

# **OXFORD PROPERTIES & FINANCE LIMITED**

INSPECTION UNDER SECTION 33 OF  
THE SECURITIES (DISCLOSURE OF INTERESTS) ORDINANCE

**CHAPTER 396 of the Laws of Hong Kong**

Report by Stephen Man-Tak Suen

*Inspector appointed by the Financial Secretary*

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**List of names and abbreviations**

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# Part I

## INTRODUCTION

### Appointment as Inspector

1.1 On 26 April 2000, I was appointed as Inspector by the Acting Financial Secretary, Mr Rafael S Y Hui, pursuant to his powers under section 33 of the Securities (Disclosure of Interests) Ordinance, Chapter 396, Laws of Hong Kong (“SDIO”), to investigate and report on the membership of Oxford Properties & Finance Limited (“Oxford”), a listed company in Hong Kong, and otherwise with respect to Oxford, for the purpose of determining the true persons who were or have been financially interested in the success or failure (real or apparent) of Oxford or were able to control or materially influence its policies as at 26 April 2000, or if transactions in any shares material to the investigation have taken place subsequent to 26 April 2000, on the date of the last of those transactions. A copy of the Instrument of Appointment (the “Appointment”) is attached at Appendix 1.

1.2 The scope of my investigation was limited to an examination of the holdings of those persons currently registered as shareholders of Oxford to establish whether or not they are and to determine who are the beneficial owners of such shares.

### Structure of the Report

1.3 I have divided this Report into four Parts :

*Part I - provides a brief background of Oxford and deals with events leading to my Appointment*

*Part II - provides an overview of the investigation and explains how the investigation was narrowed down*

*Part III - provides details of the evidence gathered and is sub-divided into four sections :*

*Section 1 : Enquiry letters to major shareholders, searches and inspections*

*Section 2 : Dividend cheques*

*Section 3 : Annual general meeting*

*Section 4 : Examination of officers and agents*

*Part IV - analyses the evidence gathered, sets out the conclusions drawn and proposes possible courses of action*

## **Background of Oxford**

1.4 Oxford (晉利地產金融有限公司) is a company incorporated in Hong Kong and listed on the Unified Exchange. It was first listed in April 1973. Before listing Oxford was known as Oxford Garment Factory Limited (牛津製衣廠有限公司) which was incorporated in January 1969. Mr James Smith Lee (“James Lee”) was the controlling shareholder as he and his wife Madam Tong Sheng Yuan (now deceased) together held 96% of the issued share capital before and 72% after the listing of Oxford.<sup>1</sup>

1.5 According to Oxford’s annual reports, the principal activities of Oxford are property investment, development and management and its main sources of income are rental income and profits from the sale of properties. When Oxford was listed it owned five investment and development properties. These properties were sold to Oxford by James Lee and his wife before the listing of Oxford. Besides investments in properties in Hong Kong, Oxford has substantial investments in properties in Guam, an unincorporated territory of the United States of America (“USA”).

1.6 James Lee was the founder of Oxford. He was also the Chairman of Oxford during the period 1973 to 1984. His late wife, two daughters (Ms Lee Wan Wah and Ms Lee An Fen), youngest son (Mr Lee Teh Yee, William, “William Lee”) and a member of Oxford’s staff, Mr Kiang Chee Man, Robert (“Robert Kiang”), were directors of Oxford when James Lee resigned as Chairman in 1984 and director in 1986. This composition of Oxford’s board has remained largely the same since 1986.<sup>2</sup>

1.7 During the eleven years when James Lee was the Chairman of Oxford, Oxford paid dividends to its shareholders almost every year except for 1975 and 1983. Oxford also paid dividends to its shareholders almost every year in the past ten years from 1990 to 2000. A table showing Oxford’s payment of dividends for the past 27 years from 1973 to 2000 is at Appendix 2.

1.8 Except for the two bonus share issues of 1 for 10, one each in both 1975 and 1981, the share capital of Oxford has not changed since 1981. Neither has Oxford been involved in any fund raising activities since being listed in 1973.

1.9 During the past 8 years, Oxford shares were very thinly traded. The average yearly turnover was only 418,837 shares. The share price ranged between \$3.60 and \$30.40. The total turnover of Oxford shares for the year 2000 was only 265,312 shares and the average share price was \$10.76. Moreover, over the past 6 years (1995 to 2000),

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<sup>1</sup> These figures are based on information contained in the prospectus issued at the time of Oxford’s listing.

<sup>2</sup> James Lee’s late wife resigned as director in 1987.

it was not uncommon to see no turnover or a monthly turnover of merely 2,000 or 4,000 shares. An analysis of Oxford share price and turnover for the period 1993 to 2000 is at Appendix 3.

1.10 At the time of its listing in April 1973, Oxford had an authorized share capital of \$100,000,000, consisting of 100,000,000 shares of \$1.00 each, and an issued share capital of \$56,000,000. The authorized share capital has, to date, remain unchanged. The issued share capital however has increased to \$67,760,000 divided into 67,760,000 ordinary shares of \$1.00 each, as a result of the two bonus share issues of 1 for 10 in 1975 and 1981.

1.11 Details of Oxford's current and past (since 1973) directors are at Appendix 4 and Appendix 5 respectively.

### **Events leading to the Appointment**

1.12 In April 1996, complaints were made by some shareholders of Oxford to the Stock Exchange of Hong Kong Ltd ("SEHK") and the Securities and Futures Commission ("SFC"). Essentially, these shareholders' main complaints were that :

- as a result of the Lee family's control over more than 79% of Oxford shares, there was an insufficient public float in Oxford and a breach of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules");<sup>3</sup> and
- Oxford's majority shareholder, who was also managing the company's daily operations, was deliberately suppressing the price of Oxford shares by not having certain properties in Guam re-valued and by not declaring dividends over an extended period of time.

1.13 The SFC looked into the complaints but concluded that there was insufficient evidence of any manipulation of the price of Oxford shares. As regards the matter of breaching the minimum public float requirement, the matter was referred to the SEHK for further investigation.

1.14 The SEHK then made enquiries with Oxford regarding a number of matters including the ownership and control of certain of its overseas corporate shareholders and James Lee's shareholding in Oxford whether registered in his own name or in the name of nominees.

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<sup>3</sup> Rule 8.08 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules") requires a minimum of 25% of issued shares in public float for a company with market capitalisation of less than HK\$4 billion.

1.15 In response, Mr Robert Horatius Bonar (“Robert Bonar”) (one of Oxford’s alternate directors) wrote to the SEHK stating that despite their efforts, they were unable to ascertain most of the information sought by the SEHK as the various shareholders and corporate shareholders (including James Lee) had not responded with the requested information.

1.16 On 27 January 1997, a group of more than 100 minority shareholders of Oxford formally applied to the Financial Secretary for the appointment of an inspector to look into the beneficial ownership of Oxford shares, pursuant to section 33 of the SDIO.

1.17 Having taken into account the merits of the application made by this group of minority shareholders and the provisions of the relevant law and in consultation with the SFC and the Department of Justice, the Acting Financial Secretary on 26 April 2000 appointed me as Inspector to investigate and report on the beneficial ownership of Oxford shares of those persons currently registered as shareholders of Oxford. I have been assisted in my investigation by staff of the SFC.

## **Part II**

### **OVERVIEW OF THE INVESTIGATION**

#### **The approach to the investigation**

2.1 As already noted, the purpose of this investigation is to determine the true persons who were or have been financially interested in the success or failure (real or apparent) of Oxford or were able to control or materially influence its policies as at 26 April 2000 and thereafter. The scope of my investigation is however limited to an examination of the holdings of those persons currently registered as shareholders of Oxford to establish whether or not they are and to determine who are the beneficial owners of such shares. I have not therefore endeavoured to conduct a comprehensive review of the entire shareholding history of Oxford. Rather, I have focused the investigation on two distinct areas:

- enquiries of those persons registered on Oxford's share register as members of the company to establish the true identity of the ultimate beneficial owner(s) of shares registered in their names, and the actual number of shares they currently own, with a view to establishing the true persons who are or have been financially interested in the success or failure (real or apparent) of Oxford;<sup>4</sup> and
- enquiries of directors of Oxford and other persons to determine who are or were in control, or are or were able to materially influence the policies, of Oxford.

#### **Analysis of Oxford's shareholding structure**

2.2 Oxford's register of shareholders shows that as at 26 April 2000, Oxford had a total of 356 shareholders. These shareholders can be divided into three major groups based on the number of Oxford shares held by them :

- the largest single shareholder is HKSCC Nominees Limited which holds 14,785,815 shares, or 21.82% of Oxford's issued share capital, as a custodian shareholder;
- the next nine largest shareholders of Oxford are nine corporate shareholders (listed in note 2 to Appendix 6) – the correspondence

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<sup>4</sup> It is important to note that the fact that a person is recorded on the register of a company as a member does not mean that that person is necessarily the beneficial owner of shares registered in his name. He may be a trustee of the shares. However, this would not be apparent from the register since under section 101 of the Companies Ordinance, Chapter 32, Laws of Hong Kong, no notice of any trust may be entered on the register.

addresses of these nine shareholders are all overseas addresses and their total shareholding is 48,302,080 shares which is 71.28% of Oxford's issued share capital; and

- the remaining 4,672,105 shares, or 6.90% of Oxford's issued share capital, are held by 346 members.

2.3 Over the past five years, there has been no major change to the above three groups of shareholders. There has also been no material change since 26 April 2000.<sup>5</sup> Appendix 6 sets out the three major group's shareholdings for the past five years. The names of the nine largest overseas corporate shareholders are listed in note 2 to Appendix 6. These companies will subsequently be referred to as the "Nine Overseas Corporate Shareholders".

#### Shares registered in the name of HKSCC Nominees Ltd – 21.82%

2.4 As at 26 April 2000, HKSCC Nominees Ltd, as custodian shareholder, held 14,785,815 Oxford shares on behalf of securities brokers who in turn held the shares on behalf of their clients. Of these, a total of 13,736,322 shares (i.e. 92.90% of the 14,785,815 shares), were held by three brokers for four corporate clients as follows:

<b><u>Name of client</u></b>	<b><u>No. of shares</u></b>	<b><u>Percentage</u></b> (of total issued share capital)
Legal (Nominees) Ltd	6,609,880	9.75
Gyna Incorporated	5,504,002	8.12
Mannab Holdings Inc	1,444,240	2.13
Modern Aspac Development Co Ltd	178,200	0.26
Total :	13,736,322	20.27

These shareholdings have remained unchanged since 26 April 2000.<sup>6</sup>

#### The Nine Overseas Corporate Shareholders – 71.28%

2.5 The Nine Overseas Corporate Shareholders are :

Peaceful Investment Inc

Barkston Investment Ltd

Lotus Real Estate Inc

<sup>5</sup> As checked up to 19 April 2001.

<sup>6</sup> As checked up to 19 April 2001.

Development & Trust Inc  
 Good American Inc  
 S Yamamoto for Hong Kong Kln First Stock Exchange Co  
 San Ting Enterprise Inc  
 Californian Enterprise Inc  
 Peaceful Corporation

2.6 The correspondence addresses of all these nine companies are located in three jurisdictions, namely Japan, Taiwan and the USA. As at 26 April 2000, they collectively held about 71.28% of Oxford's issued share capital. Individually, the largest of them held 6,143,000 shares while the smallest held 2,200,000 shares, representing 9.07% and 3.25% of Oxford's issued share capital respectively.

2.7 A table showing details of the shareholding and correspondence address of the Nine Overseas Corporate Shareholders is set out at Appendix 7. Again, these shareholdings have remained unchanged since 26 April 2000.<sup>7</sup>

2.8 There is a veil of secrecy surrounding the Nine Overseas Corporate Shareholders since all their correspondence addresses are in overseas jurisdictions and all are incorporated overseas and appear to have no registered office in Hong Kong. There is therefore no record of their respective officers, secretaries, directors or shareholders at the Companies Registry in Hong Kong.

Remaining Shareholders – 6.9%

2.9 The next two largest registered shareholders as at 26 April 2000 (ie after HKSCC Nominees Ltd and the Nine Overseas Corporate Shareholders), and their respective shareholdings were as follows. Again, these shareholdings have remained unchanged since 26 April 2000.<sup>8</sup>

<u>Name of shareholder</u>	<u>No. of shares</u>	<u>Percentage</u> (of total issued share capital)
Modern Aspac Development Co Ltd	355,200	0.52
B & M Corporation	322,640	0.48

2.10 The remaining 344 registered shareholders, collectively, held 3,994,265 shares, or about 5.89% of Oxford's issued share capital as at 26 April 2000. Individually, they held less than 300,000 shares each and in relatively small amounts. I do not consider their holdings to be significant when considering the transparency of the major

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<sup>7</sup> As checked up to 19 April 2001.

<sup>8</sup> As checked up to 19 April 2001.

shareholder base of the company and have hence focused the investigation on shareholders who held 300,000 or more Oxford shares as at 26 April 2000.

2.11 In view of the above, I have been able to narrow the investigation to the shareholdings of 14 entities who collectively held 62,716,242 shares, or 92.56% of Oxford's issued share capital, as at 26 April 2000. These 14 entities and details of their respective shareholdings are as follows :

	<b><u>Shareholder</u></b>	<b><u>No. of shares held (% of issued capital)</u></b>	<b><u>Registered Shareholder</u></b>
1	Peaceful Investment Inc	6,143,000 (9.07%)	Peaceful Investment Inc
2	Barkston Investment Ltd	6,000,000 (8.85%)	Barkston Investment Ltd
3	Lotus Real Estate Inc	6,000,000 (8.85%)	Lotus Real Estate Inc
4	Development & Trust Inc	5,814,980 (8.58%)	Development & Trust Inc
5	Good American Inc	4,314,100 (6.37%)	Good American Inc
6	Californian Enterprise Inc	6,000,000 (8.85%)	Californian Enterprise Inc
7	Peaceful Corporation	6,000,000 (8.85%)	Peaceful Corporation
8	San Ting Enterprise Inc	5,830,000 (8.6%)	San Ting Enterprise Inc
9	S Yamamoto for HK Kln First Stock Exchange Co	2,200,000 (3.25%)	S Yamamoto for HK Kln First Stock Exchange Co
10	Legal (Nominees) Ltd	6,609,880 (9.75%)	HKSCC Nominees Ltd
11	Gyna Incorporated	5,504,002 (8.12%)	HKSCC Nominees Ltd
12	Mannab Holdings Inc	1,444,240 (2.13%)	HKSCC Nominees Ltd
13	B & M Corporation	322,640 (0.48%)	B & M Corporation
14	Modern Aspac Development Co Ltd	355,200 (0.52%)	Modern Aspac Development Co Ltd
	Modern Aspac Development Co Ltd	178,200 (0.26%)	HKSCC Nominees Ltd

A copy of the above list and details is repeated at Appendix 8 for easy reference.

### **Initial enquiries**

2.12 With a view to ascertaining the beneficial ownership of the Oxford shares held by the above 14 persons, I issued letters to each of them and also placed public notices in newspapers circulated in the jurisdictions of their correspondence address. I also issued letters to Oxford's past and current directors with a view to establishing if they had any past or present interests in Oxford shares. The results of these enquiries are summarized below.

## Letters to shareholders

2.13 Enquiry letters were sent out to each of the 14 persons listed in Appendix 8 on or around 25 May 2000 in the form at Appendix 9. The letters sought to find out from them details of:

- any present or past interests, as defined in the SDIO, they have in Oxford shares;
- the consideration they provided in order to acquire such interests;
- the consideration they received from the disposal of such interests;
- any financial assistance provided to any person for the purposes of acquiring an interest in any Oxford shares.

2.14 The letters provided a summary of the meaning of “interest” as defined in the SDIO and a copy of the SDIO was enclosed with the letters to assist the recipients. The letters drew attention to the following possible consequences in the event that the Financial Secretary were to form the view that there was difficulty in finding out the relevant facts about any shares :

- the Financial Secretary may impose restrictions on the future transfer of those shares;
- the Court of First Instance of Hong Kong may order that the shares be sold.

2.15 Enquiry letters sent to the following six shareholders were returned undelivered:

<u>Name</u>	<u>Location of correspondence address</u>
Peaceful Investment Inc	Okinawa, Japan
S. Yamamoto for Hong Kong Kln First Stock Exchange Co	Taiwan
Californian Enterprise Inc	Delaware, USA
Peaceful Corporation	Delaware, USA
Legal (Nominees) Ltd	Alofi, Niue
Gyna Incorporated	Hong Kong

2.16 The following five shareholders failed to reply to my letters even though such letters were acknowledged as having been received :

<u>Name</u>	<u>Location of correspondence address</u>
Barkston Investment Ltd	Tokyo, Japan
Lotus Real Estate Inc	Tokyo, Japan
Development & Trust Inc	Tokyo, Japan
Good American Inc	Okinawa, Japan
San Ting Enterprise Inc	Taiwan

2.17 As for Mannab Holdings Inc, B & M Corporation and Modern Aspac Development Co Ltd (“Modern Aspac”), all responded to my enquiry letters and provided me with details of their interests in Oxford shares. Their responses together with other information show that :

- both Mannab Holdings Inc and B & M Corporation are controlled and beneficially owned by Mr M. B. Lee and his family members;<sup>9</sup> and
- 50% of Modern Aspac is beneficially owned by William Lee and the other 50% by Oxford.<sup>10</sup>

2.18 As a result, it was possible to further narrow down the focus of this investigation to 11 companies, namely the Nine Overseas Corporate Shareholders, Legal (Nominees) Ltd and Gyna Incorporated (subsequently referred to as the “Eleven Major Shareholders”). Together, these 11 companies hold a total of 60,415,962 Oxford shares (or 89.16% of its issued share capital).

### Public Notices

2.19 In view of the limited responses received to the enquiry letters, on 15 and 20 September 2000, I issued public notices in newspapers circulated in Japan (The Asian Wall Street Journal), Taiwan (The Asian Wall Street Journal and Economic Daily News), Delaware (Dover Post) and Hong Kong.<sup>11</sup> A copy of such notice is at Appendix 10. The notice requested that:

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<sup>9</sup> M. B. Lee & Co., Certified Public Accountants Ltd responded on behalf of Mannab Holdings Inc, noting that both companies were controlled and owned beneficially by its Governing Director, Mr M. B. Lee, and his family members and that such companies controlled 1,769,000 shares. This is 2,120 shares more than the amounts noted in paragraphs 2.9 and 2.11 as being registered in the names of these companies. The discrepancy is however considered too small to be of significance.

<sup>10</sup> Robert Bonar, General Manager, responded on behalf of Modern Aspac, noting that that company held a total of 533,400 shares (355,200 in its own name and 178,200 through Merrill Lynch). Earlier, Mr Bonar, responding to the SEHK on behalf of Oxford, had separately confirmed that William Lee was beneficially interested in 50% of Modern Aspac while the other 50% was owned by Oxford.

<sup>11</sup> Japan, Delaware and Taiwan being the places in which the last known correspondence addresses of the Nine Overseas Corporate Shareholders were located and Hong Kong being the place where the correspondence addresses of Gyna Incorporated and James Lee, a director of Legal (Nominees) Ltd, are located.

- any person holding 300,000 shares or more in Oxford and who had not received my letter of 25 May 2000; and
- any person holding Oxford shares in “street names”(i.e. those shares that had been acquired on the market and not registered),

contact me to provide details of their holdings. However, nobody has responded to these notices as at the date of this report. I have examined Oxford’s register of members as at 31 December 2000 to identify any change to the shareholding structure of Oxford. As far as the 14 persons listed in paragraph 2.11 above are concerned, there was no change to their shareholdings, nor was there any material change to other members’ shareholdings.

#### Letters to past directors

2.20 In addition to writing to the 14 shareholders mentioned above, I also wrote to Oxford’s past and present directors. Letters to Oxford’s seven past directors were sent on 27 May 2000 and were in a form similar to that at Appendix 9. The letters sought details of their past and present interests in the shares of Oxford and were sent to their respective last known addresses by courier and/or double registered mail. Appendix 11 lists the directors to whom these letters were sent and the addresses to which they were sent and indicates whether or not the letters could be delivered.

2.21 As will be noted, letters could not be delivered to three of the past directors. However, as per Oxford’s register of members, none of these three directors are registered as shareholders of Oxford.

2.22 As for the remaining four directors, only one (James Lee) did not respond. The other three all responded to the effect that they held no past or present interests or that a very small interest (2,000 shares) was still held.

#### Letters to current directors

2.23 As regards Oxford’s eight current directors, enquiry letters were sent to each of them. The letter was similar to that sent to past directors. Letters could not be delivered to Lee Wan Wah and Lee An Fen. One other, Chow Sy Pien (non-executive director since 1987), acknowledged receipt of my inquiry letter but failed to respond.

2.24 Four other directors confirmed that they have no present or past interests in the shares of Oxford, namely :

- Robert Kiang – director;
- Robert Bonar – alternate director to Robert Kiang;
- Mr Wong Shu Yuen (“S Y Wong”) – alternate director to Lee Wan Wah; and
- Mr Daniel Chan Kam Lun – non-executive director since 1998.

2.25 The last director, William Lee, Chairman of Oxford, confirmed that he held 33,000 shares in his own name and had an indirect interest in 533,400 shares held in the name of Modern Aspac in which he has a 50% interest.

### **Further investigations**

2.26 The issue of enquiry letters and public notices revealed minimal information and essentially only served to further focus the investigation to the Eleven Major Shareholders. Accordingly, pursuant to the terms of the Appointment and in exercise of the powers conferred upon me under section 36 of the SDIO, I required Oxford, its directors and staff members, its share registrar, banks, and other persons whom I believed to have relevant information, to provide information and documents which would assist me to establish the beneficial ownership of the shares held by the Eleven Major Shareholders. I also examined on oath a number of persons, including agents and officers of Oxford, whom I believed were or might be in possession of information concerning the ownership and control of Oxford. These included :

- five of the current and past directors – James Lee, William Lee, Robert Kiang,<sup>12</sup> Robert Bonar,<sup>13</sup> and S Y Wong<sup>14</sup>;
- two former staff members – Mr Liu Kin Ming, Sam (“Sam Liu”),<sup>15</sup> and Mr Lo Gun Yuen, Raymond (“Raymond Lo”)<sup>16</sup>;
- five current staff members – Mr Chiu Chor Wah, Eric (“Eric Chiu”),<sup>17</sup> Ms Wong Pui Ying, Ellen (“Ellen Wong”),<sup>18</sup> Ms Chan Sau Fan, Hermia (“Hermia Chan”),<sup>19</sup> Ms Leung Chi Fun, Winnie (“Winnie Leung”)<sup>20</sup> and Mr Ho Kwok Kuen (“K K Ho”)<sup>21</sup>; and

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<sup>12</sup> A director since 1977.

<sup>13</sup> An alternate director since 1991

<sup>14</sup> An alternate director since 1999.

<sup>15</sup> Former chief accountant (1994-1996).

