before us was, in some of its essentials, quite different in content to that which he had told the SFC investigators.

We bore in mind the context of his evidence together with the other evidence placed before the Tribunal relating to financial dealings related to trading in Stime securities.

In that context, if Mr. WONG's case was to be given any credit over a significant period of time during the course of which he claimed to have had no interest in any trading in Stime shares he was advancing monies to both Mr. TSANG and Mr. ADIL who were both trading extensively in Stime securities and who used those monies for that purpose; he utilized a large number of cheques of Mr. ADIL's to advance monies to Kingston Securities where some, at least, of those monies were paid into trading accounts which dealt in Stime shares and those monies advanced by way of those cheques accounted for the whole of the proceeds, of Mr. ADIL's Stime stock trading. In other words, Mr. WONG's evidence was to the effect he stood alone and unknowing in a sea of Stime share trading where funds advanced by him coincidentally were used to purchase Stime stock and funds accessed by him were proceeds of Stime stock trades.

Again, at the end of the day, we regarded Mr. WONG's evidence as unreliable and, as will be seen, in important and substantial aspects of the subject matter of this inquiry rejected him as a witness of truth.

Mr. ADIL

Underlying his evidence was his acceptance that in very large part he owed his business success with his company Atari to the assistance provided by or at least his connection with Mr. WONG and Stime. He contacted Mr. WONG frequently by phone, and indeed from the frequency of the financial transactions between them those contacts must have been, on occasion, daily.

Against this background he told the Tribunal he dealt in only one security, that is Stime shares and occasionally warrants, because he was familiar with the company.

He used only one brokerage firm China Point, Mr. LAU Wan's firm.

One would have thought that given Mr. ADIL's close personal relationship with Mr. WONG and Mr. ADIL's penchant for investing exclusively in Stime securities that Mr. ADIL would have told Mr. WONG something of the profits he had made trading in Stime securities by August 1997. According to Mr. ADIL, he did not do so. Nor, according to Mr. ADIL, had he ever told Mr. WONG that he, Mr. ADIL, had become a significant shareholder in Stime by 4th August 1997 by which time he owned about 4.8% of Stime's issued shares.

Nor, according to Mr. ADIL, was he at any stage, before he was interviewed by SFC investigators in 1999, aware of Stime's involvement in the joint venture with HZK.

That meant Mr. ADIL had not ever spoken to Mr. WONG or other Stime staff member about the joint venture, had not noticed Stime's public announcements of 4th and 5th August 1997 and had not seen the newspaper articles in September 1997 concerning Stime's entry into the joint venture. Mr. ADIL apparently in terms of his evidence traded in Stime securities extensively and exclusively in complete ignorance of a matter which may have been regarded at that time of considerable importance to Stime's future business potential.

Further, as will be seen, we regarded Mr. ADIL's evidence as to how it was, and why, Mr. Dominic LI wrote out a considerable number of Mr. ADIL's own personal cheques as well as his company Atari's cheques as not worthy of any credit.

Mr. ADIL was also a witness whose evidence we, at the end of the day, considered unreliable.

We were satisfied Mr. ADIL's evidence was given before us in terms more resonant of his loyalty, both personal and financial, to Mr. WONG than with any real regard for the truth.

We emphasize our comments in this chapter relating to the credibility of the implicated parties relate to our general conclusions in that regard and were arrived at at the end of the day and after consideration of all the evidence in this case.

We further emphasize that our general caution regarding the credibility of the implicated parties did not prevent us from considering their evidence carefully in regard to particular matters and on occasion accepting what they said in that regard.

Finally, we point out that we have not dealt with the credibility of Mr. LAU Wan. He did not give evidence before us and, as will be seen, in the event there was no need for us to consider his credibility.

We will now in the subsequent chapters of this Report deal with the various issues which arose pursuant to our terms of reference and our resolution of those issues.

CHAPTER 6

A SUMMARY OF THE FUNDAMENTAL ISSUES OF FACT

Fundamental issues

The fundamental issues of fact with which we were concerned in this inquiry are summarized below. Obviously not every issue with which we dealt is set out here. We mention now only the broad structure of some of the more basic issues which arose before us, and which will be dealt with in much greater detail in the following chapters of this Report.

The Tribunal regarded certain issues as of fundamental importance to this inquiry. As a background to the following description of the main issues arising in the inquiry, it should be said that it was obvious and accepted by all parties that the only information which could possibly have been relevant information was that gained by Mr. WONG on the 28th July at the Conrad Hotel meeting; the circumstances of his going to the 30th and 31st July briefing by HZK in Beijing and on the 3rd August by dint of the signing of the joint venture in Beijing. So far as any dissemination of that information, in its surrounding circumstances, to other implicated parties was concerned, it was never suggested that there realistically could have been any substantial source other than Mr. WONG.

Accordingly, as a starting point the issue as to what information was provided to Mr. WONG and when, concerning the joint venture, was of primary importance. Whether, and at what stage, he passed that information on to others, including Messrs. TSANG and ADIL was of obvious relevance to our considerations so far as they were concerned. Whether the information provided to Mr. WONG and the information passed on by him in the context of events at the time was specific and whether at the times of his receiving it or passing it on it was price sensitive and whether he and others knew that, were further fundamental issues in our considerations as to Messrs. WONG, TSANG and ADIL's cases.

Next, we were concerned with how that information may have been used as the basis for trading in Stime stock. That is, e.g. whether Mr. WONG was acting in the trading of Stime shares, if at all, by himself, or jointly with Mr. TSANG and Mr. ADIL or with either individually, and whether Mr. ADIL was acting in the trading of Stime shares wholly on his own behalf or as a nominee of Mr. WONG or Mr. TSANG or both. As a corollary, we were concerned as to whether Mr. TSANG was trading only on his own behalf in respect to the operation of his nominees accounts or whether he may have been operating those accounts in conjunction with either of Mr. WONG or Mr. ADIL or both.

We will now describe in more detail those issues the resolution of which we regarded as being fundamental to this inquiry. In this chapter, it must be remembered, we are concerned only with setting out the fundamental issues we saw as being before the inquiry. We do not attempt to resolve them here. Our deliberations and findings in respect of those issues are contained in the following chapters of this Report.

<u>What information was provided to Mr. WONG by Mr. NG at the Conrad Hotel meeting of 28th July?</u>

The question of what Mr. WONG was told at the Conrad Hotel meeting on the 28th July by Mr. NG is important to the initial question as to whether the information he possessed at that time in all the circumstances, and which it is suggested was passed on to Mr. TSANG and directly or indirectly to Mr. ADIL was sufficiently specific to satisfy the provisions of section 8 of the Ordinance as being relevant information. If it was not then, of course, any dealing in Stime shares up to Mr. WONG's trip to Beijing for the purpose of negotiations on the 30th July (during which he was provided with further and much more complete information about the joint venture) could not have been based on relevant information and could not have offended against any provision of section 9 of the Ordinance. Any dealings in Stime stock which breached any provision of section 9 could then only have occurred after the further information gathered in Beijing by Mr. WONG on the 30th and 31st July was used as the basis for trading after that date.

<u>What information was passed on by Mr. Wilson WONG, when and to</u>

whom?

Further, even if the information given to or known to Mr. WONG on a particular date was specific so as to satisfy that provision of section 8 of the Ordinance the question then arises as to whether any information passed on by him to others involved in this inquiry was in the same terms, and so equally specific, or may have been in different, lesser terms.

The question as to when any information was passed on by Mr. WONG is germane as to our considerations of the role and complicity of others. The question of who those others were is fundamental to this inquiry.

Was any information which was passed on to or known to others "price sensitive" at the time it was passed on or became known to them?

The next general issue was whether whatever information was provided to or known to Mr. TSANG or Mr. ADIL as a result of the 28th July meeting at the Conrad Hotel, or upon Mr. WONG going to Beijing on 30th July or following the return of Mr. WONG to Stime's offices in Hong Kong on the 1st August was price sensitive in the sense that it was likely to be "material" within the terms of section 8 of the Ordinance.

In this regard the primary evidence before the Tribunal came from two sources, firstly, from TW 1 Alex PANG and secondly, the actual effect the release of the information by the public announcements of 4th August and 5th August had on the Stime stock prices. That matter will be dealt with in detail in the following chapter.

The above are the more general issues which relate or may relate to the implicated parties' roles in the matters considered by us pursuant to our terms of reference.

We briefly now set out some issues which applied to the cases concerning the implicated parties.

(1) TSANG King Hung

It is common ground Mr. TSANG was trading at some stage as an inside dealer. We, as will be seen, after examining the evidence provided by him in which he admitted he was doing so by trading in Stime stock using nominees, were satisfied this was so. We will discuss his position in detail in Chapter 10. We were satisfied he traded on the basis of information provided to him by Mr. WONG and on the basis of circumstances he knew existed relating to the joint venture from the 29th July onwards. As we have said an important issue was whether the information he received on the 29th July was relevant information, and if not at that time, whether and when it became relevant information for the purposes of section 8 of the Ordinance.

A further issue which arose with Mr. TSANG was whether he was trading on his own behalf or together with either or both of Mr. WONG and Mr. ADIL. His case was that he traded on his own behalf using his nominees and had told neither Mr. WONG nor Mr. ADIL he was doing so at any time before or during the relevant period.

What Mr. TSANG's position was in this regard with Mr. WONG and Mr. ADIL, would potentially effect what provision of section 9 he and they may have breached.

(2) WONG Wing Shing, Wilson

So far as Mr. WONG was concerned an initial and fundamental issue arose as to whether he was trading in Stime stock in any way at all during the relevant period. He said he had not. His case can be simply expressed to the effect that he had neither indulged in any trading in Stime stock or any stock at any time and had not knowingly assisted others to do so during the relevant period.

Any actual trading conducted by Mr. WONG could only have been through the use of nominees, or associates, as there was no evidence whatsoever that he traded directly on his own behalf.

A further question arose as to whether in addition or separately

to any trading on his behalf, Mr. WONG may have acted as a "tipper" so as to cause someone else to trade as an insider.

(3) Mohammed ADIL

So far as Mr. ADIL was concerned it was common ground he was trading in Stime stock before, during and after the relevant period.

The issues that arose therefore concerned the nature of his trading and the information as to the joint venture he may have had at the time of his trading, i.e. whether he was trading as an inside dealer using relevant information to trade. We considered also whether he was trading simply and independently on his own behalf and for his own purposes, or perhaps as a nominee for some connected person namely either or both of Mr. WONG or Mr. TSANG.

(4) LAU Wan

So far as Mr. LAU Wan was concerned, the fundamental issue which we had to address was whether he was ever in possession of relevant information.

As will be seen from the contents of Chapter 11 which deal with our considerations on the evidence relating to him, the only conclusion available to us on the evidence before us was that there was simply no sufficient evidence to find he had at any time received any relevant information. That meant he could not have been found to have breached any of the provisions of section 9 of the Ordinance.

Generally

Obviously a number of the issues mentioned above in this chapter were common to more than one implicated party. In arriving at our conclusions so far as any particular matter was concerned, we looked at all of the evidence relevant to that issue.

In determining these matters we looked at each implicated party's case separately. Much of the evidence however was relevant to all implicated parties' cases.

Other, more specific issues arose in respect of our consideration of particular matters or individuals. Those issues are obviously also of importance and indeed may be of very great importance. But they will be dealt with in the course of our reporting on our findings when dealing with the evidence relating to the individual implicated parties.

A convenient starting point is firstly to deal with the question, which is fundamental to our consideration of all the implicated parties' roles, as to when the information available to them became relevant information for the purposes of the Ordinance.

CHAPTER 7

RELEVANT INFORMATION

Relevant information is defined by section 8 of the Ordinance as follows:

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

We have briefly referred to section 8 in an earlier chapter of this Report dealing with general provisions of the law relevant to this inquiry.

In this chapter, we will be concerned with our considerations and findings as to whether and when, on the evidence presented to us, the information concerning Stime's (through its subsidiary Eternal Summit) contemplated, proposed or actual entry into the joint venture with HZK was relevant information for the purpose of section 8.

There were three distinct occasions when information or further information concerning the joint venture came into existence.

The first occasion was when Mr. WONG was given information concerning the proposed joint venture on the 28th July 1997 at an evening meeting at the Conrad Hotel and agreed to go to Beijing to discuss the joint venture with the potential PRC partner.

The second occasion was when Mr. WONG, Bee HO and Simon NG in fact went to Beijing over the 30th and 31st of July 1997 and entered into discussions concerning the joint venture with staff of HZK.

The third occasion was when Mr. WONG returned to Beijing on the 3rd August 1997 with Simon NG and signed the joint venture agreement.

We will address each of those occasions in turn.

(A) The 28th July Conrad Hotel meeting
The evidence

There was one quite surprising contradiction in the evidence concerning this meeting.

Both Simon NG and Mr. WONG gave evidence to the effect that to their recollection Graham CHAN was present at the meeting of all three of them at about 5 p.m. or so on the 28th July at the Conrad Hotel Coffee Shop.

Graham CHAN on the other hand remembered the initial telephone contacts he had with Simon NG concerning Mr. NG looking for a replacement company for the Thai party originally to be a partner in the joint venture and his suggestion that Stime was a possible replacement but could not remember attending the meeting on the 28th July at the Conrad Hotel.

Mr. CHAN had also remembered contacting Mr. WONG after he, CHAN, had spoken to Simon NG and telling Mr. WONG that Simon NG would contact him about the matter.

We had reservations about Mr. CHAN's evidence in regard to his being unable to remember being present or not present at any meeting between Simon NG and Mr. WONG on the 28th July, or even thereabouts, at the Conrad Hotel for the purpose of Simon NG telling Mr. WONG of the proposed joint venture.

It seemed unlikely to us that someone who had been instrumental in bringing Stime into a joint venture of the nature of the one ultimately entered into would be unable to remember if he was present at an hour or so long meeting where that joint venture was given birth.

In short we regarded Mr. CHAN as being less than completely forthcoming in his evidence in this regard. Our impression of him was that he wished to distance himself from the matter.

In any event that left us with only the evidence of Mr. WONG and Simon NG as to what information Mr. WONG was given at that meeting.

Mr. NG said he told Mr. WONG enough about the joint venture proposal so as to interest him in it and obtain his eventual agreement to go to Beijing to further discuss the matter with the mainland partner, HZK.

Mr. NG agreed the Conrad Hotel meeting was in the nature of a preliminary discussion only, without great detail, but said that he told Mr. WONG:

(a) that there was an opportunity for Stime to replace a party in a joint venture project on the mainland;

(b) that the joint venture was with a particularly well connected and experienced mainland partner;

(c) that the business of the joint venture related to a 2-way pager system which was an innovative device in the nature of a mini computer;

(d) of the general structure of the joint venture and that Stime would be the majority partner.

He further said he may have mentioned the amount of capital required of Stime, i.e. $4.5 - $5.0 million US currrency. He said at the end of the meeting Mr. WONG agreed to go to Beijing to discuss the project with the Chinese party.

Mr. WONG in his evidence said at the Conrad Hotel meeting Mr. NG told him:

(a) that an opportunity existed for Stime to enter into a project in the mainland as the result of one of the participants dropping out;

(b) that the project related to a joint venture with a politically powerful party;

(c) involving 2-way pager technology;

(d) that the project required an investment of "several tens of millions of (Hong Kong) dollars".

He said that the end of the meeting he agreed to go to Beijing to be further briefed by the Chinese party. That is the scope of the direct evidence, by the people present at the meeting, as to what was said.

We accept that the conversation between Mr. NG and Mr. WONG was not fully detailed. But we bear in mind that the meeting took place for over an hour. Even allowing for the usual social chitchat, that allowed some considerable time for the discussion of the joint venture and its project.

We are satisfied from the evidence of Mr. NG and Mr. WONG, taken together, and even bearing in mind the uncertainties in their recollections of what exactly was said that Mr. NG imparted to Mr. WONG at that meeting information regarding the joint venture in substantially the following terms:

(a) That the joint venture was to be with a politically well connected mainland company;

(b) That it involved a 2-way paging project;

(c) That Stime would be the dominant partner;

(d) That the investment required of Stime would be in the region of "several ten million dollars";

(e) That it was more in the nature of an existing opportunity for Stime to step in to the joint venture rather than of Stime having to compete with other companies for acceptance into the joint venture.

We are satisfied that the above information was given to Mr. WONG by Mr. NG at the Conrad Hotel meeting.

It seems to us that that information relates to the very basics of which Mr. NG would be anxious to inform Mr. WONG concerning the project, and indeed the very basics Mr. WONG would be interested to know. We are satisfied that, for example, Mr. WONG, as he says, would have been told of the approximate amount of capital Stime would be expected to invest even though Mr. NG was not sure if he told Mr. WONG of that particular.

We are further satisfied that by the end of the meeting, Mr. WONG had expressed sufficient interest in the project so as to agree either then or early next day to go to Beijing to further discuss the potential entry of Stime into the joint venture with the Chinese party.

I. Was the information provided to Mr. WONG on the 28th July 1997 "specific" information?

There have been many definitions proposed as to the meaning of the word "specific" in equivalent or similar, legislation around the world.

Some texts, and some cases, define it practically by a series of examples of what has been found to be specific by various tribunals or courts.

Very frequently the meaning of the word for those purposes has been approached by contrasting it with the word "precise" which appears in, for example, the equivalent English legislation, or by comparing it to the concept of general information. For example, it has been frequently said that specific information need not be precise, but it must be more

than mere rumour and speculation. It has also been a starting point to contrast and compare specific information about a matter to general information about the day-to-day affairs of a company, and it has further been frequently said that it must amount to more than vague hope or conjecture about a matter.

All of these approaches are of value in determining in particular factual circumstances whether information is specific for the purposes of the Ordinance. The Tribunal has taken such approaches into account.

Further, on occasion courts dealing with similar legislation have settled upon a definition of the word for the purposes of that legislation. Such definitions often deal with the qualities required of information before it can be held to be "specific". In 1981 the Singapore Court of Appeal, in respect to its domestic legislation said that "specific information" is information which possessed sufficient particularity to be capable of being identified, defined and unequivocally expressed[4].

The Singapore Court of Appeals oft-quoted approach to the concept of specificity was to determine it by the quality and nature of the particulars of the subject matter contained within the information. That approach has much to recommend it in the view of this Tribunal.