<sup>16</sup> Former chief accountant (1996-1998).

<sup>17</sup> Senior accountant since 1995.

<sup>18</sup> Accountant since 1994.

<sup>19</sup> Leasing manager since 1996.

<sup>20</sup> Secretary since 1998.

<sup>21</sup> Company secretary since 1995.

- three other parties – Mr Ma Wai Sum, Wilson (“Wilson Ma”),<sup>22</sup> Mr Wong Yee Siu, Andrew (“Andrew Wong”)<sup>23</sup> and Mr Sum Wai Man (“W M Sum”).<sup>24</sup>

2.27 In addition, I also retained a private investigation agency to conduct company searches and other searches on the Nine Overseas Corporate Shareholders and carry out on-site visits to the location of their last known correspondence addresses.

2.28 The further investigations looked into the following :

- the existence and presence of the Eleven Major Shareholders and their acquisition of Oxford shares;
- whether dividends payable to the Eleven Major Shareholders over the past five years were collected and, if so, how and by whom;
- the attendance of the Eleven Major Shareholders at Oxford’s last four Annual General Meetings (“AGM”); and
- the manner in which and by whom Oxford’s affairs were handled and decisions were taken.

All of these are discussed at length in Part III of this report.

### **Invitation to comment on the draft report**

2.29 I circulated a draft of this report to James Lee and William Lee as well as Andrew Wong and W M Sum of Sums Ltd on 12 March 2001 for the purpose of enabling them to make whatever comments they deem fit. To date, I have only received comments from Sums Ltd. I have carefully considered these in finalising this report.

### **Completion of report**

2.30 I also wish to note that at the time of issuing this report, there were outstanding replies from James Lee, the Eleven Major Shareholders and, James Lee’s two daughters (Lee Wan Wah and Lee An Fen), who are still current directors of Oxford. Moreover, in the case of James Lee and William Lee, I was only able to meet them for interviews once and attempts to conduct further interviews have, to date, been unsuccessful. I have come to the view however that it would not be appropriate to hold up the submission of this report pending their reply. If they should make submissions at a later date, those may be considered at such time.

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<sup>22</sup> Manager of Sums Ltd, Oxford’s share registrar.

<sup>23</sup> A director of Sums Ltd.

<sup>24</sup> Another director of Sums Ltd.

## **Part III**

### **OWNERSHIP AND CONTROL OF THE ELEVEN MAJOR SHAREHOLDERS**

3.1 As briefly mentioned already, there is a veil of secrecy surrounding the Eleven Major Shareholders, who together hold 60,415,962 shares (i.e. 89.16% of Oxford's issued share capital). Each of these 11 companies is incorporated outside Hong Kong and has no registered presence in Hong Kong. Tremendous difficulty has been encountered in ascertaining the identity of the officers, secretaries, directors or shareholders of these companies. Even searches at public registries in other jurisdictions have shed little to no light in this regard.

3.2 This Part sets out the evidence gathered in the course of this investigation regarding these 11 companies. The evidence and information is examined under four sections as follows :

- Section 1 : Enquiry letters to major shareholders, searches and inspections
- Section 2 : Handling of dividend cheques payable to major shareholders
- Section 3 : Attendance at AGMs by major shareholders
- Section 4 : Examination of Oxford's officers and agents

## Section 1: Enquiry letters to major shareholders, searches and inspections

### Introduction

3.1.1 This Section focuses on the identity of the persons behind the Eleven Major Shareholders based on company searches and other searches conducted against them, inspection visits to their last known correspondence address and other documents obtained from relevant persons pursuant to my powers under section 36 of the SDIO.

### No further information with SEHK or Oxford

3.1.2 The respective shareholding, jurisdiction of correspondence address and jurisdiction of place of incorporation of the Eleven Major Shareholders are as follows.

<u>Name</u>	<u>Number of shares</u>	<u>%</u>	<u>Place of correspondence</u>	<u>Place of Incorporation</u>
Barkston Investment Ltd	6,000,000	8.85	Tokyo, Japan	Unknown
Lotus Real Estate Inc	6,000,000	8.85	Tokyo, Japan	Unknown
Development & Trust Inc	5,814,980	8.58	Tokyo, Japan	Panama
Peaceful Investment Inc	6,143,000	9.07	Okinawa, Japan	Panama
Good American Inc	4,314,100	6.37	Okinawa, Japan	Unknown
San Ting Enterprise Inc	5,830,000	8.60	Taiwan	Unknown
S. Yamamoto for Hong Kong Kln First Stock Exchange Co	2,200,000	3.25	Taiwan	Unknown
Californian Enterprise Inc	6,000,000	8.85	Delaware, U.S.A.	Delaware
Peaceful Corporation	6,000,000	8.85	Delaware, U.S.A.	Delaware
Sub-total :	<u>48,302,080</u>	<u>71.28</u>		
Legal (Nominees) Ltd	6,609,880	9.75	Niue	Niue
Gyna Incorporated	5,504,002	8.12	Hong Kong	Bahamas
Sub-total :	<u>12,113,882</u>	<u>17.88</u>		
Total :	<u>60,415,962</u>	<u>89.16</u>		
	=====	=====		

3.1.3 It is immediately apparent that each of these companies holds less than 10% and hence apparently below the reportable level imposed under the SDIO. Neither Oxford nor the SEHK would have any further information about these shareholders or

the persons behind them, other than their name, number of Oxford shares held and correspondence address. I have therefore sought information from other sources as discussed below.

## **CALIFORINIAN ENTERPRISE INC PEACEFUL CORPORATION**

### **Searches – companies apparently inactive and voided in 1983**

3.1.4 According to a private investigation agency retained for the purposes of this investigation, searches of an extensive private US database revealed no information about either Californian Enterprise Inc or Peaceful Corporation. Additionally, enquiries with the Corporation Division, Secretary of State, State of Delaware revealed that both companies had been incorporated on 16 August 1978 and voided by the Secretary of State's office in 1983.

3.1.5 Moreover, in the case of both companies :

- the last annual report was filed in February 1981, which stated (a) the company's business type and place of business outside Delaware as "inactive" and (b) that only one share had been issued at par value of US\$20;
- no Federal Employer's Identification Number had been issued by the US Internal Revenue Service; and
- a generic corporate charter was used, which did not list the type of business intended to be pursued.

### **Investigation of last known address – no presence**

3.1.6 The last known correspondence address for Californian Enterprise Inc and for Peaceful Corporation is the same – "306 South State Street, Dover City, Kent, Delaware, USA".

3.1.7 An on-site visit conducted by the private investigation agency revealed that the address "306 South State Street, Dover City, Kent, Delaware, USA" was that of a commercial office building with duplex frontage, in downtown Dover, Delaware. The building was, at the time of the visit, occupied by Delmarva Underwriters, Ltd ("Delmarva") on one side of the duplex and Bayard Firm, Attorneys at Law, on the other side. There were no signs of either Californian Enterprise Inc or Peaceful Corporation being an occupant of these premises. Enquiries were made with the occupants at the premises regarding Californian Enterprise Inc and Peaceful Corporation. The occupants indicated however that they had no knowledge of either company.

3.1.8 On 7 September 2000, I wrote to Delmarva and Bayard Firm requesting information about Californian Enterprise Inc and Peaceful Corporation. Delmarva replied but Bayard Firm did not reply. Delmarva confirmed that there were no such companies as Californian Enterprise Inc or Peaceful Corporation at the address. However, it stated that the previous tenant may have acted as registered agent for these two companies. Delmarva provided me with the name and address of the previous tenant – CSC United States Corporation Company (“CSC”). On 5 October 2000, I wrote to CSC requesting information about Californian Enterprise Inc and Peaceful Corporation. However, CSC has not responded to my letter as at the date of this report.

### **Last tax report – possibly signed by James Lee**

3.1.9 The private investigation agency also provided copies of two documents entitled “State of Delaware - 1980 Annual Franchise Tax Report – Delaware Corporation” : one in respect of Californian Enterprise Inc and the other in respect of Peaceful Corporation. Copies of both documents are at Appendix 12 and Appendix 13 respectively.

3.1.10 The agency has noted that the last annual report was signed by John S Hoenigmann. However, the signatures on Appendix 12 and Appendix 13 are not identified by name. Moreover :

- The signatures appear to resemble one of James Lee’s signatures.<sup>25</sup>
- Secondly, Appendix 12 and Appendix 13 were received attached to a copy of Californian Enterprise Inc’s and Peaceful Corporation’s Certificate of Incorporation respectively. Both Certificates of Incorporation were signed by one John S Hoenigmann as Sole Incorporator, whose signature appears to be very different from that on Appendix 12 and Appendix 13. Copies of the certificates of incorporation are at Appendix 14.

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<sup>25</sup> I am able to say this because during my examination of James Lee, he admitted to using various names and signatures. Appendix 38, which is discussed later in paragraph 3.2.22, includes an example of one of the signatures confirmed by him as being his. The signature confirmed by him as his is the one appearing on the second page above the words “Chairman of the meeting”. It will be seen that this signature resembles the ones on the reports at Appendix 12 and Appendix 13. (My examination of James Lee and his use of different names and signatures are discussed at greater length in Section 4 of this Part.)

## **Acquisition of shares – suggests possible links to James Lee**

### Californian Enterprise Inc

3.1.11 According to documents provided by Oxford's share registrar, the 6 million Oxford shares currently registered in the name of Californian Enterprise Inc have been so registered since 15 August 1991.

3.1.12 According to the form of transfer provided by Sums Ltd (Oxford's share registrar since 1984), the said 6 million shares were transferred from Barkston Investment Limited (one of the other Eleven Major Shareholders) on 30 July 1991. A copy of the form of transfer is at Appendix 15. Two matters relating to this form of transfer are worth noting :

- The form notes that the transfer is for nil consideration.
- Neither the signatory signing for the transferor nor the signatory signing for the transferee has been identified by name. However, the transferor's signature appears to read "Hsin Chuan Lee". During my examination of James Lee, he confirmed having used the name "Lee Chuan Hsin" and having signed documents using that name. A copy of Appendix 15 was also shown to him but he denied that the transferor's signature on this particular document was his.

### Peaceful Corporation

3.1.13 According to documents provided by Oxford's share registrar, the 6 million Oxford shares currently registered in the name of Peaceful Corporation have been so registered since 1 October 1991.

3.1.14 According to the form of transfer provided by Sums Ltd, the said 6 million shares were transferred from Peaceful Investment Inc (yet another one of the Eleven Major Shareholders) on 21 August 1991. A copy of the form of transfer is at Appendix 16. Again, a few matters relating to this form of transfer are worth noting :

- The form notes that the transfer is for nil consideration and that the transfer is "for nominee (to the same owner) Peaceful Investment".
- Neither the signatory signing for the transferor nor the signatory signing for the transferee has been identified by name. However, both signatures appear, on the face of it, to belong to the same person and to possibly read "Lee Chuan Hsin". During my examination of James Lee, a copy of Appendix 16 was shown to him and he confirmed that the transferor's signature was his, but that he was not sure if the transferee's signature was his also.

**SAN TING ENTERPRISE INC  
S. YAMAMOTO FOR HONG KONG KLN FIRST STOCK EXCHANGE CO.  
("Yamamoto")**

**Searches – no record**

3.1.15 Various searches were made by the private investigation agency including searches of the China External Trade Development Corporation company registration records, on-line media and credit databases and on the Internet. No record of either company was found.

**Investigation of last known address – no presence**

3.1.16 The last known correspondence address of both San Ting Enterprise Inc and Yamamoto is in Taipei :

- San Ting Enterprise Inc's is c/o Mr Chow Sy-pien, 447 Chung Hwa Road, 2<sup>nd</sup> Sec 4F-2, Taipei, Taiwan; and
- Yamamoto's is 10 Yong Swei Road, Taipei (100), Taiwan.

San Ting Enterprise Inc

3.1.17 According to the private investigation agency, the premises of San Ting Enterprise Inc were located in a seven-storey residential building. There were no signboards indicating San Ting Enterprise Inc to be an occupant at the premises. Two attempts were made to contact the occupant of the given address by ringing the bell but both were unsuccessful.

3.1.18 According to the caretaker, the resident of "4<sup>th</sup> Floor-2" was a man who had lived there a long time and worked in a bank. The only company ever located on the 4<sup>th</sup> floor had been at "4<sup>th</sup> Floor-1" but had moved away about 2 years ago without leaving a forwarding address. The caretaker could not however recall that company's name.

3.1.19 The premises at "4<sup>th</sup> Floor-1" were visited and found to be offices of Lee Real-Estate Company. Staff there noted that they had just moved there and did not know anything about the previous occupants or any company by the name of San Ting Enterprise Inc.

3.1.20 For the sake of completeness, I note that San Ting Enterprise Inc's address is stated as being "c/o Mr Chow Sy-pien". As noted in Appendix 4, one Mr Chow Sy Pien has been a non-executive director of Oxford since 1987. Also, as noted in paragraph 2.23 above, he has not responded to enquiry letters sent to him. His address as per Oxford's records is the same as San Ting Enterprise Inc's last known correspondence address.

## Yamamoto

3.1.21 The premises of Yamamoto appear to be in Taipei City. Enquiries made at the premises revealed that it was a hospital named Far Eastern Hospital, which had been there for many years.

3.1.22 On 27 July 2000, I wrote to Far Eastern Hospital at the above address of Yamamoto to inquire about the person S. Yamamoto and the company Hong Kong Kln First Stock Exchange Co. Far Eastern Hospital replied that they did not have any information about the two.

## **Acquisition of shares – possibly from James Lee**

### San Ting Enterprise Inc

3.1.23 According to extracts of Oxford's October 1979 shareholders' list provided by Incorporated Company Secretaries Ltd (Oxford's previous share registrar), San Ting Enterprise Inc first acquired 7,000,000 shares on 13 February 1979. The documents record this acquisition as follows :

- 1,800,000 shares were acquired by "San Ting Enterprise Inc, represented by Lee Wan Wah" (ie one of James Lee's daughters and a director of Oxford since 1973)
- 1,500,000 shares were acquired by "San Ting Enterprise Inc, represented by Lee Yun Yah"<sup>26</sup>
- 1,700,000 shares were acquired by "San Ting Enterprise Inc, represented by Lee Shu Wha"<sup>27</sup>
- 2,000,000 shares were acquired by "San Ting Enterprise Inc, represented by Lee An Fen" (ie one of James Lee's daughters and a director of Oxford since 1980)

In each case, the address recorded at the time was "10 Yong Suei Road Taipei (100) Taiwan" – ie the same as that stated for Yamamoto in paragraph 3.1.16 above. Copies of the documents recording the above are at Appendix 17.

3.1.24 These 7,000,000 shares increased to 7,700,000 shares as a result of the bonus share issue of 1 for 10 shares in 1981. In October 1991 however, the 1,870,000

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<sup>26</sup> It is not known what, if any, relation exists between this person and James Lee.

<sup>27</sup> Again, it is not known what, if any, relation exists between this person and James Lee.

shares<sup>28</sup> held by San Ting Enterprise and represented by Lee Shu Wha were transferred out,<sup>29</sup> thus leaving that company with the 5,830,000 shares currently held.

3.1.25 As at 18 May 2000, San Ting Enterprise Inc's interests in Oxford was recorded as follows :

- 1,980,000 shares in the name of "San Ting Enterprise Inc";
- 1,650,000 shares in the name of "San Ting Enterprise Inc, represented by Lee Yun Yah"; and
- 2,200,000 shares in the name of San Ting Enterprise Inc.

In each case, the address shown was the same as that stated for San Ting Enterprise Inc in paragraph 3.1.16 above). A copy of the relevant extract of the register of members noting the above is at Appendix 18.

### Yamamoto

3.1.26 According to documents provided by Incorporated Company Secretaries Ltd, Yamamoto first acquired 2,000,000 Oxford shares on 13 February 1979. This increased to the current 2,200,000 as a result of the bonus share issue of 1 for 10 shares in 1981. Yamamoto's address in 1979 was also recorded as "10 Yong Suei Road Taipei (100) Taiwan". A copy of the relevant document recording the above is at Appendix 19.

### Shares possibly transferred from James Lee

3.1.27 I have not been able to obtain copies of the transfer forms in respect of San Ting Enterprise Inc's or Yamamoto's acquisition of Oxford shares on 13 February 1979. I am therefore unable to ascertain who transferred these shares and for what, if any, consideration.

3.1.28 However, the acquisitions of these two companies on 13 February 1979 totalled 9,000,000 shares. Documents provided by Incorporated Company Secretaries Ltd show that on the same date (ie 13 February 1979) James Lee's registered shareholding in Oxford decreased by the same amount (ie 9,000,000 shares). Copies of the documents provided in this regard are at Appendix 20.

3.1.29 Given (a) the identical decrease in James Lee's shareholding on the same date, (b) the apparent links between the transferees and James Lee and (c) the magnitude of the number of shares involved (ie over 13.28% of the issued share capital), it would appear

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<sup>28</sup> The 1,700,000 shares originally acquired in this name increased to 1,870,000 as a result of the 1981 share dividend.

<sup>29</sup> Although the documents provided by the previous share registrar show that these shares were transferred out, they do not show any details of such transfer out.

that the shares acquired by San Ting Enterprise Inc and Yamamoto were likely transferred from James Lee.

### **Correspondence with Sums Ltd – indicates connections with James Lee**

3.1.30 According to Sums Ltd (Oxford's current share registrar), each of San Ting Enterprise Inc and Yamamoto have corresponded with Sums Ltd over the years. Copies of these letters are at Appendix 21 and Appendix 22 respectively and show as follows.

#### San Ting Enterprise Inc – letters signed by James Lee's daughters

3.1.31 By letter dated 1 May 1989, San Ting Enterprise Inc notified Sums Ltd that its correspondence address would change from "10 Yong Suei Road, Taipei (100), Taiwan" to O.C.S. Division, United World Chinese Commercial Bank, 65 Kuan Chien Road, Taipei (10038), Taiwan, Republic of China, c/o Mr Chu, Director and Vice President". Lee Wan Wah (one of James Lee's daughters and one of Oxford's directors since 1973) signed the letter for and on behalf of San Ting Enterprise Inc.

3.1.32 By letter of 20 December 1993, San Ting Enterprise Inc informed Oxford that its mailing address would change with immediate effect to "c/o Mr Chow Sy-pien, 447 Chung Hwa Road, 2<sup>nd</sup> Sec 4F-2, Taipei, Taiwan". Again, Lee Wan Wah appears to have signed the letter for and on behalf of San Ting Enterprise Inc.

3.1.33 By letter of 2 July 1996, San Ting Enterprise Inc informed Sums Ltd that Lee Wan Wah and Lee An Fen (also one of James Lee's daughters and one of Oxford's directors since 1980) were not representing San Ting Enterprise Inc since 1994 and that only Lee Yun Yah was still representing that company. The letter was signed by Lee Wan Wah and Lee An Fen.

#### Yamamoto – appears to show links to James Lee

3.1.34 By letter of 22 July 1989, Yamamoto provided Sums Ltd with the specimen signatures of the five signatories authorized to deal with Yamamoto's shares in Oxford. The letter was written on the letterhead of "James Bussan International K.K., 8-5, Jingumae 5-Chome, Shibuya-ku, Tokyo 150, Japan".<sup>30</sup> The signature of the person who signed the letter for Yamamoto appears to read S. Yamamoto.

3.1.35 None of the authorized signatories have been identified by name. However, the first specimen signature appears to read "Chuan Hsin Li" while the fifth one appears to read "Hsin Chuan Lee". As noted in paragraph 3.1.12 above, James Lee has confirmed having used the name "Lee Chuan Hsin" and having signed documents using

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<sup>30</sup> As will be seen later (paragraph 3.1.37), Lotus Real Estate Inc's last known correspondence address is "c/o James Bussan K.K." and the address is similar to the one stated here.

that name.<sup>31</sup> The second and third specimen signatures appear to read “S Yamamoto”, while the fourth one is illegible.

3.1.36 As regards the fourth and fifth signatures, it is also worth noting that although unidentified, they are on a separate piece of paper. The significance of this will be apparent later in this report.<sup>32</sup>

**BARKSTON INVESTMENT LTD  
 LOTUS REAL ESTATE INC  
 DEVELOPMENT & TRUST INC  
 PEACEFUL INVESTMENT INC  
 GOOD AMERICAN INC**

3.1.37 According to Sums Ltd, the last known correspondence address of the above five shareholders and their respective shareholdings are as follows:

<u>Name</u>	<u>No. of shares (% of Oxford's capital)</u>	<u>Correspondence Address</u>
Barkston Investment Ltd	6,000,000 (8.85%)	CPO Box 757, Chuo-ku, Tokyo 100, Japan
Lotus Real Estate Inc	6,000,000 (8.85%)	c/o James Bussan K.K., 5/F Jubilee Plaza Building 8-5, 5-Chome, Jingumae, Shibuya-ku, Tokyo 150, Japan
Development & Trust Inc	5,814,980 (8.58%)	King's Enterprise K.K., Jubilee Plaza Harajuku, 3/F 8-5 Jingumae 5-Chome, Shibuya-ku, Tokyo 150, Japan
Peaceful Investment Inc	6,143,000 (9.07%)	P.O. Box 462, Naha-Shi, Okinawa-Ken 900, Japan
Good American Inc	4,314,100 (6.37%)	3-18, Kumoji 3-Chome, Naha-city, Okinawa 900, Japan
Total :	<u>28,272,080</u> <u>(41.72%)</u>	

**Searches – no record**

3.1.38 The addresses of these five companies are in either Tokyo or Okinawa. Searches of telephone listings in Tokyo and Okinawa and searches at the Naha District Bureau of Judicial Affairs in Okinawa revealed no record of any of these five companies.

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<sup>31</sup> James Lee's use of different names and different signatures is discussed in greater length in Section 4 of this Part.

<sup>32</sup> As is discussed later in this Section (paragraph 3.1.53), an identical copy of this separate sheet of paper (bearing only these two specimen signatures) was sent to Sums Ltd as specimen signatures of authorized signatories in respect of Barkston Investment Limited, Development & Trust Inc, Good American Inc and Peaceful Investment Inc.

## **Investigation of last known correspondence address**

### Barkston Investment Ltd – address non-existent

3.1.39 Barkston Investment Ltd’s last known correspondence address is a post box number. According to the private investigation agency, enquiries made with the Central Post Office, Chuo-ku, Marunochi 2-7-2, Tokyo, 100 Japan revealed that there was no subscriber by the name of Barkston Investment Ltd and that there was no box number 757 at the Central Post Office.

### Lotus Real Estate Inc and Development & Trust Inc – no presence

3.1.40 An on-site visit conducted by the private investigation agency revealed that the correspondence address of both Lotus Real Estate Inc and Development & Trust Inc were in the same building, Jubilee Plaza Building in Tokyo, which is a four storey commercial building in the Shibuya District in Tokyo. There were no signs of either Lotus Real Estate Inc or Development & Trust Inc at Jubilee Plaza Building. The only occupants at Jubilee Plaza Building were :

<u>No. of Floor</u>	<u>Name of occupant</u>
Base floor	Café Laboheme
First floor	Hei Rokuzushi (Japanese restaurant) Santa Monica (clothing outlet) You Cha (fine Chinese tea)
Second floor	Café Chat Noir (French restaurant)
Third floor	Café Restaurant Zoot (Italian restaurant)
Fourth floor	Keiyaki Tei (Japanese restaurant)

3.1.41 Enquiries were made with the real estate agent who handled the rentals at Jubilee Plaza Building. They indicated that there was no tenant by the name of Lotus Real Estate Inc or Development & Trust Inc.

### Peaceful Investment Inc – address non-existent

3.1.42 Enquiries were made with the Central Post Office in Naha District of Okinawa regarding the correspondence address of Peaceful Investment Inc at “P.O. Box 462, Naha-Ken, 900 Japan”. The Office advised that there was no box number 462 and that they did not have any subscriber named Peaceful Investment Inc.

3.1.43 Further enquiries were made with the only two other post offices in Okinawa and one in Okinawa-Shi. Again these offices indicated that there was no subscriber by the name of Peaceful Investment Inc. Moreover, in the case of the first two offices, there

was no box number 462 and, in the case of the last one, the subscriber of box 462 was not Peaceful Investment Inc.

#### Good American Inc – no presence

3.1.44 According to the private investigation agency, the address of Good American Inc were of premises located in a commercial building consisting of four storeys, occupied as follows :

<b><u>Floor</u></b>	<b><u>Name of occupant</u></b>
First floor	James S. Lee & Company
Second floor	Sam's Anchor Inn
Third floor	Sam's Anchor Inn
Four floor	James S. Lee & Company

3.1.45 Enquiries were made with the above occupants. They advised that they had no knowledge of Good American Inc.

#### **Acquisition of shares**

##### Lotus Real Estate Inc and Good American Inc – suggests possible links to James Lee

3.1.46 According to documents provided by Oxford's share registrar, the 6 million shares currently registered in the name of Lotus Real Estate Inc have been so registered since 1 October 1991, while 4 million of the 4,314,100 currently registered in the name of Good American Inc have been so registered since 26 June 1992.<sup>33</sup>

3.1.47 According to copies of transfer forms provided by Sums Ltd, the 6 million shares currently held by Lotus Real Estate Inc and 4 million of the 4,314,100 shares currently held by Good American Inc were acquired on 21 August 1991 from Peaceful Investment Inc. Copies of these transfer forms are at Appendix 23 and Appendix 24. Several matters relating to these forms are worth noting :

- In each case, the form notes that the transfer is for nil consideration and that the transfer is “for nominee to the same owner Peaceful Investment Inc.”
- In both cases, neither the signatory signing for the transferor nor the signatory signing for the transferee has been identified by name. However, the transferor's signature on both forms appear to possibly read “Lee Chuan Hsin”. During my examination of James Lee, a copy of the form of

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<sup>33</sup> As for the remaining 314,100 shares, the share registrar's records show these to have been first registered in Good American Inc's name between 11 July 1989 and 12 July 1991.

transfer in respect of Lotus Real Estate Inc was shown to him and he confirmed that the transferor's signature was his, but that the transferee's was not. A copy of the other form was not shown to James Lee.

- In both cases, the forms are dated as having been signed on 21 August 1991. Also, the signature of the witnesses appear to be the same on both forms.
- In both cases, the transferor's address is "King's Enterprise KK, Jubilee Plaza Harajuku, 3/F 8-5 Jingumae 5-Chome, Shibuya-ku Tokyo 150, Japan". During my examination of James Lee, he confirmed that his current contact address was "James Company Ltd, 5-8-5 Jingumae Shibuya-ku, Tokyo".
- In both cases, the transferee's address is "James Bussan K.K, Jubilee Plaza Bldg, 5<sup>th</sup> floor, 8-5, 5-Chome, Jingumae, Shibuya-ku, Tokyo 150, Japan" – in the same building therefore as the transferor's address and James Lee's current address.

3.1.48 At this point, it is worth comparing these two transfer forms with the transfer form at Appendix 16 (ie whereby 6 million shares were transferred from Peaceful Investment Inc to Peaceful Corporation). All three transfer forms are dated 21 August 1991 and the signatures of the witnesses on all three transfer forms appear to be the same.<sup>34</sup> Also, the transfer receipt numbers stated in these three forms are consecutive.

#### Other companies – possibly from James Lee

3.1.49 I have not been able to obtain copies of the transfer forms relating to the acquisition of Oxford shares currently held by the other three companies, ie Barkston Investment Ltd, Development & Trust Inc and Peaceful Investment Inc. However, documents provided by Oxford's current and previous share registrars suggest that both Peaceful Investment Inc's and Barkston Investment Ltd's current shareholdings were likely acquired from James Lee and that Development & Trust Inc may have acquired its shares from Barkston Investment Ltd for the reasons stated below.

3.1.50 In the case of Peaceful Investment Inc, documents provided show :

- Until at least 15 May 1975, 40,033,800 Oxford shares were registered in the name of FNCB (Nominees) Ltd. These shares were deposited by James Lee as security for advances from First National City Bank.
- In October 1977, Peaceful Investment Inc was already registered as holding 20,130,000 Oxford shares and James Lee was already registered as holding 24,027,380 Oxford shares. In 1981, Peaceful Investment Inc's

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<sup>34</sup> For further discussion on the transfer form at Appendix 16, please see paragraph 3.1.14 above.

shareholding increased to 22,143,000 as a result of the then bonus share issue. In 1991, its holdings decreased to the current 6,143,000 as a result of the transfer of 16 million shares to Peaceful Corporation,<sup>35</sup> Good American Inc and Lotus Real Estate Inc.<sup>36</sup>

Copies of documents relating to FNCB (Nominees) Ltd's holdings and copies of extracts of Oxford's list of shareholders showing changes in Peaceful Investment Inc's shareholdings are at Appendix 25.

3.1.51 Given the magnitude of Peaceful Investment Inc's shareholding in 1977 and the limited number of transactions it entered into in respect of those shares, and given also the fact that the bulk of these shares were transferred for nil consideration and stated as being for nominee to nominee,<sup>37</sup> and that James Lee has confirmed having signed share transfer forms on behalf of Peaceful Investment Inc,<sup>38</sup> it is reasonable to conclude that the 20 odd million Oxford shares held by Peaceful Investment Inc in 1977 were acquired from James Lee.

3.1.52 In the case of the other two companies, the documents show :

- Barkston Investment Ltd first acquired 15 million Oxford shares from four companies in March/April 1979, which were at the time holding such shares on trust for James Lee. Copies of the share transfer forms in this regard and the declarations of trust are at Appendix 26. It is clear therefore that Barkston Investment Ltd acquired these shares from James Lee.
- In 1981, Barkston Investment Ltd's shareholding increased to 16.5 million shares as a result of the bonus share issue of 1 for 10. Thereafter, there is a record of its shareholding having decreased by 15 million shares on 15 August 1991 (as a result of 15 million shares having been "transferred out") and having increased, on the same day by 4.5 million shares (as a result of 4.5 million shares having been "transferred in").
- The date coincides with the date on which Californian Enterprise Inc is recorded as having acquired 6 million shares and Development & Trust Inc as having possibly acquired 3 million shares, thus suggesting that these two companies may have acquired their Oxford shares from Barkston Investment Ltd. Copies of extracts of the shareholders' list showing changes in these three companies' shareholdings are at Appendix 27.

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<sup>35</sup> See paragraph 3.1.14 above.

<sup>36</sup> See paragraph 3.1.47 above.

<sup>37</sup> See paragraphs 3.1.14 and 3.1.47 above.

<sup>38</sup> See paragraph 3.1.47 above.

- In the case of Californian Enterprise Inc, the share transfer form at Appendix 15 confirms that its shares were acquired from Barkston Investment Ltd. However, no such form could be obtained in respect of Development & Trust Inc.
- As for the remaining 6 million shares “transferred out” by Barkston Investment Ltd on 15 August 1991, there is no indication as to whom these may have been transferred. Similarly, it is not clear from where the 4.5 million shares “transferred in” came. In particular, none of the other Eleven Major Shareholders’ or James Lee’s holdings appear to have been recorded as having increased or decreased on 15 August 1991 or thereafter (other than Peaceful Investment Inc, Lotus Real Estate Inc, Good American Inc and Peaceful Corporation, but the changes in their shareholding have been accounted for in paragraphs 3.1.14 and 3.1.47 above and hence cannot be related to the changes in Barkston Investment Ltd’s shareholdings). One possibility therefore may be that of the 6 million shares “transferred out”, 4.5 million were “transferred in” again on the same day.

### **Correspondence with Sums Ltd – connections with James Lee**

3.1.53 Each of Barkston Investment Ltd, Good American Inc, Development & Trust Inc and Peaceful Investment Inc has corresponded with Sums Ltd over the years. Copies of these letters are at Appendix 28 and show as follows.

3.1.54 In each case a letter dated 1 May 1989 was issued noting a change in the company’s correspondence address. These letters are in almost identical terms. Moreover, in the case of Barkston Investment Ltd, Development & Trust Inc and Peaceful Investment Inc, the new correspondence address given was the same, ie “King’s Enterprise K.K., Jubilee Plaza Harajuku, 3<sup>rd</sup> Floor, 8-5 Jingumae, 5-Chome, Shibuya-Ku, Tokyo 150, Japan”. Furthermore, all three companies used the same letterhead which bore this same address. This address is also the same as Development & Trust Inc’s last known correspondence address and Peaceful Investment Inc’s address as given in the share transfer forms at Appendix 16, Appendix 23 and Appendix 24. It is also similar to James Lee’s current contact address.<sup>39</sup> All four companies also issued a letter dated 22 July 1989 providing specimen signatures of its authorized signatories for dealing with Oxford shares. All four letters are in identical terms to Yamamoto’s letter to Sums Ltd of the same date described in paragraphs 3.1.34 to 3.1.36 above.<sup>40</sup> Moreover, in each case, the last two specimen signatures are provided on a separate sheet of paper which appears to be a duplicate of that attached to the 22 July 1989 letter from Yamamoto to Sums Ltd. Of these two signatures, one appears to read “Hsin Chuan Lee”, which as noted in

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<sup>39</sup> See paragraph 3.1.47.

<sup>40</sup> See Appendix 22.

paragraph 3.1.12 above, is one of the Chinese names used by James Lee. In addition, there are a number of peculiar similarities among all five letters :

- Although all are dated 22 July 1989, all appear to be have borne another date (comprising 2 digits and the letters “th”) when typed, which has been written over by hand without deleting the letters “th” at the end, although the revised date was 22.
- In each case, the date has been written by hand under the signature as “22/7/89”. The handwriting of the date appears, on the face of it, to be the same.
- In the case of the letters from Yamamoto and Good American Inc, the letterhead used is the same. In the case of Barkston Investment Ltd, Development & Trust Inc and Peaceful Investment Inc, the same letterhead is used.

#### **Further documents obtained – suggest two companies controlled by Lee family**

3.1.55 I have been able to obtain copies of the articles of incorporation of Development & Trust Inc and Peaceful Investment Inc, both of which were incorporated in the Republic of Panama. Copies of these are at Appendix 29 and Appendix 30 respectively.

3.1.56 The articles of incorporation of Development & Trust Inc show that its first directors and officers were as follows :

- Leeway Ting (which is similar to James Lee’s Chinese name Lee Wei Ting) – executive director and president;
- Le Tehyee (which is similar to William Lee’s Chinese name Lee Teh Yee) – executive director;
- Elizabeth AF Lee (one of James Lee’s daughters) – director;
- U Yamamoto – assistant director; and
- Christine L Watt – secretary.

Additionally, the address given for Yamamoto is “5F, 85-5 Chome, Jingumae, Shibuya Ku, Tokyo 150, Japan” (which is the same as the last known correspondence address for Lotus Real Estate Inc). The address given for the other 3 directors is “c/o PO Box Tokyo Central 757” (which is similar to the last known correspondence address for Barkston

Investment Ltd and which, as noted in paragraph 3.1.39 above, is, at least now, non-existent).

3.1.57 The articles of incorporation of Peaceful Investment Inc show that its first directors and officers were as follows :

- Lee Yu Chiu (which is one of James Lee's Chinese name)<sup>41</sup> – director and president;
- Lee Tong Sheng Yuan (which is James Lee's late wife's name) – director; and
- Lee Tek Yee (which is similar to William Lee's Chinese name Lee Teh Yee) – director and secretary.

3.1.58 The address given in respect of each of the three directors was 1104 Manson House, 74 Nathan Road, Kowloon. This same address appears in correspondence from James Lee & Family. (See for example the letters at Appendix 31 dated August 1996).

3.1.59 According to Mossack Fonseca & Co (Hong Kong) Ltd, which provides services such as formation of offshore companies, Wong Hoi Leung/Keung Man Wa of Modern Aspac gave the instructions to acquire Development & Trust Inc on 7 May 1987.

## **LEGAL (NOMINEES) LTD GYNA INCORPORATED**

3.1.60 As briefly mentioned in Part II, both Legal (Nominees) Ltd's and Gyna Incorporated's shareholdings in Oxford are registered in the name of HKSCC Nominees Ltd as custodian shareholder on behalf of two securities brokers. These are Merrill Lynch Far East Ltd ("Merrill Lynch") and Morgan Stanley Dean Witter Hong Kong Securities Ltd ("Morgan Stanley").

### **Incorporation documents – indicate companies are under Lee family's control**

3.1.61 According to documents provided by Merrill Lynch, Legal (Nominees) Ltd was incorporated in Niue and its directors are James Lee and Lee Chuan Hsin (which, as already noted is one of the names James Lee used). The company's latest correspondence address is given as "No. 2 Commercial Centre Square, P.O. Box 71, Alofi, Niue" and the directors' address is given as "7/F Jubilee Centre, 18 Fenwick Street, Wanchai, Hong Kong" (which is the same as that of Modern Aspac).

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<sup>41</sup> During my examination of James Lee, he confirmed that one of his Chinese names is Lee Yu Chiu (李禹九), which Chinese name appears on his current name card.

3.1.62 According to documents provided by Merrill Lynch, Gyna Incorporated was incorporated in the Bahamas and its directors are James Lee, Lee Chuan Hsin (which is one of the names James Lee used), Robert Bonar and Lawrence Low (James Lee's grandson). The company's and its directors' latest correspondence address is given as "7/F Jubilee Centre, 18 Fenwick Street, Wanchai, Hong Kong" (which is the same as that of Modern Aspac).

### **Information from brokers – indicate companies under Lee family's control**

3.1.63 Merrill Lynch has confirmed that 6,609,880 and 104,002 Oxford shares are being held for Legal (Nominees) Ltd and Gyna Incorporated respectively. It has further confirmed that both Legal (Nominees) Ltd's account and Gyna Incorporated's account with them were opened in August 1996 and that James Lee was the only person who gave instructions to operate Legal (Nominees) Ltd's account, while Lawrence Low (James Lee's grandson) gave instructions for Gyna Incorporated's account.

3.1.64 Two letters dated 5 and 8 August 1996 from James Lee to Banque Indosuez appear to confirm the above. Copies of these letters are at Appendix 31. The letters note that the 6,609,880 Oxford shares belong to James Lee and his wife in equal shares and request the delivery of these shares to Merrill Lynch for the account of Legal (Nominees) Limited. The signatory to the letter is identified as James S Lee.

3.1.65 Additionally, Merrill Lynch has also informed me that James Lee had instructed that the dividend income from Oxford shares be deposited in a time deposit and that since the two accounts were opened, no cash or shares have been withdrawn from either.

3.1.66 Morgan Stanley has confirmed that 5,400,000 Oxford shares are being held for Gyna Incorporated and that the person-in-charge of Gyna Incorporated is James Lee whose contact address is "7/F Jubilee Centre, 18 Fenwick Street, Wanchai, Hong Kong" (which is the same as that of Modern Aspac).

### **Summary**

3.1.67 To summarize therefore, the investigation found as follows :

- No presence in Hong Kong  
None of the Eleven Major Shareholders are Hong Kong companies, nor do any of them have a registered presence in Hong Kong.<sup>42</sup>
- No presence at last given address

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<sup>42</sup> Ie, none are registered under Part XI of the Companies Ordinance.

Searches of various public and telephone records in the jurisdictions of last known addresses of the Nine Overseas Corporate Shareholders revealed that these companies were either inactive and had been voided<sup>43</sup> or that there was no record of such company.<sup>44</sup> On-site visits to these addresses revealed that the companies either have no presence at the given address or that such address does not exist.<sup>45</sup>

- Acquisitions

Of the Nine Overseas Corporate Shareholders :

- two (Peaceful Investment Inc and Barkston Investment Ltd) appear to have acquired their shares from James Lee prior to 1977;<sup>46</sup>
- three acquired their Oxford shares from Peaceful Investment Inc (of which company James Lee is the president) on 21 August 1991, for nil consideration and as nominees for Peaceful Investment Inc;<sup>47</sup>
- one acquired its shares from Barkston Investment Ltd on 30 July 1991, also for nil consideration;<sup>48</sup>
- two appear to have acquired their shares from James Lee in February 1979;<sup>49</sup> and
- one other appears to have acquired its shares from Barkston Investment Ltd around 15 August 1991.<sup>50</sup>

Moreover, the five acquisitions which took place in July 1991 or August 1991 resulted in reducing Peaceful Investment Inc's and Barkston Investment Ltd's shareholding in Oxford to below 10% of the total issued share capital.

- Four companies essentially controlled by James Lee

Incorporation documents of four of the Eleven Major Shareholders<sup>51</sup> show that James Lee is essentially in control of these four companies as he is the

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<sup>43</sup> Ie vis-à-vis Peaceful Corporation and Californian Enterprise Inc. See paragraph 3.1.4.

<sup>44</sup> Ie vis-à-vis San Ting Enterprise Inc, Yamamoto, Barkston Investment Ltd, Lotus Real Estate Inc, Development & Trust Inc, Peaceful Investment Inc or Good American Inc. See paragraphs 3.1.15 and 3.1.38.

<sup>45</sup> See paragraphs 3.1.6 to 3.1.8, 3.1.16 to 3.1.22 and 3.1.39 to 3.1.45.

<sup>46</sup> See paragraphs 3.1.49 to 3.1.52.

<sup>47</sup> Peaceful Corporation, Lotus Real Estate Inc and Good American Inc – see paragraphs 3.1.14 and 3.1.47.

<sup>48</sup> Californian Enterprise Inc – see paragraph 3.1.12.

<sup>49</sup> San Ting Enterprise Inc and Yamamoto – see paragraphs 3.1.27 to 3.1.29.

<sup>50</sup> Development & Trust Inc – see paragraph 3.1.52.

<sup>51</sup> Development & Trust Inc, Peaceful Investment Inc, Legal (Nominees) Ltd and Gyna Incorporated.

president of two of them,<sup>52</sup> the only director of one<sup>53</sup> and two of the four directors of the fourth.<sup>54</sup>

- Connections with James Lee  
All Eleven Major Shareholders appear to have connection with James Lee.

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<sup>52</sup> Development & Trust Inc and Peaceful Investment Inc – see paragraphs 3.1.56 and 3.1.57.

<sup>53</sup> Legal (Nominees) Ltd – see paragraph 3.1.61.

<sup>54</sup> Gyna Incorporated - see paragraph 3.1.62.

## **Section 2: Dividend Cheques**

### **Introduction**

3.2.1 This Section examines the collection and movements of dividends payable to the Eleven Major Shareholders. For practical reasons, I have confined my investigation in this regard to dividends payable for the years ended 31 January 1997 to 31 January 2000 (subsequently referred to as the “relevant period”).

3.2.2 It may be useful to note here that, in general, two dividends were declared in each financial year, an interim dividend which was usually paid in around December of the same year and a final dividend which was usually paid in around August of the following financial year. Accordingly, the dividends for the year ended 31 January 1997 were paid in December 1996 and August 1997; dividends for the year ended 31 January 1998 were paid in December 1997 and August 1998 and so forth.

3.2.3 Appendix 32 is a table showing details of the dividends issued by Oxford to the Nine Overseas Corporate Shareholders for the years ended 31 January 1997 to 31 January 2000.<sup>55</sup> It also shows whether these dividends were claimed and, if so, into which account they were first deposited.

### **Dividends unclaimed**

3.2.4 According to Oxford’s bank records, dividends payable to Yamamoto for the relevant period remain unclaimed with Oxford.

3.2.5 Oxford has also further confirmed that none of the Nine Overseas Corporate Shareholders have claimed the final dividends for the year ended 31 January 2000, which therefore also remain with Oxford. It may be worth noting here that the final dividends for the year ended 31 January 2000 were declared after my Appointment and after my first communication with Oxford as Inspector for the purposes of this investigation.

3.2.6 For the sake of completeness, I note that Article 151 of Oxford’s Articles of Association states that “Dividends payable, which are not claimed within six years from the date of declaration, shall be forfeited.”

### **Dividends first paid into Modern Aspac’s account – now in James Lee’s account**

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<sup>55</sup> As Legal (Nominees) Ltd and Gyna Incorporated are not registered shareholders, their dividends fell straight into their brokers’ accounts and hence similar details are not available in respect of these two companies.

3.2.7 According to documents obtained from banks, dividends paid to the following six of the Nine Overseas Corporate Shareholders for the relevant period, where claimed, were essentially treated in the same manner.

- Barkston Investments Ltd
- Lotus Real Estate Inc
- Good American Inc
- San Ting Enterprise Inc
- Californian Enterprise Inc
- Peaceful Corporation

#### Deposit into Modern Aspac's account with HSBC

3.2.8 In each case, the dividend cheques were made payable to the relevant company and marked "Non Negotiable A/C Payee Only". Despite this, the cheques were simply endorsed in favour of Modern Aspac and thus deposited into Modern Aspac's current account at HSBC. By way of example, copies of dividend cheques dated 16 December 1999 issued to these six companies (being interim dividend for the year ended 31 January 2000) are at Appendix 33.

3.2.9 The copies of dividend cheques at Appendix 33 also show the endorsements on the reverse. All are endorsed "Pay to the order of Modern Aspac Development Co Ltd". Moreover, although the signatory to the endorsements is not identified, all signatures appear to read "Lee Chuan Hsin" (which as already noted in Section 1 is a name used by James Lee). During my examination of James Lee, I showed him copies of the cheques and endorsements at Appendix 33. In each case, he confirmed that the endorsement signature on the reverse was his.<sup>56</sup>

3.2.10 According to documents produced by HSBC, it appears that between August 1997 and March 2000 HSBC permitted dividend cheques issued by Oxford to the said six companies to be deposited into Modern Aspac's account against a written indemnity provided by Modern Aspac.