The word "specific" at the end of the day is a plain English word. It is an adjective as used in the Ordinance. According to the Oxford English Dictionary (Second Edition) Vol. XVI, it means:

> "*a. Of qualities, properties, effects, etc.: Specially or peculiarly pertaining to a certain thing or class of things and constituting one of the characteristic features of this.*
>
> *c. Peculiar to, characteristic of, something.*"

There is no doubt that the word "specific" in our legislation does not carry with it any requirement that the information be precise. That is trite law[5]. Accordingly the meaning as set out in the excerpt of

[4] Public Prosecutor v. GCK Choudhrie (1981) 2 Co. Law 141.
[5] See for example the Report of the Tribunal in the Chinese Estates Holdings Limited Inquiry at page 39-40. Also the comments of the Tribunal in the Hanny Holdings Limited inquiry at page 71-72.

the Oxford Dictionary is the meaning adopted by this Tribunal, as it has been adopted by previous Tribunals.

Whether or not information is specific rather than general in particular circumstances is a question of fact. Where the line is crossed in that regard is often difficult to discern.

We consider that, for the purposes of Hong Kong's legislation and our present considerations of the evidence before us relating to this inquiry, information becomes sufficiently specific concerning a company's affairs if it carries with it such particulars as to the characteristics of a transaction event or matter or proposed transaction event or matter so as to allow that individual transaction event or matter to be identified and its nature to be coherently described and understood. The Tribunal directed itself accordingly.

In our view the information provided to Mr. WONG by Simon NG on the 28th July meeting at the Conrad Hotel satisfied this test.

In no way could that information be considered as merely general. It provided Mr. WONG, even if the name of HZK was not revealed, with information that narrowed down the other possible participating party as a powerfully connected PRC company. It particularized the project beyond a general business cooperation and even beyond a telecommunications project to specifically identify it as a 2-way pager project. It gave the broad scale of Stime's required financial investment and established that Stime would be the majority shareholder. It was further, so far as Mr. WONG was concerned, to the effect that he was sufficiently interested in the project so as to agree to go to Beijing to enter into discussions with the Chinese party, well knowing that he had for some time wished to "redden" Stime by participating with a well connected PRC entity.

This comprised information which went beyond generalities and related to a particular and identifiable aspect of the company's potential business or affairs. In our view it did not matter, so far as that information was concerned, whether it be, without limiting the range of what may be specific information, an existing or proposed transaction or

series of transactions or of an event or proposed event.

The information was not concerned with general trends or the day-to-day business of Stime. It provided particulars of an individual opportunity for Stime's potential participation in a new business for a capital investment of a given estimated amount. It included an agreement by Mr. WONG to go to Beijing to discuss the matter with the Chinese party. It was information Mr. WONG received against the background of his intention to "redden" Stime.

It may be that certain of the particulars were not precise or complete in their details. But we are satisfied that does not alter the fundamentally specific nature of the information.

In so far as this is concerned however the information provided to Mr. WONG by Mr. NG was most certainly not about a completed transaction. It was simply a proposal. The briefing was designed to do no more than attract Mr. WONG's interest in Stime's participation in the future project. Any agreement as to Stime's participation in the joint venture was still a long way off.

It is common ground that by the 29th July there could not be said, on the evidence before the Tribunal, anything which would suggest that it was more probable than not that Stime would enter the joint venture. The furthest matters had gone was that Mr. WONG had merely agreed to go to Beijing for discussions with the Chinese party.

How does this affect the specific nature of the information provided to Mr. WONG?

It has been suggested before other Tribunals in Hong Kong on occasion that before information concerning a contemplated transaction can be held to be sufficiently specific there must be demonstrated a probability that the transaction will proceed.

It seems to this Tribunal that there can be no additional requirement that information, otherwise specific, which relates to a proposed transaction can only be specific if, by some objective or even

subjective measure, that proposed transaction is more probable than not to proceed or come to fruition.

In our respectful view such a requirement would tend to defeat the intended operation of the legislation. That is because in large part instances of insider dealing relate to transactions which are inchoate within the corporation's purview. That is, they are under negotiation and subject to final approval or agreement. In many cases, the chances as to whether or not the transaction will be finalized or agreed cannot be given anything but the broadest assessment. The probabilities of the transaction being finalized or agreed may in many cases be simply unknown or unable to be quantified or assessed in any meaningful commercial way, yet the information concerning the commercial negotiations or the commercial approach which has taken place or been made may well in some circumstances so far as the proposed transaction is concerned be quite detailed.

The requirement that information be specific relates to the characteristics and contents of the information concerning the company's affairs itself and does not logically depend on whether or not the subject matter of the information, if a proposed course of action, has any particular likelihood of fruition or success. There may be a huge number of variables extrinsic to the actual information which may have the potential to affect the likelihood of a proposed course of conduct coming to fruition.

It may well be, of course, that the lack of particularization or specificity in information concerning a proposed transaction at a particular point of time is reflected by a correspondingly low probability, at that point of time, of the project or transaction being brought into being. But that is more to do with a commonsensical commercial reality that the more detailed and better researched a proposed transaction may come to be the correspondingly greater may be the probability of its achieving fruition.

The mere fact that a transaction is proposed, contemplated, or under negotiation, or is subject to preliminary discussions only would not and should not take it outside the provisions of section 8 of the Ordinance

and therefore outside the protections our legislation gives to the investing public.

As stated by Brenda Hannigan in "Insider Dealing" (Kluwer Law 1988) at page 54:

> "*Will knowledge of preliminary steps be sufficiently specific? What if … an individual is found to know of a chain of events the most probable consequence of which is a take-over bid? Will that suffice? Both instances would seem to be within the legislation, for while unfounded rumours and the vaguest hopes would not be sufficient to amount to unpublished price sensitive information, contemplated acts as well as actual events are certainly within the legislation*[6]."

Her comments relate to the English Company Securities (Insider Dealing) Act of 1985 but are germane to our considerations as section 10 of that legislation required that the "unpublished price sensitive information" with which she was concerned related to "specific" matters.

She goes on to say regarding merely contemplated transactions:-

> "*After all, the whole point of insider dealing frequently is to deal while the transaction is only contemplated, for once it has actually occurred the market is likely to be aware of it and will move to reflect that fact in the price, thereby preventing any profiting by insiders*[7]."

In this Tribunal's view the fact that a transaction or project is at merely an introductory or preliminary stage is not decisive as to whether information concerning that proposed transaction or project is or can be specific. It may well be one of the factors to be taken into account and indeed may in some cases be an important factor. Nor, logically, are the probabilities of the transaction or project coming to fruition decisive.

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[6] See 'Insider Dealing' by Brenda Hannigan, page 54 (London, Kluwer Law Publishers 1988).
[7] Op. cit, page 54.

It is the nature of the information which determines whether it is specific for the purposes of section 8 of the Ordinance, not the commercial probabilities or perceived probabilities of the subject matter reaching fruition. The Tribunal directed itself accordingly.

In coming to this conclusion, the Tribunal noted two further matters.

The Hong Kong Legislation in sections 9(1)(b), (d) and (e) firmly brings contemplated takeovers of companies into the ambit of insider dealing, as does all existing legislation in the major overseas jurisdictions.

Obviously the fact that a takeover is merely contemplated was not thought to be a matter which prevented information to that effect from being found to be specific for the purposes of section 8. There is no additional requirement incorporated into those provisions of sections 9(1)(b), (d) and (e) that in addition to being contemplated the takeover proposed be likely or probable to result in an offer or a successful take-over.

Finally and importantly in this regard, we do not see any unfairness in the conclusions we have arrived at. Connected persons who divulge information about inchoate transactions which may be otherwise specific, but where the probabilities of any commercial completion of that transaction are low would be protected from any allegation that they divulged relevant information by the requirement of proof that the information was price sensitive. It would be more difficult to establish that the information was price sensitive the lower the probability was that the project or transaction would reach fruition. Further, it would be more difficult to establish that those persons were aware of the price sensitivity of the information.

In our view, it is these two requirements to which the question of the probability of a contemplated transaction coming to fruition is relevant.

As stated by Brenda Hannigan,

> "*To an extent the evidential difficulties involved in dealing with whether the information …is of a specific nature, may be resolved by the court concentrating on the final requirement which is that the information …would be likely materially to affect the price of those securities*[8]."

We accordingly do not regard the probabilities, at any point of time, of the joint venture the subject of the information with which we are concerned in this inquiry, arriving at completion as determinative of whether, at that point of time, information relating to the proposed joint venture was specific for the purposes of section 8 of the Ordinance.

We have said we are satisfied that the information provided to Mr. WONG at the Conrad Hotel meeting was specific for the purposes of section 8 of the Ordinance.

In arriving at that conclusion, we have taken into account that as of the 28th July and 29th July the chances of consummation of the project were unquantifiable. Nevertheless, on the basis of Mr. WONG agreeing to go to Beijing to discuss the matter with the staff of the PRC company and of his expressed interest in "reddening" Stime we are satisfied that the joint venture project which was, we are satisfied, effectively there for the taking, was one which, following the meeting of the 28th July could properly be characterized as a course of action which Mr. WONG was contemplating, albeit he was far from having decided to proceed with the project.

II. <u>Further information provided to Mr. WONG after the 28th July meeting at the Conrad Hotel</u>

Regardless of the fact that we are satisfied that Mr. WONG possessed specific information after the conclusion of that meeting on the 28th July and by 29th July, we will go on and consider further information provided to him or known to him on the 30th July and 3rd August 1997.

[8] See 'Insider Dealing' by Brenda Hannigan, page 56-57 (London, Kluwer Law Publishers 1988).

That is because some disclosure concerning Stime's interest in the joint venture with HZK was made on the 4th and 5th August by way of public announcements.

A question before us therefore is whether so far as those announcements are concerned, they put into the market place sufficient information so as at the date of the announcement or shortly following upon the announcement the specific information then relating to Stime was or may have been generally known.

Accordingly we will now proceed to deal with the further information known or provided to Mr. WONG on the 30th July and the 3rd August 1997.

(B) <u>The 30th and the 31st July briefing in Beijing</u>

This briefing occurred on the 30th July, and, according to Mr. WONG, Simon NG and Bee HO some further discussions may have continued informally on the 31st of July prior to them returning to Hong Kong.

<u>Was the information available on 30th July "specific" information?</u>

Regardless of what, if any, further information was provided to Mr. WONG on the 30th July we are perfectly satisfied that by going to Beijing for the purpose of discussing the joint venture proposal on the 30th July that event itself was further information Mr. WONG (and others) was in possession of concerning the proposed joint venture, when considered in aggregate with the information provided to him on the 28th July.

Further by the conclusion of that day he had been, together with Bee HO, taken through the technical details of the project. He was aware of the financial structure of the joint venture. He had spent a considerable time in a briefing and in discussion with HZK, the potential partner.

There may well have been some unresolved problems in Mr. WONG's mind as to e.g. financing and the precise terms of the agreement, but we are satisfied from the evidence before us that the joint venture was now effectively wholly revealed to him.

Additionally we accept the evidence of Simon NG that Mr. WONG had, by the completion of the discussions with HZK on the 30th or 31st July expressed the view that he agreed with the joint venture proposal in principle and was prepared to go ahead with it subject to the preparation of documentation.

Whatever Mr. WONG says about his state of mind still being unsure in this regard we are satisfied, from the rapid preparations which were completed over the next few days for the signing of the joint venture on the 3rd August that Mr. NG's recollection in this regard is reliable.

(C) <u>The 3rd August signing of the joint venture agreement: Was that additional specific information?</u>

The fact that Eternal Summit, a wholly-owned subsidiary of Stime had signed the joint venture agreement on the 3rd August was further specific information concerning the affairs of Stime. The contract encapsulated in written form the whole of the particulars of the joint venture. The fact of the signing of the agreement itself was independent specific (and by now precise) information concerning the culmination of Stime's interest in the yet to be performed joint venture.

<u>Summary of findings so far as the issue of specific information is concerned</u>

We have found that even on the 28th July the information provided to Wilson WONG about the proposed joint venture was specific.

That information was added to on the 30th July in two ways, firstly by the additional fact, known to Mr. WONG and Mr. TSANG as a matter of common sense, that Mr. WONG had arrived in Beijing for the purpose of discussions or negotiations with the Chinese party, and secondly by the provision of more details as to the joint venture itself at

those discussions or negotiations. The information known to Mr. WONG accordingly became more specific.

The final item of specific information which came into Mr. WONG's possession was the culminating and important fact that he had on behalf of Eternal Summit signed the joint venture agreement on the 3rd August.

Was the specific information at material times generally known to those persons accustomed or likely to deal in the securities of Stime?

We turn now to consider whether, in respect of each of the above occasions when information concerning the joint venture came into existence it was information known to that part of the market accustomed or likely to deal in Stime stock, in terms of section 8 of the Ordinance.

I. The 28th July meeting information

The information passed to Wilson WONG on the 28th July was, on that day known only to him, Simon NG a non-executive director of Stime and, perhaps, if WONG and NG's evidence is accepted that he was also present, to Graham CHAN, the Stime auditor.

There was nothing suggested in evidence before us that would, or even could have brought that information generally to the attention of those individuals and institutions in Hong Kong concerned with Stime stock.

Nothing was done to advance this position on the following day the 29th July. All that occurred on that day was that Mr. WONG told some individuals something of the previous evening's meeting with Simon NG.

Before Mr. WONG left Hong Kong on the 30th July trip to Beijing to meet with the representatives of HZK the information provided to him on the 28th July had still not gone much outside the tight circle of himself, Mr. NG, Mr. TSANG (who said he had been told about the proposed joint venture on the 29th July) and perhaps Mr. ADIL (who

strongly denied knowing anything of this in his evidence before us) and Mr. Bee HO who had been told something of these matters so as to perform his role of technical advisor to Mr. WONG during the Beijing meeting. It may be that some of these individuals had passed that information on to others, although there was no evidence before us to that effect, but it was never in dispute during the course of this inquiry that the information had not in any real way been disseminated into the market place by the 30th July.

II. The 30th and 31st July meeting in Beijing

Again, it was common ground that Mr. WONG and his party returned to Hong Kong only on the evening of the 31st July. Mr. WONG returned to the offices of Stime on the 1st August.

There he gave some sort of briefing on the contents of the negotiations in Beijing to other Stime directors.

He placed in train about then a series of steps necessary to prepare Stime for entry into the joint venture. Those matters concerned approaches to banks as to finance and the obtaining of Eternal Summit. Documents were sent to Stime by either HZK or Mr. Simon NG.

In other words, the pool of individuals who had obtained some information concerning the proposed joint venture had widened but was still restricted.

It was common ground that pool in no way represented information being passed generally into the market so far as actual or potential Stime investors were concerned.

III. The signing of the Agreement on 3rd August

That position continued when Mr. WONG returned to Beijing on Sunday the 3rd August and signed the joint venture agreement. No information as to that had been provided to the general market, or that part of the market which was or was likely to have been concerned with Stime's stock.

IV. The announcements

The only information provided to the market was by way of two public announcements published in the press on Monday the 4th August and Tuesday the 5th August respectively.

Those published announcements were effectively mirrored by SEHK teletext announcements on the same day. There was no substantial difference in information between the press and teletext announcements.

The two announcements were as follows:

(1) The announcements of the 4th August

On the 4th August in two newspapers, the South China Morning Post and the Hong Kong Economic Times, it was announced that preliminary negotiations were taking place in respect of the proposed development of a new product in the PRC with a third party. It was emphasized that the proposal may not proceed.

Those announcements as we say were mirrored by a SEHK announcement on teletext.

The announcements in our view were objectively misleading. By the 4th August the joint venture had in fact been signed. It had become reality. The announcements of the 4th August were far from current. They, if anything, provided partial information at best as to the situation on the 30th July.

In short even following the announcements of the 4th August, there was still a fundamental gap in the market's knowledge of the affairs of Stime so far as the joint venture was concerned. The specific information which had first come into being on the 28th July had developed by the 4th August well beyond the compass of the announcements of that date. The market generally remained ignorant of the existence of the signed joint venture agreement at the close of

business on the 4th August. That situation was to change on the following day.

(2) The announcements of the 5th August

On that date, information was provided to the Hong Kong market generally which would have allowed it to be fully aware of Stime's involvement in the joint venture.

On that day, Stime published two announcements in the Hong Kong press, i.e. in the Hong Kong Standard and Hong Kong Economic Times which fully disclosed the terms of the joint venture with HZK and Target Wise, and that Stime had an interest in that joint venture through its wholly-owned subsidiary Eternal Summit.

A concurrent morning announcement was also made by way of a SEHK teletext message before the commencement of trading which again reflected the information contained in the newspaper announcements.

By those press and teletext announcements the full involvement of Stime in the joint venture was disclosed together with the principal terms, purpose and structure of the joint venture and the fundamental fact that the joint venture had been signed.

On the morning of the 5th August therefore, and only then, by way of the two press announcements and the SEHK teletext announcement of that date full information had for the first time been placed into the market place as to Stime's interest in the joint venture project with HZK.

The price-sensitivity of the information

We turn now to consider whether, as at material times, the information possessed by Mr. WONG was of the sort which would materially affect Stime's stock price if it had been known generally to those persons who were accustomed to or were likely to trade in Stime securities.

As a precursor to what follows we accept the evidence of both Alex PANG (TW 1) and Eric CHENG (TW 30) of the SFC Surveillance Division that Stime was, broadly speaking, a 3rd tier company so far as investor regard was concerned and that the market in its shares consisted primarily of retail investors.

The specific information known to Mr. WONG on the 28th July

We will not repeat our findings as to what information was available to Mr. WONG at the conclusion of that meeting on the 28th July.

Suffice it to say we have concluded that that information was specific.

In general terms Mr. WONG's possession of information should be viewed, so far as its price sensitivity is concerned, against two background realities.

Firstly, we accept from Alex PANG's evidence that the market place in Hong Kong in 1997 was favourably reactive to securities in companies which had demonstrated an intention and a potential to "redden" themselves by involvement in projects with mainland companies. In our view that reaction was enhanced by such projects being in the realm of communication technology.

Secondly, Mr. WONG intended, and had expressed the intention, to involve Stime with a mainland partner. He wanted to connect Stime with an influential partner to further Stime's business on the mainland.

We consider there to be considerable merit in the view that if it had become generally known in the market place that Stime had an opportunity, albeit still an uncertain one, to enter into a joint venture with a significant mainland company, involving a significant capital investment and a diversification of its business into a relatively, in those days, high technology communications field, and that Stime would have the controlling interest in that joint venture, then taken together with information that the chief executive of Stime was to go in a day or so to

Beijing to discuss the project with the Chinese party, that information, in the market perspective of July and August 1997, would have had a material effect on Stime's securities prices.