3.2.11 By way of example, a copy of the HSBC pay-in slip dated 7 March 2000, relating to the deposit of the dividend cheques copied at Appendix 33 (which total \$2,731,528), and a copy of the indemnity letter provided in respect of such deposit are at Appendix 34 and Appendix 35 respectively.

3.2.12 The indemnity letter at Appendix 35 appears to have been signed by three persons on behalf of Modern Aspac, including one whose signature appears to read "Lee Chuan Hsin". During my examination of James Lee, he was shown copies of 3 indemnity letters in the form similar to that at Appendix 35. In two cases, he confirmed

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<sup>56</sup> For the sake of completeness, it is noted that not all endorsements on dividend cheques issued between 1997 and 2000 were signed by James Lee. Those dated 16 December 1999 however (ie at Appendix 33) were all signed by James Lee.

that the signature “Lee Chuan Hsin” was his. In the case of the third, he was not sure, but indicated that it probably was his signature.

3.2.13 As for the other two signatures on the indemnity letter, these are of Robert Bonar and Ellen Wong. I am able to say this because I have obtained copies of the signature cards for Modern Aspac’s account with HSBC into which the dividends were deposited and the specimen signatures of Robert Bonar and Ellen Wong appear to be the same as those on Appendix 35. Additionally, during my examination of these two persons, they were shown a copy of the indemnity letter at Appendix 35 or a similar indemnity letter bearing the same signature. In each case, they confirmed that the signature in question was theirs.

3.2.14 For the sake of completeness, I note that the other indemnity letters obtained are in almost identical form as Appendix 35 except that the signatories are not always the same. However, the signature “Lee Chuan Hsin” appears in all cases.

#### Transfer into accounts with Bank of Communications – James Lee’s sole control

3.2.15 In each case, the dividends were shortly thereafter (usually a few days after) transferred from Modern Aspac’s account with HSBC to another bank account, also belonging to Modern Aspac but maintained at Bank of Communications.

3.2.16 Thereafter the monies were rolled over on time deposits with Bank of Communications. These time deposits were held in two names – Modern Aspac and Sky Dragon Management Limited (“Sky Dragon”).<sup>57</sup>

3.2.17 According to documents provided by Bank of Communications :

- there are currently four authorized signatories in respect of Modern Aspac’s accounts with Bank of Communications, namely James Lee, Robert Bonar, S Y Wong and Ellen Wong; and
- there are currently six authorized signatories in respect of Sky Dragon’s accounts, namely James Lee, William Lee, Robert Kiang, Robert Bonar, S Y Wong and Ellen Wong.

However, in both cases, only James Lee may sign singly for any amount. As for the other signatories, three must sign jointly for any amount and two for amounts under \$100,000. As such, James Lee has absolute control over both Modern Aspac’s and Sky Dragon’s accounts with Bank of Communications.

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<sup>57</sup> In some case, the monies, when first put into time deposits, would be put into time deposits in the name of Sky Dragon. In other cases, they would be first put into time deposits in the name of Modern Aspac. Thereafter, the monies would be shifted between these two accounts. In other words, upon a time deposit maturing, it would either be renewed in the name of the same company (ie Modern Aspac or Sky Dragon) or transferred, with interest, to be held in time deposits in the name of the other company (ie Sky Dragon or Modern Aspac).

### Practice adopted from 1997 to 2000

3.2.18 The aforesaid practice appears to have been largely followed between 1997 and 2000, except for a few isolated cases (where the dividends remain unclaimed) and except for the final dividend for the year ended 31 January 2000 (where, again, the dividends remain unclaimed).

### Recent remittance to James Lee's personal account

3.2.19 In September 2000, approximately \$43 million was remitted from Sky Dragon's account with Bank of Communications to James Lee's personal account in Taiwan.<sup>58</sup> Copies of the two remittances advice dated 4 September 2000 and 16 September 2000 relating to such remittance are at Appendix 36.

3.2.20 Oxford has confirmed that the approximately \$43 million remitted comprised dividends paid to the six companies listed in paragraph 3.2.7 above for the relevant period where claimed. A copy of Oxford's letter to me in this regard is at Appendix 37.<sup>59</sup> The letter shows that the dividends claimed during this period total about \$41.66 million. Taking into account interest that must have been earned on these dividends (which as already noted were held on time deposits), the amount is similar to the sum remitted.

### **Dividends paid directly into shareholders' accounts – controlled by James Lee**

3.2.21 According to documents provided by banks, dividends paid to the following two companies for the relevant period, where claimed, were deposited directly into their respective bank accounts with Wing Hang Bank.<sup>60</sup>

- Peaceful Investment Inc
- Development & Trust Inc

Most of these dividends stayed in the Wing Hang Bank accounts. Only the 1997 dividends were transferred into another account, namely First California Finance Inc's ("First California") bank account with Bank of Communications where they were placed on time deposits until at least early 1998.

3.2.22 The authorized signatories of Peaceful Investment Inc's account with Wing Hang Bank are James Lee, Lee Yu Chiu (which, as noted in Section 1 (paragraph 3.1.57 above), is one of James Lee's Chinese names), William Lee (Chairman of Oxford and

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<sup>58</sup> The monies were remitted in US Dollars and in two lots – one for US\$1,746,719.47 and the other for US\$3,779,480.74. Including the charges, the total comes to approximately HK\$43 million.

<sup>59</sup> The dividend amounts set out in the letter at Appendix 37 are the sum total of the claimed dividends for the same period as set out in Appendix 32.

<sup>60</sup> Only interim and final dividends for the year ended 31 January 2000 and Development & Trust Inc's final dividends for the year ended 31 January 1999 were unclaimed as is noted in Appendix 32.

James Lee's youngest son) and Robert Kiang (a director of Oxford who has worked for James Lee and his father since 1955). The account can be operated by any two of the four signatories signing jointly. As two of the authorized signatories are essentially the same person (ie James Lee), James Lee effectively has absolute control over this account. A copy of the board resolution dated 14 February 1989 confirming such authorized signatories and signing arrangements is at Appendix 38.

3.2.23 The authorized signatories of Development & Trust Inc's account with Wing Hang Bank are Lee Wei Ting (which, as noted in Section 1 (paragraph 3.1.56 above), is James Lee's Chinese name), William Lee, Elizabeth An Fen Lee (one of James Lee's daughters) and Robert Kiang. This account could previously be operated by Lee Wei Ting solely or William Lee and Elizabeth Lee jointly. Accordingly, until then, James Lee had absolute control over this account also. However, in 1995, Robert Kiang was added as a fourth authorized signatory and thereafter the account could be operated by any two signatories signing jointly. Copies of the relevant board resolutions confirming such authorized signatories and signing arrangements are at Appendix 39.

3.2.24 The authorized signatories of First California's account with Bank of Communications are Leeway Ting (which is a transliteration of James Lee's Chinese name), Lee James Smith (which is one of James Lee's names), Lee Teh Yee (which is William Lee's Chinese name) and Robert Kiang. Again, the account may be operated by any two of the authorized signatories and as two of these signatories are essentially the same person (ie James Lee), he essentially has absolute control over this account. Copies of the relevant board resolutions confirming such authorized signatories and signing arrangements are at Appendix 40.

### **Dividends held by brokers**

3.2.25 In the case of Legal (Nominees) Ltd and Gyna Incorporated, their Oxford shares are held in the name of HKSCC Nominees Ltd for two securities brokers. As already noted, Gyna Incorporated's shares are maintained in two accounts: one at Merrill Lynch and one at Morgan Stanley. Legal (Nominees) Ltd's shares are maintained in only one account at Merrill Lynch. Dividends issued to these two companies for the relevant period were received into these accounts.

3.2.26 As noted in Section 1 (paragraphs 3.1.63 and 3.1.66) :

- James Lee is the only person who gave instructions in respect of Legal (Nominees) Ltd's account with Merrill Lynch while Lawrence Low (his grandson) gave instructions in respect of Gyna Incorporated's account with that broker; and
- James Lee is the person-in-charge of Gyna Incorporated's account with Morgan Stanley.

## **Explanations**

### Robert Bonar

3.2.27 Robert Bonar is the general manager of Modern Aspac and one of Oxford's alternate directors. He is also one of the three persons whose signature appears on the indemnity letters provided by Modern Aspac to HSBC in the form at Appendix 35. He is one of the persons I examined during the course of this investigation.

3.2.28 During the examination, I enquired about the practice of paying dividends belonging to the six companies mentioned in paragraph 3.2.7 above into Modern Aspac's and Sky Dragon's accounts as well as the practice of signing indemnity letters as described above. Robert Bonar confirmed that, to his understanding, all these transfers were carried out on James Lee's instructions. He also confirmed having signed some of the letters of indemnity (including the one at Appendix 35), but added that he had only got involved in this a few years ago.

3.2.29 Robert Bonar further informed me that matters relating to these transfers had previously been handled by Pei Shing Chi (formerly, Oxford's treasurer and one of its alternate directors), who used to handle James Lee's private matters. He added however that since Pei Shing Chi's passing away in mid 1998, Raymond Lo (Oxford's former chief accountant) and then Eric Chiu (currently, Oxford's senior accountant) continued the practice and prepared the relevant documents for transferring the dividends.

3.2.30 As for the reasons for depositing dividends into Modern Aspac's account, Robert Bonar explained that his understanding was that James Lee did not want the money to be outside Hong Kong.

### Eric Chiu

3.2.31 Eric Chiu is the senior accountant in charge of Oxford's accounting department. He has been with Oxford since 1995. He is also one of the persons I examined in the course of this investigation. He confirmed that he followed Pei Shing Chi's practice and prepared the necessary documents for transferring the dividends of the six shareholders listed in paragraph 3.2.7 above into the bank accounts of Sky Dragon and Modern Aspac. Eric Chiu explained that since the dividends issued to these six shareholders were not funds belonging to Modern Aspac or Sky Dragon, the monies were treated as "temporary receipts" in the accounting records of these companies, pending further instructions from James Lee.

3.2.32 In respect of the two remittances advice at Appendix 36, Eric Chiu confirmed that James Lee had instructed him to transfer the approximately \$43 million from the bank account of Sky Dragon to his (ie James Lee's) personal bank account in Taiwan.

## **Dividends for financial years predating the relevant period**

3.2.33 As noted at the outset of this Section, I have only looked into the dividends for the relevant period (ie 1 February 1996 to 31 January 2000). However, in the course of my investigation, I came across information relating to the handling of dividends for periods prior to this period. As this information may be useful, I set it out briefly here. Essentially :

- Copies of letters from Oxford to each of the Nine Overseas Corporate Shareholders other than Yamamoto indicate that between 1990 and 1995, these shareholders had instructed their dividends to be sent by telegraphic transfer and by Oxford direct, rather than to be paid by cheques sent by the share registrar, as was otherwise the practice at the time. By way of example, copies of some of these letters are at Appendix 41. It will be seen that the contents of these letters are identical and that no mention is made of any details of the telegraphic transfer.
- Since 1995, Oxford had instructed Sums Ltd to send dividend cheques for these eight shareholders to Oxford rather than the shareholders direct.

## **Summary**

3.2.34 To summarize then, in respect of the collection and handling of dividends payable to the Eleven Major Shareholders, the investigation found as follows :

- Dividends for the relevant period were either unclaimed or treated in one of three ways – ie they were either first paid into Modern Aspac’s account, first paid into their own accounts or held by brokers.
- Almost all dividends for the last four financial years, paid to ten of the Eleven Major Shareholders have been claimed and are either in James Lee’s accounts or in accounts essentially controlled by him. Specifically :
  - dividends of six of these shareholders were, until September 2000, held in deposit accounts controlled by James Lee and, in September 2000, transferred to James Lee’s personal account in Taiwan;<sup>61</sup>
  - dividends of two other shareholders are held in bank accounts which are controlled by James Lee;<sup>62</sup>

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<sup>61</sup> Barkston Investments Ltd, Lotus Real Estate Inc, Good American Inc, San Ting Enterprise Inc, Californian Enterprise Inc and Peaceful Corporation – see paragraphs 3.2.7 to 3.2.20 above.

<sup>62</sup> Peaceful Investment Inc and Development & Trust Inc – see paragraphs 3.2.21 to 3.2.24 above.

- as for the two shareholders whose Oxford shares are held in the name of HKSCC Nominees Ltd, their dividends have been paid into and are held in their securities accounts with their respective brokers, which accounts are controlled by James Lee.<sup>63</sup>

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<sup>63</sup> Legal (Nominees) Ltd – see paragraphs 3.2.25 to 3.2.26 above.

## Section 3 : Annual general meeting (“AGM”)

### Introduction

3.3.1 This Section looks at whether the Eleven Major Shareholders were represented at Oxford’s AGMs and, if so, how and on whose instructions. Again, for practical reasons, I have confined my investigation in this regard to the last four AGMs (ie 1997 to 2000).

### Oxford’s AGM records

#### 1997 AGM

3.3.2 Oxford’s AGM records show that the following four companies attended the 1997 AGM and were represented by the following persons, all of whom were either Oxford’s directors or staff handling its affairs at the time :

<u>Shareholder</u>	<u>Representative</u>
Development & Trust Inc	Robert Bonar
Peaceful Investment Inc	Lawrence Low
Barkston Investment Ltd	Grace Yee
Good American Inc	Hermia Chan

#### 1998 AGM

3.3.3 Oxford’s AGM records show that the following four companies attended the 1998 AGM and were represented by the following persons, all of whom were either Oxford’s directors or staff handling its affairs at the time :

<u>Shareholder</u>	<u>Representative</u>
Development & Trust Inc	Robert Bonar
Peaceful Investment Inc	Lawrence Low
Barkston Investment Ltd	S Y Wong
Good American Inc	Hermia Chan

#### 1999 AGM

3.3.4 Oxford’s AGM records show that the following four companies attended the 1999 AGM and were represented by the following persons, all of whom were either Oxford’s directors or staff handling its affairs at the time :

<u>Shareholder</u>	<u>Representative</u>
Development & Trust Inc	Robert Bonar
Peaceful Investment Inc	Eric Chiu
Barkston Investment Ltd	S Y Wong
Good American Inc	Hermia Chan

### 2000 AGM

3.3.5 Oxford's AGM records show that the following four companies attended the 2000 AGM (which was held on 14 July 2000 and hence not long after my Appointment and first contact with Oxford as Inspector) and were represented by the following persons, none of whom are Oxford's directors or staff handling its affairs.

<u>Shareholder</u>	<u>Representative</u>
Development & Trust Inc	Shinobu Yamamoto
Peaceful Investment Inc	Ishizuka Masatoshi
Barkston Investment Ltd	Wang Ya Lei
Good American Inc	Fujii Makiko

### **Oxford's Articles of Association**

3.3.6 For the sake of completeness, it is noted that Article 72 of Oxford's Articles of Association provides that "*... on a show of hands every Member who is present in person shall have one vote ... and for this purpose a person ... who is present as representative of a corporation or corporations shall be treated as if he were a Member present in person. On a poll every Member who is present in person or by proxy shall have one vote in respect of each share in the capital of the Company of which he is the holder.*"

3.3.7 The above four shareholders, who together held 32.8% of Oxford's total issued share capital, were collectively in a position to ensure that a particular resolution could be passed or defeated on a poll. This is because, after discounting the approximately 56.3% held by the other seven Major Shareholders who had not appointed representatives or proxies to attend AGMs between 1997 and 2000, Oxford's remaining shareholders (even if they all attended such AGMs) would collectively hold just over 10% of the voting power on a poll.

### **Evidence of Oxford's staff members**

3.3.8 I was able to interview or otherwise obtain information from most of the persons named in paragraphs 3.3.2 to 3.3.4 above. They provided me with the following

information concerning the arrangements regarding the attendance of Oxford's staff members at its AGMs as representatives of the aforesaid four overseas corporate shareholders.

#### Robert Bonar – Development & Trust Inc

3.3.9 According to letters from Development & Trust Inc to Oxford, Robert Bonar was authorized to attend and vote at Oxford's AGM for the years 1997 to 1999 as Development & Trust Inc's authorized representative, while Shinobu Yamamoto of Jubilee Plaza Harajuku 8-5 Jingumae 5 Chome Shibuya-ku Tokyo was authorized to attend and vote as its representative at the 2000 AGM. Copies of these letters are at Appendix 42.

3.3.10 Robert Bonar, an alternate director since 1991, confirmed that he first represented Development & Trust Inc at Oxford's AGM shortly after joining the company in 1979 and has continued to do so over the years. He further confirmed the following :

- Initially, he received instructions to represent Development & Trust Inc at Oxford's AGM and on how to vote at such meetings verbally from Pei Shing Chi. After Pei Shing Chi passed away, he received similar instructions from Raymond Lo (Oxford's former chief accountant). He never saw any written authorization for such attendance or voting.
- He had never enquired who owned Development & Trust Inc. However, as his instructions came from Pei Shing Chi, whom he knew to be James Lee's personal assistant and very close to James Lee, he believed the company was one of James Lee's private companies. He also believed Pei Shing Chi would not have initiated such instructions on his own and that the instructions must therefore have come from James Lee. On that basis, he believed he had the authority to attend AGMs on its behalf and to vote as per Pei Shing Chi's instructions.
- He was aware that other members of Oxford's staff also attended Oxford's AGMs as representatives for other shareholder companies and believes Pei Shing Chi arranged these as well.

#### Raymond Lo – Development & Trust Inc

3.3.11 According to letters from Development & Trust Inc to Oxford, Raymond Lo was also authorized to attend and vote at Oxford's 1998 AGM as Development & Trust Inc's authorized representative.

3.3.12 Raymond Lo was formerly Oxford's chief accountant. He left Oxford in July 1998. He confirmed that some of Oxford's overseas corporate shareholders appointed members of Oxford's staff as representatives to attend its AGM. He further confirmed

that such appointments were arranged by William Lee and Robert Kiang prior to the relevant AGM. On being shown a copy of the letter appointing him as one of the authorized representatives (included at Appendix 42), Raymond Lo identified the signature thereon as being that of either William Lee or Robert Kiang.

#### Eric Chiu – Peaceful Investment Inc

3.3.13 According to letters from Peaceful Investment Inc to Oxford, Eric Chiu was authorized to attend and vote at Oxford's AGM for the years 1998 and 1999 as Peaceful Investment Inc's authorized representative, while Ishizuka Masatoshi of 2-12-11-203 Tatibanadai Aobaku Yokohama Kanagawa-ken, Japan was authorized to attend and vote as its representative at the 2000 AGM. Copies of these letters are at Appendix 43.

3.3.14 It will be seen that the letters are in essentially identical terms to those issued in respect of Development & Trust (at Appendix 42). It will also be seen that although in each case, the signatory to the letter is not identified, the signature on all letters (including the one relating to the 2000 AGM) appears to read "Lee Jee Sang". As will be seen in Section 4 (paragraph 3.4.16), this is a transliteration of one of James Lee's Chinese names.

3.3.15 Eric Chiu, Oxford's senior accountant, confirmed that he and other staff members had in the past acted as authorized representatives of some of Oxford's overseas corporate shareholders at its AGMs. He further confirmed the following :

- He was unable to recall who gave him the instructions to act as authorized representative on which occasion, but did confirm that it was always a director of Oxford who gave such instructions. He added that he did not receive instructions on how to vote but said that he would vote in favour of the company as it would not be in the company's interest to vote against it.
- He noted that the same few staff members usually attended such AGMs as authorized representatives. However, the staff members did not know what arrangements the overseas shareholders had with Oxford.
- He also confirmed that staff members usually would not know which overseas corporate shareholder they would be representing at the AGM until they reached there.

#### Wong Shu Yuen ("S Y Wong") – Barkston Investment Ltd

3.3.16 According to letters from Barkston Investment Ltd to Oxford, S Y Wong was authorized to attend and vote at Oxford's AGM for the years 1997 to 1999 as Barkston Investment Ltd's authorized representative, while Wang Ya-Lei of 3-21-6-202 Turumaki Setagayaku, Tokyo, Japan was authorized to attend and vote as its representative at the 2000 AGM. Copies of these letters are at Appendix 44. Again, the letters are essentially

identical to those issued in respect of Development & Trust Inc and Peaceful Investment Inc.

3.3.17 S Y Wong, an alternate director since 1999, confirmed that he had attended Oxford's AGM as Barkston Investment Ltd's representative between 1997 and 1999. He further confirmed the following :

- He was initially asked to attend and vote as Barkston Investment Ltd's representative by Pei Shing Chi and subsequently by Lawrence Low or Eric Chiu.
- He did not know the officers, directors or shareholders of Barkston Investment Ltd. He nevertheless agreed to act as such company's representative as this had been the practice for some time. He noted also that since the instructions were from Lawrence Low, who was an alternate director, and the General Manager appeared to be agreeable to releasing several staff members to attend such meetings, there seemed nothing wrong with complying.
- He confirmed that he would vote in favour of motions set out in the agenda confirmed by the board of directors. He noted that the items on the agenda were usually the same and nothing extraordinary.

#### Hermia Chan – Good American Inc

3.3.18 According to letters from Good American Inc to Oxford, Hermia Chan was authorized to attend and vote at Oxford's AGM for the years 1997 to 1999 as Good American Inc's authorized representative, while Fujii Makiko of 3-18 Kumoji 3-chome Naha-city, Okinawa 900, Japan was authorized to attend and vote as its representative at the 2000 AGM. Copies of these authorization letters are at Appendix 45. Again, the letters are in almost identical terms as those issued in respect of Development & Trust Inc, Peaceful Investment Inc and Barkston Investment Ltd.

3.3.19 Hermia Chan confirmed that she had initially been instructed by Pei Shing Chi and subsequently by Raymond Lo and then Eric Chiu to act as Good American Inc's authorized representative at Oxford's AGM. She further confirmed the following :

- She had attended and voted at Oxford's AGM as Good American Inc's authorized representative between 1997 and 1999. Other staff members had also been asked to attend Oxford's AGM as authorized representatives of other overseas corporate shareholders. She believed they were also instructed to do so by Pei Shing Chi.
- She had proposed motions for the re-election of Oxford's directors and the fixing of their remuneration at each of the 1997, 1998 and 1999 AGMs. She confirmed that in each case, she had, prior to the AGM, received a

piece of paper from either Pei Shing Chi or Raymond Lo or Eric Chiu which set out the motion she was to propose.

- As for Oxford's 2000 AGM, she had not been asked to represent Good American Inc or any other company, nor did she know why she was not asked to do so. She also did not know who Fujii Makiko was and why he had been appointed by Good American Inc to be its representative at that AGM.

### **Representatives attending Oxford's 2000 AGM**

3.3.20 Enquiry letters were sent to each of Development & Trust Inc's, Peaceful Investment Inc's, Barkston Investment Ltd's and Good American Inc's authorized representatives at the 2000 AGM requesting information about the person(s) who appointed them as representatives. However, none of these representatives have responded to my enquiry letters as at the date of this report.

3.3.21 William Lee, Oxford's current Chairman and James Lee's youngest son, was also asked about his knowledge of these four representatives. Initially, he denied that he had any connection with them but later he admitted that both he and his father James Lee knew them and that he had come with one of them to Hong Kong to attend Oxford's 2000 AGM. However, he denied that either he or his father arranged the appointment of these four representatives. He also claimed that he did not know why members of staff had not been appointed as representatives at the 2000 AGM as they had been previously.<sup>64</sup>

### **Summary**

3.3.22 To summarize then, the investigation found that :

- Only four of the Eleven Major Shareholders appointed representatives to attend Oxford's AGMs between 1997 and 2000. These four shareholders are :
  - Development & Trust Inc
  - Peaceful Investment Inc
  - Barkston Investment Ltd
  - Good American Inc
- The collective shareholding of these four shareholders was large enough to ensure that a particular resolution could be passed or defeated on a poll in view of the provisions of Oxford's Articles of Association.

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<sup>64</sup> This is discussed at greater length in Section 4 below (paragraphs 3.4.35 to 3.4.36).

- The representatives appointed by these four shareholders to attend, propose motions and vote at the 1997 to 1999 AGMs were all Oxford's directors or staff handling its affairs. For the 2000 AGM however, which took place after my Appointment and my first contact with Oxford as Inspector for the purposes of this investigation, no representative was a director of Oxford or staff handling its affairs, but all appeared to know James Lee and William Lee.
- Not all staff members attending as representatives of the said four shareholders were clear as to who gave them instructions to attend, propose motions and vote on behalf of these companies. It appears however that their instructions either came from Pei Shing Chi (James Lee's personal assistant) or that they were following the practice set by Pei Shing Chi which was continued after his death in 1998.
- The practice of appointing such staff to attend Oxford's AGMs as representatives of the said four overseas corporate shareholders may date as far back as 1979.

## **Section 4 : Examination of officers and agents**

### **Introduction**

3.4.1 During the investigation, I examined various officers and agents of Oxford and other relevant persons on oath in relation to the ownership and control of Oxford shares. Others provided statutory declarations. This Section highlights some of the more significant matters discussed during these examinations or noted in their statutory declarations.

3.4.2 The examinations can be divided into four groups and the discussion below is set out in the same manner :

- current and past directors
- former staff members
- current staff members and
- other relevant persons.

3.4.3 For the sake of completeness, I note that all persons were explained their rights and obligations under section 36 of the SDIO. In all cases, they confirmed that they understood their rights and obligations. Where persons were examined on oath, they were informed that the examination would be recorded by tape and conducted on oath. In each case, they were also told that a copy of the transcript of the examination would be provided to them to comment on its accuracy.

### **Current and past directors**

#### **James Lee – former Chairman and director**

##### Background and current position vis-à-vis Oxford

3.4.4 James Lee was born in April 1917 and is now 84 years old. He is the founder and former Chairman of Oxford. According to the prospectus issued at the time of Oxford's listing in 1973, James Lee held 95.318% of Oxford's shares prior to such listing and 71.489% after the listing.

3.4.5 James Lee held Oxford's chairmanship from the time it was listed until 1984. He stayed on as a director of Oxford until 1986 only, but has remained a director of some of Oxford's subsidiaries and associated companies to date, including most notably International Peaceful Interests Limited ("IPIL") and Modern Aspac, both of which act as Oxford's leasing agent and hence handle its main income generating business.

3.4.6 James Lee also currently acts as consultant to Oxford and is paid a monthly consultancy fee by IPIL (of about \$67,000) for his services. Last but not least, James Lee

is the father of three of Oxford's current directors including its Chairman, William Lee.<sup>65</sup>

#### Arranging interview

3.4.7 Contacting James Lee for the purposes of this investigation has not been easy and it was not until he contacted me in early September that a meeting with him could be arranged. I have however only been able to meet James Lee once (on 11 September 2000) although he has subsequently written three letters to me dated 28 October 2000, 7 November 2000 and 22 February 2001.

3.4.8 James Lee's present health condition is quite poor. When he attended the meeting at the SFC's offices, he needed a walking aid to assist with his movement. He was also supported by S Y Wong (an alternate director of Oxford) and Daniel Chan (a non-executive director of Oxford) who also acted as his legal representative during the meeting. At the meeting, he informed me that he had recently undergone a heart operation and had been staying in a hospital in Japan. He noted however that he knew I was looking for him and had therefore returned to Hong Kong from Japan to see me and answer my questions. At the meeting James Lee produced a copy of his medical report which indicated that he was a diabetic and on daily medication.

3.4.9 Although James Lee was weak and sometimes it was difficult to hear clearly what he said, he generally could understand and answer my questions in a coherent and clear manner. The contents of his subsequent letters also suggest that he understands the nature of this investigation and is responding to the best of his ability. The following paragraphs summarize the information he has provided to date.

#### Interests in Oxford – confirmed to be 60% to 70%

3.4.10 At the meeting, James Lee was asked about his present and past interests in Oxford shares. He confirmed the following :

- He holds about 60% to 70% of Oxford's issued share capital but could not recall exactly how much. The shares are however held in the names of private companies. Hence his registered interests in Oxford is only 90,118 shares. He used private companies to conceal his identity but he cannot now recall the names of these private companies.
- The 60% to 70% interest in Oxford are held on trusts set up about 20 years ago by two solicitors in Guam surnamed Tollin and Arrora.<sup>66</sup> Upon his death, his children will be the beneficiaries but they will not know about

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<sup>65</sup> His other two children who are directors are Lee An Fen and Lee Wan Wah.

<sup>66</sup> James Lee has not provided any further information regarding the solicitors who set up the trusts. Various checks have also been made independently against the two names provided but no further information could be found. I have therefore been unable to contact these solicitors directly.

this and their respective interests until his death. He cannot recall any further details regarding the trusts. Nor has he been able to provide any documents substantiating the setting up of any such trusts.

- Upon being shown a list of the Nine Overseas Corporate Shareholders and asked whether any of these were used to hold his interests in Oxford, James Lee said that it was possible but that he was not sure.
- Upon being asked whether Gyna Incorporated and Legal (Nominees) Ltd were his companies, again, he said that he was not sure.
- Prior to listing, he was Oxford's major shareholder. After listing, he had bought more Oxford shares from the market.

3.4.11 In his subsequent letters, James Lee stated that his shares in Oxford had been transferred to ten companies a long time ago. He listed these ten companies as the Eleven Major Shareholders other than Yamamoto.<sup>67</sup> The letters indicated also that the shares had been given to his ten children since 1985 but that the quantity and conditions would not be made known until his death and hence he was keeping the dividends in the meantime. As regards Legal (Nominees) Ltd and Gyna Incorporated, James Lee stated that he and his late wife had an 80% interest in these companies while Chow Sy Pien held the remaining 20%.

3.4.12 During the examination, I noted to James Lee that the Nine Overseas Corporate Shareholders together held about 71% of Oxford's issued share capital and that adding to this the Oxford shares held by Gyna Incorporated and Legal (Nominees) Ltd, the Eleven Major Shareholders together held almost 90% of the issued capital. I then put it to him that if these companies were his, then he may have breached SEHK's public float requirements by having about 90% of Oxford's issued share capital. James Lee responded that he did not know about this.

#### Confirms using different signatures

3.4.13 During the examination, James Lee was shown copies of various documents relating to the operation of bank accounts belonging to Modern Aspac, Sky Dragon, First California, Development & Trust Inc and Peaceful Investment Inc. When asked to confirm whether any of the specimen signatures provided in respect of these accounts were his, James Lee confirmed as follows :

- In the case of Modern Aspac's and Sky Dragon's bank accounts with Bank of Communications, the two specimen signatures appearing against the name "Lee, James Smith" are his. (Copies of specimen signatures provided in respect of these accounts are at Appendix 46. It will be seen

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<sup>67</sup> For the sake of completeness, it is noted that Yamamoto was mentioned in James Lee's second and third letters, but the relevance of this company and the position vis-à-vis its shareholding in Oxford was not clarified.

that two different specimen signatures have been provided by James Lee in each case.)

- In the case of Peaceful Investment Inc's accounts with Wing Hang Bank, the specimen signatures appearing against the names "Mr. James Smith Lee" and "Mr. Lee Yu Chiu" are his. (A copy of the relevant document showing these specimen signatures is at Appendix 38. It will be seen that two different specimen signatures have been provided by James Lee in each case.)
- In the case of Development & Trust Inc's accounts with Wing Hang Bank, the specimen signatures appearing against the name "Mr. Lee Wei Ting" is his. (A copy of the relevant document showing this specimen signature is at Appendix 39.)
- In the case of First California's bank accounts with Bank of Communications, the specimen signatures appearing against the names "Mr. Leeway Ting" and "Mr. Lee, James Smith" are his. (A copy of the relevant document showing these specimen signatures is at Appendix 40. It will be seen that two different specimen signatures have been provided by James Lee in each case.)

3.4.14 During the examination, I enquired why the signatory requirements in respect of Modern Aspac's accounts were such that James Lee could sign singly whereas the other authorized signatories had to sign jointly.<sup>68</sup> James Lee confirmed that this was because he was the boss and had control over the money whereas the other signatories were only staff members.

3.4.15 When asked why he used different signatures and whether the purpose was to conceal his identity, James Lee initially said he could not recall. Subsequently, he indicated that as two signatories were needed to draw monies, he used two names and hence two signatures. He stressed that he did not use different signatures to conceal his identity.

#### Confirms using different names

3.4.16 In the course of his examination, James Lee confirmed having used different names and different signatures, including :

- James Smith Lee
- Lee Wei Ting (李維鼎) – an example of the signature adopted when using this name and identified by him as being his is at Appendix 39.

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<sup>68</sup> At least two of the other signatories had to sign together for amounts below \$100,000 and at least three for any amount.

- Lee Jee San (李 稚 三) – an example of the signature adopted when using this name but not identified by him as being his is at Appendix 43.
- Lee Yu Chiu (李 禹 九) – an example of the signature adopted when using this name and identified by him as being his is at Appendix 38.
- Lee Chuan Hsin (李 傳 新) – examples of the signatures adopted when using this name and identified by him as being his are at Appendices 33,<sup>69</sup> 35<sup>70</sup> and 46.<sup>71</sup>

3.4.17 The names Lee Wei Ting (李 維 鼎) and Lee Yu Chiu (李 禹 九) appear on James Lee’s current name card, which he provided at the time of my meeting with him. A copy of this is at Appendix 47. In addition, James Lee noted that “Lee Yu Chiu” was the name he used in Taiwan and that the name “Lee Chuan Hsin” was one he used as a student. He also indicated that he now signed as “Lee Chuan Hsin” so that other people would not know it was him.

#### Involvement in transfer of dividends to Modern Aspac – confirmed

3.4.18 During the examination, I asked James Lee why dividends belonging to 6 of the Nine Overseas Corporate Shareholders were transferred into Modern Aspac’s account<sup>72</sup> and whether this was done on his instruction. Initially, he replied that he could not recall but admitted that it was possible. However, when shown copies of three indemnity letters provided to HSBC (in the form of the letter at Appendix 35) and copies of the various dividend cheques to which such indemnity letters related, he confirmed that :

- in each case, one of the three signatures appearing on the indemnity letter was his (namely the one which read “Lee Chuan Hsin”); and
- some of the endorsement signatures on the back of the dividend cheques were his (including all those at Appendix 33).

He also noted that these documents might have something to do with the trusts set up, but that he could not be sure.

3.4.19 Additionally, James Lee also indicated that the transfers had been arranged by staff who would prepare the relevant documents for him to sign.

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<sup>69</sup> The endorsements at the back of the cheques, which read “Lee Chuan Hsin”.

<sup>70</sup> The signature on the indemnity letters which reads “Lee Chuan Hsin”.

<sup>71</sup> The specimen signature for James Smith Lee provided in relation to Modern Aspac’s account with Bank of Communications which reads “Lee Chuan Hsin”.

<sup>72</sup> This is discussed at length in Section 2 (paragraphs 3.2.7 to 3.2.20).

### Involvement in transfer of funds to First California – cannot recall

3.4.20 When asked why dividends paid into Development & Trust Inc's and Peaceful Corporation Inc's accounts at Wing Hang Bank were transferred to First California, James Lee said that he could not recall.

### Appointment of Oxford's staff to attend Oxford's AGM – no involvement

3.4.21 With regard to the arrangement of representatives for four of the Nine Overseas Corporate Shareholders at Oxford's AGMs, James Lee said he himself did not arrange these matters. He then indicated that it was William Lee who did so, but subsequently said that it was not William Lee but his subordinates that arranged these matters. As to how William Lee would know the wishes of the major shareholders, James Lee said he did not know. He also insisted that William Lee had not first consulted him (ie James Lee) about these arrangements.

### Oxford's operations – appear to be effectively in James Lee's hands

3.4.22 During the examination, James Lee indicated that he dealt with Modern Aspac's and IPIL's affairs and was the boss of these companies. As regards Oxford however, he was inconsistent, as described below :

- At one stage, he noted that he did not give directions to Oxford. He subsequently indicated that he would make final decisions in respect of that company although he would also listen to views and suggestions made to him. He also indicated that this was not because he was the boss but because they (ie the directors) trusted his decision.
- Later on in the interview however, James Lee indicated that he did not necessarily make the final decision regarding Oxford's matters. He went on to note that, for example, he would not handle day-to-day affairs but that he would be consulted on important matters only. He added that he had to be consulted because such matters exceeded their respective authority. He was equally unclear as to what constituted important matters. He noted that it would not include matters concerning distribution of dividends as the amount involved was small, nor the development of Oxford's properties. At the same time, he indicated that it would include matters involving money because he controlled monies in the bank and matters relating to the properties in Guam because he was familiar with Guam. Later on in the interview however, James Lee said that Oxford would decide its own affairs and never consulted him on anything and that he only handled Modern Aspac's and IPIL's affairs. He added that if Oxford's staff regarded him as the boss, it was only out of respect not because he was actually their boss.

- Still later in the interview, James Lee noted that Lee An Fen and Lee Wan Wah were not usually in Hong Kong and that they did not attend Oxford's AGMs either, as the travel expense was high and there were no matters requiring them to attend. He further indicated that although both Lee An Fen and Lee Wan Wah were directors, they did not need to attend to anything since Oxford's affairs, which essentially comprised rental matters and accounting matters, were handled by Modern Aspac and IPIL.

3.4.23 James Lee also confirmed that in the past, he had arranged both Lee An Fen and Lee Wan Wah's appointments as directors as well as Robert Kiang's, but insisted that William Lee had arranged their present appointments. He also noted that he did not direct what any of these people should do.

#### Request for further information – no further information provided to date

3.4.24 On 15 November 2000, I wrote to James Lee requesting further clarification on various matters. I also asked James Lee whether he had checked through the transcript of the examination on 11 September 2000 and was satisfied with its accuracy, and, if so, that he sign the transcript and return it to me. I also sent a reminder letter to James Lee on 5 February 2001 reminding him of the possible consequences of his failure to provide the supporting documents requested in my earlier 15 November 2000 letter and that I may recommend the Financial Secretary to freeze certain Oxford shares. By letter of 22 February 2001 (received on 26 February 2001), James Lee alleged that the wife of one Dr Monte R Bullard had witnessed the transfer of Oxford shares from him to his children 10 odd years ago. He also provided me with Dr Bullard's address.

3.4.25 On 26 February, I wrote to Dr Bullard with a view to trying to obtain from him further information about the alleged transfer. By letter of 6 March 2001, Dr Bullard responded that he had known James Lee since 1960 but could not recall any details of transfer of Oxford shares from James Lee to his children. Dr Bullard also said he recalled that his late wife (who was Chinese and passed away in 1994) had discussed with James Lee his family affairs on more than one occasion between 1982 and 1985, when Dr Bullard was stationed in Hong Kong as an Army Liaison Officer at the U.S. Consulate. Dr Bullard recalled also that his late wife had met James Lee in about 1991 or 1992 and had mentioned that James Lee was in the process of organising his estate in order to take care of his children. Dr Bullard further said that he vaguely recalled that his late wife went to Guam with James Lee or one of his daughters at one time. Dr Bullard believed she had witnessed some documents for James Lee at that time but was not sure when that occurred. He also did not know of any documentation regarding the transfers or the solicitors used at that time.

#### Observations on James Lee's examination

3.4.26 Overall speaking, I found James Lee honest and frank in answering most of my questions regarding his ownership and control of the Oxford shares concerned. It is clear that James Lee did not try to hide the fact that he owned and controlled about 60% to

70% of Oxford's issued share capital but he could not recall the details. He told me clearly that he used private companies to hold Oxford shares in order to conceal his identity. It is probably true that he could not recall details of these companies (which would appear to be the Eleven Major Shareholders) since these matters were arranged some twenty years ago and he is now 84 years old, not to mention he is a diabetic and was recovering from a recent heart operation. It is also probably true that he intended to transfer these Oxford shares held by the Nine Overseas Corporate Shareholders to his children after his death. However, he could not provide me with any supporting documents or records despite my repeated requests to him to do so.

## **William Lee**

### Background and current position

3.4.27 William Lee, James Lee's youngest child, has been the chairman of Oxford since 1984. I sent enquiry letters and reminder letters to his last known correspondence address in May and June 2000. He did not reply until October 2000, stating that he held 33,000 shares in his own name and an indirect interest in 533,400 shares through Modern Aspac.

### Arranging interview

3.4.28 As I understood William Lee would be attending Oxford's AGM on 14 July 2000, I sent a letter to him requesting him to attend a meeting with me after the AGM. William Lee did not attend the meeting (scheduled for 2:30 pm) but contacted me by phone in the late morning of 14 July 2000 to say that he was on his way to China. He appeared to be calling by mobile phone from a train. Although I told William Lee that it was important for him to attend a meeting with me to answer my questions regarding Oxford, William Lee said he was very busy but that he would try to contact me again.

3.4.29 Thereafter, William Lee did not contact me until the afternoon of 26 September 2000 (about 2 weeks after my meeting with his father, James Lee). William Lee telephoned me and said he wished to see me the next morning. A meeting was arranged and I examined William Lee on oath pursuant to section 36 of the SDIO on 27 September 2000.

### James Lee's interests in Oxford – claimed not to know

3.4.30 During the examination when William Lee was asked about the Nine Overseas Corporate Shareholders and how many Oxford shares his father James Lee had and whether James Lee had made arrangements to transfer Oxford shares to private companies, William Lee generally adopted an attitude that he was not sure or he did not know.

3.4.31 William Lee was also shown copies of Gyna Incorporated's account opening documents with Morgan Stanley dated 1995, a copy of which is at Appendix 48. He confirmed that the signature on page 2 thereof against the name "William T. Lee" was his. However, he claimed that he could not recall the circumstances in which he signed this document but believed Pei Shing Chi probably passed it to him for signature since Pei Shing Chi used to handle such matters. William Lee also indicated that he was surprised to learn that Gyna Incorporated owned shares in Oxford and that he did not know about this until he received my letter regarding this investigation.

3.4.32 When asked whether he knew that James Lee's holding could be as much as about 90% of Oxford's issued share capital as a result of the 71.28% held by the Nine Overseas Corporate Shareholders and the 17.88% held by Legal (Nominees) Ltd and Gyna Incorporated, William Lee claimed that he did not know about that even though he is the son of James Lee and he has been the chairman of Oxford since 1984.

#### Arranging payment of dividends – claimed not to know

3.4.33 During the examination, William Lee was shown copies of various letters from Oxford to eight of the Nine Overseas Corporate Shareholders dating from 1990 to 1995 (ie all excepting Yamamoto). A sample collection of such letters is at Appendix 41.

3.4.34 The letters appear to be confirmation of telephone conversations between Oxford and such companies regarding instructions on the payment of dividend. William Lee confirmed that the signature on some of these letters were his. He claimed however that he could not recall the circumstances in which he signed those letters. He also indicated that although he signed some of these letters, he had not been a party to the telephone conversations referred to therein. He added that he believed these matters had been handled by Pei Shing Chi who prepared the relevant letters and passed them to him for signing.

#### Appointment of representatives – appears to be involved

3.4.35 William Lee confirmed that staff had in the past been instructed to attend and vote at Oxford's AGMs as representatives of four of the Nine Overseas Corporate Shareholders. He also confirmed that this was done at the direction of Oxford's management level and not at the direction of the corporate shareholders themselves. He could not however explain why the direction came from Oxford's management and not the shareholders, nor could he explain the basis on which Oxford's management was able to give such directions.

3.4.36 As regards Oxford's 2000 AGM, William Lee was unable to explain why staff members were no longer appointed as representatives to attend and vote on behalf of four of the Nine Overseas Corporate Shareholders. He denied that he was involved in arranging for the four non-staff persons to attend and vote on behalf of such companies at the 2000 AGM. He admitted however that he knew each of these four persons prior to the 2000 AGM and believed his father, James Lee, probably knew them as well. He

insisted however that he had not arranged for them to attend and vote at the 2000 AGM, but (after much questioning) eventually admitted that he helped arrange their hotel accommodation in Hong Kong and that he had flown to Hong Kong with one of them. He also insisted that he did not know what, if any, relation these four persons had with the respective corporate shareholder they represented at the 2000 AGM and why they chose to attend Oxford's AGM on this occasion. Moreover, he alleged that these four persons had come to Hong Kong for sight seeing reasons.

#### Observations on the examination

3.4.37 Overall, I found William Lee evasive and not forthcoming. It appeared to me that William Lee probably knew a lot more about James Lee's shareholding and the arrangement regarding his shareholding than he alleged given that he (a) is James Lee's youngest son, (b) has been the Chairman of Oxford since 1984, (c) had signed a number of documents regarding the transfer of dividends of some of the Nine Overseas Corporate Shareholders<sup>73</sup> and (d) was also one of the directors / officers / authorized signatories of some of the Nine Overseas Corporate Shareholders.<sup>74</sup>

### **Robert Bonar**

#### Background

3.4.38 Robert Bonar joined Modern Aspac in 1979 and was promoted to General Manager three months later. He has been an alternate director of Oxford (alternate to Robert Kiang) since 1991. Owing to his poor health, Robert Bonar now works from home. Moreover, since his wife passed away in 1992, he has only worked part-time. He confirmed that he has no present or past interests in Oxford shares.

#### Control of Oxford – believed to rest with James Lee

3.4.39 Robert Bonar confirmed that a management committee had been set up about five to seven years ago to run the day-to-day operation of the leasing and management of properties. The current committee comprised S Y Wong, Eric Chiu and Hermia Chan. The committee would come to his home every Wednesday and refer the day-to-day maintenance or leasing matters to him for approval. In respect of matters which exceeded his authority, he would make a recommendation for the approval of Oxford's board of directors, by which he confirmed he meant William Lee and Robert Kiang. Robert Bonar indicated that he did not have written instructions as to what fell within or outside his authority, but he was generally able to gage this based on his long history with them.

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<sup>73</sup> See paragraphs 3.4.33 to 3.4.33 above.