The fact that that chief executive, Mr. WONG, had wished for some time to "redden" Stime would have served to emphasize the price sensitivity of the joint venture information.

The evidence of Alex PANG (TW 1) was to the effect that this information was price sensitive as at the 28th July as it represented an opportunity to diversify the core business of Stime into what was then a high technology field and would be perceived by the market to be an opportunity for Stime to strengthen its future earning potential.

Nevertheless, while in our view the information available to Mr. WONG, in its totality, after the meeting of the 28th July, if placed into the market may very well have had a material effect on Stime's stock prices, after considerable deliberation we are unable to say that we are satisfied to a high degree of probability that it would likely have had a material effect.

In this regard we bear in mind that as of the 28th and 29th July there had been only an approach by Simon NG to Mr. WONG. Matters had not yet been taken further. They did develop to some extent on the 29th July when Mr. WONG enlisted Bee HO into the expedition to Beijing, but at the end of the day on 29th July there had as yet been no direct contact between the Stime group representatives and HZK.

In those circumstances we are of the view, that the joint venture proposal may still not have advanced sufficiently from the coffee house conversation of the 28th July for us to be satisfied that it would, if known, have been likely materially to have effected Stime's securities prices. We have taken into account Mr. Alex PANG's opinion in this regard, but so far as the situation as at the 29th July is concerned do not accept it. In our view, even though the information may have been price sensitive at that time it required something more, a further step, before we could be satisfied to a high degree of probability it was likely to materially effect Stime's securities prices.

In our view that further step occurred on the following day, the 30th July, when Mr. WONG in fact proceeded to Beijing for face to face discussions with HZK as to Stime entering the joint venture. That fact, regardless of any knowledge of the contents or outcome of those discussions, in our view is sufficient.

If it had been announced on the stock exchange floor in Hong Kong on the opening of trade on the morning of 30th July that the CEO of Stime had gone to Beijing to discuss, with a powerfully connected PRC company, Stime entering into a 2-way pager project and joint venture as a majority partner, together with the other particulars of information known at that time we are sure there would have been a significant and immediate market reaction.

In this regard, as has been said before, the proof of the pudding is in the eating and the analogous effect on the market of the announcement of Monday 4th August is of some considerable assistance.

We will explain why shortly. But first an appreciation of the effect that announcement had on the price of Stime shares and warrants should be kept in mind.

At the close of trading on Monday 4th August, as can be seen from Annexure A, the price of Stime shares was $1.64, which represented an increase of 23.3% on the previous Friday 1st August closing price. Turnover increased from 13,882,000 on Friday 1st August to 23,739,000 on Monday 4th August.

The figures for Stime warrants show a similar story. The previous Friday 1st August closing price of $0.61 rose to a closing price of $0.89 on Monday 4th August representing a 45.9% increase. And turnover rose from 4,420,000 on the 1st August to 11,428,000 on the 4th August.

Only some 10.49% of the share turnover on 4th August was attributable to the nominees of Mr. TSANG and to Mr. ADIL. Only

28.79% of the warrant turnover was attributable to them. The balance of the turnover was the result of independent traders.

It may be that there was some portion of that independent investor demand controlled or encouraged, for reasons in large part extrinsic to our considerations, by Mr. LAU Wan or Patrick YAU. Nevertheless it remains fair to say that the very largest part of the turnover was attributable to genuinely independent investor demand.

In our view the rise in market demand for Stime's shares and warrants throughout the trading day of the 4th August was attributable in significant part to the announcement of the 4th August.

A point which we accept and which Alex PANG made in his evidence was that that announcement, albeit made obsolete by the signing of the joint venture agreement on the 3rd August, allows, by extrapolation, knowledge of the effect that would have occurred on those securities prices if the information that Mr. WONG on the 30th July was in Beijing for discussion with HZK representatives as to Stime entering the joint venture had been released.

That is because the terms of the 4th August announcement were to the effect that,

> "the group is negotiating with an independent third party in relation to a proposal to develop a new product in the PRC".

That announcement effectively reflects the state of affairs of Mr. WONG being in Beijing for negotiations on the 30th July as to the joint venture proposal. The mere fact of negotiations taking place was reported. There was no information provided as to the content or progress of those negotiations.

On that basis then, some considerable support from the market's response to the announcement of 4th August can be given to the view that the information, as provided to Mr. WONG by Simon NG on the 28th July, taken together with Mr. WONG with Bee HO and Simon NG being

present for negotiations in Beijing with HZK on the morning of 30th July was, without more, price sensitive in terms of section 8 of the Ordinance.

A separate and as concrete basis for this view in that regard is that the potential benefit of the proposed joint venture with HZK was a diversification of the core business of Stime into a field of (then) high technology which would strengthen Stime's earning potential in the future. In this respect we agree with Mr. PANG that this would be perceived as "good news" concerning Stime by the market.

Further it would mean Stime was no longer dependent on the low profit margins of its current primary business of the manufacture of relatively low grade quartz watches and their components.

Additionally Alex PANG was of the view that by "reddening" Stime, Mr. WONG would tap into the current market sentiment in favour of companies in working arrangements with PRC corporations.

In our view all those matters, which were known to Mr. WONG by the conclusion of the 28th July meeting, when taken together with the fact of his and his associates going to Beijing for the purpose of discussions concerning the joint venture would, if placed in the market place at that time to a high degree of probability likely have had a material and significant effect on Stime's securities prices.

To add to what we have already said, in the circumstances of Hong Kong's stock market at the time it is difficult to see how such information would not have had an effect of a material nature on Stime's stock prices.

We appreciate that as of the conclusion of the meeting of 28th July any finalization of the joint venture may have seemed a long way off. But in our view this was not a mere vague preliminary approach. It was more concrete than that. HZK was looking for a partner. The joint venture details had been more or less finalized between HZK and its Thai partner before the Thai party dropped out for its own reasons.

In other words, Stime was being presented with something akin to an open door. The whole process of Stime entering the joint venture took only six days from that initial approach on 28th July.

Simon NG in his approach on the 28th July to Mr. WONG was already effectively acting as the agent of HZK in recruiting a replacement party for the Thai company. Mr. WONG knew that. Mr. NG said that that was his role in his evidence before us.

In short, if information of the circumstances of the meeting of the 28th July taken together with the fact of Mr. WONG's trip to Beijing on the 30th July for the purpose of discussing Stime's entry into the joint venture with the mainland partner been placed in the market, it would highly probably have been regarded by that section of the market accustomed or likely to invest in Stime securities as representing something considerably more potent than mere vague hopes or generalities and as being a direct commercial approach to Stime resulting in the taking of significant preliminary steps which held out a real opportunity to Stime to enter into the joint venture.

We have taken into account the likelihood of the joint venture proceeding at that stage. We bear in mind that Mr. WONG had expressed previously a desire to "redden" Stime. We accept from Mr. TSANG's evidence that he had told Mr. TSANG even as early as the 29th July that the project seemed "solid". In our view even though the precise probabilities are not quantifiable there was, by the time Mr. WONG commenced his discussions in Beijing on the 30th July a good chance that Stime would join the joint venture.

We are satisfied that there was a high probability that at the end of the day on the evidence before us the information that Mr. WONG had gone to Beijing for negotiations with HZK concerning the joint venture was price sensitive in the terms of section 8 of the Ordinance.

I. <u>The 30th July meeting in Beijing</u>

We will go on briefly to deal with the price sensitivity of the further specific information provided to or known to Mr. WONG

following the 30th July meeting and the 3rd August signing of the agreement. That is because, as we have said, of the release of some information into the market concerning the joint venture negotiations on the 4th August.

Nothing really changed following the briefing given to Mr. WONG in Beijing on the 30th July other than the opportunity to enter the joint venture had hardened and was now more in the nature of Mr. WONG having the joint venture being urgently pushed upon him by HZK and Simon NG.

From the evidence of Simon NG, which we accept, and which was never challenged, HZK had made it perfectly clear that Stime not only could, if it wished, enter into and become the dominant partner in the joint venture, but was actively pressing Mr. WONG to have Stime do so.

Mr. WONG in his evidence agreed that the ball was very much in his court. Whether he, on behalf of Stime, went ahead with the proposal was effectively up to him.

Accordingly, we are satisfied that by the end of the briefing session on the 30th July Mr. WONG was in possession of specific (and indeed by this time detailed and precise information), when taken together with the specific information he had been provided with on the 28th July at the Conrad Hotel meeting.

We accept Mr. NG's evidence to the effect that Mr. WONG had agreed to participate in the joint venture subject to documentation. That is supported by Mr. TSANG's evidence that Mr. WONG seemed inclined to proceed.

We reject Mr. WONG's evidence that he was still unsure as to whether to proceed with the joint venture.

After Mr. WONG returned to Hong Kong after the 30th and 31st July trip to Beijing, things proceeded with great rapidity. Eternal Summit was purchased. Documents were faxed to Mr. NG by HZK, he

sent them to Mr. WONG. Return flights to Beijing were booked for the signing of the agreement which was to take place on the Sunday 3rd August.

All that is redolent of a decision to proceed with the joint venture having been made.

Mr. WONG's assertion that he was still not sure whether he would enter the joint venture at this stage is nonsense. He did nothing to delay the trip to Beijing on 3rd August. He went there knowing he had to sign. He did sign. His explanation that he thought he could avoid signing the agreement once he got to Beijing on the 3rd August, but then signed when he got there because to refuse would "not be nice" was incredible. In our view he had already, following the 30th July discussions, decided to have Stime enter the joint venture. This went beyond the reference in the 4th August announcement that "the proposal was at a discussion stage and may or may not proceed".

In short it is quite obvious to this Tribunal, and we are sure, that following the 30th July briefing the information in the possession of Mr. WONG was more than enough to have had a substantial and material effect on the price of Stime securities and would have done so had it been generally known in that part of the market likely to or accustomed to trade in Stime stock.

The information possessed by Mr. WONG at that time was already more specific than that contained in the 4th August announcements. The additional information, including Mr. WONG's decision to proceed with the joint venture subject to documentation was most certainly price sensitive in terms of section 8 of the Ordinance.

II. <u>The signing of the Agreement on the 3rd August</u>

Obviously the fact that Eternal Summit had signed the joint venture agreement on the 3rd August, as Stime's 100% owned subsidiary, in the terms of that agreement, was information which, standing alone, would be of the nature to likely materially affect the price of Stime securities.

It did not immediately do so however.

After the substantial rises in both price and turnover in Stime stock which took place on Monday 4th August following the announcements made by Stime on that day, the detailed announcements of the 5th August as to Stime having entered into the joint venture with HZK and Target Wise were not followed immediately by any rise in the price or turnover of Stime stock.

Indeed the price of Stime shares and warrants fell. By the end of trading on the 5th August Stime's shares stood at $1.54, some 6% down on the previous day's close of $1.64 and Stime's warrants were at $0.85, some 4.5% down on the previous day's close of $0.89.

Turnover had also dropped from 23,739,000 on the 4th August to 16,806,000 on the 5th August so far as Stime shares were concerned, and from 11,428,000 on the 4th August to 5,906,800 on the 5th August so far as Stime warrants were concerned.

In short, the information as to the agreement signed on the 3rd August as published in the 5th August announcements did not have any immediate positive effect on Stime stock prices or turnover at closing on the 5th August.

We do not think those facts however mean that the information contained in the 5th August announcement, i.e. the signing of the agreement, as reflecting the events of the 3rd August, may not have been price sensitive information.

We are sure that the information as to the signing of the joint venture agreement on the 3rd August was in fact price sensitive information.

That is because, in addition to the reasons we have given in respect of the information relating to the joint venture proposal of the 28th July and 30th July including the "reddening" of Stime and the opportunity it had to diversify its business, Stime on that date, the

3rd August, had committed to the joint venture. What had previously been a potential or contemplated commercial relationship had now become concrete.

The reason, in our view, why the release of that information into the general market did not have an immediate positive effect on Stime share prices is quite simple.

To a significant extend the information in the 5th August announcements had been pre-empted in immediate price effect by the announcement of the 4th August which, although providing no detail, had already exercised the market's interest in a Hong Kong company working together with a PRC company on the mainland, and had also divulged, albeit very generally, the information that the project involved the setting up of a "new product".

Although the 5th August information was most certainly price sensitive, it was released into a market which had already and immediately beforehand responded dramatically to the previous day's announcement. The information released on the 5th August would take a day or so longer to have an effect on Stime's securities prices. The market would take time to digest the 5th August information, arriving as it did on the back of the 4th August information and, indeed, from the 6th August the price of Stime shares did begin a slow upward march moving from $1.54 on the 5th August to $1.64 on the 7th August (the end of the relevant period) and continued to increase to the $2.00 level by 20th August.

It is also worth noting that even on the 5th August Stime shares had reached a high of $1.80 before closing at $1.54. That high was a significant advance on the closing price of $1.64 on the 4th August.

The same general trend was evident in the prices of Stime's warrants on the 5th August and over the following days.

We turn now to deal with some particular matters raised in argument on behalf of the implicated parties as regards the price sensitivity of the information contained in the 4th August annoucement.

As Alex PANG said in his evidence the market had responded to the release of the 4th August information. That increase, in our view, was primarily due to that information. We have taken it into account in concluding that by the time matters had developed with Mr. WONG going to Beijing on 30th July for discussions with HZK the information concerning the joint venture had become price sensitive.

But it was suggested by Mr. MAK for Mr. WONG and Mr. TSANG and by Mr. LAM for Mr. ADIL that the increase on Monday the 4th August may have been merely due to a "bandwagon" effect, and had nothing to do with the announcements of 4th August, given that there had been a significant price rise on Friday the 1st August so far as Stime's securities were concerned.

We do not think any such effect could account for that level of price increase in Stime stock prices on the 4th August.

Indeed in the history of Stime stock trading there had been a series of significant increases throughout July and August of 1997.

For example, the increase in both price and turnover on Friday 1st August was itself significant and in our view in large part provoked by the trading in Stime shares by the nominees of Mr. TSANG and Mr. ADIL who amongst themselves accounted for 33% of share trading (and 10% of warrant trading) in Stime on the 1st August. On the 4th August, however, 90% of Stime shares were traded independently of those individuals (and 70% of Stime warrants). (See a Summary of Stime stock trading by TSANG's nominees and Mr. ADIL at Annexure H).

On the 4th August a very large number of independent dealings occurred in the market for Stime stock so much so that turnover in the shares of Stime at 23,739,000 and in the warrants at 11,428,000 exceeded recent historic averages by at least a factor of ten.

Over no previous period, even with the support of Mr. TSANG's nominees and Mr. ADIL's purchases, no "bandwagon" effect had manifested itself to that extent.

We regard it as highly unlikely that such an effect had manifested itself in that degree coincidentally on the 4th August, the same day as Stime's first public announcement concerning the possible joint venture.

In our view, the market reaction on the 4th August was primarily a reaction to the announcements of that date and accordingly is of some support both to the opinion of Alex PANG as to the price sensitivity of the information contained in that announcement as we have previously said, and, so far as the current issue is concerned, explains also why the information concerning the signing of the joint venture on the 3rd August when released into the market on the 5th August had little immediate positive effect.

In summary, we are satisfied that so far as the information available to Mr. WONG by the morning of the 30th July upon his going to Beijing for negotiations and following the 3rd August signing of the agreement is concerned, that on each of those occasions the information was price sensitive within the meaning of section 8 of the Ordinance.

We are accordingly satisfied for the reasons set out in this chapter that on each of those occasions Mr. WONG was in receipt or possession of relevant information.

Before we leave this chapter we mention one final matter. Mr. LAM for Mr. ADIL at one stage during the inquiry suggested that the joint venture agreement may have been a sham, designed perhaps for some reason other than genuine commercial purposes.

If so then the joint venture agreement and information about it would arguably not have been relevant information for the purposes of section 8 of the Ordinance or it would not have been "information about the company".

We dismiss this suggestion. From the 1997 annual report[9] two separate payments of US$1 million were made by Stime to Beijing Future

[9] Stime 1997 Annual Report, note 26(e) to the Accounts.

Telecommunication Company Ltd. for the purposes of the joint venture. Stime accordingly fulfilled a significant part of its financial obligations to the joint venture.

Further if the agreement was a sham it would mean Target Wise (Mr. Simon NG's company) would have been either involved in the fraud or a victim of it. We regard either possibility as highly unlikely. Accordingly, we are satisfied the joint venture agreement was a genuine commercial agreement.

We turn now to consider the individual cases of the implicated parties, Mr. WONG, Mr. TSANG, Mr. ADIL and Mr. LAU Wan.

CHAPTER 8

THE ROLE OF MR. MOHAMMED ADIL

A convenient point at which to commence our considerations and findings relating to the implicated parties is the role of Mr. ADIL.

That is, as will be seen, because our findings in regard to Mr. ADIL's role are fundamental to our findings in regard to Mr. WONG, and to some extent also have a bearing on our considerations relating to Mr. TSANG.

Mr. ADIL in his evidence, which included his interviews with SFC investigators which he adopted as being accurate and true and in his written statement provided to the Tribunal as material evidence which he also said was true and accurate, was consistent in his assertions that all trading he conducted in Stime shares was at his own volition and for his own benefit.

His trading history in Stime shares, and very occasionally warrants, which he said were the only securities he had ever traded in, stretched back to July 1996. He traded for about four months until about the end of October 1996 and then ceased trading for a period of about nine months until 14th July 1997, when he resumed trading and continued to do so until early 1998.

During this period he had only used one broker, China Point, where Mr. LAU Wan worked whom he had met at a Stime social function in 1996 and who had introduced him to China Point. He said his resumption in trading in July 1997 came about after LAU had advised him it was a good time to buy.

There are some quite distinctive features about Mr. ADIL's trading in Stime stock from the 14th July 1997 when he recommenced trading after a six-month hiatus and onwards.

Firstly, from the 14th July to 4th August he traded on a daily basis but only ever traded in Stime shares. Secondly, he only ever purchased shares and never sold. By the 4th August his portfolio stood at 13,024,000 shares which, at a unit price of about $1.62 was valued at about $21 million on a margin of about $8 million. Thirdly, starting from the 5th August (the day of the public announcement of the signing of the joint venture agreement) he purchased no more Stime stock and commenced a general and continuous selling of his Stime shares through to 21st August 1997. That reduced his Stime share portfolio from 13,024,000 on the 4th August to 3,854,000 on the 21st August, though at a unit price of about $2.17 it still was valued at about $8.35 million at close of trading that day.

Thereafter followed a more gradual selling off of his Stime shares, interrupted by periods of purchases, until by 24th December 1997 he had reduced his holding to 500 shares.