<sup>74</sup> He is one of authorized signatories on Gyna Incorporated's account with Merrill Lynch. He is also one of the directors of Development & Trust Inc and of Peaceful Investment Inc – see paragraphs 3.1.56 and 3.1.57 above.

3.4.40 Upon being questioned about James Lee's role in Oxford, Robert Bonar noted that he (referring to James Lee) *"has his own private businesses, private companies, and he looks after all these private companies but his son has been looking after the chairmanship all the time and everything we referred to his son. The company (referring to Oxford) is very strange, it was worked such a way, I would say, like a family company. Everything we do, the day-to-day usual work is given the responsibility to me, ... but still we have to keep the board informed of what the rental market is and if they agree for us to rent out the premises then we will rent it out. If they don't agree, we are just agents, we can't rent it out, you see, we have to get their approval."* Robert Bonar explained that by "their approval", he meant the approval of the board by which he meant William Lee and Robert Kiang. He also indicated that William Lee probably discussed matters with his father but that he did not know for sure.

3.4.41 During the course of the interview, Robert Bonar appeared to agree that James Lee was in fact part of Oxford's top management and made decisions for Oxford. In fact, he went so far as to agree that James Lee was the true person who controlled and owned Oxford. He also noted however that staff went through William Lee and that it was the latter who contacted James Lee, adding that, this was out of respect for his father. He also commented that, in his opinion, William Lee still took instructions from his father, adding that if he did not, he stood to risk his father passing away without leaving him anything, particularly given James Lee's hot temper.

3.4.42 As regards Lee Wan Wah and Lee An Fen's role as directors of Oxford, Robert Bonar said that they were not involved in Oxford's day-to-day business and that the only thing they did was sign the audit accounts while William Lee signed for the chairmanship.

#### Attendance of staff at Oxford's AGMs

3.4.43 Robert Bonar's responses on the issue of staff members attending Oxford's AGM have been dealt with in Section 3 (paragraph 3.3.10) and I do not propose to repeat the same here.

#### Transfer of dividends to Modern Aspac

3.4.44 Again, Robert Bonar's responses on the issue of the handling of dividends payable to the Nine Overseas Corporate Shareholders have been dealt with earlier (Section 2, paragraphs 3.2.27 to 3.2.30) and I do not propose to repeat the same here.

### **Robert Kiang**

3.4.45 Robert Kiang has been a director of Oxford since 1977. He worked for James Lee's company James S. Lee Clothing Mill Company (發利行) since 1955. He is now retired and lives alternately in Canada and Okinawa, Japan. He confirmed that he has no present or past interests in Oxford shares.

3.4.46 Robert Kiang confirmed that he had been invited by James Lee to be a director of Oxford in around 1977. He added that he played a passive role in Oxford's affairs and came to Hong Kong only once or twice a year to attend directors' meetings or the AGM.  
Control of Oxford

3.4.47 On the issue of who handled Oxford's affairs, Robert Kiang stated that Pei Shing Chi and Robert Bonar handled the day-to-day and documentary matters. He further explained that :

- Pei Shing Chi was an accountant and essentially Oxford's treasurer, responsible for all money and accounting matters, matters relating to shareholders and documentary matters relating to AGMs, board meetings and annual returns.
- Robert Bonar handled all leasing matters.

3.4.48 Robert Kiang added that after Pei Shing Chi's death, James Lee's grandson, Lawrence Low, attended to documentary matters and that when, Lawrence Low subsequently left to continue his studies, he was replaced by S Y Wong.

3.4.49 As regards Oxford's major decisions, Robert Kiang noted that while James Lee was still Chairman, he probably made all major decisions. He believed however that even after William Lee became the Chairman of Oxford in 1984, James Lee may have occasionally participated in the affairs of Oxford as its "top consultant". However, he did not know the degree of James Lee's involvement because he (Robert Kiang) was not in Hong Kong.

#### James Lee's interests in Oxford

3.4.50 As regards the Nine Overseas Corporate Shareholders, Robert Kiang said that he recognised some of them as he had seen some of their names before on the register of members. However, he stated that he did not know who their directors or shareholders were, nor did he know whether or not they were James Lee's private companies or if they had anything to do with James Lee.

#### **S Y Wong**

3.4.51 S Y Wong first worked for James Lee's company in around 1970. He left shortly afterwards but returned in 1991 as a co-ordinator in Modern Aspac's leasing department. He was invited by Oxford's board to become an alternate director to Lee Wan Wah in 1991. He confirmed that he has no present or past interests in Oxford shares.

#### James Lee's interests in Oxford – no knowledge

3.4.52 As regards James Lee's interests in Oxford, S Y Wong was asked whether he agreed that James Lee was the representative of the Nine Overseas Corporate Shareholders. He replied that he could not speculate as he had no information or evidence.

#### Control of Oxford – with management committee and two directors

3.4.53 He confirmed that the management committee, comprising himself, Eric Chiu and Hermia Chan, managed the day-to-day business of Oxford and its subsidiaries. He indicated that the committee would make recommendations for Robert Bonar's approval on all matters. He also indicated that in respect of significant matters, such as leasing contracts involving monthly rentals of about \$1 million, the matter would be referred to William Lee and Robert Kiang for approval. In a letter issued by S Y Wong on behalf of Oxford, he noted that Oxford had no staff.

#### Transfer of dividends – no knowledge

3.4.54 On the issue of the transfer of dividends into Modern Aspac's bank account, S Y Wong said he did not know why the dividends of some of the Nine Overseas Corporate Shareholders were transferred to Modern Aspac even though he had signed some of the cheques concerned. He said he signed the cheques because Robert Bonar and Ellen Wong, the accountant, had already signed them by then. He indicated that this meant the General Manager (that is Robert Bonar) had already endorsed such payment.

### **Former staff members**

#### **Raymond Lo**

3.4.55 Raymond Lo was the former chief accountant of Oxford between May 1996 and July 1998. He confirmed that he was responsible for the Oxford group's accounting and secretarial work and that he reported directly to Robert Bonar, the General Manager. He also confirmed that he has no present or past interests in Oxford shares.

#### James Lee's interests in Oxford – confirmed as being the largest

3.4.56 According to Raymond Lo, James Lee was the largest shareholder of Oxford and he used a number of overseas incorporated companies to hold Oxford shares so that nobody would know who the beneficial owner of those shares was. Raymond Lo stated that he knew this because the dividend cheques issued to some of these overseas companies had been deposited into Modern Aspac's bank account at HSBC and later transferred to James Lee. James Lee had a number of aliases such as 李禹九, 李存真 and 李振先 (transliteration). He confirmed also that he had seen the names of the Eleven Major Shareholders while working at Oxford.

### Control of Oxford – resting with James Lee

3.4.57 Raymond Lo said he considered James Lee to be the shadow player behind Oxford and, in actuality, its top management. He added that James Lee made decisions for Oxford including dividend payments, salary increments, bonuses, investments, etc. He also stated that the directors and staff of Oxford would act in accordance with instructions or directions given by James Lee, even though he was not a director of Oxford. He explained also that Robert Bonar referred to James Lee as the “principal” because James Lee was the true person who controlled and owned Oxford.

### **Sam Liu**

3.4.58 Sam Liu worked as Oxford’s chief accountant between June 1994 and May 1996. He confirmed that he was responsible for the Oxford group’s accounting work and that he reported directly to Robert Bonar, the General Manager. He also confirmed that he has no present or past interests in Oxford shares.

### Modern Aspac’s role

3.4.59 Sam Liu stated that Modern Aspac managed Oxford. He said that Modern Aspac was a Rental Agent for Oxford’s properties and responsible for finding lessees, collecting rents and managing the properties for Oxford.

3.4.60 He noted also that James Lee had numerous private companies and that Modern Aspac was responsible for the accounts of those companies that had properties in Hong Kong, the PRC and Guam. He added that he too might be required to do accounting work for those companies with property rentals in Hong Kong.

### James Lee’s interests in Oxford and staff attendance at Oxford’s AGMs

3.4.61 Sam Liu noted that Pei Shing Chi had told him that James Lee held almost all of the shares in Oxford and had used a number of overseas incorporated companies to hold these shares. He stated however that he could not recall if James Lee had set up a trust to hold Oxford shares for his children but added that these companies appointed Oxford’s staff as proxies to attend Oxford’s AGM every year. He also said that the appointment of proxies was arranged by Pei Shing Chi and that rehearsals were carried out prior to the AGM.

3.4.62 According to Sam Liu, James Lee had a number of aliases such as 李維鼎, 李禹九 and 李傳先 (transliteration). He added that James Lee used different names to open bank accounts and that the accounting department kept records of James Lee’s signatures as authorized signatory of various bank accounts.

## Control of Oxford

3.4.63 Sam Liu said he considered James Lee to be, in actuality, the top management of Oxford and that he made the ultimate decisions for Oxford including decisions about rentals, salary increments, payment approvals, etc. He noted also that the directors and staff of Oxford acted in accordance with James Lee's instructions or directions, even though he was not a director of Oxford.

3.4.64 As regards the setting up of the management committee, Sam Liu explained that there was a period of time when James Lee was out of Hong Kong and Robert Bonar was not in good health and that the management committee was thus set up at the time to look after ordinary matters. He added that the committee would seek Robert Bonar's advice if necessary and that Robert Bonar would decide whether a matter should go further up to James Lee and/or William Lee.

## **Current staff members**

### Eric Chiu – Head of accounting department

3.4.65 Eric Chiu joined Modern Aspac in 1995. He was in charge of the accounting department. He reported to Robert Bonar, the General Manager. He said he would refer any problems to the management committee. He confirmed that he has no present or past interests in Oxford shares.

3.4.66 Eric Chiu confirmed that if the management committee could not solve a problem, then it would refer the problem to Robert Bonar, who would further refer the problem to the board if he could not solve it. He added that although James Lee was not a director of Oxford, he was a director of Oxford's subsidiaries and associated company e.g. Modern Aspac. He noted also that James Lee would usually be around in the office of Modern Aspac for about two to three months a year, but that he had not been in the office during the past year due to sickness.

3.4.67 Eric Chiu confirmed that he arranged the preparation of the indemnity letters and cheques to transfer the dividend cheques of some of the Nine Overseas Corporate Shareholders to James Lee's private company Sky Dragon. He noted that these documents would be sent to James Lee for signing and that if James Lee were not in Hong Kong, his secretary would send them to Japan for James Lee's signing.

### Ellen Wong – Assistant accountant

3.4.68 Ellen Wong has been an assistant accountant of Modern Aspac since 1994. She confirmed that she was one of the authorized signatories of the bank accounts of Modern Aspac and some of Oxford's subsidiaries. She confirmed that she has no present or past interests in Oxford shares.

3.4.69 She signed on the indemnity letter after the other two signatories had signed. She followed Eric Chiu's instructions to prepare the indemnity letter and relevant documents. She said the dividends of some of the overseas corporate shareholders were treated as "temporary receipts" in the books of Modern Aspac and that the money would be rolled over as time deposits and later transferred to Sky Dragon. She said she did not know the reason for the transfer. She just followed the instructions given by the department head i.e. Eric Chiu.

#### Winnie Leung – James Lee's secretary

3.4.70 Winnie Leung joined Modern Aspac as a team secretary in 1998. She later also acted as James Lee's secretary. She said she received an extra allowance of \$1,000 per month from Modern Aspac for working as James Lee's secretary. She confirmed that she has no present or past interests in Oxford shares.

3.4.71 She said that, before 1999, William Lee seldom stayed in Hong Kong. She said that James Lee, however, spent more time in Oxford and stayed in Modern Aspac's office about three to four months every year. She thought that James Lee and William Lee controlled the staff of Oxford from a distance because James Lee and William Lee were not always in Hong Kong and called Oxford's staff by telephone from overseas. In terms of frequency, she said James Lee telephoned the office more than William Lee did. Amongst James Lee's private companies, she had come across letters sent to Lotus Real Estate Inc, Peaceful Investment Inc, Gyna Incorporated.

#### Hermia Chan – Leasing manager

3.4.72 Hermia Chan joined Modern Aspac as a leasing manager in 1996. She was responsible for the leasing and management of properties. She reported to Robert Bonar. She confirmed that she has no present or past interests in Oxford shares.

3.4.73 She was a member of the management committee which ran the day-to-day business of Oxford. She said as the day-to-day business (maintenance, leasing and management of properties) was rather routine, the management committee seldom met together to discuss issues. She did not know James Lee's position or role in Oxford but he had his own room in the office of Modern Aspac. James Lee usually stayed in the office for a week or so then he left Hong Kong and he would come back after several months. She heard that he went to the Mainland and Japan for his own private business.

#### **Company secretary**

3.4.74 Prior to 1995, Sums Ltd provided company secretarial services to Oxford. Thereafter, K K Ho became the company secretary. Each of K K Ho as well as two directors and a staff member of Sums Ltd have provided a statutory declaration for the purposes of this investigation. Their testimony is set out below.

## **Sums Ltd – Wilson Ma**

3.4.75 Sums Ltd has been Oxford's share registrar since 1984, providing services such as maintaining an updated register of members, registering shares, assisting Oxford to convene AGMs, preparing minutes of the AGMs, sending interim results and annual reports to shareholders and printing and sending dividend cheques to shareholders.

3.4.76 Wilson Ma is a manager of Sums Ltd and was responsible for overseeing the services provided by Sums Ltd to Oxford. He was supervised by one of Sums Ltd's directors, Andrew Wong. He confirmed that he has no present or past interests in Oxford shares.

### Delivery of reports to shareholders – no further information

3.4.77 Wilson Ma confirmed that he had come across the names of the Nine Overseas Corporate Shareholders in the course of maintaining Oxford's register of members. He noted however that he had never had any direct contact with them except that Sums Ltd received letters from them regarding changes in their correspondence address or their list of authorized signatories. He noted also that he had sent interim results and annual reports to these nine shareholders by mail and that some had been returned undelivered. However, Sums Ltd had not kept record of the delivery.

### Arrangements for payment of dividends – on Oxford's instructions

3.4.78 On the issue of the payment of dividends to the Nine Overseas Corporate Shareholders, Wilson Ma confirmed as follows :

- Between 1990 and 1995, dividend cheques payable to 8 of the Nine Overseas Corporate Shareholders (ie all other than Yamamoto), were not sent to them because Oxford informed Sums Ltd that the shareholders had requested that the dividends be sent by telegraphic transfer. In this regard, Oxford had provided them with letters to support such demands. Copies of some of these letters are at Appendix 41.
- Between 1997 and March 2000, dividend cheques payable to six of the Nine Overseas Corporate Shareholders (namely : Barkston Investment Ltd, Lotus Real Estate Inc, Good American Inc, Californian Enterprise Inc, Peaceful Corporation and San Ting Enterprise Inc) were sent to Oxford rather than to these shareholders direct. This was because staff of Oxford informed Sums Ltd that these six shareholders had requested them not to send the cheques by mail. The cheques were either sent to Pei Shing Chi and subsequently to Eric Chiu, or collected by staff from Oxford. It was either Pei Shing Chi or Eric Chiu who gave instructions in this regard, but Sums Ltd did not have any record of such instructions.

- The instructions from Oxford were followed because they believed Oxford had the authority to retain dividend cheques as these cheques were the property of Oxford. Moreover, the practice had been followed in previous years and Oxford's staff members had also been appointed by these shareholders to attend and vote at Oxford's AGMs.
- He did not know how Oxford handled these dividend cheques or into which account they were deposited, but Sums Ltd had never received any complaints from the overseas shareholders regarding these dividend cheques.

#### James Lee's interests – no knowledge

3.4.79 As regards James Lee's interests in Oxford, Wilson Ma stated that he did not know the relationship between these Nine Overseas Corporate Shareholders and James Lee or William Lee.

#### **Sums Ltd – Directors (W M Sum and Andrew Wong)**

3.4.80 W M Sum set up W M Sum & Company, a Certified Public Accounting firm. He stated that he had incorporated Sums Ltd in 1972 to provide company secretarial services to the firm's clients. He confirmed that he has been a director of Sums Ltd since 1972 but that he seldom got involved in its work, adding that the daily operations of Sums Ltd were handled by Wilson Ma under the supervision of Andrew Wong.

3.4.81 W M Sum further confirmed that Development & Trust Inc and Lotus Real Estate Inc had been purchased through Sums Ltd from Mossack Fonseca & Co (HK) Ltd in May 1987. He could not however confirm who gave the instructions to purchase them as Sums Ltd did not have any records of these two companies and the staff who handled the purchase had now left. He added that Sums Ltd had not been involved in the incorporation of the other seven overseas corporate shareholders. He also noted that he did not know whether the Nine Overseas Corporate Shareholders were related to James Lee or William Lee.

3.4.82 As regards the handling of dividends payable to the Nine Overseas Corporate Shareholders, W M Sum confirmed that he understood from Wilson Ma that ever since Sums Ltd had become Oxford's registrar, dividend cheques belonging to some overseas shareholders had been collected by Oxford. He added however that he did not know who had given instructions to Sums Ltd in this regard.

3.4.83 Andrew Wong is another director of Sums Ltd. During his examination, he also confirmed that he did not know whether the Nine Overseas Corporate Shareholders were related to James Lee. He further noted the following.

#### Arrangements for payment of dividends

3.4.84 In relation to the arrangements for paying dividends to the Eleven Major Shareholders, Andrew Wong confirmed that he was aware of the practice of passing dividend cheques relating to some of these companies to Oxford. He believed this was done on Oxford's instructions. He added that he did not see anything wrong with this practice as the dividends belonged to Oxford. He also noted that it was quite normal for the company to handle dividends of larger amounts itself and that shareholders with substantial holdings may contact the company and arrange for dividends to be paid otherwise than by cheque.

#### James Lee's involvement in control of Oxford – only speculative

3.4.85 As regards Oxford's board meetings, Andrew Wong confirmed that he attended board meetings regarding the announcement of interim and final results and indicated that James Lee was not present at such meetings. He added however that there was very little discussion at such meetings in respect of how much dividend would be paid, noting also that usually William Lee would come up with a figure and the others would agree. He did not know however if Mr James Lee was consulted about the dividend payment but indicated that as William Lee was his son he might have done, but he did not know.

#### Attendance by staff at Oxford's AGMs

3.4.86 Andrew Wong also confirmed that he was aware that staff of Oxford represented some of the major shareholders at Oxford's AGMs and indicated that this practice had been in place since his joining Sums Ltd in around September 1987. He stated that he did not know why there was such an arrangement.

#### **K K Ho**

3.4.87 K K Ho joined W M Sum & Co in 1992 and has worked as Oxford's company secretary on a part-time basis since October 1995. He was introduced by Andrew Wong and is paid an annual fee of \$14,400, but there is no formal employment letter between him and Oxford.

#### No further information

3.4.88 According to K K Ho, as a part-time company secretary of Oxford, he attended the AGMs, directors' meetings, and certified letters sent to the SEHK concerning Oxford's announcements and share capital matters. K K Ho said he paid no attention to Oxford's business or operation because he only worked on a part-time basis and received a nominal fee of \$14,400 per year. He further said that he did not know who the major shareholders of Oxford were or who was in charge of Oxford's business. Neither did he know that some of the Nine Overseas Corporate Shareholders had appointed proxies to

attend AGMs. Furthermore, he did not know who James Lee or Robert Bonar was. He said the name William Lee sounded familiar to him and that he seemed to be one of the directors.

## Summary

3.4.89 To summarize then, the testimony of Oxford's various directors and staff (including former directors and staff) shows as follows :

- As regards the Eleven Major Shareholders :
  - James Lee has essentially admitted that at least ten of the Eleven Major Shareholders are his private companies. He has alleged however that Oxford shares registered in the name of eight of the Nine Overseas Corporate Shareholders are held on trusts for his children. As for Legal (Nominees) Ltd and Gyna Incorporated, he has indicated that he and his late wife held an 80% interest in these companies while Chow Sy-Pien held the remaining 20%.<sup>75</sup>
  - James Lee was able to control dividends payable to some of these shareholders by using different names and signatures.<sup>76</sup>
- As regards the control of Oxford's affairs and policies :
  - Oxford's business essentially comprised attending to rental and property management matters and accounting matters. Both of these were handled by Modern Aspac and IPIL. Staff handling such matters were also employed by either Modern Aspac or IPIL and not by Oxford. Both these companies were under James Lee's control.<sup>77</sup>
  - Oxford's day-to-day affairs were handled by a management committee. The committee did not have ultimate control over Oxford's policies and would refer such matters to Oxford's board of directors, namely William Lee and Robert Kiang.<sup>78</sup>
  - As for Oxford's board, of its four directors, two played no role<sup>79</sup> and one played a limited and passive role.<sup>80</sup> As for its two alternate

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<sup>75</sup> See paragraphs 3.4.10 and 3.4.11 above.

<sup>76</sup> See paragraphs 3.4.13 to 3.4.15 above.

<sup>77</sup> See paragraphs 3.4.22 and 3.4.53 above.

<sup>78</sup> See paragraphs 3.4.38, 3.4.39 and 3.4.53 above.

<sup>79</sup> Lee An Fen and Lee Wen Wah.

<sup>80</sup> Robert Kiang.

directors, they both sat on the management committee which referred matters to William Lee and Robert Kiang and hence themselves had no control over Oxford's policies.

- Several staff and directors regarded James Lee to be the true person who controlled Oxford, namely Robert Bonar,<sup>81</sup> Raymond Lo<sup>82</sup> and Sam Liu.<sup>83</sup>

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<sup>81</sup> See paragraphs 3.4.40 and 3.4.41.

<sup>82</sup> See paragraph 3.4.57.

<sup>83</sup> See paragraph 3.4.63.

## Part IV

### CONCLUSIONS AND RECOMMENDATIONS

#### Introduction

4.1 In accordance with the terms of my Appointment, the investigation aimed at determining the true persons who were or had been financially interested in the success or failure (real or apparent) of Oxford or were able to control or materially influence its policies, as at 26 April 2000, or if transactions in any shares material to the investigation had taken place subsequent to 26 April 2000, on the date of the last of those transactions. The investigation was conducted in accordance with these terms and this Part of the report sets out the conclusions I have reached based on the evidence and findings set out in Parts II and III.

#### Conclusions – true person financially interested in Oxford – James Lee

4.2 On the basis of the evidence set out in Parts II and III of this Report, I am of the view that James Lee controls and owns all of the Eleven Major Shareholders and that he used these companies to conceal the true extent of his interests in Oxford. This view is supported by the following :

(a) Minimal registered interests

The apparent absence of James Lee or any of his family members among the list of Oxford's 14 largest (who together hold about 92.56% of the company) is glaring, particularly given that :

- since its listing, Oxford's only two chairmen have both been members of the Lee family – first James Lee, who was Chairman from 1973 to 1984, and then his youngest son William Lee, who has been Chairman since 1984;
- Oxford's main board of directors (ie directors other than alternate and non-executive directors) has always predominantly comprised members of the Lee family;
- as for the alternate directors and non-executive directors, these are basically staff members of Oxford or business associates of Oxford and/or James Lee; and
- James Lee and his late wife together held 96% of Oxford's issued share capital before and 72% after the listing.

If the Lee family's interests in Oxford were limited to the shares registered in the name of James Lee, William Lee and Modern Aspac, this would mean that the family, collectively, owned less than one percent (0.968%) of Oxford's issued share capital. This seems unusual given the matters noted above.

(b) James Lee's admissions

During his examination, James Lee stated that he was unsure of his exact interest in Oxford, but indicated that he held about 60% to 70% of Oxford's issued share capital, and that this was held in the name of private companies to conceal his identity. He also stated that he had bought more Oxford shares from the market after the company was listed.<sup>84</sup> Given that after the listing, James Lee held about 71.5% of Oxford's issued share capital, it follows that his shareholding now must exceed 71.5%. Moreover, in later correspondence, James Lee identified ten of the Eleven Major Shareholders as the companies to which he transferred his Oxford shares.<sup>85</sup>

(c) Source and timing of acquisitions

The shareholdings of almost all of the Nine Overseas Corporate Shareholders – or at least the bulk of such shareholding – can be traced as having been acquired from James Lee or from companies who in turn acquired their Oxford shares from James Lee.<sup>86</sup> In the four cases where the share transfer form is available, the transfer is stated as being for nil consideration. Moreover, five of the Nine Overseas Corporate Shareholders appear to have acquired the entirety or the bulk of their Oxford shares from either Peaceful Investment Inc or Barkston Investment Ltd very shortly before the SDIO first came into operation on 1 September 1991. More significantly, as a result of these transactions, Peaceful Investment Inc and Barkston Investment Ltd were able to reduce their respective shareholdings to below the 10% discloseable level imposed by the SDIO.

(d) Companies controlled by or connected to James Lee

James Lee appears to have clear connections with at least ten of the Eleven Major Shareholders (ie all except Yamamoto). Even in the case of Yamamoto, there are some indications of connections with James Lee.

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<sup>84</sup> See paragraph 3.4.10.

<sup>85</sup> See paragraph 3.4.11.

<sup>86</sup> See paragraph 3.1.67.

- In the case of four companies, he sat on their board of directors and was essentially in control of them.<sup>87</sup> Moreover, the other directors essentially comprised either his children or various long serving staff of Oxford, all of whom James Lee would likely have trusted to follow his instructions. In one case,<sup>88</sup> James Lee even used two different names to appear as two directors of the company. Other directors do not adopt a similar practice. This again suggests that James Lee intended to be in a position to control these companies on his own.
- In the case of the other six companies, James Lee signed documents on their behalf.<sup>89</sup>
- James Lee also essentially controlled all six bank accounts into which dividend monies belonging to all Nine Overseas Corporate Shareholders other than Yamamoto, were held.<sup>90</sup> In some cases, he has even adopted two names and two signatures to ensure that he is able to solely control such accounts.<sup>91</sup> Again the other authorized signatories are either his children or staff of Oxford, some quite junior, all of whom would again be unlikely not to follow his instructions. None of the other authorized signatories used two names or two signatures. Moreover, in some cases their authority was strictly controlled by the requirement for three signatures in respect of amounts exceeding \$100,000 whereas James Lee had unrestricted authority.<sup>92</sup>

In the case of Yamamoto, addresses used are similar to or the same as that of James Lee or some of the other Eleven Major Shareholders,<sup>93</sup> thus also suggesting some connection with James Lee. Moreover, the

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<sup>87</sup> Development & Trust Inc, Peaceful Investment Inc, Legal (Nominees) Ltd and Gyna Incorporated – see paragraph 3.1.67.

<sup>88</sup> In the case of Legal (Nominees) Ltd – see paragraph 3.1.61.

<sup>89</sup> The endorsement on at least some of the dividend cheques payable to Barkston Investment Ltd, Lotus Real Estate Inc, Good American Inc, San Ting Enterprise Inc, Californian Enterprise Inc and Peaceful Corporation were signed by James Lee and he has admitted this – see paragraphs 3.2.8 and 3.2.9 and Appendix 33.

<sup>90</sup> Ie Modern Aspac's and Sky Dragon's bank accounts with Bank of Communications and, presumably, his personal account in Taiwan – see paragraphs 3.2.17, 3.2.19 and 3.2.20; Peaceful Investment Inc's and Development & Trust Inc's bank accounts with Wing Hang Bank and First California's bank account with Bank of Communications – see paragraphs 3.2.22 to 3.2.24.

<sup>91</sup> In the case of Peaceful Investment Inc and First California's accounts with Bank of Communications – see paragraphs 3.2.22, 3.2.24 and 3.4.15.

<sup>92</sup> In the case of Modern Aspac's and Sky Dragon's accounts with Bank of Communications – see paragraph 3.2.17.

<sup>93</sup> Yamamoto's previous correspondence address is the same as Lotus Real Estate Inc's current address and similar to Development & Trust Inc's and James Lee's current addresses – see paragraphs 3.1.34, 3.1.37 and 3.1.47. Moreover, Yamamoto's current correspondence address is the same as San Ting Enterprise Inc's previous address – see paragraphs 3.1.16 and 3.1.23.

specimen signatures of its authorized signatories provided to Sums Ltd included two which read “Chuan Hsin Li” and “Hsin Chuan Lee”, which are similar to one of James Lee’s Chinese names.<sup>94</sup>

(e) Dividends controlled by James Lee

Dividends paid to all Eleven Major Shareholders, other than Yamamoto, were always essentially under James Lee’s control even when they were being held in the account of Sky Dragon or Modern Aspac. Moreover, he has in fact transferred a large portion of these into his own personal account. The timing of the transfers to his personal account is also significant in that it was shortly after my interview with him.

(f) Representation at AGMs and timing of change

Only four of the Eleven Major Shareholders attended Oxford’s AGMs between 1997 and 2000. However, their collective shareholding was large enough to ensure that a particular resolution could be passed or defeated on a poll. Moreover, the representatives appointed were all either personally known to James Lee<sup>95</sup> or they were staff working for Oxford and his company, Modern Aspac.<sup>96</sup> The timing of the change in practice for appointing representatives is also significant in that the change occurred after my Appointment and first contact with Oxford in respect of this investigation.

(g) Similarities among Eleven Major Shareholders

There are a number of similarities among the Eleven Major Shareholders. Specifically :

- at least six of their addresses have at some stage been of premises located in Jubilee Plaza Building in Tokyo,<sup>97</sup> which is also where James Lee’s current address is located;<sup>98</sup>
- dividends paid to six of them were handled collectively and in the same manner for at least the past four years, where collected;<sup>99</sup>

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<sup>94</sup> See paragraph 3.1.35.

<sup>95</sup> As was the case in the 2000 AGM – see paragraph 3.4.36.

<sup>96</sup> As was the case in the 1997 to 1999 AGMs – see paragraphs 3.3.2 to 3.3.4.

<sup>97</sup> Yamamoto (see paragraph 3.1.34), Development & Trust Inc (see paragraphs 3.1.37 and 3.1.54), Peaceful Investment Inc (see paragraphs 3.1.47 and 3.1.54), Lotus Real Estate Inc (see paragraphs 3.1.37 and 3.1.47), Good American Inc (see paragraph 3.1.47), Barkston Investment Ltd (see paragraph 3.1.54).

<sup>98</sup> See paragraph 3.1.47.

<sup>99</sup> See paragraphs 3.2.7 to 3.2.20.

- letters sent to Sums Ltd by four shareholders in respect of the appointment of representatives for the 1997 to 1999 AGMs were in essentially identical terms;<sup>100</sup> and
- five of the shareholders sent identical letters to Sums Ltd on 22 July 1989 concerning the provision of specimen signatures of authorized signatories, and two of the specimen signatures provided were identical.<sup>101</sup>

(h) Allegations of trust

Save for James Lee's allegations during his examination, there is nothing to evidence that the shares held by the Nine Overseas Corporate Shareholders are held on trust for any of James Lee's children or any other person. As regards his allegation that Legal (Nominees) Ltd and Gyna Incorporated are held as to 80% by James Lee and his late wife and as to the remaining 20% by Chow Sy-pien, again there is no other evidence to substantiate the same. Moreover, it contradicts the contents of the two letters sent to Merrill Lynch at the time of opening Legal (Nominees) Ltd's account which states that the Oxford shares in question belong to James Lee and his late wife in equal shares.

4.3 In addition, the following matters tend to suggest that all the Eleven Major Shareholders are merely nominee companies for some person :

- (a) Although I have sent enquiry letters and reminder letters to the last known correspondence addresses of the Eleven Major Shareholders, the letters were returned undelivered or no reply to them was received.
- (b) On-site visits to the last known correspondence addresses of the Nine Overseas Corporate Shareholders suggest that many of them no longer exist at those addresses and may never have.
- (c) Despite the issue of public notices in Japan, Taiwan and Delaware (being the places in which the last known correspondence addresses of the Nine Overseas Corporate Shareholders were located) as well as in Hong Kong, appealing for persons interested in 300,000 or more Oxford shares to contact me, nobody responded.

In view of the matters noted in paragraph 4.2 above, this further evidence suggests that this person could only be James Lee.

4.4 In view of the above, I am also of the opinion that the true extent of James Lee's interests in Oxford comes to at least 60,506,080 shares (or just under 90% of

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<sup>100</sup> See Appendices 42 to 45.

<sup>101</sup> See paragraph 3.1.54, which discusses the similarities among the letters.

Oxford's total issued share capital),<sup>102</sup> thus making him the true person financially interested in the success or failure of Oxford.

4.5 For the sake of completeness, I would mention that even if James Lee's allegations of trust are true and the shares held by the Nine Overseas Corporate Shareholders are held in trust for his children and Chow Sy-pien has a 20% interest in the shares held by Legal (Nominees) Ltd and Gyna Incorporated, I would maintain that he is the true person financially interested in the success or failure of Oxford as the evidence strongly suggests that the Eleven Major Shareholders are accustomed to acting in accordance with James Lee's directions or instructions. As such, James Lee has a deemed interest in these companies pursuant to section 8(2)(a) of the SDIO.<sup>103</sup> This view is also supported by the matters already noted in paragraphs 4.2 and 4.3 above.

### **Conclusions – true person controlling Oxford – James Lee**

4.6 As regards the identity of the true persons controlling or materially influencing Oxford's policies, I am of the view that this person is James Lee. This is supported by the following :

(a) Apparent interest in almost 90% of Oxford

Although there is no categorical evidence that James Lee is the ultimate beneficial owner of the shares held in the name of the Eleven Major Shareholders, there is strong evidence that he has control over them. Such control over almost 90% of Oxford's issued share capital effectively puts him in a position to control Oxford's affairs.

(b) James Lee's admission

James Lee indicated in the examination that he dealt with Modern Aspac's affairs and was the boss of that company. As regards Oxford, he indicated that he would make final decisions. He added that he would be consulted on important matters only and that important matters would include matters involving money because he controlled monies in the bank.<sup>104</sup>

(c) Current and former staff's evidence

Robert Bonar appeared to agree that James Lee was in fact part of Oxford's top management and made decisions for Oxford. In fact, he

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<sup>102</sup> This does not take into account the 533,400 shares owned by Modern Aspac, which in turn is owned by Oxford and William Lee in equal shares. Taking these shares into account also would bring James Lee's total interests to 61,039,480 shares or 90.08% of the total issued share capital.

<sup>103</sup> Section 8(2)(a) of the SDIO provides that : "*For purposes of sections 3 to 7 (of the SDIO), a person is taken to be interested in shares if a corporation is interested in them and – (a) that corporation or its directors are accustomed to act in accordance with his directions or instructions...*"

<sup>104</sup> See paragraph 3.4.22.

went so far as to agree that James Lee was the true person who controlled and owned Oxford.<sup>105</sup> Although Robert Kiang said he did not know the degree of James Lee's involvement, he said James Lee may have occasionally participated in the affairs of Oxford as its "top consultant".<sup>106</sup> Raymond Lo said he considered James Lee to be the shadow player behind Oxford and, in actuality, its top management. He also stated that the directors and staff of Oxford would act in accordance with instructions or directions given by James Lee, even though he was not a director of Oxford.<sup>107</sup> This view was echoed by Sam Liu who said James Lee made the ultimate decisions for Oxford including decisions about rentals, salary increments, etc.<sup>108</sup>

(d) Role played by IPIL and Modern Aspac

James Lee indicated in the examination that Oxford's affairs, which essentially comprised rental matters and accounting matters, were handled by Modern Aspac and IPIL. As such, it follows that Oxford's affairs were effectively under his control as both Modern Aspac and IPIL are his companies.<sup>109</sup>

## Breaches

4.7 On the basis of the above conclusions, it follows that the following breaches appear to have been committed :

- (a) James Lee has, since 1991, been in breach of section 3 of the SDIO by failing to disclose his entire interests in Oxford. In particular, he has not disclosed his interests in the Oxford shares held by the Eleven Major Shareholders. Pursuant to section 15 of the SDIO, such failure is an offence rendering James Lee liable on summary conviction to a fine of \$10,000 and to imprisonment for six months and on conviction upon indictment to a fine of \$100,000 and to imprisonment for two years.
- (b) In view of the matters noted in paragraph 4.6 above, James Lee may well be a "shadow director" of Oxford, as the term is defined in the SDIO. Therefore, the duty of a director to disclose his interest in his own listed company would also appear to fall upon James Lee as a shadow director of Oxford.<sup>110</sup> James Lee would have been under such a

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<sup>105</sup> See paragraph 3.4.41.

<sup>106</sup> See paragraph 3.4.49.

<sup>107</sup> See paragraph 3.4.57.

<sup>108</sup> See paragraph 3.4.63.

<sup>109</sup> See paragraph 3.4.22.

<sup>110</sup> Such duty is imposed by virtue of section 28 of the SDIO. The disclosure obligation is imposed on shadow directors (defined in Section 2 of the SDIO) by virtue of section 28(7) of the SDIO.

duty to notify Oxford and the SEHK in writing of the subsistence of his interests ever since 1991, when the SDIO became effective. Pursuant to section 28(8) of the SDIO, such failure is an offence punishable on summary conviction to a fine of \$10,000 and to imprisonment for six months and on conviction upon indictment to a fine of \$100,000 and to imprisonment for two years.

- (c) Oxford has breached the 25% minimum public float requirement applicable in its case and required by Rule 8.08 of the Listing Rules.

### **Possible courses of action**

4.8 Flowing from the above conclusions, there are a number of courses of action which the Financial Secretary may wish to explore including the following :

- (a) prosecuting James Lee for breaches of the SDIO;
- (b) prosecuting William Lee for aiding and abetting James Lee in his breaches of the SDIO;
- (c) referring William Lee's apparent misconduct to the SEHK;
- (d) imposing freezing orders on the shares held by the Eleven Major Shareholders;
- (e) referring the apparent breach of the minimum public float requirement to the SEHK;
- (f) commencing a further investigation under section 143 of the CO or, alternatively, referring this matter to the Commission to consider commencing a further investigation under section 29A of the SFCO;
- (g) referring the possible inadequacies of the current duties imposed on approved share registrars to the Federation of Share Registrars Limited for consideration;
- (h) referring the inadequacies of the current legislation to the Standing Committee for Company Law Reform for consideration; and
- (i) publishing this report, but without Appendices 12 to 31 and 33 to 48.

Each of the above is discussed at length below.

## **James Lee – prosecution for breach of SDIO**

4.9 The Financial Secretary may wish to consider and seek legal advice on whether James Lee's apparent contravention of the SDIO gives grounds to criminally prosecute James Lee.

4.10 Given his admissions and the other strong evidence against him, I consider the prospects for a successful prosecution of James Lee good. However, in considering whether there are grounds to criminally prosecute James Lee, the Financial Secretary may wish to have regard to a number of possible practical difficulties, including :

- (a) he is already 84 years old;
- (b) he is not only very old but also weak, and he may not live much longer since he suffers from various health problems and has only recently undergone heart surgery; and
- (c) he is currently hospitalised in Japan and hence if he elects not to come back to Hong Kong voluntarily to face the prosecution, there would be no means of compelling him to return to Hong Kong as there is no extradition agreement with Japan.

These difficulties may make it impractical to prosecute James Lee.

## **William Lee – prosecution for aiding and abetting breach of SDIO**

4.11 Based on the findings of the investigation, I consider that there are reasonable grounds for suspecting that William Lee knew or should have known that his father, James Lee's, interest in Oxford was not limited to the 90,118 Oxford shares registered in his (James Lee's) name, but in fact included the Oxford shareholdings of at least nine of the Eleven Major Shareholders, if not all. This view is supported by the following :

- (a) Shareholding structure and James Lee's interests  
William Lee first became a director of Oxford in 1978 and has been the Chairman of Oxford since 1984. He is also the youngest son of James Lee. In view of this, William Lee must have been aware of :
  - his father's considerable shareholding in Oxford immediately prior to and after the company's listing in 1973; and
  - Oxford's current unique shareholding structure and, in particular, the fact that a relatively small group of companies owned almost all the shares in Oxford.

(b) Eight of the Nine Overseas Corporate Shareholders<sup>111</sup>

- Many of the letters from Oxford to eight of the Nine Overseas Corporate Shareholders concerning the handling of 1990 to 1995 dividends were signed by William Lee. According to him, he was prepared to do this without question simply because his father's long time personal assistant Pei Shing Chi had arranged it.<sup>112</sup> This suggests he knew or believed that the companies had something to do with his father.
- The bulk of the 1997 to 2000 dividends payable to these eight shareholders was deposited into and subsequently held in seven bank accounts.<sup>113</sup> William Lee is one of the authorized signatories of five<sup>114</sup> of these seven bank accounts. He also has a 50% interest in Modern Aspac, into which company's account some of these dividends were first deposited. Given this and given also that he is Oxford's Chairman, it is difficult to believe that he would be totally unaware of the dividend monies being deposited into and held in these accounts and, in some cases, transferred between such accounts. Moreover, there must have been some reason why he considered this practice acceptable.
- A letter from one of these eight shareholders (ie Good American Inc) to Sums Ltd noting changes in its correspondence address appears to have been signed by William Lee.<sup>115</sup> This suggests that William Lee either had connections with this company or with its shareholders or directors. In the case of Development & Trust Inc and Peaceful Investment Inc, he was also one of the authorized signatories of their bank accounts with Wing Hang Bank,<sup>116</sup> thus again suggesting that he had connections with this company or with its shareholders or directors. Yet, when shown a list of the Nine Overseas Corporate Shareholders, he stated that he only recalled having seen their names on the register of members and on some correspondence.

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<sup>111</sup> Ie all Nine Overseas Corporate Shareholders, except Yamamoto.

<sup>112</sup> See paragraph 3.4.33 and 3.4.34.

<sup>113</sup> Modern Aspac's bank account with HSBC, Modern Aspac and Sky Dragon's bank accounts with Bank of Communications, Peaceful Investment Inc's and Development & Trust Inc's accounts with Wing Hang Bank, First California's account with Bank of Communications and James Lee's personal account in Taiwan..

<sup>114</sup> William Lee was an authorized signatory of Modern Aspac's account with HSBC, Sky Dragon's account with Bank of Communications (see paragraph 3.2.17), Peaceful Investment Inc's account with Wing Hang Bank (see paragraph 3.2.22), Development & Trust Inc's account with Wing Hang Bank (see paragraph 3.2.23) and First California's account with Bank of Communications (see paragraph 3.2.24).

<sup>115</sup> The 1 May 1989 letter from Good American Inc at Appendix 28. The signature on this letter resembles other signatures confirmed by William Lee as being his, such as signatures on the accounting opening documents at Appendix 48.

<sup>116</sup> See paragraphs 3.2.22 and 3.2.23.

- According to Raymond Lo, it was William Lee who had instructed him to attend Oxford’s AGM as representatives of Development & Trust Inc.<sup>117</sup> Again, this suggests that William Lee either had connections with this company or with its shareholders or directors.

(c) Gyna Incorporated

William Lee is an authorized representative of Gyna Incorporated for the purpose of operating Gyna Incorporated’s account with Morgan Stanley<sup>118</sup> As such, he must at least know who the registered (if not beneficial) owner(s) of this company is.

(d) Following James Lee’s directions

Robert Bonar indicated that it was likely that William Lee still followed James Lee’s wishes regarding Oxford’s matters.<sup>119</sup>

4.12 In view of the above, the Financial Secretary may also wish to consider and seek legal advice on whether William Lee’s conduct and knowledge give grounds to criminally prosecute him for aiding and abetting his father’s apparent breaches of the SDIO.

4.13 However, the Financial Secretary may wish to consider whether the possible practical difficulties alluded to in relation to James Lee may also make a possible prosecution of William Lee impractical as it would be unusual to prosecute an accessory but not the principal.

### **William Lee – failure to comply with undertakings to SEHK**

4.14 William Lee, as the Chairman and a director of Oxford, is not specifically required by the SDIO to ensure the disclosure of his father’s undisclosed interests in Oxford. However, as a director, William Lee has made certain undertakings to the SEHK, including undertakings to use his best endeavours to ensure that Oxford complies with the Listing Rules<sup>120</sup> and the SDIO.<sup>121</sup>

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<sup>117</sup> See paragraph 3.3.12.

<sup>118</sup> See paragraph 3.4.31 and Appendix 48.

<sup>119</sup> See paragraph 3.4.41.

<sup>120</sup> This undertaking is given in the paragraph (a) (ii) of Part 2 of the Declaration and Undertaking with regard to Directors form which William Lee is required to lodge with the SEHK. The undertaking states : “... *I shall use my best endeavours to procure that the issuer shall (comply with the Listing Rules);*”.

<sup>121</sup> This undertaking is given in the paragraph (b) of Part 2 of the Declaration and Undertaking with regard to Directors form which William Lee is required to lodge with the SEHK. The undertaking states : “*I shall, in the exercise of my powers and duties as a director of the issuer, comply to the best of my ability with the Securities (Disclosure of Interests) Ordinance, the Code on Takeovers and Mergers, the Code on Share Repurchases and all other securities laws and regulations from time to time in force in Hong Kong, and I shall use my best endeavours to procure that the issuer shall so comply*”.

4.15 Given his apparent knowledge of Oxford's shareholding structure and his likely knowledge of his father's, James Lee's, undisclosed interests in at least nine of the Eleven Major Shareholders,<sup>122</sup> William Lee knew or ought to have known that Oxford had breached the 25% minimum public float requirement imposed by Rule 8.08 of the Listing Rules<sup>123</sup> and thus himself breached the undertaking to ensure compliance with the Listing Rules.

4.16 Further, under section 18 of the SDIO, a listed company has limited powers to investigate the interests of persons in its shares.<sup>124</sup> William Lee however failed to use such powers to look into the holdings of Oxford shares notwithstanding his likely knowledge of the true extent of his father's interests in Oxford and thus failed to act in the interest of Oxford and its minority shareholders in particular.