A further period of trading took place from January to April 1998 but so far as the purposes of this inquiry are concerned, can be ignored.

A history of Mr. ADIL's trading in Stime stock from July 1996 onwards is at Annexure J of this Report.

In short, Mr. ADIL came into the market on the 14th July 1997, and continuously purchased only Stime shares building up a very large portfolio until the announcement by Stime on the 5th August of the joint venture agreement with HZK and Target Wise having been signed on 3rd August, and thereafter began a long and extended sell off of the major part of his Stime share portfolio.

So far as his combination of timing of purchases and sales and their quantities were concerned, it could be said he got it perfectly right from a retail investor's point of view.

This was itself unusual because Mr. ADIL seemed to be a person who was, even on his evidence before us, someone who had little experience in stock-trading. He had traded as an investor only in one

security i.e. Stime stock. He apparently paid little attention to news or announcements relating to the company whose shares he had decided to trade in. He said in evidence he knew nothing of the Stime announcements of 4th August and 5th August. His evidence was to the effect that it was a mere coincidence that his decision to sell Stime stock continuously from the 5th August took place on the same day as Stime's announcement of the signing of the joint venture agreement.

He at one time in his evidence struggled with his understanding of the concept of settlements occurring at "T+2" or two days after the stock transaction had occurred.

Against that background of Mr. ADIL as a retail investor the following evidence assumes considerable importance.

Mr. ADIL's trading was financed in large part by funds provided by Mr. TSANG and Mr. WONG. From the schedule at Annexure E it can be seen that from the 23rd July to the 4th August, Mr. ADIL received approximately $3 million from them through his trading business Atari's account at the HSBC bank ("HSBC"). All of that was paid into his China Point trading account and was used to fund purchases of Stime shares.

The $3 million paid to the Atari account was paid by way of cash cheques. In other words, a cash cheque would be made out, taken to the bank, cashed, and paid as a cash deposit into Mr. ADIL's Atari account. As a matter of pure machinery, that made the tracing of funds from Mr. WONG or Mr. TSANG to Mr. ADIL's bank accounts somewhat difficult. But what can be further said is that from Mr. ADIL's own evidence he conceded that he had obtained funds from WONG even before 23rd July and that some of those funds may have been used to fund his Stime share purchases.

In other words, from the matching of amounts in cash cheques drawn by WONG (on 23rd July) and TSANG (on 28th July, 30th July and 4th August) and contemporaneous deposits into Atari's bank account which were then used to fund payments to Mr. ADIL's China Point account for the purchase of Stime shares, at least $3 million of the

approximately $14 million cost of Mr. ADIL's total Stime share purchases were funded by Mr. WONG's or Mr. TSANG's funds.

Of the remaining $11 million approximately $8.2 million was paid for by way of margins with some $2 odd million from untraced sources.

We point out that that is as far as any evidence of the matching of payments into Mr. ADIL's account with cash cheques drawn on Mr. WONG's bank account or Mr. TSANG's bank account can go. We emphasize that we do not assume that any other such payments, outside the evidence, were made but were successfully hidden. That would be unfair to Mr. ADIL and Messrs. WONG and TSANG.

Equally however it means that there is no evidence, other than that of Mr. ADIL, as to where the purchase monies for the balance of the $2 million he paid into his China Point account for the Stime shares during that period came from. He said in evidence it was his money.

His China Point account simply refers to "Fund deposit" as the source of those monies. His bank accounts, so far as there were sufficient funds in them to meet those sums paid to China Point simply refer to a considerable number of "cash deposits".

But as we have said, from the schedule at Annexure E, and its supporting documents a substantial part, some $3 million, of the "cash deposits" into Mr. ADIL's bank accounts used to fund his Stime share purchases from China Point can be traced to funds from Mr. WONG or Mr. TSANG.

Secondly, so far as cheques drawn on Mr. ADIL's Atari account are concerned, most if not all of the cheques drawn by Atari in favour of China Point for the purchase of Stime shares from the 14th July to the 4th August were, although signed by Mr. ADIL, in fact written out and completed by Dominic LI, the Stime Director and Finance Controller. That is from Mr. ADIL's own evidence, and Mr. LI's evidence.

So far as that is concerned, Mr. LI gave evidence of writing out (using the cheque machine of Atari or Stime sometimes for the completion of the printed amount numerals) two categories of Mr. ADIL's cheques.

The first category were written out in circumstances where Mr. LI said he was working at Atari's offices at Tsim Sha Tsui as a favour to Mr. ADIL so as to get Atari's accounts in order. On some of those occasions, Mr. ADIL would ask him to complete certain cheques for signature, or complete blank signed cheques. He did so. It is from these cheques, drawn on Atari's account, that the payments were made to China Point to meet margin calls and so to fund the Stime share purchases by Mr. ADIL and it should be borne in mind that the major part of those funds drawn upon by those cheques were provided by Mr. WONG or Mr. TSANG into Atari's account.

Those cheques would be then returned, completed, to Mr. ADIL or, on occasion according to Mr. LI would be banked by him, as another favour to Mr. ADIL. Those cheques were written from 14th July to 4th August 1997.

A second category of cheque written out by Mr. LI were cheques drawn on the joint account of Mr. ADIL and his father Mr. Siddique at HSBC. Those cheques were provided to Mr. LI by Mr. WONG in the offices of Stime and were signed in blank by Mr. ADIL. This occurred from 20th August 1997 onwards. Mr. WONG said he borrowed the cheques from Mr. ADIL to lend money to Mr. LAU Wan and had used another person's cheques (i.e. Mr. ADIL's) to do so at the suggestion of Mr. LAU Wan. Mr. ADIL confirmed that Mr. WONG had asked to borrow some signed blank personal cheques and he had given him twenty odd such cheques.

In any event those cheques were drawn down on Mr. ADIL's joint account from 20th August onwards as set out in the schedule at Annexure E and were numbered more or less sequentially from 017101 to 017115 and 017124 to 017132 and 017146 to 017150 and 025071, 025072 and 025078 totalling 29 cheques (some sequential numbers were missing).

In drawing down Mr. ADIL's joint account they totalled an aggregate amount of some $23 million.

Over the period those cheques were drawn they effectively accounted for the proceeds of Mr. ADIL's trading account at China Point which had been paid into that same joint account. Those proceeds totalled some $13.4 million. The additional $10 million to fund the 29 cheques came substantially from monies advanced to Mr. ADIL's joint account, from Mr. WONG's accounts comprising at least some $8.25 million and from Mr. TSANG's accounts, comprising some $1.47 million.

That means not only did Mr. WONG, from Mr. LI's evidence as supported by the cheques themselves so far as the handwriting thereon was concerned, and as was common ground in both Mr. WONG's and Mr. ADIL's evidence, draw down with those cheques an amount equivalent to the whole of the $13.4 million proceeds of Mr. ADIL's share trading as deposited in his bank account but also provided at least another $9.72 million together with Mr. TSANG into that account so as to fund the larger part of a further $10 million withdrawn from that account using those cheques.

Those 29 cheques drawn by ADIL and completed by Mr. LI on Mr. WONG's instructions were used by Mr. WONG to, according to him, lend monies to Mr. LAU Wan.

Mr. WONG had then had them completed by Mr. LI, so far as the payees were concerned in favour of various securities related firms on Mr. LAU Wan's instructions according to Mr. WONG, and we will deal further with the nature of Mr. WONG's evidence in this regard in due course.

What then can be made of this evidence? It is common ground that, so far as Mr. ADIL's trading account at China Point was concerned before, during and after the period of our terms of reference, the following matters occurred.

(1) A substantial and indeed major part of the monies used by Mr. ADIL to meet margin calls so as to purchase Stime stock up to and including the 4th August were monies which came from Mr. WONG's or Mr. TSANG's bank accounts.

(2) The cheques drawn on Mr. ADIL's Atari's account so far as payments to his stockbroker China Point are concerned for purchases of Stime shares were, from the evidence of Mr. ADIL, and the evidence of Mr. LI mostly written by Mr. LI and perhaps all were written by Mr. LI. From the schedule at Annexure E it can be seen that four of the six payments to China Point from 23rd July to the last day of share purchases before the selling of shares began, namely 4th August were written by Mr. LI according to Mr. LI's evidence based on the same four cheques he was shown relating to that period.

Of course the schedule is limited to transactions involving funds actually traced as emanating from Mr. WONG or Mr. TSANG's accounts and paid to Atari's account. It does not include all cheques drawn on Mr. ADIL's accounts paid to China Point.

Nevertheless, so far as it goes, the evidence referred to in the schedule summarizes the evidence actually given by Mr. LI in this regard and supports the admission made by Mr. ADIL in his evidence that most, if not all, of the cheques instrumental in placing funds into his China Point account, or dealing with funds taken from that account were written by Mr. LI, though signed by Mr. ADIL.

(3) So far as the proceeds of Mr. ADIL's China Point account were concerned, those proceeds which included the whole of the profits of Mr. ADIL's trading after deposit in Mr. ADIL's bank account were, in large part at least, distributed by way of cheques written by Mr. LI and kept in the possession of Mr. WONG after having been signed by Mr. ADIL in blank.

(4) In that regard over the period of about 20th August to the end of 1997 some twenty or so of these cheques signed in blank by Mr.

ADIL were written by Mr. LI on Mr. WONG's instructions and were paid to various securities firms as set out in the schedule at Annexure E.

The above matters, so far as they relate to cash flows based on bank documentation and the evidence of Dominic LI in the identification of cheques written by him and agreed facts as to Mr. LI having written the cheques referred to are effectively common ground. They were not challenged in any substantial sense. We accept this evidence.

Instead Mr. WONG and Mr. ADIL and indeed Mr. TSANG offered explanations of those matters in their evidence.

<u>The monies provided to Mr. ADIL's bank accounts by Mr. WONG and Mr. TSANG</u>

Mr. WONG said so far as funds provided by him or Mr. TSANG to Mr. ADIL's accounts were concerned, which were used by Mr. ADIL to purchase Stime stock without Mr. WONG's knowledge, those funds were loans requested by Mr. ADIL. Mr. WONG thought Mr. ADIL may have been having cash flow problems in this regard.

On occasion those loans were provided from Mr. TSANG's account as it was inconvenient for Mr. WONG to lend Mr. ADIL the money directly from his own account. Mr. TSANG advanced money to Mr. ADIL's account as Mr. WONG asked him to do so. That was convenient because on occasion Mr. TSANG had also borrowed money from Mr. WONG and therefore owed him money.

Mr. TSANG, in his evidence, supported this version of events.

Mr. ADIL also asserted in his evidence that the funds from WONG or TSANG represented his borrowings from WONG and that WONG thought he, ADIL, had cash flow problems.

As to the cheques written by Mr. LI

Mr. ADIL said that those signed on Atari's account were written by Mr. LI as a favour to him when Mr. LI was present at Atari's offices because of his own laziness and difficulties in writing them. Mr. LI supported this in his evidence in the sense that he said he wrote the cheques as a favour to Mr. ADIL when he was at Atari's office and was requested to do so.

As to the second category of cheques written after about 20th August, Mr. ADIL said they were signed by him in blank and provided to Mr. WONG at Mr. WONG's request. Mr. WONG's evidence, as we have said, supported this.

As to the use of the proceeds from Mr. ADIL's trading account at China Point

Mr. WONG said he used the blank cheques drawn on Mr. ADIL's personal bank account where the China Point proceeds were deposited after about 20th August simply to lend money to Mr. LAU Wan at Mr. LAU Wan's request and in accordance with his directions. He did not know those funds in large part represented Mr. ADIL's Stime share trading proceeds. Mr. ADIL supported this in his evidence. He effectively said it was simple coincidence so far as he knew that those funds had become available in his bank account at that time to meet the cheques written on it by Mr. LI at Mr. WONG's request.

We should say at this point that we reject the evidence of Mr. WONG, Mr. ADIL and Mr. TSANG as being of any weight in this regard.

We have already set out our findings generally as to the credibility of Messrs. TSANG, WONG and ADIL in Chapter 5.

More specifically in regard to the matters set out above the following aspects of the evidence in our view mean that their evidence should be rejected.

Firstly in regard to the deposits of money into Mr. ADIL's bank

account from those of Mr. WONG and Mr. TSANG which were used by him in settling his China Point account:-

We place no credit on the evidence of the three implicated persons that these monetary advances were loans to Mr. ADIL as alleged in their evidence.

It is worthy of note that all of those advances were cash transactions in one form or another, whether a cash cheque or cash transfer.

That seems to us a very inconvenient and completely unnecessary way of going about the making of personal loans. It had the effect of disguising the source of the monies and that, in our view, must have been known to both Mr. WONG and Mr. TSANG. Indeed, Mr. TSANG in his interview record dated 9th April 1999 says he used cash cheques to pay his nominees "to avoid being easily discovered" that he was using their accounts.

Another aspect of these advances which in our view weighs against them being personal loans is their amount and, more importantly, their frequency.

It may be that all of Mr. WONG, Mr. TSANG and Mr. ADIL were accustomed to dealing in large sums of money. But the totality of these advances of some of $3 million up to 4th August 1997 was not insignificant and they were advanced in a somewhat cavalier fashion.

As we say the evidence of Mr. WONG was that he thought they were requested by Mr. ADIL because he was having cash flow problems with his company Atari.

But he never asked Mr. ADIL what the loans were for, according to both their evidence. He simply assumed they were related to cash flow problems.

Mr. WONG said there was no time set for the repayment of any loan and that he charged no interest. He said he did keep a record of sort, but that he no longer had it.

Accordingly, Mr. WONG remained ignorant of the use Mr. ADIL made of the funds advanced by him or, at his request by Mr. TSANG, and did not know Mr. ADIL made use of the money to fund his purchase of Stime shares in his China Point account.

This was so even though, coincidentally, Mr. LI was at Atari's offices, according to Mr. LI, writing cheques to China Point as a favour to Mr. ADIL which drew from the very same funds advanced directly from Mr. WONG or through Mr. TSANG.

We regard Mr. WONG's and Mr. ADIL's and indeed Mr. TSANG's evidence as to the explanation of the advances to Atari which were used to fund Mr. ADIL's Stime share purchases as explanations worthy of no credit. The explanations sit uneasily with the circumstances of the advances and when taken into account with our general assessment of the credibility of those witnesses carry little weight.

As to the evidence of Mr. ADIL and Mr. LI explaining Mr. LI's writing of Mr. ADIL's business cheques for him, we regard it as of no weight whatsoever.

The concept of Mr. LI, a financial director of a publicly listed company, who headed a department of that company with some 6 or 7 staff, travelling personally from Stime's offices at Tsuen Wan to Atari's offices at Tsim Sha Tsui so as to be able to help Mr. ADIL get his accounts in order, seems, to say the least, unusual. The further concept of Mr. ADIL requesting Mr. LI to write out Atari cheques because he was fearful of making mistakes, or was lazy or both as he, Mr. ADIL suggested in his evidence seems even more unusual. That is particularly so because from Atari's bank statement, there appears to be a large number of small commercial cheques written on a regular basis, in sequential order, which would suggest there was not a tremendous difficulty with miswritten cheques in Atari's daily business life.

The coincidence of Mr. LI being asked to write these cheques in those circumstances which in many cases up to the 4th August drew down on funds advanced by Mr. WONG or Mr. TSANG is also quite difficult to digest.

Further Mr. LI on at least one occasion not only wrote cheques out for Mr. ADIL but did his banking for him as well. It is worthwhile considering in more detail that particular occasion.

On the 19th August, as can be seen from the schedule at Annexure E, a $351,000 cash cheque from Mr. WONG was cashed at the Kwai Chung HSBC branch and then amalgamated with another $600,000 cash and banked into Atari's account.

The bank documents were completed by Mr. LI. His handwriting appears on them.

He explained that event in this way: He said he had been working at Mr. ADIL's office in Tsim Sha Tsui and was about to return to Stime's office at Tsuen Wan when Mr. ADIL gave him $600,000 in $1,000 notes and asked him to bank it for him as a favour. He agreed to do so, counted the money (which must itself have taken a considerable time), pocketed it and left.

He happened to pass no banks on the way to Stime so still had the $600,000 with him when he arrived there.

Coincidentally, Mr. WONG then asked him to write out a cash cheque for $351,000 and further asked him to take it to the bank, cash it, and deposit it into Atari's account.

Mr. LI did so, and took advantage of this new errand to combine the amounts of cash and make a total cash deposit into Atari's account of $950,000.

Mr. WONG described the $350,000 portion of the total sum paid into Atari's account as another loan to Mr. ADIL at Mr. ADIL's request.

Coincidentally that same day, Mr. LI had written an Atari cheque at Mr. ADIL's request in an amount of $1 million which was largely funded by the $950,000 deposit. That cheque was made out in favour of CA Pacific, another stockbroker firm.

From Mr. TSANG's evidence he occasionally had asked Mr. WONG to repay funds he had advanced Mr. WONG by paying those funds into his nominees accounts.

Presumably on this occasion, as a further coincidence Mr. WONG had asked Mr. ADIL to repay moneys owed for previous loans to him by having the cheque made out to CA Pacific where Mr. NG Kam Cheuk, and of Mr. TSANG's nominees, operated a trading account for Mr. TSANG.

However this layer cake of coincidence is looked at, the version of events proffered by Mr. WONG, Mr. ADIL and Mr. LI in the totality of their evidence is quite unbelievable. We place no weight on the explanations of Mr. WONG and Mr. ADIL. We regard Mr. LI's evidence as unreliable in large part except for his identification of his handwriting on cheques and bank documents he was presented with and except to the extent also that we accept his evidence to the effect that he made out cheques whether they be Mr. WONG's, Mr. TSANG's or Mr. ADIL's as directed.

The final aspect of the evidence of Mr. WONG, Mr. ADIL and Mr. LI, we wish to deal with, relates to the drawing down on Mr. ADIL's personal account of some $23 million worth of cheques (the 29 cheques referred to) which, in the course of that drawing down, accounted for the major part of the $13.4 million proceeds of Mr. ADIL's Stime share trading.

We accept Mr. LI wrote all of these cheques. That was common ground. We accept that he did so on the instructions of Mr.

WONG, that also was common ground, and we accept that Mr. WONG possessed and had control of the 29 cheques which had been signed in blank by Mr. ADIL.

What we do not accept is Mr. WONG's evidence that he issued these cheques to Mr. LAU Wan in amounts and to payees as requested by Mr. LAU Wan simply as loans to Mr. LAU Wan.

Mr. WONG's evidence in this regard stretches credibility to beyond breaking point.

His assertion is that Mr. LAU Wan contacted him and asked him for loans. He agreed to lend Mr. LAU Wan money and Mr. LAU Wan suggested he use someone else's bank account. He did not ask why. But he contacted Mr. ADIL and asked to borrow a number of blank cheques. Mr. ADIL agreed to give him those cheques. Mr. ADIL did not ask why, but did so.

Mr. WONG says that Mr. LAU Wan, on an earlier occasion, had told him that he was prepared to maintain the turnover of Stime shares but that he, WONG, had rejected Mr. LAU Wan's proposal in this regard. He said also that Mr. LAU Wan had suggested he could do something beneficial for Stime in some way, using newspapers. But Mr. WONG's evidence in this regard was vague in the extreme. So far as the particular loans were concerned, he said he simply "was not concerned with what Mr. LAU Wan was doing" and that he "was not sure what he would do" and that he simply advanced the money at Mr. LAU Wan's request and on his instructions.

It must be borne in mind that some $23 million was utilized in this way, i.e. the 29 cheques signed in blank by Mr. ADIL, written by Mr. LI and paid in favour of Kingston, Get Nice, Chark Fung etc. totalled, over the period of about three months some $23 million.

That is a huge amount of money to be disposed of in such a cavalier way. Again there was no certainty as to terms of repayment. According to Mr. WONG it has never been repaid. He has taken no steps to recover it.

We dismiss Mr. WONG's and Mr. ADIL's evidence in this regard as in any way reliable.

At the end of the day, we accept as facts only that these cheques were drawn down on sums representing in part the proceeds of ADIL's Stime share trading, were signed by Mr. ADIL and written by Mr. LI at Mr. WONG's direction.

So far as Mr. WONG's evidence was to the effect that he had not deliberately dealt with the proceeds of Mr. ADIL's Stime share trading is concerned, we reject that evidence as being of no weight.

We bear in mind also that apart from the $13.4 million proceeds of Mr. ADIL's Stime share transactions being utilized in large part by these cheques, an additional $10 million approximately was also utilized by Mr. WONG. That sum was in the main compensated for by deposits into Mr. ADIL's account coming from Mr. WONG.

We summarize the evidence we accept in this regard; that is, that monies funding Mr. ADIL's share purchases came in large part from Mr. WONG and Mr. TSANG, that cheques drawn on Mr. ADIL's Atari account were written by Mr. LI in the process of providing those funds to his China Point trading account for the purchase of the Stime shares and that the eventual proceeds of sale of those shares were disposed of by way of cheques signed by Mr. ADIL, but again written by Mr. LI at Mr. WONG's directions, and that other funds were placed in Mr. ADIL's account in the same way by Mr. WONG and withdrawn in the same way, so that the whole of the dealings with Mr. ADIL's bank account withdrew funds totalling $23 million. From those findings, we had no hesitation in concluding that Mr. ADIL's bank account, so far as its use to fund and utilize Stime share dealings with China Point were concerned was under the control of Mr. WONG.

We find it more than highly probable that Mr. ADIL's two bank accounts at HSBC, i.e. Atari's trading account and his joint account, so far as payments to China Point and dealings with receipts from China Point and the use of his personal account to fund payments to other

brokerage firms were concerned were controlled by Mr. WONG. Mr. WONG was the guiding mind in these transactions.

We are sure from the evidence before us that Mr. WONG directed Mr. ADIL's trading in Stime shares at the China Point account.

The question then we finally address in this chapter is whether Mr. ADIL, even though acting under the orders of Mr. WONG may still have been a "tippee" for the purposes of section 9(1)(c) of the Ordinance.

The only evidence before us that Mr. ADIL may have received information concerning the joint venture project from Mr. WONG comes from Mr. WONG's third recorded interview with SFC investigators on the 26th February 1999.

The relevant portions of that interview occur at Q&A6 and Q&A7. Those portions have been set out in full in this Report at pages 68-69 in another context (Chapter 5).

There is no doubt that if the truth of what Mr. WONG has said in this regard were to be accepted as evidence against Mr. ADIL then we would be drawn toward the conclusion that Mr. ADIL was, at the time of his Stime share dealings from 29th July onwards, in possession of specific information concerning Stime's affairs, i.e. the proposal made to its chief officer that it join the joint venture. We bear in mind two things however.

Firstly, as we have said we regard Mr. WONG's evidence as unreliable. In the present instance that is compounded by his evidence in chief effectively contradicting the contents of his 26th February interview. In his evidence he said he did not think he gave Mr. ADIL any information about the proposed joint venture.

Secondly we bear in mind that what Mr. WONG said in his recorded interview remains therefore very much unsupported hearsay. In this regard we also bear in mind Lord Salmon's remarks as to the weight usually given to evidence of this sort, even though admissible.

Accordingly at the end of the day we do not think there is any reliable evidence before us so as to allow us to find to a high degree of probability that Mr. WONG provided specific information to Mr. ADIL on the 29th July concerning the proposed joint venture.

We go further. In our view the degree of control by Mr. WONG over Mr. ADIL's trading account at China Point, and its proceeds, evidenced by the Atari account and joint account cheques written by Mr. LI militates against our finding that Mr. ADIL enjoyed any independent part in the operation of that account so far as those proceeds were concerned, or payments relating to share trading were concerned.

We are satisfied that Mr. ADIL was a mere puppet. We cannot be satisfied from the contents of Mr. WONG's interview of 26th February 1999 that Mr. ADIL was provided with specific information regarding the joint venture.

Conclusion

Mr. ADIL is not found by us to have offended against any of the provisions of section 9(1) of the Ordinance.

He is not found by us to have engaged in insider dealing as defined by the Ordinance.

CHAPTER 9

THE ROLE OF MR. WONG

We will now deal with the evidence, issues and our conclusions so far as Mr. WONG's role is concerned.

Mr. WONG's case was to the effect that he at no stage had ever directly or indirectly dealt in Stime securities or indeed any securities whatsoever at any time in 1997 contrary to section 9(1)(a) of the Ordinance. Further, his position at all times was that he never "tipped" or encouraged others to trade in Stime shares contrary to section 9(1)(c). Those are the only two of the provisions of section 9(1) of the Ordinance that could apply to Mr. WONG.

According to Mr. WONG's evidence after being approached by Mr. Simon NG (TW 2) concerning the joint venture, he simply negotiated and eventually entered into the joint venture agreement on behalf of Stime (through Eternal Summit) without ever providing information to any person, including Mr. TSANG, for any reason other than commercial or executive reasons connected with the joint venture proposal and agreement itself.

He was never aware in any way that information he may have provided to any person might have been used by them to deal in Stime shares. Indeed his evidence was to the effect he did not think information concerning the joint venture proposal was price sensitive.

The first issue that arises in respect of Mr. WONG is whether, following his discussions with Mr. Simon NG on the 28th July at the Conrad Hotel, he was in possession of relevant information.

We have already dealt with this issue in Chapter 6.

For the reasons we gave there we are satisfied that the commercial proposal put to Mr. WONG on that day, given the background circumstances of Mr. WONG wanting to "redden" Stime and

Mr. NG's approach being more in the nature of an invitation than a mere possibility, did result in Mr. WONG's possession of specific information for the purposes of section 8 of the Ordinance. We have already addressed the issues of the price sensitivity of that information and our conclusions in that regard are also set out in Chapter 7. For the reasons we set out there we are satisfied that upon Mr. WONG going to Beijing for the purpose of negotiations or discussions with HZK concerning the joint venture the aggregate of information concerning the joint venture became price sensitive for the purposes of section 8 of the Ordinance.

Accordingly, we have already determined that the information Mr. WONG possessed on the morning of 30th July was relevant information, given the information concerning the joint venture he had been given and the preliminary steps taken, including going to Beijing for the purpose of discussions.

We are satisfied that he knew it was relevant information. He knew his own mind, and was perfectly aware that this was a real opportunity, and indeed effectively an invitation, to Stime to "redden" itself as he had wished it to do.

We are satisfied, by the time he had gone to Beijing on the 30th July that he was aware that there was a good chance the joint venture would become a reality. He had already described it as a "solid" proposal to Mr. TSANG on the 29th July, and in this regard we accept Mr. TSANG's evidence. It explains Mr. TSANG "jumping the gun" with a large purchase of 2,738,000 shares through his nominee LAM Wai Keung on that day.

Up until the 5th August, Mr. WONG must have been aware that the information was not generally known to persons who did or were likely to invest in Stime securities. The information he possessed up until that time was always held only by a tight, though slowly expanding, circle of Stime executives, HZK executives and solicitors and bankers.

The announcement of the 4th August (Annexure F) did not change this position because by that time the Agreement relating to the

joint venture had been signed and was not announced to the investing public until the 5th August.

It must be borne in mind however that the 5th August announcements (Annexure G) were both extensive and thorough. They were published by means of two large advertisements in the Chinese and English press and by contemporaneous SEHK teletext on the morning of that day.

Mr. WONG was certainly aware of those announcements . In those circumstances we cannot be satisfied to a high degree of probability that from the morning of 5th August Mr. WONG would have continued to believe the information concerning the joint venture was not generally known.

Accordingly his period of insider dealing ceased at the close of trading on the 4th August.

Mr. WONG in our view, in the investing climate that prevailed in Hong Kong in 1997, must have been aware that the information he possessed including the fact he was in Beijing to discuss the entry of Stime into the joint venture was likely to affect the price of Stime stock.

He himself was aware of the importance or desirability of "reddening" Stime. He must also have known that if this occurred by way of Stime breaking into an effectively different industry from the low margin watch industry it had operated in that this would enhance the price sensitivity of the information particularly where that new industry was, in the terms of 1997, "high tech".

We concluded therefore that Mr. WONG was aware that the information he possessed was relevant information.

The questions which follow on from that conclusion are whether Mr. WONG counselled or procured another person to deal in Stime stock, or whether he disclosed that information to another person knowing or having reasonable cause to believe that other person would deal in Stime stock.

We will now consider those matters.

Did WONG procure another person to deal in Stime securities contrary to section 9(1)(a) or did he "tip" another person contrary to section 9(1)(c)?

So far as any potential "other person" is concerned, on the evidence before us there are only two real possibilities; Mr. TSANG and Mr. ADIL.

(1) Mr. ADIL

We have already necessarily dealt with the relationship between Mr. ADIL and Mr. WONG when we considered Mr. ADIL's role in the previous chapter.

We have set out our findings in that chapter. We have found that Mr. ADIL was purely a nominee of Mr. WONG and was acting on Mr. WONG's instructions and was under Mr. WONG's control in his dealings in Stime shares through China Point. We will not repeat those findings here. It is sufficient to say that our findings in this regard are that it is at least highly probable that Mr. WONG procured Mr. ADIL to deal in Stime securities over the relevant period and that from 30th July to 4th August during the relevant period, Mr. WONG was knowingly in possession of information which was relevant information pursuant to section 8 of the Ordinance.

In our view, the evidence before us has clearly established that Mr. ADIL was acting wholly under the instructions of Mr. WONG in the operation of the China Point trading account and that the funding of that account's trading in Stime shares and the distribution of its proceeds were under the control of Mr. WONG.

Mr. WONG knew from his past relationship with Mr. ADIL and the influence of a personal and commercial nature that he had over Mr. ADIL that Mr. ADIL would indeed operate the China Point account in accordance with his, WONG's, instructions. We might add that we place no importance on the fact that over the 30th-31st July Mr. WONG

was in Beijing. We are perfectly satisfied that he was able to maintain contact either directly or indirectly with Mr. ADIL. To suggest otherwise would be naïve.

So far as Mr. WONG is concerned we find, given his operation of the China Point account through Mr. ADIL who he procured for this purpose, all the elements of section 9(1)(a) are satisfied and Mr. WONG is in breach of that provision. We have already found and set out our reasons for finding, that Mr. ADIL did not trade independently, and that Mr. WONG did not "tip" Mr. ADIL so as to be in breach of section 9(1)(c).

(2) Mr. TSANG

We turn now to consider Mr. WONG's role in respect of Stime stock trading carried out by Mr. TSANG.

Mr. TSANG's case will be dealt with in the following chapter. But it is common ground for the purposes of this inquiry that he did trade in Stime stock on the basis of the information provided to him by Mr. WONG on the 29th July.

In Mr. TSANG's evidence, however, including his statement of "admitted facts", he at no stage has said or agreed that he traded in Stime stock at Mr. WONG's express suggestion or request during the relevant period or with Mr. WONG's knowledge.

In other words, so far as Mr. TSANG's evidence is concerned he acted completely independently of Mr. WONG during the relevant period and was aware of nothing that would have brought his trading in Stime stock to Mr. WONG's attention.

Mr. TSANG said that in about September or October of 1997, or perhaps November of 1997 as he later said in his evidence, as a result of losses he suffered in trading in Stime stock through his nominees accounts he borrowed increasingly from Mr. WONG in order to meet calls on his nominees' accounts. He said at that time he told Mr. WONG of his trading in Stime stock. That was the first time Mr.

WONG knew of his Stime stock trading according to both Mr. TSANG and Mr. WONG.

He said that all trading in Stime stock he conducted before and during the relevant period was with his own money. Much of that money he had the use of came from a company, Peckwater Holdings Limited ("Peckwater") in which he had a significant minority interest and which was a substantial Stime stockholder. When the majority shareholder in that company emigrated to Canada, Peckwater sold all its Stime stock and Mr. TSANG was allowed the use of the funds generated, consisting of several million dollars. He said he used that to trade in Stime stock through his nominees, and that Mr. WONG knew nothing of it until late 1997.

It is common ground between Mr. WONG and Mr. TSANG that Mr. WONG had informed Mr. TSANG of the fact that he had had a meeting with Simon NG on the 28th July concerning the proposed joint venture.

In Mr. WONG's evidence he said he told Mr. TSANG what had been discussed at the 28th July meeting at some time on the 29th July.

In Mr. TSANG's evidence, including his statement prepared for the Tribunal he said Mr. WONG on the 29th July had told him that he, Mr. WONG, had discussed a project involving a mainland company which involved a powerful PRC party; that it involved 2-way pager technology, would require funding in the broad region of tens of million of dollars; that the project looked "solid" and that Mr. WONG would go to Beijing for further discussions concerning the project. In other words that Mr. WONG had told him effectively of the same matters which Mr. Simon NG had told Mr. WONG. That was specific information. Further, Mr. TSANG knew Mr. WONG had gone to Beijing on the 30th July.

Both Mr. WONG and Mr. TSANG agree that following Mr. WONG's return to Stime's office on 1st August after the Beijing trip, Mr. WONG briefed Mr. TSANG as to the contents of that trip and according to Mr. TSANG had given Mr. TSANG the impression that it was his, Mr. WONG's, inclination to proceed with the joint venture. It is true Mr.

WONG's evidence was that he was still unsure as to whether to proceed with the project at that point. He suggested Mr. TSANG may have misunderstood him in this regard. As we have already said, given the speed of the preparations for the signing of the agreement on the 3rd August and Mr. WONG's return to Beijing on the 3rd August, we are satisfied Mr. WONG did intend to proceed with the joint venture and, as Mr. Simon NG said in his evidence had agreed in principle to do so subject to documentation on the 30th or 31st of July.

In any event Mr. WONG had, on 29th July and 1st August, provided Mr. TSANG with specific information concerning the joint venture proposal.

We add here again that we are sure Mr. WONG had the means to communicate with persons, including Mr. TSANG, in Hong Kong while he was in Beijing.

We think there is a very high probability, given their business relationship, that Mr. WONG kept Mr. TSANG informed of events in Beijing.

In our view, at the time Mr. WONG had provided this information to Mr. TSANG he must have been aware that Mr. TSANG had been previously trading in Stime shares.

It is true that Mr. WONG's oral evidence was on all fours with Mr. TSANG's in regard to his ignorance of, and lack of involvement in TSANG's trading in Stime stock.

However in his interviews with the SFC investigators, he had said he knew before 28th July Mr. TSANG had traded in Stime stock.

In his interview with an SFC investigator on 17th March 1999, he said in response to a question (Q6) as to whether he had anything to add to his previous interview of 26th February 1999:

> "….. But having had a second thought about it, I recalled that I had lent money to TSANG King Hung for his trades. Around early 1997 TSANG

mentioned to me he had traded in the shares of Stime Watch, but I did not know at first who he had asked to open an account and trade on his behalf. Later TSANG asked me to lend him money for his trades ……"

It must be borne in mind that this answer was given by Mr. WONG some three weeks after his previous interview (which was itself his third interview) and therefore after he had had considerable time to contemplate the subject matter and content of his answer.

In our view this answer goes some way towards undermining Mr. WONG's and Mr. TSANG's evidence that Mr. WONG did not know of Mr. TSANG's Stime trading until the latter part of 1997.

But additionally, one year later on the 29th March 2000 during his final of five interviews, by which time Mr. WONG had had more than ample time to consider these matters, he said to the interviewer:-

"Q7: When did you know that TSANG King-Hung was trading in the shares and warrants of Stime Watch in other names?
A7: I remember it was around early 1997 (I don't remember the exact date and month) that TSANG King-Hung mentioned to me that he had traded in the shares of Stime Watch, but he didn't say whether he had bought warrants of Stime Watch. I don't remember when TSANG King-Hung told me he traded in the shares of Stime Watch in other people's names.

Q8: Could it be possible that TSANG King-Hung told you he had traded in the shares of Stime Watch in other names before July 1997?
A8: I don't remember.

Q9: In July 1997, before you discussed the joint venture project of Stime Watch with Hua Zheng Kang [Communication and Technology Co Ltd], did you already know then that TSANG King-Hung had traded in the shares of Stime Watch in other people's names?
A9: I didn't know that TSANG King-Hung had traded in the shares of Stime Watch in other people's names at that time. However, I did know that he had traded in the shares of Stime Watch, but I had no idea in what way or under whose names he conducted the trades.

Q10: At the time you learnt that TSANG King-Hung had traded in the shares of Stime Watch, did you know whether he had reported the trades to Stime Watch or the SEHK?

A10: I believe he had probably not reported the trades to Stime Watch and the SEHK."

In our view it would be fanciful to think that Mr. WONG, in these circumstances, and in the detail in which he answered the above questions, could be mistaken.

We reject his explanation that he gave in evidence as to the contents of his answers to these questions. He said in evidence that he was referring to the sale by the company Peckwater, in which Mr. TSANG to his knowledge had an interest, of its Stime shareholding earlier in 1997. His answers to the SFC investigator obviously refer to Mr. TSANG trading in shares. It stretches common sense beyond breaking point to accept that the terms of his answers may have only meant the divesting of shares by a company Mr. TSANG had an interest in.