4.17 In view of the above, William Lee may not be an appropriate person to hold the office of a chairman or director of a listed company. In this regard, the Financial Secretary may wish to consider and seek advice on whether William Lee's apparent misconduct may and should be referred to the Disciplinary Committee of the SEHK.

### **Freezing orders**

4.18 Section 41(1) of the SDIO provides that:-

*“If in connection with an investigation under either section 33, 34 or 35 it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that the shares registered or, in the case of unissued shares, to be registered on issue on the Hong Kong register shall until further order be subject to the restrictions of Part V.”*

4.19 Section 44 of the SDIO provides that:

*“(1) So long as any shares are directed to be subject to the restrictions of this Part<sup>125</sup> –*

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<sup>122</sup> Ie all except Yamamoto and Legal (Nominees) Ltd – see paragraph 4.11 above.

<sup>123</sup> As previously noted, rule 8.08 of the Listing Rules requires a minimum of 25% of issued shares in public float for a company with market capitalisation of less than HK\$4 billion. James Lee together with all Eleven Major Shareholders other than Yamamoto and Legal (Nominees) Ltd held 51,696,200 shares (or about 76.3% of Oxford's issued share capital).

<sup>124</sup> Section 18(1) of the SDIO states : “A listed company may by notification in writing require a person whom the company knows or has reasonable cause to believe to be or... to have been interested in shares comprised in the company's relevant share capital - (a) to confirm that fact or .. to indicate whether or not it is the case; and (b) ... to give such further information as may be required ... ”

<sup>125</sup> The reference “Part” here refers to Part V of the SDIO, which encompasses sections 44 to 47 of that ordinance.

- (a) *any transfer of those shares;*
  - (b) *in the case of unissued shares-*
    - (i) *any transfer of the right to be issued with them; and*
    - (ii) *any issue of such shares;*
  - (c) *any cancellation of the share certificates for those shares or of the relevant certificates for those rights; and*
  - (d) *any removal of those shares to a register of shareholders other than the Hong Kong register,*
- are void.*

- (2) *Where shares are subject to the restrictions of subsection (1), any agreement to transfer the shares or, in the case of unissued shares, the right to be issued with them is void (except an agreement to sell the shares on the making of an order under section 46(3)).”*

4.20 Section 46(4) of the SDIO provides that:-

*“Where shares in a company are subject to the restrictions, the Court of First Instance may on application order the shares to be sold, subject to the court’s approval as to the sale, and may also direct that the shares shall cease to be subject to the restrictions.”*

4.21 Section 46(5) of the SDIO provides that:-

*“An application to the Court of First Instance under subsection (4) may be made by the Financial Secretary (unless the restrictions were imposed by court order under section 24), or by the company.”*

4.22 Section 47(1) of the SDIO provides that:-

*“Where shares are sold in pursuance of an order of the Court of First Instance under subsection 46(4) the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons who are beneficially interested in the shares; and any such person may apply to the Court of First Instance for the whole or part of those proceeds to be paid to him.”*

4.23 Although, as noted in paragraph 4.2 above, I am of the view that James Lee owns all of the Eleven Major Shareholders and that he used these companies to conceal the true extent of his interests in Oxford, it must be borne in mind that this view is based on documents and information which suggest such ownership, and not on direct evidence of such ownership. I am therefore unable to conclude categorically whether or not James

Lee has a beneficial interest in the Oxford shares currently registered in the names of the Eleven Major Shareholders. I am also unable to conclude categorically whether or not such shares are held by these companies on trust and, if so, on trust for whom.

4.24 Furthermore, various attempts have been made to contact and locate the Nine Overseas Corporate Shareholders but were unsuccessful. I am satisfied that these shareholders cannot be contacted at their last known correspondence address as stated in the register of Oxford.

4.25 Accordingly, the Financial Secretary may wish to consider whether the 60,415,962 Oxford shares held by the Eleven Major Shareholders should be made subject to the restrictions of Part V of the SDIO,<sup>126</sup> on the basis that I have been unable to establish the beneficial owner of the Oxford shares held by these companies.

4.26 It should be noted however that any such restrictions imposed on the shares concerned would not affect the companies' ability to receive and deal with dividends as they see fit, nor their ability to appoint representatives to attend and vote at Oxford's AGM as they see fit. Accordingly, after imposing such restrictions on these shares, the Financial Secretary may also wish to consider making an application to the Court of First Instance (under section 46 of the SDIO) for an order for their sale. The proceeds of any such sale, less costs, will be paid into court and held until their beneficial owner applies for them to be paid over to him.

### **Breach of public float requirement**

4.27 As a result of James Lee holding almost 90% of Oxford's issued share capital (and taking into account also the 33,000 Oxford shares held by William Lee and the 533,400 shares held by Modern Aspac), less than 10% of Oxford's issued share capital has been in public hands ever since at least 1991. Therefore, James Lee's shareholdings appear to have caused Oxford to seriously contravene the 25% minimum public float requirement under Rule 8.08 of the Listing Rules. Furthermore, the requirement that there must be an open market in the securities for which listing is sought<sup>127</sup> also appears to have been seriously violated.

4.28 The Financial Secretary may wish to consider whether these matters should be referred to the SEHK so that the latter may consider what further action to take. Action which the SEHK may take includes :

- (a) requiring Oxford to "place down", that is to place a sufficient number of shares to parties verified as being independent of James Lee so that the 25% minimum public float is achieved;

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<sup>126</sup> The relevant provisions of Part V SDIO are set out in paragraphs 4.18 to 4.22.

<sup>127</sup> This requirement is also imposed by Rule 8.08 of the Listing Rules.

- (b) withdrawing Oxford's listed status on the basis that there is no open market for its shares; and
- (c) imposing any of the additional disciplinary sanctions available under rule 2A.09 of the Listing Rules, which includes reprimanding and censuring involved parties.<sup>128</sup>

### **Redress for Oxford's minority shareholders**

4.29 In considering whether to make or seek the orders referred to in paragraphs 4.18 to 4.26 above and to refer the apparent breach of the Listing Rules to the SEHK, the Financial Secretary may wish to have regard to the effect of either action on Oxford's minority shareholders on whose application I was appointed as Inspector.

4.30 My Appointment follows a long history of complaints by Oxford's minority shareholders about the lack of transparency as to who really owns and controls Oxford and the lack of an adequate public market for Oxford's shares. My enquiries seem to vindicate these complaints.

4.31 The regulatory scheme established by the SDIO and the Listing Rules ultimately exists for the benefit of all shareholders. The purpose of the SDIO is to ensure that the ownership and control of listed companies is transparent so that, among other things, shareholders may make an informed decision about the purchase or sale of shares in a listed company. Further, the minimum public float and open market requirements in the Listing Rules together ensure that there is a sufficiently liquid market to properly value shares in listed companies and that shareholders of those companies have a ready means to exit the company if they wish.

4.32 James Lee's apparent breaches of the SDIO and the resulting apparent breaches of the Listing Rules have harmed Oxford's minority shareholders in that they have been unable to make an informed choice about whether to purchase or sell Oxford shares, the shares that they do hold may not be accurately priced and it may be difficult for them to exit Oxford and realise their investments if they wish.

4.33 It is therefore likely that, given the current situation, Oxford's minority shareholders will look for an opportunity to exit the company by selling their shares at a fair price.

4.34 Imposing Part V SDIO restrictions on the 60,415,962 Oxford shares in which James Lee has a notifiable interest will not directly assist Oxford's minority shareholders. Nor will applying for an order to have James Lee's shares sold under section 46 of the SDIO. This is because there is unlikely to be sufficient public interest for such shares to be taken up by the public, resulting in a more widely held company, and it is also unlikely

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<sup>128</sup> A copy of Rule 2A.09 of the Listing Rules, setting out the various sanctions open to the SEHK is at Appendix 49.

that Oxford's minority shareholders will have the resources to acquire all the Oxford shares in which he is interested.

4.35 If following a referral of the apparent breaches of the minimum public float and open market requirements, the SEHK were to decide to withdraw Oxford's listing, this would most likely exacerbate the position of Oxford's minority shareholders as they may not be able to dispose of their Oxford shares. It would also seem to be unlikely that any "placing down" by Oxford would be successful, given the limited public interest in the free floating Oxford shares as indicated by the very low turnover and relatively flat share price trend to date. Lastly, any SEHK reprimand or public censure of those involved would do little to improve the situation of Oxford's minority shareholders.

4.36 However, all or any of these actions may indirectly induce James Lee to seek a suitable solution, which also benefits Oxford's minority shareholders.

4.37 Additionally, two statutory remedies exist that may provide direct redress to Oxford's minority shareholders: section 37A of the Securities and Futures Commission Ordinance, Cap 24, Laws of Hong Kong, ("SFCO") and section 168A of the Companies Ordinance, Cap 32, Laws of Hong Kong ("CO"). Both provisions create similar remedies to apply to court for various orders including in particular an order for the shares of one member to be purchased by another. From the minority shareholders' perspective, an order compelling the purchase of their shares would be far more appealing than an order compelling the sale of James Lee's shares. The only significant difference between section 37A SFCO and section 168A CO is that, in one case, the application is required to be made by the Commission whereas in the other, it must be made by the Financial Secretary.

4.38 It should be noted however that both provisions might require the appointment of another inspector to further enquire into Oxford's affairs and the financial and time costs in this regard would have to be taken into account. The Financial Secretary may therefore wish to consider and seek legal advice on whether it is appropriate to seek redress for Oxford's minority shareholders and, if so, whether such redress should be sought under sections 37A of the SFCO or section 168A of the CO.

4.39 The two provisions are discussed at greater length below.

#### Section 37A SFCO

4.40 Section 37A(1) of the SFCO provides that:

*"If it appears to the Commission from any information, record or other document obtained under section 29A, or under section 36 in relation to section 29A, that the affairs of a listed company are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, the Commission, after consultation*

*with the Financial Secretary, may make an application to the Court of First Instance by petition for an order under this section.”*

4.41 Section 37A(2) of the SFCO provides that:

*“If on a petition under this section the court is of the opinion that the company’s affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members ... the court may ... -*

...

*(d) make any other order it thinks fit, whether for regulating the conduct of the company’s affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company’s capital, or otherwise.”*

4.42 Section 29A(1) of the SFCO provides that:

*“Where-*

...

*(c) it appears to the Commission that there are circumstances suggesting that its members have not been given all the information with respect to its affairs that they might reasonably expect; or*

...

*the Commission may give directions to the company or to a subsidiary of the company or to a company substantially under the control of the same person as the company, requiring it, at the time and place specified in the directions, to produce the records and documents specified in the directions.”*

4.43 Section 36 of the SFCO is the power of the SFC to apply to a Magistrate for a search warrant.

4.44 Accordingly, to secure an order (under section 37A(2)(d) of the SFCO) for Oxford’s minority shareholders’ shares to be purchased by other shareholders, such as (for example) James Lee, the Commission would need to :

- (a) commence an investigation under section 29A of the SFCO since the powers under section 37A SFCO can only be exercised on the basis of information and documents obtained under section 29A of the SFCO; and
- (b) satisfy the Court that Oxford’s affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the minority shareholders.

4.45 As to commencing an investigation under section 29A of the SFCO, I would note that the findings of the present investigation suggest that Oxford's minority shareholders have not been given all the information regarding Oxford's true owner and controller. On that basis, there would appear to be sufficient grounds for commencing an investigation under section 29A(1)(c) of the SFCO. The Financial Secretary may therefore wish to consider referring the findings in this report to the SFC for the purposes of considering an inspection under section 29A of the SFCO.

4.46 As to whether Oxford's affairs have been conducted in a manner unfairly prejudicial to some or all of its shareholders, I would note as follows :

- (a) The findings of this investigation only reveal possible breaches of the disclosure obligations under the SDIO and a failure to maintain the minimum public float requirement. The Financial Secretary may wish to seek legal advice as to whether these findings, in and of themselves, indicate that the affairs of Oxford are being conducted in a manner unfairly prejudicial to minority shareholders.
- (b) The above said, I note that in their letters of complaint, the minority shareholders made various allegations of mismanagement of Oxford's affairs. I have not looked into these allegations as they fall outside the scope of the terms of my Appointment and this investigation, nor have I, in the course of this investigation, come across any information or documents which would substantiate such allegations. I am therefore not in a position to advise on the likelihood of a possible case of unfair prejudice being made out.

#### Section 168A of the CO

4.47 As an alternative to pursuing the remedies available under section 37A of the SFCO, the Financial Secretary may also wish to consider the possibility of pursuing the remedies under section 168A of the CO.

4.48 Sections 168A(1) and (2) of the CO essentially echo sections 37A(1) and (2) of the SFCO. They provide that:

- “(1) ... in a case falling within section 147(2)(b), the Financial Secretary, may make an application to the court by petition for an order under this section.*
- (2) If on any petition under this section the court is of opinion that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or some part of the members ... the court may ... -*

- (c) *make such other order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise."*

4.49 Section 147(2)(b) of the CO provides that:

*"If, in the case of any body corporate liable to be wound up under this Ordinance, it appears to the Financial Secretary from any report made under section 146 or from any information or document obtained under section 152A or 152B-*

*...*

- (b) *that the business of such body corporate is being or has been conducted in a manner unfairly prejudicial to the interests of the members generally or of any part of its members, he may (in addition to, or instead of, presenting a petition under paragraph (a)) present a petition for an order under section 168A."*

4.50 Section 146 of the CO is the power of an inspector appointed by the Financial Secretary under sections 142 or 143 of the CO to report. Section 143(1)(c)(iii) of the CO gives the Financial Secretary the power to appoint one or more inspectors on essentially the same grounds as those in section 29A(1)(c) of the SFCO.

4.51 Section 143(1)(c)(iii) of the CO provides that:

*"... the Financial Secretary ...*

- (c) *may ... (appoint one or more competent inspectors to investigate the affairs of a company and to report thereon if it appears to the Financial Secretary that there are circumstances suggesting- ...*

*(iii) that its members have not been given all the information with respect to its affairs that they might reasonably expect."*

4.52 It should be noted that the powers of an investigator appointed under section 143 of the CO are wider than those of the SFC's under section 29A of the SFCO in that, in the former case, the investigator has the power to examine persons on oath and to institute certification proceedings to compel a person to produce documents requested or respond to questions put to him.<sup>129</sup>

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<sup>129</sup> See sections 145(2) and (3) of the CO.

4.53 As for sections 152A and 152B of the CO, these essentially allow the Financial Secretary or a person authorized by the Financial Secretary to exercise powers similar to those available to the SFC under sections 29A and 36 of the SFCO.

4.54 It follows therefore that the considerations noted in paragraphs 4.44 to 4.46 above are equally relevant to pursuing remedies under section 168A. Essentially, to secure an order under section 168A(2)(c) of the CO for the minority shareholders' shares to be purchased by other shareholders, such as James Lee :

- (a) The Financial Secretary would need to first commence an investigation under section 143 of the CO, for which grounds exist under section 143(1)(c)(iii) on the basis that the findings of this investigation suggest Oxford's minority shareholders have not been given all the information regarding Oxford's true owner and controller.
- (b) Assuming that the report on such investigation suggests that Oxford's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of some or all of its members, the Financial Secretary may then present a petition for an order under section 168A CO. To secure such an order, the Financial Secretary would of course have to satisfy the Court that such unfairly prejudicial conduct exists or existed and in this regard, the concerns highlighted in paragraph 4.46 above would apply equally here.

4.55 It may be worth noting here that if legal advice obtained by the Financial Secretary confirms that the findings of this report, in and of themselves, suffice to indicate that the affairs of Oxford are being conducted in a manner unfairly prejudicial to minority shareholders, then the Financial Secretary may wish to consider seeking further legal advice as to whether it would be possible to commence proceedings under section 168A of the CO on the basis of this report notwithstanding that it has been prepared pursuant to section 36 of the SDIO and not section 146 of the CO. This would obviate the need for a further investigation aimed only at securing the same documents and information already disclosed in this report.

### **Practice of Sums Ltd and its officers**

4.56 Between 1996 and March 2000, Sums Ltd released dividend cheques of six of the Nine Overseas Corporate Shareholders to Oxford without any supporting evidence of authorization by these shareholders.<sup>130</sup> Sums Ltd have noted that such practice was proper in the circumstances of the case because :

- (a) as Oxford's agent, it was obliged to follow Oxford's instructions regarding the issuing and handling of dividend cheques;

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<sup>130</sup> See paragraph 3.4.78.

- (b) the instructions given in the present case were reasonable and there was no reason to dispute them given :
- the large amount involved and the fact that the shareholders were overseas shareholders, so that it would have taken a much longer time for the cheques to clear if sent by post;
  - that there are no laws or regulations restricting the contractual arrangement between Oxford and Sums Ltd regarding the processing of dividend payments; and
  - that the cheques were drawn on Oxford's account and were hence the property of Oxford; and
- (c) there were no complaints from shareholders regarding Sums Ltd's return of dividend cheques to Oxford.

I accept that the current legislation does not expressly impose a specific duty of care on share registrars towards shareholders of a listed company. I also accept that there is currently no Code or Guideline stipulating the standards of behaviour or care expected of an approved share registrar -- whether towards shareholders of the listed company in question or otherwise. However, in my view, it is clear that Sums Ltd's practice of releasing dividend cheques to Oxford without evidence of shareholders' approval facilitated the concealment of James Lee's interests in Oxford. The Financial Secretary may therefore wish to consider referring this issue to the Federation of Share Registrars Ltd to look into the appropriateness of imposing on its members some form of duty of care towards shareholders of the relevant listed company.

## **Law reform**

4.57 This report highlights the lack of an appropriate remedy for minority shareholders who may have no means of exiting at a fair price from a listed company in which they are “trapped” owing to the company’s domination by a single shareholder or group of related shareholders. The proposed Securities and Futures Bill does not substantially change the powers available to the Financial Secretary or the Courts so as to eliminate this problem. The ideal remedy would be a means for the company or majority shareholder to be ordered to buy out the minority shareholders at a fair price, such as exists under section 37A of the SFCO and section 168A of the CO. However, it should not be necessary for a wasteful second inspection to occur following an inspection under the SDIO itself for the remedy to be available. The Financial Secretary may wish to consider whether to refer this issue to the Standing Committee for Company Law Reform as part of its program of reviewing corporate governance in Hong Kong.

## Publication

4.58 Section 39(3) of the SDIO provides that:-

*“The Financial Secretary may, if he thinks fit-*

- (a) forward a copy of any report made by the inspector to the listed company’s registered office or principal place of business in Hong Kong;*
- (b) furnish a copy on request and on payment of the fee provided in the regulations to-*
  - (i) any member of the listed company or other corporation which is the subject of the report;*
  - (ii) any person whose conduct is referred to in the report;*
  - (iii) the auditors of that listed company or corporation;*
  - (iv) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed company or corporation, or otherwise; and*
- (c) cause any such report to be printed and published.”*

4.59 I recommend that the Financial Secretary forward a copy of this report to Oxford at its registered office in Hong Kong and that he cause this report to be printed and published but without Appendices 12 to 31 and 33 to 48 given that they are voluminous and given also the confidential and sensitive nature of the contents of many of them. However, the Financial Secretary may wish to seek legal advice on the timing of publication so as not to prejudice any prosecutions or other proceedings instituted in the light of the contents of this report.

Stephen Suen Man Tak  
Inspector appointed under section 33 of the  
Securities (Disclosure of Interests) Ordinance

Date : 25 April 2001

## List of names and abbreviations

<b><u>AGM</u></b>	annual general meeting
<b>Andrew Wong</b>	Mr Wong Yee Siu, Andrew
<b>CO</b>	Companies Ordinance, Chapter 32, Laws of Hong Kong
<b>CSC</b>	CSC United States Corporation Company
<b>Delmarva</b>	Delmarva Underwriters, Ltd
<b>Eleven Major Shareholders</b>	Nine Overseas Corporate Shareholders, Legal (Nominees) Ltd and Gyna Incorporated
<b>Ellen Wong</b>	Ms Wong Pui Ying, Ellen
<b>Eric Chiu</b>	Mr Chiu Chor Wah, Eric
<b>Federation of Share Registrars Ltd</b>	The association approved under rule 3 of the Securities (Stock Exchange Listing) (Approved Share Registrar) Rules, each of whose members is an approved share registrar
<b>First California</b>	First California Finance Inc
<b>Hermia Chan</b>	Ms Chan Sau Fan, Hermia
<b>Incorporated Company Secretaries Ltd</b>	Oxford's previous share registrar
<b>IPIL</b>	International Peaceful Interests Limited
<b>James Lee</b>	Mr James Smith Lee, also known as Lee Wei Ting (李維鼎), Lee Jee San (李稚三), Lee Yu Chiu (李禹九), and Lee Chuan Hsin (李傳新)
<b>K K Ho</b>	Mr Ho Kwok Kuen
<b>Listing Rules</b>	Rules Governing the Listing of Securities on SEHK
<b>Merrill Lynch</b>	Merrill Lynch Far East Ltd
<b>Modern Aspac</b>	Modern Aspac Development Company Ltd
<b>Morgan Stanley</b>	Morgan Stanley Dean Witter Hong Kong Securities Ltd

<b>Nine Overseas Corporate Shareholders</b>	Collectively: Peaceful Investment Inc., Barkston Investment Ltd., Lotus Real Estate Inc., Development & Trust Inc., Good American Inc., S. Yamamoto for HK Kowloon First Stock Exchange Co., San Ting Enterprise Inc., Californian Enterprise Inc. and Peaceful Corporation.
<b>Oxford</b>	Oxford Properties & Finance Ltd
<b>Raymond Lo</b>	Mr Lo Gun Yuen, Raymond
<b>Robert Bonar</b>	Mr Robert Horatius Bonar
<b>Robert Kiang</b>	Mr Kiang Chee Man, Robert
<b>S Y Wong</b>	Mr Wong Shu Yuen
<b>Sam Liu</b>	Mr Liu Kin Ming, Sam
<b>SDIO</b>	Securities (Disclosure of Interests) Ordinance, Chapter 396, Laws of Hong Kong
<b>SEHK</b>	The Stock Exchange of Hong Kong Limited
<b>SFC</b>	Securities and Futures Commission
<b>SFCO</b>	Securities and Futures Commission Ordinance, Chapter 24, Laws of Hong Kong
<b>Sky Dragon</b>	Sky Dragon Management Ltd
<b>Sums Ltd</b>	The share registrar of Oxford since 1984
<b>Tax Report</b>	Annual Franchise Tax Report
<b>USA</b>	United States of America
<b>W M Sum</b>	Mr Sum Wai Man
<b>William Lee</b>	Mr Lee Teh Yee, William
<b>Wilson Ma</b>	Mr Ma Wai Sum, Wilson
<b>Winnie Leung</b>	Ms Leung Chi Fun, Winnie
<b>Yamamoto</b>	S. Yamamoto For HK Kln First Stock Exchange Co



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