In our finding, Mr. WONG's explanation of the answers he gave to the SFC interviewer during the course of the two interviews is completely without credibility.

A further significant aspect of Mr. WONG's and Mr. TSANG's interconnection so far as Mr. TSANG's Stime stock trading is concerned relates to fund transfers between the two.

Much of the evidence presented before the Tribunal during the course of this inquiry touched upon Mr. WONG's financial relationships with Mr. TSANG and his nominees and Mr. TSANG's financial relations with Mr. WONG and his nominee Mr. ADIL before, during and after the period of 29th July to 7th August, i.e. the period of time limited by our terms of reference.

For example, the inquiry was presented with evidence which showed that over the period of 23rd July to about 19th November 1997 a

large number of financial transactions in the nature of transfers of large sums of money by way of cheques (and occasionally cash) took place between bank accounts controlled by Mr. WONG (and his nominee Mr. ADIL) and Mr. TSANG (including on occasion his nominees accounts).

The sums of money ranged from the region of several hundred thousand to several million.

Additionally, money was transferred from these accounts, with the exception of Mr. WONG's personal account, to the bank accounts of brokers' firms in Hong Kong.

In other words, over the period limited by our terms of reference and well afterwards there is a system of fund transfers from bank accounts of Mr. WONG and Mr. TSANG whereby funds are placed in the bank accounts of their own and the others' nominees. Those funds provided those persons' accounts with funds to enable them to trade in Stime securities.

We say "system" because of the similarities in the methods of making these transfers. Each was by way of a cash transaction. Each cash transaction was usually made on the same day, or on the day before a sum was provided from the nominee's account to pay a settlement or margin call into the nominee's trading account with the broker.

The cheques controlling these fund transfers, across the range of bank accounts involved in the fund transfers were very often written by Mr. LI. We will not repeat his evidence, which we accept, that he did so under instructions. We have found those instructions emanated largely from Mr. WONG. Mr. LI also on occasion completed the bank documentation at the bank where the cash cheque transfers took place.

Both Mr. WONG and Mr. TSANG used cheques signed in blank by their nominees. Mr. ADIL provided them to Mr. WONG and NG Kam Cheuk provided them to Mr. TSANG according to the evidence of Mr. NG which we accept. We note also that two cheques from another of Mr. TSANG's nominees, Ms NG Yu Shui were found signed in blank at Mr. TSANG's premises by SFC investigators.

We are satisfied from this system of mutual cash transfers from each other's accounts so as to fund the others' nominees accounts together with the contents of Mr. WONG's interviews with SFC officers we have referred to that Mr. WONG was perfectly aware of Mr. TSANG's trading in Stime shares (as was Mr. TSANG aware of Mr. WONG's trading through Mr. ADIL), and both used very similar methods to facilitate their trading.

We reject any suggestion that these transactions may have been personal loans and their repayments between Messrs. WONG, TSANG and ADIL. There were simply too many of them. They were too convoluted in their organization. They required cheques being converted into and deposited in cash. Mr. LI was involved in writing a significant number of these cheques. They extended over too long a period. They required too much synchronisation with margin calls from brokers to whom the funds representing the "loans" were paid.

We are satisfied these fund transfers were part of an organized system designed to provide funds to share trading accounts.

We are satisfied for the above reasons that when Mr. WONG told Mr. TSANG on the 29th July of the details of the joint venture project and of his trip to Beijing on the 30th July (of which we are satisfied he kept Mr. TSANG abreast of during the course of that trip), he was providing Mr. TSANG with relevant information having good cause to believe that Mr. TSANG would use that information to further his trading in Stime shares of which Mr. WONG was already aware.

Accordingly we are satisfied for these reasons Mr. WONG had "tipped" Mr. TSANG in breach of section 9(1)(c).

In our view it makes no difference that Mr. TSANG was Mr. WONG's vice chairman at Stime. Mr. WONG, by his own admission, took no steps to prevent or warn against Mr. TSANG acting upon the information provided to him to trade in Stime stock.

Finally in this regard we wish to deal with some concluding matters.

We have found, as we have said, that Mr. WONG and Mr. TSANG assisted each other with fund transfers while each was dealing in Stime stock.

But we do not think that the evidence goes so far as to satisfy us that they were acting together jointly in their share trading.

That is because it seems quite apparent from the evidence presented before us that only Mr. TSANG was involved in giving instructions to his four nominees. They said so. Mr. WONG did not give them any instructions at any stage. We accept their evidence in this regard.

From the perspective of Mr. WONG's nominee Mr. ADIL, his bank account which contained the proceeds of his Stime share trading at China Point was operated by Mr. WONG. There is no evidence that Mr. TSANG participated in the operation of that account. We accept that that account was under the sole control (so far as the cheques written by Mr. LI were concerned) of Mr. WONG.

For these reasons it appears to us that the high probability was that Mr. WONG traded for himself through Mr. ADIL and Mr. TSANG traded for himself through his nominees. We find that there was no joint trading between Mr. WONG and Mr. TSANG though they were aware of each other's trading, used a similar system to do so, and may have provided funds, one to the other, to assist the other's trading.

Conclusion

We find Mr. WONG to have breached the provisions of sections 9(1)(a) and 9(1)(c) of the Ordinance by insider dealings in Stime securities between 30th July and 4th August.

CHAPTER 10

THE ROLE OF MR. TSANG

Our findings concerning Mr. TSANG's role have already in considerable part been necessarily dealt with in the previous chapter concerning the role of Mr. WONG. What remains is to set out our findings and reasons for those findings as to Mr. TSANG's own insider dealing.

Before considering the role of Mr. TSANG in these matters we should refer to the status of the admissions of fact he made as to insider dealing at the commencement of this inquiry. By those admissions he states that he was an inside dealer in Stime's stock from 29th July 1997, when Mr. WONG first told him of the joint venture proposal, onwards. He traded using his four nominees.

It should be said at this stage that Mr. TSANG's admissions, as contained in his statement of 2nd July 2002, were to some extent contradicted by his evidence.

As we have said however we do not regard him as bound by those admissions of fact.

There is nothing in the Ordinance which describes what weight or force should be given to "admissions" made by an implicated person as contained in a statement provided to a Tribunal. There is no equivalent to section 63C of the Criminal Procedure Ordinance, Cap. 221 contained within the parameters of the Ordinance we are concerned with. In our view Mr. TSANG's formal admissions of fact have no particular additional status other than that of a statement made by him and placed before the Tribunal.

We gave to his admissions of fact, and to his evidence before us, what weight we thought appropriate.

Additionally insofar as Mr. TSANG's admissions purport to be admissions of insider dealing we bear in mind that not Mr. TSANG, nor any other implicated person or other witness can admit or agree to a matter of law. It is for the Tribunal to decide whether facts the Tribunal are satisfied have been proven amount to insider dealing in respect of any individual, including Mr. TSANG.

We turn now to our considerations and findings in respect of the role of Mr. TSANG in the matters we have inquired into.

A large part of Mr. TSANG's role was not in issue.

The evidence of the four nominees, Ms NG Yu Shui, LAM Wai Keung, NG Kam Cheuk and LO Kwok Wah, whose accounts he used at Wah Sang, Cheung's, Yardley, Intercontinental, CA Pacific and Brighton to trade in Stime securities was never challenged to the effect that they were his nominees.

Mr. TSANG's evidence and prior statements (with the exception of his first interview with the SFC on 15th February 1999, which he now accepts contained lies in this regard) generally agree with the evidence of those four nominees.

So it is not in issue, and from the evidence we are satisfied, that Mr. TSANG did trade in Stime securities using accounts with the various brokers firms opened in the names of the four nominees throughout the relevant period.

From the evidence of Mr. WONG and Mr. TSANG taken together, Mr. TSANG on the occasions of the 29th July, 1st August and 4th August was told by Mr. WONG of, respectively, the terms of the original approach by Mr. Simon NG concerning the joint venture and of Mr. WONG's decision to travel to Beijing to talk to the potential joint venture partner, of something of the results of that trip (though precisely what Mr. WONG told Mr. TSANG in that regard was in issue) and of the signing of the 3rd August agreement.

He had worked together with Mr. WONG for a large part of his working life. Mr. TSANG had worked for Mr. WONG's father. He and Mr. WONG had started up Stime together. They were the two major shareholders. They were trusted friends. We are satisfied from Mr. TSANG's admissions that he intended to use the information he obtained from Mr. WONG to deal to his own benefit in Stime's securities.

To that end we are satisfied that he would have been anxious to find out from Mr. WONG what he could of the proposed joint venture. Given their personal, as well as their working relationship, we are satisfied Mr. WONG would have told Mr. TSANG what he could. We are satisfied on the 29th July Mr. TSANG had been provided with effectively the contents of the 28th July meeting.

Accordingly, we are satisfied that Mr. WONG told Mr. TSANG all of what he knew of the proposed joint venture on the occasions he gained information about it.

Mr. TSANG's statement of the 2nd July 2002 is in the following terms:

> "6. On or about 29th July, 1997, I, together with other members of the management, were informed by Wong Wing Shing Wilson ("Wilson Wong") that he would be leaving for Beijing on the day after, i.e. 30th July, 1997 to discuss with a mainland-funded enterprise on a joint venture project on a 2-way directional paging service. He said the proposal was that Stime Watch would participate as an investor with the Chinese providing the technology. He told us that he did not yet have the details of the proposed joint venture and that's why he had to go to Beijing to discuss.
>
> 7. I did not form any conclusion or was given any understanding that the discussion by Wilson Wong in Beijing would mature into a deal by which the prospect or profitability of Stime Watch would be greatly enhanced. But at that time, the market atmosphere was very good; it was just after the handover and I personally perceived that if there was eventually a joint venture

by Stime Watch with a Chinese Party, the share price of Stime Watch would go even higher. ….”

His further statement, undated but presented to the Tribunal on 23rd July 2002, is in the following terms:

> “17. In the morning of 29th July, in the office of Stime Watch, Wilson told me in passing that he had a meeting with Simon Ng the day before. He said Simon Ng introduced to him a project of a 2-way paging system and the PRC party was politically powerful. He said only a few tens of million was concerned and the project appears to be solid. He said he agreed with Simon Ng to go to Beijing to meet the PRC party to find out the details and he would take Bee Ho with him.
>
> 18. Though Wilson cannot say anything concrete about the venture and he did not appear to have decided anything, after hearing that, I must say I personally had some wishful thinking that this might result into something big. At that time the market atmosphere was hot, and if the PRC party was indeed “something”. I believed that the joint venture might indeed result in a boost of the share price of Stime Watch. I therefore immediately liaised with Lau Wan and asked Lo Kwok Wah and Ng Kam Cheuk to open the accounts.”

His earlier statements were less detailed. From his 15th February 1999 recorded statement to the SFC, Mr. TSANG told his interviewer:

> “A28: I don’t remember the exact time. Before Wilson WONG and Bee HO first went to Beijing for the negotiation, Wilson WONG had mentioned to me that Stime Watch would be negotiating with Hua Zheng Kang on a joint project on 2-way directional paging services. Wilson WONG told me the company intended to cooperate with Hua Zheng Kang. However, I didn’t know then whether Stime Watch had already reached any agreement with Hua Zheng Kang. When Wilson WONG returned to Hong Kong, he told me he had reached agreement with Hua Zheng Kang. He also told me the general details of the cooperation. Later, Stime Watch held board meeting to pass the joint project with Hua Zheng Kang.”

Also in his 9th April 1999 statement he said:-

> "A15: As said in my answer to question 28 in the last statement, before the first time Wilson WONG and Bee HO went to Beijing [for the negotiation], Wilson WONG told me that they were going to Beijing to negotiate with Hua Zheng Kang on a joint venture project on 2-way directional paging services. He did not mention the details though. That's [probably] why they had to go to Beijing and discuss with Hua Zheng Kang. The first time Wilson WONG told me about this was around 10-11 am on 29 July 1997. …."

In his oral evidence before the Tribunal Mr. TSANG attempted to inch away from his previous statements and "admissions" in this regard. It was a characteristic of Mr. TSANG that he was evasive and incomplete in his answers in evidence. He rarely gave us the impression he was being forthright.

His oral evidence before the Tribunal was to the effect that on the 29th July Mr. WONG had provided him with some sketchy information about the proposed joint venture but that nothing was said to him in detail. He said he knew nothing had been confirmed, but that he thought that it was possible the joint venture would come to fruition, and if it did Stime's share price would increase. Taking his evidence as a whole and for the reasons we have given above we are satisfied that on the 29th July and subsequently Mr. WONG kept Mr. TSANG fully updated with information concerning the joint venture proposal and its progress.

We are satisfied in the circumstances of the whole case that Mr. TSANG knew much more of the details of the joint venture on the 29th July. We are sure he was motivated to find out about it and that Mr. WONG, given their assistance to each other's share trading and relationship with each other, would have told him of what he himself knew of the joint venture. That is why Mr. TSANG was confident enough to invest in over 2 million Stime shares on the 29th July (see summary of nominees share trading at Annexure H).

In our view, against the background of Mr. WONG being generally motivated to connect Stime with a mainland partner which was known to Mr. TSANG, we find, in the circumstances of this proposed joint venture, that Mr. TSANG and (as we have said) Mr. WONG by the 30th July, by which date Mr. WONG had gone to Beijing for discussions, must have thought there was a good chance the joint venture could come to fruition.

Indeed in his written statement presented to the Tribunal on 23rd July as set out above[10] Mr. TSANG says that when Mr. WONG first told him of the proposal Mr. WONG described it as "solid".

That information given to him by Mr. WONG on the 29th July caused him to open more accounts. That was the reason he asked LO Kwok Wah and NG Kam Cheuk to open accounts at Brighton, Yardley and CA Pacific.

In short, we are satisfied Mr. TSANG was provided with information by Mr. WONG to the full extent of Mr. WONG's knowledge on the occasions of the 29th July, 1st August and 4th August.

We are satisfied for the reasons we have given in earlier chapters that the information known to Mr. WONG as of the 29th July which, as we have said, was passed to Mr. TSANG was specific information.

We have already found that by the time Mr. WONG went to Beijing for negotiations on the 30th July, then taken as a whole, the information was price sensitive for the purposes of section 8 of the Ordinance and in all respects was, at that time relevant information for the purposes of that section.

We are satisfied that Mr. TSANG knew the information to be price sensitive by the morning of the 30th July.

He had already commenced to increase his Stime share trading to a considerable extent on the 29th July in hopes that the information

[10] See page 141 supra.

concerning the proposed joint venture would in due course result in an increase in Stime stock prices.

In his statement of 23rd July 2002 to the Tribunal Mr. TSANG describes himself on the 29th July after hearing of the joint venture from Mr. WONG of "having wishful thinking that this might result in something big". In the statement of 2nd July 2002 he describes his reaction to the news as being "I perceived that if there was eventually a joint venture…..the share price of Stime Watch would go even higher". In the statements he refers to the market atmosphere being "very good" or "hot".

In our view, Mr. TSANG was an alert enough individual, given his previous interest in trading in Stime shares, to know that the information he possessed on the morning of 30th July 1997 was relevant information for the purposes of section 8 of the Ordinance. He knew the CEO of his company was in Beijing for the purposes of discussing the joint venture proposal. That it had already been described as "solid" by that CEO and was aware of both that CEO's motivation to "redden" Stime and of the market sentiment at that time.

So far as Mr. TSANG was concerned, though he may not have been aware of the details discussed at the meeting of the 30th July, he was by then aware of the additional fact that Mr. WONG and Bee HO were in Beijing in discussion with the proposed mainland partner. Mr. TSANG's possession of information concerning the status of the proposed joint venture had become in aggregate with what he had been told by Mr. WONG on 29th July the possession of relevant information by the morning of the 30th July.

For the same reasons we have mentioned in the previous chapter dealing with Mr. WONG we are satisfied Mr. TSANG's insider dealing ceased at close of trading on the 4th August. By the time the market reopened on the 5th August the two press announcements and SEHK teletext announcement had been made. There was no evidence before us as to anything to delay that information coming to the attention of the market generally. We cannot be satisfied to a high degree of probability Mr. TSANG still believed the information was not known by

then to that section of the market concerned or likely to be concerned with trading in Stime securities.

We have dealt already with the relationship between Mr. WONG and Mr. TSANG so far as their insider trading was concerned. We have found that Mr. TSANG and Mr. WONG were involved in insider dealing in Stime shares during the relevant period from 30th July to 4th August inclusive, but that they, although aware of each other's activities and on occasion sharing or providing to each other funds to assist each other in that regard, had structured their insider dealing activities in the manner of Mr. TSANG using his four nominees and trading through their accounts, and Mr. WONG using Mr. ADIL and trading through his account.

We will not repeat in this chapter our considerations in that regard.

Conclusion

In summary we are satisfied that the trading conducted by Mr. TSANG through the accounts of his nominees from the 30th July to 4th August inclusive was insider dealing contrary to the provisions of section 9(1)(a). We might add that as Mr. TSANG received that information from Mr. WONG, a person he knew to be a connected person in terms of section 4 of the Ordinance, and knew Mr. WONG had come into possession of that information by reason of his position at Stime that Mr. TSANG's subsequent dealings in Stime stock were also in breach of section 9(1)(e) of the Ordinance during the period 30th July to 4th August.

CHAPTER 11

THE ROLE OF MR. LAU WAN

Mr. LAU Wan at, before and after the relevant period was a stockbroker working in Hong Kong.

We have already intimated that in our view there is not sufficient evidence against Mr. LAU Wan so as to find him in breach of any provision of section 9(1).

In explaining that conclusion we will firstly set out the evidence which involves him in trading in Stime securities during the relevant period.

Firstly, he was instrumental in the setting up of a number of trading accounts operated by Mr. TSANG's nominees and by Mr. ADIL who we have found was Mr. WONG's nominee.

Those nominees of Mr. TSANG who gave evidence that the setting up of their trading account was assisted by Mr. LAU Wan were:-

Firstly, LAM Wai Keung who said Mr. TSANG in July 1996 told him to contact Mr. LAU Wan at Yardleys for the purpose of opening a trading account. He did so and with Mr. LAU Wan's assistance a trading account was opened.

Secondly, NG Kam Cheuk gave similar evidence of Mr. TSANG asking him to contact, in mid-1997, Mr. LAU Wan at Yardley for the purpose of opening an account there. He did so and the account was opened.

According to CHAN Kin Sun, a dealing director at Yardleys, both LAM Wai Keung and NG Kam Cheuk were introduced to Yardleys by Mr. LAU Wan. They were granted large margin facilities of $30 to $40 million each, the amount of which surprised Mr. CHAN as both, according to their account opening documents, were persons of moderate

income, but according to Mr. CHAN the only role Mr. LAU Wan played in respect of these two accounts was simply to act as an introducer of Mr. LAM and Mr. NG.

Mr. TSANG in his evidence said that he knew Mr. LAU Wan and that Mr. LAU had assisted him with setting up trading accounts using nominees in 1996 after the listing of Stime. He said that on the 29th July 1997 he had contacted Mr. LAU Wan and told him he, Mr. TSANG, had an opportunity to make further money trading in Stime shares and Mr. LAU Wan had suggested setting up further nominees accounts and he had then asked LO Kwok Wah and NG Kam Cheuk to open accounts for him to trade through.

Mr. TSANG said he could not remember whether he told Mr. LAU Wan as to why he had an opportunity to make money trading in Stime stock in July 1997.

Mr. WONG in his evidence, as we have already mentioned, said he lent some $23 million to Mr. LAU Wan from late August onwards in 1997 using blank cheques signed by Mr. ADIL. Mr. WONG said it was Mr. LAU Wan's idea to use another person's account to make these loans. Mr. LAU Wan gave him instructions as to how to complete these cheques and he then instructed Mr. LI, who as we have said wrote the cheques out, as to the completion of the cheques. Those cheques on Mr. LAU Wan's instructions were made payable to various stock brokers firms, most of them being payable to Kingston.

To complete some sort of circle, Mr. Patrick YAU (TW 20), a dealer at Kingston, said at the end of 1997 and early 1998 Mr. LAU Wan introduced the four nominees of Mr. TSANG who then transferred their trading accounts from their existing brokers to Kingston.

Mr. LAU Wan according to his own statement of the 11th December 1997 was, by that time, a dealer at China Point where Mr. ADIL had opened a trading account.

Mr. ADIL said he (as Mr. TSANG said he had also) had met Mr. LAU Wan at Stime's listing party in July 1996 and after a

conversation with him had decided to open an account at China Point. Mr. LAU Wan helped him to do so.

In mid-July 1997, according to Mr. ADIL, Mr. LAU Wan had contacted him and told him that it was a good time to re-commence trading in Stime stock. Mr. ADIL agreed and had done so. He said Mr. LAU Wan had no other role to play in the operation of the account.

Mr. LAU Wan in his statement of 11th December 1997 said he had helped Mr. ADIL open his account at China Point and that subsequently Mr. ADIL had placed orders on that account through him, Mr. LAU Wan.

Mr. LAU Wan, as we have said, although served, after being located in Toronto Canada, with a Salmon letter made no response directly or indirectly to this Tribunal.

Accordingly, we have proceeded in this inquiry in the absence of any assistance from his evidence apart from the brief and relatively uninformative contents of his interviews on the 11th and 12th December 1997.

Accordingly we must proceed to consider his role on the basics of the evidence as it stands.

At no stage in the evidence called before the Tribunal was there any suggestion that Mr. LAU Wan had been told anything of the joint venture proposal concerning Stime and HZK.

The most that could be said in this regard is that Mr. TSANG could not remember whether he had or had not mentioned the joint venture proposal to Mr. LAU Wan.

Accordingly there is no direct evidence that Mr. LAU Wan was aware of any relevant information in the terms of section 8 of the Ordinance.

Nor do we think any such knowledge on his part can be inferred.

It is true that aspects of his involvement in the subject matter of this inquiry gave rise to considerable suspicion. Not least of those matters are his suggesting to Mr. TSANG, according to Mr. TSANG, that nominees be used to operate trading accounts at Yardley on Mr. TSANG's behalf, and his requesting Mr. WONG, according to Mr. WONG, that another person's bank account be used for the purpose of advancing what at the end of the day proved to be a total of $23 million to Kingston and some other brokers.

Even accepting the evidence of Mr. TSANG and Mr. WONG, and there is some support for Mr. TSANG's evidence from Mr. LO Kwok Wah and NG Kam Cheuk in this regard, we do not think that is enough to draw any inference that Mr. LAU Wan was aware of and advising either of Mr. TSANG or Mr. WONG on trading on the basis of the specific information relating to the joint venture during the relevant period.

For one thing it may well be that there was significant trading going on in Stime shares which Mr. LAU Wan was concerned with which was independent of the insider dealings conducted by Mr. TSANG and Mr. WONG and their nominees.

Accordingly although suspicion attaches to Mr. LAU Wan's role in these matters, there is insufficient evidence before us to allow us to conclude to a high degree of probability that he was involved in any aspect of insider dealing in respect of Stime's stock during the relevant period.

Conclusion

Mr. LAU Wan is not found by us to have offended against any provision of section 9(1) of the Ordinance. He is not found by us to have engaged in insider dealing as defined by the Ordinance.

CHAPTER 12

SOME CONCLUDING MATTERS RELATING TO MR. WONG AND MR. TSANG'S INSIDER DEALINGS

There are two final related matters we wish to deal with.

Previous dealings by Mr. TSANG and Mr. WONG

We have found that both Mr. TSANG, through four nominees and Mr. WONG through Mr. ADIL had dealt in Stime shares prior to the relevant period and indeed prior to either becoming aware of the potential joint venture.

Mr. TSANG had, of course, been dealing through Mr. LAM Wai Keung since July 1996 and subsequently through his other three nominees.

Implicit in our finding is that Mr. WONG had been trading through Mr. ADIL since at least 14th July 1997.

How then does this sit with our findings that both traded as insider dealers on the information first provided to Mr. WONG only on the 28th July 1997.

In our view both Mr. TSANG and Mr. WONG, for their own reasons and benefit had been trading through their nominees prior to 28th July 1997.

We do not need to consider in any depth their motives for so doing. But we think it important to state two things.

Firstly so far as our considerations were concerned as to whether they had traded in Stime stock as insiders during the relevant period we did not take into account adversely against them that they had indulged in previous, apparently undisclosed, trading in that stock.

Our finding so far as this went was simply that they had so traded (as Mr. TSANG for his own part freely admitted). We did not from that make any adverse assumption or conclusion as either to their motives for so doing or that by so doing they were more likely to have, during the relevant period, acted as inside dealers.

In our view, when the opportunity to trade as inside dealers had arrived on the back of Mr. Simon NG's approach to Mr. WONG on the 28th July 1997, both Mr. TSANG (as he admits) and Mr. WONG had simply used their existing system of trading in Stime stock to effect their insider dealings in Stime stock.

Other dealings in Stime securities

Secondly, the evidence before us revealed some connection between Mr. WONG and a number of other individuals or accounts trading in Stime stock in Kingston and some other brokers in the latter part of 1997 and after the relevant period.

That connection, as we have already outlined, related to cheques drawn on Mr. ADIL's account and filled in by Mr. Dominic LI on Mr. WONG's instructions being made out to those brokerage firms. At least some of those cheques were then paid into accounts which were or had been dealing in Stime shares.

We have already stated that, in view of the absence of Mr. YAU and Mr. LAU Wan, the two persons apparently most likely to provide relevant evidence concerning these accounts and the assurance of counsel assisting the Tribunal that, so far as could be determined, no trading in Stime securities had occurred in those accounts during the relevant period, we decided not to proceed further along that path of inquiry.

Having reached that point, as we have already pointed out in Chapter 4, we drew no adverse conclusion of fact against Mr. WONG or Mr. TSANG in terms of any conclusion of insider dealing so far as these accounts and the payment of funds into them was concerned. There was no evidence before us as to Mr. WONG nor Mr. TSANG in any way benefiting from these accounts or directing their operation.

Accordingly we drew no conclusions adverse to either Mr. WONG or Mr. TSANG in that regard. Our consideration of this area of evidence went no further than to take into account Mr. WONG's involvement in the control and directing of some $23 million from the account of Mr. ADIL to the securities firms where those accounts were held (which included $13.4 million of Mr. ADIL's Stime share trading proceeds) evidenced by his ordering Mr. LI to complete the cheques making that totality of payment to those companies. We have set out our conclusions in that regard in Chapter 8.

Mr. TSANG also was connected on the evidence with at least one of those accounts maintained at Kingston.

That is because Mr. CHOW Wai Keung (TW 17) said that in about early 1998 Mr. TSANG's four nominees Ms NG Yu Shui, LO Kwok Wah, LAM Wai Keung and NG Kam Cheuk transferred their remaining Stime shares into his account at Kingston. According to him, he had little to do with the operation of that account which was operated by Mr. Patrick YAU, the missing witness.

We made no adverse findings against Mr. TSANG in this regard at all, we use it against him in no way.

It is fair to say that there were a number of unexplained aspects of various individuals trading in Stime shares which appeared at times throughout the evidence in this case as a chronic background of somewhat unusual trading activity.

But, as we say, we drew no adverse inference of fact against either Mr. WONG or Mr. TSANG in this regard in coming to our findings against them.

Further in considering this evidence we took it into account on behalf of the implicated persons.

We did so in this way: Given that there had been pre-existing (by way of Mr. TSANG's nominees and Mr. ADIL's trading for Mr.

WONG) trading in Stime stock by Mr. TSANG and Mr. WONG before the relevant period to a considerable extent, and that there may have been considerable post relevant period trading in Stime stock in some way connected to Mr. LAU Wan and Mr. YAU, we considered whether during the relevant period Mr. TSANG and Mr. WONG may, separately, have had a motive or object in such trading other than with a view for gain.

It is fair to say this was never raised before us by their counsel. Nevertheless we thought it appropriate to consider this possibility.

We concluded that both Mr. TSANG and Mr. WONG during the period of their insider dealing did so for profit.

Firstly, Mr. TSANG admitted this. He admitted it when interviewed by the SFC investigators and consistently through his statements and evidence. We accept the truth of these admissions.

Secondly Mr. WONG in directing the use of Mr. ADIL's account did so, from the history of that account with a view to making a profit. The sell-off of shares in Mr. ADIL's China Point account was steady, controlled and significant. It occurred on the day of the 5th August announcement. It was in our opinion a sell-off best timed to maximize profits.

We are satisfied Mr. WONG's and Mr. TSANG's insider dealing was with a view to profit.

This concludes our considerations and findings as to the matters contained in questions (a) and (b) of the Notice pursuant to section 16(2) of the Ordinance dated 11th April 2002 under the hand of the Financial Secretary.

CONCLUSIONS

We summarize our findings in respect of questions (a) and (b) of the Financial Secretary's notice dated 11th April 2002 issued pursuant to section 16(2) of the Ordinance.

As to question (a), there was insider dealing in the securities of Stime Watch International Holding Limited conducted by and on behalf of Mr. TSANG King Hung and by and on behalf of Mr. WONG Wing Shing, Wilson, through nominee accounts between 30th July and 4th August 1997 inclusive.

As to question (b), the only two such insider dealers identified were Messrs. TSANG King Hung and WONG Wing Shing, Wilson.

We now have pleasure in forwarding the first twelve chapters of this Report to the Financial Secretary dealing with our conclusions to questions (a) and (b) of the Notice.

We will deal with matters pertinent to question (c) in due course upon hearing the further submissions of counsel.

Deputy High Court Judge McMahon
Chairman

Mr. HUI Sik Wing, Joseph
Member

Mr. PANG Hon Chung
Member

6th December 2002

CHAPTER 13

PENALTIES AND CONSEQUENTIAL ORDERS

On the 6th December 2002, the Tribunal sent Chapters 1-12 of the Report to the Financial Secretary, and a few days later provided copies of the same to the then representatives of Mr. TSANG and Mr. WONG who we had found to be insider dealers in terms of paragraphs (a) and (b) of the Financial Secretary's Notice of 11th April 2002.

Shortly before the Tribunal reconvened on the 6th January 2003 to determine their profits pursuant to paragraph (c) of the Notice, both Mr. TSANG and Mr. WONG's previous representatives notified us that they had had their instructions withdrawn. On that day, therefore, the Tribunal adjourned consideration of Mr. TSANG and Mr. WONG's position pursuant to section 23(1) and section 27 of the Ordinance to the 11th January. Subsequently on the 11th January 2003, Mr. TSANG and Mr. WONG appeared in person and informed us that for the purposes of their being heard in respect of the profit to be assessed as arising from their insider dealing and orders which the Tribunal would consider making against them that they proposed to represent themselves.

The Tribunal, with the consent of Mr. TSANG and Mr. WONG, then heard submissions from counsel assisting the inquiry as to various matters. Then the Tribunal adjourned, at the request of Mr. TSANG and Mr. WONG, until the 18th January 2003 so as to allow both of Mr. TSANG and Mr. WONG to consider how they wished to proceed and what mitigation they wished to present to the Tribunal. The various orders and penalties the Tribunal could impose were explained to both Mr. TSANG and Mr. WONG. On the 18th January, both Mr. TSANG and Mr. WONG indicated they wished to provide written submissions and support those submissions with their own evidence. The Tribunal then proceeded to hear evidence and submissions from Mr. TSANG and Mr. WONG.

The evidence and submissions of Mr. TSANG

Mr. TSANG's evidence and his submission in mitigation was directed really at one matter which was additional to his admission of insider dealing. That was the lack of means he asserted he now had as a result of the large losses he had incurred from his continuing trading in Stime shares in a deteriorating market after the relevant period. He now, he says, holds some 30 million Stime securities (now Medtech securities) in the accounts of two of his nominees, LAM Wai Keung and LO Kwok Wah. Those securities at current Medtech prices of $0.01 are worth at most $300,000. Their value is entirely consumed by the debt he says he owes to Kingston. He has no other assets of any worth.

He made no further submission of substance.

Once again, the Tribunal regarded Mr. TSANG's evidence with considerable reservations.

It was, as a starting point, worthy of note that he had not in his schedule of financial worth provided to the Tribunal for the purpose of his submissions referred to his continued control of 30 million Medtech shares, worth perhaps no more than $300,000, but nevertheless representing some form of asset even if outweighed by any debt to Kingston. His continued beneficial ownership of these shares held in his nominees accounts was something which was revealed only in cross-examination.

In that regard also there was considerable uncertainty as to how the remaining debt apparently due to Kingston (the brokers where the Medtech securities are held in the accounts of LAM and LO) was being financed.

Further, so far as Mr. TSANG is concerned, we bear in mind the outside business interest he held in the company Peckwater. That interest was referred to by him in the body of our main Report. Whatever the present position of Peckwater we are not satisfied Mr. TSANG's evidence revealed all of his present financial interests. We recollect also the general thrust of his evidence during the course of the

Tribunal proper that cash advances by him in sums of $1 million or more were matters of a relatively minor nature, not requiring the usual prudent measures taken in respect of loans such as written agreements and terms of repayment or interest.

All in all, in our view, there was considerable uncertainty and a lack of transparency in Mr. TSANG's evidence as to his present means. In short, we place little weight on Mr. TSANG's evidence in that regard.

We do take into account however the very basic fact, as appears from the share trading statements of account in this case, that Mr. TSANG did incur considerable losses in his later dealings in Stime's securities at least during 1997 and 1998.

Further, and importantly so far as Mr. TSANG's mitigation is concerned, we accept that he admitted at an early stage in the inquiry that he had been an inside dealer during the relevant period.

We bear in mind however that that admission was neither as full and complete as it may have been.

Mr. TSANG in admitting his own role was still motivated to assist Mr. WONG in his evidence and insisted e.g. that Mr. WONG was unaware of his own Mr. TSANG's insider dealing and more cogently that he, Mr. TSANG, was unaware of Mr. WONG's insider dealing through Mr. ADIL's account.

In short, we will allow Mr. TSANG considerable, but less than full, credit for his early admission of inside dealing.

We place no substantial weight on his claim to be impecunious. In our view, given Mr. TSANG's prior financial dealings, it seems less than likely that his losses in his Stime securities dealings through his four nominees has resulted in him presently being of the extremely reduced means claimed by him.

In our view the levels of the financial orders and penalties imposed on him by us as set out hereunder are such as can be met by Mr. TSANG, particularly given the time we allow him to pay.

We now go on to deal generally with Mr. WONG's mitigation as urged upon us by him in his evidence and written submissions.

The evidence and submissions of Mr. WONG

Like Mr. TSANG, Mr. WONG primarily urged us to consider in mitigation his present lack of means.

Mr. WONG's evidence was given very little weight by us. He asserted that he had lost his very considerable fortune during the course of the 1997 and onwards property collapse. He provided no documentation to us in that regard, but simply said in evidence that he owned a number of residential investment properties in Hong Kong worth, in 1997, something in the vicinity of $100 million and in respect of which his equity was about $30 million.

He now asserts that has all gone and he has ended up owing about $2 million to the mortgagee banks.

There is, as with Mr. TSANG, a considerable lack of transparency in Mr. WONG's evidence about his present means.

During his evidence before us during the inquiry proper, he explained his drawdown of some $23 million on Mr. ADIL's bank account as being loans made by him, Mr. WONG, to Mr. LAU Wan. In the course of that evidence he further said that he had never attempted to take formal steps so as to have Mr. LAU Wan repay that money. Apparently whatever Mr. WONG's present means they are not such as to require him to chase Mr. LAU Wan for the outstanding $23 million of loans advanced to him by Mr. WONG in the latter part of 1997. His evidence in mitigation added nothing to his earlier assertions in that regard.

In short, we place no weight on Mr. WONG's evidence as to his present lack of means. His present evidence as to his reduced means sits awkwardly with the evidence (including his own) during the main body of the inquiry that he was in 1997 a person of very considerable wealth. It should be borne in mind also that he obtained proceeds of some $13 million as a result of his dealings in Stime shares through Mr. ADIL's trading account at China Point before, during and after the relevant period.

In our view the financial penalties and orders we impose upon him are such as can be met by him, particularly given the time we allow him to pay.

We will now proceed to deal with the orders we make in respect of Mr. TSANG and Mr. WONG.

We are firstly concerned with section 23(1) of Cap. 395. That sub-section is as follows:

> "23(1) At the conclusion of an inquiry or as soon as is reasonably practicable thereafter, where a person has been identified in a determination under section 16(3) or in a written report prepared under section 22(1) as an insider dealer, the Tribunal may in respect of such person make any or all of the following orders – *(Amended 61 of 1995 s. 8)*
>
> (a) an order that that person shall not, without the leave of the Court of First Instance, be a director or a liquidator or a receiver or manager of the property of a listed company or any other specified company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or any other specified company for such period (not exceeding 5 years) as may be specified in the order; *(Amended 25 of 1998 s.2)*
>
> (b) an order that that person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the insider dealing;
>
> (c) an order imposing on that person a penalty of an amount not exceeding three times the amount of any profit gained

> or loss avoided by any person as a result of the insider dealing."

Section 23(1)(a)

Mr. TSANG King Hung

We will deal with Mr. TSANG's position firstly pursuant to the provisions of section 23(1)(a).

So far as the provisions of section 23(1)(a) are concerned, we are satisfied that an order disqualifying Mr. TSANG from being a director of a listed company or any subsidiary of a listed company should be made.

That is because in our view the facts we have found proven in respect of Mr. TSANG show clearly that he acted in calculated disregard of the provisions of Hong Kong Law preventing him from acting on inside information so far as his dealings in Stime securities were concerned. Mr. TSANG was very aware of the illegality of his actions in that regard.

The methodology of those dealings was relatively sophisticated and the dealings themselves were on a considerable scale.

Indeed it is quite obvious from the evidence placed before us during the inquiry that Mr. TSANG spent a considerable proportion of his time, while a director of Stime in 1997 and before, during and after the period in respect of which we found he was an inside dealer, in arranging the purchase and sale of Stime securities.

In our view he treated in considerable part his duties as a director of Stime with disregard.

In our judgement, Mr. TSANG should be disqualified from holding any directorship in any Hong Kong listed company or its subsidiary for a period of three years.

Mr. WONG Wing Shing, Wilson

So far as Mr. WONG is concerned, in large part, our comments concerning Mr. TSANG apply also to him. His insider dealing was not so complicated in method as Mr. TSANG's in that he used only one nominee, Mr. ADIL, but it was nearly as extensive and was as calculated.

In our view, in total, Mr. WONG's abrogation of his duties as a director, indeed the chairman, of Stime was more substantial than Mr. TSANG's. It was worse because Mr. WONG not only conducted his own insider trading on nearly as an extensive scale as Mr. TSANG and with nearly as extensive a proportion of his time as Mr. TSANG but more importantly was wholly aware of his vice-chairman Mr. TSANG's own dealings in Stime shares before, during and after the period of insider dealing and financially assisted him to carry out those dealings.

Bearing in mind Mr. WONG's position as a chairman of a listed company we find that to be a very considerable breach of his duties in this regard.

In our view, Mr. WONG should be disqualified from holding any directorship in any listed company or its subsidiary for a period of four years.

Section 23(1)(b)

We turn now to the provisions of section 23(1)(b) and the calculation of Mr. TSANG's and Mr. WONG's profits.

In considering what orders to make under the provisions of the sub-section we had the benefit of the evidence, in statement form, of Mr. SHEK Kam Por, a Senior Manager of the Enforcement Division of the SFC. That statement was dated the 20th December 2002.

Neither Mr. TSANG nor Mr. WONG wished to ask any questions of Mr. SHEK nor did the members of the Tribunal or counsel assisting, and accordingly Mr. SHEK gave no oral evidence. His opinions as to the profits made by Mr. WONG's nominee Mr. ADIL, and

the realized and unrealized profits made by Mr. TSANG through his nominees, LAM Wai Keung, NG Kam Cheuk, Raymond, LO Kwok Wah and NG Yu Shui, were accordingly not in issue. We accepted them.

According to Mr. SHEK's statement the profits obtained by Mr. TSANG and Mr. WONG, whether realized or unrealized were calculated on the following basis.

(1) Where a relevant share trading account had an existing shareholding prior to the period in respect of which we found insider dealing had occurred i.e. 30th July to 5th August then Mr. SHEK's calculations of profit were based on purchase prices of securities determined on the assumption that the "last in first out" principle applied. That is, where securities were sold after a series of insider dealing purchases had been made, that any particular sale was of the last most securities purchased going back to the first most securities purchased during the insider dealing period.

(2) Generally where an account had inside dealing purchases taking place then the profits upon sale of such stock before full dissemination of the relevant information into the market is counted as actual realized profits.

Where no sale of such stock has occurred either at all or not until after the full dissemination of the relevant information then the profit is calculated by reference to the stock price on the date of full dissemination of the information into the market. That is the "re-rated" price of the stock as referred to by Mr. SHEK. From that date is calculated the actual but unrealized profit attributable to the purchase of, and insider dealing with, those securities.

Transaction costs are then deducted from the calculated trading profit, thereby arriving at the profit attributable to each inside dealer.

These principles adopted by Mr. SHEK, in his calculation of the insider dealing profits attributable to each account we are concerned with, are in general accordance with the principles set out in the judgement of

Lord Birkenhead in Insider Dealing Tribunal – v – SHEK Mei Ling (1999) 2 HKC 1.

One matter not dealt with in that judgement or in the judgement in the same case of Nazareth V-P in the Court of Appeal was the question which arises in the present assessment of profits, of whether the principle of "last in first out" should in law apply to the assessment of profits of trading accounts which held, from transactions which predated the inside dealing, existing stocks of Stime securities. Those existing stock would be subsequently added to by the acquisition of stock during the inside dealing period.

The application of the "last in first out" principle would mean that sales during the inside dealing period would be effectively assumed to be, firstly, sales, not of the pre-existing stock, but of stock purchased during that insider dealing period.

In our view, such a principle must properly and fairly apply to these transactions.

There are two primary reasons. Firstly such securities as those we are concerned with are, in the real world of stock trading and from the perspective of the inside dealer, effectively fungible items.

No order for sale specifies or could practically specify what particular numbered security to sell. All trading is conducted on the basis of accounts. To both the trader and the inside dealer no individual stock can be identified.

That means that there is no practical or real way to distinguish between items of stock sold. The use of the "last in first out" principle accords with equitable principles of law in such circumstances.

Secondly, with the exception of circumstances where the stock is sold prior to the full dissemination date of the relevant information, the calculation of profit is based upon the unrealized profit made on that date. It matters not then that the particular identity of securities subsequently sold cannot be ascertained.

In other words the "last in first out" principle in its application applies primarily to instances where stock is sold prior to the full dissemination date of the relevant information. That occurred for present purposes on four occasions only in two trading accounts we are concerned with, those of LAM Wai Keung and NG Yu Shui, both being nominees for Mr. TSANG.

It should be added that very often when the insider dealing stock is sold before the full dissemination date the use of the "last in first out" principle actually benefits the inside dealer. Because such sales would normally occur prior to the increase in price accompanying the dissemination of the information then the stock sale price used to calculate the realized profits would generally be less than the price of the stock upon full dissemination of the relevant information resulting in a lower calculated profit (as occurred with the facts relating to Madam SHEK in SHEK Mei Ling).

Accordingly, in our view, the use of the principle of "last in first out" by Mr. SHEK in his calculations accords with the law and results in no unfairness to the inside dealer.

The profit of Mr. TSANG King Hung

We will again deal with our considerations concerning Mr. TSANG firstly.

We are satisfied that Mr. SHEK's method and conclusions in calculating Mr. TSANG's profits are correct. Relevant excerpts from his statement and annexures in that regard appear at Annexure L to the Report.

Accordingly we find that Mr. TSANG's realized and unrealized profits from his insider dealing through the accounts of LAM Wai Keung, LO Kwok Wah, NG Kam Cheuk Raymond and NG Yu Shui amounted to, net of transaction costs, a total $3,627,926.88 in respect of both his Stime share and Stime warrants insider dealings.

The purpose of section 23(1)(b) is to allow the recovery of illicit profits made by the inside dealer. The maker of such illicit profits owes a notional debt to the community. But we appreciate that there exists a discretion on the part of the Tribunal as to what part of those profits are ordered to be subject to any order under the sub-section. In our view there would need to be truly exceptional reasons for not making an order for the full disgorgement of actual realized profits.

But where profits are as in this case substantially unrealized we take the view as was taken in Shek Mei Ling that the disgorgement amount ordered under section 23(1)(b) can reasonably be less.

Accordingly we order that Mr. TSANG pay to the Government of the Hong Kong Special Administrative Region an amount of $2,000,000 pursuant to the provisions of section 23(1)(b) of the Ordinance.

The profit of Mr. WONG Wing Shing, Wilson

For the reasons we have given, we accept Mr. SHEK's calculation of Mr. WONG's profits arising as a result of his inside trading in Mr. ADIL's account in Stime stock as being, net of transaction costs, $1,605,943.01. Relevant annexures to Mr. SHEK's statement in that regard appear at Annexure M to the Report.

Accordingly, these being realized profits we order that Mr. WONG pay to the Government of the Hong Kong Special Administrative Region an amount of $1,605,943.01 pursuant to the provisions of section 23(1)(b) of the Ordinance.

Section 23(1)(c)

Mr. TSANG King Hung

We bear in mind that in assessing penalty in respect of both Mr. TSANG and Mr. WONG that matters of mitigation are to be borne firmly in mind.

So far as Mr. TSANG is concerned, it is true that at an early stage of this inquiry he effectively admitted his own role as an inside dealer regarding the matters we were to inquire into.

Whilst we give him substantial credit for his admissions in that regard, we also bear in mind that his admissions were not wholly complete inasmuch as they did not extend frankly to his role in providing funds to and obtaining funds from Mr. WONG in respect of their insider dealing. In his evidence he maintained his ignorance of these matters.

We do not regard any lies or omissions in his evidence before us or in statements he made to the inquiry or earlier to the SFC as aggravating features in terms of any penalty we impose. But it does mean the benefit he receives from his admissions is somewhat lessened.

Further, we take into account the fact that Mr. TSANG did make eventual significant losses in his trading in Stime securities.

He says those losses, in real terms, amounted to about $14 million. We do accept that he incurred eventual losses of many millions of dollars.

Those losses, regardless of the lack of weight we attach to his evidence and submissions in mitigation as to his present lack of means, we accept do stand to be taken into account by us in assessing any penalty to be imposed on Mr. TSANG. Independently of his evidence, we accept that his financial circumstances, given the level of loss that he incurred as a result of his continued trading in Stime securities, must be significantly reduced.

Together with the mitigating factors of his admissions to insider dealing and the losses he eventually suffered from his dealing in Stime stock, we bear in mind also the financial totality of the orders we make regarding Mr. TSANG and order that he pay a penalty of $1 million. That represents a penalty of about one third of his assessed unrealized profits.

We are satisfied, given the time we allow him to pay, that that penalty is reasonable in the circumstances of this case.

Mr. WONG Wing Shing, Wilson

We, as we have said, place no weight on Mr. WONG's submissions and evidence as to his means put before us in mitigation. We are satisfied Mr. WONG still has means. There is no other factor we regard as mitigating Mr. WONG's penalty.

We do however bear in mind the totality of the financial orders we impose upon Mr. WONG. In our view an appropriate penalty would be $2 million.

That is equivalent to approximately 125% of his illicit profits as assessed by us.

Section 27

So far as Mr. TSANG and Mr. WONG are concerned, we bear in mind so far as any expenses order against them is concerned that the expenses of the Tribunal and the Department of Justice ("DoJ") (and the actual expenses of the SFC incurred during the course of the inquiry) total something in the vicinity of $4,508,306.90 made up of the Tribunal's expenses of $2,128,383.20 and the DoJ expenses of $2,358,002.70 and expenses of $21,921 so far as the SFC is concerned.

We do not include in our orders against Mr. TSANG or Mr. WONG any part of the investigative costs of the SFC prior to the commencement of the inquiry.

Also, and perhaps over generously given the reasoning in Building Authority – v – Business Rights Limited (1999)3 HKC 247, we have asked the DoJ to assess its expenses on a pure indemnity basis with no profit factor. In our view, the terminology of section 27 in using the language of "expenses" rather than of "costs" is more amenable to assessments made on a pure indemnity basis only.

In respect of those expenses of the Tribunal, the DoJ and the SFC, we order Mr. TSANG to pay $500,000, and we order Mr. WONG to pay $1,500,000 pursuant to section 27 of the Ordinance.

We have arrived at those figures on the following basis.

Mr. TSANG King Hung

So far as Mr. TSANG is concerned, we bear in mind that he was one of four implicated persons originally the subject of this inquiry. In our view that is the starting point of an objective assessment of the inquiry costs so far as his role was concerned. Further, he made significant admissions as to his role at an early stage in the inquiry. Finally, we take into account those admissions were somewhat incomplete and did not remove by any means all of the focus of the inquiry into his role.

We think the level of payment of expenses we have imposed, perhaps over generously as we have said, reflects a fair amount of the expenses of the inquiry reimbursable by Mr. TSANG. We order accordingly.

Mr. WONG Wing Shing, Wilson

In our view the fairest assessment of Mr. WONG's liability to pay expenses is the proportion of the inquiry taken up in determining his role in the matters we were to inquire into.

In our view nearly half of the inquiry was concerned with Mr. WONG's role. We regard a fair estimation of the expenses he is to reimburse as those set out above and order accordingly.

We set out in summary form the orders we make in respect of Mr. TSANG and Mr. WONG pursuant to section 23 and section 27 of the Ordinance.

Mr. TSANG King Hung

Section 23(1)(a): Disqualified from holding any directorship in any Hong Kong listed company or its subsidiary for a period of three years.

Section 23(1)(b): Pay to the Government of the Hong Kong Special Administrative Region an amount of $2,000,000.00.

Section 23(1)(c): Pay to the Government of the Hong Kong Special Administrative Region a penalty of $1,000,000.00.

Section 27: Pay to the Government of the Hong Kong Special Administration Region expenses of $500,000.00.

Mr. TSANG is allowed six months to make the payments required of him under section 23(1)(b) and (c) and of expenses ordered against him pursuant to section 27.

Mr. WONG Wing Shing, Wilson

Section 23(1)(a): Disqualified from holding any directorship in any Hong Kong listed company or its subsidiary for a period of four years.

Section 23(1)(b): Pay to the Government of the Hong Kong Special Administrative Region an amount of $1,605,943.01.

Section 23(1)(c): Pay to the Government of the Hong Kong Special Administrative Region a penalty of $2,000,000.00.

Section 27: Pay to the Government of the Hong Kong Special Administrative Region expenses of $1,500,000.00.

Mr. WONG is allowed six months to make the payments required of him under section 23(1)(b) and (c) and of expenses ordered against him pursuant to section 27.

Application for costs pursuant to section 26A of the Ordinance by Mr. Mohammed ADIL

The final matter we turn to is Mr. ADIL's application for costs. Mr. ADIL was found by us to have not been proven to have been an insider dealer pursuant to the provisions of section 9 of the Ordinance.

That is because, as we have set out in detail in Chapter 8, we were not satisfied Mr. ADIL was proven to have been provided with information relating to Stime's proposed or agreed dealings in respect of the joint venture with HZK and Target Wise so as to place him in possession of specific information for the purposes of section 8 of the Ordinance.

Mr. ADIL therefore was not found to be an insider dealer under our terms of reference.

Mr. LAM for Mr. ADIL has urged upon us that Mr. ADIL in those circumstances is entitled to his costs of this inquiry.

Costs for a person whose conduct forms part of the subject matter of an inquiry under the Ordinance and who has not been identified as an inside dealer are governed by section 26A of the Ordinance.

That section is as follows:

> "26A. Costs
>
> (1) Subject to subsection (5), at the conclusion of an inquiry or as soon as reasonably practicable thereafter, the Tribunal may award to –
>
> (a) any witness;
>
> (b) any person whose conduct is, in whole or in part, the subject of the inquiry,
>
> such sum as it thinks fit in respect of the costs reasonably incurred by him in relation to the inquiry.

(2) Any costs awarded by the Tribunal under subsection (1) shall be charged on the general revenue.

(3) The Tribunal may order that any costs awarded under subsection (1) may be taxed on the basis of any one of the scales of costs set out in the Schedules to Order 62 of the Rules of the High Court (Cap. 4 sub. leg.). *(Amended 25 of 1998 s. 2*)

(4) Subject to any rules made by the Chief Justice under section 36, Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to the award and taxation of any costs awarded by the Tribunal under this section. (*Amended 25 of 1998 s. 2*)

(5) <u>This section shall not apply to any person referred to in subsection (1) who is –</u>

(a) a person who has been identified as an insider dealer in a determination under section 16(3);

(b) an officer of a corporation who has been identified as such officer in a determination under section 16(4);

(c) a person who and in respect of whom it appears to the Tribunal has by his own acts or omissions caused or brought about (whether wholly or in part) the Tribunal to inquire into his conduct subsequent to the institution of the inquiry under section 16 or during the course of that inquiry; or

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

(*Added 61 of 1995 s. 10*)"

(<u>emphasis added</u>)

That section comprises the whole of our power to award costs to a person coming within its provisions. There is no other power to do so available to us. More explicitly, there is no separate inherent power vested in this Tribunal whether at common law or elsewhere to award

costs which would operate independently of the provisions of section 26A.

Accordingly, Mr. ADIL's application for costs falls to be considered entirely under the provisions of that section.

There is no doubt that Mr. ADIL is a person coming within the provisions of section 26A(1)(b) as an original implicated party the subject of the inquiry.

The only real issue to be considered by us in the determination of this application is whether Mr. ADIL falls within the provisions of section 26A(5)(d).

In our view that sub-section requires us to be satisfied that Mr. ADIL by his acts or omissions was at least partly responsible for the institution of this inquiry under the provisions of section 16 of the Ordinance.

And of that we have no doubt. By our findings regarding Mr. ADIL as comprehensively set out in Chapter 8, we are sure that even though he may not himself have had possession of information concerning Stime's proposed or actual entry into the joint venture, he was willingly and knowingly assisting Mr. WONG to trade in Stime shares and, crucially, did so knowing that his role in doing so was to act as camouflage for Mr. WONG's improper activities in this regard by lending his own name and company bank account and his personal bank account for the use of Mr. WONG's trading activities.

Further we are satisfied that Mr. ADIL, when inquiries were undertaken by the SFC lied to them so as to falsely represent that he was trading on his own behalf and that Mr. WONG was in no way a beneficiary or guiding mind of that trading.

We are satisfied that Mr. ADIL's acts in trading or allowing trading in his name and using and allowing the use of his company's and his own bank accounts in the course of that trading and the dispersal of the profits of that trading and, separately, his failure to reveal the truth of

these matters to the SFC investigation was at least partly the cause of the institution of the inquiry into his role in these matters pursuant to the section 16 notice.

Accordingly, section 26A(5)(d) applies so as to prevent Mr. ADIL being awarded his costs of the inquiry under the provisions of section 26A(1) and we make no such order.

Deputy High Court Judge McMahon
Chairman

Mr. HUI Sik Wing, Joseph
Member

Mr. PANG Hon Chung
Member

14th February 2003